Department of the Interior

Commissioner to the Five Civilized Tribes

Choctaw Enrollment Case of Loula West, et. al.

Letter of Acting Secretary of Interior of February 15, 1905, to the Commission to the Five Civilized Tribes, transmitting copy of an opinion of the Assistant Attorney General for the Department of the Interior of February 10, 1905.

Letter of First Assistant Secretary of Interior of December 13, 1905, transmitting to the Commissioner to the Five Civilized Tribes copy of an approved opinion of the Assistant Attorney General of December 8, 1905.

DEPARTMENT OF THE INTERIOR.
WASHINGTON.

February 15, 1905.

Commission to the Five Civilized Tribes,

Muskogee, Indian Territory,

Gentlemen:

Inclosed herewith is a communication dated December 16, 1904, from Mrs. Loula West, of Ardmore, Indian Territory, forwarding a petition addressed to the President, praying him to cause an investigation to be made of the allegations contained in said petition, and, if said allegations are found to be true, to cause her name to be placed upon the final roll of the Choctaw Nation.

It appears from said petition that your Commission deems itself precluded from considering her case, by reason of a decision of the Choctaw-Chickasaw Citizenship Court denying her enrollment.

In an opinion dated February 10, 1905, approved by the Department, the Assistant Attorney General held that your Commission has jurisdiction to examine into the claimant's case, and should adjudicate it upon its merits, regardless of any judgment of the Citizenship Court.

Inclosed herewith is a copy of said opinion for your guidance. You will permit the petitioner to submit such testimony in support of her claim as she may see fit.

Respectfully,

M. W. MILLER,

Acting Secretary.

DEPARTMENT OF THE INTERIOR.

Office of the Assistant Attorney-General,

Washington.

February 10, 1905.

The Secretary of the Interior.
Sir:

I received by reference of December 23, 1904, with request for opinion thereon, the communication of Mrs. Loula West, addressed to the President, asking an investigation of the Choctaw citizenship case of herself and others of the same family.

The petition states that she is of Choctaw descent, born in Tennessee, removed to the nation twenty years ago, and has ever since resided there; that she applied to the Choctaw authorities for readmission and was denied, but appealed to the Indian Agent, at Muskogee, the matter was fully heard, the agent found her claim proven, recommended her admission July 15, 1889, and this action was approved by the Secretary of the Interior, January 9, 1890; that she was regularly borne on the tribal rolls, and drew the leased district money payment in 1893, as shown by the authenticated rolls in the possession of the present commission.

She then states that she applied to the Dawes Commission under the act of June 10, 1896 (29 Stats., 321, 339), and was admitted, from which the Choctaw Nation appealed to the United States court for the central district of Indian Territory, which affirmed the judgment, after which the citizenship court, organized under the act of July 1, 1902 (32 Stat., 641, 646-8), annulled this judgment, and the cause was transferred to that court to be adjudicated, whereupon she filed a motion for dismissal of the cause upon the ground that the court had no jurisdiction of it, but the motion was overruled, and ultimately the court denied her enrollment.

She states that the Commission to the Five Civilized Tribes admit the justice of her claim to Choctaw citizenship, but deem themselves precluded from considering it by the judgment of the citizenship court, and she prays investigation of her case by the President

and an order to the Secretary of the Interior that she be placed on the rolls, if such allegations are found to be true.

Accepting such allegations as true, for the purposes of discussion here, I am of opinion that the Commission has ample jurisdiction to examine into the merits of her claim, and, if the facts are found to be as stated, that she is entitled to be enrolled.

The act of June 10, 1896, confirmed the tribal rolls, and under it the Commission had no jurisdiction or power to eliminate persons therefrom. In respect to such persons, already recognized as citizens on the tribal roll, they had no power other than identification and entry upon the roll by them to be prepared. Such action was not a decision of admission of such applicant to citizenship, as that status already existed. In her case (as the facts are stated) it existed by virtue of her recognition and enrollment as a Choctaw by the Secretary of the Interior, January 9, 1890. That the Commission had no power to deny enrollment of such an applicant was decided by the Department, May 21, 1903, in the Choctaw case of Wiley Adams.

The United States Court, under the act of 1896, **supra,** had in citizenship cases no other jurisdiction than an appellate one, and from the very nature of such jurisdiction obtained no jurisdiction by an attempted appeal of a matter wherein the original tribunal had no jurisdiction. My opinion was so expressed in the recent Creek case of Mary C. Keifer (I T D 5066-1902, 6236-1903). It follows that the attempted appeal by the Choctaw Nation in the case here under consideration, if the facts are as stated, vested no jurisdiction in the court to which the appeal was attempted to be taken, and, its judgment being essentially and necessarily a nullity, the citizenship court itself obtained no jurisdiction in the case by going through the form of annulling a judgment that for total want of original jurisdiction had never any validity or operation.

I am therefore of opinion that the Commission to the Five Civilized Tribes have jurisdiction, upon the facts stated, to examine into the claimant's case, and should adjudicate it upon its merits re-

gardless of any judgment of the citizenship court.

Very respectfully,

FRANK L. CAMPBELL,

Assistant Attorney-General.

Approved:

February 10, 1905.

E. A. HITCHCOCK,

Secretary.

DEPARTMENT OF THE INTERIOR.

WASHINGTON.

December 13, 1905.

Commissioner to the Five Civilized Tribes,

Muskogee, Indian Territory.

Sir:

There is inclosed a copy of the opinion of the Assistant Attorney General of December 8, 1905, in the Choctaw enrollment case of Loula West, et al., approved the same day, in which he adheres to his former opinion.

You will proceed in this and analogous cases in accordance with such opinion.

Thomas Norman, of Ardmore, I. T., appears as attorney for the applicants in this case.

Respectfully,

THOS. RYAN,

First Assistant Secretary.

DEPARTMENT OF THE INTERIOR.

Office of the Assistant Attorney-General.

Washington.

December 8, 1905.

The Secretary of the Interior.

Sir:

I received by reference of April 22, 1905, the motion of counsel for the Choctaw and Chickasaw Nations for reconsideration of my

opinion of February 10, 1905, in case of Loula West and others (I. T. D. 10353-1904), applicants for enrollment as citizens of the Choctaw Nation. The motion assigns error in the most general terms that "the conclusions of law therein reached are erroneous and should not stand." No error of statement of fact is alleged, and for all purposes of this motion it stands conceded that:

Loula West is a Choctaw, born in Tennessee, who removed to the Nation twenty years ago and has ever since resided there. She applied to the Choctaw authorities for readmission, was denied, appealed under a Choctaw law to the Indian Office, was admitted January 9, 1890, by the Secretary of the Interior, was thereafter borne on the tribal rolls and participated in the 1893 leased district money payment. She was enrolled by the Dawes Commission under the act of June 10, 1896 (29 Stat., 321, 339). The Choctaw Nation appealed to the United States Court, Central District, Indian Territory, which affirmed the judgment, after which the Citizenship Court, under the act of July 1, 1902, (32 Stat., 641, 646-8), in the test suit, annulled this judgment; the cause was transferred to that court for adjudication; she filed a motion for its dismissal upon the ground that the court had no jurisdiction; the motion was overruled, and the court entered a judgment denying her enrollment. She applied to the present Commission for enrollment, and was denied upon the ground that the Commission is barred from consideration of her case by the judgment of the Citizenship Court.

Upon these facts, February 10, 1905, I rendered an opinion that, as the tribal rolls were confirmed by the act of June 10, 1896, **supra,** the Commission had no jurisdiction to purge the tribal rolls, and had only a ministerial duty to enroll all enrolled persons, and as the United States Court and the Citizenship Court had no original jurisdiction in such cases, but only an appellate one in cases appealed from decisions of the Commission upon applications by unenrolled persons for admission to citizenship, all the proceedings in the case of Loula West were without jurisdiction of either the United States or the Citizenship Court and a nullity, and that it was the duty of the Commission to the Five Civilized Tribes to consider the case and adjudicate it upon its merits.

In oral argument the general assignment of error in the conclusions of law was defined to be:

(1) In holding that any rolls of the Choctaw Nation existed which were confirmed by the act of June 10, 1896.

(2) But whether so or not, these applications belong to the class of persons "deprived of a favorable judgment" of the United States court by the judgment of the Citizenship Court, which thereby acquired jurisdiction to act finally and to conclude them by its final judgment.

With the motion is also transmitted for my consideration the letter of the Commission to the Five Civilized Tribes and of May 27, 1905, wherein the Commission recites the facts in case of Loula West, above briefly set out, and, among other things, says:

The Commission has not, as yet, complied with the instructions contained in departmental letter of February 15, 1905, and before doing so desires . . . . . to call attention to certain departmental opinions heretofore rendered in reference to persons who applied for citizenship in the Choctaw and Chickasaw Nations under the provisions of the act of Congress approved June 10, 1896, (29 Stat., 321).

Reference is then made to the opinion of this office of March 17, 1899, as to the finality of decisions of the Commission under the act of 1896, **supra;** to the act of July 1, 1902 (32 Stat., 641), declaring that "the judgment of the Citizenship Court in any or all of the suits or proceedings committed to its jurisdiction shall be final;" to the opinion of the Acting Attorney-General of May 9, 1904, in the matter of Richard B. Coleman; departmental letters of June 10, 1904, (I. T. D. 1610-1904), in case of Andrew D. Pollock, and August 3, 1904 (I. T. D. 6174-1904), in case of Dr. Clay McCoy, and my opinion of July 30, 1904, therein, and proceeds to say that the Commission under these departmental plain constructions of the acts of June 10, 1896, and July 1, 1902,—
has uniformly held (1) that the decisions of the Commission in 1896 admitting persons to citizenship in the Choctaw and Chickasaw Nations, which were unappealed from, are conclusive as to the rights of such persons to be enrolled . . . . . and (2) the decrees of the Choctaw and Chickasaw Citizenship Court are, irrespective of any facts that might have been considered in connection with the applications of such persons . . . . . final.

