Abigail Rogers Glenn and Indian Affairs Excerpts

LETTER

From

THE SECRETARY OF THE INTERIOR

Transmitting,

In answer to a resolution of the 6th June, 1890, a report of the Commissioner of Indian Affairs respecting intruders into the Choctaw and Chickasaw nations.

Page 45

missioner of Indian Affairs to "notify all disputed claimants to citizenship in the Choctaw Nation whose names are furnished you by the Choctaw authorities to appear at the next session of the proper tribunal and submit their claims for adjudication as provided by the Choctaw laws; that, failing to do so, they will be deemed intruders and removed from the Territory; and that any party feeling aggrieved by the decision of the Choctaw tribunal will be allowed thirty days in which to appeal to you, at the expiration of that time to be deemed an intruder if no appeal be taken.

"This notice you will serve upon the parties, either by causing your police to deliver a written or printed copy, with your signature attached, to the person interested, or to leave the same at the usual place of abode of such person at least sixty days prior to the first day of the session of the council before which he is summoned to appear, or by sending the same through the mails, so that sixty days may elapse between the receipt of the notice and the commencement of said session.

"You will hear all cases of appeal from the decision of the Choctaw authorities, giving proper notice to the principal chief of the time and place of hearing, receiving and considering such proper evidence, without distinction as to the race of witnesses, as may be presented. You will allow the claimants to be represented by counsel, if they so desire, as well as the nation.

"You will hear all cases of appeal as promptly as possible, and submit the evidence in each case, with your finding thereon, to this office for final adjudication." (Ibid.)

It does not appear that the Choctaw ever formally accepted the suggestions and modifications of Secretary Teller, but it is stated in the letter of the Commissioner of May 16, 1890 (supra) that they

have been acquiesced in proceedings had the reunder recognized as valid by the nation. To the same effect is a letter from Mr. Owen, attorney for the Choctaw Nation, dated April 16, 1890.

In pursuance of the instructions, issued as above, to the Indian agent, he caused to be notified a number of parties, whose names were furnished him. to submit their claims of

citizenship to the Choctaw council. Among the parties who thus presented their names to the council were John C. Glenn, Tucker, and others. On November 6, 1884, their claims were rejected. From this rejection they appealed to the United States Indian agent, on December 2, 1884. Insomuch as they claimed from a common ancestor, one Abigail Rogers, said appeals were consolidated. A good deal of testimony was taken, mostly by the appellants, and in August, 1887, Robert L. Owen, the United States Indian agent, gave judgment sustaining the decision of the Choctaw council. The papers were transmitted to the Commissioner of Indian Affairs, who on October 4, 1887, sent them to this Department with an approval of the judgment of Agent Owen. The papers, however, were informally withdrawn, and on March 5, 1889, the Commissioner reversed his former action and sustained the appeal of Glenn, as follows:

"Referring to the case of the Choctaw Nation vs. Glenn, Tucker, et al., claimants to Choctaw citizenship, appealed by the defendants to the United States Indian agent, and transmitted among others to this office, with your letter of August (September) 21, 1887, I have to say, that in view of the incompleteness of the record, and apparent want of regularity in the proceedings of the council, I am unable to determine that any regular or legal proceedings have been had in this case, and I must therefore, upon this record, sustain the appeal from the judgment of the agent, which sustains the action of the Choctaw Nation."

On April 11, 1890, Agent Bennett, in a communication to the Indian Office, inquires whether said letter is to be construed so as "to establish the citizenship of these claimants; or is the case in statu quo until `regular proceedings have been held?'" He states that the Choctaw Nation declare Glenn and his associates to be intruders, and requests their removal; that in response to a notice to remove, served upon said parties, they reply that they are citizens of the Nation, citing the letter as authority.

