honorable Secretary of the Interior, washington, d. c.

In the matter of the consolidated applications of, William C. Thompson et al., Terry Thompson Stubblefield, et al., Winnie S. Wright et al., Mary McNeese et al., Arthur M. Thompson William Thompson, Jr., et al., Mattie Holloway et al., Mary Jones, Winburn Jones et al., Bryant M. Jones et al., Mary E. O. Quin et al., R. C. McLendon et al., B. F. McLendon et al., R. O. Thompson et al., John T. Thompson et al., John T. O'Quin et al., W. H. McCoy et al., W. S. Jones et al.,

and Clarence Gatlin et al.,

Applicants for enrollment as Choctaw Indians in the Indian Territory.

BRIEF ON BEHALF OF APPLICANTS.

CHESTER Howe, Attorney for Applicants.

BEFORE THE

Honorable Secretary of the Interior.

WASHINGTON, D. C.

In the matter of the consolidated applications of William C. Thompson et al., Terry Thompson Stubblefield et al., Winnie S. Wright et al., Mary McNeese et al., Arthur M. Thompson, William Thompson, Jr., et al., Mattie Holloway et al., Mary Jones, Winburn Jones et al., Bryant M. Jones et al., Mary E. O. Quin et al., R. C. McLendon et al., B. F. McLendon et al., R. O. Thompson et al., John T. Thompson et al., John T. O'Quin, et al., W. H. McCoy et al., W. S. Jones et al., and Clarence Gatlin et al.

BRIEF ON BEHALF OF APPLICANTS.

STATEMENT.

The records show that William C. Thompson was born in the Choctaw and Chickasaw country, Indian Territory. His father was a quarter blood Choctaw Indian. His mother was Elizabeth Mangum; she was also a quarter blood Choctaw woman. This applicant was born on February 6, 1839, in the old Choctaw Nation, now part of the Chickasaw Nation. His father and mother died in 1840 and his grandfather (James Mangum) came from the Choctaw Nation in Mississippi and carried him back to Mississippi, raising him and keeping him there until 1857. At 18 years of age he came back to his grandmother, who was Margaret McCoy Thompson, a half-breed woman living in the Choctaw Nation, Indian Territory, and made his home with her and

Governor Dickinson Frazier; in about eight months he went back to the Choctaw Nation in Mississippi and remained there until the war; after the war, came to Texas, and from Texas to the Chickasaw Nation; here he has lived since 1887. His Choctaw blood is fully and satisfactorily shown. His place of birth was old Fort Towsen. From 1887 until 1896 he occupied land in the Chickasaw Nation as a Choctaw Indian, was recognized by the Choctaw government by being appointed a deputy permit collector, and presented a petition to the Council for formal enrollment, which petition had not been acted upon by the Council at the time of the Act of June 10, 1896. While he and his people had not been formerly placed upon the rolls, they were in the position of publicly recognized citizens.

After the passage of said Act the Dawes Commission issued a circular letter of instruction dated July 8, 1896, for the guidance of applicants for citizenship, and in July, 1896, this claimant together with the members of his family appeared before said Commission. Their applications were filed and no decision rendered thereon at that time, and on August 1, 1896, he made application to the Choctaw Council for enrollment as a citizen. His said application was referred to the Commission appointed under Act of the Choctaw Council of September 18, 1896, the same being placed before said Commissioner the 8th day of October, at Kiowa, in the Indian Territory. They were not enrolled, because they were not personally present at the time the matter was taken up by this Commission. By subsequent action of the Choctaw Council an Advisory Board was appointed by action of the Council of October 10, 1896, and on January 6, 1897. Thompson appeared before said Board, where the former action of the Council was affirmed, the names placed on the roll of 1896, and certificates issued under the seal of the Choctaw Nation.

The Dawes Commission did not act upon these applications

for citizenship until December 8, 1896, when their action was made of record, but there is no showing in the record that he was ever notified of this action, and it is shown, by competent testimony, that not only was no notice of such action received by them, but, on the contrary, they were notified by the attorneys for the Nation that they had been enrolled by the Dawes Commission.

It is further shown that the claimants and their witnesses appeared a number of times both before the Choctaw authorities and the Dawes Commission, ready, willing and anxious to make any further proof required. That he had reduced to possession and occupied as a Choctaw, lands in the Chickasaw Nation and had placed valuable improvements thereon, the improvements being worth at least One Thousand dollars.

The Act of Congress, June 10, 1896 (29 Statutes, 339), provides as follows:

"That said Commission is further authorized and directed to proceed at once to hear and determine the application of all persons who may apply to them for citizenship in any of said Nations, and after such hearing they shall determine the right of such applicant to be so admitted and enrolled; provided, however, That such application shall be made to such Commissioners within three months after the passage of this Act. The said Commission shall decide all such applications within ninety days after the same shall be made. That in determining all such applications said Commission shall respect all laws of the several Nations or Tribes, not inconsistent with the laws of the United States, and all treaties with either of said Nations or Tribes, and shall give due force and effect to the rolls, usages, and customs of each of said Nations or Tribes: And provided, further, That the rolls of citizenship of the several Tribes as now existing are hereby confirmed, and any person who shall claim to be entitled to be added to said rolls as a citizen of either of said Tribes and whose right thereto has either been denied or not acted upon, or any citizen who may within three months from and after the passage of this Act desire such citizenship may apply to the legally constituted court or committee designated by the several Tribes for such citizenship, and such Court or Committee shall determine such application within thirty days from the date thereof."

"Provided, That if the tribe, or any person, be aggrieved with the decision of the trial authorities or the Commission provided for in this Act, it or he may appeal from such decision to the United States district court: Provided, however, That the appeal shall be taken within sixty days and the judgment of the court shall be final."

"That said Commission, after the expiration of six months, shall cause a complete roll of citizenship of each of said nations to be made up from their records, and add thereto the names of citizens whose right may be conferred under this Act, and said rolls shall be, and are hereby, made rolls of citizenship of said Nations or Tribes, subject, however, to the determination of the United States Courts, as provided herein."

The circular of instructions issued by the Dawes Commission on July 8 contains that portion of the Act of June 10, herein above set forth;

This applicant and his family availed themselves of the privileges of application to both of the tribunals mentioned in said Act, and their petition filed before the Choctaw Council, which at that date was the only authority in the Choctaw Nation, is as follows:

Ехнівіт "А."

"To the Honorable Board of the Senate and House of Representatives of the Choctaw Nation in General Council assembled, at the regular session, October, 1896, at its Capitol, Tuskahomma, Choctaw Nation, Indian Territory:

"Gentlemen:—In accordance with the Act of Congress of the United States of America, passed June 10, 1896, your undersigned, William C. Thompson et al., Choctaw by blood, does most respectfully present a petition unto your Honorable Board and prays that all rights, benefits, and immunities of the Choctaw Nation be granted and thereby enrolled as the legal citizens of said Nation for the following reasons, to wit:—

"First, Because William C. Thompson (et al hereinafter mentioned) are the children of Margaret McCoy, who was a half-breed Choctaw Indian woman, who married a white man, Thompson by name, and they had children born to them while living in lawful wedlock. William Thompson was the oldest son of Mrs. Margaret McCoy Thompson;

"Second. Because your undersigned, William C. Thompson, who was a Choctaw by blood, being the son of Mrs. Margaret McCoy Thompson et al., aforesaid;

"Third. Your attention will be called to the evidence of Mrs. Elsie Perkins, Mr. Henry Perkins, and Mrs. Lavinia Franklin, who are enrolled citizens of the Choctaw Nation by blood, who have testified under their oaths that the applicant, William C. Thompson, is the son of William Thompson, a Choctaw Indian aforesaid;

"Fourth. Your attention will be called to the fact that about the year 1879 Hon. Green W. Thompson, a Choctaw Attorney, who had presented a petition to the Choctaw Council for the lineal descendants of Margaret McCoy Thompson, aforesaid to be admitted into the citizenship of the Choctaw Nation, but some time afterwards the said Hon. Green W. Thompson died and there has never been any action taken on said petition;

"Fifth. Your attention will be called to the fact that your undersigned was ignorant of the time stated by the Choctaw and Chickasaw Commission to enable Choctaws residing in the Chickasaw Nation, as your undersigned are residents of the Chickasaw Nation aforesaid:

"Therefore your undersigned prays your Honorable Board to be caused to be enrolled as the citizens of the Choctaw Nation, the following names, to wit:—

Ехнівіт "В."

No.	Names.	AGE.	M.	F. REMARKS.
1	William C. Thompson, Sr.	57	1	
2	Sarah S. Thompson	52		1
3	Arthur H. Thompson	26	1	
4	William C. Thompson, Jr.	.20	1	
5	Mary M. Thompson	27		1 (Now McNee).
6	William G. McNee	28	1	Intermarried.
7	Harold G. McNee	4	1	
8	Terry Thompson Stubble-	30	1	Dead brother's
	field			daughter.
9	Sarah T. Stubblefield	4		1 Daughter of
				above.
10	William R. Thompson	15	1	Dead brother's
				son.

