

ON MOTION FOR REVIEW.

J.R.W.

I.T.D.

3687-1905.

November 11, 1905.

The Secretary of the Interior.

Sir:

I received by reference of April 22, 1905, "for consideration," the motion by counsel for the Choctaw and Chickasaw Nations for reconsideration of my opinion of February 21, 1905, in case of Joe and Dillard Perry (I. T. D. 12092-1904), for enrollment as citizens by blood of the Chickasaw Nation. The motion is based on a general assignment of error, that " the findings of fact and conclusions of law reached are erroneous." Counsel upon request has been orally heard, and the general assignment is in oral argument limited and defined to be that the application was made too late and is barred by section 34 of the act of July 1, 1902 (32 Stat., 641, 649), and by the act of May 31, 1900, (Stat., 22, 236).

For all purposes of the case as now presented it is conceded that the applicants are the children of Eliza Perry, who was one-quarter Indian, one-quarter white, and one-half negro; or in another part of the evidence one-half white and one-half negro, a Chickasaw freedman. Their father was Charley Perry, a recognized Chickasaw citizen by blood, but the record does not show whether his Chickasaw blood was unmixed. Assuming it to be so, the children were five-eighths Chickasaw, one-eighth white, and one quarter negro, or one-half Chickasaw, one-quarter white, and one-eighth negro. Eliza and Charlie cohabited as husband and wife, and Joe was born to them March 20, 1892. After his birth, in 1892,



his parents were married at Parris, Texas, when under arrest for illicit cohabitation. They returned to the nation and continued to cohabit as husband and wife until Charley's death, February 20, 1896. Dillard was born to them May 5, 1894. The father always acknowledged the children as his own. There is in the record an admission that she was previously married without a license, "out of the Bible," by a clergyman, when about fifteen years old, about 1889, to one Mose James, a Creek, who deserted her two months thereafter, and after lapse of two years without hearing from him she began cohabitation with Perry. At one place in her testimony she testified that James, her first spouse, was living when she married Perry, in another that she does not know whether James at the time she married Perry was living or dead. She informed the officer who performed the second marriage of the first and its circumstances, and he told her that the former was illegal for lack of a license, and performed the second marriage ceremony. I have found no Chickasaw statute, and counsel have cited none prohibiting marriage between a Chickasaw and a negro, and the constitution, treaties, and Laws of the Chickasaw Nation, published at Atoka, 1890 appear to contain no such act, though there are acts requiring record of marriages (p. 76), validating marriages irregularly celebrated before October 12, 1876 (p. 78), marriage "by mutual consent," and those under Choctaw law prior to August 30, 1876 (p. 112), and one of October 19, 1876, amended September 24, 1887, requiring a license for marriage between a citizen and a non-citizen (p. 142). I am therefore advised of no objection to the marriage of these parties, except the admission of the mother that about two years before meeting with Perry, and about four years prior to her marriage to him, s



she was married to James, who may have then been living, though the fact is left in doubt. Upon such facts I was, February 21, 1905, of opinion that Joe and Dillard Perry were shown to be descendants of Charley Perry, a recognized citizen of the Chickasaw Nation, born within the nation and to its allegiance.

At the time of my former opinion the question now presented by counsel for the nation-- while the facts raising it were contained in the record-- was not discussed in the briefs, and failed to be considered.

Section 34 of the act of July 1, 1902, supra, so far as here material, provides that:

During the ninety days first following the date of the final ratification of this agreement, the Commission to the Five Civilized Tribes may receive application for enrollment only of persons whose names are on the tribal rolls, but who have not heretofore been enrolled by said Commission, commonly known as "delinquents", . . . and such infant children as may have been born to recognized and enrolled citizens on or before the date of the final ratification of this agreement; but the application of no person whomsoever for enrollment shall be received after the expiration of said ninety days.

