

DEPARTMENT OF JUSTICE,

February 19, 1907.

SIR: I have the honor to communicate to you my opinion in certain Choctaw Indian citizenship cases, the first two submitted by your letter of May 29, 1906, and the others by the direction of the President under date of January 19, 1907.

1. The first case is that of Myrtie Randolph and her brother, W. J. Thompson, in regard to which you say:

"Myrtie Randolph and W. J. Thompson are children of Giles Thompson, white, intermarried in the Choctaw Nation in Mississippi prior to the treaty of September 27, 1830 (7 Stat., 333), and was one of the parties named by supplementary Article II (ib. 340) as entitled to a section and a half, reserved to him from the ceded lands, to be so selected as 'to include their present residence and improvement.' His first and second wives were Choctaws. His name appears on page 64, volume 7, American State Papers (Public Lands), as a beneficiary of Article XIX of the treaty of September 27, 1830, and on page 28, volume 1, of the record in suit of the *Choctaw Nation v. United States*, Court of Claims. He was registered under the treaty as citizen of the Choctaw Nation, Mushulatubbee's District, and with his family was transported under the treaty as Choctaws, at expense of the United States, from Mississippi to the Choctaw Nation, west, prior to October 24, 1833, when he petitioned the President, from Doakesville, near the Red River, in the southern part of the Choctaw Nation, to approve sale of his Mississippi lands to James Gay, of Mississippi, and for issue of patent therefor (copy A inclosed). In the Choctaw Nation, west, in Indian Territory, in 1863, in accordance to Choctaw law, he married a white woman, citizen of the United States, of whom the applicants were born. He was living October 19, 1865, and was paid by the Choctaw Nation for beeves furnished June, 1865. (Copy of act of council of October 19, 1865, is inclosed, B.) He continued to live in the nation, and was recognized as a citizen until his death, aged 76 years, and his estate was administered in the Choctaw courts as that of an Indian and within their jurisdiction. The applicants, his children, were born in the Choctaw Nation, were admitted to and attended the Choctaw schools as Choctaws, and in all respects enjoyed and were accorded the privileges of native-born Choctaws. The applicants were enrolled by Choctaw Committee on Citizenship in 1892 as Choctaw citizens. The Department is not yet advised whether they are borne on any other of the Choctaw rolls. They settled and improved tribal lands, as the father before had done in Mississippi, as Choctaws, erected homes, and were never ousted or objected to or regarded as intruders.

"September 8, 1896, these applicants and others applied to the Commission to the Five Civilized Tribes for enrollment under the act of June 10, 1896 (29 Stat., 321, 339), and December 7, 1896, were denied. Applicants appealed to the United States court, southern district, Indian Territory, which, January 18, 1898, reversed the Commission and admitted the applicants. From this judgment the nation appealed and the judgment was affirmed (reported as *Stephens v. Cherokee Nation* and *Choctaw Nation v. Robinson*, 174 U. S., 445, foot note page 469, case No. 589; *Same v. Randolph et al.*). Subsequently, under the act of July 1, 1902 (32 Stat., 641, 646-9), the matter was brought by appeal of the nations to the ~~Choctaw-Chickasaw~~ *Choctaw-Chickasaw* Citizenship Court, which, November 29, 1904, denied the application—copy of opinion therein, and in *Wall v. Choctaw Nation et al.*, and in *E. H. Bounds v. Choctaw and Chickasaw Nations*, whereon both were founded, are inclosed (C, D, E)."

The validity and finality of the citizenship court are therefore a vital feature of this case. In regard to its judgment you say in your letter:

"Bearing upon the validity of this judgment, your attention is called to the fact that the act of June 10, 1896, gave no power to the Commission to the Five Civilized Tribes to purge the tribal rolls, which were by the act confirmed. Power to purge the rolls was first conferred on the Commission by the act of June 7, 1897 (30 Stat., 84), and further by section 21, act of June 28, 1898 (30 Stat., 495, 502). Wherefore this Department holds that no jurisdiction was given the Commission, or to the courts on appeal therefrom, to exclude persons having tribal recognition and borne on the tribal rolls, but that such persons, notwithstanding prior adverse action by the Commission or the courts, are entitled to enrollment under the act of 1898 and supplementary acts, unless their inscription on the tribal rolls was procured by fraud or was without authority of law. Such has been the rule of this Department since decision in the case of Wiley Adams, May 21, 1903, discussed and concurred in by the Assistant Attorney-General, Interior Department (Opinions of March 24, 1905), in cases of Benjamin J. Vaughn and Mary Elizabeth Martin. In Vaughn's case counsel for the nations acceded to it as the proper rule."

To determine the validity and the finality of the judgment of the Citizenship court, as well as other questions arising in these cases, it is necessary to consider carefully the entire legislation of the Congress on this subject.

The act of June 10, 1896 (29 Stat., 321, 339), directed the Commission to the Five Civilized Tribes in the Indian Territory to continue the exercise of the authority theretofore conferred upon them to negotiate with such tribes for the extinguishment of the tribal title to their lands, by the cession of the same or a part thereof to the United States, or their allotment in severalty to the members of such tribes, with a view to the ultimate creation of a State or States embracing such lands.

That act also provided—

“That said Commission is further authorized and directed to proceed at once to hear and determine the application of all persons who may apply to them for citizenship in any of said nations, and after such hearing, they shall determine the right of such applicant to be so admitted and enrolled: *Provided, however,* That such application shall be made to such Commissioners within three months after the passage of this Act. The said Commission shall decide all such applications within ninety days after the same shall be made. That in determining all such applications said commission shall respect all laws of the several nations or tribes, not inconsistent with the laws of the United States, and all treaties with either of said nations or tribes, and shall give due force and effect to the rolls, usages, and customs of each of said nations or tribes: *And provided, further,* That the rolls of citizenship of the several tribes as now existing are hereby confirmed, and any person who shall claim to be entitled to be added to said rolls as a citizen of either of said tribes and whose right thereto has either been denied or not acted upon, or any citizen who may within three months from and after the passage of this Act desire such citizenship, may apply to the legally constituted court or committee designated by the several tribes for such citizenship, and such court or committee shall determine such application within thirty days from the date thereof.

“In the performance of such duties said Commission shall have power and authority to administer oaths, to issue process for and compel the attendance of witnesses, and to send for persons and papers, and all depositions and affidavits and other evidence in any form whatsoever heretofore taken where the witnesses giving said testimony are dead or now residing beyond the limits of said Territory, and to use every fair and reasonable means within their reach for the purpose of determining the rights of persons claiming such citizenship, or to protect any of said nations from fraud or wrong, and the rolls so prepared by them shall be hereafter held and considered to be the true and correct rolls of persons entitled to the rights of citizenship in said several tribes: *Provided,* That if the tribe, or any person, be aggrieved with the decision of the tribal authorities or the commission provided for in this Act, it or he may appeal from such decision to the United States district court: *Provided, however,* That the appeal shall be taken within sixty days, and the judgment of the court shall be final.

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

“The Commission is hereby required to file the lists of members as they finally approve them with the Commissioner of Indian Affairs to remain there for use as the final judgment of the duly constituted authorities.”

