DEPARTMENT OF THE INTERIOR,
COMMISSION TO THE FIVE CIVILIZED TRIBES.
MUSKOGEE, INDIAN TERRITORY, NOV.20,1899.

Argument of Malven Cornish Esq., before the Commission to the Five Civilized tribes.

Mr Chairman, and Gentlemen of the Commission: We are here today, to represent the Chickasaw Nation, and are here in obedience to the circular letter of the Commission, suggesting to all parties who are interested, that certain questions of law would be discussed before the commission upon to-day and to-morrow, preparatory to completing the work of making the final citizenship rolls of the Choctaw and Chickasaw Nations. Mr. Mansfield and myself represent the Chickasaw Nation, and in obedience to that call, we are here to discuss before the Commission those questions lf law affecting the interest of the Chickasaw Nation, and incidentally the interest of the Choctaw Nation, because the interest of these two nations are interwoven, and intermingled and overlapped in such a way, that it is absolutely impossible to discuss the interest of one nation without at the same time considering those of the other. I desire to state before commencing the discussion of the laws of these questions, that I esteem it an honor to appear before this commission on this occasion. This Commission is one of the most important that has ever been sent out by the United States Government at any time, or under any circumstances. I desire to state further that the Indian people recognize that when this Commission shall have passed upon the interest which they have in their hands that they pass upon it in such a way as to meet their approbation. I speak of these people, not those people who have and may be expected to have within their lives and within their feelings and emotions, those racial prejudices which have ever moved them. Those people recognize that their inter

ests aresafely in the hands of this commission, and whatever their rulings may be, and whatever disposition they make of their nation, they will cheerfully regard it, and cheerfully acquiesce in whatever those rules may be.

The Commission has suggested two questions which shall be discussed. In addition to that we desire to submit other questions that may arise.

I shall first discuss the question of intermarriage and adoption. Now the only right of the intermarried and adopted citizen arises under the provisions of the treaty of 1866, under article 38 of the treaty of 1866, which reads as follows: "Every white person, who, having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw Nations, or who has been adopted by the legislative authorities, is to be deemed a member of said Nation, and shall be subject to the Laws of the Choctaw and Chickasaw Nations according to his domicile, and to prosecution and trial before their tribunals, and to punishment according to their laws in all respects, as though he was a native choctaw or Chickasaw." Now if we cannot locate the foundation stones upon which these rights rests, if we cannot locate the foundation, then in future discussions in future laws, in future treaty provision, we can readily see from what they are arrived affects us. I say the foundation of rights adopted is based absolutely upon article 38 of the treaty of 1866. It does not and could not refer to future adoption. The words are these: "Every white person who, having married a Choctaw or Chickasaw Nations, resides in the said Choctaw or Chickasaw Nations, or who has been adopted", not who shall be adopted, but "who has been adopted. "By Legislative authorities, is to be deemed a member of said Nation". Now for what purposes? "And shall be subject to the Laws of the Choctaw and Chickasaw

fore their tribunals, and to punishment according to their laws in all respects, as though he was a native Choctaw or Chickasaw." The courts have held--Judge Clayton and Townsend--that whenever a clause only refers to that clause which ends: "Is to be deemed a member of said Nation". Now I take it that these people knew at that time, what conditions they were going to meet, by inserting article 38. As Mr. Telle, who is a member of the Chickasaw Nation, recounted this morning, there was a historical condition. If they had intended to confer absolute property and citizenship conditions, they would have said so; they didn't say that, the decisins of judges Clayton and Townsend to the contrary, notwithstanding. I refer to their decisions with all deference. They are learned men, and I say the construction they put on article 38 of the treaty of 1866 is not the proper construction. We could read in this way, and perhaps gather some light:"Who, having been adopte d by the legislative authorities, is to be deemed". Let us substitute; we haven't a dictionary. Where "deem" is not absolutely it is conditional; leave out the words and say, who, having been adopted, is to be, for a particular purpose, considered to be, not a citizen, but a member of the nation, for jurisdictional purposes. And shall be tried and subject, in all respects, as though a native born Choctaw or Chickasaw. Leaving aside the constructions courts have put on it. And considering what those people sought to do at that time, and considering the conditions they intended to meet by this provision. If they had intended article 38 would have reference to subsequent adoptions they would have said so. #Or who has been adopted". They don't ad "and who shall hereafter be adopted", but "who having been adopted. They don'$ say shall be, or is to be, but "is to be deemed a member of the Nation" for a specific purpose. And that purpose was suggested by Mr Telle

to be met, and was met by Article 38 of the treaty of 1866. Now if the construction I place upon this is the proper construction, that would mean that the adoptions and marriages which were prior to the treaty of 1866 confirmed to white men. That is all Article 38 of the treaty of 1866 intends to do. Those "who, having married or who has been adopted, are confirmed to those rights. Now they did intend to justify adoptions in a certain way under the treaty of 1866. They did not add that in article 38 of the treaty of 1866; if they had intended to they would have done so, and said so. In article 43, the United States promises and agrees. Mr.Telle drew the distinction between adoption and re-admission. Up to September 1896, it was in the power of Council to readmit, and that is what is meant by re-admission. That is not adoption, as I understand it. Let us see how, under the treaty of 1866, white people could be adopted. Under this treaty, the United States promise and agree that no white person, except officers, agents and employes of the Government and of any internal improvement Company, or persons traveling through, or temporarily sojourning in the said nations or either of them. Those are exceptions of course; those shall passthrough and have those privileges. "The United States promise and agree that no white person, except etc. shall be permitted to go into said territory, unless formally incorporated and naturalized." If we would stop there, we couldn't say what they meant; but we will continue: "Shall be permitted to go into said territory unless formally incorporated and naturalized by the joint action of the authorities of both Nations into one of the said Nations". If they should be naturalized and incorporated into one nation, they would be a citizen of that Nation, but when they come to acquire property they would take possession of only joint property, because the land would be

joint property, and before that nation could be bound, bouth should be bound. In other words, the two nations should join, in order to adopt into one of said nations, Choctaw of Chickasaw, according to their laws, customs and usages. Now the next clause throws light upon the intention of the parties. "But this article is not to be construed to affect parties heretofore adopted," but the inference is that it is to effect parties hereafter adopted. That is the way an manner of adoption under the treaty of 1866. "Is not to be construed to affect parties heretofore adopted. Article 38 confirms the rights of those heretofore adopted, because it says the rights of those heretofore adopted are to be confirmed. "Or to prevent the employment temporarily of white persons who are teachers, mechanics or skilled in agriculture, or to prevent the legislative authorities of the respective nations from authorizing such works of internal improvements as they may deem essential to the welfare and prosperity of the community or be taken to interfere with or invalidate any action which has heretofore been had in this connection by either of the said Nations. That congress had an idea which has been applied to the treaty of 1866, that it can only refer to marriage and adoptions prior to that; they cannot be adopted, only in article 43 of the treaty of 1866, which provides that before a white person can become a citizen of either nation, it must be by joint action of both nations, because he takes property which belongs to both nations, which is joint property and capable of being effected only by joint action . I hope I have made my construction clear to the Commission.

There is one other question. We can best determine what they intended to do, first by what they said, and inquiring what construction they put upon it. Let us see how the Chickasaws

regarded that matter thereafter. Section 7 of the General Provisions of the Chickasaw constitution provides: (It was adopted shortly thereafter) "Every white person, who having married a Chickasaw Indian, or who has been adopted by the Legislative authorities of said nation shallbe entitled to all the rights, privileges and immunities guaranteed to them only by the thirty-eighth Article of the Treaty of 1866, with the Choctaw and Chickasaw Indians. Exactly a repetition of Article 38 of the treaty of 1866. This provision is based on the treaty of 1866, which is conclusive. "That every white person, who having married a Chickasaw Indian, or who has been adopted by the Legislative authorities of said Nation shall be entitled to all the rights, privileges and immunities guaranteed to them only by the thirty-eighth Article of the treaty of 1866." When the constitution of 1867 was adopted it contained a provision there which was in line with article 33 of the treaty of 1866. Now the question has been raised whether or not that is the law of the Chickasaw Nation. I desire to address myself to that before passing on. They based a contention upon Article 26 of the treaty of 1866: "The right here given to Choctaws and Chickasaws respectively, shall extend to all persons who have become citizens by adoption or intermarriage of either of said Nations, or who may hereafter become such." Before taking that from the treaty of 1866, let us take the very worst fase of the case that can be imagined. The right here given to Choctaw and Chickassaws is contained in article 33 of the treaty of 1866, which is the only article that provides that it must be by joint action of the two nations, because it affects joint property. As Mr Telle suggests that part which refers to the allotment scheme was never ratified and is not now a part of the treaty of 1866. The question arises why is that contained in the draft of the laws of the

every lawyer present that there was never a digest formulated of any of the states, that did not contain errors of the digester, erroniously placed by him nk in the digest. Why is the Choctaw Nation to be bound by what is put there by the digester. The argument in regard to state laws will apply. When the digester makes an error and carries it into it, it is not law; the state and people are not bound by it and the courts will not uphold it. There are the laws of the Chickasaw Nation.

