In the Supreme Court of the United States.

OCTOBER TERM, 1903.

EX PARTE: IN THE MATTER OF U. S. JOINS, PETITIONER.
NO. 12. ORIGINAL.

PETITION FOR WRITS OF PROHIBITION AND CERTIORARI TO THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT.

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STATEMENT.

The question sought to be raised upon this petition is the constitutionality of the legislation by Congress (act of July 1, 1902, c. 1362, 32 Stat., 641, 646–9) establishing the Choctaw and Chickasaw Citizenship Court and authorizing it to review the judgments of the United States courts in the Indian Territory in certain Choctaw and Chickasaw citizenship cases appealed thereto from the Dawes Commission, as the Commission to the Five Civilized Tribes of Indians is commonly called.

By the act of June 10, 1896, c. 398 (29 Stat., 321, 339), Congress, in pursuance of its plan to extinguish

the tribal title to lands in the Indian Territory by allotting the same in severalty among the members of the several tribes or nations therein, with a view to the ultimate erection of a State or States, authorized the Dawes Commission to proceed at once to hear and determine the application of all persons to be admitted and enrolled as citizens in any of said nations, in doing which they were required to respect "all laws of the several nations or tribes not inconsistent with the laws of the United States, and all treaties with either of said nations or tribes, and shall give due force and effect to the rolls, usages, and customs of each of said nations or tribes."

The rolls of citizenship of the several tribes, as then existing, were confirmed by that act, and any person whose application to be enrolled had been denied or not acted upon by the Commission within the time prescribed, or who might desire such citizenship, was authorized to apply to the legally constituted court or committee designated by the several tribes.

In the performance of their duties the Commission were authorized to administer oaths, issue process for and compel the attendance of witnesses, send for persons, papers, etc., "and to use every fair and reasonable means within their reach *for the purpose of determining the rights of persons claiming such citizenship, or to protect any of said nations from fraud and wrong.*"

It was also provided by the act of June 10, 1896, that the tribe or any person aggrieved with the decision of the tribal authorities or the Commission might

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appeal to the United States *district* court, whose judgment should be final.

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After the expiration of six months, the Commission were required to "cause a complete roll of citizenship of each of said nations to be made up from their records, and add thereto the names of citizens whose rights may be conferred under this act, and said rolls shall be, and are hereby, made rolls of citizenship of said nations, or tribes, *subject, however, to the determination of the United States courts as provided herein.*"

The Commission were also required "to file the lists of members as they finally approved them with the Commissioner of Indian Affairs, to remain there for use as the final judgment of the duly constituted authorities."

In exercising the appellate jurisdiction conferred upon them by the act of June 10, 1896, the United States courts in the Indian Territory did not limit their inquiry to a review of the citizenship cases appealed thereto from the Dawes Commission upon the papers and evidence submitted to that Commission, but examined such cases *de novo*, upon evidence taken before commissioners appointed for that purpose. As a result, it is claimed, opportunity was given for the commission of fraud and perjury by numerous persons, commonly designated "court claimants," wrongfully seeking admission into said tribes, and whose applications had been denied by the Commission.

The Choctaw and Chickasaw nations filed a protest with the Dawes Commission against the enrollment of

any such persons as members of their respective tribes, on the ground not only of illegality and fraud in the procurement of such judgments, but because of the failure to give notice of such proceedings to both of said nations, and for other irregularities.

By a provision in the Indian appropriation act of July 1, 1898, c. 545 (30 Stat., 591), inspired, it is to be inferred from later events, by dissatisfaction with the proceedings of the United States courts in the Indian Territory in matters relating to enrollment and the allotment of lands, appeals to this court were allowed to either party from those courts "in all citizenship cases, and in all cases between either of the Five Civilized Tribes and the United States involving the constitutionality or validity of any legislation affecting citizenship, or the allotment of lands, in the Indian Territory, under the rules and regulations governing appeals to said court in other cases."

In *Stephens* v. *Cherokee Nation* (174 U. S., 445), however, it was held that the appeal given by this act was restricted to a determination of the constitutionality and validity of the legislation by Congress affecting citizenship or the allotment of lands in the Indian Territory (which was upheld) and did not extend to a review of either class of cases upon their merits.