The act of June 7, 1897 (30 Stat., 62, 84), contained this provision:

“That said Commission shall continue to exercise all authority heretofore conferred on it by law to negotiate with the Five Tribes, and any agreement made by it with any one of said tribes, when ratified, shall operate to suspend any provisions of this Act if in conflict therewith as to said nation: *Provided,* That the words ‘rolls of citizenship,’ as used in the Act of June tenth, eighteen hundred and ninety-six, making appropriations for current and contingent expenses of the Indian Department and fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-seven, shall be construed to mean the last authenticated rolls of each tribe which have been approved by the council of the nation, and the descendants of those appearing on such rolls, and such additional names and their descendants as have been subsequently added, either by the council of such nation, the duly authorized courts thereof, or the Commission under the act of June tenth, eighteen hundred and ninety-six. And all other names appearing upon such rolls shall be open to investigation by such Commission for a period of six months after the passage of this Act. And any name appearing on such rolls and not confirmed by the Act of June tenth, eighteen hundred and ninety-six, as herein construed, may be stricken therefrom by such Commission where the party affected shall have ten days’ previous notice that said Commission will investigate and determine the right of such party to remain upon such roll as a citizen of such nation: *Provided, also,* That any one whose name shall be stricken from the roll by such Commission shall have the right of appeal, as provided in the Act of June tenth, eighteen hundred and ninety-six.”

The act of June 28, 1898 (30 Stat., 495, 502-3), provided:

“Sec. 21. That in making rolls of citizenship of the several tribes, as required by law, the Commission to the Five Civilized Tribes is authorized and directed to take the roll of Cherokee citizens of eighteen hundred and eighty (not including freedmen) as the only roll intended to be confirmed by this and preceding Acts of Congress, and to enroll all persons now living whose names are found on said roll, and all descendants born since the date of said roll to persons whose names are found thereon; and all persons who have been enrolled by the tribal authorities who have heretofore made permanent settlement in the Cherokee Nation whose parents, by reason of their Cherokee blood, have been lawfully admitted to citizenship by the tribal authorities, and who were minors when their parents were so admitted; and they shall investigate the right of all other persons whose names are found on any other rolls and omit all such as may have been placed thereon by fraud or without authority of law, enrolling only such as may have lawful right thereto, and their descendants born since such rolls were made, with such inter-married white persons as may be entitled to citizenship under Cherokee laws.

"Said Commission is authorized and directed to make correct rolls of the citizens by blood of all the other tribes, eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made, with such intermarried white persons as may be entitled to Choctaw and Chickasaw citizenship under the treaties and the laws of said tribes.

"The rolls so made, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon, with their descendants thereafter born to them, with such persons as may intermarry according to tribal laws, shall alone constitute the several tribes which they represent."

The act of May 31, 1900 (31 Stat., 221, 236), provided:

"That 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, and its refusal of such application shall be final when approved by the Secretary of the Interior."

The act of March 3, 1901 (31 Stat., 1058, 1077), contained this provision:

"The rolls made by the Commission to the Five Civilized Tribes, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon shall alone constitute the several tribes which they represent; and the Secretary of the Interior is authorized and directed to fix a time by agreement with said tribes or either of them for closing said rolls, but upon failure or refusal of said tribes or any of them to agree thereto, then the Secretary of the Interior shall fix a time for closing said rolls, after which no name shall be added thereto."

The act of July 1, 1902 (32 Stat. 641), ratified an agreement made by the Commission to the Five Civilized Tribes with the Commission representing the Choctaw and Chickasaw tribes. This agreement was subsequently ratified by those two nations as required therein. In regard to rolls of citizenship it provided:

"27. The rolls of the Choctaw and Chickasaw citizens and Choctaw and Chickasaw freedmen shall be made by the Commission to the Five Civilized Tribes, in strict compliance with the act of Congress approved June 28, 1898 (30 Stats., 495), and the act of Congress approved May 31, 1900 (31 Stats., 221), except as herein otherwise provided: *Provided*, That no person claiming right to enrollment and allotment and distribution of tribal property, by virtue of a judgment of the United States court in the Indian Territory under the act of June 10, 1896 (29 Stats., 321), and which right is contested by legal proceedings instituted under the provisions of this agreement, shall be enrolled or receive allotment of lands or distribution of tribal property until his right thereto has been finally determined.

"28. The names of all persons living on the date of the final ratification of this agreement entitled to be enrolled as provided in section 27 hereof shall be placed upon the rolls made by said Commission; and no child born thereafter to a citizen or freedman and no person intermarried thereafter to a citizen shall be entitled to enrollment or to participate in the distribution of the tribal property of the Choctaws and Chickasaws.

"29. No person whose name appears upon the rolls made by the Commission to the Five Civilized Tribes as a citizen or freedman of any other tribe shall be enrolled as a citizen or freedman of the Choctaw or Chickasaw nations.

"30. For the purpose of expediting the enrollment of the Choctaw and Chickasaw citizens and Choctaw and Chickasaw freedmen, the said Commission shall, from time to time, and as early as [practicable, forward to the Secretary of the Interior lists upon which shall be placed the names of those persons found by the Commission to be entitled to enrollment. The lists thus prepared, when approved by the Secretary of the Interior, shall constitute a part and parcel of the final rolls of citizens of the Choctaw and Chickasaw tribes and of Choctaw and Chickasaw freedmen, upon which allotment of land and distribution of other tribal property shall be made as herein provided. Lists shall be made up and forwarded when contests of whatever character shall have been determined, and when there shall have been submitted to and approved by the Secretary of the Interior lists embracing names of all those lawfully entitled to enrollment, the rolls shall be deemed complete. The rolls so prepared shall be made in quintuplicate, one to be deposited with the Secretary of the Interior, one with the Commissioner of Indian Affairs, one with the principal chief of the Choctaw Nation, one with the governor of the Chickasaw Nation, and one to remain with the Commission to the Five Civilized Tribes.

"31. It being claimed and insisted by the Choctaw and Chickasaw nations that the United States courts in the Indian Territory, acting under the Act of Congress approved June 10, 1896, have admitted persons to citizenship or to enrollment as such citizens in the Choctaw and Chickasaw nations, respectively, without notice of the proceedings in such courts being given to each of said nations; and it being insisted by said nations that, in such proceedings, notice to each of said nations was indispensable, and it being claimed and insisted by said nations that the proceeding in the United States courts in the Indian Territory, under the said Act of June 10, 1896, should have been confined to a review of the action of the Commission to the Five Civilized Tribes, upon the papers and evidence submitted to such commission, and should not have extended to a trial de novo of the question of citizenship; and it being desirable to finally determine these questions, the two nations, jointly, or either of said nations acting separately and making the

other a party defendant, may, within 90 days after this agreement becomes effective, by a bill in equity filed in the Choctaw and Chickasaw citizenship court hereinafter named, seek the annulment and vacation of all such decisions by said courts. Ten persons so admitted to citizenship or enrollment by said courts, with notice to one but not to both of said nations, shall be made defendants to said suit as representatives of the entire class of persons similarly situated, the number of such persons being too numerous to require all of them to be made individual parties to the suit; but any person so situated may, upon his application, be made a party defendant to the suit. Notice of the institution of said suit shall be personally served upon the chief executive of the defendant nation, if either nation be made a party defendant as aforesaid, and upon each of said ten representative defendants, and shall also be published for a period of four weeks in at least two weekly newspapers having general circulation in the Choctaw and Chickasaw nations. Such notice shall set forth the nature and prayer of the bill, with the time for answering the same, which shall not be less than thirty days after the last publication. Said suit shall be determined at the earliest practicable time, shall be confined to a final determination of the questions of law here named, and shall be without prejudice to the determination of any charge or claim that the admission of such persons to citizenship or enrollment by said United States courts in the Indian Territory was wrongfully obtained as provided in the next section. In the event said citizenship judgments or decisions are annulled or vacated in the test suit hereinbefore authorized, because of either or both of the irregularities claimed and insisted upon by said nations as aforesaid, then the files, papers and proceedings in any citizenship case in which the judgment or decision is so annulled or vacated, shall, upon written application therefor, made within ninety days thereafter by any party thereto, who is thus deprived of a favorable judgment upon his claimed citizenship, be transferred and certified to said citizenship court by the court having custody and control of such files, papers and proceedings, and, upon the filing in such citizenship court of the files, papers and proceedings in any such citizenship case, accompanied by due proof that notice in writing of the transfer and certification thereof has been given to the chief executive officer of each of said nations, said citizenship case shall be docketed in said citizenship court, and such further proceedings shall be had therein in that court as ought to have been had in the court to which the same was taken on appeal from the Commission to the Five Civilized Tribes, and as if no judgment or decision had been rendered therein.