This broad grant of power now seemingly conferred by the opinion of the Assistant Attorney-General of February 10, 1905, will practically reopen for adjudication a number of cases which have been adjudicated by the Commission under the act of June 10, 1896, and by the Choctaw and Chickasaw Citizenship Court . . . . . If this direction is adhered to the Commission will be compelled to proceed to a trial **de novo** of numerous cases of applicants . . . . whose rights had, in our opinion, become **res adjudicata,** and where any proceedings wherein they might appear as parties in interest have been dismissed.

The plaint of the Commission seems to be, in substance, when analyzed, that consideration of the cases of persons claiming right of citizenship, resident in the nation and borne on the tribal rolls, will involve so much labor, and be so inconvenient, that it prefers they should not be heard, regardless of whether they were ever properly within the jurisdiction of the Commission in 1896 and of the Citizenship Court, or not, so only these tribunals or the latter one assumed to render a decision depriving them of their clear right. It is needless to say that I am of the opinion that the considerations suggested by the Commission are not of a character entitled to executive or judicial consideration.

It was first held by the Department, so far as I am advised, May 21, 1903, in case of Wiley Adams, that the Commission under the act of 1896 was without authority to admit or deny citizenship of persons borne on the tribal rolls as citizens. I have had occasion in several more recent cases to examine the question, among others, in cases of Benjamin J. Vaughn (I. T. D. 11952-1904), March 24, 1905; Stonewall J. Rogers, (I. T. D. 6340-1904), March 25, 1905; Mary Elizabeth Martin, March 24, 1905; and Dr. Clay McCoy, and have no doubt that the decision of the Department was a true construction of the power of the Commission under the act.

It is also well founded and well established that in appellate proceedings the appellate tribunal obtains no jurisdiction of a cause by appeal, if the original tribunal had none over the subject, and that such objection may be taken at any time, and that consent of parties can not give jurisdiction. Elliott's Appellate Procedure, 1892, says:

Sec. 12. Jurisdiction of the subject can not be given to any court by the parties since such jurisdiction can be conferred only by law.

Sec. 13. It is a necessary sequence . . . . that parties can not by consent confer upon the appellate tribunal authority to decide questions which are not in the record, except in cases where it has original jurisdiction.

* * * * * * * *

Sec. 470. Objections to the jurisdiction of the trial Court over the subject may be successfully urged at any time. If the trial court did not have jurisdiction of the subject the appellate court acquires none (citing Morris vs. Gilmer, 129 U. S., 315; Chapman vs. Barney, (ib., 677).

* * * * * * * *

Sec. 498. The rule that a party must adhere to the theory adopted in the trial court does not preclude him from insisting on appeal that the trial court had no jurisdiction of the subject, for nothing that a party can do, short of executing the judgment in some way, can deprive him of the right of objecting to the jurisdiction. The theory of the law is that where there is absolute want of jurisdiction there is no court, and it is too clear for controversy that a party can neither create a court nor endow it with authority over a subject not placed within its jurisdiction by law.

Sec. 503. . . . . Where there is no jurisdiction there is no court, and if no court there is of course no officer or tribunal capable of acting in the matter at all. The phrase **coram non judice** does not mean that the person who assumes to be a judge is not a judge, but an intruder, or usurper; on the contrary, it simply means that he is not a judge in the particular case or class of cases.

I deem the matter too clear to admit of debate, that if the Commission had no power to purge the rolls, and Mrs. West was on a tribal roll, all the power of the Commission in 1896 was the ministerial duty to inscribe her on the roll to be prepared. Had the Commission denied her right, its action was a mere nullity. Any

appeal taken from their action was a mere nullity. Any judgment of the United States Court upon such appeal other than to dismiss it for want of jurisdiction was a mere nullity. Any action of the Citizenship Court upon it was a mere nullity. That Court had no jurisdiction, and should have dismissed it upon her motion. The Commission should proceed to hear her case upon the merits.

It is proper also for me here to add that it is not my province, nor do I assume to make a "broad" or yet any "grant of power" to the Commission. That is the province of Congress. I have merely endeavored to define what powers were granted to the Commission and to the Courts by the acts of June 10, 1896, and July 1, 1902. I have carefully examined the decisions of the Department, the opinion of the Attorney-General, and the former opinions from this office referred to by the Commission, and, without discussing them in detail, find nothing therein inconsistent with the views herein expressed, or in my former opinion herein, which is based on a want of jurisdiction of the subject matter under the acts of 1896 and 1902, and I adhere to my former opinion herein.

Very respectfully,
FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved: December 8, 1905.
E. A. HITCHCOCK,
Secretary.

DEPARTMENT OF THE INTERIOR

OFFICE OF ASSISTANT ATTORNEY-GENERAL.

In the matter of the application of Lula West, et al., for enrollment as citizens by blood of the Choctaw Nation.

SYNOPSIS OF ORAL ARGUMENT in support of motion for a reconsideration of the decision of the Assistant Attorney-General dated February 10, 1905.

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The applicants applied to the Commission to the Five Civilized Tribes for enrollment as citizens of the Choctaw Nation under the act of June 10, 1896. The Commission rendered a decision and from that decision an appeal was taken to the United States Court and there a decision was rendered admitting the applicants. The decision of the United States Court for the Southern District of the Indian Territory was "annulled, vacated, set aside" by the decision of the Choctaw and Chickasaw Citizenship Court rendered under the act of July 1, 1902. The whole question of law arising in this case is as to the validity and finallity of the adverse decision of the Choctaw and Chickasaw Citizenship Court.

We contend that it was rendered by a court of competent jurisdiction under a valid law and that it is final against the applicants and binding upon the Commission and the Secretary of the Interior. This office has decided in its said opinion dated February 10, 1905 that the Commission to the Five Civilized Tribes was without jurisdiction under the law of 1896 and that therefore the United States Court and the Choctaw and Chickasaw Citizenship Cou Court was without jurisdiction. This conclusion is reached upon the theory that the names of the applicants were upon a roll of the Choctaw Nation which was "confirmed" by an act of Congress approved June 10, 1896 and that therefore the Commission acted without

jurisdiction. In the act of June 10, 1896 occurs the following language:

> "And provided further that the rolls of citizenship of the several tribes as now existing are hereby confirmed"

but in the act of June 7, 1897, occurs the following:

> "Provided that the words "rolls of citizenship" as used in the act of June 10, 1896 x x x shall be construed to mean the last authenticated rolls of each tribe which have been approved by the council of the Nation".

The two acts when read together mean therefore that the only rolls which are "confirmed" are those "now existing" (June 10, 1896) "which have been approved by the council of the Nation".

There were and are no rolls within the meaning of this act. No roll had been so"approved by the council of the nation".

In order to escape the jurisdiction of the Commission under the law of 1896 by showing the presence of their names upon a roll "confirmed" within the meaning of the law the burden is of course upon the applicants. We have no objection however to assume the burden upon this point by way of assisting the office. As bearing upon this we quote from the holding of the office in the case of Mary Elizabeth Martin, an applicant for enrollment as a citizen of the Choctaw Nation, dated March 24, 1905, as follows:

> "The Commission states its clear conviction to be that there had never prior to the approval of the act of Congress of June 10, 1896, been any rolls of the citizens of the Choctaw and Chickasaw Nations which had been ratified and confirmed by the legislative bodies of the two Nations x x x x".

It therefore appears when the acts of June 10, 1896 and of June 7, 1897 are examined and the facts understood as they existed and exist and as set forth by this office that since there were no rolls "confirmed" within the meaning of the law there were no persons without the Commission's jurisdiction in 1896. This applicant applied to the Commission and the Commission had jurisdiction to entertain his application. It was passed upon and the case passed to the United States Court and the Choctaw and Chickasaw Citizenship Court.

But if the holding of the office relative to the Commission's jurisdiction in 1896 was well founded it could not operate to the advantage of the applicants. They belong to the class of persons passed upon by the United States Court for the Southern District of the Indian Territory. They were persons "deprived of a favorable judgment" of the United States Court by the Choctaw and Chickasaw Citizenship Court acting under section 31 of the act of July 1, 1902. They and those similarly situated were the persons to whom the legislation referred in fixing the jurisdiction of the Citizenship Court and that jurisdiction was fixed without reference to the jurisdiction of any other tribunal. The act said that a test suit might be entertained by the Choctaw and Chickasaw Citizenship Court; and that if it found that persons had been irregularly admitted by the United States Court, those persons "thus deprived of a favorable judgment" should, in order to further prosecute their citizenship claims have their cases transferred to the Choctaw and Chickasaw Citizenship Court. These applicants did so and invoked its jurisdiction and a second decision was rendered adverse to them in their own individual case. The particular question that arises in this case, with reference to the Choctaw and Chickasaw Citizenship Court having jurisdiction, has been passed upon by the Attorney General of the United States in an opinion dated May 9, 1904 A copy of that opinion is attached hereto and made a part of this statement. Certain persons sought to escape the ~~jurisdictionuxufx~~ affect of the decision of the Citizenship Court in the test case by showing that they had been originally admitted by the Commission under the law of 1896. The Attorney-General held that they were, without reference to the Commission's action in 1896, of the class of persons "deprived of a favorable judgment" by the Citizenship Court in the test case and were required in order to prosecute their claims further to transfer their cases to the Citizenship Court. The persons in connection with whom this decision was

rendered were favorable upon the tribal rolls of the Choctaw Nation and there cases were in all respects parallel to the present case except stronger for the reason that they were in fact and in law Indians of unquestioned status and entitled to enrollment.

