

No. 27.

James R. Kelley & al.
vs
Choctaw Nation

No. 78.

Central District Court

No
Dawes Commission

See 3-87

See No. 29

lit for trial June 3, 1903

Motion made 4/18/03

(see foreperson)

Witnesses.

For Claimants.

Sam York	X	^{M. Alister} Simpson, J.T.
Anderson McCarty	X	Hedden, J.T.
Wm Baker	X	Leffers, J.T.
Solomon Wilson	X	^{Krebs} Mischler, J.T.
Ernest E. McCarty	X	Coalgate, J.T.
Anderson Parker	X	Purcut, J.T. ✓
Eugene McCarty	X	
Willis Jackson	X	

For Nations.

O.D. McCarty, Coalgate

South McAlester, Indian Territory, April 9, 1903.

James R. Kelly, et al

vs. No. 27 Central District No. 78

Choctaw Nation.

(Same relationship as the McCarty case.)

LETTER OF INSTRUCTIONS.

To _____.

The office files of the papers in this case are herewith delivered to you and you are hereby directed to investigate the case conforming in the main to the instructions contained in this letter, and to return it with your written report and exhibits attached thereto at the earliest possible time.

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An examination of the papers will disclose that the relationships claimed by these people parallel those of the applicants in the McCarty case; they being related. It is claimed that Annie Kelly nee McCarty, the wife and mother of applicants and Everett E. McCarty and Anderson McCarty; (the latter two being the principal applicants in the McCarty case), are brothers and sisters; that they are the children of Annie McCarty, whose maiden name was Smith; and that she was the daughter

of Martha Smith, whose maiden name was Jones, and that she was a Choctaw Indian in Mississippi.

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Witnesses Thomas York, William Baker and Solomon Wilson, who gave material testimony for applicants in 1896 are now dead. Witness Willis Jackson who gave material testimony at that time has already been seen by our representative and a counter affidavit taken; and you are directed to see the only, remaining living witness who gave material testimony on behalf of applicants, whose name is Anderson Parker. Anderson Parker of Durant, states that he is a white man and born in Scott County, Mississippi; that while living there he became acquainted with the McCarty's; that he knew Annie McCarty, and that her maiden name was Smith; that she was a recognized Choctaw Indian.

Inasmuch as this witness is a white man we are strongly of the belief that he has either deliberately sworn falsely; or has stated in his affidavit things he does not know positively to be facts. If this is true this witness belongs to a class of witnesses with whom it will be most difficult to deal; and it is expected that you shall exercise your very best judgment in interrogating this witness and take from him a statement that will develop the weakness of his testimony and be of advantage to the Nations. For instance it may be

that he can state with reasonable certainty of his own knowledge what the relationships of these people are as he states them; but the untruth which he has told is that they were recognized in Mississippi as Choctaw Indians. If it develops that he has a real knowledge of these people and their relationships, you will be confronted with the necessity of developing the untruth of his statement that they were recognized Choctaw Indians; and as to just how you are to do this must be determined at the time, and upon the ground, after you have looked the witness over, talked with him and taken your bearings.

An examination of his testimony will show that he asserted that witness Tom York, deceased lived in the McCarty neighborhood. Elsewhere it is shown conclusively that Tom York lived in Leake County, whereas the McCarty's claimed to have lived in Scott County. This is an inconsistency that we note in passing through the testimony, and if you will thoroughly familiarize yourself with it before interrogating this witness, and then lead him over the ground gone over in 1896, we think his statements now will not, and parallel those made at that time; and the worthlessness of his testimony can thus be developed.

These instructions are based upon the assumption that witness Anderson Parker has sworn falsely and deliberately. If it should develop that he is an honest man and has been imposed upon, then

another line of procedure will be necessary.

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It is not expected that you shall be governed entirely by the instructions contained in this letter, or to confine your investigation to the witnesses here named. It may be that these witnesses and others with whom you can safely confer will know of other persons who have material information; and you should exercise your best judgment as to whether or not you shall proceed along the lines thus suggested without first returning to the office for further instructions.

Yours very truly

Wesley H. Murray Cornish

This notice has been seen by D. A. Richardson, our representative and a counter affidavit taken in case of John M. Gorty et al vs Choctaw Nation; and such may be referred to in this case —

2nd.-- In the case of James R. Kelly, under date of July, 1897, testified: Age 47 years; full blood; came to the Indian Territory from Mississippi seven years ago. Lived in Newton County which is a part of the old Choctaw Nation. Knew a man by the name of J. J. Smith. He lived in Scott County about 25 miles from where I lived. He was a Choctaw Indian of about one quarter breed. Was recognized as being a member of the Choctaw Tribe.

My name is Willis Jackson; I am
55 yrs of age; was born in Mississippi
have lived in the Indian Territory 12
years. I knew ~~FF~~ a man by the name
of Dick Smith ~~FF~~ who lived in Scott County,
Mississippi; he looked to be about $\frac{1}{4}$ blood
was a recognized Indian and was the
only Indian by the name of Smith that
I knew in Scott County or elsewhere
in Mississippi. I did not know his
~~last~~ mother but his father's name
was Jack Smith and he was half
Indian. Dick Smith ~~would~~ ^{would} be about
60 yrs old if still living. I have not
seen him for 25 yrs. He was a married
man when I knew him. Dick Smith was
a lawyer, ~~but~~ I did not know his wife.
I do not remember the name of any of
Dick Smith's children except on ~~one~~ ^{one} ~~of~~ ^{her}
name "Cepie". He had several other children
Dick Smith has been dead about 23 ^{years} ~~ago~~ ^{since} in
Scott County Mississippi.

his
Willis Jackson
mark

Witness

Minsey Hunt Kapiller

Subscribed and sworn to before me this 29th day
of March 1903

W. H. Moore
Notary Public



Geo R Kelley
and
John McCarty

Affidavit of Willis
Jackson

South McAlester, Indian Territory, May 25, 1903.

Please do so if possible. We will reimburse you for any expense you may incur in the matter. We do not believe it would be worth while for you to Mr. B.S. Smiser, the information if you allow McCarty to know Atoka, Indian Territory.

Dear Sir: We believe if you go at it in the right way that you will remember that some time ago you wrote us in reference to certain information which O.D. McCarty of Coalgate possesses in regard to the citizenship cases of Kelley and McCarty. Mr. McCarty evidently has this information but knowing its value, is attempting to hold up the Choctaw Nation for an unreasonable fee for disclosing it.

Dictated The thing he knows that would be of value to the nation is the name of an aged relative, we think his father-in-law, who lives somewhere in Texas, and who was acquainted with the McCarty family for ten or twenty years prior to the birth of E.E. McCarty, the original applicant.

If we can obtain the name of this relative, we will have gotten all the information we desire from O.D. McCarty. He has refused to give it to us on reasonable terms, and it occurs to us that it might be possible for you to obtain this information.

Please do so if possible. We will reimburse you for any expense you may incur in the matter. We do not believe it would be worth while for you to attempt to get the information if you allow McCarty to know what you are after.

We believe if you go at it in the right way that you may get it, and it will be of vast benefit to the Choctaw Nation. Please attend to this at your earliest convenience and write us the result.

E. E. McCarty, the original applicant.

Yours very truly,

If we can obtain the name of this relative, we will have gotten all the information we desire from G. H. Dictated. has refused to give it to us on reasonable terms, and it seems to us that it might be possible for you to obtain that information.

SYNOPSIS OF THE JAMES R. KELLY, ET AL, CASE.

The applicants are James R. Kelly, Eugene McCarty, Eliza Greer, nee Kelly, Erastus P. Kelly, Everett S. Kelly, Ewing G. Kelly, Laura G. Hancock, nee McCarty, Alphonso B. McCarty, and Oscar McCarty. and their children.

Application states that the petitioners are the sons and daughters of Annie Kelly, nee McCarty, and Bryant J. McCarty, who were sisters and brothers of Everett E. McCarty and Anderson McCarty, and were one eighth Choctaw by blood, which they derived from Annie McCarty, a 1/4 Choctaw by blood, their mother. Annie McCarty was a daughter of Martha Smith Nee Jones, a half blood Choctaw Indian. The applicants give the names of their children.

Applicants were denied by the Dawes Commission. Appealed to the United States Court for the Central District. Applicants were admitted by the Court.

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AFFIDAVITS BEFORE DAWES COMMISSION.

THOMAS YORK says that he is 74 years old and lives at Simpson, I.T. He was well acquainted with Bryant J. McCarty and Annie McCarty; also knew Everett E. McCarty and Anderson McCarty, their brothers. They were all 1/8 Choctaw Indians by blood and were born and reared in the Choctaw Nation in Miss. He knew their mother Annie McCarty. She was 1/4 Choctaw Indian and spoke the language fluently. He knew their ~~###~~ grandmother, Martha Smith, nee Martha Jones; she was 1/2 blood Choctaw Indian. Affiant is a full blood Choctaw Indian.