"32. Said citizenship court shall also have appellate jurisdiction over all judgments of the courts in Indian Territory rendered under said Act of Congress of June tenth, eighteen hundred and ninety-six, admitting persons to citizenship or to enrollment as citizens in either of said nations. The right of appeal may be exercised by the said nations jointly or by either of them acting separately at any time within six months after this agreement is finally ratified. In the exercise of such appellate jurisdiction said citizenship court shall be authorized to consider, review, and revise all such judgments, both as to findings of fact and conclusions of law, and may, whenever in its judgment substantial justice will thereby be subserved, permit either party to any such appeal to take and present such further evidence as may be necessary to enable said court to determine the very right of the controversy. And said court shall have power to make all needful rules and regulations prescribing the manner of taking and conducting said appeals and of taking additional evidence therein. Such citizenship court shall also have like appellate jurisdiction and authority over judgments rendered by such courts under the said act denying claims to citizenship or to enrollment as citizens in either of said nations. Such appeals shall be taken within the time hereinbefore specified and shall be taken, conducted and disposed of in the same manner as appeals by the said nations, save that notice of appeals by citizenship claimants shall be served upon the chief executive officer of both nations: *Provided*, That paragraphs thirty-one, thirty-two and thirty-three hereof shall go into effect immediately after the passage of this Act by Congress.

"33. A court is hereby created to be known as the Choctaw and Chickasaw citizenship court, the existence of which shall terminate upon the final determination of the suits and proceedings named in the last two preceding sections, but in no event later than the thirty-first day of December, nineteen hundred and three. Said court shall have all authority and power necessary to the hearing and determination of the suits and proceedings so committed to its jurisdiction, including the authority to issue and enforce all requisite writs, process and orders, and to prescribe rules and regulations for the transaction of its business. It shall also have all the powers of a circuit court of the United States in compelling the production of books, papers and documents, the attendance of witnesses, and in punishing contempt.

"Except where herein otherwise expressly provided, the pleadings, practice and proceedings in said court shall conform, as near as may be, to the pleadings, practice and proceedings in equity causes in the circuit courts of the United States. The testimony shall be taken in court or before one of the judges, so far as practicable. Each judge shall be authorized to grant, in vacation or recess, interlocutory orders and to hear and dispose of interlocutory motions not affecting the substantial merits of the case. Said court shall have a chief judge and two associate judges, a clerk, a stenographer, who shall be deputy clerk, and a bailiff. The judges shall be appointed by the President, by and with the advice and consent of the Senate, and shall each receive a compensation of five thousand dollars per annum, and his necessary and actual traveling and personal expenses while engaged in the performance of his duties. The clerk, stenographer, and bailiff shall be appointed by the judges, or a majority of them, and shall receive the following yearly compensation: Clerk, two thousand four hundred dollars; stenographer, twelve hundred dollars; bailiff, nine hundred dollars. The compensation of all these officers shall be paid by the United States in monthly installments. The moneys to pay said compensation are hereby appropriated, and there is also appropriated the sum of five thousand dollars, or so much thereof as may be necessary, to be expended under the direction of the Secretary of the Interior, to pay such contingent expenses of said court and its officers as to such Secretary may seem proper. Said court shall have a seal, shall sit at such place or places in the Choctaw and Chickasaw nations as the judges may designate, and shall hold public sessions, beginning the first Monday in each month, so far as may be practicable or necessary. Each judge and the clerk and deputy clerk shall be authorized to administer oaths. All writs and process issued by said court shall be served by the United States marshal for the district in which the service is to be had. The fees for serving process and the fees of witnesses shall be paid by the party at whose instance such process is issued or such witnesses are subpoenaed, and the rate or amount of such fees shall be the same as is allowed in civil causes in the circuit court of the United States for the western district of Arkansas. No fees shall be charged by the clerk or other officers of said court. The clerk of the United States court in Indian Territory, having custody and control of the files, papers, and proceedings in the original citizenship cases, shall receive a fee of two dollars and fifty cents for transferring and certifying to the citizenship court the files, papers, and proceedings in each case, without regard to the number of persons whose citizenship is involved therein, and said fee shall be paid by the person applying for such transfer and certification. The judgment of the citizenship court in any or all of the suits or proceedings so committed to its jurisdiction shall be final. All expenses necessary to the proper conduct, on behalf of the nations, of the suits and proceedings provided for in this and the two preceding sections shall be incurred under the direction of the executives of the two nations, and the Secretary of the Interior is hereby authorized, upon certificate of said executives, to pay such expenses as in his judgment are reasonable and necessary out of any of the joint funds of said nations in the Treasury of the United States."

It appears that the agreement in these paragraphs provides for the establishment of the Choctaw and Chickasaw Citizenship Court, and gives it jurisdiction of a test suit to annul and vacate the decisions of the United States courts in the Indian Territory admitting persons to citizenship and enrollment as citizens of the Choctaw and Chickasaw nations, respectively, on the ground of want of notice to both of said nations and because the United States courts tried such cases *de novo*, with a right, in the event such judgments should be annulled because of either or both of the irregularities mentioned on the part of any party thus deprived of a favorable judgment to remove his case to the Citizenship court, where such further proceedings were to be had therein "as ought to have been had in the court to which the same was taken on appeal from the Commission to the Five Civilized Tribes, and if no judgment or decision had been rendered therein;" and also "appellate jurisdiction over all judgments of the courts in Indian Territory, rendered under said act of Congress of June tenth, eighteen hundred and ninety-six, admitting persons to citizenship or to enrollment in either of said nations." In the exercise of such appellate jurisdiction the citizenship court was "authorized to consider, review, and revise all such judgments, both as to findings of fact and conclusions of law, and may, whenever in its judgment substantial justice will thereby be subserved, permit either party to any such appeal to take and present such further evidence as may be necessary to enable said court to determine the very right of the controversy."

It will be noted that the agreement further provides (paragraph 33) that "the judgment of the citizenship court in any or all of the suits or proceedings so committed to its jurisdiction shall be final."

The agreement also contained this provision:

"34. During the ninety days first following the date of the final ratification of this agreement, the Commission to the Five Civilized Tribes may receive applications 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 intermarried white persons as may have married recognized citizens of the Choctaw and Chickasaw nations in accordance with the tribal laws, customs, and usages on or before the date of the passage of this act of Congress, 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 the said ninety days: *Provided*, That nothing in this section shall apply to any person or persons making application for enrollment as Mississippi Choctaws, for whom provision has herein otherwise been made."

By the act of April 21, 1904 (33 Stat., 189, 204), it was provided that the Commission to the Five Civilized Tribes should conclude its work and terminate on or before July 1, 1905, and cease to exist on that date, the powers theretofore conferred upon it being continued.

By the act of March 3, 1905 (33 Stat., 1048, 1060), it was provided "that the work of completing the unfinished business, if any, of the Commission to the Five Civilized Tribes shall devolve upon the Secretary of the Interior, and that all the powers heretofore granted to the said Commission to the Five Civilized Tribes are hereby conferred upon the said Secretary on and after the first of July, nineteen hundred and five."