When the act of July 1, 1902, was passed Congress had reference to a class of persons and that class of persons were those who had been admitted to citizenship by the United States Court. These persons belong to that class. The law made no exception, and intended to make no exceptions. The law had no reference to the early history of these cases or any other cases. It said that the decision of the Citizenship Court should apply to those persons admitted by the United States Court. These persons were admitted by the United States Court and the decision of the Citizenship Court applied to them and is final against them. There can be no controversy as to what the law says and the only way the law can be avoided is to say that it is unconstitutional and not valid. In view of the declaration of the Supreme Court of the United States in the case of Stephens vs. Cherokee Nation and its later expressions in other cases we do not apprehend that such a holding will be made. In citizenship questions it is not a matter of what Congress has power to do. The only question is what has it said and done and what jurisdiction has it conferred, in terms, upon its tribunals. If Congress had said in the act of July 1, 1902, that the Citizenship Court should have jurisdiction to try anew the citizenship claims of all persons residing West of the Missouri, Kansas & Texas Railway its jurisdiction would have been thus fixed but would have been no clearer than its jurisdiction was fixed in designating the class of persons whose claims had been passed upon by the United States Court.

Not only was jurisdiction given the citizenship court over these persons in terms, but they have invoked it .

The question as to the finality of th decisions of the

Citizenship Court has been passed upon not only by the Attorney-General as above shown but by both judges of the United States Court for the Southern District of the Indian Territory. We refer to the cases of John Quincy Adams vs the Choctaw and Chickasaw Nations and Dora Bethea, et al., vs. Choctaw and Chickasaw Nations decided by Judge Townsend and the case of Thompson vs. Morgan decided by Judge Dickinson. In the first two cases the plaintiffs were denied citizenship by the United States Court under the act of June 10, 1896 and sought by a bill in equity to set aside the adverse decision of the United States Court upon the ground that the appeal had been taken without notice to them. Judge Townsend held that since they were passed upon by the United States Court under the law of 1896 they belonged to the class of persons referred to by the act of July 1, 1902 and that it was incumbent upon them to appeal to the Choctaw and Chickasaw Citizenship Court if they wished to further prosecute their claims. In the case of Thompson vs Morgan, the plaintiff Thompson was an applixant before and passed upon by the Choctaw and Chickasaw Citizenship Court adversely to him. He sought to maintain a suit in ejectment for the possession of land raising the question of the validity and finality of the Citizenship Court's decision adverse to him. Judge Dickinson held that the Citizenship Court was a Court of competent jurisdiction and that its decision adverse to the applicant was valid and binding. It was held further that without reference to other questions that since the applicant had invoked the jurisdiction of the Citizenship Court he could not now be heard to question the validity and finality of its decision. While these decisions of the United States Court in Indian Territory are in connection with cases which are not entirely parallel with the present case yet they bear directly upon the question of the validity and finality of the adjudications of the citizenship court and od the requirement which confronts the applicants of the class

to which these persons belong to invoke its jurisdiction in order to further prosecute their claims.

It is our view that the decision of the Assistant Attorney General dated February 10, 1893 is erroneous and should not stand and that it should be held in this case that the adverse decision of the Citizenship Court is final and binding upon the Commission and the Department.

Respectfully submitted,

_____

Attorneys for the Choctaw and Chickasaw Nations.

Indian Territory
Central District.

G. Rosenwinkel on oath states that a copy of the foregoing argument was on this day mailed to Chester H. Howe, the attorney of record of the applicants, at Washington D.C., by registered mail.

_____

Subscribed and sworn to before me this 12th day of October 1905.

_____

Notary Public.

Lula West et al
+
Choctaw case
+

J.W.H

DEPARTMENT OF THE INTERIOR, FHE
WASHINGTON.

February 15, 1905.

D.C. 9044-1905.
I.T.D.10353-1904
1484-1905.

LRS

Commission to the Five Civilized Tribes,

Muskogee, Indian Territory.

Gentlemen:

Inclosed herewith is a communication dated December 16, 1904, from Mrs. Loula West, of Ardmore, Indian Territory, forwarding a petition addressed to the President, praying him to cause an investigation to be made of the allegations contained in said petition, and, if said allegations are found to be true, to cause her name to be placed upon the final roll of the Choctaw Nation.

It appears from said petition that your Commission deems itself precluded from considering her case, by reason of a decision of the Choctaw-Chickasaw Citizenship Court denying her enrollment.

In an opinion dated February 10, 1905, approved by the Department, the Assistant Attorney General held that your Commission has jurisdiction to examine into the claimant's case, and should adjudicate it upon its merits, regardless of any judgment of the Citizenship Court.

Inclosed herewith is a copy of said opinion for your

guidance. You will permit the petitioner to submit such testimony in support of her claim as she may see fit.

Respectfully,

M. M. Miller

Acting Secretary.

3 inclosures.

(COPY)

The Choctaw Nation.

vs.

J.E.Shockley, et als.

Before the U.S.Ind. Agt.

Union Agency, I.T.

March 26, 1889.

J. E. Shockley, the claimant in this case, bases his claim on the ground of being a lineal descendant of the Choctaw tribe of Indians. This claim is supported by the testimony of witnesses whose statements you will herein find. The case is hereby submitted for your action -- on the merits of the evidence.

Respt.

A. Telle,

Atty. for the Choctaw Nation

In appealed citizenship cases

(COPY).

Union Agency, Muscogee, I.T.,

March 26, 1889.

In the matter of

John E. Shockley

vs. Disputed citizenship

Choctaw Nation.

Before the United States Indian Agent.

The claimant in the above styled cause by his attorney confidently submits said case on its merits.

J. S. Standley,

Atty. for claimant.

Department of the Interiow.

Commissioner to the Five Civilized Tribes.

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Lula West et al, petitioners.	]	
	]	
vs.	]	Petition for identification and
	]	enrollment.
Choctaw and Chickasaw Nations,	]	
Defendants.	]	

Come now petitioners herein, Lula West, F. K. West, Roy West, Marie West, Corine West, Elzora Shockley, Ethel Jones(nee Shockley), Charles L. Shockley, Callie Shockley, Albert Shockley, Herman Shockley, Mamie Shockley, Herbert E. Shockley, E. E. Shockley, Ava Shockley, Mattie Shockley, Leverett Shockley, Elva May Shockley, Plasssee Shockley, Pauline Daniel(nee Shockley, Albert Shockley, Mattie L. Osborne(nee Shockley), Eddie Shockley, Lenora Parker(nee Shockley), Treva Myrtle Parker, Ludie Franklin Parker, William Leslie Parker, and Albert R. Shockley, and respectfully state that they and each of them are citizens of the Choctaw Nation, and are entitled to be identified and enrolled on the ro rolls of said nation, and to the enjoyment of all the rights, priviliges and immunities of any other citizen of that nation.

As grounds therefor, they allege that on or about the 15th day of July, 1889, John Shockley and his wife Mattie L. Shockley, William E/ Shockley and his wife Elzora Shockley, Charles L. Shockley, Ephraim E. Shockley, Lula Shockley, and Albert Shockley, were admitted to citizenship in said Nation by a decree of the United States Indian Agemt, Leo E. Bennett, which said decree was affirmed by the Secretray of the Interior on or about the 9th day of January, 1890; that thereafterwards said parties were duely and legally enrolled on the rolls of that nation and that from the date of said decision of the said Indian Agent they continued at all times thereafter to be citizens of said nation, to be duely enrolled on the rolls thereof, and to be residents thereof; that all of them, except John Shockley, who had died prior thereto, were enrolled on the rolls made up for the payment of the lease district money in 1893, and that they drew their pro rata share of that money; that also Eddie Shockley, a child of said John Shockley and Mattie E. Shockley, Roy West, a child of Lula West(nee Shockley) and Mattie Shock-

ley, a child of Ephraim E. Shockley, and others were on said roll so prepared in 1893 for the payment of the lease district money, and drew their pro rata share of that money; that said last named parties were al so citizens of said nations and residents thereof at all times since said date.

Petitioners would further state that Eddie Shockley was born a or about the ____day of _____, as the legitimate issue of said John Shockley and Mattie L Shockley; that after the death of sa said John Shockley, his said wife Mattie L. Shockley on or about the 22 day of January, 1899, married a white man named J. R. Osborne, and that both the said Eddie Shockley and his said mother are on the tribal rolls residents and citizens of said nation.

Petitioners further state that said Charles L. Shockley married Callie Mitchusson, a white woman, in accordance with the laws of said nation, on or about December 10, 1893, she being then and there a resident of said nation, and that said parents had born to them as the issue of this marriage the following four children:- Albert Shockley born ~~September 26, 1891~~ June 30, 1895, Herman Shockley born May 23, 189 1897, Mamie Shockley born October 11, 1899, and Herbert E. Shockley born June 15, 1903, all of whom are citizens of said nation and residents ~~thereof~~ of the Chickasaw Nation.

Petitioners further state that Ephraim E. Shockley married Ava Townsend, a white woman, in accordance with the laws of the said nation, on or about the 30th day of July, 1890, she being then and there a resident of said nation, and that they have as the issue of this marriage the following children born to them:- Mattie Shockley born September 26, 1891, Leverett Shockley born August 16, 1896, Elva May Shockley born October 12th, 1900, and Plasssee Shockley born April 6, 1903, all of whom are citizens of said nation and residents of the Chickasaw Natio

Petitioners further state that Lula Shockley married a white man named F. K. West on or about the 20th day of August, 1889, he being then and there a resident of said nation, and had by him as the issue of this marriage the following children:- Roy West born September 26, 1891,

Marie West born December 3, L895, and Corine West born August 25, 1898, all of whom are citizens of said Choctaw Nation and residents of the Chickasaw Nation.