In pursuance of the attempt to prevent the "court claimants" from being enrolled, certain individual members of the Choctaw and Chickasaw nations, endeavoring to sue for all other members of said tribes as well as themselves, filed a bill in equity in the

United States court for the southern district of the Indian Territory against one Goodall and others, for the purpose of having the judgments referred to vacated and annulled and the defendants enjoined from exercising any rights thereunder. As stated by petitioner, this case is now pending in the court of appeals for the Indian Territory, on the appeal of complainants. A similar bill was also filed in the central district of the Indian Territory against one Arnold and others. It is not perceived, however, that these suits have any bearing upon the present case, except as illustrating and emphasizing the belief of the Choctaw and Chickasaw nations, and the members thereof, that great wrong and injustice had been done them through the action of the United States courts by admitting the persons referred to to citizenship.

This and other matters being called to the attention of the Secretary of the Interior, that officer directed the Dawes Commission to negotiate a supplemental treaty or agreement with the Choctaw and Chickasaw nations. Such an agreement was made between the representatives of the United States and the two nations on the 7th of February, 1901. In transmitting it to Congress the Secretary said that experience had demonstrated that the previous agreement (known as the Atoka agreement), ratified by the act of June 28, 1898, was faulty and did not work with satisfaction to the Indians or the public, and that there was pressing reason for supplementing it by a new and further agreement; and, referring to the citizenship judgments

rendered by the United States courts in the Indian Territory, he observed:

> *Believing that the questions affecting the validity and rectitude of these judgments deserved judicial investigation and scrutiny*, article 8 has been rewritten, as shown in the amended draft of the agreement, so as to provide for a fair, speedy, and final decision of these questions by judicial tribunals.

The agreement of February 7, 1901, was not transmitted in time to be acted upon by Congress at that session; and subsequently the Secretary of the Interior directed the Dawes Commission to negotiate another agreement along the same lines for transmittal to the Fifty-seventh Congress at its first session. This latter agreement, which provided for the creation of the Choctaw and Chickasaw Citizenship Court, and authorized the review of the citizenship judgments in question, was concluded between the representatives of the United States and the Choctaw and Chickasaw nations March 21, 1902, and ratified and confirmed by the act of Congress of July 1, 1902 (32 Stat., 641). The material provisions thereof are as follows:

> SEC. 27. The rolls of the Choctaw and Chickasaw citizens and Choctaw and Chickasaw freedmen shall be made by the Commission to the Five Civilized Tribes, in strict compliance with the acts of Congress approved June 28, 1898 (30 Stat., 495), and the act of Congress approved May 31, 1900 (31 Stat., 221), except as herein otherwise provided:
>
> *Provided*, That no person claiming right to

> enrollment and allotment and distribution of tribal property, by virtue of a judgment of the United States court in the Indian Territory under the act of June 10, 1896, instituted under the provisions of this agreement, shall be enrolled or receive allotment of lands or distribution of tribal property until his right thereto has been finally determined.
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> SEC. 31. It being claimed and insisted by the Choctaw and Chickasaw nations that the United States courts in the Indian Territory, acting under the act of Congress approved June 10, 1896, have admitted persons to citizenship or to enrollment as such citizens in the Choctaw and Chickasaw nations, respectively, without notice of the proceeding in such courts being given to each of said nations; and it being insisted by said nations that in such proceedings notice to each of said nations was indispensable, and it being claimed and insisted by said nations that the proceedings in the United States courts in the Indian Territory, under the said act of June 10, 1896, should have been confined to a review of the action of the Commission to the Five Civilized Tribes, upon the papers and evidence submitted to such Commission, and should not have extended to a trial de novo of the question of citizenship; and it being desirable to finally determine these questions, the two nations, jointly, or either of said nations acting separately and making the other a party defendant, may, within ninety days after this agreement becomes effective, by a bill in equity filed in the Choctaw and Chickasaw Citizenship Court

hereinafter named, seek the annulment and vacation of all such decisions by said courts. Ten persons so admitted to citizenship or enrollment by said courts, with notice to one but not to both of said nations, shall be made defendants to said suit as representatives of the entire class of persons similarly situated, the number of such persons being too numerous to require all of them to be made individual parties to the suit; but any person so situated may, upon his application, be made a party defendant to the suit. Notice of the institution of said suit shall be personally served upon the chief executive of the defendant nation, if either nation be made a party defendant as aforesaid, and upon each of said ten representative defendants, and shall also be published for a period of four weeks in at least two weekly newspapers having general circulation in the Choctaw and Chickasaw nations. Such notice shall set forth the nature and prayer of the bill, with the time for answering the same, which shall not be less than thirty days after the last publication. Said suit shall be determined at the earliest practicable time, shall be confined to a final determination of the questions of law here named, and shall be without prejudice to the determination of any charge or claim that the admission of such persons to citizenship or enrollment by said United States courts in the Indian Territory was wrongfully obtained, as provided in the next section. In the event said citizenship judgments or decisions are annulled or vacated in the test suit hereinbefore authorized, because of