The act, section 72 and 73, provided for the holding of an election for ratification on part of the Indian nations, and that it should not be effective until ratified at a tribal election, and if ratified, should operate from that date. I am advised that it was ratified by the tribes at an election held September 25, 1902, so that the ninety days limited for presentation of applications extended to include December 24, 1902.

There are distinct classes of persons provided for by section 34, the last of which are, infant children born to recognized and enrolled citizens, which would include these applicants who are ~~xxx~~ infants and were born to Charley Perry during his life a recognized



Chickasaw citizen. They are therefore entitled, if they applied on or before December 24, 1902. The mother of the applicants testified, October 1904, as to the date of their application, as follows:

Q. When did you first claim these children were entitled to enrollment as Chickasaw citizens by blood?---A.....  
Last August.

Q. August of what year?---A. 1903.

She further testified to the circumstances fixed by dates of record respecting allotments, which definitely fix the date of the first assertion of their claim as being made after July 9, 1903.

In the Chickasaw Nation freedmen are not citizens, but are a class of non-citizen persons, resident within the Chickasaw Nation, to whom certain rights are granted by the nation and the Congress of the United States. Were they a class of citizens, their application would not be, within the meaning of the limitation in the act of 1902, supra, for enrollment, but for correction of the record by their removal from one class of citizens to another class of citizens. Freedmen not being citizens of the Chickasaw Nation, the application cannot be considered as one to correct the record, but to admit and enroll them into a citizenship to which they previously did not belong and their right to which the record shows had not been asserted or applied for. Their application was therefore within the limitation of section 34 of the act of 1902 supra, and was made too late.

Though this question was not presented by counsel for the nation in the former brief, it is a question as to the jurisdiction of the Commission over the subject matter, and may be taken at any stage of the cause. It does not admit of doubt that the subject of limiting the time within which such rights must be asserted is within the power of Congress, and that its action is conclusive.



I am therefore of opinion that the application must be denied.

A memorandum by counsel for the applicants refers to the judgment of the Citizenship Court, November 28, 1904, in case of T. J.

Minor, Jr. (No. 117), and states that:

I am informed that a number of transfers have been made from to the freedmen roll. Its importance as reference in the Joe and Dillard Perry case consists mainly in the fact that transfers were so made after the limit of time had expired when original applications could be made.

I have examined the judgment in the Minor case, and while it does not show at what time his right to enrollment as a citizen by blood was first asserted, I infer from the nature of the jurisdiction of the Citizenship Court that he must have made application under the act of June 10, 1896, for enrollment as a citizen by blood as otherwise his case would not have reached that court for adjudication.

In the present case it does not appear that any application, or assertion of right, of these applicants for enrollment as citizens by blood was ever made until August, 1903, after December 24, 1902. If such was made under the act of 1896, or at any time prior to and including December 24, 1902, the record before me is incomplete. This opinion is based solely on the fact that no right to enrollment of these applicants as citizens by blood was asserted until after December 24, 1902.

It is stated in the brief of counsel for the applicants that their allotments as freedmen have been cancelled, and that their applications to take allotments as citizens were denied. It is needless to say that such procedure, if the statement be true, was



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erroneous. The applicants are enrolled freedmen, and having selected allotments as such, were entitled to hold them until their right to enrollment as citizens was fully established, and their allotments, if canceled, should be reinstated.

Very respectfully,

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Assistant Attorney General.

Approved: November 11, 1905.

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Secretary.



*Member or "Members" Citizens or Citizens"  
Act July 1, 1902 "not including freedmen"*

DEPARTMENT OF THE INTERIOR  
OFFICE OF ASSISTANT ATTORNEY GENERAL

In the matter of the application of Joe and Dillard Perry  
for enrollment as citizens by blood of the Chickasaw Nation.

SYNOPSIS OF ORAL ARGUMENT in support of motion for a recon-  
sideration of the decision of the Assistant Attorney-General dated  
February 21, 1905.