Petitioners further state that Albert P. Shockley married a white woman named Pauline DeBose, in accordance with the laws of said nation, and had by her one child named Albert Shockley who was born on or about the ___ day of _____1898; that said Albert P Shockley died on or about the __day of _____1898, and that after his death, his said wife, Pauline Shockley, married a white man named _____ Daniel,; that said Albert Shockley and Pauline Daniels are both citizens of said nation and entitled to be identified and enrolled.

Petitioners state further that William E. Shockley, who died about the year 1894, married a white woman named Betty Duke, on or about the 16 day of September, 1877, and by her had two children as the issue of this marriage, Lenora Shockley and Albert R. Shockley; that the said Betty Shockley died on or about the ___ day of _____ and that thereafterwards the said William E. Shockley married a white wo woman named Elzora Gage, then and there a resident of said nation, in accordance with the laws of said nation; that the said William E. Shockley and Elzora Shockley had born to them as the issue of this marriage a the ____ day of _____1891_____, one child named Ethel Shockley, wh on or about the __ day of _____, married a white man named _____Jones; that Lenora Shockley, one of the Children of said William E. Shockley by his first wife Betty Duke, married a white man named W. I. Parker, on or about the 8 day of Jan, 1896, and has by him the following children:- Treva Myrtle Parker born ~~July 31, 1899~~ Feb. 26, 1897, Ludie Franklin Parker born July 31, 1899, and William Leslie Parker born April 14, 1902.(Also George Cecil Parker born October 2, 1904).

Petitioners further state that all of said petitioners are living and residents of either the Choctaw or Chickasaw Nations; that all of them are citizens of the Choctaw nation, and that they have continuously been citizens thereof, the said Children from their birth, and the said adults from their adoption under the decree aforesaid, and the inter,arried parties from the dates of their marriages.

Petitioners state further that application was made for the identification and enrollment of all of petitioners who were then living on or about the ___ day of _____ 1896 to the Commission to the Five Civilized Tribes, and were admitted, that an appeal was taken wrongfully and without authority of law to the United States Court, and afterwards to the Citizenship Court. Petitioners later made application to said Commission when it was making its field identification at Ardmore on or about August 1898, and such of them as were then living were enrolled as they have been informed on a white card; that such of said children as have been born since then have made application for enrollment in due and apt time to said Commission before December 25, 1902.

Wherefore, considering the above, petitioners pray to be identified and enrolled as citizens of said Choctaw Nation, and for any and all other proper and suitable relief.

Thos. Norman

Attorneys for petitioners.

I, Lula West, do solemnly swear that the facts and statements contained in the above petition are true.

(signed) Lula West

Subscribed and sworn to before me this the 11th day of January, 1906.

(seal) D. H. Carr

Notary Public.

Department of the Interior

Commissioner to the Five Civilized Tribes

Choctaw Enrollment Case of Loula West, et. al.

Letter of Acting Secretary of Interior of February 15, 1905, to the Commission to the Five Civilized Tribes, transmitting copy of an opinion of the Assistant Attorney General for the Department of the Interior of February 10, 1905.

Letter of First Assistant Secretary of Interior of December 13, 1905, transmitting to the Commissioner to the Five Civilized Tribes copy of an approved opinion of the Assistant Attorney General of December 8, 1905.

DEPARTMENT OF THE INTERIOR.
WASHINGTON.

February 15, 1905.

Commission to the Five Civilized Tribes,

Muskogee, Indian Territory,

Gentlemen:

Inclosed herewith is a communication dated December 16, 1904, from Mrs. Loula West, of Ardmore, Indian Territory, forwarding a petition addressed to the President, praying him to cause an investigation to be made of the allegations contained in said petition, and, if said allegations are found to be true, to cause her name to be placed upon the final roll of the Choctaw Nation.

It appears from said petition that your Commission deems itself precluded from considering her case, by reason of a decision of the Choctaw-Chickasaw Citizenship Court denying her enrollment.

In an opinion dated February 10, 1905, approved by the Department, the Assistant Attorney General held that your Commission has jurisdiction to examine into the claimant's case, and should adjudicate it upon its merits, regardless of any judgment of the Citizenship Court.

Inclosed herewith is a copy of said opinion for your guidance. You will permit the petitioner to submit such testimony in support of her claim as she may see fit.

Respectfully,

M. W. MILLER,

Acting Secretary.

DEPARTMENT OF THE INTERIOR.

Office of the Assistant Attorney-General,

Washington.

February 10, 1905.

The Secretary of the Interior.
Sir:

I received by reference of December 23, 1904, with request for opinion thereon, the communication of Mrs. Loula West, addressed to the President, asking an investigation of the Choctaw citizenship case of herself and others of the same family.

The petition states that she is of Choctaw descent, born in Tennessee, removed to the nation twenty years ago, and has ever since resided there; that she applied to the Choctaw authorities for readmission and was denied, but appealed to the Indian Agent, at Muskogee, the matter was fully heard, the agent found her claim proven, recommended her admission July 15, 1889, and this action was approved by the Secretary of the Interior, January 9, 1890; that she was regularly borne on the tribal rolls, and drew the leased district money payment in 1893, as shown by the authenticated rolls in the possession of the present commission.

She then states that she applied to the Dawes Commission under the act of June 10, 1896 (29 Stats., 321, 339), and was admitted, from which the Choctaw Nation appealed to the United States court for the central district of Indian Territory, which affirmed the judgment, after which the citizenship court, organized under the act of July 1, 1902 (32 Stat., 641, 646-8), annulled this judgment, and the cause was transferred to that court to be adjudicated, whereupon she filed a motion for dismissal of the cause upon the ground that the court had no jurisdiction of it, but the motion was overruled, and ultimately the court denied her enrollment.

She states that the Commission to the Five Civilized Tribes admit the justice of her claim to Choctaw citizenship, but deem themselves precluded from considering it by the judgment of the citizenship court, and she prays investigation of her case by the President

and an order to the Secretary of the Interior that she be placed on the rolls, if such allegations are found to be true.

Accepting such allegations as true, for the purposes of discussion here, I am of opinion that the Commission has ample jurisdiction to examine into the merits of her claim, and, if the facts are found to be as stated, that she is entitled to be enrolled.

The act of June 10, 1896, confirmed the tribal rolls, and under it the Commission had no jurisdiction or power to eliminate persons therefrom. In respect to such persons, already recognized as citizens on the tribal roll, they had no power other than identification and entry upon the roll by them to be prepared. Such action was not a decision of admission of such applicant to citizenship, as that status already existed. In her case (as the facts are stated) it existed by virtue of her recognition and enrollment as a Choctaw by the Secretary of the Interior, January 9, 1890. That the Commission had no power to deny enrollment of such an applicant was decided by the Department, May 21, 1903, in the Choctaw case of Wiley Adams.

The United States Court, under the act of 1896, **supra,** had in citizenship cases no other jurisdiction than an appellate one, and from the very nature of such jurisdiction obtained no jurisdiction by an attempted appeal of a matter wherein the original tribunal had no jurisdiction. My opinion was so expressed in the recent Creek case of Mary C. Keifer (I T D 5066-1902, 6236-1903). It follows that the attempted appeal by the Choctaw Nation in the case here under consideration, if the facts are as stated, vested no jurisdiction in the court to which the appeal was attempted to be taken, and, its judgment being essentially and necessarily a nullity, the citizenship court itself obtained no jurisdiction in the case by going through the form of annulling a judgment that for total want of original jurisdiction had never any validity or operation.

I am therefore of opinion that the Commission to the Five Civilized Tribes have jurisdiction, upon the facts stated, to examine into the claimant's case, and should adjudicate it upon its merits re-

gardless of any judgment of the citizenship court.

Very respectfully,

FRANK L. CAMPBELL,

Assistant Attorney-General.

Approved:

February 10, 1905.

E. A. HITCHCOCK,

Secretary.

DEPARTMENT OF THE INTERIOR.

WASHINGTON.

December 13, 1905.

Commissioner to the Five Civilized Tribes,

Muskogee, Indian Territory.

Sir:

There is inclosed a copy of the opinion of the Assistant Attorney General of December 8, 1905, in the Choctaw enrollment case of Loula West, et al., approved the same day, in which he adheres to his former opinion.

You will proceed in this and analogous cases in accordance with such opinion.

Thomas Norman, of Ardmore, I. T., appears as attorney for the applicants in this case.

Respectfully,

THOS. RYAN,

First Assistant Secretary.

DEPARTMENT OF THE INTERIOR.

Office of the Assistant Attorney-General.

Washington.

December 8, 1905.

The Secretary of the Interior.