By the act of April 26, 1906 (34 Stat., 137), it was provided:

"That after the approval of this act no person shall be enrolled as a citizen or freedman of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes of Indians in the Indian Territory, except as herein otherwise provided, unless application for enrollment was made prior to December first, nineteen hundred and five, and the records in charge of the Commissioner to the Five Civilized Tribes shall be conclusive evidence as to the fact of such application; and no motion to reopen or reconsider any citizenship case, in any of said tribes, shall be entertained unless filed with the Commissioner to the Five Civilized Tribes within sixty days after the date of the order or decision sought to be reconsidered except as to decisions made prior to the passage of this act, in which cases such motion shall be made within sixty days after the passage of this act."

By that act the rolls of citizenship of the several tribes were required to be completed by March 4, 1907.

After very carefully considering this legislation in the light of the circumstances under which it was enacted, I am constrained to the conclusion that the Citizenship court had jurisdiction of the cases now under consideration, and that its judgment therein is final.

By the act of June 10, 1896, the Commission to the Five Civilized Tribes was "authorized and directed to proceed at once to hear and determine the application of *all* persons who may apply to them for citizenship in any of said nations." It is true that this act also confirmed the then existing rolls of the several tribes, but the question whether an applicant was, as matter of fact, already duly enrolled upon one of the rolls so confirmed constituted, in my opinion, an issue upon which the Commission was authorized and required to pass. The applicant may be fairly held to have waived by his application the conclusiveness of the confirmation of the rolls in his case.

Independently of any such waiver, I do not see how the proposition that the Commission did not have jurisdiction of the case of a person whose name was upon a tribal roll can be maintained in the face of the provision of the act of June 10, 1896, that "in determining all said applications said Commission shall * * * give due force and effect to the *rolls*, usages, and customs of each of said nations or tribes." I think that act left it to the Commission to determine whether or not the applicant was upon a roll which was confirmed, and evidently it did not so hold in these cases.

It is unnecessary, however, to determine what might have been the effect of an adverse judgment in the case of an applicant whose name was upon a roll so confirmed, for such confirmation was certainly and very materially modified by the act of June 7, 1897, and apparently altogether withdrawn by the act of June 28, 1898. The act of June 7, 1897, provided that the words "rolls of citizenship" as used in the act of June 10, 1896, should be construed to mean the "last authenticated rolls of each tribe which have been approved by the council of the nation." I am informed that there never was any such an authenticated roll of the Choctaw tribe, either at the time of the passage of the act of June 10, 1896, or subsequently thereto. Moreover, by the act of June 28, 1898, it was provided that in making rolls of citizenship of the several tribes, the Commission should take the Cherokee roll of 1880 as the *only* roll intended to be confirmed by that and preceding acts of Congress. It seems to be clear from the further provisions of the act that the Congress did not here refer to the Cherokee rolls only, but had in mind those of all the tribes. To my mind, however, the decisive consideration is that Congress, knowing there were certain cases of contested citizenship in the Choctaw and Chickasaw nations, referred these cases, under carefully defined conditions, to the Citizenship court and made the determination of that court in those cases final. This provision of law repealed, as to cases in this category, any inconsistent provisions (if any there were) in the act of 1896 or any other prior act. These cases were unquestionably within the terms of the law; the claimants had been admitted to citizenship by decisions of the United States courts, and it seems clear that, under the agreement with the Choctaw and Chickasaw nations ratified by the act of July 1, 1902, it was intended that the Citizenship court should have a revisory jurisdiction of judgments of the United States courts in the Indian Territory in citizenship cases, irrespective of the grounds on which these suits had been entertained by the said courts. That agreement was made after the confirmation given to the tribal rolls had been

qualified, if not withdrawn, and, we must presume, with a knowledge of the fact that the Commission, under the act of June 10, 1896, had exercised jurisdiction in the case of persons whose names appeared upon some of the rolls of the tribes. Its action seems to show that Congress did not intend to confirm any roll of the Choctaw and Chickasaw tribes; but, however that may be, when, with a knowledge of all that had gone before, it created the Citizenship court, this was done, in my opinion, with the evident purpose of giving it jurisdiction of all citizenship cases which had been decided by the United States courts for the Indian Territory on appeal from the judgments of the Commission. As neither Congress nor the nations made any distinction in the act and agreement referred to as to the cases of persons whose names were on a tribal roll which might have been confirmed by the act of June 10, 1896, if Congress had not decided otherwise, I do not think any other authority can make this distinction. Indeed, as I have suggested, the applicants themselves, having voluntarily submitted to the jurisdiction of the Commission, might be fairly held estopped to now deny it.

I understand that it is not contended, nor do I think it could be successfully maintained, that any authority to review the judgments of the Citizenship court was intended to be conferred upon you by Congress when it made the rolls, as finally compiled, subject to your approval (see paragraph 30 of the agreement ratified by the act of July 1, 1902). Neither do I think that the provision in the act of April 26, 1906, above quoted, as to enrolling persons and entertaining motions to reopen or reconsider citizenship cases, was intended to recognize or confer any such authority, the purpose of that provision being simply to limit the time in which the authority previously conferred might be exercised. To hold thus would be to treat the later act as a repeal of so much of the former as expressly declared the judgments of the Citizenship court to be final, which seems to me untenable.

This disposes of the cases of Myrtie Randolph and her brother, W. J. Thompson. Whatever their intrinsic merits, these claims have been finally decided adversely to the claimants by the judgment of the citizenship court.

2. The second case is that of Cyrus H. Kingsbury and Lucy E. Littlepage, in regard to whom you say:

"Cyrus H. Kingsbury and Lucy E. Littlepage are children of John Parker-Kingsbury and wife, Hannah Mariah, white, affiliated by act of the Choctaw council of November 15, 1854, which enacted:

"That all rights, privileges, and immunities of Choctaw citizens are hereby granted unto John Parker-Kingsbury and to his wife, Hannah Mariah, and they shall enjoy all the benefits to which the citizens of this nation may hereafter be entitled, except in the participation of any sum of money which may now be due the nation under treaty stipulations heretofore made."

"Both applicants were born in the Choctaw Nation and have always resided there as its recognized citizens. Both are on the tribal Choctaw 1885 census roll, Atoka County, Nos. 819, 821. September 7, 1896, they applied to the Commission to the Five Civilized Tribes under the act of June 10, 1896, were enrolled, and no appeal was taken. Cyrus H. Kingsbury is on the 1896 Choctaw census roll. Lucy E. Littlepage is on the partial roll of Choctaw citizens by blood, and her husband, Patrick H. Littlepage, is on the roll of intermarried citizens—both rolls approved by the Secretary of the Interior, October 21, 1904. Patent, signed and executed by the principal chief of the Choctaw Nation, conveying to Cyrus H. Kingsbury allotted tribal lands as a citizen by blood, is now before the Secretary of the Interior for approval, but is not yet approved or delivered. No objection to occupation of tribal lands was ever made against either applicant as an intruder."

Paragraph 27 of the agreement with the Choctaw and Chickasaw nations, ratified by the act of July 1, 1902, provides that the rolls of Choctaw and Chickasaw citizens shall be made by the Commission to the Five Civilized Tribes "in strict compliance" with the acts of June 28, 1898, and May 31, 1900.