Beginning on page 523 appears the Curtis act and the agreement--the great law that now has to do with property interests in this country. I want to say that the Curtis law as it appears in the addition of 1899 to the laws of the Chickasaw Nation, is absolutely erroneous. Here is section 20, and from there it skips to Section 22. Over here is section 26 and it skips to section 29; section 27 and 28 are nowhere to be found. In that below section 32 is as regards the Atoka agreement. I beg the pardon of the Commission for refering to that. Is the Chickasaw Nation to be held because the digester has made an error? Is the Chickasaw Nation bound by the Curtis Act because the digester made an error? That came about in this way: The man who got up this book, got an imperfect draft of the Curtis act--an act gotten up by the Committee, and he didn't get the final draft of the Curtis Act. He got the initial draft, and it appears imperfect in the law book. So much for the error in carrying it into Durant's digest. Mr. Teale undertakes to show and will show that part was never considered by the Choctaw Chickasaw people as part of the treaty of 1866. Now let us see what the effect of that will be. Take the treaty as it stands with the allotment features in it. The Indians did not agree to that. The United States promulgated form of the treaty as proper form of the treaty. The Indians didn't agree; they re-

that all intermarried and adopted people shall share in the allotment of land. Those provisions of the treaty of 1866 were not accepted by the Indian people. Therefore, if article 26 with reference to white intermarried and adopted people, if that's law in this country, it is law having been made so by main force on the part of the United States. And if the United States has done or would do that, they would violate the promises made the Indians in section 2 of article 1 of the treaty of 1855, which provides that this property shall forever remain the property of the members of the Choctaw and Chickasaw Nation, their heirs and successors; t That is promised in the treaty of 1855 ; and if the treaty of 1866 wasn't the law, it violates the promise of the patent to this land made in 1865. As I suggested, that is not a part of the treaty of 1866, and they cannot be bound by the imperfect draft that appears in Durant's code. Mr. Telle suggested that the Choctaws and Chickasaws have never agreed to that, and it could not certainly bind the Indians.

Now I will pass on. It will be remembered by the Commission that this land was first patented to the Choctaw Nation in 1837, and the Chickasaws bought into this land. Under the treaty prior to that time the United States promises to patent to the Choctaws and did patent to the Choctaws; it patented and conveyed this land to the Choctaw Nation; then came the treaty of 1837 and the Chickasaws bought into it., and came on down to the treaty of 1855 whichwas a readjustment of the Choctaw-Chickasaws with the United States. Section 31 of the Treaty of 1855 provides: "Pursuant to act of Congress etc, the United States do forever secure and guarantee". What language could be more forcible? As I suggested, the foundation stone upon whichrests the right of intermarried and adopted citizens is in Article 38 of the Treaty of 1866.

which rests the title of the Choctaws and Chickasaws to this land, found in section 2 of article 1 of the treaty of 1855: "The United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes". Not to the Nation, but to the members of the Choctaw and Chickasaw tribes; "that each and every member of either tribe shall have an equal, undivided interest in the whole; Provided, however, no part thereof shall ever be sold without the consent of both Tribes; and that said land shall etc." I refer to that, because as I proceed, I will apply another provision. "And that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same."

Now with reference to intermarried and adopted people there is two questions to ask. First, are they heirs of or successors of the Choctaw and Chickasaw Indians? The United States being the guardian of the Indians has said to them, that it forever guarantees the land embraced in said limits to the members, their heirs and successors.

First: Are these intermarried and adopted people heirs of the Choctaw and Chickasaw Indians?

Second: If so, was the admission of these adopted people by the joint action of the two nations?

Now the indians; the Courts have always held and tribunals have held upon the question of adoption it was a question which could be regulated by the Indians themselves. The Honorable Gentlemen who represents the applicants in this case was interested in the case Roth vs. Burney

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Now, I shall briefly leave the general discussion aside, and briefly call the attention of the commission to the statutes of the Chickasaw Nation with reference to intermarriage. I have discussed and given my opinion of the various laws of the Chickasaw Nation regulating intermarriages. Now I lay it down, first, I don't think I have ever heard this suggested before. Judge Town send in passing on the subject of intermarriage, lay down in his decision, that the first license law was passed in 1876. I will be able to show to this Commission that there has been a law ever since 1840 requiring white men to procure a license before he can become a limited member of the nation. My holding is, if he complies with all the laws he acquiresno property rights, but can enjoy property rights so long as he

There is a law, ever since 1840 which requires a white man to procure a license through the Chickasaw Nation before he can acquire any privileges from the Chickasaw Nation. The commission knows that the Chickasaws bought into this country in 1837 and became a part of the Choctaw Nation On the 4th of October, 1840, the following law was passed; the Chickasaws had been here three years; they came here in 1837, and in 1840 the Choctaws and Chickasaws passed this law. An act in relation to white men marrying in this Nation. SECTION 1. Be it enacted by the Legislature of the Chickasaw Nation for a period of two years, and be of good moral character and industrious habits before they can procure a licenset to marry a citizen of this Nation; Provided, further, they be re commended by at least five good and reponsible citizens of this Nation, and of the County wherein they resided, the County Judge being satisfied with the petition shall grant a license to marry under existing laws, and the non-citizens so applying for license shall pay fi one dollar and fifty cents.

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That law was passed three years after the the Chickasaws, and while the Chickasaws and Choctaws were one Nation.

The Chickasaws remained in the Choctaw Nation until the treaty of 1855. The Chickasaws remained in the Choctaw Nation until the treaty of 1855. Up to that time they got an idea that they wanted a separate government, and they went over into the Chickasaw Nation and erected a separate government. They drew a political line between the two districts. When they went over and erected their government, they inserted in the treaty of 1855 this provision: "The Government and laws now in operation, and, and not in compatible with this instrument, shall be and remain in full force and effect within the limits of this Chickasaw District, until the Chickasaws shall adopt a constitution, and enact Laws, superceding, abrogating, or changing the same. " I have here a manuscript culy certified by the Secretary of the Chickasaw Nation, which is a license law, passed by the Chickasaw Nation, as the Chickasaw Nation; that appears in this book as having been passed on the 19th of October 1876. I waded through 8 or 10 big manuscript boxes of law and found it, and have it duly certified by the National Secretary of the Chickasaw Nation. The original license law of the Chickasaw Nation was passed September 24th, 1875. It is duly certified by the National Secretary of the Chickasaw Nation, and provides: "Be it enacted by the Legislature of the Chickasaw Nation, That all non-citizens shall remain in any one county of this Nation for a period of two years, and be of good moral character and industrious habits before they can procure a license to marry ~~under existing laws, and~~ a citizen of this Nation; Provided, further, they be recommended by at least five good and responsible citizens of this Nation, and of the County wherein they resided, the County Judge being satisfied with the petition shall grant a

That is the first license law ever passed by the Chickasaw Nation as a Nation, and the first law that repealed or abrogated the license law of 1840. I will give the Commission my idea of why this law appears in this book. It will be remembered that in 1876 they got together their laws and repassed them; and it will be remembered that probably 200 pages of law bear the signature bear the signature of B F Overton, and bear date of , "Approved October 2, 1876. They got the laws passed, and theywent in of that date; there is no question of the genuineness of this, and if the Commission desires, we will submit the original. In 1876 the Chickasaws struck out the $1.50 and had inserted therein $50.00 The license law of the Chickasaw Nation remained until 1875, when it was changed as provided in the constitution. Then it was necessary to procure from the County Judge. It was first $1.50 and after that $50.00 was inserted, and it stands that way to-day. So much for the license law of the Nation.

