ENROLLMENT IN THE FIVE CIVILIZED TRIBES

HEARINGS

BEFORE THE

SUBCOMMITTEE OF THE COMMITTEE ON INDIAN AFFAIRS

HOUSE OF REPRESENTATIVES

ON THE SUBJECT OF ENROLLMENT IN THE FIVE CIVILIZED TRIBES

STATEMENT OF

REFORD BOND

ATTORNEY FOR THE CHICKASAW NATION IN OPPOSITION TO ENROLLMENT OF MISSISSIPPI CHOCTAWS

WASHINGTON
GOVERNMENT PRINTING OFFICE
1915

ENROLLMENT IN THE FIVE CIVILIZED TRIBES.

SUBCOMMITTEE OF COMMITTEE ON INDIAN AFFAIRS,
HOUSE OF REPRESENTATIVES,
Friday, August 14, 1914.

The subcommittee met at 10.30 o'clock a. m., Hon. Charles D. Carter (chairman) presiding.

The CHAIRMAN. Mr. Bond, you may proceed.

STATEMENT OF MR. REFORD BOND, ATTORNEY FOR THE CHICKASAW NATION.

Mr. BOND. Mr. Chairman and gentlemen of the committee, the members of the Choctaw and Chickasaw Nations own an equal undivided interest in the entire tribal moneys and properties. They own their moneys and properties in common, therefore they have a common cause and a common fight. Mr. Hurley, attorney for the Choctaw Tribe of Indians, has so carefully briefed this question and has so fully and ably argued the same, that I feel a delicacy in attempting to present the issues involved for fear that I may encroach upon the time of the committee by often repeating or possibly rearguing questions which have heretofore been fully discussed.

The bill under consideration provides for the reopening of the Choctaw-Chickasaw rolls for claimants under the fourteenth article of the treaty of 1830.

Mr. CARTER. Does it not go further than that? Does not the Harrison bill provide for the reopening of the rolls to almost anyone?

Mr. BOND. Yes; practically any person of Choctaw blood who does not now appear upon the approved rolls of the tribe could apply as a claimant. According to the reports of the commission more than 20,000 persons applied as fourteenth-article claimants.

Mr. CARTER. Are you going to discuss the proviso to section 2 or 3?

Mr. BOND. Yes, sir. Section 2 of the bill provides:

That the Secretary of the Interior shall be vested with the power to determine the rights of said claimants upon such evidence as may be produced by the applicant, without regard to any adverse judgment or decision heretofore

rendered by any court or commission to the Five Civilized Tribes or the Department of the Interior, and without regard to any condition or disability heretofore imposed by any act of Congress.

Said section further provides:

Provided further, That the Secretary of the Interior be, and he is hereby, authorized and directed to enroll, without requiring further application, under the provisions of this act, all persons who have been identified as Mississippi Choctaws by the Dawes Commission in its report of March tenth, eighteen hundred and ninety-nine, and commonly known as the McKennan roll; and also all persons who have been identified as Mississippi Choctaws by the Dawes Commission from March tenth, eighteen hundred and ninety-nine, to March fourth, nineteen hundred and seven, and were approved by the Secretary of the Interior, but whose names do not now appear on the final citizenship rolls of the Choctaw-Chickasaw Nation.

Mark the danger signal. Section 2 attempts to confer authority upon the Secretary of the Interior to determine the rights of claimants without regard to any adverse judgment or decision heretofore rendered by any court or commission to the Five Civilized Tribes or the Department of the Interior. Mark a further danger signal. Section 2 attempts to direct the Secretary of the Interior to place upon the approved rolls of the Choctaw and Chickasaw Nations, without review and without a hearing of any character, certain claimants whose rights have heretofore been denied by a tribunal of competent jurisdiction. The alleged claimants, in disregard of the restricting and restraining provisions of the Constitution, ask that the legislative department of the Government not only exercise its powers as a lawmaking body, but ask that said department of the Government exercise judicial authority and annul and vacate judgments.

I read from Sutherland on Statutory Construction, Volume I, page 3:

Under the Constitution, the legislature is empowered to make laws; it has that power exclusively; the Executive has the power to carry them by all executive acts into effect; and the judiciary has the exclusive power to expound them as the law of the land between suitors in the administration of justice.

I read further from page 4:

As coordinate branches of one government, they are politically connected and bound together; but their powers and functions are not blended; they occupy no common ground, nor do they exercise any concurrent jurisdiction.

I read further from page 5:

Any statute which attempts to confer powers or impose duties upon one department which properly belong to the others violates the Constitution and is void.

I read further from page 12:

The whole legislative power delegated to the Federal Government is vested in Congress, with the exceptions made in the Constitution, as in the instance of making treaties.

I read further from page 13:

The power which is entirely and exclusively vested in the judiciary department is the power conferred on judicial courts and tribunals to administer punitive and remedial justice to and between persons subject to or claiming rights under the law of the land. * * * It is part of this judicial power to determine what the law is, and all questions involving the validity and effect of statutes when thus determined are authoritatively settled.

I read further from page 18:

Even rules of action are not valid laws, if, when enacted by the legislature, they are judicial in their nature or trench on the jurisdiction and functions of the judiciary. The legislature may prescribe rules of decision which will govern future cases; these rules will have the force of law, so general rules of practice, regulating remedies and so operating as not to take away or impair existing rights, may be made applicable to pending as well as subsequent actions. But it has no power to administer judicial relief; it can not decide cases, nor direct how existing cases or controversies shall be decided by the court; it can not interfere by subsequent acts with final judgments of the courts. It can not set aside, annul, or modify such judgments, nor grant or order new trials, nor direct what judgment shall be entered or relief given. No declaratory act—that is, one professing to enact what the law now is or was at any past time—can affect any existing rights or controversies.

The text from which I have read is amply supported and sustained by an unbroken line of authorities, not only from State and Federal courts but the Supreme Court of the United States, and the text read clearly establishes the fact that you can not enroll a claimant without regard to any adverse judgment or decision heretofore rendered by any court or commission to the Five Civilized Tribes or the Department of the Interior.

Mr. CARTER. Is it your contention, Mr. Bond, that the bill of Mr. Harrison recognizes that the cases have been adjudicated by the courts?

Mr. BOND. Yes, sir; and it is a well-known and admitted fact that practically all these cases have been adjudicated by tribunals of competent jurisdiction.

Therefore, I say, gentlemen, under the authorities read, it would be unconstitutional and Congress would not have the authority to enforce an act which provides that these claims shall be considered without regard to any adverse judgment of any court or any tribunal.

Mr. CARTER. Do you think that would be true in view of the Lone Wolf decision and the Cherokee Baby case decision?

Mr. BOND. Yes; that would be true under those decisions. The Lone Wolf decision, if it please the committee, did not attempt to annul the judgment of a court. It did not attempt to vacate or set aside any finding of any tribunal. It did not attempt to take the property of the tribe for the use or benefit of persons who were aliens to the tribe. It simply held that Congress had the authority to allot the lands of the tribe in severalty and dispose of the surplus. The decision in the Cherokee Baby case did not affect a judgment or a finding of a court. The Cherokee allotments had not been completed, and the Cherokee Council asked that the Cherokee babies be allotted.

It was the policy of the Government to wind up the affairs of the Lone Wolf Band. Therefore Congress provided for the allotment of their lands in part and a sale of the balance, and when a part of that band of Indians attempted to prevent the allotment and the sale the court held that that legislation was within the plenary power of Congress; that their rights were not jeopardized or disturbed; that they received an equal share of lands in allotment, and received a reasonable consideration for the lands sold.

Mr. CARTER. The points decided in the Lone Wolf case, as I remember, were about these: That an act of Congress had been passed for the allotment of the land of the Kiowa and Comanche Indians, 160 acres per capita, and the sale of the residue. The Kiowa Indians

contended that they had not agreed to have that done and that they were not willing to take a 160-acre allotment. Is that your understanding of what the contention was?

Mr. BOND. That is my understanding. Further, the Lone Wolf case is not in point with the issues being considered by the committee, for the reason that they were reservation Indians and did not hold title by patent. They did not have title in fee simple.

Mr. CARTER. Let me ask you another question, Mr. Bond, about the comparative difference between the title of the Kiowas and Comanches and the Choctaws and Chickasaws, since you have raised the point. You did not say quite fully just what kind of title the Kiowas and Comanches had.

Mr. BOND. The Kiowas and the Comanches were a roving band of Indians having no fixed place of abode. They were placed on this land by the United States and it was given them as a gratuity.

Mr. CARTER. What I am particularly interested in is knowing just what the title consisted of. Did they have a patent to the land?

Mr. BOND. I do not think they had a patent to the land. If they did have a patent to the land, it was a gratuity.

Mr. CARTER. There are three kinds of so-called titles to Indian reservations: First, there is the Executive-order title, which consists merely in this, that a band of Indians is taken up and placed upon a reservation by Executive order, without giving them any other evidence of title to the reservation; second, you have what might be called the treaty reservation, which is a reservation acquired by Indians by treaty, for which they sometimes gave and sometimes did not give valuable consideration; third, you have the patent in fee reservation, for which not only a treaty was made and a valuable consideration given, but for which an actual patent in fee was executed and delivered to the tribe. For my own information, because my memory does not serve me very accurately about the Kiowas and Comanches, I was interested in knowing just what kind of title the Kiowas and Comanches had that had been interfered with by acts of Congress and which were sustained by court decisions, in order that this committee might know just how far the power of Congress may reach in such matters.

Mr. BOND. The Lone Wolf Band acquired a right of use and occupancy under the treaty of Medicine Lodge. I read from the treaty:

> Shall be, and the same is hereby, set apart for the absolute and undisturbed use and occupation of the tribes herein named, and for such other friendly tribes or individual Indians as, from time to time, they may be willing (with the consent of the United States) to admit among them.

Mr. CARTER. Now, then, let me ask you this question: In the Lone Wolf case and in the Cherokee Baby case, were the plaintiffs the authorities of the tribe or were they individuals?

Mr. BOND. That is a distinction that has very appropriately been mentioned at this time. They were not the authorities of the tribe in the Cherokee Baby case; they were individuals, and the courts have held in an unbroken line of decisions that an individual member of a tribe has not such a vested right in tribal property as to maintain an action therefor; that the title is in the nation or in the tribe and not in the individual. In the Lone Wolf case, it was reported that three-fourths of the qualified voters of the tribe favored the allotment of the lands of the band, however, it developed thereafter that not quite the required number had asked for the allotment.

Mr. CARTER. Was that point discussed in either the Lone Wolf case or in the Cherokee Baby case, or do you know?

Mr. BOND. It was discussed in the Cherokee Baby case. In that case the nation was fighting for the babies and the individuals were fighting against their enrollment.

Mr. CARTER. Do you say that the constituted authorities of the nation were fighting for the enrollment of the babies, and that the Supreme Court decided in line with the contention of the constituted authorities of the nation?

Mr. BOND. Yes, sir.

Mr. CARTER. Now, do you know of any court decisions that have settled or dealt with the right of Congress to administer tribal property in defiance of the constituted authorities of the tribe, or of the legally constituted authorities of the tribe?

Mr. BOND. In my judgment, Congress with its plenary power could interfere with the legally constituted authorities of the tribes in the administration of their affairs and in the control of their property. But to what extent, would depend entirely upon the circumstances and the conditions. If a tribe acquired a right under an act of Congress, Congress could not repeal that act and thereby abrogate the right. It is a fundamental rule of law that Congress can not destroy a right acquired under a statute by the power of repeal. There are numerous decisions to that effect, and I see no reason why tribes should not have rights the same as individuals or corporations. There is a marked distinction between administering tribal affairs, and taking tribal property and appropriating it to the use of persons foreign to the tribe.

Mr. CARTER. Take the present situation as it exists to-day: The Choctaws and Chickasaws owned a reservation in Indian Territory; they agreed that the property should be allotted to the enrolled members of the tribe, and they agreed, furthermore, that the Federal Government should make the rolls. The Federal Government passed a law, in accordance with this agreement, closing the rolls as of certain date, thereby making operative the rolls that had been made for the distribution of the property in accordance with the agreement that had been made with the tribes. Now, what I would like to understand is this:

Has the Federal Government the right now to enroll other members over the objection of the legally constituted tribal authorities, who made the agreement, and to place other members on the rolls in defiance of the protests of those authorities with whom they had made the agreement?

Mr. BOND. Yes, sir; the statement is clear. Your question will cause me, naturally, to divert from the line of my argument, but I will answer the chairman's question. I will say this: That the claimants in this particular proceeding are claiming under the treaty of 1830. Article II of that treaty reads as follows:

> The United States, under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it.

That provision of the treaty was carried to the patent, and the patent reads in part, as follows:

> That the United States of America, in consideration of the premises and in execution of the agreement and stipulation in the aforesaid treaty, have given and granted, and by these patents do give and grant, unto the said Choctaw Nation the aforesaid "tract of country west of the Mississippi," to have and to hold the same, with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, as intended "to be conveyed" by the aforesaid article, "in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it," liable to no transfer or alienations, except to the United States or with their consent.

Mr. HILL. That was the deed or patent made by the Government to the tribe?

Mr. BOND. Yes, sir; to the tribe. I have already shown the committee by all the text writers and by an unbroken line of decisions that Congress can not annul a judgment, that Congress can not grant a new trial, and that Congress can not vacate or set aside a finding of a judicial tribunal of competent jurisdiction. The courts have determined the rights of the claimants under the patent and under the treaty.

Mr. BALLINGER. Right in that connection, Mr. Bond, if it will not interrupt you, I would like to ask you a question: Did not Congress do precisely that very thing by the act, or supplemental agreement, of July 1, 1902, wherein it authorized another tribunal to review the judgment of the United States courts which had been declared to be a finality by the act of June 10, 1898?

Mr. BOND. I am pleased to have you ask that question. Congress can provide for the review of a judgment of a court of its own creation, but all the authorities make a distinction between annulling a judgment and creating a court to review a judgment. There is a distinction between granting a new trial and providing for a tribunal for the review of a judgment. I acknowledge that Congress has authority to provide for the review of a judgment rendered by a tribunal of its own creation. That is not in conflict with anything I have said in my argument, but under this particular bill, Congress does not attempt to provide for a tribunal to review particular judgments against particular claimants, but Congress attempts to absolutely place them upon the rolls or attempts to direct the Secretary of the Interior to place them upon the rolls, absolutely ignoring the judgments denying them citizenship.

Mr. BALLINGER. Right there, in this particular case being discussed before the committee, the regularly constituted tribunal had found them to be entitled to enrollment, provided only that they removed and made proof of their removal. So that judgment of their right is to-day in force, and only the question as to their removal is in issue. Is not that correct?

Mr. BOND. I was going to explain that under the terms of the patent just read by me, and under the terms of the fourteenth article of the treaty, no individual having Choctaw or Chickasaw blood is entitled to any right in the Choctaw and Chickasaw Nations unless he lived upon the land and complied with the terms and conditions of the patent and the treaty; and the courts have upheld that contention.

Mr. BALLINGER. Right there let me ask you another question, which, I think, will entirely clear up the atmosphere. Will you state in what decision the court has ever held that removal was a prerequisite to a right?

Mr. BOND. For your edification I will argue that question for you.

Mr. BALLINGER. If you will cite the decision we can refer to it.

Mr. BOND. I will read you the decision. You admit, Mr. Ballinger, that the Mississippi Choctaws reside in the State of Mississippi, do you not?

Mr. BALLINGER. Most of them are there to-day.

Mr. BOND. You admit that those who reside in the State of Mississippi did not remove to the Indian Territory and comply with the terms of the patent by living upon the land, do you not?

Mr. BALLINGER. Mr. Bond, as to compliance with the terms of the patent, it has been my contention throughout that that patent to which you have referred never conveyed any interest at all, and that the interest in the western land had been conveyed by the treaty of 1820 which did not require any patent.

Mr. CARTER. I think that is aside from the issue, somewhat. But the patent was really the evidence of the title that was conveyed by the treaty, was it not?

Mr. BALLINGER. The patent that was issued under the treaty of 1830, to which Mr. Bond has made reference, has never been held by any court to have been a conveyance even of the legal title, but the court has held in the case of the Choctaw Nation against the United States that the title to those lands passed to the Choctaw Nation by operation of the treaty of 1820.

Mr. BOND. In order to answer the argument of Mr. Ballinger, I will admit that the Supreme Court of the United States did hold that those lands were acquired under the treaty of 1820. They were acquired under that treaty. The Choctaw Nation exchanged 4,000,000 acres of land in the State of Mississippi for the reservation west under the treaty of 1820, but the patent to the lands involved was not issued until 1842. The nation accepted the terms and conditions of the patent. If you had contracted for real estate in 1820 and the patent or deed was issued in 1842 in compliance with a supplementary agreement made in 1830, and you accepted it without objection and retained the benefits under it, then you would be bound by its terms.

Mr. CARTER. Let me ask you this: Was the treaty of 1830 made by the legally constituted authorities of the Choctaw Nation in Mississippi?

Mr. BOND. Yes, sir.

Mr. CARTER. And the rights involved in or concluded by that treaty were a part and portion of the rights of the Mississippi Choctaws?

Mr. BOND. In 1830 the Choctaw Nation resided as a whole east of the Mississippi River and the Choctaw Nation as a whole made the treaty of 1830.

Mr. CARTER. Then you consider that all the Choctaw Indians then belonging to the Choctaw Nation in Mississippi were bound by the treaty of 1830 just as strongly as they were by treaty of 1820?

Mr. BOND. Yes, sir. As a matter of fact, the treaty of 1830 was supplementary to the treaty of 1820, and superseded the treaty of

1820. Now, if the chairman please, Mr. Ballinger will say that there was no consideration for placing this restriction in the patent that the land must be lived upon, but you can find a consideration for placing such a restriction in the patent. When the Choctaw Nation agreed to go West the United States promised and agreed with said nation that no person should have title in and to said lands who did not live on same, and that those who remained should not be entitled to citizenship unless they removed.

Mr. Ballinger will say that there was no consideration passing to those members who expatriated themselves from the nation and remained in Mississippi. But, Mr. Chairman, there was a consideration passing to those members because the nation left for them in Mississippi 10,000,000 acres of land, out of which they had the right to select 640 acres for each head of a family, 320 acres for each child over 10 years of age, and 160 acres for each child under 10 years of age. Was this not a sufficient consideration?

Mr. BALLINGER. No. That was nothing more than their share of the 10,000,000 acres to which they were entitled.

Mr. CARTER. Were they entitled to that consideration under the treaty of 1820?

Mr. BALLINGER. No, sir.

Mr. BOND. Under the treaty of 1820 their share of the 10,000,000 acres of land was not mentioned, and you, Mr. Ballinger, know it was not. No allotment scheme was provided for by that treaty, and you, Mr. Ballinger, know it to be a fact.

Mr. BALLINGER. Under the treaty of 1820 they reserved in common all their rights as members of the tribe in the remaining 10,000,000 acres of land, and by the treaty of 1830 they were given allotments in that 10,000,000 acres, and the allotment was no more than their proportionate share would have been had all the lands been allotted; that is, if all of the 10,000,000 acres had been allotted to the then members of the tribe.

Mr. BOND. The Supreme Court held in the case of Fleming *v.* McCurtain et al., reported in 215 United States Reports, at page 56, that the title under the treaty of 1830 was in the tribe and that the tribe did not hold same in trust for individuals.

Mr. CARTER. Is it your contention that the right of a man to an allotment and to get the title to the individual portion of the property which he already owns is not a consideration?

Mr. BALLINGER. I do not think it would be a consideration.

Mr. CARTER. By the same token, then, it might be contended that there was no consideration whatever in the Atoka or supplemental agreement made with the Choctaws in Oklahoma.

Mr. BALLINGER. Yes, sir; under those treaties the land in the Choctaw Nation was allotted equally among all the members of the tribe, or at least provision was there made that when the residue lands were sold the proceeds were to be divided equally among all those people that were enrolled.

Mr. CARTER. That is going into the details and technicalities, but the real consideration that the Choctaws and Chickasaws in the Indian Territory received for making the agreements of 1898 and 1902 was the allotment and division in severalty of that which they already owned in common.