Sir:

I received by reference of April 22, 1905, the motion of counsel for the Choctaw and Chickasaw Nations for reconsideration of my

opinion of February 10, 1905, in case of Loula West and others (I. T. D. 10353-1904), applicants for enrollment as citizens of the Choctaw Nation. The motion assigns error in the most general terms that "the conclusions of law therein reached are erroneous and should not stand." No error of statement of fact is alleged, and for all purposes of this motion it stands conceded that:

Loula West is a Choctaw, born in Tennessee, who removed to the Nation twenty years ago and has ever since resided there. She applied to the Choctaw authorities for readmission, was denied, appealed under a Choctaw law to the Indian Office, was admitted January 9, 1890, by the Secretary of the Interior, was thereafter borne on the tribal rolls and participated in the 1893 leased district money payment. She was enrolled by the Dawes Commission under the act of June 10, 1896 (29 Stat., 321, 339). The Choctaw Nation appealed to the United States Court, Central District, Indian Territory, which affirmed the judgment, after which the Citizenship Court, under the act of July 1, 1902, (32 Stat., 641, 646-8), in the test suit, annulled this judgment; the cause was transferred to that court for adjudication; she filed a motion for its dismissal upon the ground that the court had no jurisdiction; the motion was overruled, and the court entered a judgment denying her enrollment. She applied to the present Commission for enrollment, and was denied upon the ground that the Commission is barred from consideration of her case by the judgment of the Citizenship Court.

Upon these facts, February 10, 1905, I rendered an opinion that, as the tribal rolls were confirmed by the act of June 10, 1896, **supra,** the Commission had no jurisdiction to purge the tribal rolls, and had only a ministerial duty to enroll all enrolled persons, and as the United States Court and the Citizenship Court had no original jurisdiction in such cases, but only an appellate one in cases appealed from decisions of the Commission upon applications by unenrolled persons for admission to citizenship, all the proceedings in the case of Loula West were without jurisdiction of either the United States or the Citizenship Court and a nullity, and that it was the duty of the Commission to the Five Civilized Tribes to consider the case and adjudicate it upon its merits.

In oral argument the general assignment of error in the conclusions of law was defined to be:

(1) In holding that any rolls of the Choctaw Nation existed which were confirmed by the act of June 10, 1896.

(2) But whether so or not, these applications belong to the class of persons "deprived of a favorable judgment" of the United States court by the judgment of the Citizenship Court, which thereby acquired jurisdiction to act finally and to conclude them by its final judgment.

With the motion is also transmitted for my consideration the letter of the Commission to the Five Civilized Tribes and of May 27, 1905, wherein the Commission recites the facts in case of Loula West, above briefly set out, and, among other things, says:

The Commission has not, as yet, complied with the instructions contained in departmental letter of February 15, 1905, and before doing so desires . . . . . to call attention to certain departmental opinions heretofore rendered in reference to persons who applied for citizenship in the Choctaw and Chickasaw Nations under the provisions of the act of Congress approved June 10, 1896, (29 Stat., 321).

Reference is then made to the opinion of this office of March 17, 1899, as to the finality of decisions of the Commission under the act of 1896, **supra**; to the act of July 1, 1902 (32 Stat., 641), declaring that "the judgment of the Citizenship Court in any or all of the suits or proceedings committed to its jurisdiction shall be final;" to the opinion of the Acting Attorney-General of May 9, 1904, in the matter of Richard B. Coleman; departmental letters of June 10, 1904, (I. T. D. 1610-1904), in case of Andrew D. Pollock, and August 3, 1904 (I. T. D. 6174-1904), in case of Dr. Clay McCoy, and my opinion of July 30, 1904, therein, and proceeds to say that the Commission under these departmental plain constructions of the acts of June 10, 1896, and July 1, 1902,—
has uniformly held (1) that the decisions of the Commission in 1896 admitting persons to citizenship in the Choctaw and Chickasaw Nations, which were unappealed from, are conclusive as to the rights of such persons to be enrolled . . . . . and (2) the decrees of the Choctaw and Chickasaw Citizenship Court are, irrespective of any facts that might have been considered in connection with the applications of such persons . . . . . final.

This broad grant of power now seemingly conferred by the opinion of the Assistant Attorney-General of February 10, 1905, will practically reopen for adjudication a number of cases which have been adjudicated by the Commission under the act of June 10, 1896, and by the Choctaw and Chickasaw Citizenship Court . . . . . If this direction is adhered to the Commission will be compelled to proceed to a trial **de novo** of numerous cases of applicants . . . . whose rights had, in our opinion, become **res adjudicata,** and where any proceedings wherein they might appear as parties in interest have been dismissed.

The plaint of the Commission seems to be, in substance, when analyzed, that consideration of the cases of persons claiming right of citizenship, resident in the nation and borne on the tribal rolls, will involve so much labor, and be so inconvenient, that it prefers they should not be heard, regardless of whether they were ever properly within the jurisdiction of the Commission in 1896 and of the Citizenship Court, or not, so only these tribunals or the latter one assumed to render a decision depriving them of their clear right. It is needless to say that I am of the opinion that the considerations suggested by the Commission are not of a character entitled to executive or judicial consideration.

It was first held by the Department, so far as I am advised, May 21, 1903, in case of Wiley Adams, that the Commission under the act of 1896 was without authority to admit or deny citizenship of persons borne on the tribal rolls as citizens. I have had occasion in several more recent cases to examine the question, among others, in cases of Benjamin J. Vaughn (I. T. D. 11952-1904), March 24, 1905; Stonewall J. Rogers, (I. T. D. 6340-1904), March 25, 1905; Mary Elizabeth Martin, March 24, 1905; and Dr. Clay McCoy, and have no doubt that the decision of the Department was a true construction of the power of the Commission under the act.

It is also well founded and well established that in appellate proceedings the appellate tribunal obtains no jurisdiction of a cause by appeal, if the original tribunal had none over the subject, and that such objection may be taken at any time, and that consent of parties can not give jurisdiction. Elliott's Appellate Procedure, 1892, says:

Sec. 12. Jurisdiction of the subject can not be given to any court by the parties since such jurisdiction can be conferred only by law.

Sec. 13. It is a necessary sequence . . . . that parties can not by consent confer upon the appellate tribunal authority to decide questions which are not in the record, except in cases where it has original jurisdiction.

* * * * * * *

Sec. 470. Objections to the jurisdiction of the trial Court over the subject may be successfully urged at any time. If the trial court did not have jurisdiction of the subject the appellate court acquires none (citing Morris vs. Gilmer, 129 U. S., 315; Chapman vs. Barney, (ib., 677).

* * * * * * * *

Sec. 498. The rule that a party must adhere to the theory adopted in the trial court does not preclude him from insisting on appeal that the trial court had no jurisdiction of the subject, for nothing that a party can do, short of executing the judgment in some way, can deprive him of the right of objecting to the jurisdiction. The theory of the law is that where there is absolute want of jurisdiction there is no court, and it is too clear for controversy that a party can neither create a court nor endow it with authority over a subject not placed within its jurisdiction by law.

Sec. 503. . . . . Where there is no jurisdiction there is no court, and if no court there is of course no officer or tribunal capable of acting in the matter at all. The phrase **coram non judice** does not mean that the person who assumes to be a judge is not a judge, but an intruder, or usurper; on the contrary, it simply means that he is not a judge in the particular case or class of cases.

I deem the matter too clear to admit of debate, that if the Commission had no power to purge the rolls, and Mrs. West was on a tribal roll, all the power of the Commission in 1896 was the ministerial duty to inscribe her on the roll to be prepared. Had the Commission denied her right, its action was a mere nullity. Any

appeal taken from their action was a mere nullity. Any judgment of the United States Court upon such appeal other than to dismiss it for want of jurisdiction was a mere nullity. Any action of the Citizenship Court upon it was a mere nullity. That Court had no jurisdiction, and should have dismissed it upon her motion. The Commission should proceed to hear her case upon the merits.

It is proper also for me here to add that it is not my province, nor do I assume to make a "broad" or yet any "grant of power" to the Commission. That is the province of Congress. I have merely endeavored to define what powers were granted to the Commission and to the Courts by the acts of June 10, 1896, and July 1, 1902. I have carefully examined the decisions of the Department, the opinion of the Attorney-General, and the former opinions from this office referred to by the Commission, and, without discussing them in detail, find nothing therein inconsistent with the views herein expressed, or in my former opinion herein, which is based on a want of jurisdiction of the subject matter under the acts of 1896 and 1902, and I adhere to my former opinion herein.

Very respectfully,
FRANK L. CAMPBELL,
Assistant Attorney-General.

Approved: December 8, 1905.
E. A. HITCHCOCK,
Secretary.

I. T. D.
3693-1905.

J. R. W.

December 8, 1905.

The Secretary of the Interior.

Sir:

I received by reference of April 22, 1905, the motion of counsel for the Choctaw and Chickasaw Nations for reconsideration of my opinion of February 10, 1905, in the case of Loula West and others (I.T.D. 10353-1904), applicants for enrollment as citizens of the Choctaw Nation. The motion assigns error in the most general terms that "the conclusions of law therein reached are erroneous and should not stand." No error of statement of fact is alleged, and for all purposes of this motion it stands conceded that:

Loula West is a Choctaw, born in Tennessee, who removed to the nation twenty years ago and has ever since resided there. She applied to the Choctaw authorities for readmission, was denied, appealed under a Choctaw law to the Indian Office, was admitted January 9, 1890, by the Secretary of the Interior, was thereafter borne on the tribal rolls and particpated in the 1893 leased district money payment. She was enrolled by the Dawes Commission under the act of June 10, 1896 (29 Stat., 321, 339). The Choctaw Nation appealed to the United States Court, Central District, Indian Territory, which affirmed the judgment, after which the Citizenship Court, under the act of July 1, 1902, (32 Stat., 641, 646-8), in the test suit, annulled this judgment; the cause was transferred to that court for adjudication; she filedamotion for its dismissal upon the ground that the court had no jurisdiction; the motion was overruled, and the court entered a judgment denying her enrollment. She applied to the present Commission for enrollment, and was denied upon the ground that the Commission is barred from consideration of her case by the judgment of the Citizenship Court.