Anderson McCarty says that he is 68 years old and lives at Healdton I.T. Mrs. Annie Kelly, nee McCarty, now deceased, was a sister of affiants. She was 1/8 Choctaw Indian by blood derived from her mother, Annie McCarty who was 1/4 Choctaw Indian, and a daughter of Martha Smith nee Jones, a half blood Choctaw Indian. Mrs. Kelly died a good many years ago; her husband was a white man, he also is dead. They left the following children. Eliza Greer, nee Kelly, Erastus Kelly, James Kelly, Everett E. Kelly, and Kelly. Mrs. Kelly was born and reared in the Indian settlements in Miss? Bryant J. McCarty now deceased was affiants brother. He was 1/8 Choctaw Indian.

WILLIAM BAKER says that he is 74 years old and lives at Leflore. He was intimately acquainted with Bryant J. McCarty and Annie Kelly, both deceased. Knew them in Scott County, Miss. They were son and daughter of Annie

Smith who was 1/4 choctaw Indian by blood. Affiant is himself a full blood Choctaw Indian.

SOLOMON WILSON SAYS THAT HE IS 60 years old and lives at McAlester. He was well acquainted with Bryant J. McCarty and Annie Kelly, nee McCarty both deceased. Also knew Everett E. McCarty and Anderson McCarty their brothers. They were all one eighth Choctaw Indians by blood, and were born and reared in the Indian settlements in Miss. Knew their mother, Annie Smith. She was 1/4 Choctaw and was a daughter of Martha Smith, nee Martha Jones, who was a 1/2 blood Choctaw. Affiant is a full blood Choctaw himself.

EVERETT E. MCCARTY says that he is 55 years old and lives at Coalgate. He is personally acquainted with the applicants. They are the persons they represent themselves to be. Affiant is one of the applicants, and gives the same pedigree as the others.

#.#.#.#.#.#.#.#.#.#.#.#.

DEPOSITIONS.

ANDERSON PARKER says that he is 54 years old and lives at Durant. Was born in Scott County, Miss. Was acquainted with the McCartys. Gives the same pedigree as the others. Says that Annie McCarty nee Smith was an Indian recognized by the Choctaw Indians. Deponent is positive that the applicants are of the same McCartys that he knew in Miss. He knows that they are because they know of the same incidents and people that deponent knows of. They also favor their father considerably. Deponent is a white man.

ANDERSON MCCARTY gives the same testimony as that contained in his affidavit, except that ~~he~~ says that he has been ~~in~~ the Ind. ~~er.~~ for seven years. That he filed an application before the Choctaw Council, but it was never acted upon. The Indians used to visit at their house in Miss.

EUGENE MCCARTY gives the same testimony as the others; says that he knew Tom ~~####~~ York in Miss. Also Solomon Wilson and Billy Baker. Used to go squirrel hunting with Tom York. Deponent has been in the Ter. for 21 years.

TOM YORK says that he is 75 years old. Was raised in Lee County, Miss. Is a full blood Choctaw Indian. He knows the applicants; knew them in Miss. Gives their pedigree just as the others. Deponent used to work for Annie and Jack Smith; they talked Choctaw. Deponent thinks that his mother

was some kin to McCartys mother.

WILLIS JACKSON says that he is 47 years of age ; is a full blood Choctaw. He came to the Indian Territory from Miss seven years ago. He knew J.J. Smith in Miss. He was a quarter blood choctaw Indian. Was recognized as being a member of the tribe. Died a good many years ago. Could speak the Choctaw language well.

SOLOMON WILSON says that he is 58 years of age and is a full blood Choctaw. Lives at Krebs. Came from Miss to this country seven years ago. Knew E.E. McCarty in Miss. Used to play with him as a boy. Knew that he was a Choctaw. His mother was a recognized Choctaw. Don't know the degree of blood.

E.E. MCCARTY says that he is 57 years old and lives at Coalgate. Has lived in the Territory six years. Came ~~from~~ from Scott County, Miss. to Texas and lived there several years; then came to the Territory where he has lived ever since. Gives the same pedigree as the others. Knew Tom York and Solomon Wilson ~~there~~ in Miss. Deponent applied to the Choctaw Council for citizenship at the first meeting of the Council after deponent came here. In Oct. 1891 he paid the \$100 required by the Choctaw laws. The citizenship Com. after hearing the evidence reported favorably and a bill was drafted admitting the deponent and his children to citizenship; but it was tabled and never acted upon. The same thing happened again in 1895. Deponent has been recognized as a citizen except that he has not been allowed to vote or to draw money. Has owned lands and improved them and has had permits issued him for his renters. Has never been molested in his rights.

CONCLUSIONS/

Tom York, Solomon Wilson, and Billy Baker are professional witnesses. Outside of their testimony and the statement of the applicants there is nothing to show that the applicants or their ancestors had any Indian blood. It is not shown who the applicants' ancestors were.

The applicants have lived in Texas and other states, and no doubt exercised rights of citizenship in that state.

exercised rights of citizenship in that state.

The applicants have lived in Texas and other states, and no doubt it is not known who the applicants' ancestors were.

Nothing to show that the applicants or their ancestors had any Indian blood outside of their testimony and the statement of the applicants there is

Tom York, Solomon Wilson, and Billy Baker are professional witnesses.

CONCLUSIONS

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them and has had permits issued him for his tenters. He has never been had not been allowed to vote or to draw money. He has owned land and improved land in 1882. Deponent has been recognized as a citizen except that he sensibly; but it was tabled and never acted upon. The same thing happened and a bill was drafted submitting the deponent and his children to citizenship.

laws. The citizenship Committee hearing the evidence reported favorably. Deponent came here. In Oct. 1881 he paid the \$100 required by the Choctaw Council for citizenship at the first meeting of the Council after

Tom York and Solomon Wilson ~~was~~ in Miss. Deponent applied to the he has lived ever since. Given the same pedigree as the others. Knew to Texas and lived there several years; then came to the Territory where he has lived in the Territory six years. Came here from Scott County, Miss. Has lived in the Territory and in Texas old and lived at Congress.

of blood.

was a Choctaw. His mother was a recognized Choctaw. Don't know the degree Knew E. E. McDuffy in Miss. Used to play with him as a boy. Knew that he Choctaw. Lives at Kleres. Came from Miss to this country seven years ago.

SOLOMON WILSON says that he is 28 years of age and is a full blood. Could speak the Choctaw language well.

recognized as being a member of the tribe. Died a good many years ago. He knew E. E. Smith in Miss. He was a hunter blood Choctaw Indian. Was Choctaw. He came to the Indian Territory from Miss seven years ago.

WILLIE JACKSON says that he is 17 years of age; is a full blood

was some kin to McDuffy's mother.

SUMMONS.

Duplicate

United States of America,

INDIAN TERRITORY,

Choctaw and Chickasaw Citizenship Court.

SS:

The President of the United States of America,

To the United States Marshal for the Indian Territory, Northern District,

GREETING:

YOU ARE COMMANDED TO SUMMONS Green McCurtain,

Principal Chief of the Choctaw Nation,

on behalf of said Nation

to answer in twenty days after the service of this summons upon him

as Principal Chief of said Nation

a complaint in Equity filed against the Choctaw and Chickasaw Nations

in the Choctaw and Chickasaw Citizenship Court, in the Indian Territory, So. Mc Alester

by James R. Kelley et al as said Principal Chief
and warn him that upon his failure to answer, the

on behalf of said Nation

complaint will be taken for confessed, and you will make return of the summons on the

~~first day of next~~ instant

~~Term of said Court~~

and you are further commanded to notify said Green McCurtain, Principal
Chief aforesaid, that the files, papers and proceedings, in the case of

James R. Kelley et al file No. 78, in the District Court
for the Central District of the Indian Territory have been trans-
ferred to the Choctaw and Chickasaw Citizenship Court, and that the
certificate of the Clerk of said Court for said Central
District, Indian Territory has been attached thereto.

WITNESS the Honorable SPENCER B. ADAMS, Chief Judge, WALTER L.