With reference to this question of marrying out, the forfeiture of the intermarried right, whatever it may be. That is found on page 270of the present edition of the Chickasaw laws :

Section 2: Be it further enacted, That every United States citizen who has heretofore become a citizen of the Chickasaw Nation, or who may hereafter become such by inter-marriage and be left a widow or widower by the decease of thewife or husband such surviving widow or widower shall continue to enjoy the rights of citizenship unless he or she shall marry another United States citizen, man or woman, as the case may be, having no right of Chickasaw citizen ship by blood, in that case all his or her rights as citizens shall cease, and shall forfeit all rights of citizenship in this Nation. My construction is they refer to such rights as would be required under the treaty of 1866. That is what isknown as marry-

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After the bonds of matrimony have been entered into, after the marriage relation has been contracted, the question is whether or not subsequent compliance would confer upon such white person such rights of intermarriage as the Chickasaw Nation had power to confer. With reference to that I will suggest this: It has been held by all the Courts, that marriages valid where contracted are valid everywhere. The Chickasaws never intended that the entering of the marriage relation should be one thing, and the acquiring of property interests should be another. They intended that white persons might come here and marry citizens by blood of the Chickasaw Nation, and whatever property rights it carried with it; the right of property should follow as an incident to marriage. It never was intended by them; I state as my opinion. And it seems to me the reasonable construction.

They intended that the privilege of coming in and marrying an Indian, should be extended and property interests follow as incident. Let us take for instance a marriage contrat in the state of Texas; if that marriage is contracted according to the laws of the state where the parties reside, the marriage is good as a marriage, but it doesn't carry with it property rights in the Chickasaw Nation or anywhere else, but it is good as a marriage, and will be respected everywhere as a marriage.

Q Suppose those parties come into the Chickasaw Nation and desire to comply with the laws of the Chickasaw Nation; then property rights would result. My idea is that the Chickasawsintended that the entering of the marriage relation, and the resulting property privilege should be one and the same--that they should not be separated at all. A man or woman cannot enter the marriage relation unless he is eligible to matrimony. If he then has about him the existing relations of matrimony, he cannot enter matrimony unless the existing bond has been dissolved. When he comes in

here and goes through the forms of matrimony a second time, neither party is eligible until the previous bonds of matrimony have beendissolved. It is not necessary I apprehend to address myself to the bad faith by parties who have come into this country, and endeavoring to aomply with the laws in order to get property. It is a matter of general knowledge, and it would not perhaps be proper for me to do so; but my observation has shown me that there are hundreds of individuals who have come into this country and are endeavoring to comply with the laws for the sole and absolute purpose of property rights. Section 3, page 143 of the Chickasaw laws is as follows: "That no marriage heretofore solemnized or whichmay hereafter be solemnized, between a citizen of the United States, to confer any right or privilege whatever, in this Nation, by again marrying another citizen of the United States, or upon such other citizen of the United States or their issue, and in case any citizen of the United States shall have married a member of the Chickasaw Nation, and shall have heretofore abandoned her, or should hereafter voluntarily abandon or separate from such member of the Chickasaw Nation, such citizen of the United states shall forfeit all right acquired by such marriage in this Nation, and shall be liable to removal, as an intruder, from the limits thereof." Now one idea I desire to suggest in this connection, the Commission will observe that in refering to separation, the Indians used words that is not susceptable of misconstruction. "And in case any citizen of the United States shall have married a member of the Chickasaw Nation, and shall have heretofore abandoned her, or should hereafter voluntarily abandon or separate from such member of the Chickasaw Nation" I merely suggest that as incidental, to show that the meaning of that article is as it reads. So much for the laws with reference to intermarriage and

Now after having disposed of that, I desire to approach an ide a and contention and suggestion whish is really the most important that will be suggested by us, for the consideration of this Commission, and I desire to enter that with due deference. I desire to approach that question with the deference to which itsix importance entitles it There are within the limits of the Chnctaw and Chickasaw Nations, more than three thousand persons who hold judgments, or what purport to be judgments of the United States Courts in the Indian Territory, and upon which they ask enrollment by this Commission, in order that they might acquire a share in the joint property of these two Nations, when it shall be allotted by this Commission.

Before entering a discussion of that, I desire to say that the Chickasaw Nation here and now enters a protest against the enrollment of those people by this Commission. There is involved more than twenty million dollars worth of property which those people who hold judgments of those Courts and ask this Commission to enroll them, are seeking to take of the joint property of these two Nations--more than twenty million dollars worth of the joint property of the two nations. It is not necessary to refer to the magnitude and importance of the contention, because the Commission and all who have had to do twith this question know of the vastness of the interest and know of the importance of the questions involved. More that six hundred people who have been admitted by the United States Court to Chickasaw membership are asking this Commission to put them in possession of three million dollars worth of property in which the members of the Choctaw Nation have an undivided interest in every inch and foot of it. People who have been admitted by judgment of the United States court in the Indian Territory; more than two thousand are asking this Commission

to put them in poasession of three million dollars worth of property in the the members of the Choctaw Nation--every member of the Choctaw and Chickasaw nation have an undivided interest in every inch and foot of it. Now let us see, that which we base our protest against the enrollment of these people are these. The lands of the Choctaw and Chickasaw Nation are held jointly, not in common; but every individual in these two nations are joint tenantsin the ownership of every inch and every foot of land in these two nations. Those who have Choctaw judgments have only taken judgments against the Choctaw Nation; they have only made the Choctaw Nation a party; they have asked judgment only against the Choctaw Nation, and onlytaken judgment against the Choctaw Nation. Those who have judgments against the Chickasaw Nation have only made the Chickasaw Nation a party, have only asked judgment against the Chickasaw Nation, and have taken judgment only against the Chickasaw Nation. What is the effect of that. The object and purpose of that application is to place John Smith who has been admitted by the United States Courts in possession of 550 acres of land which belongs to every individual member.
He has not made each individual of the Choctaw and Chickasaw Nation a party. Neither has he made the heads of the Nations a party, but against one nation only, and he has proceeded against one natinn when it is the joint property of the two nations as promised and guaranteed by the United States. It may be asserted that if John Smith comes with his judgment against the Chickasaw Nation, and if the Commission places him on the roll, that that act doesn't put him in possession of the land. That would be falacious. We have only to look at the policies of the very laws in which the commission is acting. The very object of the laws of 1896 or 1898

of the joint property; that is the purpose of this roll. There is no such thing as a court of citizenship contemplated by existing law. This commissionknows nothing of the political privileges of the Choctaw or Chickasaw Nation. With that, it has nothing to do. It is instructed under existing laws to make such a roll as will enable them to allot these lands to the citizens of these nations. In order to entitle John Smith with his judgment; in order to entitle him to allotment, he must show himself entitled to that for which the roll is to be made, to wit, the allotment in severalty of these lands. In order to perfect that right, two things are necessary by this Commission. First,he must be enrolled; Second, this allotment must be made. Those terms are interchangable. To omit either of these steps would destroy his right. To do either wrong or erroneous, would jeopardize property interests of these two Natinns, which are at stake. Now I willmake a brief illustration, and pass to the construction of the laws and treaties of the United States that bear upon these questions from the time the se nations have been nations, down to the present time. The continued and united policy of the Government has been that they should be joint owners of the property. The two nations occupied them jointly. Suppose that six parties consulted together for the purpose of organizing some commercial enterprise. Suppose that in the preliminary discussion of the details of that movement one of them drops out, as it is commonly termed freezing out, and five of them continue and perfect the organization of that enterprise. Let us suppose that the sixth man who has been frozen out or been dropped out; suppose he comes up six months thereafter and demands that he be admitted to the rights and privileges and benefit of tht that concern. Suppose he has paid his money into it, and for any reason is not present when the final organization is made.

He comes up six months thereafter for the purpose of asserting the right. Would it be contended for a moment if he entered the Court it would not be necessary for him to join the five joint owners in order to be recognized inhis rights.