Upon these facts, February 10, 1905, I rendered an opinion

that, as the tribal rolls were confirmed by the act of June 10, 1896, supra, the Commission had no jurisdiction to purge the tribal rolls, and had only a ministerial duty to enroll persons, and as the United States Dourt and the Citizenship Court had no original jurisdiction in such cases, but only an appelate one in cases appealed from decisions of the Commission upon application by unenrolled persons for admission to citizenship, all the proceedings in the case of Loula West were without jurisdiction of either the United States or the Citizenship Court and a nullity, and that it was the duty of the Commission to the Five Civilized Tribes to consider the case and adjudicate it upon its merits.

In oral argument the general assignment of error in the conclusions of law was defined to be:

(1) In holding that any rolls of the Choctaw Nation existed which were confirmed by the act of June 10, 1896.

(2) But whether so or not, these applications belong to the class of persons "deprived of a favorable judgment" of the United States Court by the judgment of the Citizenship Court, which thereby acquired jurisdiction to act finally and to conclude them by its final judgment.

With the motion is also transmitted for my consideration the letter of the Commission to the Five Civilized Tribes of May 27, 1905, wherein the Commission recites the facts in the case of Loula West, above briefly set out, and among other things, says:

> The Commission has not as yet complied with the instructions contained in the departmental letter of February 5, 1905, and before doing so desires. . . to call attention to certain departmental opinions heretofore rendered in reference to persons who applied for citizenship in the Choctaw and Chickasaw Nations under the provisions of the act of Congress approved June 10, 1896 (29 Stat., 321).

Reference is then made to the opinion of this office of March 7, 1899, as to the finality of decisions of the Commission under the act of 1896, supra; to the act of July 1, 1902, (32 Stat.,641),

declaring that "the judgment of the citizenship court in any or all of the suits or proceedings committed to its jurisdiction shall be final;" to the opinion of the Acting Attorney-General of May 9, 1904, in the matter of Richard B. Coleman; departmental letters of June 10, 1904, (I.T.D., 1610-1904), in case of Dr. Clay McCoy, and my opinion of July 30, 1904, therein, and proceeds to say that the Commission, under these departmental plain constructions of the acts of June 10, 1896, and July 1, 1902---

has uniformly held 1 that the decisions of the Commission in 1896 admitting persons to citizenship in the Choctaw and Chickasaw Nations, which were unappealed from, are conclusive as to the righs of such persons to be entitled. . . . . and 2 the decrees of the Choctaw and Chickasaw Citizenship Court are, irrespective of any facts that might have been considered in connection with the application of such persons. . . . . final.

This broad grant of power now seemingly conferred by the opinion of the Assistant Attorney-General of Fberuary 10, 1905, will practically reopen for adjudication a number of cases which have been adjudicated by the Commission under the act of June 10, 1896, and by the Choctaw and Chickasaw Citizenship Court. . . If this direction is adhered to the Commission will be compelled to proceed to a trial de novo of numerous cases of applicants. . . whose rights had, in our opinion, become res adjudicata, and where any proceedings wherein they might appear as parties in interest have been dismissed.

The plaint of the Commission seems to be, in substance, when analyzed, that consideration of the cases of persons claiming right of citizenship, resident in the nation and borne on the tribal rolls, will involve so much labor, and be so inconvenient, that it prefers they should not be heard, regardless of whether they were ever properly within the jurisdiction of the Commission in 1896 ~~or~~ and of the Citizenship Court, or not, so only these tribunals or the latter one assumed to render a decision depriving them of their clear right. It is needless to say that I am of the opinion that the considerations suggested by the Commission are not of the character entitled to executive of judicial consideration.

It was first held by the Department, so far as I am advised, May 21, 1903, in the case of Wiley Adams, that the Commission under the act of 1896 was without authority to admit or deny citizenship of persons borne on the tribal rolls as citizens. I have had occasion in several more recent cases to examine the

the question, among others, in cases of Benjamin J. Vaughan (I.T.D. 11952-1904), March 24, 1905; Stonewall J. Rogers (I.T.D. 6340-1904), March 25, 1905; Mary Elizabeth Martin, March 24, 1905; and Dr Clay McCoy, and have no doubt that the decision of the Department was a true construction of the power of the Commission under the act.

It is also well founded and well established that in appellate proceedings the appellate tribunal obtains no jurisdiction of a cause by appeal, if the original tribunal had none over the subject, and that such objection may be taken at any time, and that consent of parties cannot give jurisdiction. Elliott's Appellate Procedure, 1892, says:

Sec. 12. Jurisdiction of the subject cannot be given to any court by the parties since such jurisdiction can be conferred only by law.

Sec. 13. It is a necessary sequence. . . that parties cannot by consent confer upon the appellate tribunal authority to decide questions which are not in the record, except in cases where it has original jurisdiction.

. . . . . .

Sec. 470. Objections to the jurisdiction of the trial court over the subject may be successfully urged at any time. If the trial court did not have jurisdiction of the subject the appellate court acquires none citing Morris v. Gilmer, 129 U.S.,315; Chapman v. Barney, ib., 677.

. . . . . .

Sec. 498. The rule that a party must adhere to the theory adopted in the trial court does not preclude him from insisting on appeal that the trial court had no jurisdiction over the subject, for nothing that a party can do, short of executing the judgment in some way, can deprive him of the right of objecting to the jurisdiction. The theory of the law is that where there is absolute want of jurisdiction there is no court, and it is too clear for controversy that a party can neither create a court nor endow it with authority over a subject not placed within its jurisdiction by law.

. . . . . .

Sec. 503. Where there is no jurisdiction there is no court, and if no court there is of course no officer or tribunal capable of acting in the matter at all. The phrase coram non Judice does not mean that the person who assumes to be a judge is not a judge, but an intruder, or usurper; on the contrary, it simply means that he is not a judge in the particular case or class of cases.

I deem the matter too clear to admit of debate, that if the Commission had no power to purge the rolls, and Mrs. West was on a tribal roll, all the power of the Commission in 1896 was the ministerial duty to inscribe her on the roll to be ~~xxxx~~ prepared Had the Commission denied her right, its action was a mere nullity. Any appeal taken from their action was a mere nullity. Any judgment of the United States Court upon such appeal other than to dismiss it for want of jurisdiction was a mere nullity. Any action of the Citizenship Court upon it was a mere nullity. That court had no jurisdiction, and should have dismissed it upon her motion. The Commission should ~~xxxxxxx~~ proceed to hear her case upon the merits.

It is proper for me here to add that it is not my province, nor do I assume to make a "broad" or yet any "grant of power" to the Commission. That is the province of Congress. I have merely endeavored to define what powers were granted to the Commission and to the courts by the acts of June 10, 1896, and July 1, 1902. I have carefully examined the decisions of the Department, the opinion of the Attorney-General, and the former opinions from this office referred to by the Commission, and, without discussing them in detail, find nothing therein inconsistent with the views herein expressed, or in my former opinion herein, which is based on a want of jurisdiction of the subject matter under the acts of 1896 and 1902, and I adhere to my former opinion herein.

Very respectfully,

(Sgnd.) Frank L. Campbell,

Assistant Attorney-General.

Approved: December 8, 1905.

(Sgnd.) E. A. Hitchcock,

Secretary.

(COPY).

Union Agency

Muskogee, Ind. Ter., July 15, 1889.

J O H N S H O C K L E Y

vs.

C H O C T A W N A T I O N.

OPINION OF LEO E. BENNETT, UNITED STATES INDIAN AGENT, ON APPEAL TAKEN FROM DECISION OF THE CHOCTAW NATIONAL COUNCIL.

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The evidence in this case shows that in October, 1888, the claimant, John Shockley, filed a petition before the General Council of the Choctaw Nation, asking that all the rights, privileges and immunities of Choctaw citizenship be granted unto the petitioner, John Shockley, and his family, to wit: Mattie L. Shockley, his wife, and their several children as follows: William Shockley age 20 and his wife Elzora Shockley age 18, Charles L. Shockley age 18, Ephraim Shockley age 16, Lula Shockley age 14 and Robert Shockley age 12: and that claimant based his petition upon the allegation that as, the petitioner is a Choctaw by blood, being the son of Nancy Shockley who was a half-breed Choctaw woman who lived and died in Tennessee and that after the death of petitioner's parents he went to live with his mother's half-sister, who is a fullblood Choctaw.

The evidence taken in the case before the Council consisted of a statement by Henry Wages that "the old people" meaning the old Choctaws, told affiant that Ephraim Shockley, who was the father of petitioner, had married a Choctaw woman and that the petitioner had always represented himself as a Choctaw. Wade Hampton, a venerable and intelligent old gentleman who is well known to me and who at

the time of giving his evidence before the Council was a Senator, stated that he knew petitioner in Tennessee in the year 1859 and subsequently and that petitioner was at that time living with a woman who claimed to be Choctaw and who talked Choctaw as well as English, that she had a mark known as "six town" and she was a member of that town; that affiant heard this woman claim petitioner as her nephew and that her general reputation was of being a Choctaw. Clayton Shockley who has been personally known to me for several years as a man of good repute and entitled to credit stated that he knew petitioner for forty years, that petitioner was considered a Choctaw from childhood, that he knew petitioner's father and mother and that Nancy Shockley, the mother of petitioner, was considered a Choctaw half-breed, that after the mother's death this Aunt Huldah, a half-sister of the mother and herself a Choctaw, a full blood, took charge of petitioner and raised him; that subsequently petitioner was sent off to learn a trade and thus separated from his Aunt Huldah and his brother and sister who are still living in Tennessee.