either or both of the irregularities claimed and insisted upon by said nations as aforesaid, then the files, papers, and proceedings in any citizenship case in which the judgment or decision is so annulled or vacated, shall, upon written application therefor, made within ninety days thereafter by any party thereto, who is thus deprived of a favorable judgment upon his claimed citizenship, be transferred and certified to said citizenship court by the court having custody and control of such files, papers, and proceedings, and, upon the filing in such citizenship court of the files, papers, and proceedings in any such citizenship case, accompanied by due proof that notice in writing of the transfer and certification thereof has been given to the chief executive officer of each of said nations, said citizenship case shall be docketed in said citizenship court, and such further proceedings shall be had therein in that court as ought to have been had in the court to which the same was taken on appeal from the Commission to the Five Civilized Tribes, and as if no judgment or decision had been rendered therein.

Sec. 32. Said citizenship court shall also have appellate jurisdiction over all judgments of the courts in Indian Territory rendered under said act of Congress of June tenth, eighteen hundred and ninety-six, admitting persons to citizenship or to enrollment as citizens in either of said nations. The right of appeal may be exercised by the said nations jointly, or by either of them acting separately, at any time within six months after this agreement is finally ratified. In the exercise of such appellate

jurisdiction said citizenship court shall be authorized to consider, review, and revise all such judgments, both as to findings of fact and conclusions of law, and may, wherever in its judgment substantial justice will thereby be subserved, permit either party to any such appeal to take and present such further evidence as may be necessary to enable said court to determine the very right of the controversy. And said court shall have power to make all needful rules and regulations prescribing the manner of taking and conducting said appeals and of taking additional evidence therein. Such citizenship court shall also have like appellate jurisdiction and authority over judgments rendered by such courts under the said act denying claims to citizenship or to enrollment as citizens in either of said nations. Such appeals shall be taken within the time hereinbefore specified and shall be taken, conducted, and disposed of in the same manner as appeals by the said nations, save that notice of appeals by citizenship claimants shall be served upon the chief executive officer of both nations: *Provided*, That paragraphs thirty-one, thirty-two, and thirty-three hereof shall go into effect immediately after the passage of this act of Congress.

SEC. 33. A court is hereby created to be known as the Choctaw and Chickasaw Citizenship Court, the existence of which shall terminate upon the final determination of the suits and proceedings named in the last two preceding sections, but in no event later than the thirty-first day of December, nineteen hundred and three. Said court shall have all authority and power necessary to

the hearing and determination of the suits and proceedings so committed to its jurisdiction, including the authority to issue and enforce all requisite writs, process, and orders, and to prescribe rules and regulations for the transaction of its business. It shall also have all the powers of a circuit court of the United States in compelling the production of books, papers, and documents, the attendance of witnesses, and in punishing contempt. Except where herein otherwise expressly provided, the pleadings, practice, and proceedings in said court shall conform, as near as may be, to the pleadings, practice, and proceedings in equity causes in the circuit court of the United States. The testimony shall be taken in court or before one of the judges, so far as practicable. Each judge shall be authorized to grant, in vacation or recess, interlocutory orders and to hear and dispose of interlocutory motions not affecting the substantial merits of the case. Said court shall have a chief judge and two associate judges, a clerk, a stenographer, who shall be deputy clerk, and a bailiff. * * * The clerk of the United States court in Indian Territory, having custody and control of the files, papers, and proceedings in the original citizenship cases, shall receive a fee of two dollars and fifty cents for transferring and certifying to the citizenship court the files, papers, and proceedings in each case, without regard to the number of persons whose citizenship is involved therein, and said fee shall be paid by the person applying for such transfer and certificates. *The judgment of the citizenship court in any or all of the suits or*

Among those "similarly situated" was the petitioner, U. S. Joins, who had been adjudged to be a member of the Chickasaw tribe of Indians by the United States court for the southern district of the Indian Territory, March 8, 1898, upon an appeal taken from the decision of the Dawes Commission denying his application.

ARGUMENT.

I.

No case justifying the issuance of a writ of prohibition is presented.

