

No. 33

W. F. Cobb & al  
vs.

Choctaw Chickasaw Nations

FERGUSON & RICHARDSON,  
ATTORNEYS AT LAW,  
DURANT, IND. TER.

December 6, 1904.

Mansfield, McMurray and Cornish,  
South McAlester, Indian Territory.

Gentlemen:-

I am sending you by today's express the manuscript of the reply brief which I have prepared for you for use before the Interior Department in the Gee case. Also I am returning you therewith the papers and records bearing upon the case.

As you will see, the brief as I have written it is quite lengthy. After debating the matter some time, I decided to try to cover every material point which the applicants in their brief sought to make; and to leave you to apply the scissors wherever you think it proper to do so. Also the manuscript contains some passages the temperature of which you may wish to reduce somewhat before sending it forth.

I should have had the brief in your hands sooner, but we have had some business in the court here which has necessarily required some of my time. I have put in every available minute upon the brief that I have had since I received the papers in the case. If convenient, I should like to have one or two copies of this brief when it is typewritten.

Trusting that you may find the brief satisfactory, and that you will win the case, I am,

Your friend,

*D. A. Richardson*

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BEFORE THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT

W.F.Cobb, et al.,

vs. --#33

Choctaw and Chickasaw Nations.

MOTION TO OPEN THE CASE.

Come the applicants herein and moves the Court to open

this case and permit them to file certain documentary evidence;

FIRST- Certified copies from the files of the Office of the Honorable

Commissioner of the Indian Affairs of the Journals of Lieutenants

Phillips and Simonton, who accompanied the Choctaw Indians in the

emigration of 1831 to 1835 and of certain letters written by the

Agent having charge of the emigration of the Choctaw Indians in said

years; and of which Journals, records and letters the applicants

herein say that had no knowledge until since this case was closed

and that they have procured certified copies of the same with all

possible dispatch.

SECOND- A certified copy of the deposition of J. H. Brasher taken

before the Commission to the Five Civilized Tribes at Muskogee,

Indian Territory, July 11, 1904, and filed in the Department of

the Interior as a part of the record in the case of ~~of~~ S.E. Gee, et al

pending before the Secretary of the Interior, and at which time and

place in the taking of said deposition the Choctaw and Chickasaw

Nations were represented by their attorney, Mr. Cornish, who was

present and the applicants say that this copy was made for them on

the 18th day of October, 1904; and that at the time this case was

closed they intended to file it; and that the case was closed with

the understanding and belief on their part that the deposition of

this witness had been filed; that they were misled and a mistake

made in not filing it because this testimony and that which was in

fact filed on the 24th day of October, were transmitted by mail in

separate packages both addressed to McRae & Tompkins, Tishomingo,

Indian Territory; that the said McRae & Tompkins authorized the postmaster at said office to deliver any mail that might be received by him for them to E. F. Nichols, one of the attorneys in this case, or his order; that Mr. Nichols gave an order for such mail to some attorney who was to be in attendance on this Court for the reason that he could not attend, and that when said order was presented only one package was delivered, and that only contained the testimony which was filed, and the said attorney having no information that there was or would be another package containing other testimony and believing that the package which he had received contained all that he was expected to present, filed it, and the case was closed without the deposition of the said J. H. Brasher being presented. The said applicants say that they did not know that this evidence had not been filed until yesterday when their attorneys, McRae & Tompkins, called at the post office at Tishomingo and received the package containing it.

WHEREFORE, the applicants ask the Court to reopen the case for the purpose of allowing them to file said copies of said journals records, letters and also the deposition of the said witness.

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Attorneys for Applicants.

Geo. S. Cobb, one of the applicants herein, states on oath that he believes the statement of the foregoing application to be true and correct.

Sworn to and subscribed before me this 22d day of November, 1904.

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Notary Public.

My commission expires.....