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The Commission to the Five Civilized Tribes and the Secretary  
of the Interior have no jurisdiction to entertain this application.  
The record shows that these applicants are and have always been  
Chickasaw freedmen and have been duly enrolled as such and selected  
their allotments as such.

In August 1904 the idea was conceived that since it was  
alleged that their father was a Chickasaw Indian that they might be  
enrolled as Chickasaw Indians. Whether it is a fact or not that  
their father was a Chickasaw Indian is not a matter for considera-  
tion in this connection.

Without reference to the facts there is no jurisdiction to  
entertain their applications for enrollment as citizens by blood  
of the Chickasaw Nation after the expiration of the time fixed in  
the act of Congress of July 1, 1902. The time therein fixed within  
which applications could be filed was December 25, 1902 or within  
three months after the ratification of the supplementary agreement  
on September 25, 1902. (see section 34, act of July 1, 1902 entitled  
"An act to ratify and confirm an agreement with the Choctaw and  
Chickasaws Nations or tribes of Indians and for other purposes").

Even then under that act there was jurisdiction to entertain  
the applications only of persons whose names appear upon the tribal  
rolls of the Choctaw or Chickasaw Nations or who have been duly and  
lawfully admitted as such. (see act of May 31, 1900, Indian approp-



riation act) as follows:

"That the said Commission shall continue to exercise all authority heretofore conferred upon it by law. But it shall not receive, consider or make any record of any application of any person for enrollment as a member of any tribe in Indian Territory who has not been a recognized citizen thereof, and duly and lawfully enrolled or admitted as such. ...."

It is suggested that it is the purpose to transfer the names of these applicants from the freedman roll to the roll of Chickasaw Indians by blood. However it may be expressed the position of the applicants is that they are applicants for enrollment as Chickasaw Indians by blood and that their present application as such was never conceived until more than one and one half years after the expiration of the time within which such application could have been made. There is just as much authority for the Department to transfer the names which appear upon the schedule of owners of improvements on the government reservation at Sulphur Springs, Indian Territory to the Chickasaw Indian roll as there is to transfer the names of these applicants from the Chickasaw freedmen roll to the roll of Chickasaw Indians by blood. Names could as legally be transferred from the tax rolls of the District of Columbia.

Chickasaw freedmen have no relations whatever to Chickasaw Indians. Chickasaw freedmen are neither Indians nor citizens. The roll of Chickasaw freedmen happens to be made up by the same tribunal but has no connection whatever or any relation to the Chickasaw Indian roll. Chickasaw freedmen are such by mere gratuity and are given 40 acres of land as a gratuity because the Chickasaws and Choctaws agreed to it. The land which they are to receive is given them and it has been judicially determined that even that land is a mere gratuity and not given as a matter of right such determination having been made under the provisions of the supplementary agreement above referred to. The government of the United States



will pay the Chickasaws and Choctaws from one half to one million of dollars for the lands given these freedmen. If by the mere use of the word transfer the whole purpose of the law with reference to the filing of applications could be defeated the law would be useless. The law says that no application shall be received after December 25, 1902 and it certainly means what it says. If these people were full blood Chickasaw Indians of unquestioned right and status there would be no jurisdiction to entertain their applications if made at the time these applications were made.

Respectfully submitted,

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Attorneys for the Choctaw and Chickasaw  
Nations.

Indian Territory,  
Central District.

G. Rosenwinkel, on oath states, that a copy of the foregoing argument was mailed to Chester Howe at Washington, D.C. by registered mail as evidenced by the registry receipt attached hereto.

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Subscribed and sworn to before me this \_\_\_ day of October 1905.

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Notary Public.