On April 16, 1890, the attorney of the Choctaws, asked that the Commissioner be required to send the record up for your examination "to the end that justice may be done the Choctaw people." This application was sent to the Commissioner, who on May 15, 1890, transmitted the record, accompanied by a letter wherein he asks two questions:

(1) As to whether the action taken by the Commissioner of Indian Affairs in his letter of March 5, 1889, to the United States Indian agent, was with proper authority and operates as remanding the case for proceedings de novo before the Choctaw authorities; and if not,

---

(2) As to whether upon the record presented, which was discussed in Office report of October 4, 1887, before referred to, the claimants, Glenn, Tucker et al., have established their rights to citizenship in the Choctaw Nation.

And these are referred to me for answer, as before stated.

In view of the quoted legislation of the Choctaw council, authorizing an appeal from its action to the United States agent, and the acquiescence, as stated, in the added condition, that the action of the agent should be subject to the revision of the department, there would seem to be no room to question your right to pass upon the claim of these parties to citizenship in the Choctaw Nation. But, independent of the authority thus conferred and recognized, the Indians are really seeking to have the United States remove Glenn and his associates from the Nation as intruders. On such an application, it becomes the United States to determine for itself, under the general laws of the land, independent of any Indian legislation, whether it be proper to make such removal. (16 Ops. Atty. Gen., 404.) And in a case where the parties sought to be removed set up a claim or right to Indian citizenship, that question should be examined before the Government comes to a conclusion in the premises.

The case being one thus clearly within the jurisdiction of this Department, it was proper for the Commissioner, who is specially charged with the supervision of Indian affairs to have expressed his views upon the report of the United States agent, in transmitting the same to this Department. The Commissioner's duty was discharged when he did this. The Subsequent informal withdrawal of the papers from the files of this Department and his reversal of the action of the Indian agent was not only irregular, but was without proper lawful authority, if for no other reason, because the matter had then passed beyond the Commissioner's jurisdiction.

It is therefore my opinion that this action of Commissioner Oberly should be treated as a nullity, and the case determined on its merits, just as it stood in this Department before his irregular proceeding. In this view of the case it is immaterial whether Glenn and his associates were technically "petitioners" or not, or whether the burden of proof is on them or the Indian Nation.

Were it necessary to discuss these questions it would abundantly appear that said parties regarded themselves as, and were, applicants to the Choctaw council for citizenship in that Nation, and of course were bound to support their claim by testimony. Confessedly they were not recognized by the authorities as citizens of the Nation. Being in danger of removal there from as intruders, they sought from the Indian authorities that recognition as citizens which they had not theretofore received, and which would be a protection to them against threatened removal. To hold, under these circumstances, they were not "petitioners" or applicants before the council for the franchise of citizenship, and that the burden of proof was upon the Nation to prove their non-citizenship, as contended by their attorney, would not be logical.

Nor is there such absolute "incompleteness of the record and apparent want of regularity in the proceedings of the council" as in my opinion would justify the setting aside of the judgments and proceedings therein, as was attempted to be done by Commissioner Oberly. The record is by no means as perfect or complete as I would like to see it. But it shows that Glenn and some of his associates were notified by the United States Indian agent in June, 1884. in pursuance to instructions; that in October 1884, the testimony of John C. Glenn, and others, in behalf of their claim of citizenship was filed with

the officers of the Nation; that on October 23, 1884, a petition sworn to by said Glenn and addressed to the council, was filed with the national secretary, wherein that body was asked to grant unto him and his family "all the rights and privileges of citizenship in the Choctaw Nation;" that on report of a committee of the council on November 6, 1884, the petition was denied, and the claim rejected by that body; that on December 2, 1884, certain of the parties appealed to the United States Indian agent from the action

of the council; that in October, 1886, a paper was filed in the office of the Indian agent, wherein it was agreed that the cases of all of those who asserted descent from Abigail Rogers should be consolidated, and considered as one case. And the record further shows that additional testimony was taken and submitted in behalf

Page 46

Page 48

their Indian blood; or plainly, because they are Indians, But if they are white people, who have not married Choctaws, their residence within the nation for several tears past will not protect them from ejectment unless they have been adopted by the legislative authority. There is no pretense of such marriage or such adoption, and I presume they necessarily deny that they are white people, as they cannot be both Indians and white people.