Section 21 of the act of June 28, 1898, after providing that in making rolls of citizenship of the several tribes the Commission shall take the roll of Cherokee citizens of 1880 as the only roll intended to be confirmed by that and preceding acts of Congress, and providing for the enrollment of the Cherokees, authorizes and directs the Commission "to make correct rolls of the citizens *by blood* of all the other tribes, eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made, *with such intermarried white persons as may be entitled to Choctaw and Chickasaw citizenship under the treaties and the laws of said tribes.*"

It might be held that the only white persons intended to be enrolled by this act were such intermarried ones as were entitled to citizenship under the treaties and laws of the tribes, if it were not for the reference to the tribal rolls, on which, as appears from your statement as to these parties, there were undoubtedly the names of adopted whites. The only names which the act declares shall be eliminated from the tribal rolls are those placed thereon by fraud or without authority of law, and it is not suggested that the names of these parties were open to either of those objections.

Light, it seems to me, is thrown on this matter by the act of May 31, 1900, which was also directed to be strictly complied with in making the rolls of citizenship of these tribes. That act is plainly intended to be of a restrictive nature, yet a fair construction of it would seem to authorize the enrollment of these parties. It provides that the Commission shall continue to exercise all authority theretofore 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 the Indian Territory who has not been a recognized citizen thereof and duly and lawfully enrolled or admitted as such, and its refusal of any such application shall be final when approved by the Secretary of the Interior."

This act recognizes the authority of the Commission to receive, consider, and record the application of a recognized citizen of any of the tribes referred to who has been duly and lawfully enrolled or admitted as such, its refusal of the application of any person not so qualified being made final when approved by the Secretary of the Interior.

These applicants appear to possess all of these qualifications. Your letter states that they were born and have always resided in the Choctaw Nation as its recognized citizens; that their names appear upon various tribal rolls, and that they were admitted by the Commission in 1896 as citizens, no appeal from the decision of the Commission being taken by the nation. That they were duly and lawfully enrolled by the tribal authorities would seem to result from the fact that both of their parents had been adopted into the tribe, and the failure to contest the action of the Commission in admitting them would indicate that their citizenship rights were regarded as indisputable.

You say that you would not have doubt that these applicants, born to the allegiance of the Choctaw Nation, are entitled to be enrolled, but for the report of my predecessor to the President of February 24, 1906, in the case of persons without Indian blood, and the order to you of February 27, 1906, that "in the President's judgment, without reference to the act of Congress, it is perfectly clear equity demands that the son of white parents, who has no Indian blood in his veins, even though *one* of these parents has been adopted into the tribe, should not be treated as an Indian."

The report of Mr. Moody and the order of the President thereon had reference to the case of children of white persons, one of whom had previously acquired Indian citizenship by virtue of his marriage into the Choctaw tribe, but had afterwards, upon the death of his Indian spouse, married a white person. Mr. Moody was of opinion that the right of citizenship acquired by an intermarried white was a personal right and could not be conferred upon children by such subsequent marriage, which is also the view taken by the citizenship court.

I see no reason to question the soundness of that conclusion, assuming that the matter is still open for consideration. It is expressly provided by the Choctaw act of November 9, 1875, providing for the intermarriage of whites with Choctaws, that a white person intermarrying into the tribe in pursuance of that act should forfeit his rights of citizenship acquired thereunder, if upon the death of his Indian spouse he married "a white man or woman, or person, as the case may be, having no rights of Choctaw citizenship by blood."

I am aware that it has been held by one of the United States courts in the Indian Territory that this law is inconsistent with the treaty of April 28, 1866, but, with great respect for the said court, I do not so consider it. That treaty provides:

"ART. 38. Every white person who, having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw Nation, or who has been adopted by the legislative authorities, is to be deemed a member of said nation, and shall be subject to the laws of the Choctaw and Chickasaw nations according to his domicile, and to prosecution and trial before their tribunals, and to punishment according to their laws in all respects as though he was a native Choctaw."

This article merely recognizes a pre-existing custom of the Choctaw and Chickasaw nations as to the intermarriage and adoption of white persons, and can not fairly be said to have been intended to prevent them from decitizenizing an intermarried person for good cause; and what better cause *could* there be than that the tie which bound him to the tribe, and because of which alone citizenship was granted, was broken?

An act of the Choctaw Nation, approved October 30, 1896, providing for the enrollment of Choctaw citizens, provided that "~~the~~ Commission shall enroll as citizens all who come under any one of the following heads, and all such persons are hereby declared citizens of the Choctaw Nation:"

"V. All white men who have married Choctaw women by blood in strict conformity to the laws of the Choctaw Nation of 1875 regulating intermarriage, or the Chickasaw law of 1876 regulating intermarriage, and have not been divorced from same *nor married any other than a Choctaw woman by blood since said marriage.*"

"VIII. All white women who have married Choctaws by blood legally and have not been divorced from them *nor since married any other than a Choctaw by blood; a recognized citizen and resident of the Choctaw or Chickasaw Nation.*"

That act further provided that "the commissions are especially prohibited from enrolling as citizens any persons coming under the following heads:"

"II. *The children of any marriage where neither the father nor mother are Choctaws by blood, though one or both of said children's parents may have enjoyed intermarried rights.*

"III. All persons who, though they had at one time intermarried rights, *afterwards married a person not a Choctaw by blood (being the father or mother of Choctaw children shall not save a person from this clause).*

"VI. All white persons who have been admitted to citizenship with their wife or husband by the General Council and afterwards *the wife or husband, Choctaw by blood, dying, the surviving party, being a white person, has intermarried with a person not a Choctaw by blood.*"

It is clear that, at least since 1875, the Choctaw Nation never intended that a white person intermarrying into the tribe should have power to confer citizenship upon his children by a subsequent marriage to other than a citizen by blood. The informal opinion of Attorney-General Moody unquestionably had reference to cases of this character.

The case of the present applicants is quite different from that just referred to. Here both parents were adopted into the tribe. It must have been contemplated that they might have children; and if so, what was to be their citizenship if not that of their parents?

The facts in the present case answer this inquiry. Your letter states that these applicants have always been recognized as citizens of the Choctaw Nation; that their names appear on the tribal census roll of 1885, as well as upon the rolls prepared in pursuance of the Choctaw act of October 30, 1896. It seems clear, therefore, irrespective of the action of the Commission in admitting them as citizens in pursuance of the authority granted to it by the act of June 10, 1896, that they are clearly entitled to be enrolled for allotment purposes.

3. THE CASE OF LOULA (OR LULU) WEST, ET AL.

It appears from the papers in this case that Loula West applied to the Commission to the Five Civilized Tribes, pursuant to the act of June 10, 1896, for admission to citizenship in the Choctaw Nation and was admitted as a citizen by blood; that the Choctaw Nation appealed to the United States Court for the Central District of the Indian Territory, which affirmed the judgment of the Commission; that this judgment was annulled and vacated by the judgment of the Citizenship court in the test case provided for by the act of July 1, 1902 (32 Stat., 641, 647), and thereupon she removed her case to that court, which denied her application.

This case is similar to that of Myrtie Randolph and her brother, W. J. Thompson, children of Giles Thompson, above referred to, in that it involves the question of the finality of the judgment of the Citizenship court, it being contended that the Commission in the first instance and the Citizenship court ultimately on appeal had no jurisdiction of the case because at the time of her application to the Commission her name was upon a tribal roll.

For the reasons heretofore stated, I think this contention is not well founded, and that the Citizenship court had jurisdiction of such cases, and its judgments therein were final.

4. THE CASE OF WILLIAM C. THOMPSON ET AL.

In this case the record shows that Thompson applied to the Commission to the Five Civilized Tribes, pursuant to the act of June 10, 1896, for the enrollment of himself, his wife, and children, with the exception of a daughter, Mary M. McNeese, who made a separate application for herself, her husband, a white man, and their children. The Commission denied Thompson's application, and also that of his daughter. No appeal was taken from these judgments, and it is contended, on behalf of the nation, that under the act of June 10, 1896, they were final and conclusive against the right of these parties to be enrolled.