Mr. BALLINGER. That is absolutely correct.

Mr. BOND. Under the treaty of 1830 there was no provision made for allotments save to those who elected to remain and renounce their allegiance to the tribe and become citizens of the State of Mississippi. Those who went West were not to receive an allotment from the lands east, but all land remaining after the allotment of those who remained was ceded to the United States.

Mr. CARTER. Then, in like manner, it occurs to me it can not be said in fairness that the right of the members of the Choctaw Nation in Mississippi to individualize what was about his pro rata share of land at that time and get title to it was not a consideration.

Mr. BALLINGER. I will make this statement, and then I will not ask any more questions, because I do not want to interrupt counsel. In 1830 all the Choctaws constituting the Choctaw Tribe owned the 10,000,000 acres remaining in Mississippi which had not then been ceded, as well as all the western lands. By the fourteenth article of the treaty of 1830 those Choctaws who remained in Mississippi were given allotments out of the 10,000,000 acres of land, which allotments were not any more than their individual share of the 10,000,000 acres remaining in Mississippi, and there was no consideration, as I claim, passed to them for their individual shares in the western lands.

Mr. CARTER. Your statement is fair as far as it goes, but you neglect to carry it out to its logical end. The further consideration was given the Mississippi Choctaws, if the contention of these gentlemen be correct, after he had individualized his 640 acres, and so on, to his pro rata share in the division of the lands of the Indians in Indian Territory at any time that he might choose to move onto those lands, so it occurs to me that the man who did receive a consideration under the treaty of 1830, and about the only man was the Mississippi Choctaw, to wit, the consideration to allot 640 acres to the head of a family, and so on down, which was not granted to those Indians who moved to Indian Territory. This further statement, which has gone into the record, I think, several times, might be appropriate; at that time it was a physical impossibility for any person to derive any benefit from the reservation in Indian Territory unless he moved upon it, because he could not lease the land for a longer term than one year, he could not cultivate it and remain in Mississippi, and he could not enjoy any use of that land without actually removing to and remaining upon the land. So that in the light of conditions as they existed at that time, I repeat, it occurs to me the only consideration given in the treaty of 1830 was that given to the Mississippi Choctaws, which was denied to those who removed to Indian Territory.

Mr. BALLINGER. It is true that by the treaty of 1830 provision was made that the Indians who remained in Mississippi must remove to the western lands, but there was no time limit fixed in which removal should occur, and that was left open and indefinite, and it is our contention that before Congress or the Choctaw Nation could have divided the western lands and thereby destroyed the rights of the Mississippi Choctaws ample and proper notice should have been given to the Mississippi Choctaws, which notice was never given.

Mr. CARTER. I understand you now.

Mr. PHELPS. Do you maintain that the granting or the allotting of 640 acres to the head of a family who remained in Mississippi was a consideration for his remaining in Mississippi?

Mr. CARTER. I am not yet maintaining anything. I am trying to get at the facts. I spoke only of the way the matter occurred to me at this time. I do not think that anything was given to him as a consideration for his remaining in Mississippi, because at that time it was the evident purpose of the Federal Government to move every one of them onto the reservation in the West as soon as possible.

In the decision of Judge Clayton it is set out, and I presume he had authority for that statement, that bayonets and soldiers were ready to move them to the reservation as soon as it could be conveniently done and to restrain them from leaving the reservation after they were placed upon it. But the Federal Government at that time was confronted with the proposition of not getting any of the Choctaws to move West. The treaty had been in force for 10 years and practically none of them had gone there. It has been repeatedly stated that the object in making the treaty with these people was to get as many of them as possible to move West; but some of the Choctaws would not sign the treaty requiring them to move West. It seems to be the general contention that the giving of 640 acres to the heads of families and so on down the line was done in order that they might get the treaty signed and the Indians moved.

Mr. PHELPS. That leads me to this question: Was it not a fact that the Government of the United States found it impossible to make that treaty with the Choctaw Indians in 1830 up until the time that they drafted the fourteenth article?

Mr. CARTER. I think I stated that very plainly.

Mr. PHELPS. Then the 640 acres did not constitute a consideration to remain in Mississippi, and do you contend that it was just simply to satisfy those people who refused to move and that there was no power in Congress to remove those people?

Mr. CARTER. Again, I am not contending anything, but am simply saying how the matter presents itself to me at this time. I wanted to bring out a discussion of both sides of the question, and that was the animus for my interrogatories. I repeat, it seems apparent that the Federal Government did not want the Indians to remain in Mississippi, the people in Mississippi did not want them to remain there, but they wanted to get a treaty signed by which they could start the migration. They were unable to get that treaty signed and the Choctaws refused to move. So it seems to be generally conceded that the fourteenth article was placed in this 1830 treaty to secure its adoption and induce the Choctaws to begin migration to the new reservation in the West.

Mr. PHELPS. That was the point I wanted to make clear.

Mr. BALLINGER. Mr. Bond, I have just one suggestion and then I will not interrupt you. Judge Clayton did render a decision, as you stated, holding in effect that removal was essential to a right in the western lands. That decision was rendered, as I recall, in the Jack Amos case. Judge Townsend, another United States judge, sitting in another district in Indian Territory, as I recall, in the consolidated "Mississippi Choctaw cases," held that removal was not essential to a right under the treaty of 1830; that the Choctaws living in Indian Territory held the land for the benefit of the absentees in Mississippi, Louisiana, or wherever they might be. So that you have two decisions of coordinate courts diametrically opposite, and there has never, so far as I know, been a decision of a higher court on that particular point.

Mr. BOND. Mr. Ballinger, it is a very difficult undertaking for a man to make an argument in logical sequence and in chronological order without notes, without a written statement, and without a brief; and if I am to be continually interrupted during my discussion of the issues, the argument will be so scattered that the committee will be unable to get heads or tails out of my discussion when the matter has been closed. I will attempt now to answer one or two of your questions, and hereafter I will appreciate it if you will refrain from asking me questions until I have had an opportunity to present my argument to the committee. After I have presented my argument I will be pleased then to answer any question that is relevant or competent.

Mr. PHELPS. Mr. Chairman, I would like to say to Mr. Bond that I beg his pardon for interrupting in the course of his argument. It was not my intention to do that. The argument had become rather informal at that time, and I had no idea of at all confusing Mr. Bond.

Mr. BOND. No; I appreciate that.

Mr. CARTER. I think the Chair can be charged for practically all the irregularities that have entered into Mr. Bond's argument. I thought it important to bring out clearly any distinction between the force that an objection from an individual or band of individuals might have as compared to the force of an objection from the legal and duly constituted tribal authorities.

Mr. BOND. I think the Chair left the room shortly after I commenced my argument and did not get the trend of my thought and the authorities cited by me.

Now, Mr. Ballinger has asked me to site him to some decision holding that, under the terms and conditions of the patent issued under the treaty of 1830, it was necessary to remove to and establish a bona fide residence within the tribal domain in order to acquire citizenship and share in the tribal funds and properties. The case of Jack Amos against the Choctaw Nation so holds, and I will discuss that case fully later on in the hearing. I might also say that I have no knowledge of an opinion rendered by Judge Townsend wherein the question of removal was involved save an ex parte opinion entitled "In re Citizenship cases," which will be referred to later. The only Horn citizenship case that I have any knowledge of is the E. J. Horn case decided by Judge Clayton, and that case does hold as you have stated.

It will be argued that Congress has authority to pass on applications for citizenship and therefore the provisions of the bill in question are within the law, but I assert that there is a marked distinction between the title held by the Choctaw and Chickasaw Nations under the treaty of 1855 and the title vested in other tribes, a distinction that has been recognized by the court of last resort, and when Congress contemplated the allotment in severalty of the lands of the Choctaw and Chickasaw Nations it fully realized the danger of attempting to divest them of such title by the addition of the names of claimants to their rolls without the consent of the tribe; hence, Congress agreed with the tribes as to the manner and method

of enrollment and the allotment of lands. It was agreed that the right to citizenship should be determined by a competent tribunal empowered to administer oaths and hear testimony, and Congress is without authority to annul the judgments of said tribunal and enroll without evidence and without a hearing.

The judicial department has the exclusive power to determine what the law is, and the validity and effect of statutes and the rights of the claimants can not be determined without passing upon the effect of the fourteenth article of the treaty of 1830, and without passing upon the effect of the patent issued in pursuance thereof; and, therefore, I say Congress could not direct the enrollment of claimants without encroaching upon the power of the judicial department of the Government. If the moneys and properties of the Choctaws and Chickasaws are taken from them by an act of Congress and sent to an alien people in a foreign State, the act which deprives the tribes of their property in violation of the patent and the treaty, and in violation of court decisions, should carry with it a provision giving the Court of Claims jurisdiction to determine the responsibility of the United States for such taking of property.

The claimants are notoriously insolvent. The tribes are without authority to sue the United States unless permission is first granted, therefore the force and effect of the treaties and agreements made and entered into between the United States and the tribes, in the event permission to sue is refused, may be tested in a proceeding to enjoin the Secretary of the Interior from paying such moneys; however, we would much prefer the right to institute a suit in the Court of Claims with the right of appeal to the Supreme Court. We trust, however, that there will be no occasion for such a suit, and trust that if Congress ever contemplates the taking of tribal moneys under the conditions and circumstances above named that Congress will first submit a test case to the Court of Claims with the right of appeal by either party. If, after a full hearing, Congress should conclude that the claimants are not entitled to citizenship rights as against the Choctaw and Chickasaw Nations, but should find a settlement due or equities existing between the Choctaws east and the Choctaw Nation west, then Congress should authorize a suit to determine such equities. You often hear the assertion that the subcommittee last session reported in favor of reopening the rolls. I have read carefully the report of said committee, and I do not so construe the report. I read from said report, at page 27:

Mr. MILLER. The Choctaws, as a nation, have some money and have valuable coal lands. But we must recognize a solemn treaty provision between the Choctaws and the United States. In the treaty of 1902, article 35 begins as follows:

"35. No person whose name does not appear upon the rolls prepared as herein provided shall be entitled to in any manner participate in the distribution of the common property of the Choctaw and Chickasaw Tribes and those whose names appear thereon shall participate in the manner set forth in this agreement."

Now, I can finish in one or two more sentences. It is a grave question whether the Choctaw Nation alone is responsible and should be required to compensate, if any body does compensate, these Indians for the injustice. I am not prepared to say here what I think about it, but it seems to us that the committee ought to be agreed that these Indians are on earth. They have been injured and they ought to have some relief, and the committee, then, should say what the relief should be, and, as a prerequisite to that, we are agreed that we should know who they are, how many they are, and where they are.

The Secretary of the Interior, in writing, states that there are records in his office now, or in the office of the commissioner to the Five Civilized Tribes, they heretofore having received applications for $24,000, and taken testimony on them covering practically all meritorious cases. They can probably make up a list that will include all who have the right and who ought to be included in the list of those to whom relief should be given.

Mr. CARTER. No doubt that would depend almost entirely upon whom the Secretary would refer it to, would it not, Mr. Miller?

Mr. MILLER. I do not know. I will say this to you, Mr. Carter: If this is left as it is, the Secretary of the Interior would submit a very small list, and the way we have drawn this is not to open it up, not to let every Tom, Dick, and Harry have an investigation, but to take it up and determine where the meritorious case are.

We are of the opinion that the recommendations of said report were practically complied with at this session. The Department of the Interior reported the names of applicants who had claims of apparent merit and such persons were enrolled. The tribes agreed to the enrollment as a compromise and to purchase their peace, and yet they are still threatened with a practically unrestricted reopening of their rolls. It will ever be so until their properties and moneys are exhausted unless Congress takes a firm stand in the premises. The cases of the claimants have been the subject of congressional legislation, commission report and decision, judicial decree and determination until finally adjudicated, and the members of the Choctaw and Chickasaw Tribes are entitled to their peace.

(The committee thereupon took a recess until 2.30 o'clock p. m.)

AFTER RECESS.

Mr. BOND. The proponents of the bill contend that the alleged claimants are entitled to citizenship in the Choctaw and Chickasaw Nations with all the rights, privileges, and immunities of such without removing to and establishing a bona fide residence within the confines of the tribal domain. The opponents of the bill assert that the ancestors of the alleged claimants, having renounced their allegiance to the tribe, that the alleged claimants having been born without the tribe, and having refused to assume the burdens and responsibilities of tribal citizenship, and having refused to remove to and establish a bona fide residence within the tribal territory, they have forfeited their rights to tribal citizenship. The proponents of the bill ask for an interpretation of the treaty in conflict with the weight of authority in violation of two fundamental rules of statutory construction and against the treaties, laws, usages, and customs of the tribe.

The opponents of the bill ask for an interpretation of the treaty in accord with the weight of authority, in harmony with two well-established rules of statutory construction, and in keeping with the treaties, laws, usages, and customs of the tribe. Principle is the very groundwork and foundation of the law; precedent is persuasive and often final; and we will establish to your satisfaction, by both principle and precedent, that the alleged claimants are without legal or equitable right to citizenship in the Choctaw and Chickasaw Nations.

Mr. MILLER. If I may suggest it, I do not know that it has ever been seriously contended, or contended at all, that the so-called Mis-

patent and are the only portions of that instrument which shed any light on the question now being considered, and therefore article 2 and the conditions of the patent may be considered together. * * *

Article 3 of the treaty of 1830 stipulates that the Choctaws agree to remove all of their people during the years 1831, 1832, and 1833 to those lands.

Article 14 of the treaty, however, provides for certain privileges and rights for those who might choose to remain in Mississippi with a view of becoming citizens of that State. They and their descendants were to receive certain lands and, after living on them for five years, intending to become citizens of the State, those lands were to be granted to them in fee simple. Then follows this very peculiar clause:

"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 difficulty in construing this clause of the treaty is to ascertain the meaning of the word "remove." To what does it relate, and how shall we give it meaning? It certainly does not purpose to impose a penalty on the Choctaw who may choose to remove for removing, and for that reason forfeit his right to the annuity, because so long as he remained in Mississippi he was not entitled to any annuity, and therefore by removing he could not forfeit that which he did not have. If he removed he was to have no annuity, and if he remained he was to have no annuity. It is evident, therefore, that the word was not used for the purpose of forfeiting the annuity in case of removal. Then what are its uses? The very object of the treaty was to procure a removal of these people. The whole of the Choctaw Nation, with all of its sovereignty, its powers, and its duties, was to be transferred beyond the Mississippi. It was to exercise its powers, confer its privileges, and maintain the citizenship of its people in another place. Those who were left behind were to retain, not this Choctaw citizenship but only the "privileges of a Choctaw citizen"; that is, that when they put themselves into a position that these privileges could be conferred upon them they were to have them, and under the conditions and purposes of this treaty, how would it be possible for them to put themselves in such a position without first removing within the territorial jurisdiction of the Choctaw Nation and within the sphere of its powers? What privilege would it be possible for the Choctaw Nation to confer or a Mississippi Choctaw to receive so long as he remained in Mississippi and out of the limits of the Choctaw Nation?

By the very terms of the treaty they were to become citizens of another State, owing allegiance to and receiving protection from another sovereignty. If one Mississippi Choctaw were to commit a wrong against the person or property of another, the right would be enforced and the wrong redressed under the laws of Mississippi. The Choctaw Nation would be powerless to act in such a case. The Choctaws in that State can not vote, sit as jurors, or hold office as a Choctaw citizen, or receive any other benefit or privilege as such. They can not participate in the rents and profits of the lands of the Choctaw Nation, because by the very terms of the grant the Choctaw people and their descendants must live upon them. If they do not, it is an act of forfeiture, made so by the provisions of article 2 of the treaty of 1830, and also of those of the patent to their lands afterwards executed.

The title of the Choctaw people to their lands is a conditional one, and one of the conditions of the grant, expressed in both the second article of the treaty of 1830 and the patent, is that the grantees shall live upon them. And who are the grantees? Who are these people who are to live upon the land? Unquestionably the Choctaw people and their descendants; for, while the grant is to the Choctaw Nation, the people seem to be included both as grantees and beneficiaries. The language of the treaty is, and it is carried into the patent:

"The President of the United States shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple, to them and their descendants, to inure to them while they shall exist as a nation and live on it."

The Choctaw Nation is not "them" and can not have "descendants." And while it may exercise its sovereignty and its national powers within certain defined territorial limits, it can not "live on land." Those provisions of the grant which are expressed in the plural and attach to "descendants" and which require as a condition that the land shall be lived on beyond doubt refer to the Choctaw people and their descendants. * * * There can be no question but that the second article of the treaty of 1830, negotiated 12 years before the execution of the patent, * * * was intended to convey a fee-simple title, burdened by two conditions subsequent, the one that the grantees should continue the corporate existence of their nation, and the other that the people of that nation and their descendants should forever live upon the land. A failure of either would work a forfeiture of the title to the grantor. * * *

This condition was inserted for two reasons: First, to compel the grantees to remove upon the lands; and, second, to compel them to remain on them after removal. It was not intended that some should go and locate on the lands and hold the title for themselves and also for the others who should choose to remain. * * *

The word "successors" was omitted from the treaty, because by its terms the Choctaw Nation was to have no successors. They were to live on the land forever or it should be forfeited to the grantor. When the technical words "successors" and "heirs" were dropped and the common word "descendants" was used, these Indians could understand it. They knew what they and their offspring were. It was to them—the people and their children—that the land was sold, and when the condition was added that the grant was to be made to them and their descendants only in the event that they should live upon the lands, they could not but understand that this implied a removal and a continual residence upon them.

Mr. MILLER. May I ask you a question on a point that I would like to have you elucidate fully? In the early part of the court's opinion it is stated that the Choctaws remaining in Mississippi had no annuities. Therefore by removing west they lost none. What have you to say as to whether or not that is a correct statement of the fact?

Mr. BOND. That is a correct statement of the fact, because the Government paid no annuities to the Choctaws who remained, expatriated themselves from the tribe, and became citizens of the State of Mississippi.

Mr. MILLER. Are you quite sure about that?

Mr. BOND. I am quite sure about that, for the reason that the annuities promised under that treaty were afterwards recovered in an action wherein the Choctaw Nation was plaintiff and the United States was defendant, and the annuities were distributed in the Choctaw Nation West, and the Choctaws who remained in Mississippi under the fourteenth article of the treaty received no annuities provided for under the treaty of 1830.

Mr. MILLER. Is that what the language of that opinion says?

Mr. BOND. The annuities provided for in the treaty were for the nation. Those annuities were to assist the nation who went west to endure privations and hardships in their effort to conquer a wilderness and establish homes in a new country.

Mr. MILLER. Can you state what those annuities consisted in?

Mr. BOND. They consisted of $20,000 a year for 20 years.

Mr. MILLER. I made some special effort to ascertain that phase of the case some time ago, and the results were not entirely satisfactory. I thought that possibly you had some additional information.

Of course, that construction of the court is not at all the language of the treaty. Nobody could claim that was so. If there were 40 decisions like that nobody would read the terms of the treaty and read the opinion and say that that was a correct statement of what the treaty provided. Now, it may be that a subsequent action on the part of both the Choctaws and the United States relieved the United States of its obligations and changed the rights of the Choctaws. However, I do not think that is fundamental or a determining factor in this controversy, but I have never been able to understand why the court used that language. The language clearly says that

if they removed west they would lose their right to annuities. Of course, if you and I used that language between us we could only mean that if they wanted the annuities they should stay in Mississippi.

Mr. BOND. You must construe the treaty as a whole, and the treaty does not offer annuities to anyone except members of the nation, and naturally when those who remained alienated themselves from the tribe and became citizens of the Commonwealth of Mississippi they were no longer members of the nation.

Mr. MILLER. Then you take the position that those who remained in Mississippi by that act severed their relationship with the tribe?

Mr. BOND. They severed their relationship with the tribe, with the retention of a privilege. They reserved a privilege to remove to the nation west, to renounce their allegiance to the Commonwealth of Mississippi, reaffirm it to the tribe, and thereby enjoy all the rights, privileges, and immunities of tribal citizenship save to share in the annuities.