On the facts of the case, not having tribal relations with the Choctaws, I can not see on what ground it can be held that these people are Indians, unless we are prepared to conclude that the slightest amount of Indian blood necessarily characterizes the party, in fact and law, as an Indian. This I am not prepared to concede, nor is it necessary in denying it to say at what point the line of distinction between the two races should be drawn, though in the absence of other considerations, it would seem reasonable that the predominance of blood should determine the race. (McKay vs. Campbell, 2 Sawyer 118-133.) But this is an ethnological question, about which opinions differ. (Re Camille, 6 Sawyer, 541; 7 Ops. Atty. Gen., 746-750.)

But, independent of this consideration, there is no doubt that the ancestor of all the claimants, John Glenn, who married the half-breed Choctaw woman, Abigail Rogers, was a full-blooded white man. This being so, in the absence of any special reason to the contrary, I think, the common law rule should prevail and the condition of the child follow that of the father. As there was no further intermixture of Indian blood, his descendants must therefore be white people. (McKay vs Campbell, surpa; Ex parte

Reynold s, 5 Dillon, 394-403.) In the case of the United States vs. Sanders (Hempstead's Report, 483), it was held that the child of an Indian woman should follow the condition of the mother. But I think the cases before cited are based upon the better reason, inasmuch as the civil law rule "partus sequiter rentrem" is not applicable to Indians, they being free people and not slaves. I am well aware that in Elk vs. Wilkins, (112 U. S., 94-108) the Supreme Court say that certain passages cited by counsel from the Reynolds case supra were obiter dicta. The passages thus condemned are not given, but it is evident from the tenor of the opinion of the Supreme Court that they were those, wherein it was intimated, page 397, that Indians by scattering

themselves among the citizens of the United States were merged in the mass thereof and became citizens.

But, even if obiter dicta, and therefore not to be accepted as an authoritative decision of the question, the reasoning of the learned judge in the Reynolds' case, supra commands the approbation of my judgment, as it is based upon sound legal principals, even though it may not have been necessary for him to decide the question in that particular case.

Adopting this rule, and under all the circumstances of this case, I have no hesitation in giving it as my opinion that the claim of said parties to Indian citizenship should be rejected.

Very respectfully,

GEORGE H. SHIELDS,

Assistant Attorney General.

The Secretary of the Interior.

_____

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,

Washington, July 3, 1890.

SIR: Referring to previous correspondence of this office relating to the Choctaw citizenship case of Glenn, Tucker, and others against the Choctaw Nation, Indian Territory, I have to inclose herewith copy of an opinion of the honorable Assistant Attorney-General for the Department of the Interior in the matter dated the 24th ultimo; and also copy of Department letter dated June 30, 1890, relating thereto.

It will be observed from the opinion above referred to that the claims of the persons named in the appeal which appears to include the cases of John Barnes, John B. Tucker, Joseph Tucker, Joseph Barnes, Edward Tucker, George Tucker, Lee Edmonson, Jackson Glenn, Casey Glenn, Robert Tucker, and Kizh Herra, Lindsey Williams, and their families to citizenship are rejected; that the honorable Secretary of the Interior concurs in the said opinion and grants authority to eject the parties referred to from the

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,

Washington, May 16, 1890.

SIR: I have the honor to acknowledge, by Department reference for report, receipt of a letter of April 16, 1890, from Robert L.

Owen, esq., counsel for the Choctaw Nation, relative to the Choctaw citizenship case of Glenn, Tucker, and others, against the Choctaw Nation and the action taken by this office therein.

In reply I have to say that under date of October 21, 1882, the Choctaw national council adopted a law requesting the Secretary of the Interior to instruct the United States Indian agent for the Union Indian Agency in the Indian Territory to "hear and determine all applications made to him to establish claims to citizenship in the Choctaw Nation, and the decision of such agent shall be final; provided only that all such applications shall have been made to the proper Choctaw tribunal and by it refused, the agent notifying the principal chief of the time and place of such rehearing."