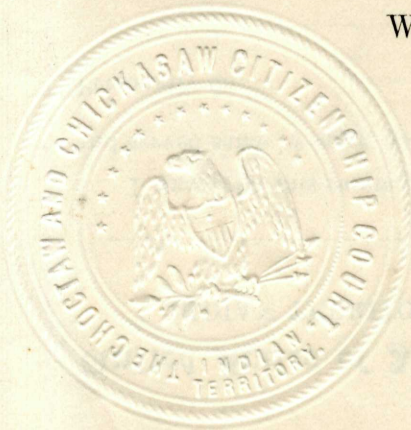
WEAVER and HENRY S. FOOTE, Associate Judges, and the Seal

thereof, at South Mc Alester, I.T., aforesaid,

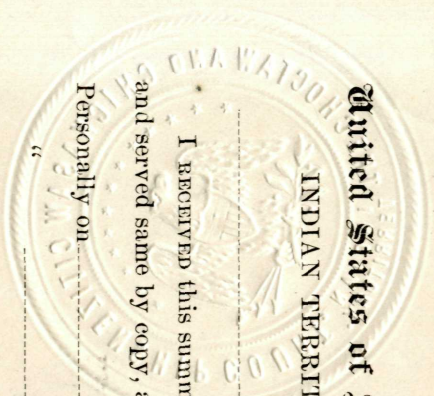
this 25- day of March, A. D. 1903.

By James B. Cassada, Deputy.

Clerk.



MARSHAL'S RETURN.



United States of America,
INDIAN TERRITORY,
DISTRICT.

ss:

I RECEIVED this summons this _____ day of _____, A. D. 190____, at _____ o'clock _____ m.
and served same by copy, as follows:

Personally on _____ at _____ Ind. Ter. this _____ day of _____ 190____, _____ o'clock _____ m.
" _____ at _____ Ind. Ter. this _____ day of _____ 190____, _____ o'clock _____ m.
" _____ at _____ Ind. Ter. this _____ day of _____ 190____, _____ o'clock _____ m.
" _____ at _____ Ind. Ter. this _____ day of _____ 190____, _____ o'clock _____ m.
At Residence of _____ at _____ Ind. Ter. this _____ day of _____ 190____, _____ o'clock _____ m.
" _____ at _____ Ind. Ter. this _____ day of _____ 190____, _____ o'clock _____ m.
" _____ at _____ Ind. Ter. this _____ day of _____ 190____, _____ o'clock _____ m.
" _____ at _____ Ind. Ter. this _____ day of _____ 190____, _____ o'clock _____ m.

With a member of defendant's family over 15 years of age there residing.
And the other persons named in this Summons are "not found in this District."

By _____, Deputy
U. S. Marshal.

No. 27-m

SUMMONS IN EQUITY.

James R. Kelley et al
vs.
Chactum & Chickasaw Nations

Summons issued the 25- day
of March, 1903

Returnable instantly Term, 1903

Returned and filed _____, 190____

Clerk.

By _____, Deputy.

MARSHAL'S FEES.

Services,	-	-	-	-	\$	_____
Miles,	-	-	-	-	\$	_____
Expense,	-	-	-	-	\$	_____
TOTAL,	-	-	-	-	\$	_____

J. M. Foster
So Mc Austin J. T. Attorney for Plaintiff.

SUMMONS.

Duplicate

United States of America,

INDIAN TERRITORY,

Choctaw and Chickasaw Citizenship Court.

SS:

The President of the United States of America,

To the United States Marshal for the Indian Territory, ~~Southern~~ District,

GREETING:

YOU ARE COMMANDED TO SUMMONS

P. S. Mosley

~~Governor of the Chickasaw nation~~

~~on behalf of said nation~~

to answer in twenty days after the service of this summons upon ~~him~~

~~as Governor of said nation~~

a complaint in Equity filed against ~~the Choctaw and Chickasaw nations~~

in the Choctaw and Chickasaw Citizenship Court, in the Indian Territory, *So McAlester*

by *James R. Kelley et al* and warn ~~him~~ that upon ~~his~~ as said Governor

~~on behalf of said nation~~

complaint will be taken for confessed, and you will make return of the summons on the

first day of next ~~instant~~ *instant* Term of said Court.

and you are further commanded to notify said P. S. Mosley, Governor,

R. Kelley et al ~~aforesaid~~, that the files, papers and proceedings in the case of *James*

Culbert file No. *78*, in the District court for the

Culbert District of the Indian Territory, have been transferred

to the Choctaw and Chickasaw citizenship court, and that the certificate

of the clerk of said court for said *Culbert* District

Indian Territory, has been attached thereto.

WITNESS the Honorable SPENCER B. ADAMS, Chief Judge, WALTER L.

WEAVER and HENRY S. FOOTE, Associate Judges, and the Seal

thereof, at *South McAlester, I. T.*, aforesaid,

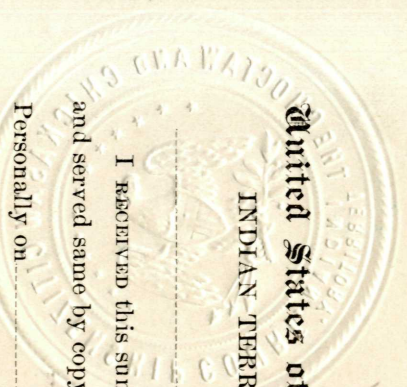
this *25-* day of *March*, A. D. 190*3*

James B. Cassada
Clerk.

By _____, Deputy.



MARSHAL'S RETURN.



United States of America,
INDIAN TERRITORY,
District. } ss:

I RECEIVED this summons this _____ day of _____, A. D. 190____, at _____ o'clock _____ m.
and served same by copy, as follows:

Personally on _____ at _____ Ind. Ter. this _____ day of _____ 190____, _____ o'clock _____ m.
" _____ at _____ Ind. Ter. this _____ day of _____ 190____, _____ o'clock _____ m.
" _____ at _____ Ind. Ter. this _____ day of _____ 190____, _____ o'clock _____ m.
" _____ at _____ Ind. Ter. this _____ day of _____ 190____, _____ o'clock _____ m.
At Residence of _____ at _____ Ind. Ter. this _____ day of _____ 190____, _____ o'clock _____ m.
" _____ at _____ Ind. Ter. this _____ day of _____ 190____, _____ o'clock _____ m.
" _____ at _____ Ind. Ter. this _____ day of _____ 190____, _____ o'clock _____ m.
" _____ at _____ Ind. Ter. this _____ day of _____ 190____, _____ o'clock _____ m.

With a member of defendant's family over 15 years of age there residing.

And the other persons named in this Summons are "not found in this District."

U. S. Marshal.

By _____ Deputy

DUPLICATE

No. 27-m

SUMMONS IN EQUITY.

James R. Kelly et al
vs.
Chastain of Chickasaw Nations

Summons issued the 25- day
of March, 1903
Returnable instant Term, 1903

Returned and filed _____, 190____

Clerk.

By _____, Deputy.

MARSHAL'S FEES.

Services,	-	-	-	-	\$	_____
Miles,	-	-	-	-	\$	_____
Expense,	-	-	-	-	\$	_____
TOTAL,	-	-	-	-	\$	_____

J. M. Foster
Attorney for Plaintiff.
So. McAuliffe J. J.

Report on Present Status of the James R. Kelly Case.

The remotest ancestor of petitioners
mentioned in their application is Martha
Smith, nee Jones, whom they allege to have
been a half blood Choctaw Indian. They
say that she had a daughter named Annie
McCarty, nee Smith; that Annie McCartney was
the mother of Annie Kelly, nee McCartney, Bryant
J. McCartney, E. E. McCartney & Anderson McCartney.
The present applicants are children &
grandchildren of Annie Kelly & of
Bryant J. McCartney.

John York, now deceased, P.O. Simpson
27. was a witness for these people
before the Dawes Com. & the U.S. Court.

He professed to have known them
and all their ancestors in Miss. &
to know that ~~they are~~ applicants are
Choctaw Indians by blood. Says that
Anne McCarty was a greater blood &
spoke the Choctaw language, that
he knew Martha Smith nee Jones, &
knew her to be a half breed Choctaw.
Thomas York should be impeached -
- - -

Billy Baker, of Leflore, same as the
above.
- - - -

Solomon Wilson, of Maclester, same.
- - - -

Willis Jackson testified that he
formerly lived in Scott County, Miss.

and that he knew J. J. Smith there;
that Smith was a quarter blood
Choctaw Indian, and a recognized
member of the tribe; and speak
the language fluently.

This Smith, I suppose, was the
alleged brother of Annie W. Holt. Some
investigation of the case should be
made in Scott County, Miss.

Willis Jackson gave false ~~st~~
evidence in the J. H. Wamack case,
and afterwards repudiated it. He ~~has~~
also made a counter
~~statement in this case~~ + a counter state-
ment ~~in this case~~ - He should be im-
peached, if possible.

No. 78.
Jas. R. Kelly et al
vs
The Choctaw Nation

Affidavit of Tom York

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT

At

Et Al.

Vs.

The Choctaw and Chickasaw Nations

The Petitioners.

