Argument of

POTTER & POTTER

In Behalf of Judgments Claimants Against the Adoption of the Pending Treaty Agreed Upon by the

Choctaw and Chickasaw Indians

——AND THE——

Dawes Commission,

And Submitted to Congress on the 23rd day of February, 1901.

To the Honorable Committees of Indian Affairs of the Senate and House of Representatives of the United States:

There is before your committee an agreement purporting to have been made between the Choctaw and Chickasaw Indians, and the Honorable Commission to the five civilized

tribes, which was submitted to your committee by the Honorable Secretary of the Interior on February 23, 1901, where the same is still pending.

The 8th section of the treaty as finally amended and submitted by the Honorable Secretary of the Interior, seeks to nullify in effect, certain judgments of the United States court for the Indian Territory determining and establishing the rights of citizenship in the Indian Territory, and membership in the Choctaw and Chickasaw tribes of Indians, or at least authorizes the annulling of said judgments upon purely technical grounds, to-wit: The failure to make both tribes parties to each proceeding.

As we represented a number of said persons in procuring said judgments and still represent them as attorneys, we beg the privilege to submit to your Honorable Bodies the reason why we think such treaty in its present form should not be ratified.

In the Indian Appropriation Bill, approved June 10, 1896, a provision was engrafted authorizing the Commission to the Five Civilized Tribes, now better known as the Dawes Commission to make a roll of the members of said Tribes and authorizing such Commission to hear contests in reference to the same. This provision is found on page 339 of Statutes-at-large, Vol. 29. From the decision of the Dawes Commission an appeal was allowed by either party to the United States court for the Indian Territory whose judgment was to be final in the premises. Under this act the proceedings were instituted that resulted in the judgments in question. The Indian tribes, at every stage of the proceeding denied the authority of Congress to authorize the Dawes Commission to make such roll, and denied that Congress had any power to confer jurisdiction upon the Commission or the

courts to decide and determine such questions. And in 1898 they applied to congress to be allowed the right of appeal in these cases to the Supreme Court of the United States to test the validity of such laws and the consequent validity of such judgments, notwithstanding the act made the judgments of the United States court for the Indian Territory final. Congress granted this request by provision contained in the Indian Appropriation act, of July 1, 1898, found in Vol. 30, United Stated Statutes-at large, Ch. 545. This appeal was taken and the opinion of the Supreme Court in these cases, affirming the same, is found in the case of Stevens et al vs. Cherokee Nation et al, 174, U. S. 445; in which the constitutionality and validity of all legislation by Congress in reference to this matter was fully upheld and confirmed.

It is now claimed by the Choctaw and Chickasaw Tribes of Indians that all of these judgments are void by reason of the fact that when a person's name is placed upon the roll, he becomes a member of that Tribe of Indians, and as all the lands of the Chickasaw and Choctaw Nations belong, according to the terms of the patent, and the provision of the treaty, to the members of said tribes in common, and that therefore in proceedings by persons to be enrolled, both Tribes, if not all the members of each Tribe, should have been made a party, and should have had notice of the proceedings. And that, as in fact only the Tribe was made a defendant in each proceeding, in which the person sought enrollment, there was such a non-joinder of parties at interest as renders the judgments an absolute nullity.

When the Dawes Commission began this work of enrollment under the act of 1896, it issued a public circular for the guidance of applicants, defining to some extent the methods of procedure before it, as the Act of Congress itself

proscribed no method of procedure, which circular was dated at Vinita, I. T., July 8, 1896; and among other things contained the following directions:

"Any person desiring that said Commission shall pass upon any claim for citizenship in any of said Tribes, under the provisions of this act, (having previously set for the principal provisions of the act) must make application in writing signed and sworn to, containing a particular statement of the grounds upon which his claim is based and accompanied by such evidence in the form of affidavits, depositions or record evidence as he may desire to have considered in support of his claim. All to be forwarded under seal to the Commission at Vinita, I. T., before September, 1896. The applicant should state facts, sufficient if true, to show that the applicant is entitled to citizenship. The applicant must at the same time furnish to the Chief or Governor of the nation in which citizenship is sought, a copy of such application and evidence, and shall furnish the Commission evidence of the fact. Such Chief or Governor must within thirty days thereafter, furnish the Commission his answer thereto, signed and sworn to by some duly authorized officer of this Government and accompanied by such evidence in the form of affidavits, depositions or record evidence as he may desire the Commission to consider in support of his answer. All arguments shall be in writing."