DEPARTMENT OF THE INTERIOR  
OFFICE OF ASSISTANT ATTORNEY GENERAL

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It is suggested that it is the purpose to transfer the names of these applicants from the freedman roll to the roll of Chickasaw Indians by blood. However it may be expressed the position of the applicants is that they are applicants for enrollment as Chickasaw Indians by Blood and that their present application as such was never conceived until more than one and one half years after the expiration of the time within which such application could have been made. There is just as much authority for the Department to transfer the names which appear upon the schedule of owners of improvements on the government reservation at Sulphur Springs, Indian Territory to the Chickasaw Indian roll as there is to transfer the names of these applicants from the Chickasaw freedmen roll to the roll of Chickasaw Indians by blood. Names could as legally be transferred from the tax rolls of the District of Columbia.

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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 mailed to Chester Howe at Washington, D.C. by registered mail as evidenced by the registry receipt attached hereto.

Subscribed and sworn to before me this \_\_\_ day of October 1905.

Notary Public.



BEFORE THE DEPARTMENT OF THE INTERIOR.

In the matter of the application for the enrolment of Joe Perry, and Dillard Perry, as citizens by blood of the Chickasaw Nation.

Brief of Applicants.

Statement of the facts.

From the evidence in this case the following facts appear: Benjamin Franklin Perry, and Margaret Perry (now Margaret Lee) were the parents of five children, to-wit: Geo. Perry, now dead, Tom Perry, Lizzie Rodke, wife of Lawrence Rodke, Alice Walker, and Charley Perry, the latter dying in the month of February, 1896; that Charley Perry took up, and began to live with Eliza James, in 1891; that in March, 1892, as the fruits of their cohabitation, <sup>Joe Perry,</sup> the applicant was born; that shortly afterwards, they were arrested upon the charge of fornication, or unlawfully living together, and taken to Paris, Texas, for trial; that under the advice of their attorney there, to escape further prosecution, they married; that the preacher who married them asked Eliza if she had been married before, and she told him that, without a license, she had been married to Mose James, "out of the bible"; that the preacher or official who married her to Charley Perry, said her marriage to James under the circumstances was not a lawful marriage-that she should have been married under a license- and proceeded with the marriage ceremony between her and Charley Perry, which was ~~performed~~ under a license procured by Charley Perry at Paris, as she supposes, as he did not have a license when they got there; that Eliza had only lived with Mose James about two months, and had not seen him for



more than two years prior to the time she first began to live with Charley Perry; that when she and Charley Perry returned from Paris, they lived together as man and wife until Charley's death in 1896; a part of the time they kept house to themselves, and the remainder they lived with Eliza's mother, the witness, Harriett Taylor; after the marriage, the younger of the applicants herein, Dillard Perry, was born, and given the name Dillard, by Charley Perry; at the time Charley Perry and Eliza James were taken to Paris, a great many others from their section were arrested and taken there on the same charge, all of whom, under an agreement with the Government, in order to escape prosecution, agreed to marry or separate and quit cohabiting, which they did, and the cases against them were nollied accordingly; that after their return from Paris, Eliza James was universally among their neighbors, called, and known as Eliza Perry; that she and Charley Perry lived and cohabited as man and wife; they went together to church and other public gatherings, and he helped to take care of the applicants herein, on such occasions, and spoke of, and referred to them as his children, and to Eliza, their mother, as his wife; he gave orders on the different stores at which he traded, to Eliza, requesting the merchants to let "my wife" 'have such goods as she wants and I will pay for them', which he did; he told his mother, Margaret Lee, that applicants were his children, and always, in conversations with others about them, referred to them as his sons; they called him "papa", and he recognized them as his offspring. Charley's parents and family were opposed to his living with Eliza, and did every thing in their power to induce him to desert, and quit her companionship; his mother swears she did all she could to persuade him to

*She did not know then & does not know, whether he was living or dead.*

*she has never heard of him since they departed.*



leave Eliza, without avail; Lizzie Rodke, his sister, was mad and in tears about it, and denounced his marriage to a negress and his brother George, had a fight with him because he would not leave her and go home with him, and referred to Eliza as "Charley's woman", and Charley's wife".