Mr. MILLER. Do you think that is what the Choctaws understood the language to mean when they had the fourteenth article written?

Mr. BOND. That was evidently what the Choctaws understood the language to mean, because the annuities were paid to the nation, and the annuities were not paid to the individuals who remained, and the individuals who remained never claimed a right to the annuities. Therefore the nation and the individuals must have understood the treaty as it was construed by the Government authorities who paid the annuities and as construed by the courts and the commission at a later date.

Mr. MILLER. I just wanted to get your ideas on that. As I said before, I do not think it is fundamental as affecting the rights of the parties at all.

Mr. BOND. You were evidently confused in attempting to ascertain what tribal annuities were. A great many people take the position that any tribal funds that are paid out to the tribe are tribal annuities.

Mr. MILLER. No; I do not think that. I put the query squarely to the department to inform us, if it could, what annuities were referred to and what they consisted of. Of course, all we had was their reply, and the subsequent course of events we know. They are of record.

Mr. CARTER. Mr. Bond, what article of the treaty is it that provides this annuity of $20,000?

Mr. BOND. Article 17 provides for the annuities. I will read same in full:

> ART. XVII. The several annuities and sums secured under former treaties to the Choctaw Nation and people shall continue as though this treaty had never been made.
>
> And it is further agreed that the United States in addition will pay the sum of twenty thousand dollars for twenty years, commencing after their removal to the West, of which, in the first year after removal, ten thousand dollars shall be divided and arranged to such as may not receive reservations under this treaty.

The terms of the seventeenth article show that the annuity of $20,000 was not to be paid until after their removal west, and that same was not to be paid to those receiving reservations under the treaty.

Reading further from the opinion of Judge Clayton——

Mr. MILLER. It seems to me I recall that there was due them under the former treaty a very small payment in addition to this $20,000 a year that is provided for in this treaty.

Mr. BOND. In practically all the early treaties a provision was made for annuities, and the several annuities and sums secured under former treaties were continued under the terms of this treaty, but, as a rule, the annuities under former treaties were very small. I take it that a large annuity was paid the nation west, as before suggested, on account of its going into a new country. It was unsettled, uncultivated, and uncivilized.

Mr. MILLER. But have you ever contemplated—if there was a small annual payment in the way of annuities due—that while these who would go West would have a large acreage at their disposal, those who remained would have that which is specified in the treaty; but as an additional aid to those who remained in Mississippi, to aid them in building homes, perhaps, not having any additional aid such as the others would get who removed, they were to receive the annuities?

Mr. BOND. Mr. Miller, the people who remained, or their ancestors, had been living in practically the same section since De Soto discovered the Mississippi River. In fact, I think they should have had title to that land by the right of possession, because they did not roam and move about as other tribes did. History places them in the same locality. They were not only found there under the Spanish, but under the French, and later when those possessions passed to us. And, therefore, they had homes, they had lands in cultivation, they were in a better position to earn a livelihood for themselves and for their families than a people would who were going into an absolute wilderness and attempting to reclaim it.

Mr. MILLER. Then the position you take is that the annuities referred to were to be paid to the Indians who moved West; and that those who first remained in Mississippi and did not go West with the main body, if they subsequently removed they would then become citizens of the Choctaw Nation west, but would not participate in any distribution of annuities to the Choctaws west?

Mr. BOND. That is my contention. But I will say this, that those who did go West, I think, participated in the annuities, so far as my knowledge goes, the same as any other member of the tribe.

Mr. CARTER. You mean those that afterwards moved West?

Mr. BOND. Yes; those who afterwards moved West.

Let me leave this thought with you. If the annuity you speak of should have been paid, as you seem to suggest, to the Choctaws east as well as the Choctaws west, but was not so paid, that fact would not entitle the Choctaws to citizenship in the Choctaw Nation.

Mr. MILLER. I agree with you on that absolutely.

Mr. BOND. But it might entitle them to a suit for the annuities they were deprived of, with interest since the date they became due.

Mr. MILLER. I agree with you absolutely. That is the reason I said I did not think it was a determining factor in the query whether or not the Mississippi Choctaws were entitled to citizenship in the nation west.

Mr. RICHARDSON. Will you in your argument consider the word "lose" in that fourteenth article; whether that is not inconsistent with your idea of the right reserved to them?

Mr. BOND. Yes; Mr. Richardson, I have considered the word "lose" carefully. If you will permit me to finish reading the parts of this opinion that I desire to present I will then take up the word "lose" and argue same for you.

Reading further from the opinion:

When the fourteenth article of the treaty was framed, the negotiating parties understood that the policy of the United States was that the Choctaws were to be removed. The Choctaws, in article 3, had just agreed that they should all go. The ink was not yet dry in article 2, whereby the condition was placed in this grant to the lands that they were to live upon them or they should be forfeited, and that no privilege of citizenship could be conferred or enjoyed outside of the territorial jurisdiction of their newly located nation. Understanding these conditions the latter clause of article 14 was penned:

"Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but, if they ever remove (that is, if they ever place themselves on the land and within the jurisdiction of the nation whereby those privileges may become operative), are not to be entitled to any portion of the Choctaw annuity."

In other words, if they ever remove, they are to enjoy all of the privileges of a Choctaw citizen except that of participating in their annuities. If this be not the meaning to be attached to the word "remove" as used in the clause of the treaty under consideration, it must be meaningless. But in the interpretation of statutes it is the duty of the court to so interpret them as to give to every word a meaning, and, in doing so, it must take into consideration the whole statute, its objects and purposes, the rights which are intended to be enforced and the evils intended to be remedied; it may go to the history of the transaction about which the legislation is had and call to its aid all legitimate facts proven or of which the courts will take judicial notice in order to find the true meaning of the word as used in the statute.

Of course the same rule of interpretation applies to treaties. Adopting these rules in the interpretation of article 14 of the treaty of 1830, I arrive at the conclusion that the "privilege of a Choctaw citizen" therein reserved to those Choctaws who shall remain, thereby separating themselves, it may be forever, from their brethren and their nation, becoming citizens of another sovereignty and aliens of their own, situated so that it would be impossible, while in Mississippi, to receive or enjoy any of the rights of Choctaw citizenship, was the right to renounce his allegiance to the Commonwealth of Mississippi, move upon the lands conveyed to him and his people, and there, the only spot on earth where he could do so, renew his relations with his people and enjoy all of the privileges of a Choctaw citizen except to participate in the annuities.

* * * * * * *

To permit men with, perchance, but a strain of Choctaw blood in their veins who, 65 years ago, broke away from their kindred and their nation and during that time, or the most of it, had been exercising the rights of citizenship and doing homage to the sovereignty of another nation, who have borne none of the burdens of this nation, and have become strangers to the people, to reach forth their hands from their distant and alien home and lay hold of a part of the public domain, the common property of the people, and appropriate it to their own use, would be unjust and inequitable.

It is, therefore, the opinion of the court that absent Mississippi Choctaws are not entitled to be enrolled as citizens of the Choctaw Nation.

Mr. MILLER. Now, can you state the further history of that case, so as to get it all together in the record?

Mr. BOND. After the rendition of that judgment it was still contended that the claimant under the fourteenth article of the treaty was entitled to citizenship in the Choctaw Nation without removal. The act of 1896 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.

In the face of this act it was impossible to appeal, since the act of 1896 made the judgment of the United States court final.

Thereafter, in 1898, Congress passed an act, in part, as follows:

Appeals shall be allowed from the United States Court in the Indian Territory direct to the Supreme Court of the United States to either party in all citizenship cases and in all cases between either of the Five Civilized Tribes and the United States involving the constitutionality or validity of any legislation affecting citizenship or the allotment of lands in the Indian Territory, under the rules and regulations governing appeals to said court in other cases.

Under the provisions of that act the Jack Amos case was appealed to the Supreme Court of the United States. Pending the appeal of said case to the Supreme Court, numerous other cases involving questions of citizenship in various different tribes were appealed; and the court having rendered a decision in some of said cases holding that the constitutionality and validity of the act was the only thing submitted to the jurisdiction of the court, and that the court was without jurisdiction to pass upon any other matters, a great number of such cases were dismissed, among them being the Jack Amos case.

Mr. MILLER. So that the Jack Amos case was never reviewed by the Supreme Court?

Mr. BOND. No.

Mr. MILLER. That is, as to its merits.

Mr. CARTER. It was dismissed on the motion of the attorneys for the Mississippi Choctaws.

Mr. BALLINGER. And before the decision in the Stephens case was rendered.

Mr. BOND. I will say, further, that this judgment is now final, and conclusive, so far as rights to citizenship of fourteenth-article claimants are concerned, who failed to remove, and the Chickasaw Tribe of Indians, having purchased subject to that treaty, and the courts having construed that treaty, the Chickasaw Tribe of Indians are entitled to insist upon removal before their funds shall be disposed of to claimants or applicants for citizenship. Congress is without authority now to pass an act providing for the enrollment of those who do not remove unless Congress would first provide for a review of the Jack Amos case in a court of competent jurisdiction, and that court would necessarily have to reverse the Clayton decision before Congress would be warranted in opening the rolls for citizens who had not removed to the Choctaw Nation.

Mr. BALLINGER. Mr. Bond, if that decision was conclusive as to the rights of the Mississippi Choctaws, whose cases were before Judge Clayton, what have you got to say about Judge Townsend's decision, in which he held just the reverse of Judge Clayton, in the case entitled "In re Citizenship cases," decided by him?

Mr. BOND. I have one question to answer for Mr. Richardson, and I would like to dispose of it at this time, but before I have finished my argument, I will take up the Townsend decision and analyze and discuss it carefully. Now, Mr. Richardson, you asked me what construction I would put on the word "lose" appearing in the fourteenth article of the treaty. Under the rules of statutory con-

struction, treaties must be construed as a whole. The second article of the treaty provides in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live upon it. You will admit that under the language of the second article of the treaty, there was imposed upon the members of the tribe a duty to live upon the land conveyed by a patent which was subsequently issued and which contained the same language.

Now, you must construe every other article of that treaty, if possible, so as not to conflict with or destroy Article II of the treaty; and when you construe the language, persons who claim under this article "shall not lose the privilege of a Choctaw citizen, but if they ever remove, are not entitled to any portion of the Choctaw annuity," you must construe that article so as not to conflict with Article II, and when you do, you are irresistably drawn to the conclusion that that privilege which they shall not lose will not avail them anything unless they remove, because Article II says they must remove. In other words, they must live upon the land which would necessitate removal. Then, when the word "remove" is used in connection with the privilege which they shall not lose and in order to make it harmonize and accord with section 2, it necessarily follows that they must remove in order to enjoy that privilege, and in order to fulfill the terms and conditions of the patent and of Article II.

Another thought: You can not treat as redundant and reject as surplusage words that may be given a meaning in a treaty. What are you going to do with the words "if they ever remove"? Let us read that language and leave out the words "if they ever remove":

> Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but are not entitled to any portion of the Choctaw annuity.

The reading of that language with those words left out says that they shall not lose the privilege. It says they shall not have any annuity, and therefore the words "if they ever remove" are treated as surplusage and redundant, and when you treat them as surplusage and redundant in the face of Article II, which says they must live upon the land, and in the face of the patent which says they must live upon the land, you violate a fundamental rule of statutory construction.

Mr. MILLER. What have you to say to this: A man claiming under Article XIV of the treaty, received 640 acres of land. He had three children over 10; they each received 320; that would be 960 plus 630, 1,600 acres of land. They all lived on it five years, and received a patent for it, then immediately removed to the Choctaw Nation West and claimed property rights in the tribe west. Could he do that?

Mr. BOND. He could do that; yes, sir.

Mr. MILLER. What would be the reason for giving him such rights as that?

Mr. BOND. The reason for giving him such rights and privileges and the right to benefits far in excess of those accorded to other members or individuals was the anxiety of the Government to remove those people from the State of Mississippi to lands west. The Government, in order to accomplish its purpose, afforded the party who was entitled to the lands mentioned by you no protection whatever in the way of restrictions. His lands were alienable; they could be sold after the required residence, disposed of, alienated; no restriction on alienation was imposed, and it had been the policy of the Government practically from time immemorial not to allot Indians without placing certain restrictions on alienation, and therefore, I say, the object of the Government was to remove those people West. When the Government found that they would have to move them at the point of the bayonet, as some of the records show, it then sought other means to enter into a treaty, and used sophistry and ingenuity and offered in the end land to those who remained, with the privilege of removal and placed no restrictions on the land, hoping that they would, when the five-year limit had expired, sell same and leave the State of Mississippi and remove West.

Mr. MILLER. Do you not think they may also have had in mind the Indians who moved west would never own in severalty any of the lands given to them there; simply be owned by the tribe as an entity, and they would have the right to give up and use it in common?

Mr. BOND. Well, that's rather a difficult question to answer; it's hard to anticipate what those who made that treaty and negotiated it had in their minds for the future. It was evidently their intention that those lands would be held as community lands for a number of years.

Mr. MILLER. Well?

Mr. BOND. But surely——

Mr. MILLER. The treaty says "always."

Mr. BOND. Congress contemplated some time that Indian governments in the United States should cease; that some time all Territories should become States of the Union.

Mr. MILLER. Don't think it was, then, Mr. Bond.

Mr. BOND. Why, it was only 36 years after the adoption of the treaty of 1830 until the treaty of 1866 was made, which provided for an allotment of these lands in severalty.

Mr. MILLER. Well, the only reason for my inquiry was to develop the possibility that the annuities referred to would be the thing, and all payments by the United States to the Indians west, and very likely any funds going into the hands of the United States arising from a sale or segregation or disposition of the lands west would be paid to them.

Mr. BOND. I might say further that the individuals who remained east under the fourteenth article of the treaty never asserted or attempted to assert any claim to any of the moneys for any of the sales of any of the lands west. Only seven years after the treaty of 1830 was ratified, under the treaty of 1837, the Chickasaws purchased an interest in the Choctaw country west for a consideration of $550,000. No part of that money was claimed by those who remained east, and no claim has been asserted to this day for any of the proceeds of that sale. A portion of the lands west were ceded absolutely to the Government without a valuable consideration, but what consideration was received for the lands ceded west the Indians east never asserted a claim to and haven't to this day; but if they have any claim to the moneys derived from those lands it couldn't be reached in an action for citizenship in the Choctaw and Chickasaw Tribes, but it should be by an action in law or at equity for the specific amounts that they were entitled to, with interest from the date of the cession.

Mr. CARTER. I think a reasonable view that might—a resonable construction or view, you might say, on that might be placed upon what was in the minds of the people who made the treaty of 1830, with reference to any future allotments granted in severalty in the western reservation—might be that the Indians at that time had no idea that they would ever be called upon to allot those lands, and that the white man knew very well that they would not be called upon in the future, but kept that fact studiously from the Indians until he got the treaty signed.

Mr. MILLER. Have you the treaty between the Chickasaws and Choctaws by which they purchased their interest?

Mr. BOND. Yes.

Mr. MILLER. I have really never seen that; I hope to put that in the record.

Mr. BOND. I will put it in the record now, if you like.

Mr. MILLER. It does not make any differene when.

Mr. CARTER. Suppose we put it in as an exhibit?

Mr. BOND. At this point?

Mr. CARTER. Suppose we take those things that are not directly involved and put them in the back part of the record as an addenda?

Mr. MILLER. That will be all right.

Mr. BOND. I will offer it later. In support of the argument I have just made, in reference to the construction of the last clause of the fourteenth article of the treaty, I desire to read from Sutherland on Statutory Construction, Volume II, second edition, at page 731:

> It is an elementary rule of construction that effect must be given, if possible, to every word, clause, and sentence of a statute. Statutes should be so construed that effect may be given to all of their provisions, so that no part will be inoperative or superfluous, void, or insignificant, and so that one section will not destroy another.

If you construe the last clause of article 14 to mean that the fourteenth-article claimant is entitled to citizenship rights without removal, you absolutely destroy the language of the patent, and you absolutely destroy article 2 of the treaty, because they both provide that claimants must live upon the land.

Mr. RICHARDSON. Mr. Bond, was not the reason that that provision was put in article 2, as well as in the patent, the fact that Congress, in the spring of 1830, had passed an act relating to the giving of deeds and making treaties for Indian lands in which they had required that provision to be inserted, and in other treaties where that same clause was put in, the proviso was that the tribe—the nation or tribe—as such was the only tribe who held down that title by possession, and not the individual?

Mr. BOND. I do not know what the legislators had in mind when they placed that provision in the treaty, but the provision is there, and that provision was carried into the patent, and even if the provision did not appear in the treaty and did appear in the patent they would be bound by the terms of the patent, because they accepted the benefits under the patent and they must assume the burdens.

Now, I would like to devote some time to distinguishing cases that have been cited by counsel for proponents at this hearing and at other hearings before I was employed to represent the Chickasaw Tribe of Indians. I desire to call the attention of the committee to the case

of Oaks et al. *v.* United States, reported in 172 Federal, at page 305. This decision was cited by Mr. Cantwell, of counsel for proponents, and referred to by him as a very illuminating decision. I think it is very illuminating in its marked distinction from the issues before the committee, and I am very much pleased, indeed, that Mr. Miller is a member of this committee, because Mr. Miller was of counsel in this case and will readily see the marked distinction. Mr. Cantwell contends that under this decision all Indians throughout the United States are entitled to citizenship in their respective tribes, nations, or bands without removing to and establishing a residence in their nations, tribes, or reservations prior to allotment. I read from the syllabus, first section:

> Originally the test of the right of individual Indians to share in tribal lands and other tribal property was existing membership in the tribe, but this rule has been so broadened by the act of March 3, 1875, and the act of February 8, 1887, and other acts as to place individual Indians who have abandoned tribal relations once existing and have adopted the customs, habits, and manners of civilized living upon the same footing in respect of this right as though they had maintained tribal relations.

Now, if it please the committee, those acts referred to are acts applicable to reservation Indians, and an examination of the Federal statutes will show that Congress in passing those acts prefaced same, showing the applicability of the statute and showing that they were applicable to reservation Indians. In determining the rights of citizenship you must look to the law of the particular tribe in question. If you desired to determine the rights of citizenship of a subject of the Czar of Russia you would look to the laws of Russia. If you desired to determine the rights of citizenship of a subject of the Emperor of Germany you would look to the laws of Germany. So if you desire to ascertain the rights of citizenship of a Choctaw citizen you must look to the laws applicable to the Choctaw Tribe of Indians. The acts of 1875 and 1887 are not applicable to the Five Civilized Tribes. Congress has always legislated specifically with reference to said tribes. The courts have never construed any of the acts at large as applicable to the Five Civilized Tribes.

And I desire further to make this distinction, and Mr. Miller will no doubt recall it to his mind after it has been made. Even in this case the court held that if a party was born without the tribe and had never had any tribal affiliation or tribal relations that then he would not come within the purview of said acts—that he must some time have had tribal affiliations—and the claimants here have never had tribal affiliations; their ancestors, who renounced allegiance to the tribe, are all dead, and the claimants were born without the tribe.

Another suggestion: The court, in rendering the opinion in the Oakes case, stated that you must first look to the allotment act under which the Indians are to be allotted, and it looked to the allotment act under which this particular band of Indians were being allotted, and it found that the allotment act did not conflict with the statutes at large, applicable to reservation Indians, and therefore found that the statutes were applicable. If you look to the allotment acts of our tribes, you will find that they all contemplate residence. The act of 1898 contemplates residence; the act of 1900 says that the fourteenth-article claimants must remove; the act of 1902 says that the fourteenth-article claimants must remove; so, even if the statutes

of 1875 and 1887 had been applicable to the Five Civilized Tribes, they would have been repealed by our allotment acts of 1898 and 1900 and 1902. I will read from a part of the opinion:

Jane Andrews and Cornelia Van Etten Bent, the remaining appellants, are daughters of Mrs. Jones by her first husband. They were born and reared in St. Paul, never were enrolled or recognized as members of the tribe, and are married to white men. After the Oakes family moved to St. Paul, Mrs. Oakes and Mrs. Jones abandoned their former tribal relations, adopted the customs, habits, and manners of civilized life, and ceased to be recognized as members of the tribe; but these visits did not occur often, and were confined to relatives. The appellants were all residents of St. Paul when the act of 1889 was passed, and shortly thereafter they asserted that they were entitled to allotments thereunder. In 1894 the names of Mrs. Oakes and Mrs. Jones were placed upon a supplemental census of White Earth Mississippi Chippewas by the chairman of the commisson charged with making a census and allotments under the act of 1889, and the next year their names were dropped from the census; but the circumstances in which these acts were done are not disclosed. In 1905, before applying for allotments to specific lands, Mrs. Oakes and Mrs. Jones removed to and took up their residence upon the White Earth Reservation. Whether or not Mrs. Andrews and Mrs. Bent did likewise may be left undetermined, because, if they did, it would not help them, as will be seen presently.