In support of his allegation the petitioner stated that his mother had told him he was an Indian but he did not remember if she said Choctaw; that his Aunt Huldah told him they were Choctaws; that Wade Hampton often came to their house and told him that he was a Choctaw, that his aunt spoke of her kin folks being in Mississippi and that she belonged to the "six town clan."

James Goad stated that he had known the Shockley family ever since he could remember and they were always called Choctaws; that the father of petitioner was a white man but the mother a half-

breed Choctaw, that they said they were Indians, were called Indians and looked like Indians, that he is fifty-five years of age.

By resolution approved October 29th, the Choctaw Council rejected the prayer of petitioner, and this review is upon his appeal from their decision.

In a communication of November 5th to this office, the petitioner states that upon the advice of Captain J.S.Standley, the present National Agent of the Choctaw Nation, returned home from Council and bought an improvement near Stringtown. That he came to the Choctaw Nation because Wade Hampton, to whom I have previously referred as a Senator and prominent Choctaw, wrote him that he would not have any trouble in establishing his right.

On November 28th, National Secretary Telle states officially that he reduced the statements of Clayton Shockley and Mat Goad to writing and that he is satisfied from their answers that they were honest in their opinions touching the same.

On November 30th Hon. B. F. Smallwood, Principal Chief of the Choctaw Nation, wrote this office that the evidence presented appeared to his mind to be worthy of consideration and he asks that the claim of said Shickley be examined for he "believed the same to be a bona-fide citizen of our Nation."

The evidence in this case is all ex-parte but has been taken before the Choctaw authorities and the attorney of that Nation, Mr. A. Telle, under date of March 26th, 1889, submits the case upon the merit of the evidence above summarized. In my opinion the petitioner has made out a strong case with presumptive evidence which is rather persuasive than convincing. All the evidence, both pro and con that can be obtained is herewith submitted. The Choctaw Nation

by its Chief Magistrate admits the justness of petitioner's prayer and rests the case upon the evidence as presented.

In such acase as this it appears to me that there could only be one conclusion, for all the evidence is favorable to the petitioner and not only so but the Chief Magistrate of the Choctaw Nation frankly admits that it is his belief that the petitioner is a bona-fide citizen of the Choctaw Nation. In answer the Choctaw Nation rests entirely upon the Resolution of the Choctaw Council denying this petitioner's prayer. A denial is not evidence against petitioner's claims.

Having fully considered the premises it is my opinion that the petitioner, John Shockley, is a Choctaw Indian through his mother, Nancy Shockley, and as such is entitled to citizenship in the Choctaw Nation. I therefore decide this appeal in favor of the petitioner.

(Signed) Leo E. Bennett,

U. S. Indian Agent.

1 enclosure (COPY) C.A.M.
R.V.B.

Refer in reply
to the following:
L
34241-1889

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, January 8, 1890.

The Honorable,

The Secretary of the Interior.

Sir:

I have the honor to enclose, herewith, a letter of November 26, 1889, from Leo E. Bennett, Esq., Union Indian Agent at Muscogee, Indian Territory, transmitting the evidence in the case of John Shockley, and others, claimants to Choctaw citizenship, appealed from the adverse decision of the Choctaw National Council, and his findings in favor of the appellants.

Inasmuch as the claim is not contested by the Choctaw Authorities, before the Agent, it is not deemed necessary to review the evidence submitted by the claimant, which is admitted by the attorney for the Nation, to support the claim, and I have the honor to recommend that Agent Bennett's findings in the case be approved.

Very respectfully,

Your obedient servant,

T. J. Morgan,

Commissioner.

(Murchison)

(COPY).

DEPARTMENT OF THE INTERIOR.

Washington, January 9, 1890.

The Commissioner of Indian Affairs.

Sir:

I have considered the decision of U. S. Indian Agent L.E.Bennett, Union Agency, Indian Territory, in the matter of the claim of John Shockley and family, to Choctaw citizenship, which accompanied your communication of 8th instant, and in view of the fact that this claim is not contested by the Choctaw authorities, Agent Bennett's findings in favor of claimants, is, as recommended by you, approved.

The papers which accompanied your communication are herewith returned.

Very respectfully,

Geo. Chandler,

Acting Secretary.

173, Ind. Div. '90.

Nine enclosures.

Ardmore, I. T. december 16th, 1904.

To his Excellency, Theodore Rosevelt, President of the United States of America,

Washington, D.C.

Dear Sir:

Your applicants in the within petition desire to bring the matters set out therein to your personal attention. We fully realize the immense amount of business before you, and well know that your personal attention cannot be given to everything; and yet at the same time we believe we will get the wrongs done us righted if we can get the matter before your Excellency; so with the hope that you may be able to grant us a personal hearing, we humbly submit our cause into your hands, asking you to remember that we are poor and ignorant Indians, and with no one to appeal to except yourself, in whom will you permit us to say we fully confide.

Very truly yours

Mrs Loula West, "Nee Shockley.

DEPARTMENT OF THE INTERIOR,
Received
DEC 21 1904
No.10353
Indian Territory Division.

DEPARTMENT OF THE INTERIOR
FEB 10-1905.
Returned with No. 1484
inclosure 2 IND , TER. DIV.

Petition of F. K. West, et al.

Before His Excellency,

The President of the United States,

Washington, D.C.

Your petitioners herein Charles L. Shockley, Ephriam Shockley, Loula West, nee Shockley, and their Mother, Mattie L. Shockley and Elzora Shockley, wife of William Shockley, deceased, respectfully state that some of them are Indians by blood and the remained of them are white people, who have intermarried with them, and that they all live in the Indian Territory, and have lived in this Territory for over twenty years and that during all the time they have been in the Indian Territory and all time before, your petitioners claimed to be of Choctaw decent, and claimed to be entitled to all the rights, privileges and immunities incident thereto; that on the -- day of _____ these parties above upon an appeal from the Council of the Choctaw Nation to the United States Indian Agent at Muskogee, Indian Territory, were on the 15th day of July, 1889, admitted to citizenship of the Choctaw tribe of Indians in virtue of the decision rendered on that day by the Honorable Leo E. Bennett, at that time the United States Indian Agent for the Five Civilized Tribes, who by virtue of his official position and the Laws of the United States, and of the Indian Nation, had authority to pass upon their claim for citizenship and jurisdiction to entertain the appeal heretofore mentioned and to admit your petitioners to the rights of citizenship for which they were prosecuting an application.

The judgment of the Indian Agent is as follows:

Union Agency

John Shockley, et al. :
:
vs : Muskogee, Indian Territory,
:
Choctaw Nation, : July 15th, 1889.

Opinion of Leo E. Bennett.

United States Indian Agent on appeal taken from decision of the Choctaw National Council.

The evidence in this case shows that in October 1886, the claimant, John Shockley, filed a petition before the general Council of the Choctaw Nation, asking that all of the rights, privileges and immunities of Choctaw citizenship be granted unto the petitioner, John Shockley and his family, to wit:- Mattie L. Shockley, his wife, and their several children, as follows:- William Shockley, age twenty, and his wife, Elzora Shockley age eighteen, Charles L. Shockley age eighteen, Ephriam Shockley age sixteen, Lula Shockley age fourteen and Albert Shockley age twelve; and that claimant based his petition upon the allegation that he, the petitioner is a Choctaw by blood, being the son of Nancy Shockley, who was a half-breed Choctaw woman who lived and died in Tennessee and that after the death of petitioners parents he went to live with his Mother's half-sister, who is a full-blood Choctaw. The evidence taken in the case before the Council consisted of a statement by Henry Wage, that "the old people", meaning the old Choctaw told affiant that Ephriam Shockley, who was the father of petitioner had married a Choctaw woman, and that the petitioner had always represented himself as a Choctaw.

Wade Hampton, a venerable and intelligent old gentleman, who is well known to me and who at the time of giving his evidence before the Council was a Senator, stated that he knew petitioner in Tennessee in the year 1859, and subsequently and that petitioner was at that time living with a woman who claimed to be Choctaw, and who talked Choctaw as well as English; that she had a mark known as "Sixtown" and she was a member of that town; that affiant heard this woman claim petitioner as her nephew, and that her general reputation was of being a Choctaw.

Clayton Shockley who has been personally known to me for

several years as a man of good reputation and entitled to credit stated that he knew petitioner for forty years; that petitioner was considered a Choctaw from childhood; that he knew petitioner's Father and Mother, and that Nancy Shockley, the Mother of petitioner was considered a Choctaw half-breed; that after the Mother's death this Aunt Huldah, a half-sister of the Mother and herself a Choctaw full-blood took charge of petitioner and raised him; that subsequently petitioner was sent off to learn a trade and thus separated from his Aunt Huldah and his brother and sister who are still living in Tennessee.

In support of his allegation the petitioner states that his mother had told him he was an Indian but did not remember if she said Choctaw; that his Aunt Huldah told him they were Choctaws; that Wade Hampton often came to their house and told him that he was a Choctaw; that his Aunt spoke of her kin folk being in Mississippi and that she belonged to the "Sixtown Clan".

James Good stated that he had known the Shockley family e ever since he could remember and they were always called Choctaws; that the father of petitioner was a white man, but his mother was a half-breed Choctaw; that they were Indians, were called Indians and looked like Indians; that he is forty-five years of age.

By resolution approved October 29th the Choctaw Council rejected the prayer of petitioner and this review is upon his appeal from their decision.

In a communication of November 5th to this Office, the petitioner states that upon the advice of Captain J. S. Stanley, the present National Agent of the Choctaw Nation, he returned home from Council and bought an improvement near Stringtown; that he came to the Choctaw Nation because Wade Hampton, to whom I have previously referred as a Senator and prominent Choctaw wrote him that he would have no trouble in establishing his right.