"In duty bound, your undersigned will ever pray. Petition of William C. Thompson et al.

"August 1st, 1896, Atoka, I. T.

By DAVID A. HOMER, Attorney."

No	NAMES.	AGE.	M.	F.	REMARKS.
132/11/11	William C. Thompson	57	1		
2	Sarah S. Thompson	52		1	
		20	1		
	Arthur M. Thompson		1		
	William C. Thompson, Jr.	19			
5	William R. Thompson	14	1		
6	Terry Thompson	20	1		
7	Marry M. Thompson McNee	. 24		1	
8	William T. McNee	28	1		(Husband.)
9	Harold G. McNee	4	1		
10	Sarah T. Stubblefield	4		1	

"This is to certify that the above names were enrolled on a legal roll of citizenship of the Choctaw Nation."

"This 6th day of January, 1897, Board of Revisory of the Choctaw Nation, A. R. DURANT,

(SEAL.) "Chairman of Revisory Board."

"This is to certify that the above is a true and correct copy of the proceedings of the Revisory Board, and that A. R. Durant is the fully and legally appointed Chairman of the same.

"Witness my hand and seal of the Choctaw Nation, this 6th day of January, 1897.

"Solomon J. Homer, National Secretary."

By the endorsements contained thereon it is shown that these people were duly enrolled on the rolls of 1896; the actual enrollment of names being made on January 6, 1897, which followed.

First. The accepting of the application by the Council, on August 1, 1896.

Second. The reference of the application to the Committee of the Choctaw Council on October 8, 1896.

Third. The action of the Commission of the Choctaw Council on October 8, 1896, in enrolling the descendants of Margaret McCoy Thompson, and the issuance of a notice to them to appear personally before the Commission.

Fourth. Their actual enrollment on January 6, 1896.

The attorneys of record for the Choctaw Nation, both before the Dawes Commission and before the United States Court and in the Interior Department, at that time were Sirs Stuart, Gordon, & Hailey, of South McAlester, Indian Territory.

About May 18, 1897, the applicant wrote to said attorneys, asking them what had been done by the Dawes Commission with his case, if they knew, and he mentioned not only his case, but the cases of all the members of his family, descended from the common ancestor. The reply of said attorneys was as follows:—

Ехнівіт "С."

Chas. B. Stuart, J. H. Gordon, W. E. Hailey,
STUART, GORDEN & HALEY, Att'ys at Law.,
South McAlester, I. T., May 3, 1897.

WILLIAM C. THOMPSON, Esq.

Marlow, I. T.

DEAR SIR:—Replying to your letter of recent date, we beg to say that our record shows that you were admitted as a citizen of the Choctaw Nation and that your case has not been appealed.

STUART, GORDEN & HAILEY, Attorneys."

The Dawes Commission state that action denying Thompson's petition for enrollment, filed before them, was taken on December 3, 1896, and that no appeal was filed therefrom. The above-quoted letter of Stuart, Godron & Hailey in-

formed them, in May, 1897, five months after the pretended rejection, that they had been enrolled by the Dawes Commission, and on the other hand it is not shown that service of notice of the rejection was ever made upon Thompson, or on any of the claimants, but each member of his family deny any such action. The letter of Stuart, Gordon & Hailey not only indicates no such notice, but on the contrary shows that in fact the Dawes Commission had enrolled them, and that they, as attorneys for the Nation, had taken no appeal from such action.

It is further shown by the evidence of Thompson and the other members of his family that they had no knowledge of this pretended rejection of their application, made to the Dawes Commission, from any source whatever until long after the time for appeal had expired, and that they relied upon the action of the Commission and Revisory Board, appointed by the Choctaw Nation, and upon the information contained in the letter of Stuart, Gordon & Hailey, but upon hearing of said rejection through friends, in an accidental manner, they immediately took steps, by appearing before the Dawes Commission with relation thereto, and after the passage of the additional legislation authorizing the identification of Mississippi Choctaws they appeared before the Commission at Canadian, on December 15, 1899, and subsequently at other points, continuing to assert their rights at all times and in all ways possible, and in no way neglecting an opportunity to avail themselves of the privilege of presenting their cases to the proper authorities.

We submit this statement of facts with relation to William C. Thompson because it is a substantial statement of that of all, or nearly all, of these applicants. Some of them were not born in the Indian Territory, but all claim rights—through the same common ancestors. All were residents of the Choctaw and Chickasaw Nation in 1896. A portion of the same family not included in this case have been en-

rolled by the Commission to the Five Civilized Tribes, and a statement of facts made as to each individual applicant is not necessary, as the same questions of law are involved in all these various applications.

ARGUMENT.

TRIBAL MEMBERSHIP.

The first question for consideration in this case is the construction of that portion of the Act of June 10, 1896, which is heretofore quoted. That Act provided two methods for enrolling a citizen in this Nation; one was by application to the Dawes Commission within three months and a decision by the Commission within six months from the date of the passage of the Act; the other method provided for an application to the "legally constituted Court or Committee, designated by the several Tribes."

Prior to the passage of this Act, for a period of over fifty years the National Government of the Choctaw Nation had been recognized, and we had extended to its authorities the right to designate who were and who were not entitled to citizenship in the Tribe or Nation. Their methods of procedure had frequently been subjected to criticism, but they held that right as a matter of law and they exercised it without limitation or supervision in all kinds and character of cases, even to the right of admission where there was no trace of Indian blood.

The Government of each of the Five Civilized Tribes occupied a legal status or position much stronger than that of Indian Tribes holding only the Indian title, or possession under Treaty right or executive order, but the tribal laws and customs even of such people have been generally recognized by the authorities and in the absence of Congressional or Departmental sanction.

"From the organization of the Government to the present time, the various Indian Tribes of the United States have been treated as free and independent within their respective territories, governed by their tribal laws and customs in all matters pertaining to their internal affairs, such as contracts and the manner of their enforcement, marriage, descents, and the punishment for crime committed against each other." (Sah Quah, 31 Fed. Rep., 329.)

"They (Indian Tribes) were, and always have been, regarded as having a semi-independent position, where they preserved their tribal relations, not as States, not as Nations, not as possessed of the full attributes of sovereignty, but as a seperate people, with the power of regulating their internal and social relations, and thus far not brought under the laws of the Union or of the States within whose limits they reside." (U. S. vs. Kagama, 118 U. S. 375.)

"An Indian Tribe within the State, recognized as such by the United States Government, is to be considered as a separate community or people, capable of managing its own affairs, including the domestic relations, and those persons belonging to the Tribe who are recognized by the customs and laws as married persons, must be so treated by the courts, and the children of such marriages can not be regarded as illegitimate." (Earl vs. Godley, 44 N. W. Rep., 254.)

"By the agreement confirmed in this Act (March 2, 1889), these Nations gave up a large amount of territory and the rights conferred upon the Nation or upon individuals were the consideration thereof. The persons entitled to such rights are the persons who at the time of the agreement constituted the

Sioux Nation, and were lawful members thereof.

"The question, therefore, whether any particular person is or is not an Indian within the meaning of this agreement, is to be determined, in my opinion, not by the common law but by the law and usages of the Tribes." (20 Opinions Att'y-Gen'l, 711.)

In the often referred to case of Jones vs. Mehan (175 U. S., page 1), it was held by the Court that the laws of descent applicable to an Indian Tribe were those of the Tribe and that such rule to be applied "was controlled by the laws, usages, and customs of the Tribe, and not by the laws of the State of Minnesota, nor by any action of the Secretary of the Interior."

The status and legal position of the Five Civilized Tribes in the Indian Territory are fully referred to in the case of Stephens vs. the Cherokee Nation, 174, U. S.

And it was in said case held that portions of the Curtis Act granting authority to the Dawes Commission to make rolls of the Nation was constitutional.

The authority to admit to citizenship was within the jurisdiction of the Choctaw Council, and was not taken from it by any legislation until the passage of the Curtis Act of June 28, 1898. This power was directly recognized by Congress in the Act of June 10, 1896, and if any doubt had heretofore existed as to this power of the Tribe, this Act forever set it at rest, for the Dawes Commission was instructed by the terms of that Act to give due force and effect to the "rolls, usages, and customs of each of said Nations and Tribes," and to "add thereto (meaning the rolls) the names of citizens whose rights may be conferred under this Act" (meaning citizens similar to claimants). It had for many years been not only the usage and custom of the Choctaw Nation, but the Council was directed by its General and Specific Legislation to enroll all Choctaw Indians by blood,

coming from their old homes in Mississippi, who would actually remove to the Indian Territory and take up their domicile with the Nation in that country. To such an extent was this true that the Choctaw Nation had memorialized the Congress of the United States, asking assistance for the removal of their brethren. And the Choctaw law, its "usages, and its customs," specifically provided for the enrollment of these people and of their descendants, where good faith was shown and residence proven.