At the close of the evidence it was admitted by the attorneys for the Nations that Charley Perry was a Chickasaw Indian by blood, though the fact does not appear in the transcript of the evidence, and Harriett Taylor, Eliza's mother, swears that the mother of Eliza's father, was a half Indian, which would make him a quarter, and Eliza, an eighth Indian, and if this testimony is true, then both the parents of these applicants are Indians by blood.

#### A R G U M E N T .

That Charley Perry was a Chickasaw Indian by blood, and that the applicants herein, Joe, and Dillard Perry, are his sons, are facts too clearly established by the proof in this case to be successfully denied, and we presume they will not be disputed. Indeed, at the close of the taking of the testimony the first proposition was conceded by the attorney representing the Nations.

The record leaves as little doubt upon the question of the paternity of these children. Charley Perry's mother swears that Charley told her that they were his sons, and every other witness in the record testifies to like admissions upon his part to them.

The mother, Eliza, swears it, and Charley Perry's conduct toward them at church and other public gatherings-nursing, keeping and taking such care of them as fathers can and do-his referring to them as his children, and their calling him "papa", all at-



test it. They are his sons.

Will it be contended that their parents were never married, and that applicants are illegitimates? We think the marriage is proven. The leading case in Arkansas on Descents and Distributions, Kelly's heirs vs McGuire, 15 Ark. 555, is conclusive of the question in that State. We quote.

"Reputation or hearsay, is admissible in all matters of pedigree; and so, the repeated declarations of the father, that he had married, and by the marriage had two children, naming them; his recognition of them as his legitimate children, their recognition of him as their father, and of each other as brother and sister; and the fact that the marriage and legitimacy of the children were known and spoken of in the family, are sufficient to prove the marriage of the father and the legitimacy of the children".

Greenleaf on Evidence, 16<sup>th</sup> edition, Vol. 1, page 231, contains this language: "Evidence of the parties being received in society as man and wife, and being visited by respectable families in the neighborhood, and of their attending church and public places together as such, and otherwise demeaning themselves in public, and addressing each other as persons actually married, is not hearsay, but strictly and truly original evidence of facts from which the marriage might well be inferred". And numerous authorities are cited by him in support of the doctrine.

Now every witness in this record, save Margaret Lee, who did not live in their neighborhood, swears that after their return from Paris, which was before the birth of Dillard Perry, they lived and kept house together as man and wife, attended church and other public places as such, demeaned themselves and addressed each other as persons actually married, and were received and generally regarded in the community as man and wife. Charley Perry's own brothers and sisters admitted the fact and referred to them as being married. This, Mr Greenleaf says is not hearsay, but original evidence from which the fact of marriage might well be inferred, and unless



overcome by proof is conclusive. There is not the remotest scintilla of evidence against it.

But we apprehend that the Molsie Butler citizenship case will be urged as an authority against the enrolment of applicants herein. We havent that case before us but our recollection is that the facts are wholly different from those in this case. The blood or citizenship of the father in the Buller case was not in issue. The record proves him a negro, and as we now remember, the sole alleged rights of applicants were based upon the testimony of the grandmother, also a negress, that the grandfather of applicants was Choctaw, and she referred to him both as Choctaw and as freedman.

But if his Indian blood was held to be proven by the testimony of this witness, then we have equally as strong proof that the mother of applicants herein is possessed of Indian blood, for her mother, Harriett Taylor swears that the father of Eliza was one fourth Indian.

Besides all this, there is not a line of law unless found in the Butler case, that would deny the children of an Indian father and negro mother, citizenship. Dozens of such citizens are now on the roll. It is the known custom and rule of Indians and Indian Courts to admit to citizenship and as members of the tribe, all who had Indian blood, no matter how they became Indians, whether by lawful marriage or not. This is proven in the Joe N. Love case , # 85, Citizenship Court, Tishomingo.