* * * * * * *

We conclude that Mrs. Oakes and Mrs. Jones, who formerly were members of the tribe, are within the saving provisions of the acts of March 3, 1875, and February 8, 1887, and so are entitled to share in the allotment and distribution of the tribal property, the same as though they had maintained their tribal relations, but that Mrs. Andrews and Mrs. Bent, who never were members of the tribe, can not derive any benefit from any of the acts mentioned; and we reach this conclusion with greater satisfaction, because it is in accord with rulings of the Secretary of the Interior in cases which are not distinguishable from this. * * *

Citing decisions.

Another case cited by Mr. Cantwell, of counsel for proponents, as supporting the contention that the claimants were entitled to citizenship without removal, is found in 170 United States, at page 1, New York Indians *v.* United States. This case is not in point with the issues in question for the following reasons: The New York Indians composed several small bands living in different parts of the State. A treaty was made with those Indians whereby they ceded to the Government certain lands in the State of Wisconsin. The Government, in lieu of that cession, ceded those bands certain lands in the State of Kansas. There was a provision in the treaty that they were to live upon the lands in the State of Kansas, but that wasn't the sole condition precedent. There were other conditions precedent. The President of the United States was required under the treaty to notify the various bands when they were to remove and to provide for them a method and manner of removal. The Government disposed of the lands ceded in Wisconsin and attempted to claim a forfeiture of the lands in Kansas, because the New York bands had not moved to that State. The court held that the question of citizenship was not involved, held it was merely a question of whether or not there was a forfeiture, and since the Government had failed to comply with the condition precedent, it couldn't claim a forfeiture on the part of the Indians.

Mr. RICHARDSON. Mr. Bond, is that not very much like the claim of the identified full bloods whose claim was defeated by the action of the Government?

Mr. BOND. No; no analogy whatever. The rights of those people are absolutely founded on the treaty of 1830. Reading from the syllabus:

The provision in the treaty of June 15, 1838, with the New York Indians that the United States will set apart as a permanent home for them the tract therein described in what afterwards became the State of Kansas, was intended to invest a present legal title thereto in the Indians, which title has not been forfeited and has not been reinvested in the United States; and the Indians are not estopped from claiming the benefit of such reservation.

Reading from the opinion of the court:

By the third article of the treaty it was further agreed that such of the tribes of the New York Indians as do not accept and agree to remove to the country set apart for their new homes within five years, or such other time as the President may from time to time appoint, shall forfeit all interest in the lands so set apart to the United States.

Now, mark you, "or such other time as the President may from time to time appoint." A distinction is drawn by the authorities between the case of a private grantor, who may reenter in the case of a breach of a condition subsequent, and the Government, which can only possess itself of lands by legislative or judicial action. It will be observed that the forfeiture is conditional, not upon the actual removal of the Indians to the Kansas reservation, but upon their acceptance and agreeing to removal within five years, or "such other time as the President might from time to time appoint."

The difficult point in the case, in its equitable aspect, is whether the protests of the Indians and their final refusal to remove in 1846 do not estop them from claiming the benefit of the reservation made for them. This is the main defense in the case. Upon the other hand, no time was fixed by the President for their removal; no formal notice was ever given them to remove; but at various times, and particularly at the council held at Cattaraugus June 2, 1846, called by the commissioners to learn the final wishes of the Indians as to emigration, the chiefs of the four tribes present were unanimous in the opinion that scarcely any Indians who wished to emigrate remained. This action constitutes practically the only claim of forfeiture. There is no finding that the other five tribes did refuse. The practical application which counsel seek to make of this partial refusal is to justify the Governmet, not only in appropriating the Kansas lands, but, inferentially, in failing to make any other compensation to the Indians for the seizure and sale of the Wisconsin lands. In view of this it seems to us that to justify a forfeiture it should appear that the repudiation was as formal and broad and as unequivocal as the acceptance; that the President should have fixed a time for the removal and should at least have made a formal tender of performance.

This was simply a question of forfeiture. No question of citizenship was involved, and since the President of the United States didn't comply with the condition precedent and since five of the tribes had never expressed themselves, the court held that there was not a forfeiture; and forfeitures are not favored, and besides, the Government had received the lands belonging to the New York Indians in the State of Wisconsin in exchange for Kansas lands, and the United States couldn't have been damaged by reason of the court holding that there wasn't a forfeiture.

Mr. BALLINGER. Mr. Bond, in that same case did not the question arise as to the distribution of the proceeds, and indirectly the question as to citizenship, and did not the court hold that even Indians who had gone to Canada and gave up their allegiance to the United States were entitled to share in those funds?

Mr. BOND. The question of citizenship was not involved, and if you will examine the opinion of the court you will so find. The court so states.

And I want to say, further, that in the fourteenth article of the treaty of 1830 there is only one condition precedent, that is a condition that the claimant thereunder should remove in order to enjoy the privileges of tribal citizenship. There is no provision for notice by the President; there is no provision for notice by the tribe; there is no provision whatever as a condition precedent to be performed by the tribe or by the United States whereby the fourteenth article claimant could say, "Why, you have not performed your condition precedent, therefore you can not claim a forfeiture as against me." The cases are not analogous; they are not parallel in any respect.

(The subcommittee took a recess until 10.30 the following morning.)

SUBCOMMITTEE OF COMMITTEE ON INDIAN AFFAIRS,
HOUSE OF REPRESENTATIVES,
Saturday, August 15, 1914.

The subcommittee met at 2 o'clock p. m., Hon. Charles D. Carter (chairman) presiding.

STATEMENT OF MR. REFORD BOND—Continued.

Mr. BOND. Mr. Chairman, the case of the New York Indians *v.* The United States was originally tried in the Court of Claims, and is reported in 48 Court of Claims Reports, at page 448. The Court of Claims in rendering the opinion in that case used the following language:

> This is not a question of Indian citizenship or tribal custom or communal ownership in Indian property, but is simply a question of the subject matter and purpose of a contract and of the intent of those who entered into it.

I desire now to distinguish the case of the United States *v.* The Cherokee Nation, reported in 202 United States, at page 101. In speaking of the above case Mr. Cantwell, of counsel for proponents, used the following language:

> This Eastern Cherokee case in regard to the rights of the Eastern Cherokees is analogous to the rights that we are contending for to-day. In other words, the principle upon which they recovered their rights is the same principle upon which we ask these rights for the Mississippi Choctaws, except that we think our rights are very much more strictly secured by treaties than the rights which were secured to the Eastern Cherokees.

That case has no analogy whatever to the issues before the committee. It was analogous to the case of the Choctaw Nation *v.* The United States, reported in 119 United States, page 1. The Choctaw Nation in the case mentioned, under a special act of Congress, instituted suit in the Court of Claims in its behalf and in behalf of individual persons for damages done under the treaty of 1830 and for damages arising from other causes. The question of citizenship was not involved in the proceeding in any manner whatever. The case of the Cherokee Nation *v.* The United States, above referred to, was an action brought under a special act of Congress for the

purpose of recovering damages for the Cherokee Nation and for the eastern bands of Cherokees, by reason of a breach of the treaty of New Echota, and for damages for other causes. The act conferring jurisdiction on the Court of Claims reads, in part, as follows:

> Jurisdiction is hereby conferred upon the Court of Claims to examine, consider, and adjudicate, with the right of appeal to the Supreme Court of the United States by any party in interest feeling aggrieved at the decision of the Court of Claims, any claim which the Cherokee Tribe or any band thereof arising under treaty stipulations may have against the United States.

The act further provides:

> And said section shall be further so construed as to require that both the Cherokee Nation and said Eastern Cherokees, so called, shall be made parties to any suit which may be instituted against the United States under said section.

And it further provides:

> If said claim shall be sustained, in whole or in part, the Court of Claims, subject to the right of appeal named in said section, shall be authorized to render judgment in favor of the rightful claimant, and, also, to determine as between the different claimants to whom the judgment so rendered equitably belongs, either wholly or in part, and shall be required to determine whether for the purpose of proceeding under said claim the Cherokee Indians who remained east of the Mississippi River constitute a part of the Cherokee Nation or of the Eastern Cherokees, so called, as the case may be.

A petition was filed on behalf of certain Eastern Cherokees living east of the Mississippi asserting their claim to a pro rata share of that portion of the removal or subsistence fund improperly taken by the United States from a $5,000,000 fund on account of the removal of the Eastern Cherokees, the said $5,000,000 fund being an interest-bearing fund in the hands of the United States as trustee, and representing the money paid by the Government to the Eastern Cherokees from the sale of their lands in North Carolina, Georgia, and Tennessee, or east of the Mississippi River.

Now, if the committee please, the petition in the case, the statement of the case by the court, and the entire facts show that the eastern bands of Cherokees were not claiming the proceeds from the sale of any lands west of the Mississippi River, but were claiming the proceeds or funds derived from the sale of lands east of the Mississippi when the entire tribe resided east of the Mississippi; and, as a matter of fact, at that time both the Eastern and Western Cherokees owned the property jointly and naturally would be entitled to share jointly in the funds. It is not in point with the case before the committee, because the Eastern Choctaws are attempting to claim moneys derived from the sale of lands, not east of the Mississippi, but west of the Mississippi and in the Choctaw Nation, and to which they have no right or title. They refused to remove and assume the burdens and responsibilities of Choctaw citizenship and elected to remain in Mississippi and elected to receive their share of the estate in said Commonwealth. I read from the opinion of the court:

> As to those Cherokees who remained in Georgia and North Carolina, in Alabama and Tennessee, they owe no allegiance to the Cherokee Nation and the nation owes no political protection to them; but they, as the communal owners of the lands east of the Mississippi at the time of the treaty of 1835, were equally interested with the communal owners who were carried to the west in the $5,000,000 fund which was the consideration of the cession so far as it was to be distributed per capita.

Reading further from the opinion:

As to these eastern nonresident Cherokee aliens, the nation acted simply as an attorney collecting a debt; in its hands the money would be an implied trust for the benefit of the equitable owners.

There is a case, however, entitled "The Eastern Band of Cherokee Indians *v.* The United States and the Cherokee Nation," which is analagous to the issues being considered by the committee. That case is reported in the One hundred and seventeenth United States, page 288.

I will now read the committee what Judge Clayton said with reference to the case last cited:

The Eastern Band of Cherokees, now residing in North Carolina, sustained a relationship to the Cherokee Nation almost identical to that sustained by the Mississippi Choctaws to the Choctaw Nation. Like the Mississippi Choctaws there were some among them who were averse to moving to their new country west of the Mississippi River. Provisions were made for them by the treaty of New Echota (the treaty of 1835), between the Cherokee Nation and the United States, similar to those with the Choctaws by the treaty of 1830. When the Cherokee people moved to the present home of the Cherokees, these remained behind in North Carolina, where they have ever since resided. Like the Choctaw treaty of 1830, the treaty of New Echota provided that their lands should be ceded to them and their descendants, etc. The Cherokee Nation, by virtue of a treaty with the United States, afterwards sold some of these lands. The Eastern Band of Cherokees, in North Carolina, unlike their Mississippi Choctaw brethren, promptly demanded their pro rata of the proceeds of this sale, and, upon being denied, at once sought and obtained permission of the United States to sue the Cherokee Nation in the Court of Claims for this money; and also, in the same suit, to sue for another fund which was created by the treaty of New Echota, consisting of certain annuities in the sum of $214,000, of which the Eastern Band of Cherokees claimed a pro rata share. The suit was brought, and the Court of Claims, in a very elaborate and learned decision, decided against the right of the Eastern Band of Cherokees to recover, upon the ground that those Cherokees, by the act of remaining in North Carolina, had alienated themselves from the Cherokee Nation to such an extent that they could not claim any of the rights of a Cherokee citizen without moving into the Cherokee Nation and there being readmitted in accordance with the constitution and laws of that nation.

Judge Clayton was of the opinion that the case last cited was in point, and it can clearly be seen that the case first cited is not in point. In fact, the two cases do not deal with the same question, and the issues involved in each are entirely different; otherwise it would have become necessary for the court to have either reversed itself or distinguished the cases, one from the other. A marked distinction, one of compelling force and decisive of the question, is the fact that under the twelfth article of the treaty of 1835 the Cherokees who remained east were expressly permitted to share in the communal fund above mentioned. In the one case the eastern Cherokees had an interest because they were members of the tribe when the lands were disposed of, in the other case they had refused to remove and had thereby forfeited their right to share in the proceeds from the sale of lands west.

We find in the opinion of the court the following language used:

Their claim, however, rests upon no solid foundation. The lands from the sales of which the proceeds were derived belong to the Cherokee Nation as a political body and not to its individual members. They were held, it is true, for the common benefit of all the Cherokees, but that does not mean that each member had such an interest as a tenant in common that he could claim a pro rata proportion of the proceeds of sales made of any part of them. He had

a right to use parcels of the lands thus held by the nation subject to such rules as its governing authority might prescribe, but that right neither prevented nor qualified the legal power of that authority to cede the lands and the title of the nation to the United States.

Reading further from the opinion of the court:

The Cherokees in North Carolina dissolved their connection with their nation when they refused to accompany the body of it on its removal, and they have had no separate political organization since. They have never been recognized as a separate nation by the United States. No treaty has been made with them. They can pass no laws. They are citizens of that State and bound by its laws.

Reading further from the opinion of the court:

The claim now presented by the Cherokees of North Carolina to a share of the commuted annuity fund of $214,000 and of the fund created by sales of lands west of the Mississippi ceded to the Cherokee Nation, resting as it does upon the designation in the treaties of the lands originally possessed by the Cherokees and ceded to the United States or subsequently acquired by them from the United States, as the common property of the nation or as held for the common use and benefit of the Cherokee people, has no substantial foundation. If Indians in that State or in any other State east of the Mississippi wish to enjoy the benefits of the common property of the Cherokee Nation, in whatever form it may exist, they must, as held by the Court of Claims, comply with the constitution and laws of the Cherokee Nation and be readmitted to citizenship as there provided. They can not move out of this territory, evade the obligations and burdens of citizenship, and at the same time enjoy the benefit of the funds and common property of the nation. This fund and that property were dedicated by the constitution of the Cherokees and were intended by the treaties with the United States for the benefit of the united nation, and not in any respect for those who had separated from it and become aliens to their nation.

If it please the committee, it seems to me that counsel representing thousands of claimants, having contracts for fees estimated in the millions, evidently gave the subject sufficient consideration to ascertain that there were two cases, one reported in 117 United States and one reported in 202 United States, involving the rights of the Eastern Cherokees, and evidently he had sufficient legal ability to know that the case reported in 117 United States was analogous in many ways to the case before the committee, and to know and realize that the case reported in 202 United States is not analogous and not parallel to the issues involved before the committee. And yet we find counsel citing for the benefit of this committee the case reported in 202 United States and remaining as silent as a sphinx so far as the case reported in 117 United States is concerned. The Choctaw Council passed an act in 1895, which act appears in the brief prepared by counsel for the Choctaw Nation, and according to the terms and conditions of that act a limitation was placed upon the time in which the fourteenth article claimants of the treaty of 1830 could remove to the Choctaw Nation west, establish a residence and claim citizenship. Consider that act of the Choctaw Council in connection with the case reported in 117 United States and you have a parallel case in almost every respect, because that case was decided upon the constitution of the Cherokee Nation, which provided that the Eastern Cherokees or any other members of the Cherokee Nation, in order to have and maintain citizenship in that nation, must reside therein. Counsel for proponents of the bill no doubt will argue that the treaty of New Echota was silent on the question of removal; that the treaty of 1830 provided that persons who claimed under this article shall

not lose the privilege of a Choctaw citizen, and will contend that therefore there is a marked distinction between the Eastern Cherokee case and the issues involved before this committee. But I say to you, gentlemen, that the fourteenth article of the treaty provided that in order to enjoy citizenship they must remove and therefore we have a stronger case than the case of the Eastern Cherokees, where the treaty was silent as to removal. It will be contended further by counsel for proponent that we were without authority to pass an act of the character above referred to. Our reply to that, gentlemen, will be that the courts have held that removal was necessary; that there was a limitation in the act of removal which limited it to the persons who claimed under that article that the Choctaw Tribe of Indians waived that limitation and permitted not only the persons but the heirs to come, and therefore the Choctaws had a right to place a limitation upon the coming of the heirs on condition that that limitation be reasonable. And we contend that under all the circumstances and conditions the limitation placed by the Choctaw Council was a reasonable limitation.

Mr. RICHARDSON. Mr. Bond, do you think that Judge Clayton's opinion in the case of E. J. Horne, in which he held that the Mississippi Choctaws could come to Oklahoma at any time before filing application under the act of June 10, 1896, was correct or incorrect?

Mr. BOND. The act of June 10, 1896, reads, in part, as follows:

> 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 rules, usages, and customs of each of said nations or tribes.

We contend that under that provision due force and effect should have been given to this act of the Choctaw Council unless it conflicted with some treaty provision, as the act also provided that due respect shall be given all treaties. The act does not conflict with the treaty, because the treaty provided for removal, and the act simply fixes the limitation for removal. And, in our judgment, it could have been easily determined and held by a court that the fourteenth article claimants were barred by the act of the Choctaw Council. However, it appears that this question has never been considered by the courts, and the case referred to by you as the Horne case does not disclose the fact as to whether or not the claimant removed to the Choctaw Nation west prior or subsequent to the act of the Choctaw Council above referred to. It is very evident that he was a resident of the Choctaw Nation west at the time the act of council above referred to was adopted, as it did not become necessary for the court to consider the act of the Choctaw Council in arriving at a conclusion in the case.

Mr. RICHARDSON. In that connection, Mr. Bond, let me call your attention to this fact: That in the E. J. Horne case the question was raised whether the act of the Choctaw Council of November 5, 1886, barred him from his enrollment and the court said in its opinion, holding that it did not bar him:

> By the fourteenth article of the treaty between the Choctaw Nation and the United States, negotiated on the 27th day of September, 1830, as interpreted by this court in the aforesaid case of Jack Amos et al. *v* The Choctaw Nation, all Mississippi Choctaws and their descendants were entitled, upon their removal to the Choctaw Nation, to all the privileges of a Choctaw citizen, except to the right to participate in their annuities. This right of citizenship being conferred by the treaty, no law afterwards enacted by the Choctaw Council can deprive them of that right, because it would be in conflict with the treaty, which confers that right to them and their descendants, without reference to the quantity of Indian blood. If they are descendants of Choctaw ancestors, it is sufficient. As to them therefore the law does not apply.

Mr. BOND. In the E. J. Horne case the act of the council I refer to was not considered. The court considered the act of 1886, and was correct in holding that said act was in conflict with the treaty, because it attempted to fix the quantity of blood necessary for citizenship. The act of 1895 fixed a limit within which fourteenth article claimants should remain, and if the time fixed was reasonable the act was valid.

It is true, Mr. Richardson, that no act of the Choctaw Council could deprive them of a right acquired under the treaty, but the act in question did not deprive them of any right. The act in question did not attempt to repeal or abrogate any provision of the treaty. The act in question simply put in force the statute of limitation and started it running.