The Act of June 10, 1896, both directly and inferentially recognized that right in the Nation, and provided three classes of persons who might apply to the National authorities for enrollment:

First. Those who had been denied.

Second. "Or not acted upon."

Third. "Or any citizen who may within three months from and after the passage of such Act DESIRE such citizenship."

To whom did Congress refer? Clearly, to parties not on the rolls, dividing them into three classes. First, those denied; second, those with petitions before the Council, not acted upon; and third, those who within three months might "desire" such citizenship.

By fair construction, this was an invitation to those who were outside the Nation to come in within the three months, as well as a notice to those already within the Territory to take steps to protect their recognized rights.

These applicants were given the privilege of applying both to the Dawes Commission and to the authorities of the Choctaw Nation; they took advantage of both privileges and did so in due time.

LIMITATION OF TIME.

The only limitation of time in the Act of June 10, 1896, relative to applications for citizenship, and action thereon,

is upon the action of the Dawes Commission, and the filing of applications with it. The Act says:

"Provided, however, That such applications shall be made to such Commissioners within three months after the passage of this Act. The said Commission shall decide all such applications within ninety days after the same shall be made."

Thompson made application to the Commission under this Act in the month of July, 1896, within the time prescribed. The Commission, however, did not pass upon this application until long after the time prescribed by law, and has never, to this day, notified him of their action. It will not be contended that because they failed to comply with this directory statute they lost jurisdiction.

On August 1, Thompson made application to the tribal authorities, under the second provision of this Act. He was within two of the classes mentioned, namely, his former application, filed in 1879, had not been acted upon, and he desired citizenship within three months. This statement of time can not be considered to be a limitation within which the application was to have been filed, but if it had been subjected to such violent construction he must still have been conceded within the limit. But the law proceeds, "and such Court and Committee shall determine such application within thirty days from the date thereof." There was at this time no "Court or Committee" of the Choctaw Nation created under the Act of June 10, 1896. There was no Tribunal before which this application could be placed, other than the Council. But on September 10, 1896, the Choctaw Council by Act created a special Commission to enroll all recognized citizens of the Choctaw Nation. The wording of the Act was as follows:

> "Be it enacted by the General Council of the Choctaw Nation assembled, that a committee of three citizens by blood of the Choctaw Nation in each

country, and three in the Chickasaw Nation, shall be appointed by the principal chief immediately after the passage of this Act.

"The Commission as appointed under this Act, shall proceed at once to enroll all recognized citizens of the Choctaw Nation by blood, intermarriage and adoption who are recognized as citizens of the Choctaw Nation under the treaties, constitution, and laws of said Nation, and said Commission shall make a separate roll of all intermarried citizens and of all freedmen appearing for enrollment. Each member of said Commission shall be able to read and write, and shall, before he enters upon the duties of the office, take oath of office prescribed in the Constitution of the Choctaw Nation in the same manner as Judges of Election."

This Act, creating the Commission, does not follow the language of the Act of Congress of June 10, 1896, but it is evidently the intention to create the "Committee" referred to in that Act. This application of Thompson's must be considered as dating from the time when it first came into the hands of this Committee or Commission. It was referred to them upon the 8th day of October, 1896, and upon the same day the applicants were formally admitted to citizenship.

But it appears to us that this question of limitation is not important. If the directory statute relating to the Dawes Commission could be disregarded, and that Commission retain its power under the law, then the directory statute relating to the Choctaw Commission could have been disregarded and that body retain its power. It did not receive Thompson's application until October 8; it acted immediate ly. It was not created until September 10, yet within thirty days following this date it enrolled Thompson upon his application.

It could not be held that the National authorities were

limited in time by the words of the Act, any more than the Dawes Commission was limited in making its decision upon the application, or in making its final rolls of citizenship, for submission to the Commissioner of Indian Affairs. Both limitations were placed in the Act because Congress sought to remedy the delay caused by the failure of both the Dawes Commission and the authorities of the Choctaw Nation to act promptly. These limitations were placed there for the purpose of protecting the rights of citizens—not for the purpose of working a forfeiture.

The judgment rendered by the Commission required the personal appearance of the parties for enrollment. They complied with this requirement as soon as notice reached them, and as soon as the Committee met so that they could appear.

What was lacking in this enrollment to make it complete?

AUTHORITY UNDER CHOCTAW ACT.

In the decision of this case below it is stated, "It will be observed that this Act does not empower the Commission to pass upon applications for admission to citizenship." We may well stop here and ask what it does empower them to do? The rolls were in the hands of the Secretary; the power "to enroll" meant, if it meant anything, the adding of names of other parties to the rolls. Neither the Council nor the Commission interpreted the duties to be that of making copies of existing rolls. A stenographer could have done this without legislative enactment, and if that had been the intention no "Commission" would have been necessary.

This Commission of the Choctaw Nation was authorized "to enroll" all recognized citizens of that Nation by blood, intermarriage, or adoption, who are recognized as citizens of the Choctaw Nation under the treaties, constitution, and laws of said Nation.

It is evident that the intention of the Choctaw Council was to delegate to this Commission the power to enroll, held by it under the ancient "laws, usages, and customs" of the Nation as well as to create the "Court or Committee" provided for under the Act of Congress, June 10, 1896. Immediately upon the passage of the Act it referred to this Commission, the applications of Thompson and his family. One of them had been in their hands since 1879; the others were filed with the Council on August 1. Had the Council not intended the Commission to act upon these applications it would not have referred them to it. Their reference shows the intention of the Act to have been the creating of the "Court or Committee" named in the Act of Congress of June 10, 1896. The only reasonable construction of this Act which would render it effective and which was clearly the intent of the legislators was to place upon the rolls the names of those parties who by blood, intermarriage, or adoption were generally recognized as citizens of the Nation, entitled to be upon the roll, but who for any reason had not been enrolled.

By blood was meant those who were of Choctaw Indian blood residing in that Nation.

By adoption, those who had been adopted and whose children had not been enrolled by reason of subsequent birth.

By intermarriage, those who had married in accordance with Choctaw laws.

This Commission in the exercise of its authority as conferred had final jurisdiction; it comprised a "Court or Committee," exactly in accordance with the Act of Congress. The Choctaw National Council conferred upon them the authority which *it* had to examine witnesses, take testimony, and admit citizens. When they ordered the enrollment of Margaret McCoy Thompson and her descendants, that action was final.

They were not adopted citizens, but were citizens by blood.

But in event they had possessed no Choctaw blood whatever, under the decision of the Courts and the practice of the Department of the Interior, their adoption by the National Council would have been recognized and sanctioned.

On February 18, 1904, the Assistant Attorney-General for the Department of the Interior, rendered an opinion approved by the Honorable Secretary of the Interior with reference to the legal status of persons who had been adopted by the Choctaw National Council, and referring to the Act of July 1, 1902, holds with relation to the authority of the National Council as follows:

"The Act of July 1, 1902, does not give the citizenship Court jurisdiction to overrule the judgments of the tribal courts, nor is that power given to the Commission or to the Department except when facts are shown impeaching the integrity of the Court rendering the judgment, so that the judgment was fraudulent.

"The General Council of the Choctaw Nation had, subject to the control of Congress, plenary power to admit persons to citizenship in the Nation (referring to the time prior to the passage of the Act thereinbefore referred to)."

In the proceedings before the Dawes Commission, what force and consideration has been given to either the laws, "usages, or customs" of these people? What attempt to enforce in spirit the treaties with the Choctaw Nation, made prior to the date of the passage of the Act of June 10, 1896?

What reference is made to Choctaw conditions in Mississippi from 1834 to 1844? Were the instructions of the Commissioner of Indian Affairs with relation to the migration of these people considered? Were the circumstances set forth under which they were induced to move West? These were the causes which brought about the deplorable conditions in the Choctaw Nation which Congress desired to

remedy. These causes had placed in that country a large number of persons, Choctaws by blood, Choctaws by common recognition among their kindred, Choctaws by occupation and residence in the Nation who were not upon the tribal roll and the duty devolved upon the Government to protect and permit them to protect their recognized rights.

NO APPEAL TAKEN.

The Act of June 10, 1896, also provided "that if the *Tribe* or any persons be aggrieved with the decisions of the *Tribal Authorities*, or of the Commission provided for in this Act, it or he may appeal from such decisions to the United States District Court."

In this portion of the Act it was again recognized that the Tribal authorities had the right to enroll. The facts show that they had so enrolled. It is further shown as a matter of fact, that neither the Choctaw Nation nor any persons in its behalf sought to appeal from this decision enrolling these petitioners. They had notice of their own acts. The enrollment was public and was made of record. No protest was ever filed by the Choctaw authorities against this enrollment. On the contrary certificates of enrollment were issued to each of these applicants under the seal of the Choctaw Nation, which were calculated to, and did, prevent any further action on the part of these parties with relation to the applications filed before the Dawes Commission, until long after the legal time for filing an appeal from any rejection had passed. They lost no rights, for with the characteristic good faith of the man who knows he is right, they immediately upon hearing of the adverse action, again offered themselves for examination by the officers of the Government, whose duty it was, and is, to protect their interests.