The claimants, however, rely upon the fact that their names appear upon the tribal roll prepared in pursuance of the Choctaw acts of September 18 and October 30, 1896.

In my judgment, the action of the Commission, under the act of June 10, 1896, not having been appealed from, was final and conclusive against the right of these parties to be admitted to citizenship, and the Choctaw Nation, even if it attempted to do so, had no right thereafter to admit them. It will be observed that the act of June 10, 1896, provided that applications should be made to the Commission within three months after the passage of the act, and that the Commission should decide all such applications within ninety days after they were made; that the rolls of citizenship of the several tribes as then existing were confirmed, and "any person who shall claim to be entitled to be added to said rolls as a citizen of either of said tribes and whose right thereto has either been denied or not acted upon, or any citizen who may within three months after the passage of this act desire such citizenship, may apply to the legally constituted court or committee designated by the several tribes for such citizenship, and such court or committee shall determine such application within thirty days from the date thereof;" and that "if the tribe or any person be aggrieved with the decision of the tribal authorities or the Commission provided for in this act, it or he may appeal from such decision to the United States District Court: *Provided, however,* That the appeal shall be taken within sixty days, and the judgment of the court shall be final."

As I read this act, it authorized application to be made either to the Commission to the Five Civilized Tribes or the "legally constituted court or committee" of such tribes, with a right of appeal by the party aggrieved by the decision of either to the United States Court. Therefore, and in view, also, of the fact that the act contemplated contemporaneous action by the Commission and the tribal courts, I think it clear that the provision that "any person who shall claim to be entitled to be added to said rolls [the existing rolls of the tribe] as a citizen of either of said tribes whose right thereto has either been denied or not acted upon," had reference to a previous denial or failure to act of the tribal authorities, and not to the subsequent action or non-action of the Commission, the tense of the verbs "has either been denied or not acted upon," not "shall be denied or not acted upon"—indicating that past action or non-action was referred to. Prior to the passage of this act the Commission had no jurisdiction of these citizenship matters.

When, therefore, as here, the claimant had applied to the Commission to be admitted and enrolled, and his application denied, his only remedy, under the act in question, lay in an appeal to the United States court. It is true Thompson claims to have received no notice of the denial of his application by the Commission, but that is not a valid excuse.

But aside from this question of jurisdiction in the Choctaw Nation to admit persons to citizenship who had been denied by the Commission, it appears that the nation never undertook to "authorize the admission or enrollment of these parties, and that, in any aspect of the case, they were enrolled without authority of law and their names should, in pursuance of the mandate in the act of Congress of June 28, 1898, be eliminated from the tribal rolls.

The Choctaw Nation does not appear to have proceeded under the authority of the act of Congress of June 10, 1896, authorizing the establishment by the several tribes of a court or committee for the purpose of passing upon applications for citizenship as provided therein. It was not until September 18, 1896, ten days after the expiration of the period in which applications for citizenship were to be submitted to the "legally constituted court or committee" of the tribes under the act of June 10, 1896, that the Choctaw council passed the act above referred to. That act provided for the appointment of census commissioners in each county, with authority "to enroll all *recognized* citizens of the Choctaw Nation by blood, intermarriage, and adoption who are recognized as citizens of the Choctaw Nation under the treaties, constitution, and law of the said nation." It further provided that "the rolls when completed by said commissioners shall be certified to by said commissioners and delivered to the principal chief of the Choctaw Nation on or before the twentieth day of October, 1896, to be revised and approved by the next general council of the Choctaw Nation."

It is manifest that this act conferred no power upon such commissioners to admit any person to citizenship, but only to enroll "recognized citizens." Yet in virtue thereof one of the county committees assumed to pass upon a petition prepared by Thompson's attorney, under date of August 1, 1896, and addressed to the general council of the Choctaw Nation, "at its regular session October 1896," praying that "all rights, privileges, and immunities of the Choctaw Nation" be granted to himself, his wife, family, and certain other relatives, "and they be enrolled with the legal citizenship of said nation."

This petition does not appear ever to have been presented to the Choctaw council or referred by any competent authority to the committee which assumed to pass upon it. Upon its back is the following indorsement:

"William C. Thompson, together with the names appearing on the face of the within application, lineal descendants of Margaret McCoy, are hereby recognized and admitted to the citizenship of the Choctaw Nation or tribe of Indians by the legally constituted Choctaw census commission duly assembled at Kiowa, Ind. T., this the 8th day of October, 1896, upon the testimony of Henry Perkins, Mrs. Lavinia Franklin, they being enrolled Choctaw Indians by blood. The within names, parties not being present, were passed for further enrollment.

"A. G. FOLSOM,
"Secretary of Census Committee."

This was a manifest attempt to exercise an authority not delegated to the committee.

On October 30, 1896, the Choctaw council, at its regular session, passed an act creating three commissions, one from each district, one member of each of which to be designated as "chief commissioner," "to make a complete roll of the citizens of the Choctaw Nation." By that act it was made the duty of said commissions "to examine the rolls made by the commissions under the act of September 18, 1896, and also to expunge from said rolls of September 18, 1896, the names of all persons whom they shall adjudge not to be citizens." It was further provided:

"The Commission shall enroll as citizens all who come under any of the following heads, and all such persons are hereby declared citizens of the Choctaw Nation:

"I. All Choctaws by blood born and raised in the Choctaw Nation.

"II. All Choctaws by blood who have been admitted to citizenship by the general council and now residents of the nation."

* * * * *

It was provided that "at the expiration of the time allowed the commissions in each district, the chief commissioners shall meet at Tushka Homma at their earliest convenience, and not later than the first Monday in December, 1896, and shall revise the rolls made by their respective district commissions during the succeeding ten days after they meet." The chief commissioners were authorized to "enroll the name of any citizen who for any good cause failed to appear before the district commissions." It was further provided that "the roll as completed and signed by the chief commissioners, when approved by the principal chief, shall be the legal and authorized roll of citizens of the Choctaw Nation."

These parties were enrolled by the revisory board, but that their enrollment was unauthorized is clear. The act just referred to only authorized the enrollment of Choctaws by blood who were "born and raised" in the Choctaw Nation or had "been admitted to citizenship by the general council." The applicants possessed neither of these qualifications. According to his own statement, William C. Thompson was not raised in the Choctaw Nation, having been taken to Mississippi shortly after his birth, and returning only once during his boyhood for about a year. It is further stated that he remained in Mississippi until the war, when he went to Texas, not returning again to the Choctaw Nation until 1887. He had never been "admitted to citizenship by the general council." His wife and children could claim no greater rights than he possessed. The other applicants named in his petition were descendants of his brother, who was born in Mississippi and whose record appears to be otherwise about the same as William C. Thompson's.

Moreover, it appears from the opinion of the Assistant Attorney-General for the Interior Department, of March 24, 1905, in the case of Mary Elizabeth Martin, that on July 17, 1897, the principal chief of the Choctaw Nation advised the Commission to the Five Civilized Tribes that he had refused to approve the last revised roll made in accordance with the act of October 30, 1896, because he was satisfied there were some names thereon "that have been registered through fraud or misrepresentation." As such approval was necessary in order to make the roll so prepared "the legal and authorized roll of citizens of the Choctaw Nation," it would seem that in no aspect of the case could these parties be said to be lawfully admitted and enrolled.

It further appears that these applicants, or some of them, including William C. Thompson, applied in 1900 to the Commission for the Five Civilized Tribes for identification as Mississippi Choctaws under the following provision of section 21 of the act of June 28, 1898:

"Said Commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article fourteen of the treaty between the United States and the Choctaw Nation concluded September twenty-seventh, eighteen hundred and thirty, and to that end they may administer oaths, examine witnesses, and prepare all other acts necessary thereto and make report to the Secretary of the Interior."