Under date of March 15, 1884, the Secretary of the Interior, upon the recommendation made in a report of March 14, 1884, by this office, on the subject, approved the plan proposed by the Choctaw authorities for the determination of disputed claims to citizenship in that nation, with the further proviso that the decision of the agent, with the evidence in each case appealed to him, shall be submitted to this office for final determination by the Department, and the Indian agent J. O. Tufts, was, by letter of March 22, 1884, accordingly so directed.

There was no formal acceptance by the Choctaw Nation, so far as this office is informed, of the provision giving this Department the right of final determination of claims affected by the law in

questio n, but it was verbally accepted at the time by the Choctaw delegates then in this city, and it has since been constructively accepted by the nation, which has been recognized the proceedings subsequently had under the instructions of March 22, 1884, to Agent Tufts.

In accordance with the instructions given Agent Tufts, Agent Owen, by letter of September 2, 1887, transmitted with others the evidence in the case of Glenn, Tucker, and others against the Choctaw Nation, he having sustained the decision of the Choctaw authorities, which was adverse to the claimants.

These cases were submitted for the consideration of the Department, in a report of October 4, 1887, in which the following occurs in reference to the claim now under discussion, viz:

[62]

"This appeal appears to include the cases of John Barnes, John B. Tucker, Joseph Tucker, Joseph Barnes, Edward Tucker, George Tucker, Lee Edmonson, Jackson Glenn, Casey Glenn, Robert Tucker,

and Kizh Herrea, Lindsey Williams, and their families.

"John C. Glenn claims the right for himself, wife and son, and for their daughter and her husband and two children, as the grandson of Abigail Rogers, a half-blood Choctaw, who, as is alleged, married John Glenn, white man. The other parties are understood to be the grandchildren of Abigail Rogers and John Glenn.

"By agreement between counsel the cases of the claimants through descent from Abigail Rogers were considered by the Choctaw council as one case. From the evidence it appears that Abigail Rogers was of Indian blood, undoubtly part Choctaw, with possibly an admixture of

Cherokee blood; that she married John Glenn, a white man, and is the ancestor of the several claimants.

"None of the witnesses have any knowledge of her father and mother, except Mary Barnes, who testifies that the old folks said that the former was part Cherokee. She also states Abigail's father lived with Abigail's mother until Abigail was born, when he Page 70

Page 71

took the latter to the Cherokee Nation, where she grew up, married John Glenn, who took her to Mississippi. After her husband's death, and probably soon after the Choctaw emigration she, with others of the family, started to join the nation, as is alleged, but died in Arkansas about 1840. The descendants finally reached the Choctaw Nation some thirty years later (in 1870). None of the family appear to have drawn annuities as Choctaws, although it is claimed in certain affidavits that they did. Such testimony, however, is worthless, and several of the claimants admit that the Glenn family got no money as Choctaws in any way. The claimants do not assert that Abigail Rogers was ever recognized as a member of the Choctaw tribe, entitled to all the rights and benefits accruing from such membership, although certain of the witnesses set up this claim on their behalf.

"I do not think that the evidence shows that Abigail Rogers was a recognized member of the Choctaw tribe, although it does show, as before stated, that she was of Choctaw descent. Her descendants have intermarried among themselves or with white people, but not with members of the Choctaw tribe. They have claimed and exercised the rights of United States citizens in various States. While the mere possession of Choctaw blood is a reason which might and probably should influence the Choctaw Nation to admit them to citizenship, I do not think it sufficient to justify the Department in compelling the nation to take such action. I recommend that the action of Agent Owen affirming the decision of the Choctaw council be sustained and that the appeal be dismissed."