There has never been any attempt at evasion, concalment,

or mis-representation by these applicants, and there has nver been a charge made of illegal practice therein.

Who questioned this enrollment? Did the Nation or any party in interest?

Has it ever been alleged that there was any fraud in connection with the enrollment of these parties? Where is the sole and plenary authority of the Dawes Commission to supervise this action and to declare illegal, unconstitutional, or void, any enactment of the Choctaw Council in the absence of fraud? Under subsequent acts they may have the right to strike from the rolls those names placed thereon by reason of fraud or wrong, the right to investigate individual cases, but there has never been any allegation or statement either on the witness' stand or in a decision that there was any fraud or wrong in these applications, and the decision of the Dawes Commission nullifies the Act of Congress of June 10, 1896, overrides the action of the Choctaw Council and is an assertion of authority, the right to which exists only in the Court and which was never delegated by the Congress of the United States to any but a Judicial body.

If that part of the Statutes which provides for the authority of the Commission created by the Choctaw Council is void, then that other portion authorizing the Dawes Commission to proceed is also void. We realize that such a claim in words has not been made, but it has by act. They have construed this Act to mean that the Commission of the Choctaw Nation contemplated by Congress, must have been created and must have received the applications within three months from the passage of the Act. This, however, is not the letter nor is it the spirit of the Act. The Choctaw Nation had the power to create a Commission at any time prior to the passage of this Act, or at any time subsequent thereto, without Congressional action, and it was by this Act given in addition a special power to act in connection and conjunction with the Dawes Commission in assisting in and expediting

the general enrollments which it was proposed by Congress to secure as a preliminary measure to other legislation soon to follow. This is a reasonable interpretation and one which is just and proper, in view of the well-known desire to preserve the rights of all admitted Choctaw citizens.

It may be fair to remark that the Revisory Board found that one of their members, subsequent to the action in the Thompson case, went to Paris, Tex., and enrolled a number of people who were not entitled to enrollment, but this action was questioned by the parties themselves. They protested that those names of non-residents were wrongfully placed on that roll. But that is another and different proposition entirely, and does not apply to this case and is no part of it.

This mistake or wrong does not, however, invalidate in any manner the action of the Commission where no fraud or even irregularity is alleged by any member thereof, and where the rolls and the testimony of a member of the Commission prove conclusively the regularity and authenticity of the enrollment.

It is but fair to state that the Dawes Commission probably construed the statute strictly, in order to cut out a number of fraudulent claims for citizenship; but this policy should not have operated against bona fide citizens of the Tribe, and it is not now the duty of the reviewing officers to continue such constructions, after the fraudulent claims have been eliminated. Regularly admitted members of the Tribe against whom no charges of fraud have ever been made, should be recognized. Under the law sanctioned by the "usages and customs" of the Tribe, and approved by Act of Congress, these claimants were, in fact, citizens of the Choctaw Nation at the time of the passage of this Act, and they were so adjudged by the National authorities.

VESTED RIGHTS.

The Choctaw and Chickasaw Nation are estopped from denying the legality of this enrollment; they can not be heard to plead in the year 1904 that the legal action of their directly authorized authority in 1896 or 1897 was illegal.

These people were in the Territory in response to the oftrepeated and widely-circulated invitation of the Choctaw Nation, to Choctaws, to come and live with them and share in the Tribal benefits. They had been publicly recognized as citizens. They had been duly enrolled by the tribal authorities. No appeal from this enrollment had been taken. They had applied to the Dawes Commission, and, through the attorneys for the Nation, had been notified that they had been, by said Commission, admitted as citizens of said Nation, and no appeal taken from this action. Relying upon their wellknown rights and their formal enrollment, above stated, they bought, and made extensive improvements upon, the lands occupied by them. They have ever since, at great expense and trouble, and without opposition from the Nation or the United States Government, held possession of these lands, through all the vicissitudes of Congressional, Departmental, and Court action, at all times publicly proclaiming their rights as Choctaw citizens, and their possession of lands in said Nation.

If being a blood member of an Indian Tribe, born upon its reservation, placed upon its rolls by its tribal authorities, publicly and openly recognized by its citizens, occupying for years—with permanent and valuable improvements, without interference by Government or tribal authorities—tribal lands, does not invest an Indian with all tribal rights, then an Indian can have no vested rights.

If long-continued public recognition by the tribal authorities, election to tribal office, acceptance of the benefits of services as such officer, recognition of permits to non-citizens

issued by him, enrollment by the tribal Council, permission to hold continuous possession of tribal lands and place thereon valuable and permanent improvements, does not estop a Tribe from denying membership, then Indian Tribes are not governed by the law of estopel.

If Congressional and Departmental recognition of the laws and customs of an Indian Tribe under which a citizen has been enrolled, receipt by the proper officer of the Government of his application, asking that they "add" his name to the final rolls of said Tribe, as provided by said law, failure on the part of said officer to act upon such application until months after the expiration of the time limited by law, notice to said citizen by the attorneys for the Indian Tribe, who are recognized by these Government authorities, by the Interior Department and the Courts, as representatives and agents of the Tribe, stating that he has been finally enrolled. failure of said authorities to notify him of any adverse action until long after his right to appeal has expired, does not bind the Government to protect his vested rights, then the Government is not moved by the same principles of equity and justice which it requires its citizens to observe.

The Dawes Commission having failed to notify these petitioners of the pretended action of that Board taken on December 3, 1896, rejecting their applications and the attorneys who appeared for said Nation before said Commission, and were recognized by it as the agents for said Nation before said Commission, having notified these applicants that they had been duly enrolled and no appeal taken by the Nation, and these parties having by reason of these things failed to take an appeal from the rejection of the Dawes Commission, we insist that under the law they are entitled here and now to invoke the supervisory authority of the Secretary of the Interior to the end that a palpable wrong may be corrected and manifest justice be done.

The Secretary of the Interior at all times has had and

now has the supervisory authority over Indian affairs. It is his duty to see that any parties properly entitled are enrolled upon the Choctaw and Chickasaw rolls, just as much as it is his duty to see that any person not entitled is stricken therefrom. This authority does not require a special Act of Congress to render it operative, but if it did, such authority is found in the numerous Acts providing that his approval of the rolls shall be required before they shall become final. The applicants in this case appeal to that authority for protection of vested rights in land and absolute right of citizenship accrueing to them under the Act of Congress hereinbefore cited, and under the Laws of the Choctaw Nation hereinbefore set forth.

We do not care to cumber the record with the questions at issue as to the validity of their rights as Mississippi Choctaws. We believe it to be a fact that if an applicant applied to Colonel Ward, and by reason of Ward's negligence or mistake was not alloted land, that he did not by such act lose his right to be enrolled, but these applicants have a superior right to any acquired under this treaty, and upon this right the case should be adjudicated.

And for these reasons the matter is respectfully submitted.

CHESTER Howe, Attorney for Applicants. LRS

DEPARTMENT OF THE INTERIOR.

I.T.D.3622-1904.

Washington, April 5,,1905.

Commission to the Five Civilized Tribes,

Muskoge e, Indian Territory.

Gentlemen:

April 13, 1904, you transmitted the record in the consolidated Choctaw case of William C. Thompson et al. Concerning the applicants included therein under title M. C. R. 341, see departmental letter of March 24, 1905.

Herein will be considered, both as to the right to be identified as Mississippi Choctaws and to be enrolled as Choctaws by blood or intermarriage, the applications of the following persons included in said consolidated case, viz:

Mary E. O'Quinn et al., (M.C.R.7124) Rufus O. Thompson et al., (M.C.R.581) Mattie Halloway et al., (M.C.R.458).

Under title M.C.R.7124 will be considered the claim of Mrs. O'Quinn for herself and children as Choctaws by blood, and the claim of her husband, Thomas J. O'Quinn as a citizen by intermarriage.

It appears that Mrs. O'Quinn claims to be a one-sixteenth blood Choctaw, and that she was born about 1854 in Texas, where she continued to reside until about the year 1891. when she removed to the Choctaw-Chickasaw country. She was married March 22, 1871, to the said Thomas J. O'Quinn, prior to

her removal to the Territory. It thus appears that her residence in the state of Texas continued for about 37 years during which time she married and brought up her family there. So far as the record reveals her property interests, if any, related exclusively to the state of Texas, and during her residence there she was in no way identified, in person or property, with the Choctaw Nation, nor did she make any effort to retain her Choctaw rights, if any, therein, or to establish or maintain citizenship in said nation, during such period.