James R Kelly, Annie Kelly, James R Kelly Jr, Teresa Kelly, Buell Kelly, Minerva Kelly, Fannie Kelly, Eugene McCarty, Marcellus McCarty, Rosa Belle McCarty, Nannie McCarty, Elbert McCarty, Laura J Hancock, John Hancock, Viola Hancock, Rattie Hancock, Joseph Hancock, Beatie Hancock, Walter hancock, Joseph McCarty, Alphonso McCarty, Oscar McCarty, and Eliza A Greer, Erastus Kelly, Everett Kelly,

Nation No. 78 adjudged to be citizens of said Nation but that by a decree of this Court entered on the 17th day of December 1900 said decree was set aside annulled and vacated.

The Petitioners pray that said cause be transferred to this Court for further proceedings according to law. And your petitioners will ever pray etc.

Attorney for Petitioners.

being sworn says that the matters and things in the above petition alleged are true as therein stated.

respectrully show to the Court that they are of right Citizens of the
Choctaw-----Nation but that their Citizenship is denied by the
authorities of said Nation that heretofore they were by a decree of the
United States Court for the-----*Central*-----District of the
Indian Territory in a case then pending upon the docket of said Court en-
titled-----*James R. Kelly et al*-----vs. the-----*Choctaw*-----
Nation No. *78*-----adjudged to be Citizens of said Nation but that by
a decree of this Court entered on the 17th day of December 1902 said
decree was set aside annulled and vacated.

The Premises Considered Petitioners Pray that said Cause be transfer-
red to this Court for further proceedings according to law. And your pe-
titioners will ever pray etc.

T. N. Foster

Attorneys for Petitioners.

Eugene M. Cady-----being sworn says that the matters and things
in the above petition alleged are true as therein stated.

Subscribed and sworn to before me this-----day of March 1903.

Clerk Choctaw and Chickasaw Citizenship Court.
T. N. Foster being sworn states that he delivered a true copy of the above
petition to Mansfield McMurry and Cornish Attorneys for the Choctaw and
Chickasaw Nations on the-----day of March, 1903.

Subscribed to and sworn before me this-----of March 1903

Clerk Choctaw and Chickasaw Citizenship Court.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT SITTING
AT SOUTH McALESTER, INDIAN TERRITORY SEP-
TEMBER TERM, 1903.

James R. Kelly, et al,-----Plaintiffs,

vs.

The Choctaw Nation and
the Chickasaw Nation,-----Defendants.

MOTION TO MAKE MORE DEFINITE AND CERTAIN.

Come now the Choctaw and Chickasaw Nations, by Mansfield, McMurray & Cornish, their attorneys, and move this Honorable Court to require the plaintiffs herein, James R. Kelly et al, to make their "Application for Admittance and Enrollment" filed before the Commission to the Five Civilized Tribes under the act of Congress approved June 10, 1896, more definite and certain in this; that they be required to state:

First: Whether they or any, or all, of their alleged ancestors through whom he claims the right to be admitted and enrolled as a citizen of the Choctaw Nation complied with the requirements of article fourteen of the treaty of 1830 between the United States and the Choctaw Nation; and if any, or all, so complied, by whom such compliance was made, and how; and,

Second: Whether they or any, or all, of his alleged ancestors emigrated to the Choctaw Nation, Indian Territory, with the Choctaw Indians residing in the old Choctaw Nation in the State of Mississippi in accordance with the provisions of article three of the said treaty of 1830; and if so, the name or names of the person or persons so emigrating.

THE CHOCTAW NATION,

THE CHICKASAW NATION,

Mansfield M. Murray & Cornish
Their Attorneys.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP
COURT, SITTING AT SOUTH McALESTER, SEP-
TEMBER TERM, 1903.

James R. Kelly, et al, Plaintiffs

vs.

The Choctaw Nation and the
Chickasaw Nation, Defendants.

DEMURRER.

Come now the Choctaw and Chickasaw Nations and demur to
the petition for citizenship of plaintiffs and for cause state that
it does not state facts which if true, would warrant this Honorable
Court in admitting them as citizens of the Choctaw Nation.

THE CHOCTAW NATION

THE CHICKASAW NATION

BY

ATTORNEYS.

BY _____
ATTORNEYS.

THE CHICKASAW NATION
THE CHOCTAW NATION

Court in admitting them as citizens of the Choctaw Nation.
It does not state facts which it true, would warrant this Honorable
the bet for citizenship of plaintiffs and for same state that
Come now the Choctaw and Chickasaw Nations and demand to

James H. Kelley
C. H.
D. M. U. R. R.
Chickasaw Nation, Defendants.
The Choctaw Nation and the
vs.

James H. Kelley, et al, Plaintiffs

MEMBER TERM, 1903.
COURT, SITTING AT SOUTH MOBILE, SEP-
IN THE CHOCTAW AND CHICKASAW CITIZENSHIP

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,
SITTING AT SOUTH McALESTER, NOVEMBER TERM, 1903.

James R. Kelley, et al,

vs. No. 27.

C. & C. Nations.

WEAVER:

I understand that the record in case number twenty-nine
can be used in this case, is that correct

CORNISH:

So far as I know it is a companion case.

Weaver:

Aby objections, if not it can be u ed.

CORNISH:

If the counsel for applicants w sh to move the court
to the record to this case, we would not object to it. We
have no objection to its transfer.

ELIZA J. APPALE CASE.

January 7, 1904.

Mr. Foster:

Before the call for the day begins, I have always been accustomed to a motion hour, I have one or two matters that I shall like to bring to the attention of the Court before the call for the day is begun.

In the first place the Apple case is set for the eighteenth of this month. The Apple case is a companion case of the McCarty case, in which testimony is to be taken in Mississippi, and with parties to the Apple case are ready and they are numerous and live a considerable distance, and do not want to have to make two trips.

JUDGE ADAMS:

That testimony will be taken by the 18th.

Mr. Foster:

It is understood that the two cases are to be heard together or at least, that the evidence in the McCarty case will be applied to the Apple case, and I thought that they would be concluded at the same time.

JUDGE ADAMS:

It will be taken by then.

Mr. Foster:

It may be possible that we may find other evidence in Mississippi that we do not know of.

JUDGE FOOTE:

That evidence will be taken on the 12th or 13th, and they will be back here by the 18th.

Mr. Foster.

I will simply ask the court if I should have them here

JUDGE ADAMS:

Let the evidence apply in each case.

Mr. Foster:

Very well.

JUDGE ADAMS:

Any necessity of having them make two trips.

Mr. Foster:

The cases are interwoven, they ought to have been
one case.

, JUDGE ADAMS:

We will set the McCarty case for the 18th, that suit
you gentlemen.

Mr. Cornish.

Yes sir.

JUDGE ADAMS:

Number 29, McCarty case, set for the 18th.

In the Choctaw and Chickasaw Citizenship Court, sitting at South
McAlester, in the Central District of the Indian Territory,
April Term, 1904.

James R. Kelly, et al.,

vs.

No. 27.

Choctaw and Chickasaw Nations.

DECREE OF COURT.

On this 30th day of April, 1904, this cause coming
on for final decision, the same having heretofore been submitted
upon the law and the evidence, and the Court being well and
sufficiently advised in the premises, doth find that the
plaintiffs, James R. Kelly or Kelley, Annie Kelly or Kelley,
James R. Kelly Jr., or Kelley, Teresa Kelly or Terresa Kelley,
Buell Kelly or Buel Kelley, Minerva Kelly or Kelley, Fannie
Kelly or Kelley, Eugene McCarty, Marcellus McCarty, Rosa Belle
McCarty, Nannie McCarty or Nannie Lou McCarty, Elbert McCarty,
Laura J. Hancock, John Hancock, Viola Hancock, Rettie Hancock or
Lettie Hancock, Joseph Hancock, Beatie Hancock or Bettie Hancock,
or **B**etta Hancock or Beaddie Hancock, Walter Hancock, Joseph
McCarty, Alphonso McCarty or Alfous McCarty, Oscar McCarty,
Eliza A. Greer, Erastus Kelly or Kelley, and Everett Kelly or
Kelley, are not entitled to be deemed or declared citizens of
the Choctaw Nation, or to enrollment as such, or to any rights
whatever flowing therefrom.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the
petition of the plaintiffs, James R. Kelly or Kelley, Annie
Kelly or Kelley, James R. Kelly Jr., or Kelley, Teresa Kelly or
Terresa Kelley, Buell Kelly or Buel Kelley, Minerva Kelly or

Kelley, Fannie Kelly or Kelley, Eugene McCarty, Marcelinus
McCarty, Rosa Belle McCarty, Fannie McCarty or Fannie Lou
McCarty, Elbert McCarty, Laura J. Hancock, John Hancock, Viola
Hancock, Nettie Hancock or Lettie Hancock, Joseph Hancock,
Beattie Hancock or Bettie Hancock or Betta Hancock or Beaddie
Hancock, Walter Hancock, Joseph McCarty, Alphonso McCarty or
Alfonso McCarty, Oscar McCarty, Eliza A. Greer, Erasmus Kelly or
Kelley and Everett Kelly or Kelley, be denied, and that they be
declared not citizens of the Choctaw Nation, and not entitled
to enrollment as such citizens, and not entitled to any rights
whatsoever flowing therefrom.

