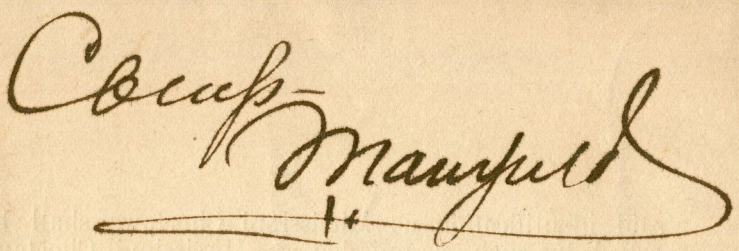

BEFORE THE HONORABLE THE ATTORNEY GENERAL OF THE UNITED STATES UPON THE REQUEST OF THE HONORABLE SECRETARY OF THE INTERIOR FOR AN OPINION.

IN THE MATTER OF THE IDENTIFICATION OF THE MISSISSIPPI CHOCTAWS.

Brief on behalf of the Choctaw and Chickasaw Nations on motion for a reconsideration of the opinion rendered March 17, 1903, to the Commission to the Five Civilized Tribes.

On March 17, 1903, an opinion was rendered by the honorable Secretary of the Interior to the Commission to the Five Civilized Tribes, construing the provisions of the forty-first section of the act of Congress of July 1, 1902 (32d Stats., 641). This section contains a special provision in regard to the identification of the Mississippi Choctaws, and is as follows:

"All persons duly identified by the Commission to the Five Civilized Tribes, under the provisions of section 21 of the act of Congress approved June 28, 1898 (30th Stats., 495), as Mississippi Choctaws entitled to benefit under article 14 of the treaty between the United States and the Choctaw Nation concluded September 27, 1830, may, at any time within six months after the date of their identification, as Mississippi Choctaws by the said commission, make *bona fide* settlement within the Choctaw-Chickasaw country, and upon proof of such settlement to such commission within one year after the date of their

said identification as Mississippi Choctaws, shall be enrolled by such commission as Mississippi Choctaws entitled to allotment as herein provided for citizens of the tribes, subject to the special provisions herein provided as to Mississippi Choctaws, and said enrollment shall be final when approved by the Secretary of the Interior. The application of no person for identification as a Mississippi Choctaw shall be received by said commission after six months subsequent to the date of the final ratification of this agreement and in the disposition of such applications all full-blood Mississippi Choctaw Indians and the descendants of any Mississippi Indians, whether of full or mixed blood, who received a patent to land under the said 14th article of the said treaty of 1830, who had not moved to and made *bona fide* settlement in the Choctaw-Chickasaw country, prior to June 28th, 1898, shall be deemed to be a Mississippi Choctaw, entitled to benefits under article 14 of the said treaty of September 27, 1830, and to identification as such by said commission, but this direction or provision shall be deemed to be only a rule of evidence and shall not be invoked by or operate to the advantage of any applicant who is not a Mississippi Choctaw of the full blood, or who is not the descendant of a Mississippi Choctaw who received a patent to land under said treaty, or who is otherwise barred from the right of citizenship in the Choctaw Nation; all of said Mississippi Choctaws so enrolled by said commission shall be upon a separate roll."

It may be well before beginning a discussion of the question to state briefly the history of this provision in regard to Mississippi Choctaws.

It had been found by the Commission to the Five Civilized Tribes, and they so reported to the honorable Secretary of the Interior, that the full-blood Mississippi Choctaws were nearly all unable to show a compliance with the provisions of article 14 of the treaty of September 27, 1830. This report of said commission will be found on page 73 of their annual report for the year 1899. This report is quite full, and to it we invite attention.

Article 14 of the treaty of 1830 referred to is as follows:

"Each Choctaw head of a family, being desirous to remain and become a citizen of the States, shall be permitted to do so by signifying his intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one-half that quantity for each unmarried child which is living with him over ten years of age; and a quarter section to such child as may be under ten years of age, to adjoin the location of the parent. If they reside upon said lands intending to become citizens of the States for five years after the ratification of this treaty, in that case a grant in fee-simple shall issue; said reservation shall include the present reservation of the head of the family or a portion of it. Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not entitled to any portion of the Choctaw annuity."

The condition of the law, therefore, at the date of the agreement entered into on the 21st day of March, 1902, between the Choctaw and Chickasaw tribes of Indians and the United States, ratified and confirmed by the act of July 1, 1902, was that no person could be enrolled as a Mississippi Choctaw until he had established by satisfactory proof to the Commission to the Five Civilized Tribes that he was a descendant of a Mississippi Choctaw who had complied with article 14 of the treaty of 1830.

There was also another condition which existed which gave the Choctaws and Chickasaws great concern. While the full-blood Choctaws yet remaining in the State of Mississippi, referred to by the commission in its report, were making no efforts to speak of looking to securing their identification under the provisions of existing law, many thousand persons with only a trace of Indian blood, living in the States surrounding the Indian Territory, had appeared before the commission and made application to be identified

as Mississippi Choctaws, entitled to benefits under article 14 of said treaty of 1830. It was well known to the Choctaw and Chickasaw nations and the commission to the Five Civilized Tribes that none of these persons could show a compliance with said article of the treaty, and while the Choctaws and the Chickasaws were aware that these persons were not entitled to claim anything as against them, the applicants having failed to make out a case, the nations rested secure in the protection afforded them by existing law. We would further state in passing that it is well known that this numerous class of applicants above referred to have no meritorious claim to recognition, but are white persons relying upon the most visionary legends as to a trace of Indian blood.