It further appears that Mrs. O'Quinn is the daughter of John T. Thompson, deceased, an alleged one-fourth blood Choctaw, by Mary Jane Kerr, a white woman. It is further claimed that John T. Thompson was the son of Archibald Thompson, and that the latter was the son of Henry Thompson, a white map. by a full blood Choctaw woman named Margaret McCoy. It is here noted that the Archibald Thompson referred to was the uncle of the said William C. Thompson, and that Henry and Margaret Thompson were his grandparents. The testimony and affidavits submittedrelative to these ancestors tend, in a degree, to show that certain of them attempted to comply with article 14 6 the treaty of September 27, 1830. This testimony, however, is insufficient to warrant the conclusion that such an attempt was made, particularly in view of the fact that the records of the Indian Office fail to furnish any information corroborative of such attempted compliance. The identification of the applicants by reason of their descent from said ancestors was therefore properly denied.

It seems that the father of the principal applicant resided in Mississippi, and it is stated by one witness that he never lived in the Indian Territory. In fact, the evidence utterly fails to show that any one of the ancestors of these applicants ever removed, within a reasonable time after the treaty of 1830, to the Choctaw Nation and identified himself, politically or otherwise, with its people. This finding of facts being correct, it follows that Mrs. O'Quinn was born outside of the Choctaw Nation, and to non-citizens thereof. Under the circumstances, in order to acquire the status of a Choctaw citizen it was incumbent upon her to be admitted or readmitted to Choctaw citizenship. That she has been so admitted or readmitted does not appear from the record, nor is it so alleged. Accordingly, although her name is borne upon the tribal roll, as well as the names of her husband and children, allo of whom now reside therein, such enrollment was not a lawful one. Their names should therefore be eliminated from the tribk rolls of the Choctaw Nation.

Title 581 includes the application of Rufus O. Thompson, for himself as a Choctaw by blood, and his wife Martha Louisiana Thompson, as a citizen by intermarriage. The principal applicant included under this title is a brother of the

said Mary E. O'Quinn. He was born in Texas and resided there until about the year 1891, when he removed to the Indian Territory. His name and that of his wife appear upon the 1896 census roll of the Choctaw Nation, placed thereon by the revisory committee in January of 1897. Like his sister, he was born outside of the Choctaw Nation and to non-citizens. As he has never been admitted or readmitted to the citizenship of said nation his enrollment should now be refused. The same reasons for the rejection of Mrs. O'Quinn's application for identification as a Mississippi Choctaw govern in the Rufus C. Thompson case, they having common ancestry. With his claim must fall the claim of his wife for enrollment as a citizen by intermarriage.

for the ennolment of herself and her children, based upon their alleged Choctaw blood. The principal applicant under this title is the daughter of the said Mary E. O'Quinn. Inasmuch as the latter is not entitled to identification as a Mississippi Choctaw or to enrollment as a citizen by blood, it follows that the application of Mattie Helloway must also be denied, unless she has been admitted or readmitted to citizenship in the Choctaw Nation. Of such admission or readmission the record contains no exidence. With the claim of Mrs. Holloway must fall the claimsof her minor children.

In your decision of March 5, 1908, you held that none of these applicants is entitled to identification as a Mississ-

ippi Choctaw or to enrollment as a citizen by blood or intermarriage of the Choctaw Nation.

In a report rendered April 30, 1904, the Indian Office recommended that your action be approved.

The Department concurs in this recommendation; accordingly, your decision adverse to the applicants is hereby affirmed.

Respectfully,

Thos. Ryan.

Acting Secretary.

he was born and raised in Jackson county, Mississippi, and that thereafter he removed to the Chickasaw Nation where, apparently, he resided for a few years. The mother of the principal applicant, Ailsey Morris, is a white woman. The father of the said Jeremiah Jones was Woody Jones, Sr., and the latter was a son of Jim Jones. It is here noted that the said Woody Jones, Sr., was the grandfather of Winburn Jones, relative to whom see departmental decision of recent date in the case of Winburn Jones et al., (M.C.R.310).

It does not appear that the name of William Starr Jones or the name of his wife or the names of any of the minor applicants herein are borne upon the rolls of the Choctaw Nation. The testimony submitted tends to show, in a measure, that certain of the alleged ancestors of William Starr Jones attempted to comply with article 14 of the treaty of September 27, 1830. This testimony of itself is insufficient to warrant the conclusion that such an attempt actually was made, and in view of the fact that the records of the Indian Office furnish no information corroborative of the alleged attempt, it is considered that the identification of these applicants was properly denied.

As none of their names appear upon the tribal rolls of the Choctaw Nation, and for the further reason that the principal applicant was born outside of the Choctaw Nation, and to persons who were apparently non-citizens thereof, it is

considered that neither he nor his children are justly entitled to enrollment as Choctaws by blood, nor his wife to enrollment as a citizen by intermarriage.

In your decision of March 5, 1904, you ruled adversely to the applicants herein.

In a report rendered April 30, 1904, the Indian Office recommended that your action be approved.

Concurring in said recommendation, your decision is hereby affirmed.

Respectfully,

Thos. Ryan,

Acting Secretary.

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to the applicanta hardin.

W. W. Separat rendered April 30, 1904, the ind an Orline W. W. W. C. -14-1.

Separation be approved.

Concurring in said recommendation, your decision is a C. -14-1.

Show Hand.

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W.O.B.

COMMISSIONERS:
TAMS BIXBY,
THOMAS B. NEEDLES,
C. R. BRECKINRIDGE.
WM. O. BEALL,

DEPARTMENT OF THE INTERIOR, COMMISSION TO THE FIVE CIVILIZED TRIBES.

M C R 458, 581 583, 7124

Chairman

ADDRESS ONLY THE COMMISSION TO THE FIVE CIVILIZED TRIBES.

Muskogee, Indian Territory, April 19, 1905.

Mansfield, McMurray & Cornish,

Attorneys for Choctaw and Chickasaw Nations, South McAlester, Indian Territory,

Gentlemen:

You are hereby advised that on April 5, 1905, the Secretary of the Interior affirmed the decision of this Commission
of March 5, 1904, refusing to identify Mattie Holloway, Ivy Bolensiefen, Jessie Holloway, Willie Holloway, Hallie Hazle Holloway,
Rufus O. Thompson, Martha Louisianna Thompson, William Starr Jones,
Susan Jones, Jettie May Jones, Ailsey Jones, Florence Jones, Mary
E. O'Quin, James Walter O'Quin, Dora E. O'quin, Thomas M. O'quin
and Ora May O'Quin as Mississippi Choctaws, and also held that all
of said persons were not entitled to enrollment as citizens of the
Choctaw Nation.

For your information there are inclosed you herewith copies of Departmental letters of April 5, 1905.

Respectfully,

Enc. M.M.C.-19-1

(COPY).

Land. 25846-1904.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, April 29, 1904.

The Honorable,

The Secretary of the Interior.

Sir:

There is enclosed herewith a report from the Commission dated April 13, 1904, transmitting the record in the consolidated Mississippi Choctaw case of William C. Thompson et al., applicants for identification. William C. Thompson applied for the identification of himself and Sarah Thompson, his wife, and W. R. Thompson, his nephew, and Sarah T. Stubblefield, his grand-neice. Tersa Thompson Stubblefield applied for the identification of herself and her five minor children, Dora, Rosa, Johnnie, Bertha and Horace Stubblefield. Minnie L Wright applied for the identification of herself and her child Grandville Wright. Mary M. McNeese applied for the identification of herself and her child Herold Graham McNeese. Arthur M. Thompson applied for the identification of himself, and William C. Thompson Jr., applied for the identification of himself. Mattie Holloway applied for the identification of herself and her minor children, Iva Bolensiefen, Jessie Holloway, Willie H. and Hallie Hazle Holloway. Rufus O. Thompson applied for the identification of himself, and Mary Jones for the identification of herself. Winburn Jones applied for the identification of himself and his seven minor children, Peter M., Eslie, Thomas, Maud C., Jesse H., Sallie, and Paul Jones. Bryant M. Jones applied for the identification of himself, his wife. Maggie Jones, and their two children, Jessie and Frank Jones. William Starr Jones applied for the identification of himself and three

children, Jettie May, Ailsey and Florence Jones. Mary E. O'Quin applied for the identification of herself and her four children, James Walter, Dora E., Thomas M., and Ora May O'Quin. W. C. Thompson, Jr., applied for the identification of his wife, Maud Thompson; Rufus O. Thompson for the identification of his wife, Martha Louisiana Thompson, and William Starr Jones for the identification of his wife, Susan Jones, as intermarried Mississippi Choctaws.