Article 14 of the treaty of September 7, 1830 (7 Stat., 335), provided:

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

The only evidence adduced in any way tending to show a compliance with the terms of this article were statements to the effect that William C. Thompson's grandfather applied for land under the treaty of 1830, but was refused by the Indian agent. Congress, however, by the acts of March 3, 1837, and August 23, 1842 (5 Stat., 180, 513), appointed commissioners for the purpose of adjusting claims of this kind, and there was no evidence to the effect that the ancestors of the claimants had endeavored to comply with the provisions of those acts, or received patents or certificates for land as therein provided for. The Commission properly held, therefore, that it was impossible to identify the applicants as Mississippi Choctaws.

Upon the whole case, it seems to me clear that these applicants, and those claiming intermarried rights with them, should be denied enrollment.

The other cases consolidated with this are of a similar nature, and under the views above stated the parties referred to therein are, in my judgment, not entitled to be enrolled.

5. THE CASE OF RICHARD B. COLEMAN ET AL.

The enrollment of the parties referred to in this case depends upon the effect to be given to the following act of the general council of the Choctaw Nation, passed November 8, 1889:

"An act to establish the citizenship of R. B. Coleman, his wife, and their children.

"SEC. 1. *Be it enacted by the general council of the Choctaw Nation assembled*, That Richard Benjamin Coleman and his wife, Eva Coleman, and their children, as follows: Richard St. Clair, age 15 years; Ida Clay, age 13; Bennetta, age 11; Bettie Withers, age 9; Henry Allen, age 6; Willie Norma Coleman, age 4 years, are hereby admitted to citizenship in the Choctaw Nation, with rights, privileges, and immunities, and that this act shall take effect and be in force from and after its passage."

It is contended that this act was procured by fraud and bribery, and that therefore the names of Coleman and his family should be eliminated from the tribal rolls upon which they appear, under the act of Congress of June 28, 1898, which provides:

"Said Commission is authorized and directed to make correct rolls of citizens by blood of all the other tribes, eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto * * *."

The Commission held that they had no authority to go behind the act of the Choctaw council referred to, but in an informal opinion rendered on December 7, 1904, Acting Attorney-General Day, after quoting the above provision, said:

"It appears to me the above-quoted provisions of the statute impose upon the Commission to the Five Civilized Tribes the duty and gave it the power to determine whether any name appearing upon a tribal roll was placed there by fraud or without authority of law, and that the mere fact that such enrollment was by virtue of an act of the national council is not sufficient to preclude an inquiry. An act of the council should be treated with respect as *prima facie* valid and efficacious, and nothing done as the result thereof should be lightly set aside; but if it *clearly* appears that the act was procured by deliberate fraud and perjury I do not think that Congress intended that benefits thereunder should be enjoyed."

Mr. Day did not pass upon the facts of this case. Subsequently, the Assistant Attorney-General for the Interior Department, upon a consideration of the record, held that it did not clearly appear therefrom that the act in question had been fraudulently procured.

In my judgment the record in this case clearly shows deliberate fraud on the part of Richard B. Coleman in procuring the passage of the act admitting him to citizenship. It appears that Coleman came into the Choctaw Nation about 1880. In 1887 he made application to the citizenship committee of the Choctaw council for admission as a citizen by blood, representing by himself and witnesses he brought before the committee that his father was a Choctaw boy named Frank Coleman, the son of a John Coleman and Chaponia, a full-blood Choctaw, who had lived in Mississippi with his parents prior to the migration in 1830. The boy Frank, it was testified, had been sent to Kentucky to school and nothing afterwards heard of him.

The testimony adduced on behalf of the nation before the Commission to the Five Civilized Tribes shows that the father of Coleman was Francis S. Coleman, a son of a Francis Coleman who was born and raised in Orange County, Va., and was not a Choctaw. That testimony was given in the form of a deposition by Mrs. Harriet Henry, a sister of Francis S. Coleman, and R. L. Coleman, a nephew, residing at Columbia, Mo. The identity of Francis S. Coleman with the father of the applicant appears from the fact testified to by the applicant as well as the two witnesses just referred to, that he married Ann Elizabeth Bedford, the daughter of John Bedford, in Kentucky, and the testimony of all parties that Francis S. Coleman went to Denton, Tex., and died there. Although duly advised as to the intention of the attorneys for the Choctaw Nation to take this testimony, no effort was made by Coleman or his attorney to file cross interrogatories or in any way rebut it, but they confined themselves to an endeavor to have the testimony stricken from the records as not having been taken in accordance with law. The authority of the Commission to take the testimony in this way is clear, under the act of June 28, 1898 (30 Stat., 495, 503), which provides:

"Said Commission shall make such rolls descriptive of the persons thereon, so that they may be thereby identified, and it is authorized to take a census of each of said tribes, or to adopt any other means by them deemed necessary to enable them to make such rolls."

This testimony was further enforced by another deposition of said R. L. Coleman, taken by Commissioner Tams Bixby, in which R. L. Coleman stated further that he knew the applicant, Richard B. Coleman; that he was his cousin. A motion was likewise made to strike this testimony from the record, because taken without notice to the applicant, but it was overruled by the Commission, who held that under the authority of the above act they could take such measures as they deemed necessary to satisfy themselves as to the justice of the applicant's claim. I do not think it is shown that they abused their discretion in this matter.

It appears that the application of Richard B. Coleman to be enrolled as a citizen by blood of the nation, upon the grounds above stated, was passed over by the citizenship committee of the council in 1887; taken up again in 1888, and a bill of rejection passed by the committee or the council; renewed at the session of 1889, and a bill of admission introduced into the House of Representatives, which was rejected, and then a new bill introduced and enacted into the law above quoted.

I think it sufficiently appears from the testimony in this case, particularly that given by and on behalf of the applicant himself, that the council in admitting him and his family to citizenship did so upon the strength of the testimony adduced by him before the committee on citizenship that he was a Choctaw by blood, descended as he represented. It is to be observed that he and his family all claim that he was admitted as a Choctaw by blood.

Some testimony was introduced for the purpose of showing that Coleman had bribed one Roebuck, the member of the Council who introduced the second bill, but the evidence on that point is not sufficient to establish the fact.

In October, 1898, the general council of the Choctaw Nation passed an act repealing the act of November 8, 1889, admitting Coleman and his family to citizenship. This act was, however, disapproved by President McKinley, upon the recommendation of the Secretary of the Interior, under the authority of the act of Congress of June 28, 1898, which required the approval of the President to all acts of the Choctaw and Chickasaw nations in any manner affecting the lands of the tribes.

Although this act was thus invalidated it may fairly be taken to indicate the sense of the nation at that time that Coleman was improperly admitted. The reason for its disapproval does not appear, but it might reasonably have been rejected on the ground that by the act of June 28, 1898, the work of making up the rolls of citizenship and eliminating therefrom those placed thereon by fraud was committed entirely to the Commission to the Five Civilized Tribes.

It is to be observed that Commissioner Bixby, who was the only commissioner who considered this case on its merits, was "clearly of the opinion from such evidence as has been presented to this Commission that the evidence presented to and acted upon by the citizenship committee of the Choctaw general council, which passed upon the petition of these applicants, and upon which evidence their admission to Choctaw citizenship was based, was fraudulent, false, and misleading."

In my opinion, these parties should be stricken from the rolls.