Would judgment against two of the five ; would it give him the benefits of that for which he went into court; It would certainly not be held that he ~~xx~~ could proceed that way; but before he can bind the joint property it is necessary that the joint owners be made parties to the proceeding which seeks to effect the joint title to the property. It might be suggested by some that the admission of John Smith as a citizen would not affect the rights of the Choctaw Nation if it is not divided. They would not contend for a moment that when John Smith is enrolled as a Chickasaw, he swells the membership of the Chickasaw and diminishes the aggregate allotment by the value of his own allotment. And if six hundred are admitted, they have the aggregate allotments are diminished by six hundred times one allotment or six hundred times five hundred and fifty acres of land. The test to apply, whether or not that is injurious; does that effect the interest of the Choctaw Nation. I think that would be readily answered in the affirmative. The second is, does such parties whose rights have been effected. Is he a party to that proceeding? John Smith has a Chickasaw judgment that will diminish the aggregate allotment by 550 acres. The six hundred citizens admitted by Judge Townsend, if enrolled will diminish it by six hundred times 550. The value of each man's allotment will be correspondingly decreased. Having seen that the Chickasaws are injured by this judgments, the question is, have the Chickasaw Nation been a party. The question is, does it injure the members not party to the suit, and second has that person been a party to the suit. Is John Smith's judgment injurious to the Choctaw Nation, and the Choctaw Nation not a party

been toward regarding this as common property. In 1834 the Chickasaws sold out in Mississippi, and moved out in this country. I want to address myself wo the policy of the government with reference to this question. In 1832 the Choctaw people finding themselves oppressed by being made subject to the laws of the United States, being ignorant of the laws of the white man. Rather than submit to this, they prefered to seek a home in the west where they might live and be governed by their own laws, and believing they could procure a home providing they had themeans. The president has heard the complaint, and like them does not believe they can be satisfied, and being desirous of relieving that very great calamity has sent a commission, General John Coffee, and made the treaty of 1832. The promise of the United States was to see that this was done. Following the treaty of 1834, the Chickasaws are about to abandon the home which they have long cherished and loved; they still hope to find a home somewhere west of the Mississippit River. Then in 1837 after the preliminary arrangements had been made and gone through with, the treaty of 1837 was made, in which they bought in with the Choctaw Nation. This contract of purchase between the Choctaws and Chickasaws to which the United States was a party and to which the United States was a witness. Article one of the treaty of 1837: "It is agreed tby the Choctaws that the Chickasaws shallhave the privilege of forming a district within the limits of their country, to be held on the same terms that the Choctaws now hold it except the right of disposing of it, which is held in common with the Choctaws and Chickasaw s, to be called the Chickasaw District of the Choctaw Nation, to have and equal representation in their General Countil, and to be placed on anequal footing in every other respect with any of the other districts of said nation, escept" The landed property was to be heldi

are held in common between these two nations. The words refer to separate money of the Choctaw or Chickasaw Nation. It gives them power to deal with their separate funds, separate property, without consulting the other nation. Before I pass to the provisions of the treaty of 1855, I desire to call attention to the Choctaw patent. This had previously been patented to the United States by the Choctaws and Chickasaws bought in, under the provision of the treaty of 1837, and under the provision of the treaty of 1855, the United States reaffirmed the conveyance of land to the Chickasaws, and specified just how it should be held.

Now the patent of the Choctaw Naton, which is in the year 1842, the United States under a grant specially to be made by the president of the United States, to be made by the Choctaw Naton. "Know ye that the United Statesof America in consideration of the promises, and in execution of the agreement and stipulation ****** **********

That was in 1842. Now when it came to make the treaty of 1855, it was a re-affirmation, it was a readjustment of the Choctaw and Chickasaw and the United States. The United States says this: "Pursuant to an ~~agreement~~ act of Congress, The United States do forever secure and guarantee. It could not be more solemn than that. For the purpose of securing and guaranteeing the lands embraced within these limits to the members, (Not to the nation) of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have one undivided interest in the whole. No part thereof shall ever be sold without the consent of both tribes.

In refering to these acts, it is to show the policy of the government from the time the lands were originally conveyed, down to the present time, except by a joint act of the two nations.

Under article three of the same treaty of 1855, after setting out the political limit of the Chickasaw Nation, after laying that out, the remainder of the country to be held in common by the Choctaws and Chickasaws. Now under articles 11, 12, 17, 33 and 35 of the treaty of 1866 which the Commission will understand it has been suggested did not exist at the time; but if I am going to weed out the sections of the treaty of 1866, it would not be proper to argue in support of this contention. I will say this to the Commission, there was 5 references to these sections of the treaty of 1866m which were not ratified by the Choctaw and Chickasaw Nations, which refer to these lands as being held in common by the Choctaws and Chickasaws. Without reference to those provisions, I will pass over.

Article 47 of the treaty of 1866. After refering to the allotment scheme and going on and providing the land shall be, it goes on to provide that the funds of the Choctaw Nation shall be divided up among the members of the Choctaw Nation and the Chickasaw Nation. So as I have called the attention of the Commission to the preceeding sections, that whenrever the Government refers to the separate property of these two Nations, it gives them control over it. Wherever it makes reference to lands deeded in 1842 and redeeded in to the members of the Choctaw and Chickasaw Nation in the treaty of 1855, it refers to it as their common property, and makes it absolutely impossible for the Indians themselves to affect the property without it be by joint action of the two nations.. Continueing on down to the Atoka agreement, let us see what its expressions are The Atoka Agreement is section 39 of the Curtis Act. Allotment of lands. That all lands within the Indian Territory belonging to the Choctaw and Chickasaw In-

dians shall be allotted to the members of said tribes", showing the continued and consistent policy of the government and the animus of the government in refering to the lands of these two Nations.I will pass on. "Members titles to lands" "That as soon as practicable, after the completion of said allotments, the principal chief of the Choctaw Nation and the Governor of the Chickasaw Nation shall jointly execute, under their hands and the~~xrespectivxe~~ sealsof the respective nations, and deliver to each of the said allottees patents conveying to him all the right, title, and interest of the Choctaws and Chickasaws". Ut provides that the governor of the Chickasaw and the Chief of the Choctaw Nation shall jointly execute their patent, and that patent shall be a conveyance of everything of these lands, belonging to the Choctaw and Chickasaws except mineral I refer to this land as belonging to the Choctaw and Chickasaw tribes. "It is agreed that all coal and asphalt within the limits of the Choctaw and Chickasaw Nations shall remain and be the common property of the members of the Choctaw and Chickasaw tribes" Let us look a little further into current history of the tribes. There was many difficulties in treating with the Indians. The Commission did several years work before it could bring the Indians to the point of making an agreement, and finally in Muskogee made the treaty with the Choctaws. The Chickasaws were not present. That treaty was transmitted to Congress. The Commission was perhaps familiar with it at the time. At any rate, that treaty was sent to Congress. They said, we cannot consider it until you make this joint agreement between the Choctaw and Chickasaw--make them joint. The Atoka Agreement didn't become effective until it was ratified by a vote of the members of the Choctaw and Chickasaw nations.

The Constitutional law yers of Congress said, and it was conceded by all. The title of that property cannot be effected unless the joint owners of that property consent to it. The Atoka Agreement was submitted to the members of the Choctaw and Chickasaw Indians and ratified by their votes, affecting the joint ownership of the common property and providing for allotment before the Commission. Our contention is this: the judgments are not binding, because they have been procured only against one nation, and the other nation is not a party. As a legal proposition and with reference to legal procedure, joint property cannot possibly be effected unless the joint owners are parties to the proceedings. The Government of the United States has not only always held with reference to its own acts, not only held that it could not affect this joint property, but it has always expressly prohibited the Indians themselves to effect the joint property unless they jointly moved in the matter. under the treaty of 1855, they say that land cannot be sold except by the joint act of the 2 nations. Now if the Government will not permit the Indians to effect the title to joint property, certainly the government of the United States, having assumed to hve done that, having prohibited the Indians from doing that except by joint action, most certainly no proceeding will be held to be valid unless the joint owners of the property are parties to the proceeding.

Now as I stated in the out set, the government came into this work over the protest of the Indians. The Indians were not willing to this but the government came in and assu ed to do this, and the Supremem court of the United States says this Commission has jurisdiction; and having gone into the Courts, and having invoked legal proceedings, they will hold them to strict compliance with the legal proceedings in this Court. The promise of the

government contained in article 3 of the treaty of 1866, it says it will forever do so and so..... except by joint act of the two nations. It may be said that these applicants did no know ; and were proceeding without having the laws before them in 1896. I say that the Dawes Commission in 1896 could not, unless the parties came before them. If John Smith, asking to be admitted as a citizen, came before the Dawes Commission and asked to be admitted as a Chickasaw. It is not the fault of the Court, it is not their duty to advise the applicant. The Dawes commission and the Courts pass upon only what comes before them The question would occur, whether these judgments have any binding effect. That question we do not raise before the Commission today. It may be that the judgments of the United States Courts are good as to the separate funds and property of the Chickasaw Nation; it may be that the judgments having been taken only against the Chickasaw nation would confer political privileges.; would confer upon John Smith the right to participate in the funds, but most certainly in accordance with the laws of the United States it will not allow John Smith to take possession of the property when it belongs to joint owners, when the proceedings are against one, and judgment against only one. In order for the the United States to proceed in this matter, it was necessary that there should be parties to the suits. The United States had no jurisdiction in the matter unless it was provided by suit The presumption is that in proceeding in that jurisdiction that he will conform to the well established legal proceedure, and avail himself of the well known legal proceedings in proceeding under that jurisdiction. Now answering the suggestion made, the Commission will rember after passing pattent to this nation in 1842, from the time the grant in this land is reaffirmed, down to the present time, they refer