On November 28th National Secretary Tell states officially that he reduced the statements of Clayton Shockley and Mat Good to writing and that he is satisfied from their answers that they were thoroughly acquainted with the facts as stated; and that they were honest in their opinions touching the same.

On November 30th Honorable B. F. Smallwood, principal Chief of the Choctaw Nation, wrote this office that the evidence presented appeared to his mind to be worthy of consideration and he asked that the claims of said Shockley be examined for he believed the same to be a bona-fide citizen of our Nation.

The evidence in this case is all ex parte but has been taken before the Choctaw Authorities and the Attorney of that Nation, Mr. Telle, under date of March 28th 1889, submits the case upon the merit of the evidence above summarized.

In my opinion the petitioner had made out a strong case with presumptive evidence which is rather persuasive than convincing. All the evidence both pro and con that can be obtained is herewith submitted. The Choctaw Nation by its Chief Magistrate submits the justice of petitioners prayer and rests the case upon the evidence as presented.

In such a case as this it appears to me that there could only be one conclusion. For all the evidence is favorable to the petitioner and not only so but the Chief Magistrate of the Choctaw Nation frankly admits that it is his belief that the petitioner is a bona-fide citizen of the Choctaw Nation. In answer the Choctaw Nation rest entirely upon the resolutions of the Choctaw Council, denying petitioner's prayer. A denial is not evidence against petitioner's claim.

Having fully considered the premises it is my opinion that the petitioner, John Shockley, is a Choctaw Indian through his Mother, Nancy Shockley, and as such is entitled to citizenship in the Choctaw Nation.

I therefore decide this appeal in favor of the petitioner.

(signed)Leo E. Bennett,

U. S. Indian Agent.

Your petitioner further states that the said Leo E. Bennett as United States Indian Agent, as aforesaid, did on the 26th day of November 1889, transmit all the papers in said cause together with the judgment, which he had rendered therein after due notice had been given to the Choctaw Authorities, to the Secretary of the Interior and the Commissioner of Indian affairs, that on January 8th, 1890, Commissioner of Indian affairs took under consideration the approval or rejection of the action of the United States Indian Agent for the Five Civilized Tribes admitting your petitioners to citizenship, and on said day last mentioned the Honorable T. J. Morgan, then Commissioner of Indian affairs made a recommendation to the Secretary of the Interior that the judgment of the United States Indian Agent for the Five Civilized Tribes in admitting these people to citizenship be approved; that on January 9th, 1890, Honorable George Chandler, then acting Secretary of the Interior passing upon the judgment of said United States Indian Agent for the Five Civilized Tribes, and upon the recommendation of the Commissioner of Indian affairs, approved of the judgment of the said Indian Agent and render judgment in accordance with the recommendation of the Commissioner of Indian Affairs. All the various matters herein above mentioned and set forth are of record in the various departments of the Secretary of the Interior, and are accessible and can be had.

Subsequently Congress passed an act on the 10th day of June 1896, directing the Commission to the Five Civilized Tribes, commonly known as the Dawes Commission to prepare and forward to the Secretary of the Interior correct rulls of all of the members of the various Five Civilized Tribes. Your petitioners applied to this Commission for enrollment. The act of June 10th 1896, provided,

as follows: "The rolls of citizenship of the various tribes as now existing are hereby confirmed", and the acts also provided that the parties whose claims for citizenship are disputed or denied or not acted upon might have their rights determined by the said Commission, but with this later provision your petitioners have no concern, because at that time the rights of your petitioners herein had been determined, and they were upon the rolls of citizenship of the Choctaw Nation and had theretofore. On the _____day of _____, 1893, drawn their pro rata part of the leased district money going to the members of the Five Civilized Tribes, a record of this will be found in the possession of the said Dawes Commission.

As stated above your petitioners applied to the Dawes Commission, aforesaid, to be enrolled under that provision of the act of June 10th, 1896, alluded to above, providing, "That the rolls of citizenship of the several tribes as now existing are now confirmed." On the 7th day of June 1897, Congress of the United States passed an act defining what the said words "Rolls of Citizenship" meaning in the act of 1896 said provision is as follows "that the words "rolls of citizenship" as used in act of June 10th 1896, making provision for current and contingent expenses of the Indian Department for fulfilling treaty stipulations, that the various tribes for the fiscal year ending June 30th, 1897, should be construed to mean the last authenticated rolls of each tribe which have been approved by the Council of the Nation and all decendants as have been entered on such rolls and such additional names and their decendants as have been added either by the Council of such Nation; the duly authorized Court thereof or the Commission under the act of June 10th, 1896.

As stated above at the time the later act was passed

your petitioners were then upon the authenticated rolls of the Choctaw Nation, a record of which is in the possession of the so called Dawes Commission, and in virtue of the decision of the United States Indian Agent admitted them to citizenship and the approval of their judgment forwarded by the Secretary of the Interior, as well as under the above acts of Congress, they were entitled to be placed upon the rolls of citizenship of the Choctaw Nation. This was done and your petitioners were duly enrolled. The Choctaw Nation, however, were agrieved by the action of the Dawes Commission and although they had no right or authority to do so, and in open violation of the law appealed from the decision of the Dawes Commission to the United States Court for the Central District of the Indian Territory, which said Court your petitioners allege had no jurisdiction of this cause whatever;

Subsequently on the __day of _____the Court disregarding their want of jurisdiction entered judgment, however, approving of the action of the Dawes Commission and admitted again and anew your petitioners to all the rights, privileges and immunities of the citizens of the Choctaw Tribe of Indians, which action of said Court however added nothing of the rights which they were already possessed of as the rights of your petitioners were confirmed by the actd of Congress heretofore alluded to;

Subsequently the Congress of the United States under Section 31, 32 and 33 of the act approved on the 1st day of July 1902, created a Court known as the Choctaw-Chickasaw Citizenship Court. This Court proceeding under the authority granted it by this act of Congress annulled all of the judgments heretofore rendered by the United States Courts in the Indian Territory, including your petitioners' judgment, whereupon your petitioners after the cause had been transferred to the Choctaw-Chickasaw Citizenship Court filed a written motion to have their cause dismissed, still

alleging and asserting that the Courts had no jurisdiction over them as their rights had been fixed by the judgment of the United States Indian Agent, which judgment had been confirmed by the said decision of the Secretary of the Interior, and their names had been duly and legally placed upon the authenticated rolls of citizenship of the Choctaw Nation, and further that Congress had confirmed that roll, which confirmation of the roll by the Congress of the United States above alluded to carried with it an absolute right for your petitioners enrollment and the absolute duty upon the part of the Dawes Commission to make the enrollment of them. This Choctaw-Chickasaw Citizenship Court absolutely ignored your petitioners' motion, whereupon your petitioners declined and refused to submit their cause to that Court, this motion will be found with the records of this cause now in the hands of the said Choctaw-Chickasaw Citizenship Court. Your petitioners allege and charge that the three members of this Court were violently prejudiced against your petitioners, and that one of them long before he had tried any of the cases coming before him had stated to various parties that he intended to deny rights of citizenship to as many as he possibly could, and when the motion was made to have your petitioners case dismissed in this Court one of the Judges before the public and from his judicial seat in the Court Room, in an angry and contentious voice declared that your petitioners should never leave that Court until a decision had been rendered denying them of the rights of citizenship, and your petitioners charge that they grossly and wantonly trampeled upon the rights of your petitioners, yet in utter disregard of all this the said Choctaw-Chickasaw Citizenship Court falsified its judgment and entered a judgment to the effect that your petitioners had submitted the cause to them and further denying all rights of citizenship to your petitioners;

Subsequently your petitioners made application of the

Commission to the Five Civilized Tribes to be enrolled as citizens of the Choctaw Nation in virtue of the aforesaid judgment of the Secretary of the Interior, and under the acts of Congress heretofore alluded to confirming the rolls of citizenship upon which the cause of your petitioners is to be found. The justness of your petitioners request was admitted by the said Dawes Commission, and they admit that the rights of your petitioners were fixed and vested by the said acts of Congress and the Secretary of the Interior and that your petitioners ought to be enrolled, but claimed that the Honorable Secretary of the Interior had issued an order, which as interpreted by the said Dawes Commission preventing them from enrolling your petitioners upon the ground that the adverse decision had been made to their claim by the aforesaid, Choctaw-Chickasaw Citizenship Court, whose judgment your petitioners then allege as they now allege was rendered without right or authority, and in open defiance of the law for the purpose of preventing your petitioners' enrollment by the said Dawes Commission, which allegation your petitioners beg to submit is true and correct.

Now your petitioners in conclusion allege that they are humble citizens of the Choctaw Nation and are looking to the Great Government of the United States, and especially to your Honorable Self to protect them in their rights and defend them against the wrongs and injustice;

Wherefore they respectfully pray your Excellency for an order directed to the Honorable Secretary of the Interior, requesting him to investigate your petitioners allegations herein made, and if found to be true place them upon the final rolls of the Choctaw Nation and that they be permitted to share in the share in the distribution of the tribal property, which is now being alloted

in severalty to those whose names appear upon said final rolls.

Loula West nee Shockley

Subscribed and sworn to before me this the 16th day of Dec. A.D. 1904.

J. S. Mullen

(SEAL) Notary Public.

DEPARTMENT OF THE INTERIOR
Received
DEC 21 1904.
Enc. No. 1 of No. 10353
Indian Territory Division.

DEPARTMENT OF THE INTERIOR,
FEB 10, 1905.
Returned with No. 1484
inclosure 1 Ind. Ter. Div.