I now desire to call the committee's attention to the ex parte opinion delivered by Judge Townsend. As a rule, I am opposed to arguing ex parte opinions or dissenting opinions, because neither have very much weight with the courts, but Mr. Ballinger seems to be possessed with a burning desire to have the Judge Townsend opinion discussed and analyzed, and before I attempt an analyzation or discussion of the opinion I would like to draw a picture of Judge Clayton and of Judge Townsend—that is, a mind's picture. Judge Clayton regarded the law as a jealous mistress. He worshipped for more than two-quarters of a century at the shrine of justice, and in his early manhood was regarded as one of the strongest and one of the ablest lawyers at the bar of Arkansas. After his appointment to the Federal bench in the Indian Territory he was regarded as one of the most eminent judges in that Territory. It is a well-known fact that he was reversed less than any other judge within that jurisdiction. Judge Townsend, while an elegant gentleman and a big-hearted man, had only devoted a few years to the practice of law when he entered politics. He remained in politics for a number of years and then engaged in the mining business. After having followed that avocation for a number of years he was appointed to the bench in the Indian Territory as the compliment of a college chum. While he was an honest judge, he did not have the legal training that Judge Clayton had. While he was a good man, he did not have the legal mind that Judge Clayton had developed through long years of legal work, both at the bar and on the bench. Any lawyer has but to read the opinions of the two judges in this particular case to determine that fact. Hearsay evidence is seldom admissible.

Mr. RICHARDSON. Mr. Bond, if I may interrupt you: If the facts with relation to these judges be true, why was it that the Choctaw and Chickasaw Nations complained so bitterly of their decisions in the citizenship cases and their inaccuracies that they insisted upon and secured the appointment of a Choctaw and Chickasaw citizen court which proceeded to review and reverse their decisions in the matter of several thousand cases?

Mr. BOND. Because, Mr. Richardson, the courts were overworked. Their dockets were so congested that they did not have the time nor the opportunity to give these cases their personal supervision and they were tried largely by masters. Many names crept into those cases by interpolation. In those days lawyers were not as numerous in Oklahoma as in some other States. The attorneys of experience and ability were busy practicing at the bar. The young men just entering the practice were often given a master's duty, and it might be possible that they, through some misunderstanding of the law, allowed error to creep into the record. You well know, as a lawyer, that when a master makes a report to a busy court the report is generally adopted without much ceremony, and further, very few, if any, Mississippi Choctaws were involved in those court decisions; and if I am correctly informed, none of the clients that you represent were involved in any case in the Federal court in the Indian Territory.

Mr. RICHARDSON. It has been my understanding that those cases were not reversed on the facts in each case, but on generic and jurisdictional questions affecting all those questions which were erroneously decided by Judge Clayton and Judge Townsend.

Mr. HURLEY. If Mr. Bond will permit me to answer that question?

Mr. BOND. Certainly, Mr. Hurley.

Mr. HURLEY. As a matter of fact, the judgments to which I believe you are referring now are judgments which were found to be a nullity because of the lack of original jurisdiction. The Dawes Commission had stricken certain names from the rolls under the act of June 10, 1896, and the applicant whose name was stricken appealed to the United States court, and it was afterwards determined that the commission had no power under that act to strike any name from the roll, and consequently an appeal from a commission that had no jurisdiction conferred no jurisdiction upon the court, and those judgments were not set aside by reason of any finding of fact in the case, but because of the fact that the court had no jurisdiction; there was a lack of original jurisdiction.

Mr. RICHARDSON. I was referring to the decision of the citizenship court in what is known as the Court Claimants case, in which one of the general questions involved was the failure to make the chiefs of both tribes parties to the case.

Mr. HURLEY. If you will read the decision in the Eliza West case and the opinion of the Attorney General in that case, you will, I believe, arrive at a clear understanding of what was considered the basis for setting aside those decisions. It has been argued by the proponents of this bill and for the opening of the roll that they were set aside merely on the ground that while the citizenship asked for was citizenship in both the Choctaw and Chickasaw Nations, the chief or governor of but one tribe had been served in the suit, but underlying all of that was the controlling fact that in the cases which were appealed from the Dawes Commission under the act of 1896 there was a lack of original jurisdiction and the judgment of the court based on such an appeal was therefore a nullity.

Mr. BOND. Perhaps I misunderstood your question. I had just paid a just eulogy to Judge Clayton's legal ability, and I understood you to ask why so many errors should creep into these cases with such an eminent judge on the bench.

Mr. RICHARDSON. My suggestion was developed by the difference in the attitude which you as tribal attorney are now taking in regard to Judge Clayton from what was urged here in 1901 and 1902 by the Choctaw and Chickasaw Nations, that many errors had been committed by the very judge you now eulogize.

Mr. BOND. I think I can make that matter perfectly clear by simply referring you to the act of Congress of 1902. The contention made by counsel who were formerly representing the Choctaw and Chickasaw Nations is set forth in section 31 of said act, which reads in part as follows:

> 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 proceedings in the United States courts in the Indian Territory, under the said act of June 10, 1896, should have been confined to a review of the action of the Commission to the Five Civilized Tribes, upon the papers and evidence submitted to such commission, and should not have extended to a trial de novo of the question of citizenship; and it being desirable to finally determine these questions, the two nations, jointly, or either of said nations acting separately and making the other a party defendant, may, wihin 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.

That is evidently the act you had in mind when you asked me the question; and after reading the act I have nothing to retract, because you, as a lawyer, know that any judge is apt to commit error. If it were not for error, appellate courts would be useless institutions. If it were not for the right of appeal and the possibility of reversal, the practice would not be so remunerative. I have never, to my knowledge, practiced before a corrupt judge; yet I do not put any man above error. To err is human; and while those cases were reversed on errors of law, thereafter they were heard on their merits.

I desire to call your attention to the fact that in construing the clause, "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 annuities," Judge Townsend violated two fundamental rules of statutory construction. The first rule of construction violated was that he treated as redundant and rejected as surplusage the words "if they ever remove," and he did that in direct violation of a well-established principle of statutory construction that has been recognized by all the writers and by all the decisions.

Another rule of statutory construction. The second article of the treaty of 1830 provides in part as follows:

> In fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it.

This provision in the treaty provides that they must live upon the land in order to retain title thereto. The provision with reference to removal must be construed so as to harmonize with section 2 and not destroy the force and effect thereof, if possible. Judge Clayton construed those two sections so they harmonized absolutely. Judge

Townsend has construed them so that the fourteenth article of the treaty is in absolute conflict with the second article of the treaty. In fact, Judge Townsend paid no attention whatever to statutory construction and did not attempt to explain why he did not make an effort to apply the rules of statutory construction to article 2 and article 14 of the treaty.

Judge Townsend's construction of the treaty of 1866 is in conflict with the opinion of every court and every commission which has ever attempted to pass upon that treaty. I will read you his language:

> When it was supposed that the lands would be allotted in severalty under the treaty of 1866, it was expressly provided that notice should be published in the papers of several States that absent Choctaws and Chickasaws might come in and obtain the benefits of the allotment, and absentees were to be allowed five years to occupy and commence improvements; and all that was necessary was to satisfy the register of the land office that that was their intention. The allotment did not take place; but if they had not come in, they were only to lose their allotment of land; it did not make them any the less Choctaws or Chickasaws or members of the Choctaw or Chickasaw Tribes.
>
> It has been said that they could not be put upon the roll as citizens and members of those tribes unless they lived upon the land within the Choctaw or Chickasaw Nation. I submit that the action of the Choctaw and Chickasaw Nations themselves when making the treaty of 1866 does not bear out the view; and if they were Choctaws and Chickasaws in 1866, what has occurred to change their relations to those tribes? I have heard of nothing whatever.
>
> It is said the land was held in common, and certainly some of the tenants in common in possession could hold the possession for all their cotenants in common.

As I have said before, it has been recognized by everyone that when the Congress and the Indians made the treaty of 1866 they simply provided for notice in the article just read in order that the Indians who were living in other States might avail themselves of the privilege under the fourteenth article of the treaty to disaffirm their allegiance to those States and to reaffirm it to the Choctaw Nation and become citizens of that nation.

Mr. CARTER. Mr. Bond, have you there that provision of the treaty of 1866?

Mr. BOND. I think Mr. Hurley offered in evidence that provision of the treaty of 1866, did you not, Mr. Hurley?

Mr. HURLEY. Yes, sir.

Mr. BOND. Now, he says that the land was held in common. The Supreme Court of the United States has held that under the treaty of 1830 we did not hold our lands in common. While the court does not say that we absolutely held them in common in 1855, it intimates that since that treaty they were held in common. I will read you the decision in the case of Fleming *v.* McCurtain, reported in two hundred and fifteenth United States, page 56:

> The grant in letters patent, issued in pursuance of the treaty of Dancing Rabbit Creek of September 27, 1830, conveying the tract described to the Choctaw Indians in fee simple to them and their descendants to inure to them while they should exist as a nation and live thereon, was a grant to the Choctaw Nation, to be administered by it as such: it did not create a trust for the individuals then comprising the nation and their respective descendants, in whom as tenants in common the legal title would merge with the equitable title on dissolution of the nation.

It even goes so far as to hold that on the dissolution of the nation that the legal title would not even then merge with the equitable and result to the benefit of the descendants as tenants in common.

The Supreme Court of the United States likewise held in One hundred and seventeenth United States, page 308, that the title vested in the Cherokee Nation was not a title held in common, and the Cherokees held title the same as the Choctaws. The court used the following language:

> They were held, it is true, for the common benefit of all the Cherokees, but that does not mean that each member had such an interest as a tenant in common that he could claim a pro rata proportion of the proceeds of sales made of any part of them.

I will read again from Two hundred and fifteenth United States, which suggests that under a later treaty it is quite possible that our lands are held in common:

> But these allegations make out no case for the plaintiffs. It is said that the statutes recognize individual rights as already existing. It is true that by a treaty of June 22, 1855, the United States guaranteed the lands "to the members of the Choctaw and Chickasaw Tribes, their heirs and successors, to be held in common, so that each and every member of either tribe shall have an equal, undivided interest in the whole" with provisos. But the plaintiffs do not claim under this treaty or mention it in their bill or a treaty of April 28, 1866, by articles 11–36, of which the change from common to individual ownership was agreed, and it was provided that unselected lands should "be the common property of the Choctaw and Chickasaw Nations in their corporate capacities."

If the committee please, every court that has ever passed upon this question under the treaty of 1830 and every court that has ever passed upon like treaties has held that it is communal property; that it is not held in common; that individual Indians could not maintain a suit in partition for their interest; that they have not such a vested right as could be adjudicated and determined in the courts; and that the property is in the tribe entirely.

Now, just one other point with reference to the Townsend case——

Mr. CARTER. What did Judge Clayton say about the treaty of 1866, if anything?

Mr. BOND. Judge Clayton held that after the treaty of 1855 the land was held in common, and said that the treaty of 1866 provided for removal as a condition precedent to Choctaw citizenship. I read from his opinion:

> The counsel for the claimants lay considerable stress on the effect of the provisions of article 13 of the treaty of 1866 between the United States and the Choctaw Nation.
>
> By the eleventh and twelfth articles of that treaty a scheme was devised by which the lands of the Choctaw and Chickasaw Nations were to be surveyed and divided and allotted to the individual Indians, provided the councils of the respective nations should agree to it, which, however, they have refused to do. A land office was to be established at Boggy Depot, in the Choctaw Nation. When all of the surveys were completed maps thereof were to be filed in the said land office, subject to the inspection of all parties interested, and immediately thereafter notice of such filing was to be given for 90 days calling upon all parties interested to examine said maps, to the end that errors in the location of occupancies, which were to be noted on the maps, might be corrected. Then followed article 13 of the treaty, which is as follows:
>
> "ART. 13. The notice required in the above article shall be given, not only in the Choctaw and Chickasaw Nations, but by publication in newspapers printed in the States of Mississippi and Tennessee, Louisiana, Texas, Arkansas, and Alabama, to the end that such Choctaws and Chickasaws as yet remain outside of the Choctaw and Chickasaw Ntions my be informed and have opportunity to exercise the rights hereby given to resident Choctaws and Chickasaws: *Provided*, That before any such absent Choctaw or Chickasaw shall be per-

mitted to select for him or herself or others as hereinafter provided, he or she shall satisfy the register of the land office of his or her intention, or the intention of the party for whom the selection is to be made, to become a bona fide resident in the said nation within five years from the time of selection; and should the said absentee fail to remove into said nation and occupy and commence an improvement on the land selected within the time aforesaid the said selection shall be canceled, and the land shall thereafter be discharged from all claim on account thereof."

From an examination of this article of the treaty it will be seen that the Choctaws and Chickasaws recognized the right of absent members of their nation to participate in the allotment and the subsequent ownership of their lands to the same extent as they themselves enjoyed, but on conditions, however, first, that they should satisfy the register of the land office of their intention to become bona fide residents in the said nation within five years from the time of said selection; and, second, that within the said five years they should actually remove into the said nation (here is a statute of limitation); and, third, that within the said five years they should occupy and commence an improvement upon the selected lands.

It will be observed that this latter clause impoess a condition on absent Indians nowhere required of the resident ones by any clause of the treaty. They were required to move into the country and show their good faith and their intention to remain bona fide citizens of the nation by actual occupancy of the land and an expenditure of money in its improvement. The notice was to be given them in order that they might have an opportunity of removing into the nation and there residing and resuming their rights as citizens; but care was to be taken and safeguards provided by which their removal was to be actually had, and that it was to be done in good faith. First, the register of the land office was to be convinced, by such proof as might satisfy him, of the intention of the absent Indians to become a bona fide resident of the nation before he was allowed to make a selection; and second, that was to be followed by an actual occupancy and improvement of the land, and if he failed in this it worked a forfeiture of his rights. Nowhere within the whole treaty is any right recognized or conferred on an absent Indian, except on the condition that he shall remove into the nation, and the right is not to be consummated or enjoyed until after actual removal. No treaty or act of the Choctaw Council or of any officer of the Choctaw Nation since the treaty of 1830 can be cited, or at least I have not found them, whereby any right or privilege has been conferred, granted, or recognized in or to a Mississippi Choctaw so long as he shall remain away from his people, but there are an infinitude of such acts and conduct granting and recognizing such right and privileges to him after he shall have removed.

The provisions of the treaty of 1866, so far from being an authority in favor of the contention of claimants, seems to me to be strongly against them.

Judge Townsend's opinion is entitled "In re Indian citizenship cases," and it is found in the Sixth Annual Report of the Commission to the Five Civilized Tribes, at page 109. It bears this certificate:

I, C. M. Campbell, clerk of the United States court within and for the southern district of the Indian Territory, do hereby certify that the annexed and foregoing is a true, perfect, and literal copy of the general opinion of the Hon. Hosea Townsend, judge of the United States Court of the Southern District of the Indian Territory, filed in my office.

Now, mark you, a "literal copy of the general opinion." That bears out the hearsay doctrine that I attempted to refer to a few minutes ago. I was at college at the time this opinion was rendered, but I have been told that the opinion was handed down in the law office of Furman & Herbert; that no case was under consideration; that some of the lawyers representing citizenship cases and some representing the nation desired the opinion of Judge Townsend on certain citizenship questions, and that this was the general opinion handed down to them in the law office above referred to, no particular case being under consideration. I think the record bears out my

hearsay contention. But, be that as it may, Judge Townsend did not remain of that opinion. I refer to a case tried by Judge Townsend and reported in volume 4, Indian Territory Reports, at page 214.

Mr. CARTER. What is the case?

Mr. BOND. The case is entitled "Ikard *v.* Minter."

Mr. RICHARDSON. What is the date of the delivery of the opinion?

Mr. BOND. The opinion was delivered September 25, 1902. Judge Townsend was the trial judge. The case was appealed and affirmed by the appellate court. I will read you from the syllabus:

Showing that he was a Mississippi Choctaw was not sufficient, for prior to 1898 the Mississippi Choctaw not then on the regular roll of the Choctaw Nation could not hold lands in the Choctaw Nation, but had only the right to go before the Commission to the Five Civilized Tribes and make the necessary proof, securing his enrollment under the act of Congress of June 28, 1898, and the act of Congress of May 31, 1900.

Judge Townsend evidently had a change of heart and he evidently had a change of mind, because he says that they, the Mississippi Choctaws, had no right until 1898, and in this general opinion entitled "In re Citizenship cases," he says that they were Choctaw citizens all the time, and that he had heard of nothing that prevented them from being Choctaw citizens. Now, let us read further from Judge Townsend's own language, not from the appellate court affirming him. On page 221 he says:

The COURT. I recollect a little about it, because when I wrote the general opinion that I gave in these citizenship cases I went through every treaty from 1784 down, and read every one of them, and at that time I was pretty familiar with it, but I have been annoyed so much in trying lawsuits since that time that I have nearly forgotten everything I knew of that question. But my recollection at that time there were conditions; they had got to sell their lands and come to this country; and that this provision in the Curtis Act is the first provision giving that recognition.

Now listen:

They had got to sell their lands and come to this country.

Judge Townsend's language verbatim! Evidently, gentlemen of the committee, he had just left his mining interests in Colorado when he handed down that general opinion. In 1900 or 1902 he had been on the bench for three, four, or five years, and his early legal training was evidently coming back to him. Yet you gentlemen tout "In re Citizenship cases" as being an opinion of the court. If it had been an opinion in a case on trial, and it was not, he would have reversed himself after a more careful and deliberate consideration, as is shown by the opinion in the Ikard-Minter case. Why, Mr. Ballinger says that after that "In re Citizenship" case opinion was rendered by Judge Townsend attorneys visited the Indian Committees of Congress and so impressed them with that opinion that they had an act passed in 1897 requiring the commission to report as to the rights of the Mississippi Choctaws. The act reads as follows:

That the commission appointed to negotiate with the Five Civilized Tribes in the Indian Territory shall examine and report to Congress whether the Mississippi Choctaws, under their treaties, are not entitled to all the rights of Choctaw citizenship, except an interest in the Choctaw annuities.

I will read in part from the report of the commission, in compliance therewith, and contained in House Document No. 274, second

session of the Fifty-fifth Congress. It is very elaborate, and I will read only a few short passages:

The Mississippi Choctaws are the descendants of those Choctaw Indians who declined to remove to the Indian Territory with the tribe under the provisions of the treaty made with the United States September 27, 1830. * * *

They claim the right to continue their residence and political status in Mississippi as they and those from whom they descended have done for 65 years, and still are entitled to enjoy all the rights of Choctaw citizenship, except to share in the Choctaw annuities. * * *

What their political status is in the State of Mississippi is defined in the fourteenth article of the treaty. Their ancestors, each, was to signify, within six months after the ratification of the treaty, his desire to remain and become a citizen of the States, which would entitled them to 640 acres of land and a less amount to each member of his family, and after a residence on the same of five years, with intent to become a citizen, are then entitled to a patent in fee, and are thereby made citizens of the States. Their ancestors having done this, they claim, under the concluding clause of said article, that their ancestors could and they now can continue such citizenship and residence in Mississippi and be still entitled to all the rights of a Choctaw citizen in the tribal property of said nation in the Indian Territory, except their annuities. This clause, upon which the claim rests, is in these words:

"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 annuities."

But this construction is in direct conflict with the very purpose for which the treaty was made, and with the nature of the title to the lands in the Territory secured to the Choctaws by it, and to the whole structure and administration of their government ever since under it. * * *

There can be no longer doubt that the present title is in the members of the tribes alone, and that the United States has pledged itself to so maintain it, and that it so does, in the belief of both parties to the treaty that such was the title from the beginning. No man can, therefore, as the title now stands, have any interest in these lands unless he is a member in one of these tribes.

Now, it has been a law of the Choctaw Nation from the beginning of its existence, recognized by the Supreme Court and by Congress, that no man can be a citizen of that nation who does not reside in it and assume the obligations of such citizenship before he can enjoy its privileges. To "enjoy the privileges of a Choctaw citizen" one must be a Choctaw citizen. * * *

This historical review of the acquisition of this territory by the Choctaw Nation, and its subsequent legal relations to it, makes it clear, in the opinion of this commission, that the Mississippi Choctaws are not, under their treaties, entitled to "all the rights of Choctaw citizenship except an interest in the Choctaw annuities," and still continue their residence and citizenship in the State of Mississippi.