they have refered to the land as belonging to members of the Choctaw and Chickasaw Nation. It is conceded if they have proceeded against the legal constituted authorities of the Nations, when the government has guaranteed the land shall be the common property of every man, woman and child in the Nations. In order for these judgmen tsto be binding; in order to confer rights; they assume that it is absolutely necessary as a legal proposition that every man, woman and child, every Indian in this country be made a party to that suit according to well established legal proceedure. I say the question is, whether these judgments are not absolutely void. They may be good as to separate property of the Choctaw and Chickasaw Nation, but this Commission has no warrant for making courts of citizenship. The purpose of the roll which this Commission is making is to allot these lands. That is the roll this Commission is making; that is the object and purpose. And if the applicant comes to this Commission, and doesent show himself entitled by reason of being on the roll, he is not entitled to be placed on that roll. The question of his right under the judgment would come up later. But the roll which this Commission is making and has authority to make is to make such roll as will bring that joint property in the Choctaw and Chickasaw Nation among the members of the Choctaw and Chickasaw Nations.

Now continueing further it may be said that if these people are placed on the roll, the interest of the Choctaw and Chickasaw Nations will not be effected or jeopardized. The authority under which this commission is proceeding says: "The rolls shall be made and approved by the Secretary of the Interior, shall be made final". And as I understand it the jurisdiction of this commissions contemplates only one roll, and the names should go on it; have

all the privilegesof property, political and ~~otherwise~~ ~~xxxx~~ every~~4~~ thing in the two nations. It may be said that the Secretary of the Interior will right this matter. It is not the desire of these nations to contest thes matters. It is approved or disproved as a whole. It is not the desire of these Nations to contest the work of this commission; and do not desire to be put to the necessity of filing such procedure as to make it necessary to open this question again. It may be said that if this Commission puts them on the roll, they can be enjoined from taking possession. What is the law with reference to that. The Nations, Choctaw and Chickasaw have no warrant to go into the Courts of the country unless specially authorized by congress. This Commission knows that it is the disposition of Congress to close this matter out, and would not wish their work to be interfered with by the United states Courts in this country. There is absolutely no hope, if the nations are to be protected in this idea, unless it be said the judgments show that they have a right to be placed on the final roll. This Gentlemen of the Commission is the last stand of the Choctaw and Chickasaw people for the righting of the injustices that have been done them. This Commission having been sent out by the laws of Congress with jurisdiction to deal out justice to the Indians, they have heard and understood what the policies of congress are, and the Commission to the five Civilized tribes have come here and said there are abuses existing in your tribal property--abuses which should be righted. They have listened to that, and joined hands with the United States, and have acted in harmony with the policy of the United States, and have done what this Commission told them to, to weed out the abuses that congress said existed in these tribes. They have done all these and trusted all to this Commission and those who have the administration of the

and I am done. It may be improper to make this reference, and I hope if it is improper, the Commission will correct me. I say this, that the great moral considerations are in favor of these people not being enrolled. There is no proof before this Commission as to marriages of these people. I stand before this Commission and give it as my opinion, after having investigated some considerable. The great majority of people are not entitled to enrollment. I want to say that in my investigation in an Ardmore case last week I found an application including 7 members, which case has not been passed upon. There that case is docketed, and they are demanding citizenship as Chickasaw Indians. Since the institution of that suit those 7 parties have come before this Commission and holding up their hands to Almighty God, have sworn themselves to be Chickasaw Freedmen, and have been placed upon roll as Chickasaw Freedmen. They do not apply to the Commission as Indians but as Freedmen. There is another case in which 13 members are admitted to citizenship. The judgment of the Court says their citizenship is by blood Their application in 1896 wasn't as Chickasaw citizens, but as Chickasaw Freedmen I beg the pardon of this Commission for speaking of this, but I say the great moral consideration shows that these nations should be protected, because the great majority of people in my opinion are not entitled to be enrolled as Chickasaw and Choctaw Indians.

One other idea, and I shall close. The Indians have become reconciled to the interference of the United States; the regard that they have sent men who will properly consider questions of law and judgments in accordance with the justice right and law. They feel that when this is at an end, they will become citizens of the United States, if their interests are protected under the law they will certainly feel more kindly toward the United States, when

I thank the commission for patiently listening to my discussions of questions of law. We will later on prepare and submit to the Commission a brief, containing a careful schedule of all the laws with reference to the adoption of intermarriage, and our views with regard to the construction of those laws.

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DEPARTMENT OF THE INTERIOR,
COMMISSION TO THE FIVE CIVILIZED TRIBES.
MUSKOGEE , INDIAN TERRITORY, Nov. 21,1899.

Argument of George A Mansfield Esq., before the Commission to the Five Civilized Tribes:-

Mr. Chairman, and members of the Commission: This talk of mine to the Commission, will necessarially be very rambling, because I shall take up certain things in the argument of these gentlemen, following in the course of their arguments, to answer them where they havemade points.

I shall answer the arguments of Mr. Herbert so far as his argument proper is addressed to the Commission, and I shall endeavor to eliminate them, where I do not consider them vital to this question, and will consider those two points along.

Now, I think the rights of intermarried and adopted citizens hinge upon this treaty of 1866, and the proper construction of articles 38 and 43. So I shall discuss that briefly, and then I shall address myself to this question of Court judgments. I do not know that the Commission, even from what has been said, fully appreciate the position we take in this matter. Mr. Cornish has presented it very ably, and very in his opening statement. And if these gentlemen were present, I would say in compliment andfairness to him; they have said during the progress of this argument, that there was nothing in that question; they have made light of that question, and Mr. Herbert in his opening argumen t was inclined to refer sarcastically to Mr. Cornish, but as a professionalman, although he is young, I knew from his manner, that the argument had gone home to him, otherwise he would not have attached so much importance to it. There is a courtesy due a young member of the of the bar. Mr. Herbert listened to Mr. Cornish's presentation of this matter, and absolutely went to pieces. Mr. Cruse in refering to him, refered to him as a young

man, the same atrocious crime that was charged against the younger Pitt. While he is a young man in the profession, not having the advantage of experience, I do not think that anybody would contend--Mr. Cruse, Mr. Herbert or anybody else would have successfully combatted it. As it was, I do not think they did.

Mr. Palls made the remark this morning, that might be taken as an insinuation, that this was some claptrap scheme for benefiting ourselves in a financial way. Gentlemen of the Commission, there is some thing in our contention; there is a question for the deepest consideration right along that line. I might give a brief history of how we regarded this matter. We were at Hartshorn, and we approached this question with minds unbiased. I believe every Indian is equal in those particulars who seek their their property rights in the territory. At that time, we hadn't worked long in the harness, so as to work up any enthusiasm. I saw these judgments, and turned to my partner, Mr. Cornish, and said it appears to me those judgments ought to be against both nations. It struck him like a burst of sunlight; so it will appeal to any man. These two points I am going to present to the Commission, and I want to present them fully. I am going to say this upon this proposition of Court judgments. I do not believe there is within the confines of the United States of America one lawyer of ability that will say he believes that judgment to be valid and binding against anybody for any purpose whatever. If so, it is the first time in the history of jurisprudence, that a man's property rights were ever taken away from him without due process of law, and without notice of a judgment which upon its face does not purport to include or conclude him. On the contrary, when confronted with this question they take the position that they do not intend to embrace both Choctaw and Chickasaw Nations. They concede that.

Mr. Cruse made an argument to the Commission this morning; he made that sort of an argument a lawyer frequently makes when confronted with a proposition he doesn't know how to answer, but seeks to avoid it and deals in generalities.

This Commission is dealing with conditions never known before, in the history of the United States of America. Congress, when it sent this Commission here to inquire into the conditions, selected them with the view that they could come here bringing their ripe experience of manhood, make a report of these facts and after having done so, to act in a certain way. Then is it true that moralconsiderations are to have no part in the judgments of this Commission? Is it true that it is not proper for the Commission to consider in any way the property rights, and the wrongs to be done the Indian Tribes.