It is not pretended that the applicants did not strictly follow the directions of the Commission. It is not claimed in any case within our knowledge, that the Chief or Governor of the Tribe in which enrollment was sought, did not have thirty days notice of the application, together with copies of the proof offered in support of the same, besides this, he filed answers and made defenses in all these cases. They employed attorneys, the proper thing to do in these proceedings, and the thing they always do when any possible opportunity is offered. In addition to this each one of the tribes, the

Chickasaw and Choctaw, appointed a committee of its wise men to sit in connection with the Dawes Commission, and to co-operate with its attorneys in defense of these actions. While every possible legal defense that could suggest itself to the minds of able attorneys, was made to these actions, it never occurred to them to raise the question of non-joinder of parties. The contests were fought out before the Commission on other legal grounds and on issues of fact. From the judgment of the Dawes Commission a great number, but not all of the cases, were appealed to the United States Courts for the Central and Southern Districts of the Indian Territory. That is, the cases against the Choctaw and Chicksaw Nations, the only ones we are now discussing. Some of these appeals were taken by the Nations themselves, but a great majority of them by the applicants. The contests were again fought, over in the courts in a De Novo trial; the court permitting either party to file new pleadings and to introduce additional evidence, though no new parties were permitted to be made in courts. But in these contests in the courts, it never was suggested by any one that both Nations should be made parties to the proceedings. Most of these cases were carried to the Supreme Court of the United States on appeal under the act of 1898, but the point of non-joinder was not urged before that tribunal. But now after so much delay and so many opportunities, it is for the first time suggested that all this time, labor and trouble amount to nothing because of a non-joinder of parties. It is now seriously and solemnly claimed that if a man wanted to be enrolled in the Chickasaw Tribe of Indians he must notify the Choctaw Nation of the fact, and if he wanted to be enrolled in the Choctaw Nation he must give the Chickasaws notice and make them parties to the proceedings.

We think the gross injustice of allowing such a plea at this late day is entirley obvious from what has already been stated. But the stupendous folly of it will fully appear when we consider that the Choctaw and Chickasaw Tribes of Indians have been separate and distinct since the treaty of 1855, and since that time they have had seprate and distinct political governments, separate and distinct control of the questions of membership in their Tribes. In fact never in the history of these Tribes have they considered the question of membership in their respective Tribes a common or joint question, but they have invariably considered it as one under the separate and independent jurisdiction of each Tribe. There is but one instance in the entire history of these Tribes where the question of citizenship has ever been treated or considered as a joint one and that is the provision contained in the 43rd article of the treaty of 1866, where it is provided among other things as follows:

"The United States promise and agree that no white person execpt officers, agents and employees of the Government, and of any internal improvement company, or persons traveling through or temporarily sojourning in, said Nation or either of them shall be permitted to go into said Territory, unless formerly incorporated and naturalized by the joint action of the authorities of both Nations into one of the said Nations of Choctaws and Chickasaws according to their laws and customs or usages, but this article is not to be construed to affect parties heretofore adopted."

There were at the time of this treaty, and are yet, three classes of persons who compose the membership of these Tribes.

(1.) The Indian by blood. (2.) The Indian by inter-marriage. (3.) The Indian by adoption.

These Indians by adoption were incorporated into the Tribe by the act of the legislature of the Tribe making the adoption. This had long been the custom of both Tribes, but

it seems to have been the purpose of this article to provide that citizens by adoption could only be made from that time on by the joint action of both Tribes, but in truth and in fact, even as to this class of persons, neither one of the Tribes has ever observed this provision of the treaty of 1866, and it has practically been a dead letter, for both parties have adopted a number of persons into their Tribe since, as shown by their published legislative acts, and there has never been, so far as we are advised, a joint action in reference to any person. But this class of persons are very few in number and their rights are not involved in this controversy. Of course a person who was adopted into the Tribe was one who made no claim to any right of citizenship on account of blood or intermarriage, but accept the same as a pure bounty and gratuity from the Tribe. And the fact that in this class of cases only, the joint action of the Tribe was required, is conclusive proof that it was intended by the treaty to leave all other questions of citizenship to the separate action of the Tribes themselves, where it had always been except as citizenship, was defined and established in the 38th article of the treaty, which is as follows:

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

To further show that the Tribes themselves always considered this question of membership, one within the separate and independent jurisdiction of each Tribe; we call attention to section 7, of the general provisions of the constitution adopted by the Chickasaw Nation in 1867, for the express

purpose of carrying out the provisions of the treaty of 1866:

"All persons other than Chickasaws who have become citizens of this Nation, by marriage or adoption, and have been confirmed in all their rights as such by former conventions, and all persons as aforesaid, who have become citizens by adoption, by the legislature or by inter-marriage with the Chickasaws, since the adoption of the constitution of August 18, A. D. 1856, shall be entitled to all the rights and privileges and immunities of native citizens, all who may hereafter become citizens either by marriage or adoption shall be entitled to all the privileges of native born citizens without being eligible to the office of Governor."