.....
Chief Judge.
.....
Associate Judge.
.....
Associate Judge.
.....

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James R. Kelly, Eugene McCarty, et al.

To

Pettition for Citizenship.

The Dawes India Commission.

Comes James R. Kelly, Eugene McCarty, Eliza Greer nee Kelly, Erastus P. Kelly, Everett S. Kelly and Ewing G. Kelly, Laura G. Hancock nee McCarty, Alphonso B. McCarty and Oscar McCarty and represents that they are sons and daughters of Annie Kelly nee McCarty and Bryant J. McCarty who were sisters and brothers of Everett E. McCarty and Anderson McCarty and one eighth Choctaw Indians by blood derived from Anni McCarty a one fourth Choctaw, their mother, she being a daughter of Martha Smith nee Jones, a half blood Choctaw Indian. That petitioner James R. Kelly has the following children living; Annie C. Kelly 10 years old; James W. Kelly 8 years old; Theresa A. Kelly 6 years old; Ruth Kelly 4 years old; Buel R. Kelly 2 years old; Grace Kelly 1 year old.

That Eugene McCarty has the following children living; Marsellus McCarty 18 years old; Rose McCarty 11 years old; Elbert McCarty 8 years old and Nannie L. McCarty 3 years old.

Petitioner Eliza Greer has one child living; Albert L. Greer 21 years old.

Petitioner Erastus P. Kelly has the following children living, Minnie Kelly 14 years old; George W. Kelly 14 years old.

Petitioner Everett S. Kelly has the following children living; Rosa Kelly 9 years old; Lotta Kelly 7 years old; Anderson Kelly 5 years old; Jesse Kelly 4 years old; Ruby Kelly 2 years old; Alvin Kelly 6 months old.

Petitioner Laura G. Hancock nee McCarty has the following children living; John W. Hancock 18 years old; Viola Hancock 16 years old; Retta Hancock 12 years old; Joseph D. Hancock 10 years old; Betta Hancock 8 years old; Walter Hancock 1 year old.

Petitioner Alphonso McCarty has one child, a son, living, Joe Lee McCarty 6 months old.

That petitioners have never been convicted of any felony.

Petitioners being the descendants of Bryant J. McCarty, and Annie Kelly ne McCarty, nephews and nieces of Everette E. McCarty and Anderson McCarty, they pray that they may be enrolled as members of the Choctaw Tribe of Indians, as also their children above mentioned.

That petitioners Eugene McCarty has a sister Viola Genette, deceased who left surviving her a son Delmas Genette, who is of the same Choctaw blood as his own children.

James R. Kelly and Eugene McCarty being duly sworn say that the statements above set forth are true and correct as they verily believe.

(Signed) J. R. Kelly.

(Signed) Eugene McCarty.

Subscribed and sworn to before me this Aug. 10th. 1896.

(Signed) J. H. Wilkins.

Notary Public.

(Seal of J. H. Wilkins

Notary Public)

UNITED STATES OF AMERICA.

Indian Territory,

Central District.

Thomas York first being duly sworn according to law says:-

My nem is Thomas York, I am 74 years old, my postoffice is Simpson, Indian Territory.

I was well and intimately acquainted with Bryant J. McCarty and Annie ^{Kelly} formerly Annie McCarty, each now deceased.

I also knew Everette E. McCarty and Anderson McCarty their brothers..

They are all one eighth Choctaw Indians by blood. Were born and reared in Miss. in the Indian settlement.

I knew their mother Annie McCarty, whose maiden name was Annie Smith. She was one fourth Choctaw Indian, and spoke the Choctaw language fluently.

I also knew their grandmother, Martha Smith, formerly Martha Jones who was one half blood Choctaw Indian.

I am a full blood Choctaw Indian citizen, a member of the Tribe.

Am not related to any of these parties and am not interested on their claims for citizenship.

Attest. J. H. Wilkins

his
Thomas X York
mark

Subscribed and sworn to before me this Aug. the 2th, 1896.

J. H. Wilkins,

(Notarial Seal.)

Notary Public.

UNITED STATES OF AMERICA

Indian Territory.

Anderson McCarty being duly sworn according to law says:
I am 68 years old, my postoffice is Healdton, I. T.

I was acquainted with Mrs. Annie Kelly nee McCarty, deceased; she was my sister. She was one eighth Choctaw Indian, by blood derived from her mother, Annie McCarty, who was a one fourth Choctaw Indian, and a daughter of Martha Smith nee Jones, a half blood Choctaw Indian.

Mrs. Kelly died a good many years ago, her husband was a white man, he is also dead; they left surviving the following children:

Eliza Greer nee Kelly; Erastus Kelly; James Kelly; Everette Kelly and Kelly.

Mrs. Annie Kelly was born and reared in the Indian settlements in Mississippi.

I was also acquainted with Bryant J. McCarty, now deceased. He was my brother. He was a one eighth Choctaw Indian by blood, derived from his mother Annie McCarty, a one fourth Choctaw Indian and a daughter of Martha Smith nee Jones, a half blood Choctaw Indian.

Bryant McCarty was born and reared in the Indian settlements in Mississippi, and died in Texas several years ago. He left surviving him:

Eugene McCarty; Alphonso McCarty; Oscar McCarty and Laura Hancock nee McCarty, his children and heirs at law by his white wife now deceased.

Anderson McCarty.

Subscribed and sworn to before me this 7th day of August 1896.

(NOTARIAL SEAL)

J. H. Wilkins
Notary Public.

UNITED STATES OF AMERICA.
Indian Territory.

I, William Baker, being duly sworn according to law says, my name is William Baker, says I am 74 years of age, my post office is Lafloure, Indian Territory, I was well and intimately acquainted with Bryan J. McCarty and Annie Kelly now deceased. I knew them in the state of Mississippi and the county of Scott and they were son and daughter of Annie Smith who was one fourth Choctaw Indian by blood, and am in no way related to Bryan J. McCarty or Annie Kelly. I am a full blood Choctaw Indian and a citizen of the Choctaw Tribe.

(Signed) William X Baker
his
mark

On this day personally appeared before me a clerk in and for the county of Sugar Loaf, Choctaw Nation I. T./ William Baker to me well known and stated that he had signed the foregoing instrument of writing of his free and voluntary act and that the statements therein set were true to the best of his knowledge and belief.

Witness my hand and seal this 7th, day of August 1896.

(Signed) James Culberson.
County Clerk.

(Seal of the County Court of
Sugar Loaf County, C. N.)

UNITED STATES OF AMERICA.

Indian Territory,

Central District.

Soloman Wilson being first duly sworn according to law says:

My name is Soloman Wilson, I am sixty years of age, my pist
office ~~is~~ McAlester, Ind. ~~er~~.

I was well and intimately acquainted with Bryant J. McCarty
and Annie ~~elly~~ formerly Annie McCarty, each now deceased.

I also knew Everette E. McCarty and Anderson McCarty their
brothers. They were all one eighth Choctaw Indians by blood.
Were born and reared in Miss. In the Indian settlements.

I knew their mother Annie McCarty whose maiden name was
Annie Smith. She was one fourth Choctaw Indian, being a daughter
of Martha Smith formerly Martha Jones a half blood Choctaw
Indian.

I am a full blood Choctaw Indian Citizen, a member of the Tribe

I am not related to any of the parties and am not interested
in their claims for citizenship.

his
Soloman X Wilson
mark

Attest. J. H. Wilkins

Subscribed and sworn to before me this Aug. the 8th. 1896.

J. H. Wilkins,

(NOTARIAL SEAL)

Notary Public.

COPY.

UNITED STATES OF AMERICA.

Indian Territory,

Central District.

Everette E. McCarty being duly sworn according to law says:--

My name is Everette E. McCarty, I am 55 years of age. My postoffice is Coal Mine, Indian Ter.

I am personally acquainted with James R. Kelly, Eugene McCarty, Eliza Greer nee Kelly, Ewing G. Kelly, Laura G. Hancock nee McCarty, Alphonso B. McCarty and Oscar B. McCarty. They are sons and daughters of Annie Kelly nee McCarty and Bryant J. McCarty now deceased.