R. H. Love, the father of Joe N. Love, was a Chickasaw Indian, and had a living wife at the time he began to live with Ann E. Mizell, Joe N's mother. Was never married to Ann E. Misel, but lived in adultery with her; she had no Indian blood, but was



a white woman. The son was admitted to citizenship as a Chickasaw Indian by blood, upon the ground that his father was an Indian. Joe, and Dillard Perry's, is a stronger case. Their father was an Indian, their mother of Indian blood; Dillard is the legitimate son of a lawful marriage; Joe stands in the plight of Joe N. Love, the acknowledged son of a common law marriage. The one has been admitted, the others should be.

We do not think the argument that the mother of these applicants has negro blood in her veins, should affect the rights of these applicants. The Honorable, the Secretary of the Interior, knew this at the time this case was re-opened. He knew that both mother and applicants were on the freedman roll, and acted favorably upon the petition to re-open the case solely upon the allegation that the father of applicants was an Indian by blood. If the fact that negro blood in the mother was sufficient to disbar applicants from the citizenship roll, the case would not have been re-opened, but applicants would have been saved the great expense of making the proof adduced since the hearing was granted, by the simple announcement that the fact of their mother being of negro blood, would disbar them notwithstanding their father was an Indian. But so far is this from his opinion that, in substance his letter states an Indian by blood, that applicants rely on the fact that Charley Perry, was their father, and mentions that such a name appears on the Leased District Payment of 1893, but not on the payment roll of 1896, the possibility of his having died before the 1896 payment, and of his being the Charley Perry to whom they refer, and that they should therefore have an opportunity of proving the fact, thus leaving the inference that if they did, they were entitled



to enrolment as citizens. This is exactly what they have done.

Respectfully submitted,

*King & Turner*

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Attys. for Applicants.



COPY.

DC#35064

J.W.H.

J. P.

DEPARTMENT OF THE INTERIOR  
WASHINGTON.

LLB

September 14, 1904.

I.T.D.6204)  
6862) 1904.  
7232)  
7497)

Commission to the Five Civilized Tribes,  
Muskogee, Indian Territory.

Gentlemen:

The receipt is acknowledged of your communication of August 9, 1904, transmitting the petition of Eliza Perry for the enrollment of her children, Joe and Dillard Perry, as Chickasaws by blood instead of Chickasaw freedmen. This petition is accompanied by the affidavits of R. S. Floyd and Harriet Taylor.

Further investigation was ordered in this matter on May 14, 1904. Of this action the applicant and her attorney and the attorneys for the Choctaw and Chickasaw Nations were notified June 1, 1904. No appearance was made by or on behalf of the applicants within the 30 days allowed for presenting testimony.

Accordingly on July 20, 1904, you so reported in a communication which was forwarded by the Commissioner of Indian Affairs August 1, 1904, with the recommendation that the enrollment of said children as Chickasaw freedmen be allowed to stand. On August 4, 1904, the Department concurred in this recommendation stating:



"In the absence of any showing on behalf of the applicants in support of their enrollment as Chickasaws by blood, and for the further reason that no explanation has been offered why such showing was not made, it must be presumed that it is the wish of the applicants, and those representing them, to forego further action in the matter. The recommendation of the Acting Commissioner is accordingly affirmed."

In transmitting the petition referred to above of Eliza Perry the Commissioner of Indian Affairs on August 24, 1904, quoted that portion of departmental letter which appears above and stated that in view of the circumstances under which the Indian Office recommended that the enrollment of said children be allowed to stand and under which the Department approved said recommendation, it was the opinion of the Indian Office that the petition of their mother, Eliza Perry, for a reopening of their case should be allowed. It was accordingly recommended.

On August 25, 1904, you acknowledged the receipt of departmental letter of August 4, 1904, referred to above, and advised the department that prior to the receipt thereof you had transmitted the papers herein referred to, filed by Eliza Perry, in support of the rehearing requested.