And as further indicating the same policy we call attention to the act of the Chickasaw Legislature, approved September 10, 1874.

"Be it enacted by the Legislature of the Chickasaw Nation that there shall be appointed a committee of three from each house of the Legislature to investigate the claims of all persons claiming to be Chickasaws and to report the same to the Legislature for their action on the same.

"Sec. 2. Be it further enacted, that when the committee are sitting for that purpose they shall have the power to appoint a secretary and sergeant-at-arms to wait on them; also to summons any and all witnesses that they may deem necessary in any case that they may have under consideration, and the secretary, sergeant-at-arms and witnesses shall receive two dollars per day for their services, to be paid out of the national treasury."

To show that the Choctaw Nation pursued the same policy, we call attention to the act passed by it October 19, 1876, which is as follows:

"Any person who is not now recognized as a citizen of this Nation or of Choctaw descent, and claiming to be a citizen, or of Choctaw descent, shall petition to the general council, during the regular session thereof, for the rights and privileges of citizenship of the Choctaw Nation. Such petitioner shall prove her or his blood, or other means by which they claim citizenship, by not less than two reputable Choctaws, disinterested persons, before a proper committee, or the chairman thereof; and the chairman or secretary of the committee shall have power to administer any and all oaths

that may be necessary in conducting the investigation. The committee aforesaid to be appointed by the general council, and to report to the body by act or resolution, or otherwise, in reference to the petition or petitions of the person or persons claiming to be citizens, or of Choctaw blood or descent; and in the event of the adoption of such report of the committee, then such person or persons shall thereafter be deemed as bona fide citizens of the Choctaw Nation. Any and all persons who make the attempt under the provision of this act to establish their rights and fail to establish the same, shall be reported immediately to the principal chief, by the president of the senate, and the principal chief shall proceed to remove them as other intruders."

When these tribes, themselves, have so long regarded the question of membership in their respective tribes as exclusively within the separate and distinct jurisdiction of each tribe, it is not surprising that the Dawes Commission when it sought to carry out the provision of the act of 1896, did not consider it necessary to make any tribe a party to the proceeding except the one in which the person claimed membership. These tribes, according to their published laws, had themselves each established tribunals, separate, distinct and independent of the tribunals of the other, authorized to pass upon and decide these questions of membership without reference to the rights or wishes of the other tribe. And it now certainly comes with poor grace from them to object to the United States Government following the same methods of proceedure. We think that those who make this contention on behalf of the Indians fall into this error. They seem to labor under the impression that the United States Government had authorized the Dawes Commission to make Indians. To add white people and not Indians to the Indian tribe. When the only purpose was to ascertain in fact who were members of the tribes; to ascertain who were Indians, and place their names upon the rolls, thereby securing to them their tribal rights and privileges. It was a well known

fact at the time of the passage of this law that much controversy had arisen among these tribes as to who their real members were. Factions had grown up among them, and when one of these factions was in power the minority faction suffered and frequently citizenship was denied, especially where it was based upon inter-marriage or where there was an intermixture of Indian blood with the white man, the negro or any other tribe of Indians. The government had set out to allot these lands in severalty to the members of the Indian tribes, seeking to do justice to all, it created what was supposed to be a just and independent tribunal for the purpose of making the rolls, and wherever tribal relations were disputed, to settle the question. And the government in its liberality and justice to these tribes extended to them the privilege of carrying the questions to the highest tribunal in the land.