The specific purposes for which a prohibition is sought are to prevent the Choctaw and Chickasaw Citizenship Court from "giving further effect" to its decree in the test case, and to restrain it from certifying a copy of that decree to the Dawes Commission.

1. As to the latter object, it is sufficient to say that it appears from the return filed by the Citizenship Court (par. 1) that, although not required to do so by the statute, a copy of its decree in the test case was certified and delivered by it to the Dawes Commission prior to the filing of the petition herein.

2. The decree in the test case has already had its full effect by operation of law, and is now entirely beyond the control of the Citizenship Court. The test suit, which the statute declared should be "confined to a final determination of the questions of law here named," was fully and finally completed when the court rendered a decree in accordance with its conclusions upon those questions. By that

decree the judgments of the United States courts in the Indian Territory, which the Citizenship Court had under review, were annulled, vacated, and set aside. No further action in that suit was required of the Citizenship Court, the decree being self-executing.

The proceedings provided for by the act (sec. 31), "in the event said citizenship judgments or decisions are annulled or vacated in the test suit hereinbefore authorized," are not only separate and distinct from the test suit, but wholly dependent upon the voluntary action of each and every individual whose judgment was so annulled and vacated.

The statute merely affords an opportunity for those whose judgments were set aside by the decree in the test suit to have their cases reviewed by the Citizenship Court. It was discretionary with each individual concerned whether this opportunity should be availed of. If not, the decree in the test case remains a final and complete adjudication of his rights. If he transferred his case, such proceeding on *his* part certainly could not be said to be an effort *by the court* to give further effect to its decree in the test case. Besides, the proceedings on such transfer might result in his admission to citizenship, thus practically reversing the decree in the test suit so far as his particular case was concerned.

At the time of filing his petition herein the petitioner, Joins, had not made application for the transfer of the papers in his case from the United States court having control of the same to the Citizenship Court.

Since then, however, according to the return of that court (par. 2), he has made such application, and his cause is now pending therein. He has thus placed himself in the attitute of invoking the jurisdiction of the Citizenship Court at the very moment he is seeking to restrain it from taking further proceedings for the enforcement of its decree in the test case. Or, stated a little differently, he has himself instituted the very proceeding which his petition prays to be restrained.

It is manifest that the real object of petitioner is not to prevent the doing of some act which is about to be done by the Citizenship Court, but to have this court review and undo that which has been fully and finally completed, namely, the decision of the Citizenship Court in the test case. But this court has held that the writ of prohibition can not be used for such a purpose. (*United States* v. *Hoffman*, 4 Wall., 158.)

The test suit is a completed fact, and "prohibition will not lie after the cause is ended." (*Hall* v. *Norwood*, Siderfin, 166, cited in *United States* v. *Hoffman*, *supra.*)

The writ of prohibition can not be made to serve the office of a writ of error.

> It is no ground for relief by prohibition that provision has not been made for a review of the decision of the court of original jurisdiction, by appeal or otherwise. A prohibition can not be made to perform the office of a proceeding for the correction of mere errors or irregularities. (*Ex parte Ferry Co.*, 104 U. S., 519, 520.)

It will be observed that section 31 of the act in question contains a proviso that the test suit therein authorized "shall be without prejudice to the determination of any charge or claim that the admission of such persons to citizenship or enrollment was wrongfully obtained, as provided in the next section;" and that by the "next section" (sec. 32) Congress provided for the contingency of the Citizenship Court deciding the test suit adversely to the Choctaw and Chickasaw nations, by giving those nations, acting jointly or separately, a right to appeal the judgments in question to the Citizenship Court, which, in the exercise of the jurisdiction thus conferred, was "authorized to consider, review, and revise all such judgments, both as to findings of fact and conclusions of law, and may, whenever in its judgment substantial justice will thereby be subserved, permit either party to any such appeal to take and present such further evidence as may be necessary to enable said court to determine *the very right of the controversy.*"

Section 32 further provides that "such Citizenship Court shall have like appellate jurisdiction and authority over judgments rendered by such courts under the said act *denying* claims to citizenship or to enrollment in either of said nations; notice of such appeals by citizenship claimants to be served upon the chief executive officer of both nations."

It thus appears that by the act in question Congress endeavored to accord an equal measure of right to all parties concerned, its only purpose being to have "the

very right of the controversy" determined. It is also clear that the decision in the test suit, whether in favor of one party or the other, was to be equally binding upon both and final and conclusive in respect to the subject-matter thereof; and that any further proceedings under the act would be separate and distinct from that suit, the initiative in either case resting upon the defeated party.