Bryant J. McCarty and Annie Kelly nee McCarty were my brother and sister. I am also a brother of Anderson McCarty.

Bryant J. McCarty, Annie Kelly nee McCarty, Anderson McCarty and I are eighth Choctaw Indians by blood derived from our mother Annie McCarty a one fourth Choctaw Indian. She being the daughter of Martha Smith nee Jones a half blood Choctaw Indian.

(Signed) E. E. McCarty.

Subscribed and sworn to before me this Aug. 10th 1896.

J. H. Wilkins,

Notary Public.

(NOTARIAL SEAL)

IN THE UNITED STATES COURT FOR THE CENTRAL DISTRICT OF THE
INDIAN TERRITORY, AT SOUTH McALESTER.

Jas. R. Kelly and
Eugene McCarty, Plaintiffs,

ANSWER.

vs.

The Choctaw Nation, Defendant.

Comes now the Choctaw Nation, by its attorneys, and
for answer to the petition of appeal filed by the plaintiffs
herein, says,

That it is not true that applicants are entitled
to citizenship in the Choctaw Nation. That it is not true that the
Dawes Commission erred as alleged in said petition.

Further answering, the Choctaw Nation says that it
has heretofore filed its answer to the application of the plaintiffs
before the Dawes Commission, which said answer is hereby referred
to and made part hereof; and having fully answered, appellees pray
that the judgment of the Dawes Commission ~~may~~ be in all things
affirmed..

Wm. M. Cravens and
Stuart, Gordon & Hailey,
Attorneys for Choctaw Nation

In the United States Court in the Indian Territory.

Depositions of Anderson Parker, Anderson McCarty, Eugene McCarty, Tom York, Solomon Wilson, Willis Jackson, E. E. McCarty & Mrs. E. C. McCarty taken at the office of Frank C. Garner, a Notary Public, in the town of Coal Gate in the Central District of the Indian Territory, on the 14th day of July, 1897, between the hours of 8 o'clock a.m. and 6 o'clock p.m., in an action wherein James R. Kelly et al is plaintiffs and the Choctaw Nation is defendant, pending in the United States Court for the Central District of the the Indian Territory at South McAlester, and to be read in evidence on the trial of said cases.

IN THE UNITED STATES COURT FOR THE CENTRAL DISTRICT OF
THE INDIAN TERRITORY, AT SOUTH McALESTER, I.T.

James R. Kelly, et al.

Plaintiff

vs.

CHOCTAW NATION,

Defendant.

NOTICE TO TAKE DEPOSITIONS.

To the Choctaw Nation, the above named defendant, and Stuart,
Gordan & Hailey, and Wm. M. Cravens, attorneys of record for the
said defendants:

You are hereby notified that the deposition of witnesses
to be read in evidence in the above entitled cause on the part
of the plaintiff will be taken at the office of Frank C. Garner
in the town of Coal gate, in the central district of the Indian
Territory on the 14th, day of July 1897, between the hours of
eight o'clock in the forenoon and six o'clock in the afternoon,
of that day; and that the taking of said depositions, if not com-
pleted on that day, will be continued from day to day at the same
place and between the same hours, until completed.

Dunstan & Wilkins
Attorneys for Plaintiff.

INDIAN TERRITORY;
CENTRAL DISTRICT.

I, J. E. Gresham, having been by me duly sworn, states
on his oath that he served the foregoing and above notice on the
12th, day of July 1897, at South McAlester, Indian Territory, by
then and there delivering a true copy thereof to W. E. Hailey,
one of the attorneys of record for the above named defendant.
Affiant further states that he has no interest in this action and
is over 21 years old.

J. E. GRESHAM.

Subscribed and sworn to before me, this 12th day of July, 1897.

J. G. Ralls,
Notary Public.

Deposition of Anderson Parker.

Anderson Parker, being duly sworn, upon his oath says: I am 54 years of age, live in Durant, Indian Territory. Was born in Scott county, Mississippi. Am a white man. While living in Mississippi I was acquainted with the McCartys. I knew Annie McCarty, her husband was Bryant McCarty. I knew Jack Smith a brother of Annie McCarty. Annie McCarty was a Smith before she was married. Anderson McCarty, one of the applicants had the following children, Dr. McCarty, Calvin McCarty, Press McCarty, Arnold McCarty, Everette McCarty, one of the applicants, and two girls, Anna, who married a man by the name of Kelly, Abner L. Kelly, and the other girl's name Lettie who married a man by the name of Jim Sawyer. The Annie McCarty, wife of Abner Kelly was a daughter of Bryant and Annie McCarty, being named for her mother, is a sister of Dr. McCarty, one of the applicants herein. Bryant McCarty was a white man and his wife, Annie McCarty, nee Smith, was a recognized Indian by the Choctaw Indians and all the other people, and they resided among them in Mississippi. She showed by her looks that she was an Indian. I am positive that the McCartys that I knew in Mississippi are the same ones who are applicants herein. I know they are from the fact that they know of the same incidents and people that I know of. They also have the favor of their father considerable. Anderson McCarty lives in the Choctaw Nation at this time. I am acquainted with Dr. McCarty's sons, they also live at Durant. I only know of his three sons, don't know of any other children. I know Tom York Choctaw Indians in Mississippi.

I have no interest whatever in this case.

Anderson Parker.

Deposition of Anderson McCarty.

Anderson McCarty of lawful age, being first duly sworn, testifies as follows: My age is 69 years and I live at Durant, Indian Territory, I have been married and my wife is dead. I have been married twice and both wives are dead. By my first marriage I have living three children as follows: C. M. McCarty, Doratha L. Weaver, nee McCarty, and James A. McCarty, and one by the second wife W. S. McCarty. C. M. McCarty is married to a white woman and they have three children named as follows, Maggie, Mildred and Lucile, all living. James A. Married a white woman by the name of Gunter, and by that marriage has two children named Frank and James A. Jr., W. S. McCarty is married to a white woman of Anderson but has no children. My sons and three wives and children reside in the Choctaw Nation. My daughter Doratha E. married a white man by the name of F. M. Weaver and has four children named J. E. Weaver, James Weaver, Roderick and Kate. I have been in the Indian Territory seven years. In 1892 I filed a claim for myself and my children with the Choctaw Council, but the application has never been acted upon. Bryant McCarty and Annie McCarty were my parents. My mother was a Smith before she was married. She was a sister of Jack Smith. I knew my grandmother, but did not know my grandfather on my mother's side. She was a Jones, Martha Jones before she was married. I was born in the State of Mississippi, and my parents resided there in the Choctaw Indian settlement. My mother spoke the Choctaw Indian language and showed to be Indian as did also her mother. In my judgment my mother's mother was a half breed Choctaw. The Indians used to visit at our house in Mississippi. I had brothers Calvin, Thomas, Bryant, Aaron and E. E. McCarty and two sisters Annie and Lettie McCarty. E. E. McCarty, or Everette McCarty is my youngest brother and lives here in the Choctaw Nation. He is married. He is my full brother. My sister Ann married Abner Kelly, by which marriage she had children

as follows: Eliza A. Erastus, Everette, J. R., E. G., five children in all. I knew Tom York and Solomon Wilson in Mississippi. They are Indians, Choctaws. I also knew William Baker in Mississippi he was known as "Fat Billy" He is a Choctaw. I have seen Tom York and Solomon Wilson in this country.

I desire to have my rights recognized for the purpose of continuing a bona fide resident of the Choctaw Nation.

ANDERSON McCARTY.

Deposition of Eugene McCarty.