6. THE CASE OF ETHEL PIERSON.

This case presents the question of your authority to enroll the children of Choctaw freedmen who were minors living March 4, 1906. The decision of this question turns upon the construction to be given to section 2 of the act of April 26, 1906 (34 Stat., 137), as amended by the act of June 21, 1906 (34 Stat., 342).

The act referred to originally provided:

"SEC. 2. That for ninety days after approval hereof applications shall be received for enrollment of children who were minors living March fourth, nineteen hundred and six, whose parents have been enrolled as members of the Choctaw, Chickasaw, Cherokee, or Creek tribes, or have applications for enrollment pending at the approval hereof, and for the purpose of enrollment under this section illegitimate children shall take the status of the mother, and allotments shall be made to children so enrolled. If any citizen of the Cherokee tribe shall fail to receive the full quantity of land to which he is entitled as an allotment, he shall be paid out of any of the funds of such tribe a sum equal to twice the appraised value of the amount of land thus deficient. The provisions of section nine of the Creek agreement ratified by Act approved March first, nineteen hundred and one, authorizing the use of funds of the Creek tribe for equalizing allotments, are hereby restored and reenacted, and after the expiration of nine months from the date of the original selection of an allotment of land in the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes, and after the expiration of six months from the passage of this Act as to allotments heretofore made, no contest shall be instituted against such allotment: *Provided*, That the rolls of the tribes affected by this Act shall be fully completed on or before the fourth day of March, nineteen hundred and seven, and the Secretary of the Interior shall have no jurisdiction to approve the enrollment of any person after said date: *Provided further*, That nothing herein shall be construed so as to hereafter permit any person to file an application for enrollment in any tribe where the date for filing application has been fixed by agreement between said tribe and the United States: *Provided*, That nothing herein shall apply to the intermarried whites in the Cherokee Nation, whose cases are now pending in the Supreme Court of the United States."

The amendatory act provided (34 Stat., 341-2):

"That section two of the Act entitled "An Act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes," approved April twenty-sixth, nineteen hundred and six, be, and the same is hereby, amended by striking out thereof the words "*Provided further*, That nothing herein shall be construed so as to hereafter permit any person to file an application for enrollment in any tribe where the date for filing application has been fixed by agreement between said tribe and the United States: *Provided further*, That nothing herein shall apply to the intermarried whites in the Cherokee Nation whose cases are now pending in the Supreme Court of the United States." And insert in said Act in lieu of the matter repealed, the following: *Provided further*, That nothing herein shall be construed so as hereafter to permit any person to file an application for enrollment or to be entitled to enrollment in any of said tribes, except for minors the children of Indians by blood, or of freedmen members of said tribes, or of Mississippi Choctaws identified under the fourteenth article of the treaty of eighteen hundred and thirty, as herein otherwise provided, and the fact that the name of a person appears on the tribal roll of any of said tribes shall not be construed to be an application for enrollment."

In the agreement with the Choctaw and Chickasaw nations ratified by the act of July 1, 1902 (32 Stat., 641), it was provided (paragraphs 1 and 3) that the words "member" or "members" and "citizen" or "citizens," "whenever used in this agreement, shall be held to mean members or citizens of the Choctaw or Chickasaw tribe of Indians in Indian Territory, not including freedmen."

The Commissioner to the Five Civilized Tribes, in passing upon this case, held that, in view of the above definition, the act of April 26, 1906, as amended, was not intended to apply to the children of freedmen in the Choctaw and Chickasaw nations, but only to those of the Cherokee and Creek nations.

There would be some force in the argument that minors the children of freedmen members of the Choctaw Nation were not included in the act of April 26, 1906, if it were not for the proviso substituted by the amendatory act of June 21, 1906. That proviso was, as the Commissioner said, "in the nature of a construction by Congress of the meaning intended to be conveyed by the section as originally enacted." It says, in so many words, that minors the children of freedmen members of said tribes (referring to all of the tribes, which are separately named in the preceding part of section 2, among them the Choctaw and Chickasaw tribes) may be enrolled. This definition settles the doubt that otherwise might have arisen as to the children of freedmen members of said tribes, as well as the children of Mississippi Choctaws. If, therefore, the Choctaw freedmen are members of said nation, the right of their children to be enrolled can not be questioned.

The Choctaw freedmen were adopted by an act of the general council of the nation approved May 21, 1883, entitled "An act to adopt the freedmen of the Choctaw Nation," which provided (Report of Commissioner of Indian Affairs, 1884, p. XLV):

"Whereas by the third and fourth articles of the treaty between the United States and the Choctaw and Chickasaw nations, concluded April 28, 1866, provision was made for the adoption of laws, rules, and regulations necessary to give all persons of African descent resident in said nations

at the date of the treaty of Fort Smith, September 13, 1865, and their descendants, formerly held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, except in the annuities, moneys, and public domain claimed by or belonging to said nations respectively; and also to give to such persons who were residents as aforesaid, and their descendants, 40 acres each of the lands of said nations on the same terms as Choctaws and Chickasaws, to be selected on the survey of said lands; until which said freedmen shall be entitled to as much land as they may cultivate for the support of themselves and families; and

"Whereas the Choctaw Nation adopted legislation in the form of a memorial to the United States Government in regard to adopting freedmen to be citizens of the Choctaw Nation, which was approved by the principal chief November 2, 1880, setting forth the status of said freedmen and the inability of the Choctaw Nation to prevail upon the Chickasaws to adopt any joint plan for adopting said freedmen, and notifying the United States Government of their willingness to accept said freedmen as citizens of the Choctaw Nation in accordance with the third and fourth articles of the treaty of 1866 as a basis; and

"Whereas a resolution was passed and approved November 5, 1880, authorizing the principal chief to submit the aforesaid proposition of the Choctaw Nation to adopt their freedmen to the United States Government; and

"Whereas a resolution was passed and approved November 6, 1880, to provide for the registration of freedmen in the Choctaw Nation, authorizing the principal chief to appoint three competent persons in each district, citizens of the nation, whose duty it shall be to register all freedmen referred to in said third article of the treaty of 1866 who desire to become citizens of the nation in accordance with said treaty, and upon proper notification that the Government of the United States had acted favorably upon the proposition to adopt the freedmen as citizens, to issue his proclamation notifying all such freedmen as desire to become citizens of the Choctaw Nation to appear before said commissioner for identification and registration; and

"Whereas in the Indian appropriation act of Congress May 17, 1882, it is provided that either of said tribes may adopt and provide for the freedmen in said tribe in accordance with said third article: Now, therefore,

"Be it enacted by the general council of the Choctaw Nation, That all persons of African descent resident in the Choctaw Nation at the date of the treaty of Fort Smith, September 13, 1865, and their descendants, formerly held in slavery by the Choctaws or Chickasaws, are hereby declared to be entitled to and invested with all the rights, privileges, and immunities, including all the right of suffrage, of citizens of the Choctaw Nation, except in the annuities, moneys and the public domain of the nation.

* * * * *

"SEC. 3. *Be it further enacted,* That all said persons are hereby declared to be entitled to forty acres each of the lands of the nation, to be selected and held by them under the same title and upon the same terms as the Choctaws."

* * * * *

It appears that this act was accepted by the Secretary of the Interior on behalf of the United States as a substantial compliance with the terms of the treaty of 1866, and the moneys authorized to be paid by that treaty upon a compliance therewith were turned over to the nation.

I am of opinion, therefore, that the Assistant Attorney-General for the Interior Department was right in his conclusion that minors the children of Choctaw freedmen living March 4, 1906, are entitled to be enrolled.

This disposes of the several cases submitted. The papers therein are herewith returned.

Respectfully,

CHARLES J. BONAPARTE,
Attorney-General.

THE SECRETARY OF THE INTERIOR.