This does not apply to a case where theremight be a judgment valid on its face. The Commission ought to respect them; we all assume that. Now the commission was sent here. What were you told to do? These gentlemen get up there, and there is one thing the best of them cannot get out of their minds, and that is that the Indian people cannot waive a right, or that estoppel operates against them, especially by certain acts. And I address Captain McKennon; I know him to be a lawyer; I beg the pardon of the Commission, but he knows very well as a lawyer that estoppel does not operate against the. The whole history of this legislation shows that the Government never has held estoppel against them, or that they could be held to waive their rights. It directs the Commissinn sent here to protect the interest of these tribes. That is the history of this legislature; the Government which was the guardian of these people said a certain condition existed here owing to corruption. Not only the members of the tribes, but citizens of

this country. A condition existed and it should be remedied, and congress sent the Commission here. Not only that,, but every time the Commission went back and reported, Congress said to the the commission come back with additional power. They said congress did not permit the Indian to pad his rolls of citizenship, but struck from them all names placed there fraudulently or without authority of law.. They said to you go and stand like rocks in this sea of corruption, and weed out and resist all that should nt not be there. That is what the Commission is here for. So this Commission were sent here to bring their ripe experience in human affairs, to carry out your instructions in accordance with the customs and usages and the tribal laws, and maintain all that were valid in consideration of the treaties preceding them, in accordance with that. That is what the commission came here to do; they came here for that purpose. The question that now confronts the commission is whether or not certain classes of persons should be enrolled here. Gentlement of the Commission, even as clear a headed lawyer as Mr. Herbert while suffering from the in which he had fallen, wound up by certifying that he had a client who had enjoyed a rich farm for 17 or 18 years, which he would have to forfeit. If it were in one of the states, not only would they take away from him the land in a suit in ejectment, but they would force him to account for the rents and profits. The supreme court of the United States has said that everybody that came in here, came with a knowledge of these conditions, and nowhere has any vested rights. The Commission has always thought , and we as lawyers have understood that there is no vested right. You remember Judge Yancey Lewis before Judge Clayton, presented that question, presented it in a very able manner; and the concensus of opinion was that there could be no vested rights in Indian

So we may consider there is no such thing as a waiver of rights; there is no such thing as being estopped; those technical rules of law do not apply. Neither is there any such thing as anybody acquiring a vested right.

The government, in dealing with this Indian question has never granted authority to deal with the Indians in a political way. By these laws we should take into consideration the end to be attained; that is true, is it not? What stood in the way of the government interfering with the tenures by which the Indians had these lands; by patents from the government. They inserted in the treaty of 1866 commencing about Art. 11, I think, and going up to Art. 37, they inserted such provisions as practically exist today in the Atoka agreement; the general scheme was to establish land laws, to take charge of the Indian property, distribution of school money, alloting the lands in severalty, and to deal with the town site question. It is not necessary to read all these sections to the court; the court can turn to it and read it, but the scheme of the proposition was just this, that if the agreement had been binding on the Choctaw and Chickasaw people, there would have been no necessity for the making of the Atoka agreement; the government would have already secured their signatures to the treaty that the government strove to get them to adopt. And this question was discussed by the ablest constitutional lawyers in Congress, and they all held that some such action was necessary to aid and assist in providing for the holding of these lands in severalty. That is the history of the treaty of 1866, and as appears, those articles were never adopted; they were simply referred to the Choctaw Nation, and the government and the Indian people ratified the remaining articles of this treaty, but the government has never endeavored to act as to those articles atall; simply passed supplementary laws; but this has

question. As to inter-married citizens, I will turn to Art. 38. That reads in this way: I will first state my construction of it. In 1866, the Commission will first take notice of the fact, here was the United States government, all-powerful, treating with these Indian tribes. The Commission know it is true of an Indian; he is wary of ~~xxxxxx~~ written words; he wants you to repeat it to him, so that he may repeat it to his fellow men; they understand it; they do not understand written language. This treaty was entered into at a time when no Indian had a thought that the land, six hundred and forty acres, would be parcelled out to him by the government; the Indian had no thought of owning land like he would a horse; he could not understand the parcelling out of the soil that God had put him on; he could not comprehend these things in 1866. He could not anticipate the clearing of lands and building of little towns. The great mass of people at that time laughed at the idea of allotment. Mr. Telle stated in his remarks to this Commission the other day, that he could remember the time himself, when, if these people were told that the time of allotment was coming, they would laugh at it; that you never could make the mass of people believe it, and they never ratified these articles with that understanding. How are we to construe Art. 38 without taking into consideration, by some means, the conditions surrounding the people that made that instrument? The Indian people will tell you that they never intended giving the right to anyone, that would result ultimately in the allotment of lands to him and the members of his family. The white man came in here and married among the Indian people; they never permitted him to live here as a citizen. These men occupied the public domain, just as they were permitted to use the water and breathe the air of these Indian reservations. If one of these white men committed an offense against the tribe he said: "I am a United States citizen, and he was protected as such. If an

desired to put a stop to that. The white man came in here and lived among them, used the free range, let his stock run on the public domain and married into the Indian tribes. Art. 38 says: "Every white person who having married--you will notice the construction Mr. Herbert gave, a construction most strong against the Indian--who having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw Nation, or who has been adopted by the legislative authorities-"- or who has been adopted--having been married or who has been married---- here is where he substituted. What is he to so? He is to be deemed a member of said nation. Is that making him an absolite Indian? It could not have conveyed any guaranteed right permitting them to come in here, dividing up the Indian's property, and if they had thought of it, where is the strange construction in this article? To divide up the Indian property among people who are not members of the Indian tribe. There is no authority to do it. It is not to be presumed that they are violating their part; they were to be deemed members of the nation. What is the object of all this? The Choctaw people have passed many laws that are valid, but many of these things they have no right to do. I think it the duty of the Commission under the laws that empowered them to act that they shall take this Choctaw and Chickasaw law into consideration. The Indian discussed just as fully as the white man did, all the provisions of the treaty. This treaty gave rights to everybody who might contract marriage after that time--who having married or been adopted a citizen in the future time---everybody in the future who having been adopted was to have these rights. Art. 43 says: "The United States promise and agree that no white person except officers, agents and employes of the government, and of any improvement company, or persons traveling through, or temporarily soujourning in, the said nations, or either of them, shall be permitted to go into said territory unless formally incorporated and naturalized by the joint action of the Choctaw and Chickasaws, ac-

was naturalized by the joint action of the two nations, and formally. In other words, they threw out every safeguard they could around them. " But this article is not to be construed to affect parties heretofore adopted, or to prevent the employment temporarily of white persons who are teachers, mechanics, or skilled in agriculture, or to prevent the legislative authorities of the respective nations from authorizing such works of internal improvement as they may deem essential to the welfare and prosperity of the community, or be taken to interfere with or invalidate any action which has heretofore been had in this connection by either of the said nations Art. 48 then details the nature of the persons who are to be lawfully admitted. This article is not to be constfued or considered so as to interfere with any action heretofore taken by said nations. Gentlemen of the Commission, this seems to be the natural construction of this treaty. My construction will not please the gentleman on the other side because there are not many of these people that got in here before 1866, and since that time I suppose it would be difficult to find anybody who had been formally naturalized and incorporated into these nations by either the Choctaw or Chickasaw tribe; it would not please them; it would not please the people who came here clamorous for their rights, from outside the territory. It was not contemplated that this rich, Indian country was to be divided up. These inter-married citizens had not discovered how badly their country needed them until the treaty of 1866 was made. Not one of them could show he was lawfully incorporated into either one of these nations; it was not understood, and never intended by Congress that white men should share in this land. The Government recognized at the time of the purchase that it owed the Indian a duty, and in placing the red man on this land, it did it to afford

a right until he has shown that he has been jointly admitted by both of these nations. As I said before, you cannot charge an Indian with a knowledge of what is taking place. The inter-married people ought to have complained long ago. They acquaired nothing that could not be swept away by the hand that gave it. Let this Commission xxxxx force them to show that they have been formally admitted by the tribes of both nations-- naturalized and incorporated into these nations-- and I take it the Indian people would be satisfied with the results. The only way you can avoid that contention is that the Indian allowed these people to come in here; while they were not coming in lawfully, the Indian people allowed them to come in.