Subsequently the papers accompanying this report were informally withdrawn, and upon the submission, November 16, 1888, by Mr. Van R. Manning, attorney for the claimants in the Glenn, Tucker, et al. case, of a brief in their behalf holding that they were improperly made to appear in the capacity of petitioners instead of defendants as they should, appearing as they do before the committee of the Choctaw council only because they were served with a notice so to do, the then Commissioner of Indian Affairs, Mr. Oberly, addressed a letter dated March 5, 1889, to the Union agent as follows, viz:

"Referring to the case of the Choctaw Nation vs. Glenn, Tucker, et al., claimants to Choctaw citizenship, appealed by the defendants to the United States Indian agent, and transmitted among others to this office, with your letter of August (September 2), 1887, I have to say, that in view of the completeness of the record, and apparent want of regularity in the proceedings of the council, I am unable to determine that any regular or legal proceedings have been had in this case, and I must therefore, upon this record, sustain the appeal from the judgment of the agent, which sustains the action of the Choctaw Nation."

It will be observed from a letter of April 11, 1890, from the Union Indian agent, Leo E. Bennett, esq. (inclosed herewith), that the claimants construe this letter as conferring citizenship upon them. On the other hand, it is claimed by the Choctaw Nation that the said letter can not be so construed, holding that under the rule of procedure in such cases, prescribed by the Secretary of the Interior in his letter of March 15, 1884, to the Commissioner of Indian Affairs, the finding of the United States Indian agent in a particular case can only be reversed or confirmed by the Secretary of Interior, or by his authority; that the Commissioner of Indian Affairs has no other duty in connection with claims to Choctaw citizenship than to transmit, with his recommendation thereon, the evidence and findings of the agent in each case, for final consideration and determination by the Department, and that the action taken by Commissioner Oberly in his said letter of March 5, 1889, was without authority and should not be allowed to affect the status of the case as pending transmission from this office for Department action.

Without discussing the question as to the power of the Commissioner of Indian Affairs under the existing plan of procedure in these cases to overrule the findings of the agent in the Glenn, Tucker et al. case, and dismiss it from the consideration of the government on the ground of irregularities appearing in the record, I have the honor to inclose herewith the entire record in the case for your consideration and determination -

(1) As to whether the action taken by the Commissioner of Indian Affairs in his letter of March 5, 1889, to the United States Indian agent was with proper authority and operates as remanding the case for proceedings de novo before the Choctaw authorities; and it not,

(2) As to whether, upon the record presented, which was

Page 71

The following cases appealed to this office, and reports are herewith submitted, to wit:

A. Frank Ross, W. T. Ross, James Biddie, Mary Goddard, Elizabeth Grant, Martha Carroll, Fanny Mathews, James Bragg, William T. Stephens, Harmon Mickle, Wilson M. King, William Mc H.

Morris, J. N. Bynum, Franklin Stube, Joseph Tucker, Caroline M. Hazel, Henry Harrison Justice, John C. Glenn, et. al. Jehu Casey, Nancy C. Berryman, James Langford, William Langford, Mary C. Barker, Elizabeth Deaton, Elizabeth Casey, Linsey Williams, W. M. Moore, S. A. Donald.

Page 123

party to present a petition and support it by proof as to his blood or adoption, and be re-admitted by act of the legislature.

The Cherokee custom was similar, but was reduced to writing, and in their constitution it was plainly declared that any person moving out of the Cherokee Nation with his effects, becoming a citizen elsewhere, lost his right as a citizen of the Cherokee Nation after an absence of two years, and must be re-admitted by an act of the Cherokee national council,

which has authority under the constitution to pass upon this question, and later laws of the Cherokee Nation strictly forbid persons having forfeited citizenship in this manner, or persons claiming citizenship from any cause whatever, to be re-admitted before they exercised any rights of citizenship.

The Supreme Court of the United States, in the North Carolina case, declared that persons resident in the States, who desired to exercise the rights of citizenship in the Cherokee Nation, must be re-admitted as provided in their constitution, and I think the same principle should be held in the case of the Choctaws, according to their customs and laws.

Bill No. 65, of November 5, 1886, recites as follows:

"Whereas, the Choctaws are and have ever been disposed to accord the people of their blood any right they may have, they feel bound to adhere to the long and recognized usages of their Nation, and to exclude from those rights all claimants whose blood is so remote and uncertain, that the appellation of `Indian' would be a misnomer.