It should, perhaps, be noted that by the amendatory act of March 3, 1903 (32 Stat., 995), it was provided that all causes transferred to the Citizenship Court under section 31 of the act of July 1, 1902, should be tried, determined, and disposed of the same as if appealed to such court under section 32 of said act. The amendatory act also provided that this court might transfer to the Citizenship Court the Choctaw and Chickasaw citizenship cases appealed here from the United States courts in the Indian Territory during the year 1898.

II.

A prohibition would obstruct the action of the political department of the Government.

The Choctaw and Chickasaw Citizenship Court, like the Dawes Commission, is a political agency created by Congress in furtherance of the plan outlined in the act of March 3, 1893 (27 Stats., 645), namely, the extinguishment of the national or tribal title to lands within the Indian Territory "with a view to such adjustment, upon the basis of justice and equity, as may, with the consent of such nations or

tribes of Indians, so far as may be necessary, be requisite and suitable to enable the ultimate creation of a State or States of the Union which shall embrace the lands within said Indian Territory." (*Stephens* v. *Cherokee Nation*, 174 U. S., 446.)

In *Cherokee Nation* v. *Hitchcock* (187 U. S., 294, 308) this court said:

> The power existing in Congress to administer upon and guard the tribal property, and the power being *political* and *administrative* in its nature, the manner of its exercise is a question within the province of the legislative branch to determine, *and is not one for the courts.*

The political nature of the measures adopted by Congress for the control and betterment of the Indian tribes within the United States, and its exclusive authority in respect thereto, was again affirmed in *Lone Wolf* v. *Hitchcock* (187 U. S., 558, 567), in which it was said:

> *Plenary* authority over the tribal relations has been exercised by Congress from the beginning, and the power has always been deemed a *political* one, *not subject to be controlled by the judicial department of the Government.*

In re Cooper (138 U. S., 404) this court entertained an application for a writ of prohibition to the district court of Alaska in an admiralty proceeding, holding that in such case it came within section 688, Revised Statutes; but upon final hearing (143 U. S., 472) declined to issue the writ, upon the ground that the record showed jurisdiction in the Alaskan court. The

court stated, however, that it might have rested its denial "upon the well-settled principle that an application to a court to review the action of the political department of the Government * * * should be denied."

III.

Having no appellate jurisdiction over the Choctaw and Chickasaw Citizenship Court, this court can not issue a writ of prohibition thereto.

In *Ex parte Gordon* (1 Black, 503, 506) the court said:

> A prohibition can not issue from this court in cases *where there is no appellate power given by law*, nor any special authority to issue the writ.

See also Foster's Fed. Prac., vol. 2, sec. 362.

The "special authority" of this court to issue a writ of prohibition is limited to the district courts of the United States when sitting as courts of admiralty. (Rev. Stat., sec. 688.)

Ex parte Christy, 3 How., 293.
Ex parte Gordon, 1 Black, 503.
Ex parte Easton, 95 U. S., 68.
Ex parte Phoenix Ins. Co., 118 U. S., 610.

No appellate power has been conferred "by law" upon this court over the Citizenship Court. On the contrary, the act creating it declares that all its judgments and decrees shall be final (sec. 33).

The Citizenship Court is not a "constitutional" court, in which the judicial power of the United States referred to in article 3 of the Constitution may be

vested, but a "legislative" court, created by Congress in virtue of the general sovereignty of the United States over all territory within its limits, whether occupied by Indian tribes or not.

American Ins. Co. v. *Canter*, 1 Pet., 321.
United States v. *Kagama*, 118 U. S., 380.

It is a special tribunal, created for a particular purpose, and will expire by limitation, in any event, on December 31, 1904. (Amend. act, March 3, 1903, 32 S at., 995.)

Not being a "constitutional" court, and, unlike the regular Territorial courts, possessing no general law and equity jurisdiction, the question whether this court can issue a writ of prohibition thereto in the exercise of its "inherent general power" can not arise. (*In re Vidal*, 179 U. S., 126.)

In re Vidal was an application for leave to file a petition for certiorari to review the proceedings of a military tribunal established by a general of the United States Army while in supreme command in Porto Rico. In denying the application, this court, referring to section 14 of the judiciary act of 1789 (sec. 716, R. S.), which authorizes the Supreme and other Federal courts "to issue all writs, not specifically provided for by statute, *which may be necessary for the exercise of their respective jurisdictions*, and agreeable to the usages and principles of law," said:

> This court is not thereby empowered to review the proceedings of military tribunals by certiorari; nor are such tribunals courts with jurisdiction in law or equity within the meaning of those terms as used in the third article of the Constitution, and the question of the issue of the writ of certiorari in the exercise of inherent general power can not arise in respect of them.