The time for the allottment of these Indian lands in severalty to the members of the tribes had arrived. It was absolutely essential to this allotment, and the very first step necessary to be taken in the proceedings, to ascertain by fair and just means the true membership of the tribes. That this duty could not be safely left to these tribes was made apparent by the report that the Dawes Commission itself made, to the Secretary of the Interior, on November 18, 1895, in which among other things the Committee reported: "That there is already painful evidence that in some parts of the Indian Territory this attempt of a fraction to dictate terms to the whole has already reached its limit, and if left without interference will break up in revolution." And speaking further with reference to the question of citizenship, the Commission used the following language: "The Commission is of the opinion that if citizenship is left without control or supervision to the absolute determination of the tribal authorities with power to decitizenize at will, a gross injustice will be perpetrated and many good and law abiding citizens will be reduced to beggary." Further speaking of these tribal governments, the Commission said: "No one conversant with the situation can doubt that it is impossible of continuance. It is of a nature tnat inevitably grows worse and has in itself no power of regeneration. Its own history bears testimony of this truth. The condition is every day becoming more acute and serious. It has little power or disposition for self-reform." We know that it was a matter of public scandal, and was currently reported that for many years, those who had money and were so disposed to so use it, could purchase from these Indian tribunals the right to enrollment as members of their tribe without reference to the merits of their claims, while those without money or who would not use it for corrupt purposes, could never get a hearing, however meritorious their claim may be.

We would not assert that the fact that this profitable occupation was taken from these tribes and conferred upon the Commission and the courts, alone, forms the basis for their bitter opposition to the judgment of the courts, but we have no doubt that many an individual who was profiting and expected to continue to profit by this business is prompted by no worthier motive. We hope the committee will bear in mind that as to the judgments we are now discussing, the only ground upon which their invalidity is charged, is that both tribes were not made parties to the proceedings. In some proceedings recently instituted in the courts, the contention has been made that not only each tribe should have been made a party to the suit, but each member of both tribes should have been made parties and actually served; that if

by an oversight any one of the 15,000 Indians interested should not have been properly served the judgments would have been void. That if any Indian boy or girl off at school at the expense of the United States government, or if any one of the wild element of the tribe should have been wandering in the forest hunting for game, or if a more prominent member of the tribe had gone to Washington to see a lawyer and should thereby escape the vigil of the marshal, and not be served with process, then the whole judicial proceedure culminating in these judgments would be absolutely void. As a legal proposition we are certain that there is nothing in either contention.

These proceedings were not suits for lands, but it would have made no difference if they were, and they were not proceedings to create or make Indians. They were not proceedings to add to the number of Indians or increase the membership of the tribe. They were simply proceedings to ascertain who were in fact members of the tribe and were entitled to enrollment. It is not claimed that the result would have been different had both tribes been made parties to each proceeding. It cannot be truthfully claimed that they have suffered any injury, direct or remote, by not being made parties to the suit. As a matter of fact these tribes both knew that applications for enrollment were pending against each of them at the same time, and as far as legal questions are concerned, they made common cause, and each got the benefit of the labor of the other, the legal questions being practically the same as to both tribes. The truth is, these tribes have had a fair and legal hearing. They have been treated most liberally by the government. In many of these cases they were successful. They long refused to be bound by the acts of congress in reference to enrollment,

and they now refuse to be bound by the judgments of the courts. If there was any merit in their claim; if they were seeking an opportunity to attack these judgments upon any ground that injustice had been done or fraud had been perpetrated, then they would be entitled to more favorable consideration. But they seek to undo all that has been done upon a barren and meritless technicality. To now say to these people when they have followed the very methods of proceedure which the Dawes Commission had prescribed; when they fought through the tribunals to which these cases were permitted to be appealed; after they had incurred all this expense and trouble and finally won the controversy, that they now must go back and begin anew or to submit to have the very foundation of their rights put to the hazzard of further litigation on a point so completely without real merit as the one alleged by the Indians in this controversy, is an injustice so gross and shocking that we are unwilling to believe it will ever receieve a favorable hearing at the hands of this committee.

But we beg pardon for extending the scope of this brief sufficient to call the attention of the committee to a very singular thing, and one that is calculated to fill persons interested in these judgments with serious apprehension.

This treaty was framed during the last days of the last session of congress, and was secretly framed. We, ourselves applied to the commission, pending negotiations, to know if any steps were being taken looking to the destruction or impairment of these judgments. We were advised that publicity could not be given to the treaty until it was finally submitted to congress. When it did reach the Secretary of the Interior, it contained the following provision:

"No person shall be enrolled who claims right to enrollment by virtue of a decision of the commission to the five

civilized tribes, or of a judgment of a United States court in the Indian Territory admitting such applicant to citizenship in the Choctaw or Chickasaw Nations under the act of congress, approved June 10, 1896, (29 Stat. 321) unless it appears to the said commission that notice of the institution of such suit had been given and decision or judgment rendered against both the Choctaw and Chickasaw Nations."