"It is not now, and never was considered, obligatory upon the Choctaw Nation to admit into their tribal organization any people who might claim, or perchance have in their veins small quantities of Choctaw blood. The policy adopted by this Nation for many years previous to the war, and treaty of 1866, was to allow all white persons from the limits of the Nation who married according to existing laws on the subject, the rights of citizenship. These rights of citizenship were courtesies extended to the marriage relation, and the rights conceded by them were matters of grace rather than matters of right, nor were there any law or treaty stipulations upon the rights thus conceded, as they were deemed by the Nation steps to its civilization and the upbuilding of their Nation.

"The necessity of legislation upon this subject has been brought to the attention of the Nation by the large number of persons presenting their claims for citizenship at its yearly sessions. The claimants claim rights upon every conceivable ground imaginable. The admission of these claimants is actuated largely by the inducement held out to them by what they may be entitled to hold when admitted. The amount thus acquired by admission in round numbers being $2,500, is so great that it becomes the duty of the Nation to prescribe by legislation some preserving principle by declaring that the applicant should have in his veins Choctaw blood to the extent of one-eighth Choctaw, and it should there be understood and declared that the rights thus conceded to persons from the outside to the inside with the rights asked or claimed are matters of grace on the part of the Nation rather than right demandable of the Choctaws, and enforceable by the Government of the United States."

The act then goes on to declare that non-citizens presenting petition to the general council for the rights of a Choctaw in the Nation, shall be required to have at least one-eighth Choctaw blood, and prove it by competent testimony, and that such persons shall never have been convicted of any felony or high crime, etc.

The preamble to this act is of much significance, showing that the Choctaw custom and the law is the same as that of the Cherokees to all intents and purposes, and I am of the opinion that it is substantially right.

The theory that having a Choctaw ancestor entitles one to citizenship in the Choctaw Nation is a very absurd conclusion, as in the Abigail Rogers case, alleged to be half Choctaw and born in 1760, and moved out of the Choctaw Nation at that time, has five hundred descendants more or less of pure white blood who, having lived in the States a century or more or less, now coolly congregate in and about the Choctaw Nation, demanding rights of the Choctaw people. I am of the opinion that citizenship in a community of this kind, as well as in more highly organized communities, necessarily involves certain duties to the community as --

Eugenia by his second wife, Elizabeth Louisa Kensa. At the same time George Washington, whom Agent Owen characterizes as a professional witness, made affidavit to the effect that he was good and well acquainted with James Jones Biddie in the old nation, long before the Choctaws removed; that he knows of his own knowledge that James Biddie was then [118] and there recognized as a Choctaw Indian; and that he was not much acquainted with the parents of the said James Jones Biddie, but was well aquainted with one Alexander Jones who was said to be the grandfather of said James Jones Biddie.

This evidence was presented to the Choctaw council in 1880, accompanied by the petition of James Jones Biddie, in which he alleges that his mother was the daughter of one Frederick Jones, a native Choctaw; that he lived in the Choctaw nation until he was eleven or twelve years of age, when he went to the Chickasaw nation, where he remained with his brother until he was about seventeen, then went to Alabama, where he remained until he moved to the Choctaw nation (about 1873).

From a memorandum on this petition it appears that his application was rejected by the committee on citizenship.

I do not think that the appellant has established his descent from a recognized Choctaw ancestor, beyond reasonable doubt, and concur in the opinion of Agent Owen that the appeal should be dismissed.

No. 19, William Langford, for himself, wife and one child. The appellant claims Choctaw descent through the line of the Jones family, and rests his case on the evidence in the Biddie case.

There is nothing in the record of either case that shows his connection with the Biddie family.

I recommend that the appeal be dismissed.

No. 20, James Langford, for himself, wife, and one child, all of whom claim to be of Choctaw descent through the Jones family. -

The case rests upon the evidence in the Biddie case. I recommend that the appeal be dismissed.

No. 21, Elizabeth Deaton, for herself, husband and eight children - Same as Nos. 19 and 20.