Then the commission concludes its opinion with this statement:

In conclusion, it seems to the commission that the importance of a correct decision of this question, both to the Mississippi Choctaws and to the Choctaw Nation, justifies the provision for a judicial decision in a case provided for that purpose. They therefore suggest that in proper form jurisdiction may be given the Court of Claims to pass judicially upon this question in a suit brought for that purpose by either of the interested parties.

The CHAIRMAN. When was that decision rendered?

Mr. BOND. January 28, 1898. Now, gentlemen of the committee, time and again I have heard from the floor of the House and from the floor of the Senate that the provision in the act of 1900 and in the agreement of 1902 providing for the removal of the Choctaw before he should enjoy Choctaw citizenship was simply put over by designing parties, and that certain Members of the House and of the Senate had no idea that such provisions were being injected into the act or into the agreement. And you gentlemen have heard the same argument.

Where were the distinguished gentlemen of intellectual excellence when the act of 1897 was passed calling for this report? Where were the gentlemen of sophistry and ingenuity and fine debating qualities when this report was filed as a House document? If the gentlemen of legal attainments were not satisfied with that document, why did not they ask that it be submitted to the Court of Claims, with a right of appeal to the Supreme Court of the United States, as suggested by the commission? Tell me that they did not know that there was going to be a provision placed in the act of 1900 and the agreement of 1902 that the Choctaw must remove before he could enjoy citizenship, in the face of the Jack Amos case and in the face of an exhaustive opinion filed as a House document. Congress took the view that Judge Clayton rendered a just and fair decision. Congress took the view that Judge Clayton's construction of the fourteenth article of the treaty was correct, because Congress did not refer this question to the Court of Claims as suggested by the commission, but passed an act providing that the Mississippi Choctaws should have a certain time within which to remove. Congress acted with full knowledge and with full information with reference to all these facts. This entire document, consisting of several pages, deals with practically but one question, and that is the question of removal, and yet that is the question which was supposedly put over without the knowledge of certain Members of Congress.

Let us see what Mr. Cantwell has to say about the legislation which grew out of this report. I read from page 11 of the hearing before the subcommittee last session:

The statement I desire to make is made in behalf of several thousands of claimants to rights in the Choctaw and Chickasaw Tribes, whose rights, I undertake to show by record evidence, have been recognized by Congress, but the recovery of whose rights has been defeated and the rights practically nullified by the enactment of legislation at the instigation of interested persons for selfish ends.

I believe I can show that this was accomplished by a conspiracy, and that the powers of the United States Government have been usurped by the conspirators.

Reading further from Mr. Cantwell's statement, on page 50:

It is not conceivable, because McMurray smuggled through Congress, in 1902, an agreement between himself and the officers of the Dawes Commission, who were absolutely ignorant of the effect of the agreement, that this agreement in any way binds Congress so as to prevent it from righting those wrongs, or that Congress intended, by this smuggled act, to change its policy.

And mark you, Mr. Cantwell bases practically his entire argument on one question, and that is that under the fourteenth article of the treaty of 1830 the Mississippi Choctaw has the full right to citizenship, has the full right to share in the distribution of tribal funds and properties without removal, and it is evident that Congress, having before it the report above referred to, acted advisedly.

Now, let us go further and see what Mr. Cantwell has to say about the citizenship court.

McMurray successfully invoked the power of Congress to destroy rights fully vested by the solemn final judgments of United States circuit courts by securing in an unguarded hour the creation of that judicial monstrosity, the citizenship court.

It has been argued by Mr. Cantwell, not only at this hearing but at other hearings, that the act creating the Choctaw citizenship court absolutely nullified and abrogated every judgment that had been

rendered by the United States courts in the Indian Territory. I have argued before that Congress can not nullify judgments; that Congress can not grant a new trial; that Congress can not abrogate a decree. I desire to offer now the decision rendered by the Supreme Court of the United States in the Wallace-Adams case, wherein the act creating the Choctaw-Chickasaw citizenship court was fully discussed; and you will note in that case that counsel for the claimants made the same contention that Mr. Cantwell has made here—that the act attempted to nullify a judgment. But the Supreme Court did not agree with counsel. Perhaps I had better read from the act creating that court and then refer to the decision. I read in part from section 31 of the act of 1902:

In the exercise of such appellate jurisdiction, said citizenship court shall be authorized to consider, review, and revise all such judgments, both as to findings of fact and conclusions of law, and may, wherever in its judgment substantial justice will thereby be subserved, permit either party to any such appeal to take and present such further evidence as may be necessary to enable said court to determine the very right of the controversy. And said court shall have power to make all needful rules and regulations prescribing the manner of taking and conducting said appeals and of taking additional evidence therein.

I read from the opinion of the court in the case of Wallace *v.* Adams, reported in Two hundred and fourth United States, at page 415:

And while it is undoubtedly true that legislatures can not set aside the judgments of courts, compel them to grant new trials, order the discharge of offenders, or direct what steps shall be taken in the progress of a judicial inquiry, the grant of a new remedy by way of review has been often sustained under particular circumstances.

Reading further:

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

In its enactment Congress has not attempted to interfere in any way with the judicial department of the Government, nor can the act be properly regarded as destroying any vested right, since the right asserted to be vested is only the exemption of these judgments from review.

I stated to the committee at the previous hearing that Congress could not review the judgment of the Supreme Court of the United States, because it is not a legislative court. All Federal courts are legislative courts created by acts of Congress, save the Supreme Court of the United States, which is a constitutional court. I desire to read a short passage from the case of Wallace *v.* Adams, which is a very clear statement of the law:

It is unnecessary to consider what would have been the effect of a judgment of this court, a court provided for in the constitution, on the question of the right of a litigant to citizenship. The distinction between this court and the courts established by act of Congress in virtue of its power to ordain and establish inferior courts is shown in Gordon *v.* United States, 117 United States, 697, in which we held that while Congress could give to the Court of Claims jurisdiction to inquire and report upon claims against the Government, it could not authorize an appeal from such report to this court unless our decision was made a final judgment, not subject to congressional review. * * *

Congress can not extend the appellate power of this court beyond the limits prescribed by the Constitution, and can neither confer nor impose on it the duty of hearing and determining an appeal from a commissioner or auditor, or any other tribunal exercising only special powers under an act of Congress; nor can Congress authorize or require this court to express an opinion on a case where its judicial power could not be exercised, and where its judgment would not be final and conclusive upon the rights of the parties and process of execution awarded to carry it into effect.

Mr. RICHARDSON. In that case, did not the Supreme Court hold that the Territorial courts in hearing these appeals were exercising special functions intrusted to them as an aid to Congress in the performance of its duties, and that their acts were a little more than the acts of a commission?

Mr. BOND. That is true, and their judgments are subject to review, but in all cases in which the Supreme Court has spoken the judgment is final and beyond congressional action.

(Thereupon, at 4.15 o'clock p. m., the subcommittee adjourned until Monday, August 17, 1914, at 2 o'clock p. m.)

SUBCOMMITTEE OF COMMITTEE ON INDIAN AFFAIRS,
HOUSE OF REPRESENTATIVES,
Monday, August 17, 1914.

The subcommittee met at 2.10 o'clock p. m., Hon. Charles D. Carter (chairman) presiding.

STATEMENT OF MR. REFORD BOND—Continued.

Mr. BOND. I desire to call the committee's attention to a statement made by Mr. Cantwell, of counsel for the proponents, which appears on page 38 of the hearing before the Subcommittee on Indian Affairs of the House:

A great many Mississippi Choctaws had gone into the Territory and had not been able to be enrolled by the commission prior to June 28, 1898. The identification contemplated by the first clause did not entitle the Mississippi Choctaws to enrollment. Under another provision of this act of July 1, 1902, they might make bona fide settlement within the Choctaw-Chickasaw country within six months after identification by the commission; but he could not get any land upon which to settle until after he should be enrolled or identified. How could he settle unless lands were given? If he undertook to go into the Choctaw or Chickasaw country at all, McMurray ejected him, through the tribal authorities, as an intruder. The statements contained in this appendix by Mr. McMurray show that he called upon the United States Government for soldiers to eject what he called intruders, and all persons were intruders, according to his definition, who were not upon the tribal rolls. The old method of identification by the tribe had been abandoned, and if the Mississippi Choctaw went into the Choctaw-Chickasaw country he was liable to be ejected as an intruder because he was not on the tribal rolls, even if he went to the Indian Territory for the mere purpose of identification.

That statement of counsel is unwarranted by law and by the evidence. However, it was made last session without contradiction and with no law and no evidence to controvert the statement, and necessarily the committee found that claimants under the fourteenth article of the treaty were rejected as intruders.

Mr. MILLER. The subcommittee did not make a finding to that effect, did they?

Mr. BOND. Yes, sir.

Mr. MILLER. I should be surprised to find that they did. My recollection is that the statement contained in the report is based exclusively upon the wording of the subsequent treaties or congressional acts bearing upon the Choctaw and Chickasaw and the Five Civilized Tribes.

Mr. BOND. On page 27 of the report of the subcommittee I find this statement by Mr. Miller:

> Yes, some of these eleven hundred actually removed, and some when removed were ejected by officers of the Choctaws and Chickasaws because they were "interlopers." Some remained in the new country, but were never enrolled. Others drifted away. I think Mr. Carter knows there are some Choctaws in Oklahoma belonging to this eleven hundrel.

I take it that the statement of their being ejected by officers of the Choctaws and Chickasaws because they were interlopers was a finding in accordance with the statement and argument of counsel that they were ejected as intruders. If I am incorrect I desire to withdraw the statement.

Mr. MILLER. I do not think the occasion for that statement is as you intimate, Mr. Bond. I will say that practically all the information that I secured was from as nearly original sources as it could be, and most of it came from out of the department. Now, I do not recall exactly what I had in mind when I made that statement, but I think it was this: The word "interlopers" probably is inadvisedly used; it should be "intruders." We all know that there were a great many intruders that came into the country, and it was necessary for the Choctaw and Chickasaw people to keep them out. Now, I did not intend by that to say that they kept out Mississippi Choctaws only as intruders, but that the general inhibition against people coming in there who had no rights in there applied to some who might be claiming to be Mississippi Choctaws the same as the rest. I presume that some of the individuals enumerated in this list might have been included. I have only a faint recollection of where I got that declaration in regard to the 1,100, but I think it was from the Indian office.

Mr. BOND. If that is so, I stand corrected. I am very glad that the committee did not so find. I am pleased to know that I misconstrued the finding of the committee on that point. However, it has been so alleged by Mr. Cantwell, of counsel for the proponents, and therefore I desired to refute it.

The CHAIRMAN. Was there any attempt at that time made to remove persons from the Choctaw Nation except such persons as did not comply with the laws of the Choctaw Nation?

Mr. BOND. No parties were attempted to be removed from the Choctaw and Chickasaw Nations to my knowledge except those who refused to comply with the intruder laws. Any person who was not a member of the tribe was required under the law of the tribe to pay a permit of $1 per year for his right of residence within the tribe, and if he refused to pay the $1 per year he was then subject to ejection as an intruder.

The CHAIRMAN. That was the law, but let me ask you what was the practice? What percentage of the white people that were in the country at that time were paying a permit tax, would you judge?

Mr. BOND. I would judge that a very small percentage of the white people paid the permit tax. If my memory serves me correctly, the tax in the Chickasaw Nation was increased in later years to $5 per annum, and I believe that after the increase very few people paid the tax.

The CHAIRMAN. Is it not a fact that no removals were attempted to be made by the tribal authorities?

Mr. MILLER. Well, as I recall, we had a vast amount of information submitted to the committee that was down there to investigate the McMurray and other contracts. There was evidence that large amounts of money were used to eject intruders.

The CHAIRMAN. Well, I will come to that in a minute. What I am asking Mr. Bond now is, Did the tribal authorities attempt to remove them, and had they any authority to remove them? Did the tribal authorities have any jurisdiction to remove people, Mr. Bond?

Mr. BOND. The tribal authorities in later days possibly were shorn of that jurisdiction, but the tribal authorities, so far as my knowledge goes, did not attempt the ejection of individuals; but there were other taxes in addition to the per capita tax.

The CHAIRMAN. We will come to that in a moment.

Mr. BOND. There was a tax per head on cattle and per dollar on merchandise. At one time the noncitizens refused to pay the cattle tax and merchandise tax, which caused the tribal and Federal authorities a great deal of trouble and considerable expense in the collection thereof, and there were efforts to eject the people who refused to pay those taxes.

The CHAIRMAN. I was coming to that in a moment, but the things I want the record to show is this: Whether or not the tribal authorities had any jurisdiction under the law to remove people who were intruders, and whether they attempted to exercise that jurisdiction during your memory.

Mr. BOND. Not during my memory, Mr. Carter. After the United States courts were given jurisdiction in the Indian Territory and after jurisdiction was conferred on the United States Indian agent, the tribal authorities had no jurisdiction of intruders whatever, because they were citizens of the United States, and the tribal authorities only had jurisdiction of tribal citizens.

The CHAIRMAN. And the only thing the tribal authorities could do was to report the matter and urge their removal with the Federal authorities. Is not that true?

Mr. BOND. I think that was the extent of their authority.

The CHAIRMAN. Well, did not the Federal authorities attempt to remove people, and was not their attempt about that time confined entirely to those people who did not pay the merchants' tax license and the cattle-tax license?

Mr. BOND. That is my recollection of the matter.

The CHAIRMAN. Do you know if there ever was any attempt made to remove any claimants for citizenship, whether Mississippi Choctaw or otherwise?

Mr. BOND. Not to my knowledge.

Mr. RICHARDSON. Mr. Carter, if it is not improper to put in the record at this time, I would like to state that the record shows that Mr. McMurray, or his firm of Mansfield, McMurray & Cornish, brought a suit in equity to require the commission not to allot and to exclude from allotment Mississippi Choctaws who did not move within the six-month period, under the act of 1902, and he secured

an injunction against the commission. The petition and the injunction in that suit were introduced on the floor of the United States Senate by ex-Senator Jones, of Arkansas, and will appear in the Congressional Record.

The CHAIRMAN. That may be true, Mr. Richardson, but the question that was raised was about Mississippi Choctaws being removed and not being permitted to settle in the Choctaw Nation in accordance with the act requiring them to settle. Mr. Bond says that nothing of that kind was done, and Mr. Miller says that they never intended to state that.

Mr. MILLER. No; we never intended to state that those who attempted to come over under the 1902 act were intruders. The statement went further to say that among the 1,100 who were identified some of them were removed as intruders. I do not know what the circumstances and facts were, but it was not simply because they tried to make a settlement.

Mr. BOND. I will say in reply to Mr. Richardson that the acts giving the commission authority to enroll especially required that it should not be subject to an injunction proceeding.

Mr. RICHARDSON. There was an injunction issued in that case.

Mr. MILLER. Do you think the provisions of that treaty of 1902 were fair and equitable as far as the Indians were concerned?

Mr. BOND. I do. Many were identified under the act of 1898, and although they had theretofore almost three-quarters of a century within which to remove, the treaty of 1902 allowed additional time for removal and waived proof as to full bloods. In my judgment the terms and provisions of the treaty were fair and equitable.

I desire to read from the report of the commissioner to the Five Civilized Tribes to the Secretary of the Interior for the fiscal year ending June 30, 1907, at page 11:

> The act of Congress approved April 26, 1906, provided that motions for rehearing of cases adversely determined prior to the passage of the act could be filed for a period of 60 days. Under this provision a large number of Mississippi Choctaws, whose claims had been rejected, filed motions for rehearing of their cases, some of which had been closed for four years. The Commissioner, acting under departmental instructions, allowed such persons to appear at the Land Office and designate tentative allotments pending final disposition of their claims. Through this procedure they maintained control of lands which duly enrolled citizens were entitled to select in allotment. When one motion was denied by the department the Mississippi Choctaw, often at the instance of speculators, would immediately file a second motion and then make the claim at the Land Office that his application was not yet finally disposed of. This practice was carried on until a short time prior to the closing of the rolls, March 4, 1907.

I desire to supplement the report of the commission with the law itself, which provided that claimants were entitled to hold possession of the land until their rights were finally determined. I read from section 3 of the act of June 28, 1898:

> That said courts are hereby given jurisdiction in their respective districts to try cases against those who may claim to hold as members of a tribe and whose membership is denied by the tribe, but who continue to hold said lands and tenements notwithstanding the objection of the tribe; and if it be found upon trial that the same are held unlawfully against the tribe by those claiming to be members thereof, and the membership and rights are disallowed by the commission to the Five [Civilized] Tribes, or the United States court, and the judgment has become final, then said court shall cause the parties charged with unlawfully holding said possessions to be removed from the same and cause the lands and tenements to be restored to the person or persons or nation or tribe of Indians entitled to the possession of the same.

I also desire to read from section 4 of the said act, which shows that they were not only permitted to hold their lands until their cases were finally determined, but they were allowed to dispose of the improvements which they had placed thereon during the time they were claiming citizenship:

> That all persons who have heretofore made improvements on lands belonging to any one of the said tribes of Indians, claiming rights of citizenship, whose claims have been decided adversely under the act of Congress approved June 10, 1896, shall have possession thereof until and including December 31, 1898; and may, prior to that time, sell or dispose of the same to any member of the tribe owning the land who desires to take the same in his allotment.

I desire to call the committee's attention to one other statement made by Mr. Cantwell. I read from the hearings of the subcommittee, at pages 17 and 24. I read first from page 17:

> Here was a clause inserted in the treaty—

Speaking of the fourteenth article of the treaty—

> for the express purpose of individualizing the Indian, of breaking up the tribal organization, of subjecting him to the laws of the white man, and of making him a citizen of the United States; and as a penalty for his removal from his allotment in Mississippi he was to be deprived of his portion of the Choctaw annuity then existing. It is quite certain the intent of the treaty at the time it was made was to encourage the Indian to become a citizen of the State, and not to discourage him.

I now read from page 24:

> The rights of the Mississippi Choctaw were granted to induce him to remain in the State, and not as a condition that he remove to the Indian country.

Reading further from the same page:

> The object was to provide a penalty if he should become a wanderer and was inserted to encourage him to remain on the Mississippi lands for five years and to become a homesteader.

I think that argument is clearly refuted by the statement of the Supreme Court in 119 United States.

Mr. MILLER. It is also refuted by all the other circumstances in the case, is it not?

Mr. BOND. Yes; by every circumstance and every fact. I read from page 36 of said report:

> Under the pressure of the demand for the settlement of the unoccupied lands of the State of Mississippi by emigrants from other States, the policy of the United States in respect to the Indian tribes still dwelling within its borders underwent a change, and it became desirable by a new treaty to effect so far as practicable the removal of the whole body of the Choctaw Nation, as a tribe, from the limits of the State to the lands which had been ceded to them west of the Mississippi River. To carry out that policy the treaty of 1830 was negotiated.

Reading further on page 37:

> It is notorious as a historical fact, as it abundantly appears from the record in this case, that great pressure had to be brought to bear upon the Indians to effect their removal, and the whole treaty was evidently and purposely executed, not so much to secure to the Indians the rights for which they had stipulated, as to effectuate the policy of the United States in regard to their removal.

I now desire to call the attention of the committee to a statement of Mr. Cantwell's to the effect that the act of June 28, 1898, gave to the fourteenth-article claimants a right to citizenship in the Choctaw and Chickasaw Nations without removal. Section 21 reads in part as follows:

> Said commission shall have authority to determine the identity of Choctaw Indians claiming rights in the Choctaw lands under article 14 of the treaty between the United States and the Choctaw Nation concluded September 27, 1830, and to that end they may administer oaths, examine witnesses, and perform all other acts necessary thereto and make report to the Secretary of the Interior.

That provision of the act does not confer upon the commission the right to enroll Mississippi Choctaws, but merely confers upon the commission the right to identify them and therefore, I take it, confers no right of enrollment or property right upon the Mississippi Choctaw without removal.

I read further from the same section:

> No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship. *Provided, however,* That nothing contained in this act shall be so construed as to mlitate against any rights or privileges which the Missiissippi Choctaws may have under the laws or the treaties with the United States.