The applicants in M.C.R. 341, William C. Thompson, et al., claimed descent from Margaret or Marguret or Margerete or Margurett Thompson, nee McCoy, and Jim or James, or Sam or Saul Jones, or Neshoba. The applicants in M.C.R. 458, 581 and 7124, to wit: Mattie Holloway et al., Rufus O. Thompson et al., and Mary E. O'Quin et al., claimed descent from Margaret or Marguret or Margerete or Margurett Thompson, and Annie Strong, nee Thompson. Sarah Thompson, a party of M.C.R. 341, claims descent from Thomas Estes. All of the applicants in M.C.R. 517, 582, and 516, to wit: Mary M. McNeese, et al., Arthur M. Thompson, et al., and William C. Thompson, Jr., et al., claim descent from Margaret or Marguret or Margerete or Margurett Thompson, nee McGoy, and Jim or James, or Sam or Saul Jones, and Thomas Estes. Mary Jones, M.C.R. 563, claims descent from Izilla Mangrum. The applicants in M.C.R. 310, and the principal applicant and two minor applicants in 557, Winburn Jones, et al., and Bryant Jones, et al., claim descent from Izilla Mangrum, and Jim or James or Sam or Saul Jones, or Ne-sho-ba. All of the applicants in M.C. R. 583, William Starr Jones, et al., claim rights as descendants, or married to descendants or Jim or James or Sam or Saul Jones, or Ne-sho-ba. Maggie Jones, M.C.R. 557, claims descent from B.F. Durant.

Mention is also made in the record of Elizabeth Mangrum and

John Thurston Thompson and Archibald Thompson. The record shows that in 1896, the following named persons applied to the Commission for admission to citizenship in the Choctaw Nation, in accordance with the provisions of the act of June 10, 1896, to wit: William C. Thompson, Sarah S. Thompson, Arthur M. Thompson, and William G. Thompson in citizenship case No. 38. William G. McNeese, Mary M. McNeese, and Harold G. McNeese in citizenship case No. 41. W. Starr Jones, Susan Jones, Jettie May Jones, Ada Jones, and Florence Jones in citizenship case No. 215. Bryant M. Jones, as an intermarried citizen, case No. 216. Wilburn Jones, Peter N., Eslie, Tom B., Maud C., Jesse Hines, and Sallie Jones, case No. 1033.

The applicants were denied admission by the Commission and no appeal was taken from that decision. From the testimony it appears that William C. Thompson, Sarah S. Thompson, Arthur M. Thompson, William C. Thompson, Jr., Mary M. Thompson, now McNeese, and Harold McNeese, in August, 1896, made application to the Choctaw Council for citizenship in the Nation. The application was referred to the Board of Commissioners appointed by the provisions of an act of the Council of September 18, 1896, and the persons last named were admitted to citizenship by this board.

From the record in the case it does not appear that the original application was filed with the Choctaw Council or referred by the Council to the Commission appointed by the act of September 18, 1896.

Section 1 of the act of September 18, 1896, provides:

[&]quot;--Be it enacted by the general council of the Choctaw Nation assembled, that a commission of three citizens by blood of the Choctaw Nation in each county, and three for the Chickasaw Nation shall be appointed by the Principal Chief, immediately after the passage of this act by the Commission so appointed under this act

The word "Hood" should be inserted after "by". See p 4 hereof.

-4-

Shall proceed at once to enroll all recognized citizens of the Choctaw Nation by blood, intermarriage and adoption who are recognized as citizens of the Choctaw Nation under the treaties, constitution and laws of said nation and said Commissioners shall make a separate roll of all intermarried citizens and of all freedmen appearing for enrollment.

Each member of said Commission shall be able to read and write and shall before he enters upon the duties of his office take the oath of office prescribed in the constitution of the Choctaw Nation and in the same manner as judges of elections."

It will be observed that this act did not empower the Commission to pass upon applications for admission to citizenship, the only power conferred upon the Committee was to "enroll all recognized citizens of the Choctaw Nation by intermarriage and adoption, who are recognized as citizens of the Choctaw Nation under the treaty, constitution and laws of the said Nation."

The Commission say in their decision that --

"The names of William C. Thompson (as Wm.C. Thompson), Sarah S. Thompson (as Sarah Thompson), Sarah T. Stubblefield (as Sarah Stubblefield), William R. Thompson (as William Thompson), Terry Thompson Stubblefield (as Terry Thompson), Mary M. McNeese (as Mary McNeese), Harrold McNeese (as Harol McNeese), Arthur M. Thompson (as Arthur M. Thompson), William C. Thompson (as Wm. Thompson, Jr.), Mattie Holloway (as Martha Halloway), Ivy Bolensiefen (as Ivy Halloway), Jessie Holloway (as Jessee Halloway), Rufus O. Thompson (as Rufus O. Thompson), Martha Louisiana Thompson (as Martha Thompson), Winburn Jones (as Winburn Jones), Peter N. Jones (as Peter Jones), Eslie Jones (as male Jones), Thomas Jones (as Thomas Jones), Maude C. Jones (as Maud Jones), Jesse H. Jones (as Jesse Jones), Sallie Jones (as Sallie Jones), Mary E. O'Quin (as Elza Oquinn), James Walter O'Quin (as Jas. W. Oquinn), Dora E. O'Quin (as Dosia E. Oquinn), and Ora May O'Quin (as Osia M. Oquinn) are found upon the Choctaw Census roll of 1896, at numbers 12521, 15121, 11815, 12531, 12524, 9534, 9535, 12522, 12523, 6179, 6180, 6181, 12542, 12543, 7372, 7373, 7374, 7375, 7376, \$377, 7378, 10028, 10030, 10031 and 10032 respectively,

and that they were placed thereon by a Board of Commissioners appointed under an act of the Choctaw Council, approved October 30, 1896. Under the law at that time, this board did not have jurisdiction, as the time limit within which applications for admission to citizenship could have

been made expired September 10, 1896. It is believed therefore that the names above quoted were on the 1896 census roll without authority of law; that they should be stricken therefrom, and that they are not by reason of their names being on said roll entitled to enrollment as Choctaw citizens. They, however, also claim rights to enrollment by virtue of the decision of the United States court for the Southern District of the Indian Territory in the case of Walter W. Jones vs the Choctaw Nation, and A. H. Jones, et al., vs the Choctaw Nation.

From the record in this case it does not appear that these applicants were parties of either to said cases, and they are not entitled to the benefits and rights that may accrue to the parties thereto, even if the citizenship court should hereafter declare the parties in the Walter W. Jones and A. H. Jones, et al., cases entitled to enrollment. The Commission invites attention to the name James Jones, which appears on pages 118 and 138; the name Samuel Jones, Jr., page 68, and Samuel Jones, senior, pages 76 and 125, volume 7, American State Papers, Public Lands.

The records of this office, book 95, page 285, show that James Jones was awarded land under the nineteenth article of the treaty of 1830. He was given the NE/4, the SE/4, and the SW/4 of Sec. 5, T.12, R.10 E., and it is shown, he "was a half-breed." The same record, page 185, shows that Samuel Jones was also given the following described land under article 19 of the treaty of 1830, to wit: the SE/4, the SW/4, and the NW/4 of fractional section 19, T.20, R.1, W. Other records show that the above location was subsequently modified and that Samuel Jones was finally awarded the S/2 and NE fractional quarter, and the NE/4, and

the NW/4 of Sec.19, T.20, R.1, W.

The records of the office do not show that Samuel Jones, Jr., was awarded land under the fourteenth article or any other article of the treaty of 1830, and it does not appear, from careful examination of said records, that any person by the name of Margaret, or Marguret, or Margerete of Margurett Thompson, nee McCoy, or Annie Strong, nee Thompson, or Jim or James or Sam or Saul Jones or Ne-sho-ba, or Thomas 8.

Estes or Izilla Mangrum, or Elizabeth Mangrum or B. F. Durant or John Thurston Thompson or Archibald Thompson complied or attempted to comply with the provisions of the fourteenth article of the treaty of 1830.

There was a Jemmy Jones, the child of Puthkintubbee, who was awarded scrip in lieu of land, but from the record it does not seem that these applicants attempt to claim descent from him. It is evident, therefore, that the decision of the Commission adverse to the identification of the applicants herein is correct and that it should be approved. Its approval is recommended.

A copy of the record of the office relative to Samuel Jones, and a copy of that relating to Jim Jones, is enclosed herewith.

Very respectfully,

A. C. Tonner,

Acting Commissioner.

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of Sec. 10, T. 80, R. 1, W.

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d. Tonner,

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BEFORE THE HONORABLE SECRETARY OF THE INTERIOR.

WASHINGTON, D. C.

IN THE MATTER OF THE APPLICATION FOR MERCELMENT AS SHOOTAW CITIZENS, OF MARY E. O'QUINN, et al., RUFUS O. THOMP-

MOTION.

Come now the applicants in the above entitled cause by their Attorney, Chester Howe, and move for a reconsideration and review of the action of the Honorable Secretary of the Interior, under date, April 5, 1905, rejecting their claims for enrollment as Chootaw citizens, alleging as reasons for each Motion the following:-

First: That shey were and are parties to the consolidated case of William C. Thompson et al., in which decision was rendered by the Assistant Attorney General, and approved by the Hon. Secretary of the Interior, on March 3, 1905.

Second: That the rights of the parties as set forth in said decision (as construed by your movants) rest upon a proper application to the Choctaw Revisory board or committee, proper action by said board or committee in said application. and a legal enrollment by the Choctaw Authorities duly empowered under the Act of June 10, 1896.