No. 22, Mary Catherine Baker, for herself, her deceased husband, Scott Cheeley, and their child, and her present husband.

Same as Nos. 19, 20, and 21.

No. 23, Joshua and Mary Goddard. - This case was appealed, but no evidence was submitted. I recommend that the appeal be dismissed.

No. 24, John C. Glenn, et al. - This appeal appears to include the cases of John Barnes, John B. Tucker, Joseph Barnes, Edward Tucker, George Tucker, Lee Edmonson, Jackson Glenn, Casey Glenn, Robert Tucker, and Kizh Herres, Lindsey Williams, and their families.

John C. Glenn claims rights for himself, wife, and son, and for their daughter and her husband and two children, as the grandson of Abigail Rogers, a half-blood Choctaw, who, as is alleged, married John Glenn, a white man. The other parties are understood to be grandchildren of Abigail Rogers and John Glenn.

By an argument between counsel the cases of he claimants through descent from Abigail Rogers were considered by the Choctaw council as one case. From the evidence it appears that Abigail Rogers was of Indian blood, undoubtedly part Choctaw with possibly an admixture of Cherokee blood; that she married John Glenn, a white man, and is the ancestor of the several claimants.

None of the witnesses have any knowledge of her father and mother, except Mary Barnes, who testifies that the old folks said the former was part Cherokee. She also states Abigail's father lived with Abigail's mother until Abigail was born, when he took the latter to the Cherokee Nation, where she grew up, married John Glenn, who took her to Mississippi. After her husband's death and probably soon after the Choctaw emigration, she with others of the family, started to join the nation, as it is alleged, but died in Arkansas about 1840. The descendants finally reached the Choctaw

Nation some thirty years later (in 1870). None of the family appear to have drawn annuities as Choctaws, although it is claimed in certain affidavits that they did. Such testimony, however, is worthless, and several of the claimants admit that the Glenn family got no money as Choctaws in any way. The claimants do not assert that Abigail Rogers was ever recognized as a member of the Choctaw tribe, entitled to all the rights and benefits accruing from such membership, although certain of the witnesses set up this claim on their behalf.

I do not think that the evidence shows that Abigail Rogers was a recognized member of the Choctaw tribe, although it does show, as before stated, that she was of Choctaw descent. Her descendants have intermarried among themselves or with white people, but not with members of the Choctaw tribe. They have claimed and exercised the rights of United States citizens in various States. While the mere possession of Choctaw blood is a reason which might and probably should influence the Choctaw Nation to admit them to citizenship, I do not think it sufficient to justify the Department in compelling the nation to take such action.

I recommend that the action of Agent Owen affirming the decision of the Choctaw council be sustained, and that the appeal be dismissed.

From Agent Owen's report it appears that Joseph Brown presented his case to the Choctaw council, but no appeal is noted.

The instruction of March 22, 1884, contained the following clauses:

"All persons finally adjudged to be intruders will be allowed a reasonable time in which to dispose of their improvements and property before being removed. [119]

"Subject to this qualification, all parties properly notified failing to appear at the session of the council for which they are summoned, should at the expiration of said session be promptly removed; and any person adjudged to be an intruder by the Choctaw authorities, failing to appeal within the time prescribed, should also be promptly removed."

In accordance with these instructions I have the honor to recommend that Agent Owen be directed to notify all persons of the second class and all those whose appeals are decided adversely by you that they will be given a reasonable time which should be fixed by the agent and governed by the circumstances in each case, in which to dispose of such of their improvements and property as they may not desire to remove, or which can not be legally removed, and at the expiration of that time they must permanently remove from the Indian Territory. All to be given to understand that they must use all diligence and exertion to dispose of their improvements within the time fixed, and in case any one is unable to do so from ant cause not his own fault the facts to be presented to this office for consideration.

I transmit the papers and request their return.

Very respectfully, your obedient servant,

J. D. ATKINS,

Commissioner.

The SECRETARY OF THE INTERIOR.

Page End