That last proviso conferred no additional right upon the Mississippi Choctaw, but it simply held in statu quo or preserved any rights that he might have under the treaties between the tribe and the United States.

Mr. MILLER. Is it not a fair statement to say that that language means this, that nothing in the act will change in any degree the right or the status of the Mississippi Choctaws if under the treaties with the United States or under previous laws of the United States they have a right to citizenship in the Choctaw and Chickasaw Nations without removal; this does not put upon them the obligation to remove?

Mr. BOND. I think that is a correct statement of the law. As a further evidence of the correctness of the statement, I desire to read from section 11 of the act:

> *Provided,* That nothing herein contained shall in any way affect any vested legal rights which may have been heretofore granted by act of Congress, nor be so construed as to confer any additional rights upon any parties claiming under any such act of Congress.

I desire now to call the committee's attention to a statement made by Mr. Cantwell to the effect that under the act of 1902 the rule of evidence was changed so as to make it compulsory upon claimants to establish the fact that they were descendants from those who had received a patent under the fourteenth article of the treaty of 1830. The Commission to the Five Civilized Tribes, in receiving proof under the fourteenth article of the treaty, did not follow strictly the letter of the law, but they looked to the spirit of the law, and not only enrolled those who could prove that they were descendants of an ancestor who had received a patent under the treaty, but also enrolled those who could show that their ancestors were entitled to rights under the fourteenth article of the treaty, even though their rights had been defeated by the agents of the Government or through any practices of citizens of Mississippi or otherwise, and the committee so found at its last hearing.

After the passage of the act of 1902 the particular section in controversy was construed by the Attorney General, and the Attorney General held that that language was not intended to abridge any rights that claimants might have had prior to the passage of the act. The commission still continued to accept proof, even though no patent had been issued to the ancestor. I will read a portion of the opinion of the Attorney General bearing on the question:

> Concerning said section 41 of the act——

Mr. HARRISON. When was the opinion issued?

Mr. BOND. The letter bearing the opinion was issued on November 23, 1904, and I take it that the opinion was issued in the year 1904:

> Concerning said section 41 of the act of July 1, 1902, the Attorney General of the United States, in an opinion rendered June 19, 1903, used the following language:
>
> "This agreement must, of course, be construed in the light of the circumstances under which it was made, and with a purpose to ascertain the intention of the parties thereto. Manifestly the parties did not intend to abridge the rights of any person theretofore entitled by law to identification as a Mississippi Choctaw, but they did intend to permit the identification of some persons who had not prior to that time been able to bring themselves within the requirements of the rules established by the commission—persons the evidence of whose rights under the treaty of 1830 could not be secured, but who the Government of the United States and the Choctaw Indians, 'in their generosity,' desired should share in the benefits arising out of the provisions of that treaty."

He refers in the latter part of his opinion to the full-blood rule, and speaks of it as a generosity on the part of the Choctaws.

Mr. RICHARDSON. Mr. Bond, do you mean to say that the Dawes Commission, prior to the act of July 1, 1902, had proof and identification of claimants who were what are known as scrip claimants?

Mr. BOND. I mean to say, Mr. Richardson, that I practiced before the Dawes Commission more or less from the time I graduated from law school. I never brought a Mississippi Choctaw case but what the Dawes Commission permitted any proof to show that the ancestor was entitled to comply with the fourteenth article of the treaty, and if you could show that the applicant was a descendant from an ancestor who was entitled to comply with the fourteenth article of the treaty, and who was prevented, by any reason whatever, from complying therewith, they would admit the applicant to citizenship on such proof.

Mr. RICHARDSON. Is it not a fact that the commission had only decided, before the act of July 1, 1902, the identification of five individuals between the time that the McKennon roll was submitted on March 10, 1899, and the act of July 1, 1902, was passed, and that those five individuals were all of one family?

Mr. BOND. I am not prepared to say how many individuals the commission had passed on at that time. I have not looked up the record, but from the finding of the subcommittee last year and from the records that I have been able to investigate, the commission never confined proof to a patentee. It is true that immediately after the passage of the act of 1902 the commission construed it literally, but the matter was passed up to the Attorney General for a decision, and after the decision of 1904 the commission followed the holding of the Attorney General, and between 1904 and 1907 the department claims to have reviewed all Mississippi Choctaw cases and to have applied the broad rule of the Attorney General to all such cases.

Mr. HURLEY. There are a great many other decisions that we can submit to the committee wherein the same holding prevailed as in the Jim Gift case, if the committee cares to go further into those decisions.

Mr. BOND. Mr. Cantwell has also denounced that part of the act of 1902 which permitted full bloods to be identified and enrolled without proving that their ancestors were descendants from persons who complied or were entitled to comply with the fourteenth article of the treaty of 1830. I therefore desire to read from the report of the Commission to the Five Civilized Tribes to the Secretary of the Interior for the year ending June 30, 1906, which bears on that question:

> The full-blood Indians living in the States of Mississippi, Alabama, and Louisiana remained innocuous in their huts and waited for the commission to take the initiative and seek them out, bringing the offer of rich farms and comfortable homes to their very doors, but they often stolidly refused to furnish any information whatever concerning their ancestry.
>
> Claimants came from all parts of the country—from the Gulf to the Great Lakes, and from Oregon to Massachusetts—and literally submerged the commission with applications.
>
> It became apparent that the ignorant full blood, for whom Congress intended to provide, had no record of his ancestry, and could not prove his rights under the law, and if required to do so would fail to receive the benefits of the legislation. In order that this might not happen, the following provision was embodied in the act of July 1, 1902.

Then follows the provision with reference to the full-blood rule.

I can not understand why counsel representing the proponents of the bill should so viciously denounce a rule which was a protection to the full bloods and which was merely a generosity on the part of the Choctaw Nation.

Mr. MILLER. What have you to say about this feature: Assuming that in the enactment of the two agreements the provision was designed to benefit the Mississippi Choctaws, it still required, in order to make application and prove their identity within six months that they had to remove to the Choctaw country west, and in your judgment did that requirement make it possible for any Mississippi Choctaw to take advantage of the provisions of the act?

Mr. BOND. Yes, it did.

Mr. MILLER. Do you not think it is rather strange that no one was ever enrolled under that?

Mr. BOND. Perhaps they failed to remove, perhaps all applications were made under former acts, and while the applicants received the benefit of the full-blood rule they were enrolled as of the acts under which they applied, but that is a very reasonable provision and is easily explainable.

In 1893 Congress passed an act looking to the allotment of the lands west. This act placed the fourteenth-article claimant on notice that there was going to be an allotment in severalty of the lands west. In 1896, under an act of Congress, a commission was sent to the Indian Territory for the purpose of making the rolls. That was an additional notice to the Mississippi Choctaws. In 1898 an act was passed closing the rolls, so far as applications to the members were concerned, but preserving the rights of the Mississippi Choctaws and providing for their identification. That act gave them an additional opportunity to remove and an additional notice that the lands

were to be allotted in severalty. In 1900 there was an act passed by Congress, which reads as follows——

Mr. HURLEY. Mr. Miller, did I understand you to say that there were no full bloods enrolled under the act of 1902?

Mr. MILLER. Yes, sir.

Mr. HURLEY. That is not my understanding.

Mr. MILLER. That was the information furnished me by the Indian Office.

Mr. HURLEY. The cases that were pending then before the Commission to the Five Civilized Tribes were passed upon after that law, and they were given the benefit of that law, as shown in the Jim Gift decision, which we have submitted here for the record. There were 24,000 more applications filed.

Mr. MILLER. Those applications were filed prior to July 1, 1902.

Mr. HURLEY. And passed on, or most of them, after that date.

Mr. MILLER. But no new applications were received under the act of July 1, 1902.

Mr. HURLEY. No, sir; but, at the same time, the reason for that act was this, that there were so many applications pending from full bloods who could not prove their identity, and it was passed in order to give the commission the right to pass favorably upon those full-blood cases, which was done under that act.

Mr. MILLER. You do not refer to any applications received under this particular provision?

Mr. HURLEY. No, sir; I do not refer to applications received, because the applications had all theretofore been received—more than 24,000 applications in all. Among those were the applications of the full bloods who could not theretofore prove their descent from a fourteenth-article claimant. Their cases were passed on after that, giving them the benefit of the full-blood rule, or the rule that could and did work favorably to the full-blood applicants who had their applications in at that time.

Mr. CARTER. Let me ask you a question: Is it not a fact that this provision was placed in the 1902 agreement for the reason that the full-blood Indians, or many of the full-blood Indians, had been unable to establish their identity as required by former laws?

Mr. HURLEY. That was the very purpose for which it was inserted, because they had so many applications from Indians in Mississippi who were full bloods and whom they wanted to pass upon favorably, but to whom they could not grant citizenship under existing laws because of the fact that those full bloods could not prove descent from fourteenth-article claimants. Then the so-called full-blood rule of evidence was made operative in favor of those applicants who could not prove their rights. In other words, they were admitted to citizenship without the proof of any right of citizenship.

Mr. BALLINGER. How many were benefited by the decision in the Jim Gift case?

Mr. HURLEY. The Jim Gift case was not a full-blood case. That case was submitted in answer to your argument that no one except the descendant of a patentee was entitled under that act. Jim Gift was not the descendant of a patentee, but the descendant of a scripee. The Jim Gift case was the ruling case in admitting those who could prove their descent from scripees under the act of 1902,

and there were probably not more than 150 or 200 citizens of that character admitted. There were 162 in all, I think, admitted as Mississippi Choctaws.

Mr. RICHARDSON. You do not mean identified as Mississippi Choctaws, but you mean finally enrolled?

Mr. HURLEY. Finally enrolled as Mississippi Choctaws.

Mr. RICHARDSON. I think Mr. Miller's inquiry related to the number of persons who under the act of 1902 and this legislation were finally identified. There were about 2,550.

Mr. MILLER. I really referred to those admitted to citizenship under the act of July 1, 1902.

Mr. BOND. I will read from the act of May 31, 1900:

Provided, That any Mississippi Choctaw duly identified as such by the United States Commission to the Five Civilized Tribes shall have the right, at any time prior to the approval of the final rolls of the Choctaws and Chickasaws by the Secretary of the Interior, to make settlement within the Choctaw-Chickasaw country, and on proof of the fact of bona fide settlement may be enrolled by the said United States commission and by the Secretary of the Interior as Choctaws entitled to allotment.

This act gave the fourteenth-article claimants a further notice and a further right to enrollment, in addition to that conferred upon other applicants. The act of 1902, extended the time for applications and for removal and the waiver of proof therein, applied to those who had theretofore been identified, or who had theretofore made application, and to all cases pending, and admitted without proof all full-blood claimants. Had it not been for this legislation practically none of the full bloods could have been enrolled, as the commission had theretofore reported that such applicants were unable to furnish proper proof. Therefore the legislation was beneficial to the claimants.

Mr. CARTER. That extended the time six months for filing the applications and for removal, which gave them a year for removal.

Mr. BOND. Yes.

Mr. HURLEY. I think that you will probably find upon a close examination of the facts surrounding that period that the reason why there were no additional applications filed under that act was because of the fact that all the applications of the Mississippi Choctaws were in at that time. All the persons whose names appeared on the McKennon roll were applicants at that time.

Mr. RICHARDSON. They had been conducting hearings in Mississippi from December, 1900, until October, 1901—that is, hearing applications——

Mr. HURLEY (interposing). And after having received all those applications, the commission found that the applicants were without the evidence to show their right to enrollment, and this act was passed in order to give the full bloods a right to enrollment without proof.

Mr. CARTER. It gave them six months after identification to remove to Oklahoma, and it gave them six months' addition time in which to file their identification papers or to be identified. The act provides as follows:

All persons duly identified by the Commission to the Five Civilized Tribes under the provisions of section 21 of the act of Congress approved June 28, 1898, as Mississippi Choctaws entitled to benefits under article 14 of the treaty between the United States and the Choctaw Nation concluded September 27, 1830, may at any time within six months after the date of their identification as Mississippi Choctaws by the said commission make bona fide settlement within the Choctaw-Chickasaw country, and upon proof of such settlement to such commission within one year after the date of their said identification as Mississippi Choctaws shall be enrolled by such commission as Mississippi Choctaws entitled to allotment as herein provided for citizens of the tribes, subject to the special provisions herein provided as to Mississippi Choctaws, and said enrollment shall be final when approved by the Secretary of the Interior. The application of no person for identification as a Mississippi Choctaw shall be received by said commission after six months subsequent to the date of the final ratification of this agreement.

Mr. BALLINGER. The point I want to make in that connection is this, that the identification was not complete until approved by the Secretary of the Interior, and that in numerous cases, perhaps in a majority of the cases, the claimants were not notified of their identification until the six months' period had practically expired, and in some instances it had actually expired.

Mr. BOND. I will say in answer to your statement that it was the duty of those people to remove to the Indian Territory. They had no right to remain in Mississippi and expect to be identified and enrolled and then remove thereafter. It was a condition precedent that they remove to the Indian Territory, and if they remained in the State of Mississippi awaiting identification, it was their fault. It was their responsibility and not the responsibility of the tribe or of the Government. I will read you what the Supreme Court of the United States has to say in reference to a condition precedent of that character. Bear in mind now that in the fourteenth article of the treaty there was no notice provided for. The claimants under that article simply retained the privilege of removing and simply a privilege of citizenship. There was no notice provided for in treaty, and there was no notice provided for under any other allotment act that was carried into effect.

Mr. BALLINGER. If they had removed prior to the time that they received notice of their identification, they would have been treated as intruders.

Mr. CARTER. Mr. Ballinger, we have gone over that phase of the matter thoroughly, and I think the record shows that no person was ever dealt with as an intruder unless he failed to comply with the laws of the Choctaw Nation.

Mr. BALLINGER. There were a number of cases where they were removed.

Mr. CARTER. There may have been some cases in which intruders were removed, but it was always for a violation of the laws of the Choctaw Nation. Citizenship claimants were not treated as intruders.

Mr. BOND. I read from the case entitled the Sac and Fox Indians of the Mississippi in Iowa *v.* Sac and Fox Indians of the Mississippi in Oklahoma, and the United States, reported in volume 220 United States Reports, at page 484. Now, mind you, in this case general notice was provided for the removal of the Sac and Fox Indians in order that they might enjoy their privileges of citizenship. I read from the opinion of the court on page 484:

The Court of Claims adds as yet a further reason for rejecting this claim that it does not appear how many of the Iowa Indians returned to Kansas to

receive their annuities, but (therein varying from the statement of facts found), that it does appear that some of them did. The course of the Government is sanctioned in principle by the implication of the treaty of October 1, 1859 (art. 7, 15 Stat., 467, 469). That article recites the anxiety of the Sacs and Foxes, that all members of the tribes should share the advantages of the treaty, invite nonresident members to come in and provide for notice to them, but adds the condition that those who do not rejoin and permanently reunite with the tribe within one year shall not have the benefit of any of the stipulations in the treaty contained.

Now, the court in construing that section on page 487 uses the following language:

The fifth and last claim is for a share in proceeds of land ceded by the treaty of 1859. * * * We do not see how the claim can be supported when the treaty itself provided that to benefit by it members must rejoin the tribe, meaning the tribe in Kansas, within one year. It is suggested, to be sure, that the forfeiture, as it is called, was dependent upon notice being given as agreed in article 7, and that there is some evidence that notice was not given. The condition, however, was an absolute condition precedent to the acquisition, by persons not parties to the treaty, of any rights, if rights they can be called, notice or no notice.

The only treaty to which the claimants were parties was the treaty of 1830, and it provided for removal, but made no provision for notice. So it was a condition precedent that they remove before they were entitled to citizenship.

I now desire to call the committee's attention briefly to an argument continually made on the floor of the House and the floor of the Senate to the effect that the act of 1900 and the act of 1902 repealed and abrogated the treaty of 1830, and I desire to say here and now that I am unable to understand how any lawyer can arrive at that conclusion. I say that for this reason: The court has held that it is necessary under the treaty of 1830 for the claimant to remove in order to be entitled to citizenship rights in the Choctaw and Chickasaw Nations. Now, pursuant to and in accordance with that decision of the court, Congress, in the act of 1900 and in the act of 1902, simply extended the time within which the claimant could remove, and in no way abrogated, and in no way changed his right of removal under the treaty. He had the right of removal under the treaty, and Congress simply extended the time for removal under the act of 1900, with a limitation, and again in 1902 extended the time with an express limitation. Without a limitation on removal tribal affairs could never be settled. That was an absolute necessity on the part of Congress for the reason that the tribal form of Government was being abolished and the tribal affairs were being settled.

Now, the claims of the Chickasaws have never been presented. I have examined volume after volume, containing hundreds upon hundreds of pages, but I have failed up to date to find a single argument in behalf of the Chickasaws, and I desire now to call the attention of the committee to the fact that the Chickasaws were bona fide purchasers for a valuable consideration; that they purchased after the treaty of 1830 and took title subject to that treaty, but not subject to any equity that might have theretofore existed between the members of the Choctaw Nation, and not subject to any moral or political claim that have theretofore or thereafter existed between the members of

the Choctaw Nation. I will read from the treaty with the Choctaws and Chickasaws of January 17, 1837. I read from article 1:

It is agreed by the Choctaws that the Chickasaws shall have the privilege of forming a district within the limits of their country, to be held on the same terms that the Choctaws now hold it, except the right of disposing of it (which is held in common with the Choctaws and Chickasaws), to be called the Chickasaw district of the Choctaw Nation; * * and the Chickasaw people to be entitled to all the rights and privileges of Choctaws, with the exception of participating in the Choctaw annuities.

Article 3 reads as follows:

The Chickasaws agree to pay the Choctaws, as a consideration for these rights and privileges, the sum of $530,000.

Now I desire to call the attention of the committee to the treaty of 1855, which changed the title and ownership of the Chickasaws and Choctaws. I read from article 1:

And pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common; so that each and every member of either tribe shall have an equal undivided interest in the whole: *Provided, however*, No part thereof shall ever be sold without the consent of both tribes, and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same.

The Chickasaws by purchase for a valuable consideration acquired title to lands in the Choctaw Nation, and, as I have said before, the title was acquired subject to the terms and provisions of the treaty of 1830. Article 2 of the treaty of 1830 provided for the fee-simple title to the nation, to them and their descendants, so long as they existed as a nation and lived upon it. That provision was carried into the patent and the Chickasaw Tribe of Indians took title subject to that provision, and they are entitled to the benefits thereof. They are also entitled to the benefits of the fourteenth article of the treaty of 1830, which says that the claimants must remove in order to be entitled to citizenship. Now, if the Chickasaw Tribe of Indians acquired rights under that treaty and under that patent, Congress at this time is unable to disturb or abrogate the title acquired under the patent and under the treaty.

Mr. MILLER. Do you think, Mr. Bond, any acts of Congress have, up to this time, been passed by which the Mississippi Choctaws have been able to become enrolled as citizens of the Choctaw-Chickasaw Nation who would not have been permitted to become enrolled had it not been for those acts?

Mr. BOND. Yes; the time for removal was extended by the acts of 1900 and 1902, and proof waived as to full bloods by the latter act. The Chickasaws have by agreement with Congress waived certain conditions; but those conditions were waived with express limitations, and those limitations have expired. For example, that provision of the fourteenth article of the treaty which said "persons" fixed a limitation itself. A limitation was fixed upon the persons who were parties to that treaty. It was held by Judge Clayton that the Choctaw people, continuing from year to year and from time to time to invite the heirs of those persons to come to the Choctaw Nation, and continuing from time to time and from year to year to give the heirs of those persons citizenship rights, waived their

right to the limitation of persons, and so continued that waiver until it became crystallized into law. The Chickasaws made practically the same waiver when they executed the agreement of 1902, which permitted the heirs of those persons to enjoy citizenshp, but there was an express limitation in said agreement. A definite time was fixed within which they could exercise the right of removal. But the Chickasaws never waived the provisions of the patent which said those claimants must live upon the land, and the Chickasaws never waived the provision of the fourteenth article which said that they must remove in order to be entitled to citizenship, but reaffirmed the provision of that article in the act of 1902 which said that they must remove.