Third:- That the applicants herein were as shown by the record duly enrolled by said revisory board and are borne upon the 1896 census rolls of the Chectaw Nation.-

Bourth; - That there has nevr been any allegation of fraud made by any person or by the nation with relation to said enrollment, although the Nation through its Attorneys have had due notice of each and every proceeding had in this case, and have been fully advised with relation thereto.

Fifth; - That the question at issue, is not one of birth

in the Nation, but is properly one of residence within the nation, and of actual enrollment therein under the Act of June 10, 1896.

Sixth:- That the testimony shows, and it is admitted in the decision that these parties have been residents of the nation, and claimed and occupied lands therein, since 1891, a period of more than fourteen years.

Seventh; - That the decision of April 5, is, as your movant believes, a misconstruction of the decision of March 3, 1905, and is a limitation upon said decision, not warranted either by the circumstances of the case or by law as applied there to.

Eighth: That the very purpose of the Act of Congress providing for the creation of a court or commission on the part of the Choctaw Nation, was to permit the Choctaws to enroll such persons as had been born outside the nation, and who being Choctaws by blood, and residing within the nation, were recognized by the people of that nation as Choctaws in truth and in fact, and that by such enrollment, they became possessed of and were entitled to full rights of citizenship therein.

Ninth:- That the only power in said Nation which could at that time admit these people to citizenship, was the commission to which such power had been delegated by the Choctaw Council and the statements contained in said decision to the effect that these applicants not having been re-admitted could not now be admitted is an error of fact and law.

Tenth:- That the facts as shown by the case at bar are identical with those shown as to Wh. C. Thompson, with the sole exception of the fact of births within the limits of the Choctaw country.

Your applicants further pray and offer and tender any and all competant proof that may be required, showing their actual residence in the Indian Territory, where as Choctaws by blood, they were enrolled by the revisory board or committee of said

Bation. That they acted in good faith in offering at all times and in all possible ways their applications, and respectfully pray for a reconsideration and construction of the decision of March 3, 1905, in conformity with the facts herein set forth.

Respectfully Submitted,

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DEPARTMENT OF THE INTERIOR COMMISSION TO THE FIVE CIVILIZED TRIBES.

In the matter of the application of William C. Thompson, et al., for identification as Mississippi Choctaws, consolidating the applications of:

William C. Thompson, et al.,	M.	C.E	7. 341
Terry Thompson Stubblefield, et al.	M.	J.F	R. 6258
Minnie L. Wright, et al.,	M.	C. E	6259
Mary M. McNeese, et al.,	M.	C.F	
Arthur M. Thompson,	M.	C.F	1. 582
William C. Thompson, Jr. et al.,	M.	G.I	R. 516
Mattie Holloway, et al.,	M.	C.F	458
Rufus O. Thompson, et al.,	M.	G.I	R. 581
Mary Jones,	M.	C.F	. 563
Winburn Jones, et al.,	M.	G.F	1. 310
Bryant M. Jones, et al.,	H.	C.I	1. 557
William Starr Jones, et al.,	M.	C.F	. 583
Mary E. O'Quin, et al.,	M.	C.F	1. 7124

---: D R C I S I O N :---

It appears from the record herein that applications for identification as Mississippi Choctaws were made to this Commission by William C. Thompson for himself, his wife, Sarah S. Thompson, his minor nephew, William R. Thompson, and his minor grand-niece, Sarah T. Stubblefield; by Terry Thompson Stubblefield for herself and her five minor children, Dora, Rosa, Johnnie, Berta and Horace Stubblefield; by Minnie L. Wright for herself and her minor child,

Granville Wright; by Mary M. McNeese for herself and her minor child, Harrold Graham McNeese; by Arthur M. Thompson for himself; by William C. Thompson, Jr. for himself: by Mattie Holloway for herself and her four minor children, Tvy Bolensiefen, Jessie Holloway, Willie Holloway and Hallie Hazle Holloway; by Rufus O. Thompson for himself; by Mary Jones for herself; by Winburn Jones for himself and his seven minor children, Peter N., Eslie, Thomas, Maude C., Jesse H., Sallie and Paul Jones; by Bryant M. Jones for himself, his wife, Maggie Jones, and his two minor children, Jessie and Frank Jones; by William Starr Jones for himself and his three minor children, Jettie May, Ailsey and Florence Jones; by Mary E. O'Quin for herself and her four minor children, James Walter, Dora E., Thomas M. and Ora May O'Quin; and by William C. Thompson, Jr. for the identification of his wife, Maude Thompson; by Rufus O. Thompson for the identification of his wife, Martha Louisianna Thompson; and by William Starr Jones for the identification of his wife, Susan Jones, as intermarried Mississippi Choctaws, under the following provision of the act of Congress approved June 28, 1898 (30 Stats., 495):

"Said Commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation, concluded September twenty-seventh, eighteen hundred and thirty, and to that end may administer oaths, examine witnesses, and perform all other acts necessary thereto and make report to the Secretary of the Interior."

It also appears that the principal applicant and the two minor applicants in M.C.R. 341, all the applicants in M.C.R. 6258 and M.C.R. 6259, claim rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation, concluded September twenty-seventh, eighteen hundred and thirty, by reason of being descendants of Margaret (or Marguret, or Margarete, or Margurett) Thompson, nee McCoy, who is alleged to have

been a Choctaw Indian, degree of blood not stated, and Jim (or James, or Sam, or Saul) Jones (or Na-sho-ba), who is alleged to have been an one-half blood Choctaw Indian, and to have resided in Mississippi in eighteen hundred and thirty; that all the applicants in M.C.R. 458, M.C.R. 581 and M.C.R. 7124, claim said rights by reason of being descendants, or married to descendants, of Margaret (or Marguret, or Margarete, or Margurett) Thompson, nee McCoy, and Annie Strong, nee Thompson, the latter of whom is alleged to have been an one-half blood Choctaw Indian; that Sarah S. Thompson, applied for in M.C.R. 341, claims said rights by reason of being a descendant of Thomas S. Estes, who is alleged to have been a Choctaw Indian, degree of blood not stated; that all the applicants in M.C.R. 517, M.C.R. 582 and M.C.R. 516, claim said rights by reason of being descendants, or married to descendants, of Margaret (or Marguret, or Margerete, or Margurett) Thompson, nee McCoy, and Jim (or James, or Sam, or Saul) Jones, (or Ne-sho-ba), and Thomas S. Estes; that the applicant in M.C.R. 563 claims said rights by reason of being a descendant of Izilla Mangrum, who is alleged to have been an oneeighth blood Choctaw Indian; that all the applicants in M.C.R. 310 and the principal applicant and two minor applicants in M.C.R. 557, claim said rights by reason of being descendants of Izilla Mangrum, and Jim (or James, or Sam, or Saul) Jones (or Ne-sho-ba); that all the applicants in M.C.R. 583 claim said rights by reason of being descendants or married to descendants, of Jim (or James, or Sum, or Saul) Jones (or Ne-sho-ba); that Maggie Jones, applied for in M.C.R. 557 claims said rights by reason of being a descendant of B. F. Durant, who is alleged to have been an one-fourth blood Choctaw Indian.

It further appears from the evidence submitted in support of said applications, and from the records in the possession of the

Commission, that none of said applicants has ever been admitted to Choctaw citizenship by a duly constituted court or committee of the Choctaw Nation, or by the Commission to the Five Civilized Tribes, or by a decree of the United States Court in Indian Territory, under the provisions of the act of Congress approved June 10, 1896 (29 Stats., 321); nor do their names appear upon any of the tribal rolls of the Choctaw Nation with the exception of the 1896 Choctaw Census roll; which enrollment is hereinafter conclusively shown to have been without authority of law.

It appears from an examination of the records of the Commission to the Five Civilized Tribes, of the applications for citizenship in the Choctaw Nation under the provisions of the act of Congress of June 10, 1896 (29 Stats., 321), that applications were made by Wm. C. Thompson for himself, Sarah S. Thompson, Arthur M. Thompson and Wm. C. Thompson, Jr. (1896 Choctaw citizenship case No. 38); by Wm. G. McNees for Mary Mangham McNees and Harold G. McNees (1896 Choctaw citizenship case No. 41); by W. Star Jones for himself, Susan Jones, Jettie May Jones, Ada Jones and Florence Jones (1896 Choctaw citizenship case No. 215); by Bryant M. Jones for himself as an intermarried citizen (1896 Choctaw citizenship case No. 216); and by Winburn Jones for himself, Peter N. Jones, Eslie Jones, Tom B. Jones, Maud C. Jones, Jesse Hines Jones and Sallie Jones (1896 Choctaw citizenship case No. 1033).

These applicants were denied citizenship in the Choctaw Nation by this Commission under the provisions of the act of Congress of June 10, 1896, and no appeal was taken from such decision in the time prescribed by the provisions of said act.