Eugene McCarty, being duly sworn testifies as follows: I am 43 years old and live in the Choctaw Nation and have been here three years. I am a married man,--have been married twice, first wife was a white woman named Nancy Hancock, and have one child named Marcellus. My second wife was a white woman named Ingram. I have three children by my last marriage named Rosa Belle McCarty, Elbert and Nannie Lou. My wife is still living with me. My father was Bryant J. McCarty and my mother was Nancy McCarty, nee Nany Kelly, a sister of Abner Kelly. I can remember my grandmother. I was born in Mississippi. I knew my uncle Dr. McCarty, also E. E. McCarty and Annie McCarty in Mississippi. I also knew Tom York and Solomon Wilson and was also acquainted with Billy Baker. I was acquainted with Anderson Parker and knew him in Mississippi. I have seen Tom York, Billy Baker and Solomon Wilson in this country. I have always understood that my grandmother was a Choctaw Indian. I filed a claim with the Choctaw Council in October of 1892 for myself and children. It has never been acted upon. I remember a great many instances that I might relate, and one in particular is when I was very small I used to go squirrel hunting with Tom York there in Mississippi, and when I got very tired he would take me to turn the squirrels for him. Everette and Anderson McCarty

12

are my uncles. I seek to have my rights established for the purpose of remaining a bona fide resident of the Choctaw Nation. I have a place here and am recognized by the Indians as having rights. I know James R. Kelly,--he is a son of Annie Kelly, nee McCarty, and Abner Kelly. Annie Kelly is a sister to Abner McCarty and my father. James R. Kelly married a white woman and they have some children. I have two brothers A. F. and O. B. McCarty and one sister Laura Hancock. She married a white man named Hancock. They have six children, named John, Viola, Lettie, Joseph, Beadie and Walter, all of whom live in the Chickasaw Nation. My brother A. F. married a white woman named Bennie Cook and they have one child named Joseph. My brother C. B. married a white woman named Belle Saunders and they have no children. I had another sister named Viola who married a white man by the name of William Jarrette. She is dead and left one child named Dilmus Jarrette. James R. Kelly has one full sister named Eliza A. Greer who married a Mr. Greer and has one child named Albert. James R. Kelly has three brothers named Erastus, Everette and Ewing G. Everette and Erastus are married. Everette married a white woman and has one child. I have been in the Indian Territory 21 years.

Eugene McCarty.

Deposition of Tom York.

Tom York of lawful age being duly sworn, testifies as follows: My age is 75 years, and reside in the Choctaw Nation. I was raised in Lee County Mississippi, in the old Choctaw settlement, in the old Choctaw Nation. I am a full blood Choctaw Indian. I speak English and Choctaw too. I know E. E. McCarty and knew him in Mississippi, I also know Anderson McCarty and knew him in Mississippi also knew thier father and mother and sister Annie. Their mother was named Annie and was a Smith before she married McCarty. She married Bryant McCarty and Bryant McCarty is the father of E. E. McCarty, Anderson McCarty and Annie McCarty. I knew Jack Smith who was a brother of Annie McCarty. I knew Bryant J. McCarty, he was a brother of E. E. McCarty, Anderson McCarty and Annie McCarty. Annie and Jack Smith talk Choctaw and I talk to them lots of times. I used work for him and he talk Choctaw language. Annie and Jack Smith were each one fourth Choctaw Indians. I know Martha Jones. She married a man by the name of Smith and she was the mother of Annie and Jack Smith. She was also a half breed Choctaw and talked the Choctaw language. She lived in the old Choctaw Nation in Mississippi, and was recognized by the Choctaws as being a member of the Choctaw Tribe. I knew Anderson Parker in Mississippi, he right young boy then, little boy, he same one testify in this case. I remember going squirrel hunting in Mississippi with Eugene McCarty, I tote him cross swamp, he get tired I kill so many squirrels he no like tote so many, wet in swamp you know. I been want see him long time but he live so far off, I at last see him. I was before Council as witness for McCarties. They are Choctaws. I think that my mother and McCarty's mother were some kin, when I little boy I used go with my mother there and stay one, two weeks. They all talk Choctaw together. Annie Smith was recognized by the Choctaws as being a Choctaw. I am acquainted with Solomon Wilson and knew him in Mississippi. He lived close to me in Mississippi. I live about 8 miles from McCarty in Mis-

Mississippi, Wilson lived on Fur River a little farther off. Solomon would move around and hunt and stay sometimes at McCarty's house. I knew Billy Baker in Mississippi. He was known as "Fat Billy" there. I am not an applicant in this case and have no interest in it. I am recognized as a citizen myself and have drawn my Leased District Money. I came straight from Mississippi here. There were a great many Indians stayed back in Mississippi that did not come out here at all. I remember when the Treaty was made and when the Indians came out here. I know that the applicants applying in this case are the same as those I knew in Mississippi. I used to work for Bryant McCarty in Mississippi.

his
Tom X York.
mark

Witness to mark, J. E. Gresham.

Anderson Parker being recalled on the part of the plaintiff testifies as follows: I was well acquainted with Tom York there in the McCarty neighborhood and he lived in the same settlement and not a great ways from me. I lived six miles from McCarty's in Mississippi, and Tom York lived four, five or six miles from me. This settlement was known as "The Forks" settlement, that is, the forks of the Tuscalametah and Pearl Rivers.

Anderson Parker.

Deposition of Willis Jackson, being duly sworn, testifies as follows: My age is 47 years. I am a full blood Choctaw Indian and an enrolled member of the Tribe. I came to the Indian Territory from Mississippi seven years ago. I lived in Newton County Missississippi which is a part of the old Choctaw Nation. I know a man by the name of J. J. Smith in Mississippi. He lived in Scott county about twenty five miles from where I lived. He was a Choctaw Indian, about a quarter blood. He was recognized as being a member of the Choctaw Tribe. He died a good many year ago. He could speak the Choctaw language fluently.

J. E. Gresham, Wit.

his
Willis X Jackson.
mark

Deposition of Solomon Wilson.

Solomon Wilson of lawful age, being duly sworn, testifies as follows: My age is 58 years. I am a full blood Choctaw and an enrolled member of the Choctaw Tribe of Indians. I live in the Choctaw Nation. My postoffice is Krebs. I came from Mississippi to this country seven years ago. I know E. E. McCarty. I first knew him in Scott, Mississippi. That was in the old Choctaw Nation in Missississippi. The applicant E. E. McCarty was a good big boy when he left. He and I used to play together in Scott County, Mississippi. About six years ago I next saw the applicant at John Simpson's, and I recognized him as being the same boy I used to play with in Missississippi. My father used to go hunting and camp near E. E. McCarty's father 's house and he would take me with him is the way I come to know E. E. McCarty, and I know he was a Choctaw. His mother was a recognized Choctaw and E. E. McCarty was also regarded while in Mississippi as a Choctaw and I know him to be one. I don't know the degree of blood. All I know is that he is a Choctaw.

his
Solomon X Wilson
mark

Deposition of E. E. McCarty.

E. E. McCarty being duly sworn upon his oath states:

I am fifty-seven years old, my postoffice is Coal Gate, I. T. . I have lived in the Choctaw Nation six years next February. I am the plaintiff in this case. I came from Scott County, Mississippi, which is a part of the old Choctaw Nation to Texas and lived there several years. I then came to the Indian Territory where I have since resided. Bryant McCarty was my father, he was a white man and he married Annie Smith, who was a sister of J. J. Smith, both of whom were quarter blood Choctaws, the other blood being that of the white race. I was born in Scott County Mississippi. Anderson McCarty is my brother, -he married a white woman a good many years ago by whom he had three children, named C.M., Dorothy L. and James McCarty; by his second wife he had one child W. S. McCarty I had another brother Bryant J. McCarty, who is now dead. Before he died he married Nancy Kelly a white woman in Mississippi. In the old Choctaw Nation, and they were the parents of Eugene McCarty who has four children. I don't know their names. I had a sister also, her name was Annie and she married a man by the name of Kelly, I also had another sister by the name of Charlotte who is dead. Bryant and Tom are my brothers and they, also, are dead. I had two other brothers Cavin and Orren. I do not know where they are. I am the youngest one of the boys. I remember my mother quite well. She could speak Choctaw fluently and I remember hearing her talk that language a good many times. I remember Tom York and Solomon Wilson. Tom York and Solomon Wilson's father used to come to my father's house and work. I used to play with Solomon Wilson in Mississippi when I was a boy. I was acquainted with Anderson Parker also in Mississippi, both were raised in the same neighborhood. He used to visit my father's house quite often. I knew Billy Parker in Mississippi. Tom York, Billy Baker and Solomon Wilson were all full blood Choctaw Indians. I was lawfully

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married to Eviline Greenwade in 1861, she is a white woman, and she is still alive and we are living together..