Q. by Mr. Fredericks: Do you contend that naturalization does not carry with it any rights excepting political rights?

Nothing but political rights was ever conferred upon any citizen of the Choctaw or Chickasaw Nation, and never intended to be; but that is a question for this Commission to decide. We contend, and contend strongly, that they never acquired any rights; they know how the Indian people held these lands. To my mind the position is just as if one man would go to another man who had a farm for fifteen or twenty years adjoining his property--a rich, bottom farm--and attempt to set up rights and claim an interest in the land. These Indians have this land in common, each an undivided interest. On that point I want to say there can be no dispute. Violent assaults have been made upon the integrity of the attorneys for the Choctaw and Chickasaw nations, charging them with impuning the integrity of the citizenship attorneys. Is it possible that Mr. Cornishs' presentation of this case should be taken to convey this meaning. Mr. Herbert says so. " 'I faith, methinks my lady doth protest too much." But if I mistake not in all these courts certain judgments

have seen of Mr. Herbert that he is not responsible for these corrupt practices. Judge Townsend is an honest man, but he was overwhelmed with work. The attorneys who represented these claims were banded together to rob these Indians of their patrimony, with a rich reward in view.

Mr. Herbert told us of an old man whom he characterized as "a pretty good sort of a vagabond", whose wife had got a judgment against him without notice, and that this was atrocious. And then he claims that he can take away the patrimony of these people on just that sort of a judgment. These matters are all to be considered by this court. In the first place, we knew as a matter of common knowledge, when it was known all over the country, that the United States was going to plant the entering wedge which would jar these people loose; that the United States had decided that something should be done; that they were going to allot these lands in severalty. What took place then? These gentlemen plead every technicality in support of their rights. They say that any judgment or any document is right and legal so long as it has the great seal of the court on one end of it, and the name of the plaintiff on the other. Why didn't Congress establish an office at Washington? These gentlemen were sent here, one from the state of Minnesota, who was familiar with Indian conditions, and one from Arkansas, an attorney of high ability, and Mr. Dawes, who was made Chairman of this Commission, and these gentlemen were expected to inform themselves of the true conditions existing in the Indian nations, and to negotiate and administer their affairs in such a way as would be to their best interests. A self respecting man would not come in here and ask enrollment and allotment of these lands, to which they have no legal claim or right, but one of these people from some part of the country presents himself here, and demands what he calls his rights, he appeals to the courts for "justice", and insists that he be recognized as one of the tribe of inter-married citizens. In Atoka, a

bers of the Choctaw Nation, about a sixteenth or thirty-second blood, a very handsome and intelligent looking young lady, whose parents lived in Mississippi, came here to be enrolled, having every reason to expect that she would have her rights in this matter. She was told by the Commission that they could no nothing for her. She and her parents had always expected that when she came, asking for allotment, that it would be granted and she would be enrolled and entitled to her share in the lands of this Nation. Right along behind her comes a tall, lank, freckeled faced ~~Arkansaw~~ fellow, Arkansaw stamped on every linement of his face, and applies to the courts for admission, and he is admitted to citizenship upon a court judgment. I cannot see the justice of these things. These Indian people have rights. I have the utmost respect for every gentleman on this Commission, but on behalf of the Choctaw people we demand that the Commission exercise all their powers of thought and mind and judgment in dealing with this important question. The Indian people think that in nine cases out of ten the Commission has dealt with them justly and right. It is a fact that our of some seven hundred cases, the Commission has only enrolled some sixty-eight

The Choctaw and Chickasaw tribes have every confidence in the integrity and rulings of the Dawes Commission, and the utmost respect for every gentleman in the Commission. I have heard it hinted- I don't know that it is true--but at least one case, Foster down here, was interested in citizenship. This right was passed upon by a master in chancery.

The Choctaws and Chickasaws have made such strides in civilization as has no other nation on the face of the globe; people have come here from far distant points for the sole purpose of establishing what they claim to be their rights to citizenship in the Indian Territory. "From Greenland's icy mountain to India's coral strand."

and every other point of the compass, they have poured in here. To say that there have been deeds done in this citizenship business that would make angels weep, is no more than true. If I were a chancery judge upon the bench, I would let all considerations in these matters weigh and enter into my decisions, and not let this burden be thrust upon a defenseless people; these Indian tribes ask nothing but an impartial hearing; they ask nothing that they should not have were their rights protected, and decidedly, these inter-married people are not entitled to this enrollment and allotment, and the sharing in these lands and annuities that they asking. I am not going to endeavor to go into these cases. I want to discuss what Mr. Herbert said for a minute. Mr. Herbert reads a Chickasaw law that he says authorizes these inter-marriages on page 315 of the Chickasaw laws. It was said that a certain man had been giving a great deal of trouble, and certain persons whose claim to citizenship was giving the nation trouble, and the Nation went on and had a Commission, and provided that this Commission should pass on their rights and report to the legislature, and if they were not reported favorably, they should be forever barred by the legislative act. It is true that this commission was not legally organized. In the court cases they could have summoned the Chief executive of each tribe; whether it was right or not, is only a matter for argument; it does not matter who ought to have been summoned; it does not matter whether they ought to have summoned every man, woman and child, or the governor. What does the judgment say? It says, John Doe et al against the Choctaw Nation; they do not make the Chickasaw nation a party. The Commission to the Five Civilized Tribes was organized under a law which provided that it should proceed, and pass upon certain questions in a certain way, under certain methods of proceedure. What did the law provide? That these

there is a provision for an appeal; the law does not provide how service may be had; I want to know if it isn 't a fact that the law of proceedure has been followed upon the part of these Indian tribes? This law provided how the Commission should go on with its duties; it said you should come here and hear applications, which the Commission has followed out carefully; there was an appeal provided for; why not take an appeal and make both nations a party? Mr. Ralls finally landed on this propositions: He said the reason the law provided no means of giving notice was because the United States Government was making this rule; that their rights would be perfected; that the Dawes Commission, the agent of the government, and the guardian of the Indians, was making the rule. We take it that Mr. Ralls was talking to see what he could say on this subject. If his contention is true, those judgments have no binding force or effect; all we ask is that where the law says an appeal shall ba taken it shall be followed; this is all we ask.

Mr. Herbert, I would presume from the manner of the man, and my limited acquaintance with him, might have presented this matter more ably than any man who argued it. I think Mr. Herbert, having carried these cases to the United states courts, and his ability as a lawyer, ought to have led him to present these questions as strongly as they could be put. I think the only reason he failed to do that is because no man can answer these questions. No lawyer of repute, in the United States today, can say that he understands these propositions. Let them all rack their brain and serch every authority in the land, and they cannot find one instance where property amounting to twenty millions of dollars, or any other amount, was ever taken away from a party upon a jusgment that did not include his name, and show that there had even been service upon him. The United States granted patents to these people and their heirs as citizens of the Choctaw and Chickasaw tribes, and

undivided right in these lands. If a person has a right in an estate, you would not contend that service could be made upon the other party or parties, and you would have a right to take a part from them and a part from me, and thus diminish the other party's share and diminish mine also. If so, I must have been made a party. The constitution of the United States reads that property cannot be taken from a person without due process of law. These courts are right beneath the shadow of the constitution of the United States. No one will contend against the great government of the United States. The government is wise in whatever it undertakes to do, but when it ran up against the title, it paused, and the ablest men in Congress said, thus far can we go but no farther without the consent of the Indian people. This Congress knew what it was talking about, or they never would have said it. Then they sent this Commission here to treat with these Indian tribes. The second section of the Curtis Act provides: "That when in the progress of any civil suit, either in law or equity, pending in the United States court in any district in said territory, it shall appear to the court that the property of any tribe is in any way affected by the issues being heard, said court is hereby authorized and required to make said tribe a party to said suit by service upon the Chief or Governor of the tribe, and the suit shall thereafter be conducted and determined as if said tribe had been an original party to said action." This act provides, clearly and distinctly that wherever the property of an Indian tribe shall be involved, the judge of that court is authorized and <u>required</u> to make that tribe a party to the suit by <u>service</u>, &c. Is not this plain enough? What more forcible language could this Honorable Commission want on this most important matter? It clearly showed that Congress realized that the Indian's rights could not be curtailed and appropriated in this outrageous manner. It has been a problem