(As both tribes were not made parties in a single case this effectually knocked everybody out.) Now we undertake to say that this is the most astonishing piece of treaty making that we have ever come across and it is difficult to speak with moderation in reference to it. It will be borne in mind that the Dawes Commission, themselves, prescribed the method of proceedure, and directed that only the tribe should be made a party to the proceeding in which enrollment was sought. It must be further borne in mind that in many instances where the judgment was against the tribe it did not appeal from the decision of the Commission but was content with their decision and let it remain intact. Yet this provision of the treaty not only destroys the judgments of the courts, but also the judgment of the Commission itself, and that upon the very ground, and for the very omission that the Commission had itself caused the applicants to commit. Now if it should also be remembered that aside from Mississippi Choctaws, and newly married and newly born persons, no person could make application to this Commission after September, 1896, and that there was no place or tribunal where the parties could again apply, you will see the monstrous iniquity of this provision. The provisions of this section seem strange coming from a Commission that a few years ago had so vigorously and justly denounced the unfairness of the Indian Governments in decitizenizing members of their tribes, but we doubt seriously if any Indian Government was ever guilty of a more flagrant injustice than that

contained in the 8th section of the treaty they agreed to. But it is now obvious to all persons claiming right under these judgments that they cannot expect any just treatment from the Dawes Commission. A commission who will agree to nullify all its acts and the court's acts upon a purely technical ground, for which itself was responsible cannot be trusted to protect the rights of these people; and the very fact that the commission agreed to such an outrage as this ought to destroy the influence and effect of anything that the commission may assert or do in reference to these people. It is no wonder that the commission refused to let these people or their attorneys know what was going on; it is no wonder that the making of this agreement was delayed to the last days of congress in order that it might be rushed through before the parties interested could arouse the attention of senators and members of congress. The Honorable Secretary of the Interior refused to approve this provision of the treaty, and he took up a large portion of his communication to congress in submitting the treaty in explaining why he could not agree to it. His language on this subject is as follows:

"The agreement as negotiated is subject to serious objections in several particulars, and if approved in the form negotiated would seriously embarrass and retard the allotment of lands and the adjustment of relations of the Choctaw and Chickasaw Tribes. Because of this a conference has been had between representatives of this department, a member of the Dawes Commission, and a representative of the two tribes, with a view to perfecting the agreement as negotiated and avoiding the embarrassment and delay which would be caused by its ratification."

As a result of this conference an amended agreement has been prepared, which meets my approval and the approval of those participating in the conference, expecting that the representatives of the two tribes do not assent to the change made in article 8. This article as originally negotiated is subject to the objection that by a legis-

lative act a large number of judgments of courts are in effect, reviewed and declared invalid. Whether these judgments are valid or invalid is a judicial rather than a legislative question and cannot be committed to or passed upon by the legislative branch of the Government. To ratify this article as originally negotiated would simply increase the confusion which now exists respecting these judgments by adding the additional question growing out of the assumption of legislative power over past judicial proceedings, and would invite a multiplicity of suits on the part of those who have obtained judgment at the hands of the courts and who would be dispossessed of them without an opportunity to be heard. Believing that the questions affecting the validity and rectitude of these judgments deserve judicial investigation and scrutiny, article eight has been re-written, as shown in the amended draft of the agreement, so as to provide for a fair, speedy and final decision of these questions by judicial tribunal."

It is apparent from this communication that the Honorable Secretary yielded to the solicitation of the tribes and their representatives, much on this question as a pure matter of compromise. While he has now consented that these tribes may have the right to bring these questions before the courts of the country and further delay allottment and put these people to further expense and trouble the same furnishes no reason, we submit, why your Honorable Committee should agree to the same thing. The Honorable Secretary states that the tribes object to the change that he demanded. This is not astonishing, without the change they de-citizenize several hundred people without the opportunity of appealing to the courts or elsewhere to establish and vindicate their rights. By the provision as changed by the Secretary of the Interior, they must now go to the courts, where in our judgment, they are bound to lose, and the only result of such an action would be to incur expense on the part of the tribes and on the part of the citizens as well, and delay further the allottment.

It is sometimes claimed by the tribes that many of these judgments were abtained by fraud and perjury. Now of course this raises altogether a different question. Because some of these judgments were obtained in that way is no reason why an honest man who obtained his judgment by honest methods should be made to suffer. These proceedings were separate and distinct, and each claim was based upon its own peculiar facts, and had no connection with any other, nor was there any joint effort on the part of these applicants to promote their common interest. We know of nothing in the entire history of these proceedings that could make the honest man responsible for the dishonest man. We do not deny, though we have no personal knowledge on the subject, but in some instances these tribes were imposed upon and judgments obtained by fraud and by perjury; considering the opportunities, it would be little less than marvelous if it were not the case.