The agreement embodied in the act of July 1, 1902, commonly known as the supplemental agreement, was the result of an earnest endeavor on the part of the Choctaws and the Chickasaws and the representatives of the United States to settle all of the vexed questions which at that time delayed the settlement of their tribal affairs. It was urged by the representatives of the Government that the full-blood Mississippi Choctaw Indians yet residing in the State of Mississippi, and referred to by the commission in its report cited above, should be provided for in some way; that, being full-blood Indians, generally unable to speak the English language, and uneducated, it was impossible for them to comply with the fourteenth article of the treaty of 1830, and yet it was morally certain that all of said *full-blood* Mississippi Choctaws were the descendants of those who complied with article 14 of said treaty. The Choctaws and Chickasaws thereupon agreed to the provisions contained in the first part of section 41 of the act of July 1, 1902; but, upon reading the preliminary draft of that section, it was suggested by the representatives of the tribes that there might be danger of an extension of the privilege thus conferred to

the numerous applicants of mixed blood, and thereupon the following language was added to that section:

"But this direction or provision shall be deemed to be only a rule of evidence and shall not be invoked by or operate to the advantage of any applicant who is not a Mississippi Choctaw of the full blood, or who is not the descendant of a Mississippi Choctaw who received a patent to land under said treaty." * * *

Thus the parties at the time of making the agreement themselves construed it and embodied that construction in section 41. They said in so many words that only two classes of Mississippi Choctaws should be entitled to any benefits, to wit, full-blood Mississippi Choctaws and descendants of Mississippi Choctaws, without reference to the quantum of blood, who could show that their ancestors complied with the provisions of article 14 of the treaty of 1830. This construction, carried to its final analysis, simply meant that the rule of existing law should not be varied by the provisions of section 41, except to relieve *full-blood* Mississippi Choctaws named therein from showing a compliance by their ancestors with the provisions of article 14 of said treaty, and it seems to us quite apparent that nothing else could have been intended.

In order to ascertain what must be done by a person of mixed blood in order to entitle him to enrollment, we must look to the law. It will be at once conceded that before the ratification of the supplemental agreement it devolved upon him to show that his ancestors complied with article 14 of said treaty. Now, as a matter of agreement, by section 41 of the act of July 1, 1902, a certain class of persons are excused from a compliance with the law, to wit, *full-blood* Mississippi Choctaws. To extend this privilege by means of legal construction to persons of mixed blood defeats the very purpose of the treaty and would have the effect of making section 41 provide that no compliance with article 14 of the

treaty of 1830 need be shown by any applicant, since practically all of the many thousand applicants claim to be descended from full-blood Mississippi Choctaws.

Where the meaning of a statute is plain, as in this case, it should be enforced according to its obvious terms. In such a case there is no necessity for construction.

Thornley *vs.* United States, 113 U. S., 310.
Poor *vs.* Considine, 6 Wall., 458.

The legislature will be held to have intended what it has so plainly expressed.

Lake County Com'rs *vs.* Rollins, 130 U. S., 662.
St. Paul, M. & M. R. Co. *vs.* Phelps, 137 U. S., 528.
Webster *vs.* Luther, 163 U. S., 331.
French *vs.* Spencer, 21 How., 228.
Yturbide *vs.* United States, 22 How., 290.

Even if it appeared that a necessity for construction existed, the rule is that if in a subsequent section of the same act provisions are introduced which show the sense in which the legislature employed doubtful phrases previously used, that sense is to be adopted in construing the phrases.

Alexander *vs.* Alexandria, 5 Cranch, 1.

If there could be any doubt as to what Congress intended by the language used in the first part of section 41 of the act of July 1, 1902 (32 Stats. at Large, 641), it is made clear beyond any question in the latter part of that section by the use of the following language:

"But this direction or provision shall be deemed to be only a rule of evidence and shall not be invoked by or operate to the advantage of any applicant who is not a Mississippi Choctaw of the full blood, or who is not the descendant of a Mississippi Choctaw who received a patent to land under said treaty, or who is otherwise barred from the right of citizenship in the Choctaw Nation."

A construction should not be placed upon this section which would defeat the intention of Congress. Technical rules of construction must yield to the clear expression of the paramount will of the legislature.

Wilkinson *vs.* Leland, 2 Pet., 627.
Webster *vs.* Luther, 163 U. S., 331.

We respectfully submit that the ruling of the Department contained in the communication of March 17, 1903, to the Commission to the Five Civilized Tribes should be so changed as to direct the commission to only enroll full-blood Mississippi Choctaws referred to in said section 41 and the descendants of Mississippi Choctaws who received a patent to land under article 14 of the treaty of 1830.

Respectfully submitted.

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