Judge Clayton said that all he could do was to pitch in and go through and do the best he could with these judgments. I do not think that reflects upon him at all, and I am not criticising him. We have all of us studied about these matters, and are all in doubt about them. This Sec.2 of the Curtis bill says "The court is hereby authorized and required"-this is a mandatory statute. "And to make said tribe a party to said suit by service upon the chief or governor of the tribe, and the suit shall thereafter be conducted and determined as if said tribe had been an original party to said action." Not only was it necessary to serve notice upon this nation, but also that after that, the suit should be determined as if that nation was the original party. Congress has made provision for that; they knew it could not be done without them. What if the property of this tribe was in controversy? There has been no service upon them. You can walk past a court room, or you can even walk into a court room, and see one man suing another for your property. You simply say: "Let him go ahead; it can affect my rights in no way; that execution is not against me." The law does not enable property rights to be taken away from a man without due process of law. A man would not be safe in his own home if that were the case. A man may even pass into a courthouse and listen to the progress of a trial regarding his own property, and that involves his rights, and a judgment would not be good as against him if there had been no service upon his as xxxxx to the trial. I have studied about this matter for months, and I must confess, so far as I am concerned, I cannot make it clear to my mind. It may be clear to this Commission. I am like Mr. Ralls when he said he would like to see the color of the man's hair"&c. It was a common saying among the Indians that all the right he acquired was the right to be whipped on the back. I heard about one man, a big fellow, who

like to seethe color of the man's hair that could make him stand up and take that. Not long afterwards, he was arrested and punished, and the same Indian laid it on good and hard, and when he got through the man stuck his head around and said "black" Mr. Ralls this morning, stated the reason why the court did not provide for some kind of service; it is all simple enough, there is nothing in it that cannot be answered. This gentleman was taken by surprise by the springing of this question. Mr. Cruis excited my amusement this morning; he is like the doctor who was death on fits; when he got a bad case he did not understand, he would throw his patient into fits, and then cure the fits; When driven from every other defense, they wander off into estopple and waiver. He tries to hold the court as bound not to let in any other questions but these. Again, he rather plead that he was taken by surprise in this matter. He ought to be, as well as Mr. Cornish, who has been here and dealt with these citizenship matters for years. I hope I may be pardoned for presenting this position. What is Mr. Herbert's defense to the court cases? He is surprised with this situation. What did he say in reply? The only way we can excuse him is that he was so dazed by the effects of that blow that he could not recover himself.

Mr. Herbert was driven to this position. I know the Commission is acting under and is surrounded by embarrasing circumstances in the matter of setting aside these judgments. Mr. Herbert comes here with arguments that he claims to be convincing? Let him come with one reasonable argument. I know he has made the very best answer he could under the cirsumstances; he has done the very best he could do. They argue that the Commission is firmly bound by these court decisions. That depends on whether the Commission says that the decisions are binding. Our contention is that they are not legal judgments. What purports to be a judgment? They endeavor to come here and take away this property without authority of law.

Choctaw nation. I may be living in the Choctaw Nation, and thereby be a citizen of the nation, but not a member of the tribe, and not entitled to share in their money, but owing to certain provisions of law I am permitted to live here under certain rules and regulations of law and conduct my business. I am a citizen but not a member of the tribe. They showed this difference between allotment and enrollment

If these judgments are valid judgments, you are obliged to enroll them. The Indian people recognize that the Commission has exercised care, and is doing all it can to protect their interests. They have learned to rely upon this Commission; upon its justice, mercy and protecting powers.; they dread these courts and court proceedures. As Mr. Cornish suggested, they are willing to abide by the admissions to citizenship made by the Commission.

This is our view of the matter: We claim that none of these judgments are good because they do not purport to be against the two nations; as they stand they have no force nor effect; you cannot enroll a man unless he is entitled to enrollemnt. I want to read to this Commission, from the Report of the Commission on Mississippi Choctaws: "Provided however, that no part thereof shall ever be sold without the consent of both tribes, and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same". How can they take away these lands, when the government of the United States says that they shall not be sold without the consent of both of the nations. It could not bind the Chickasaw people if these judgments were against the Choctaws, and it could not bind the Choctaws if the judgments were against the Chickasaws. Itsays: "If the Indians and their heirs become extinct". Think of some of these people that are claiming to be heirs of these Indian tribes! Think of some of these people who are claiming, who attempt to come in here and walk away with a share

that character! If it is permitted it will be the first time in the history of this country that a man's property was ever taken away from him without due process of law. It could not be effective under any authority in any case in which he was not a party. Can the Commission say under their oath and as the guardians and protectors of these Indians, that the choctaw people were a party to those judgments in a legal sense?

I want to ask you one question: Can any of you point to one of those judgments which does purport to make the Choctaw tribe a co-party to the proceedings? Don't all answer at once! Where is their right or authority for this?

By Mr. Fredericks: I will answer if you will give me time. In acting not only upon their duties as Commissioners, but upon the laws, the Commission knows that the customs and usages of the nations have had to control them as to who should be their own citizens themselves. They have it within themselves to say who shall be citizens."

There exists an able article by Payne which every student of law knows: That a party cannot effect a title except by joint action. The government said in 1866, that no person should be admitted to political citizenship without being first formally admitted into both nations. I believe these actions have been taken without authority of law. The Commission has said in voluminous reports at various times, that it has done this, and done that. You cannot affect property rights in these cases without joint action. Here is property to the amount of twenty millions of dollars to pass title upon just such worthless judgments as these are. I tell you, the more I examine into and try to answer these questions, the farther afield I get on these propositions.

There has been a great deal of stress laid upon the decisions

should be as to the legal enrollment of the citizens of the Choctaw and Chickasaw Nations, and if a person comes to this Commission asking to be placed on the rolls, if he is not entitled to citizenship, his name should not be placed on these rolls. These people contend that if these names are placed on the rolls it will not jeopard the rights, priveleges and property of these two nations. It is not the desire of these nations to contest these matters, nor to question the work of the Commission. These nations have no way of remedying this work, once these names are put on the rolls and certified up to the Secretary of the Interior? The purpose for which this Commission is making these rolls is to get these matters in shape so that these lands may be allotted, and it is the duty of this Commission, unless an applicant shows himself entitled by reason of already being on the roll, to refuse to enroll him. This Commission is proceeding under the law that when the rolls are made and approved by the Secretary of the Interior, they shall be final. Gentlemen, this will be our last appeal to you for the sighting of these injustices. The Supreme Court of the United States has passed upon this question, and that this Commission has jurisdiction in these allotment matters whereby the lands of the Indian Territory are to be divided. There is involved an immense amount of property--joint property--of these two nations, which they are asking you to divide up among people who claim that they hold judgments of these courts. We ask you to think of the vast importance of this contention. Each one of these judgments will diminish the joint possession of these two nations 550 acres, and there are about six hundred judgments.

Q. In case the Commission refuses to enroll, what court could the applicant go to?

If the Commission should unlawfully refuse to enroll them, they could ask the court to mandamus them. If that is a valid

judgment the Commission has no jurisdiction except as to the question of residence; that is my view and if that is a valid judgment there is no question about the residence of the party as long as the judgment stands; the Commission must be ruled by it. Of course you could not be mandamused. I do not know of any way in which the Indian tribes could contend against it. I know of no way that they can get into Court. Here is Mr. Telle, a man who is the Nation's attorney, whom they have sent abroad and educated, standing before you and asking---

By Mr. Pearsons: I would suggest that Mr. Telle has a white wife and she is on the roll.

He interrupts me to tell you that Mr. Telle has a white wife and her name is on the roll! My heart went out to him because of the fact of his standing here before you, gentlemen of the Commission, and regardless of all personal interest is endeavoring to determine the rights of his people. This gentleman breaks in right here to say that Mr. Telle has a white wife. He has a white wife, and she is on the rolls, but he says, "Let my wife abide by the law" He asks that the law be enforced, and whatever the effect of this contention is on his wif's property rights is, he sayd: "Let her go; let her abide by the law whatever it may be." Supposing he has got a white wife, one in three thousand people gathered here from Arkansas, Georgia, texas, and every other place? He, as the Nation's attorney for this Choctaw Nation, says, "Let her hew to the line, let the chips fall where they may". Let every man alike, who is not incorporated in the treaty of 1866, go. That is justice, and we say that if these court judgments are not correct, let them go too. The Indian people ask no favor except that the law be applied. These people stand here wolf like, nothing daunted, and demand their pound of flesh, and not only do they demand that, but If I were standing here with tears in my eyes, making the last appeal before this Com-

that pund of flesh!"

My relations with this Commission have always been pleasant. Captain McKennon, on the Commission, has been a lifelong friend; he has known me from a boy up. This Commission is charged with the last duties towards this tribe. I know it is the intention of this Commission to execute the law faithfully and consciencously. This Commission is a most important one.

You have my thanks for listening to me. I am sure that whatever action you take in these important matters, that by your action you will not add a blow to the fair name of our nation; you will consider carefully the result, and will add no further burden to those that xxxxinthe nation is already laboring under, and will execute the law in such a manner as will reflect credit on the Commission and contribute to the welfare of these nations. Deal out justice to Mr. Telle and his white wife, as well as to those who are not entitled to sitizenship under the law. Gentlemen, I thank you.