From the testimony of the principal applicant it appears that the following applicants: Wm. C. Thompson, Sr., Sarah S. Thompson, Arthur M. Thompson, William C. Thompson, Jr., Mary M. Thompson

(now McNeese) and Harrold McNeese, on August 1, 1896, made application to the Choctaw Council for citizenship in the Choctaw Nation and that said application was referred to a board of Commissioners appointed under an act of the Choctaw Council, approved September 18, 1896, and by said Commission, admitted to citizenship in said Nation. The original application, which is filed herewith and made a part of this record, fails to show that the same was ever filed with the Choctaw Council or by them referred to said Commission.

The powers of said Commission are set forth in Section one of the act of the Choctaw Council approved September 18, 1896, entitled "An act authorizing the appointment of Commissioners, fixing their pay, and for other purposes," and provides---

"--Be it enacted by the general council of the Choctaw Nation assembled, that a Commission of three citizens by blood of the Choctaw Nation in each county, and three for the Chickasaw Nation shall be appointed by the principal Chief, immediately after the passage of this act the Commission so appointed under this act shall proceed at once to enroll all recognized citizens of the Choctaw Nation by blood, intermarriage and adoption who are recognized as citizens of the Choctaw Nation under the treaties, constitution and laws of said Nation and said Commissioners shall make a separate roll of all intermarried citizens and of all freedmen appearing for enrollment each member of said Commission shall be able to read and write and shall before he enters upon the duties of his office take the oath of office prescribed in the constitution of the Choctaw Nation and in the same manner as judges of elections."

Under the foregoing act, this Commission, appointed by the Choctaw Council, had no authority to pass upon original applications for citizenship, being only empowered to "enroll all recognized citizens of the Choctaw Nation by blood, intermarriage and adoption, who are recognized as citizens of the Choctaw Nation under the treaties, constitution and laws of said Nation." The feregoing applicants whose names appear in said application had never been recognized as citizens of the Choctaw Nation and could not therefore come within the purview of said act.

The names of William C. Thompson (as Wm. C. Thompson), Sarah S. Thompson (as Sarah Thompson), Sarah T. Stubblefield (as

Sarah Stubblefield), William R. Thompson (as William Thompson), Terry Thompson Stubblefield (as Terry Thompson), Mary M. McNeese (as Mary McNeese), Harrold McNeese (as Harol McNeese), Arthur M. Thompson (as Arthur M. Thompson), William C. Thompson, Jr. (as Wm. Thompson Jr.), Mattie Holloway (as Martha Halloway), Ivy Bolensiefen (as Ivy Halloway), Jessie Holloway (as Jessee Halloway), Rufus O. Thompson (as Rufus O. Thompson), Martha Louisianna Thompson (as Martha Thompson), Winburn Jones (as Winburn Jones), Peter N. Jones (as Peter Jones), Eslie Jones (as Elsie Jones), Thomas Jones (as Thomas Jones), Maude C. Jones (as Maud Jones), Jesse H. Jones (as Jesse Jones), Sallie Jones (as Sallie Jones), Mary E. O'Quin (as Elza Oquinn), James Walter O'Quin (as Jas. W. Oquinn), Dora E. O'Quin (as Dosia E. Oquinn), and Ora May O'Quin (as Osia M. Oquinn), are found upon the Choctaw Census roll of 1896, at numbers 12521, 15121, 11815, 12531, 12524, 9534, 9535, 12522, 12523, 6179, 6180, 6181, 12542, 12543, 7372, 7373, 7374, 7375, 7376, 7377, 7378, 10028, 10030, 10031 ans 10032 respectively, having been placed thereon by a so-called Board of Commissioners appointed under an act of the Choctaw Council approved October 30, 1896, at a time when said board had no legal existence, having been created subsequent to September 10, 1896, the time when the jurisdiction of the Choctaw Nation to entertain applications for citizenship in that tribe had expired, as provided in the act of June 10, 1896 (29 Stats., 321).

Section twenty-one of the act of Congress approved June 28, 1898 (30 Stats., 495), entitled "An act for the protection of the people of Indian Territory, and other purposes," commonly knows as the "Curtis Act." provides---

"---Said Commission is authorized and directed to make correct rolls of citizens by blood of all the other tribes, eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto and their descendants born since such rolls were made with such intermarried white persons as may be entitled to Choctaw and Chickasaw citizenship under the treaties and laws of said tribe."

The evidence herein shows conclusively that the aforesaid names were placed upon the 1896 Choctaw Census roll without authority of law and should therefore be eliminated and stricken therefrom. Furthermore, this purported enrollment has no reference to article fourteen of the treaty of eighteen hundred and thirty, nor does it show any compliance or attempted compliance on the part of the ancestors of the applicants herein named with its provision.

It appears that the applicants herein also base their rights to identification as Mississippi Choctaws upon certain judgments of the United States Court for the Southern district, Indian Territory, in the cases of A. H. Jones, et al., vs. the Choctaw Nation (Court No. 151), and Walter W. Jones vs. the Choctaw Nation (Court No. 148), wherein certain of the plaintiffs were adjudged citizens by blood of the Choctaw Nation and ordered enrolled as such, the applicants herein basing their said claims by reason of being blood relatives of the plaintiffs in the above entitled actions; but it does not appear from the transcript of the judgments in said causes that any of the applicants herein were parties to said suits.

It is found that the name James Jones appears on pages 118 and 138, the name Samuel Jones, Jr. on page 68, and the name Samuel Jones, Sr. on pages 76 and 125 of Volume VII, American State Papers Public Lands, in various lists, statements and schedules relating to claims under article nineteen of the treaty of "Dancing Rabbit Creek." The record above referred to in no way relates to article fourteen of the treaty of eighteen hundred and thirty, or shows a compliance or attempted compliance on the part of the persons therein named with its provisions.

It does not appear from the testimony and evidence offered in support of these applications, or from the records in the possession of the Commission, relating to persons who complied or attempted to comply with the provisions of said article fourteen of the treaty of eighteen hundred and thirty, and to persons who heretofore were

claimants thereunder that the said Margaret (or Marguret, or Margerete, or Margurett) Thompson, nee McCoy, or Annie Strong, nee Thompson, or Jim (or James, or Sam, or Saul) Jones (or Ne-sho-ba), or Thomas S. Estes, or Izilla Mangrum, or B. F. Durant, or any of the applicants herein, or ancestors less remote, signified (in person or by proxy) to Colonel Wm. Ward, Indian Agent, Choctaw Agency, an intention to comply with the provisions of said article fourteen, or presented a claim to rights thereunder to either of the Commissions authorized to adjudicate such claims by the acts of Congress approved March 3, 1837 (5 Stats., 180) and August 23, 1842 (5 Stats. 513).

It is therefore the opinion of this Commission that the evidence herein is insufficient to determine the identity of William C. Thompson, Sarah S. Thompson, William R. Thompson, Sarah T. Stubblefield, Terry Thompson Stubblefield, Dora Stubblefield, Rosa Stubblefield, Johnnie Stubblefield, Berta Stubblefield, Horace Stubblefield, Minnie L. Wright, Granville Wright, Mary M. McNeese, Harrold Graham McNeese, Arthur M. Thompson, William C. Thompson, Jr., Mattie Holloway, Ivy Bolensiefen, Jessie Holloway, Willie Holloway, Hallie Hazle Holloway, Rufus O. Thompson, Mary Jones, Winburn Jones, Peter N. Jones, Eslie Jones, Thomas Jones, Maude C. Jones, Jesse H. Jones, Sallie Jones, Paul Jones, Bryant M. Jones, Maggie Jones, Jessie Jones, Frank Jones, William Starr Jones, Jettie May Jones, Ailsey Jones, Florence Jones, Mary E. O'Quin, James Walter O'Quin, Dora H. O'Quin, Thomas M. O'Quin and Ora May O'Quin, as Choctaw Indians entitled to rights in the Choctaw lands under the provisions of said article fourteen of the treaty of eighteen hundred and thirty, and that the applications for their identification as such should be refused, and it is so ordered.

It is the further opinion of this Commission that under the provision of law above quoted, no person is entitled to identification as a Mississippi Choctaw by marriage, and that the applications made by William C. Thompson, Jr. for the identification of his wife, Maude Thompson; by Rufus O. Thompson for the identification of his wife, Martha Louisianna Thompson; and by William Starr Jones for the identification of his wife, Susan Jones, as intermarried Mississippi Choctaws, should, therefore, be refused, and it is so ordered.

COMMISSION TO THE FIVE CIVILIZED TRIBES.

	(SIGNED)	Tarns Bischy.
		Chairman.
	(SIGNED)	T. B. Needles.
	ajondens	Commissioner.
	(SIGNED)	
	ROIGINED	C.R. Breckinridge
		Commissioner.
	"KSIGNED)	
	and a section of the section of	W.E.Stanlev.
tuskogee, Indian Territory,	-ace-Histories	Commissioner.
MAR 5 1904		