We have the following children living, Taresa who married a white man named Jeff Wilson, Julia F. who married a hite man named Frank Stuart, John who married a white woman named Mary Lee Pool, Theron B. who married a white woman named Annie Dawson, Lonice who is single, Jennie F. who is single, Carl C. who is single, Charlotte E. who is single. My oldest daughter is dead, her name was Annie, she married a white man named William Babers, and left living one child named Lula Babers. My next daughter is dead also, she married twice, first to a white man named Lewis by whom she had three children living, Pinkney, Flaud and Mittie. Mr. Lewis died and she afterwards married another white man named Kuhn but has no children by him? My daughter Theresa married a white man named Wilson by whom she has living three children named Beecher, Ada and Addie. My daughter married a white man named Frank Stuart and has living four children, named Pearl, Mary, Frank, andart Ellen, her husband is still living also. My son John E. married a white woman and has no children. Theron B. is also married to a white woman named Annie Dawson. Jennie S. Carl and Lottie are single At the firs metting of the Choctaw Council after I came to the Territory I applied for citizenship. I paid the citizenship to the Treasury the \$100.00 required by the Choctaw Law, receipt for which is on file at Tushka Homma. This was in October 1891. The citizenship Committee, after hearing the evidence of Solomon Wilson and other witnesses, reported favorably. A bill was drafted to admit myself and children to citizenship. The bill was properly signed by the chairman. I know this because I saw the bill myself. The bill was tabled and never acted upon. I was at every council ~~from~~ for '91 to '95. At the '95 session of council I introduced more testimony before the citizenship committee, who again reported favorably and drafted a bill signed by the chairman, which was placed before the Senate just as the Council adjourned, for that reason the Senate did not act upon it. And the matter

stands that way now. About this time the Dawes Commission was created. I applied to this commission for the reason I wanted the matter settled and my understanding was that after that Commission was created, through them was the only way by which I could be properly admitted to citizenship. Since my first application to the Choctaw Council I have been recognized as a citizen of the Choctaw Nation, with the exception of voting and drawing money. I have owned and improved lands without molestation on the part of the Choctaw Government. And have had permits issued to me for tenants on my place by order of the county court. Permits have also been issued to my sons and son-in-law Wilson. I have been permitted to hold and improve lands and have never been molested in my rights so to do in the Choctaw Nation.

E. E. McCarty.

E. C. McCarty, being duly sworn, states I am a white woman and am the lawful wife of E. E. McCarty, was married to him in 1861 and have lived with him ever since. I have heard the statements made in his deposition as to residence, names of our children their marriages and the names of our grandchildren, our sons-in-law and daughters-in-law, and his statements thereabouts are true and correct.

E. C. McCarty.

UNITED STATES OF AMERICA,

INDIAN TERRITORY

CENTRAL DISTRICT.

I, James E. Gresham, a Notary Public within and for the Central District of the Indian Territory do hereby certify that the depositions of the witnesses Anderson Parker, Anderson McCarty, Eugene McCarty, Tom York, Solomon Wilson, Willis Jackson, E. E. McCarty and Mrs. E. C. McCarty, weretaken by me at the time and place and in the action mentioned in the caption and before testifying each of said witnesses were by me dulysworn that the evidence they should give in this cause should be the truth, the whole truth and nothing but the truth, and that eah of their statements were reduced to writing by me in their presence and was read to them by me and subscribed by them in my presence and the plaintiff was present in person and by attorney J. G. Ralls, and no one was present representing the Choctaw Nation at the taking of these depositions.

Given under my hand and official seal this 14th day of July 1897.

James E. Gresham,

(NOTARIAL SEAL)

Notary Public.

FEES OF NOTRAY PUBLIC \$5.00

Milage, 60 miles at 10¢ \$6.00

Total \$11.00

Païd by Plaintiff.

James E. Gresham,

Notary Public.

IN THE UNITED STATES COURT FOR THE CENTRAL DISTRICT OF
THE INDIAN TERRITORY, AT SOUTH McALESTER.

James R. Kelly, et al. Plaintiffs,

vs.

Report of Master in Chancery.

The Choctaw Nation, Defendants

To Hon. WH. H. Clayton, Judge of above Court.

Having examined the evidence submitted in this case I
beg leave to report the following facts:

That the applicants herein, James R. Kelly, Eugene McCarty
Laura J? Hancock, nee McCarty, Alphonso McCarty and Oscar B.
McCarty are nephews of E. E. McCarty and Anderson McCarty, who are
one eighth Choctaw Indians .

That Annie McCarty, who was a sister of the said Ander-
son and E. E. McCarty, was lawfully married to a white man by the
name of Abner Kelly, who is not an applicant in this case, and
by whom she had five children; James R., the applicant, and who
is a resident of the I.T. and Eliza A. Erastus, Everette and E. G.
Kelly who are non residents of the Indian Territory.

That Eugene McCarty was lawfully married to a white
woman named Nancy Hancock, who is now dead, and by whom he has
one child, Marcellus; that he was lawfully married a second time
to a white woman named Ingram, who is now living is not an appli-
cant in this case, and by whom he has three children, Rosa Belle,
Nannie Lou and Elbert McCarty.

That Laura J. McCarty was lawfully married to John J.
Hancock a white man, who is not an applicant in this case. That
they have six children, John, Viola, Rettie, Joseph, Beadie and
Walter.

That Alphonso F. McCarty was lawfully married to a white
woman, who is not an applicant in this case, and they have on
child named Joseph.

That all the applicants, except Eliza A. Erastus,

Everette and E. O. Kelly are bona fide residents of the Indian Territory, and have been ever since before the filing of their application with the Five Civilized Tribes.

That Eugene McCarty was born in the State of Mississippi, as was also James R. Kelly, Laura J. Hancock, A. F. McCarty and O. B. McCarty, and are all descendants of Annie McCarty, nee Smith, who was a resident of the State of Mississippi and a one fourth blood Choctaw Indian and the other blood was white.

That the Choctaw Nation has taken no evidence in this case.

All of which I herewith respectfully submit.

T. N. FOSTER,

Fee to Master, \$5. paid by plffs.

Special Master.

T. N. FOSTER,

Special Master.

James R. Kelly et al

No 78 -
James R. Kelley et al

vs
C. W.

Special Master.

T. N. FOSTER,

See to Master, No. paid by bill.

Special Master.

T. N. FOSTER,

All of which I herewith respectfully submit.
case.

That the Choctaw Nation has taken no evidence in this blood Choctaw Indian and the other blood was white.

who was a resident of the State of Mississippi and a one fourth O. B. McCarthy, and are all descendants of Annie McCarthy, nee Smith, as was also James R. Kelly, Isaac J. Hancock, A. E. McCarthy and

That Eugene McCarthy was born in the State of Mississippi, subjection with the Five Civilized Tribes.

Territory, and have been ever since before the filing of their Everett and E. O. Kelly are bona fide residents of the Indian

James R. Kelley, et al.,

vs. No. 78, Judgment, Central District, January 19, 1898.

Choctaw Nation.

On this day the motion herein filed by plaintiffs to reform judgment rendered in this cause on August 26th, 1897, came on to be heard and the court finds that in said judgment ~~azszkzzzzz~~ clerical error appears, in which the names, Retta Hancock and Betta Hancock are used instead of the names, Lettie Hancock and Beaddie Hancock, the correct names as shown by proof, and that the names Ruth Kelley and Grace Kelley were also omitted from said judgment in which their names should have appeared, their claims having been properly adjudicated, and not mentioned in said judgment, and the names of Minerva Kelly and Fanny Kelly were also entered ~~xxxx~~ by clerical error, and the court being sufficiently informed, doth sustain said motion, and it is therefore ordered that said judgment so rendered be reformed so as to be ~~xxxx~~ as follows:

James R. Kelley, et al,

vs. Judgment.

Choctaw Nation.

On this day this cause came on to be heard and the same was submitted to the court upon the pleadings and proof, and the court being well and sufficiently advised in the premises, finds the issues in favor of the appellants, James R. Kelley, Annie Kelley, James R. Keley, Jr, Teressa Kelley, Buel Kelley, Eugene McCarty, Marcellus McCarty, Rosa Bele McCarty, Nannie Lou McCarty, Elbert McCarty, Laura J. Hancock, John Hancock, Viola Hancock, Lettie Hancock, Joseph Hancock, Beadie Hancock, Walter Hancock, Joseph McCarty, Alfonso McCarty, Oscar McCarty, Ruth Kelley, and Grace Kelley, and against appellants, Eliza A. Greer, Erastus Kelley, Everett Kelley, E. C. Kelley, all being non-residents of the Choctaw Nation.

It is therefore considered, adjudged and decreed by the court that the said James R. Kelley, Annie Kelley, James R. Kelley, Jr.,

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Teressa Kelley, Buel Kelley, Ruth Kelley, and Grace Kelley, Eugene McCarty, Marcellus McCarty, Rosa Belle McCarty, Nannie Lou McCarty,

Elbert McCarty, Laura J. Hancock, John Hancock, Viola Hancock, Lettie Hancock, ~~xxxxxx~~ cock, Joseph Hancock, Beadie Hancock, Walter Hancock, Walter Hancock, Joseph McCarty, Alfonso McCarty, Oscar McCarty, are Choctaw Ind

ians by blood and entitled to be enrolled as members of said tribe, and that they recover of the said Choctaw Nation their costs laid out and expended, and that the Choctaw Nation recover its costs against appellants, Eliza A. Greer, Erastus Kelley, Everett Kelley, and C. E. Kelley, and ordered further that this order be entered now as of August 26th, 1897, and that the clerk of this court furnish certified copy of same to the Commission to the Five Civilized Tribes.