IV.

The legislation in question is constitutional.

The history of this legislation shows that it was passed by Congress, at the solicitation and with the consent of the Indians concerned, for the purpose of protecting them against fraud and wrong. Its power to that end is unquestionable (*United States* v. *Kagama*, 118 U. S., 375), and, as has been shown, the manner of its exercise is a matter of legislative discretion and can not be controlled by the courts (*Cherokee Nation* v. *Hitchcock*, 187 U. S., 308; *Lone Wolf* v. *Hitchcock*, id., 565).

Its unconstitutionality is asserted, however, on the ground that it is an attempt on the part of the legislative branch of the Government to disturb vested rights by setting aside the final decrees of a court of competent jurisdiction.

Upon this point the language of this court in *Stephens* v. *Cherokee Nation* would seem to be conclusive (174 U. S., 477–478):

> The contention is that the act of July 1, 1898, in extending the remedy by appeal to this court was invalid because retrospective, an invasion of the judicial domain, and destructive of vested

rights. By its terms the act was to operate retrospectively, and as to that it may be observed that while the general rule is that statutes should be so construed as to give them only prospective operation, yet where the language employed expresses a contrary intention in unequivocal terms the mere fact that the legislation is retroactive does not necessarily render it void.

And while it is undoubtedly true that legislatures can not set aside the judgment of courts, compel them to grant new trials, order the discharge of offenders, or direct what steps shall be taken in the progress of a judicial inquiry, the grant of a new remedy by way of review has been often sustained under particular circumstances. (*Calder* v. *Bull*, 3 Dallas, 386; *Sampeyreac* v. *United States*, 7 Pet., 222; *Freeborn* v. *Smith*, 2 Wall., 160; *Garrison* v. *New York*, 21 Wall., 196; *Freeland* v. *Williams*, 131 U. S., 405; *Essex Public Road Board* v. *Skinkle*, 140 U. S., 334.)

The United States court in the Indian Territory is a legislative court and was authorized to exercise jurisdiction in these citizenship cases as a part of the machinery devised by Congress in the discharge of its duties in respect of these Indian tribes, and assuming that Congress possesses plenary power of legislation in regard to them, subject only to the Constitution of the United States, it follows that the validity of remedial legislation of this sort can not be questioned unless in violation of some prohibition of that instrument.

> In its enactment Congress has not attempted to interfere in any way with the judicial department of the Government, nor can the act be properly regarded as destroying any vested right, since the right asserted to be vested is only the exemption of these judgments from review, and the mere expectation of a share in the public lands and moneys of these tribes, if hereafter distributed, if the applicants are admitted to citizenship, can not be held to amount to such an absolute right of property that the original cause of action, which is citizenship or not, is placed by the judgment of a lower court beyond the power of reexamination by a higher court, though subsequently authorized by general law to exercise jurisdiction.

The principles thus announced are supported by the subsequent cases of *Cherokee Nation* v. *Hitchcock* and *Lone Wolf* v. *Hitchcock*, above cited.

The decision in the Stephens case, it will be observed, was confined entirely to a determination of the constitutionality of the legislation of Congress in respect to citizenship and the allotment of lands in the Indian Territory. Assuming, *without determining*, that the act of June 10, 1896, authorized the United States courts to review *de novo* the cases appealed from the Dawes Commission, the authority of Congress to authorize such a review was affirmed, and the legislation under consideration declared to be, in general, valid and constitutional. The question of notice was not even mentioned in the opinion in that case. The act of July 1, 1902, therefore, which provides for a spe-

cific inquiry by the Citizenship Court into the validity of the methods of procedure adopted by the United States courts in the citizenship cases appealed thereto from the Dawes Commission, and for a review of such cases upon their merits, in no way affects the judgment in the Stephens case. In fact, it but supplements the action of this court in that case, and merely serves to complete the purpose of Congress—manifest through all its legislation—to have "the very right" of this controversy determined.

V.

The writ of certiorari being asked merely in aid of the writ of prohibition, must be denied *pro forma*, no grounds for the issuance of the latter writ being presented.

HENRY M. HOYT,
Solicitor-General.

October, 1903.

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