The Department is also in receipt of a communication from Messrs. Mansfield, McMurray & Cornish, attorneys for the Choctaw and Chickasaw nations, relative to Eliza Perry's petition in which they "inquire if the petition referred to bears evidence of the service of a copy upon us, and if not, would ask that same be given no further consideration, until a copy of all the papers



filed have been furnished us, and due proof thereof made."

The petition of Mrs. Perry is in the nature of a request for the continuance of the rehearing proceedings ordered by the Department May 14, 1904. She furnishes excellent reasons why she failed to comply with the opportunities afforded her. The Granting of continuances is a matter within the discretion of the Department, to be exercised by it upon proper showing made by a party to the case, or of its own motion where the proper and timely discharge of the Department's business demands.

As an instance where a continuance was granted upon motion of one of the parties to the case even though service was not made upon the opposite party, reference is here made to the request of Messrs. Mansfield, McMurray & Cornish themselves, granted January 30, 1904, in the matter of a rehearing in the Mississippi Choctaw case of Samuel B. Gee et al.

As stated above the attorneys for the Choctaw and Chickasaw nations were advised on June 1, 1904, of the rehearing ordered May 14, 1904, of the time within which the same was to be had and the questions at issue. Their interests have been fully protected.

Furthermore while exercising its discretion in the matter of ordering rehearing continuances the Department desires it to be understood, of course, that all reasonable care will be had concerning the giving of notices to all parties in all cases.

The Department concurs in the recommendation of the



Indian Commissioner of August 24, 1904, referred to herein. A copy of his letter is inclosed.

You will allow the applicants 30 days from date of notice to present additional facts in support of their claim, and so notify all parties in interest, at the same time advising the attorneys for the Choctaw and Chickasaw Nations of the disposition made herein respecting their letter of August 27, 1904.

Respectfully,

Thos. Ryan,

Acting Secretary.

1 inclosure.



COPY.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
WASHINGTON, August 24, 1904.

Refer in reply to the following:

LAND  
54892-1904.

( C O P Y )

The Honorable,

The Secretary of the Interior.

Sir:

Referring to Departmental letter of August 4, 1904, (I.T.D. 6292-1903--6204-1904), there is enclosed a report from the Commission dated August 9, 1904, transmitting petition of Eliza Perry, for the enrollment of Joe and Dillard Perry, her children, as Chickasaw Indians instead of Chickasaw freedmen, which petition is accompanied by the affidavits of R. S. Floyd and Harriet Taylor.

August 1, 1904, the office transmitted a communication from the Commission, dated July 20, last, concerning this subject and recommended that the enrollment of Joe and Dillard Perry as Chickasaw freedmen be allowed to stand, as it was shown that their mother had not taken any steps to introduce evidence relative to their right to enrollment as Chickasaws by blood. In letter above referred to the Department said:

"In the absence of any showing on behalf of the applicants in support of their enrollment as Chickasaws by blood, and for the further reason that no explanation has ~~been~~ been offered why such showing was not made, it must be presumed that it is the wish of the applicants, and those representing them, to forego further action in the matter. The recommendation of the Acting Commissioner in accordingly affirmed."



Eliza Perry sets forth in her petition that the Commission's notice of June 1, 1904, was mailed to her at Center; that she was living at Wewoka, Seminole Nation; and that she did not learn until August 1 that the time in which she was granted permission to file additional testimony had expired. She asks that the case of Joe and Dillard Perry be re-opened, and that she be allowed to introduce proof touching their right to enrollment as citizens by blood of the Chickasaw Nation.

In view of the circumstances under which this office recommended that the enrollment of these parties as Chickasaw freedmen be allowed to stand, and under which the Department approved such recommendation, it is believed that the petition of their mother for the re-opening of their case should be allowed, and I so recommend.

Very respectfully,

W. A. Jones,

Commissioner.

G.A.W.-L.C.



Land.  
49486-1904.

(COPY).

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
WASHINGTON, August 1, 1904.