Mr. MILLER. Then the position that you really take is that the Chickasaws have waived the right in several instances in the past and they have not waived it in respect of anything Congress may in the future do?

Mr. BOND. The Chickasaws have never waived anything that Congress may in the future do, and the Chickasaws have never waived in the past the provisions of the fourteenth article that they must remove in order to be entitled to citizenship. They have never waived the second article of the treaty which said that they must live upon the land, and they have not waived the provision in the patent which said they must live upon the land in order to preserve the title. If you will remember, Congress in 1902 agreed that a provision should be carried into the Choctaw and Chickasaw patents, exempting their allotment selections from taxes for a period of 21 years, or during the lifetime of the allottee. Congress afterwards removed the restriction upon portions of the allotment selections of the Choctaws and Chickasaws, and in the same act provided that all lands on which the restriction on alienation had been removed should become taxable. The State of Oklahoma under that act attempted to tax said lands. The tax was contested and the State court held that Congress had power to remove the exemption and make them subject to taxation. The case was appealed to the Supreme Court of the United States, and the court held that the condition in the patent exempting them from taxation was an absolute right, and that Congress was without authority to abrogate same. Now, if there was a right conferred upon the Chickasaws in consideration of the moneys they paid for the lands west, under the patent and under the treaty of 1830, could Congress now at this time abrogate that right? Congress has the right of legislation, Congress can repeal a law, but Congress can not abrogate a right acquired under the law.

I read from Two hundred and twenty-fourth United States, at page 665, Choate against Trapp, secretary of the State board of equalization of Oklahoma. I read from the opinion of the court:

> On May 27, 1908, Congress passed a general act removing restrictions from the sale and encumbrance of land held by Indians of the class to which the plaintiffs belong. Another section provided that lands from which restrictions had been removed should be subject to taxation.
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> Thereupon proceedings were instituted by the State of Oklahoma with a view of assessing the plaintiffs' land for taxes. This they sought to enjoin, but their complaint was dismissed on demurrer. The case was carried to the supreme court of the State which held * * * that the United States, by virture of its governmental power over the Indians, could have substituted title in severalty for ownership in common without plaintiffs' consent and that, for want of a consideration, the provision that the land should be nontaxable was not a contract, but a mere gratuity which could be withdrawn at will. The court thereupon overruled plaintiffs' contention that they had a vested right of exemption which prevented the State from taxing the land at this time and dismissed their suit.
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> There are many cases, some of which are cited in the opinion of the Supreme Court of Oklahoma (Thomas *v.* Gay, 169 U. S., 271; Lone Wolf *v.* Hitchcock, 187 U. S., 565), recognizing that the plenary power of Congress over the Indian tribes and tribal property can not be limited by treaties so as to prevent repeal or amendment by a later statute. The tribes have been regarded as dependent nations, and treaties with them have been looked upon not as contracts, but as public laws which could be abrogated at the will of the United States.
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> This sovereign and plenary power was exercised and retained in all the dealings and legislation under which the lands of the Choctaws and Chickasaws were divided in severalty among the members of the tribes. For, although the Atoka agreement is in the form of a contract it is still an integral part of the Curtis Act, and, if not a treaty, is a public law relating to tribal property, and as such was amendable and repealable at the will of Congress. But there is a broad distinction between tribal property and private property, and between the power to abrogate a statute and the authority to destroy rights acquired under such law.
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> But the exemption and nonalienability were two separate and distinct subjects. One conferred a right and the other imposed a limitation. * * * The right to remove the restriction was in pursuance of the power under which Congress could legislate as to the status of the ward and lengthen or shorten the period of disability. But the provision that the land should be nontaxable was a property right.
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> The patent issued in pursuance of those statutes gave the Indian as good a title to the exemption as it did to the land itself.
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> It is conceded that no right which was actually conferred on the Indians can be arbitrarily abrogated by statute.

Mr. RICHARDSON. Must not a distinction be drawn as to the right of a patentee to enforce a condition made for his own benefit and one which is made for the benefit of the United States? Now, as I understand the case you have read from, the condition was made in there for the benefit of the patentee that his land should be exempt from taxation. In the treaty and in the patent a condition was made that the Indians should live on the land, and if they failed to do that the lands should revert back to the United States. There was a condition of their remaining on the land and that was a condition for the benefit of the United States.

Mr. BOND. No; I do not so take it. The fourteenth-article claimants under that treaty received an allotment of land of 640 acres for the head of the family and 320 acres for each member of the family over 10 years of age, and 160 acres for each member under 10 years of age. They accepted the benefit of that treaty. Then that treaty imposed a responsibility, the responsibility that if you want citizenship you must remove. They accepted the benefits under that treaty, and they must assume the burdens. There was a burden placed there, the burden of removal, and when the Chickasaws acquired a right in that property they acquired it on the condition that no outsider, no citizen of the United States who had no right in that property without removal, should share in the fruits and benefits of it.

Mr. RICHARDSON. Then do you contend that the restriction of the patent that they should enjoy the property so long as they lived upon

it and the condition in the treaty and in the act of May, 1830, which all contained the same requirement, that they were provisions put in there for the benefit of the Indian against the outsider and not for the benefit of the nation to secure forfeiture if they did not live on the land.

Mr. BOND. The Indians who remained received a handsome patrimony or they were entitled to an handsome partimony. They were entitled to receive greater allotments per capita than the Indians were afterwards allotted in Oklahoma, and when those rights were conferred upon them there were certain conditions and certain requirements imposed for the benefit of those who did remove. Those who removed got nothing. They received no allotment selection in the State of Mississippi and therefore they had the right conferred upon them to preclude the others who did not remove from sharing in the fruits of their labor. The patent, the second article of the treaty, and the fourteenth article of the treaty are identical in that respect, because they say that no one who does not live on those lands shall have any benefits from them. The fourteenth article of the treaty, in accordance with the other provisions of the treaty and of the patent, says that you must remove in order to enjoy the benefits of Choctaw citizenship.

Mr. MILLER. As I understand you, you maintain that the Indian who remained in Mississippi thereafter were not citizens of the Choctaw Nation West?

Mr. BOND. Yes.

Mr. MILLER. Under what theory did the Choctaw Nation West maintain a suit against the Government for the Indians who remained in Mississippi?

Mr. BOND. They brought and maintained the suit for the nation and for those who claimed under the fourteenth article as individual members, for damages done to those individuals under the fourteenth article of the treaty, and if you will read the opinion in One hundred and second United States, the Cherokee Nation case, you will find that the Cherokee Nation brought practically the same kind of a suit except that in the place of individuals they said "Bands." They made the bands of Eastern Cherokees, who had refused to remove, parties to this suit. The nation recovered under that treaty and the opinion of the court is found in One hundred and second United States.

Mr. MILLER. That is all very true as to the Cherokee proposition, but the Cherokee Nation was one nation and the Choctaw was another, and the rights of each depend on the facts governing each.

Mr. BOND. The act of Congress giving the right to sue in the Court of Claims calls them individuals. It recognizes that they had been damaged under the treaty of 1830. It did not repeal the act of 1830 which said that they must remove, or the treaty which said that they must live upon the land. Furthermore, the Chickasaws had nothing to do with that judgment. They were not parties to that suit. They were not a joint tribe at the time when the damage accrued, and the Chickasaws did not receive one penny of that judgment. If there had been a waiver in that case it could not have applied to a nation that was not a party to the suit and who received none of the benefits under that judgment.

Mr. MILLER. Have you that Supreme Court case in which the net proceeds decision was rendered?

Mr. BOND. Yes.

Mr. MILLER. The truth is, I do not know what language was used and I want to see the decision for my own information.

Mr. BOND. I will say that in that suit the question of citizenship was not in controversy. It was simply a question of damages under a former treaty, and I will say that the treaty between the Cherokee Tribes of Indians and the treaty between the Choctaws and the United States were identical as to the title. The only different provision in the treaty was that "persons who claimed under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove they shall not be entitled to any portion of the Choctaw annuity." I would like to state to the committee further that at the time this suit was brought practically all the individuals referred to in that case were then citizens of the Choctaw Nation. They had removed west and there were very few individuals remaining east at the time of the institution of the suit, if any. The fact that a person was a member of a tribe in 1830 and was damaged under the terms of a treaty then existing would not preclude such person from suing for damages done thereunder on renewal of citizenship thereafter. It has been asserted that the fourteenth-article claimants are wards of the Government.

It is contended that the fourteenth-article claimants being wards of the Government they are entitled to the protection of the Government, and that it was the duty of the Government to remove them over to the Choctaw Nation West.

Now I will show conclusively by decisions of the Supreme Court of the United States that the fourteenth-article claimants who remained and now live in the State of Mississippi are United States citizens and not wards of the Government. The United States hold over an Indian subject a dual guardianship, a guardianship of the person and a guardianship of his property. The guardianship of the person is relinquished when the Indian is made a citizen of the United States and subjected to State laws. The guardianship of the property is relinquished when the restrictions are removed on the alienation of the same. When an Indian is once made a citizen of the United States the Government is without authority to reassert its guardianship of the person, and when the restrictions are removed on the alienation of the property the United States is without authority to reimpose restrictions. Therefore when the guardianship of the person is relinquished by making an Indian a citizen of the United States and making him subject to State laws and when the guardianship of the property is relinquished by removing the restrictions upon the alienation of the same, the Government has no authority whatever over such Indian no more than it would have over any other of its subjects.

Mr. BALLINGER. Since 1830 has the Government ever exercised a guardianship over a person in the Choctaw Nation?

Mr. BOND. I think the United States exercised a personal guardianship over the Choctaw Indians until they were made citizens of the United States. If it did not exercise it, it had the right to exercise it.

I read from 197 United States, 488, entitled "Matter of Heff." I read from the syllabus.

The recognized relation between the Government and the Indians is that of a superior and an inferior, whereby the latter is placed under the care of the former. The Government, however, is under no constitutional obligation to continue the relationship of guardian and ward and may, at any time and in the manner that Congress shall determine, abandon the guardianship and leave the ward to assume and be subject to all the privileges and burdens of one sui juris.

* * * * * * *

Under the act of February 8, 1887 (24 Stat., 388), an Indian who has received an allotment and patent for land is no longer a ward of the Government, but a citizen of the United States and of the State in which he resides, and, as such, is not within the reach of Indian police regulations on the part of Congress, and this emancipation from Federal control can not be set aside without the consent of the Indian or the State, nor is it affected by the provisions in the act subjecting the land allotted to conditions against alienation and encumbrance, and guaranteeing him an interest in tribal or other property.

* * * * * * *

It is said that commerce with the Indian tribes includes commerce with the members thereof, and Congress, having power to regulate commerce between the white men and the Indians, continues to retain that power, although it has provided that the Indian shall have the benefit of and be subject to the civil and criminal laws of the State and shall be a citizen of the United States and therefore a citizen of the State. But the logic of this argument implies that the United States can never release itself from the obligation of guardianship; that so long as an individual is an Indian by descent, Congress, although it may have granted all the rights and privileges of national and therefore State citizenship, the benefits and burdens of the laws of the State may at any time repudiate this action and reassume its guardianship, and prevent the Indian from enjoying the benefit of the laws of the State, and release him from obligations of obedience thereto. Can it be that because one has Indian and only Indian blood in his veins he is to be forever one of a special class over whom the General Government may in its discretion assume the rights of guardianship which it has once abandoned, and this whether the State or the individual himself consents? We think the reach to which this argument goes demonstrates that it is unsound.

Reading further from page 509:

The fact that property is held subject to a condition against alienation does not affect the civil or political status of the holder of the title.

Reading further:

But it is unnecessary to pursue this discussion further. We are of the opinion that when the United States grants the privileges of citizenship to an Indian, gives to him the benefit of and requires him to be subject to the laws, both civil and criminal, of the State, it places him outside the reach of police regulations on the part of Congress; that the emancipation from Federal control thus created can not be set aside at the instance of the Government without the consent of the individual Indian and the State; and that this emancipation from Federal control is not affected by the fact that the lands it has granted to the Indian are granted subject to a condition against alienation and encumbrance, or the further fact that it guarantees to him an interest in tribal or other property.

The district court of Kansas did not have jurisdiction of the offense charged, and therefore the petitioner is entitled to his discharge from imprisonment.

Now, I will read authorities to show you that when the restriction is removed on the alienation of the land that Congress no longer has a guardianship of the property of the Indian.

I read from 171 Federal Reporter, at page 907, entitled "United States *v.* Allen."

In this case the Government of the United States authorized the institution of a number of land suits in the State of Oklahoma, and

under the act of Congress approximately 30,000 land suits were brought in the United States court for the eastern district of Oklahoma. The lower court held that the United States was without jurisdiction; that the United States was without authority to maintain those actions because the Indians of the Five Civilized Tribes had been made citizens of the United States. The trial court was reversed, because the trial court did not take into consideration that there was a dual guardianship, the guardianship of the person and of the property, and the circuit court of appeals, in reversing the trial court, held that the United States, under a specific act of Congress, had the authority to maintain those actions for the members of the Five Civilized Tribes, regardless of whether or not the restriction had been removed on the alienation of the property. Those cases were appealed to the Supreme Court of the United States and modified and affirmed, the United States Supreme Court holding that the United States, even though under this specific act, was without authority to institute a suit for a member of the Five Civilized Tribes who had had the restrictions removed on the alienation of his allotment selection. I read from the syllabus of the case in the trial court:

By act of March 3, 1901, amending section 6 of the general allotment act of February 8, 1887, and providing, inter alia, that "every Indian in the Indian Territory is hereby declared to be a citizen of the United States and is entitled to all the rights, privileges, and immunities of such citizens," all members of either of the Five Civilized Tribes in such territory became and remain citizens, unaffected by the fact that by subsequent legislation their tribal existence was continued to await the final disposition of the tribal property or that restrictions still exist on their power to alienate their lands after allotment in severalty; and such being their political and civil status, with full power to maintain suits to protect their rights, the United States occupies no such relationship of trust or guardianship toward them as entitles it to maintain in their behalf suits in its own name, to which they are not parties, to cancel conveyances made by them of their allotted lands.

I will now call your attention to the language of the court in One hundred and seventy-ninth Federal, at page 13, wherein the trial court was reversed:

The provision of the act May 27, 1908, that "nothing in this act shall be construed as a denial of the right of the United States to take such steps as may be necessary including the bringing of any suit * * * to acquire or retain possession of restricted Indian lands * * * in cases where deeds, leases, or contracts * * * have been or shall be made contrary to law with respect to such lands prior to the removal therefrom of restrictions upon the alienation thereof, such suits to be brought on the recommendation of the Secretary of the Interior, without costs or charges to the allottees, the necessary expenses incurred in so doing to be defrayed from the money appropriated by this act" is more than a saving clause and when read in connection with the part of the section appropriating $50,000 to cover the expenses incurred in such litigation is an implied grant of power to maintain such suits and such power extends to suits relating to allotments which were freed from restrictions by section 1 of the act in respect to conveyances or contracts previously made.

The circuit court of appeals thereby holding that this act conferred authority on the United States to bring suits for allottees even though the restrictions had been removed on the land.

Mr. BALLINGER. But the cause of action must have accrued prior to the time of the removal of the restrictions?

Mr. BOND. It does not make any difference whether the cause of action accrued prior to the time of the removal of the restrictions; it depends on whether or not the land was restricted.

"Stop! Stop! John Coffee," shouted the justly indignant chief in a voice of thunder, "I am no more entitled to those 15 sections of land than the poorest Chickasaw in the nation. I scorn your infamous offer, clothed under the false hood of 'our beloved chief,' and will not accept it, sir."

It is a historical fact that when the Chickasaws purchased an interest in the Choctaw Nation West they were placed on a scope of country immediately adjacent to the plains Indian or the wild tribes. They stood on the very frontier and beat back and fought off the hostile raids and encroachments of the warlike Comanche, Kiowas, and Apache. They stood on the very threshold of danger and stayed the hand of the aggressive Cheyenne and brave Arapahoe. They did all this for the Choctaw tribe. They stood between the Choctaw Nation and danger. They purchased their rights for a valuable consideration. Could a bona fide purchaser have made a greater sacrifice?

Now, gentlemen of the committe, is it your object and purpose to grant enrollment to the Mississippi Choctaw who did not have the courage, who did not have the heart, who did not have the nerve to face a wilderness and hostile tribes, and permit him to share in the benefits of a bona fide purchaser for value? Are you going to do that, gentlemen? Are you going to require the Chickasaws to answer for the debts, defaults, and miscarriages of the Choctaws, if there be any? Do you believe the courts will exact it? Do you believe justice demands it?

In conclusion let me state that in 1820 the Choctaw Tribe of Indians had a population of approximately 19,000 residing in the State of Mississippi and owning approximately 14,000,000 acres of land, 4,000,000 acres of land were ceded to the United States for their lands west. Ten million acres were left in the State of Mississippi. Out of the 10,000,000 acres the claimants under the fourteenth article of the treaty were entitled to allotments and those allotments were of greater acreage than the recent allotments in the Choctaw and Chicksaw Nations. Those who went west went to preserve the title to the land that only 4,000,000 acres had been exchanged for, were armed in part with a bow and a quiver of arrows; were armed in part with a rifle, a bullet mold and a shot pouch. They were poorly clad and scantily provisioned. The entire path of their emigration is marked by the tombstones of their fallen. They made this sacrifice to preserve the title to the land west, and after privation, hardship, and endurance they conquered a wilderness, builded homes, established a form of government, and then invited their Choctaw brothers, who had remained east, who had received lands, moneys, and script to come and share what they had preserved west; to come and enjoy the fruits of their sacrifices.

From year to year they appropriated moneys in order that the Choctaws east might remove west; from year to year they pleaded with and entreated the Choctaws who had remained east to come west and enjoy the property they had preserved by their efforts. When Congress, in 1908, closed the rolls to applicants of their own people, they held them open for the Choctaws who remained east; in 1900 they held the rolls open for applicants who had remained east; in 1902 they held the rolls open for those who had remained east; in 1902 they made a waiver as to proof for those who did not have the manhood and the courage to come west. Can you show me

anywhere a finer example of generosity and philanthrophy? Can you show me anywhere a finer example of self-sacrifice by a tribe or by a nation? Now, what has the United States Government done for the Choctaw Tribe? Congress promised the Choctaw Nation in 1830 that no one should have title to their land west, preserved through trials and hardships, unless they lived upon it; Congress promised the Choctaw Tribe in 1830 that no one who refused to remove and assume the burdens of Choctaw citizenship and the responsibilities of Choctaw government should be entitled to share in their lands west. In 1896, when the Choctaw government surrendered the right to make its own rolls, Congress promised the Choctaw Tribe that the rolls would be made in accordance with its treaties, laws, usages, and customs. Congress promised the Choctaw Nation in 1908, when it surrendered its institutions and its tribal form of government, which it had passionately clung to through patriotism and national pride, that the rolls, when approved by the Secretary of the Interior should be final, and the persons whose names appear thereon and their descendants thereafter born should alone constitute the tribe. In 1902, when the Choctaw Nation made additional concessions, Congress agreed that no person whose name did not appear upon the rolls as therein provided should be entitled to in any manner participate in the distribution of the common property of the tribe; that it would keep inviolate the treaties and would not permit anyone to share in tribal funds or tribal moneys except those whose names appeared upon the rolls. The Choctaw Nation has never broken faith with the United States Government; the Choctaw Nation has never violated a treaty with the United States Government; the Choctaw Nation has never breached an act of the Congress. Will the United States Government now keep faith with the Choctaw Nation?

Gentlemen of the committee, I am a Chickasaw by blood. My employment was without solicitation or effort on my part. My pro rata share of the residue of the Chickasaw estate will little more than exceed my monthly salary as attorney for the tribe, but I would be pleased to-day if the entire affairs of both tribes could be settled and forever closed, that I might go home to my law practice, feeling that I had rendered some assistance to the committee and some service to my tribe.

I am indebted to the members of the committee for many courtesies. I appreciate the time and attention devoted by you to the interests of my tribe. I have implicit confidence in your judgment, and I feel assured that your report will be in accord with our laws, agreements, and treaties.

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