We do not oppose the granting of any relief to the tribes, that will enable them to reach any man who has perpetrated fraud and perjury, unless in doing so it is sought to inflict the same punishment upon the honest man, and along with the destruction of the dishonest judgment to destroy the one honestly obtained. There is no reason why ninety-nine honest men should be punished in order to punish one guilty one. The same distinction that prevails throughout the law between fraud and honesty should be observed in any remedial legislation passed in behalf of the Indian tribes in reference to this matter. The provision in the treaty that allows suits to be brought to set aside judgments that have been obtained by fraud or perjury meets our entire approval, and the only possible objection that we can find to it is the delay of allotment which is indcident to such proceedings. The

tribes should have sought this remedy long ago if in fact they have not always had it under the law. The conditions so graphicly set forth in the report of the Dawes Commission in 1895 continues to exist in the Indian Territory, except as they are relieved to a slight extent by the encroaching jurisdiction of the United States courts. There is as much need for expedition now as there was then, but no substantial progress can be made until allotment of these lands is accomplished. That can only be done upon the completion of these rolls, which by the way, could and should have been finished two years ago. The very facts that these rolls have been kept open and uncompleted, and the Dawes Commission continuing to receive applications, have opened the door to and encouraged the worst frauds that have been perpetrated in the Indan Territory. There are today persons engaged in the business of procuring people to move in the Indian Territory, and file false and fraudulent claims for citizenship thereby entitleing themselves to reside in the Indian Territory and to occupy lands until said claims can be passed upon. Such claimants being assured that they can safely occupy the lands three or four years before allotment can take place under the dilatory methods heretofore and now pursued. Out of this species of fraud, we are informed, persons engaged in it are making large sums of money. But if these rolls are to continue open to every sort of application by any man who alleges that he is a Mississippi Choctaw, the Indian Territory will be absolutely overrun in a few years with these fraudulent claimants. The rolls should be in all conscience closed. It is possible, we beg to suggest, that the tribes might be granted the right to institute legal proceedings to set aside judgments that were obtained by fraud and perjury, and yet permit allotment to proceed pending the

controversy, and should the judgment be annulled and the applicant be denied his right, the land allotted to him might be sold to the highest bidder and the money paid over to the tribe.

While this suggestion has no part in the question we are dealing with, yet we hope we will not be considered as impertinent for making it in this connection.

In conclusion we most respectfully but earnestly request the committee to look diligently into the facts and the law involved into the proposed treaty provision. We are firmly convinced that no worthy interest would be promoted by its adoption. It can only benefit those who fatten on litigation and the law's delays. If it were possible to set aside these judgments on the cold proposition of law raised, the tribes should not be given the opportunity of doing it.

No substantial injury has been done. These tribes have not only had their day but they have had many days in court. They have had opportunity after opportunity to raise this alleged error, at a time when it could have been cured without delay and without injury to any one, but they refused to avail themselves of it then. And after taking the chances before the Commission and in the courts they ought not now to be given another opportunity to again litigate the same identical questions; besides if they are right in this controversy and the judgments are in fact void because of the alleged omission, then they already have an ample remedy in the courts. There is no reason why they cannot go to the United States courts for the Indian Territory and have these judgments set aside if they are in fact void. These courts, at the instance of the tribes have vacated a number of judgments obtained against them because they were held to be void for the reason that members of the same family who did

not apply to the Dawes Commission, joined in the application after the appeal was taken, and because, appeals were not taken in time, etc. In addition to this these tribes have now litigation pending in the United States courts for the Indian Territory to set aside these judgments because of the same invalidity which they here allege; and so far as we know it is not claimed by the defendants in any of those cases that the courts in the Indian Territory are without jurisdiction to hear and determine the matter. We represent the defendants in one of those cases and we know that we have not made that point. In the case that we represented, the question has already been tried in the United States court for the Indian Territory, and these tribes lost and have appealed the case to the court of appeals for the Indian Territory, where it is now pending. So if the tribes are right in this contention, this piece of legislation is utterly useless and can only serve the purpose of strengthening the case of the Tribes by the admission of Congress thereby implied that the judgments were possibly void on account of the non-joinder of parties.

All of which is respectfully submitted.

POTTER & POTTER.