The Honorable,

The Secretary of the Interior,

Sir:

Referring to Department letter of July 12, 1904- I.T.D.786 -, there is enclosed a report from the Commission to the Five Civilized Tribes dated July 20, 1904, in which it is stated that on June 1, 1904, in accordance with Departmental instructions of May 14, last Eliza Perry, mother and natural guardian of Joe and Dillard Perry, and her attorney, S. T. Wiggins, were advised that they would, up to and inclusive of July 1, 1904, receive, for transmission to the Department, petition or other papers, with a view to having the Department consider whether said children are entitled to enrollment as citizens by blood of the Chickasaw Nation instead of Chickasaw freedmen, and that on the same date the attorneys for the Choctaw and Chickasaw Nations were given similar notice.

It is said that no papers of any character have been filed by any of the persons mentioned, and that no extension of time has been requested by the applicants or any person representing them.

From the Commission's statements, and considering that the applicants have had sufficient opportunity in which to make any showing they might desire in the premises, it is believed that the enrollment of Joe and Dillard Perry as Chickasaw freedmen should be allowed to stand, and the office so recommends.

Very respectfully,  
A.C. Tonner, Acting Commissioner.

GAW-Ma



Department of the Interior.  
Commission to the Five Civilized Tribes.

I, Tams Bixby, Acting Chairman, United States Commission to the Five Civilized Tribes, do hereby certify that a thorough search of the tribal rolls of the Chickasaw Nation has been made for the names of the following persons:

Anderson, John

Brown, Jim

Duling, Sam

Folsom, Elias

Impson, Isaac

Pettigrew, Edmond

Roberson, J. R.

Tyson, Adam

Brown, A. B.

Collins, A. R.

Fitcha, John

Hawkins, Noah

Ocehubby, Robert


Perry, E. C.

Steward, E. S.

Underwood, Jim

and none of the above names are found upon such rolls.

In witness whereof I have hereunto set my hand this twenty-first day of August, A. D., 1902.

  
\_\_\_\_\_  
Acting Chairman.



DC-28125-1904.  
ITD.6292-1903.  
6204-1904.  
L.R.S.

(COPY).  
DEPARTMENT OF THE INTERIOR, J.W.H. FHE.  
WASHINGTON, August 4, 1904.

Commission to the Five Civilized Tribes,  
Muskogee, Indian Territory,

Gentlemen:

The Department is in receipt of your report of July 20, 1904, rendered in compliance with Departmental letters of May 14, and July 12, 1904, relative to the matter of transferring the names of Joe and Dillard Perry from the roll of Chickasaw freedmen to the roll of Chickasaws by blood.

You report that in accordance with departmental instructions you informed the parties in interest that they would be allowed thirty days within which to submit a petition and other papers, with a view to having the Department consider whether the children named above are entitled to enrollment as citizens by blood of the Chickasaw Nation instead of Chickasaw freedmen, but that no petition or papers of any character have been filed on behalf of these children, nor has any request been presented for an extension of the time allowed.

Transmitting your report August 1, 1904, the Acting Commissioner of Indian Affairs recommends that the enrollment of Joe and Dillard Perry as Chickasaw freedmen be allowed to stand.

In the absence of any showing on behalf of the applicants in support of their enrollment as Chickasaws by blood, and for the further reason that no explanation has been offered why such showing was not made, it must be presumed that it is the wish



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(COPY).  
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Transmitting your report August 1, 1904, the Acting Commissioner of Indian Affairs recommends that the enrollment of Joe and Dillard Perry as Chickasaw freedmen be allowed to stand.

In the absence of any showing on behalf of the applicants in support of their enrollment as Chickasaws by blood, and for the further reason that no explanation has been offered why such showing was not made, it must be presumed that it is the wish



of the applicants, and those representing them, to forego further action in the matter. The recommendation of the Acting Commissioner is accordingly affirmed.

A copy of the Acting Commissioner's letter is inclosed.

Respectfully,

THOS. RYAN,

Acting Secretary.

1 inclosure.