

Witnesses

In Claimants.

A. H. Law	_____	Woodford, D.T.
W. H. Bunker	_____	Colchester, Vt.
P. Nichols	_____	Oakland, Vt.
Thos. E. Chase	_____	Keegan, Vt. Admone.
W. B. Bunnay	_____	Admone, Vt.
Joseph H. Brown	_____	Mud Creek, D.T. (Ryan)
W. H. Baker	-----	" " " "
		(Ryan Jr.)

285
286

In Nations.

Ovinton Lovv ----- Marotta

J- No 96.

Brown, Joseph H., et al,

vs

Chickasaw Nation.

No 14.

Deakins Dist. Court.

No

Davis Commission.

Matter in relation of Law, especially
as to Joseph H. Brown and minor
applicants, vs Chickasaw Nation,
Chickasaw Nation, vs Joseph H. Brown, et
al, vs R. Brown.

Copy of fact as to Annie G.
Brown and her children. Was
Amelia Bourne, a Chickasaw
citizen.

Pass

W. C. B.

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 486.

THE CHICKASAW NATION, APPELLANT,

vs.

JOSEPH H. BROWN ET AL.

Appeal from the District Court in the Chickasaw
Nation.

BRIEF FOR APPELLANT.

HALBERT E. PAINE,

Att'y for Chickasaw Nation.

WASHINGTON, D. C. :
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1899.

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 486.

THE CHICKASAW NATION, APPELLANT,

v.

JOSEPH H. BROWN ET AL.

Appeal from the District Court in the Chickasaw Nation.

BRIEF FOR APPELLANT.

STATEMENT.

I.

On the 7th of September, 1896, the appellees presented their petition for enrollment to the Dawes Commission, containing in substance the following averments :

That Amanda Bourland, a white girl, was an adopted citizen of the Chickasaw nation and was married to Joseph H. Brown, a white man; that Annie G. Baker is the daughter of said Joseph H. and Amanda Brown; that Edwin, May J., Franklin and William G. Baker are grandchildren of said Joseph and Amanda Brown; and

that James R., Jesse J., Lawrence J., and Winnie D. Brown and Joseph H. Brown, Jr., are the "children of the said Joseph H. Brown by his second and third wives."

II.

The answer of the Chickasaw nation was filed October 7, 1896. It is printed on pages 5, 6, 7, 8, 9 of the record.

III.

On the 23d of November, 1896, the Dawes Commission rendered judgment herein refusing to enroll any of the applicants. (Rec., p. 10.)

IV.

The master, in his report filed June 23, 1897, made the following recommendation: (Rec., p. 13.)

I recommend that Joseph H. Brown, Anna G. Brown, now Mrs. Anna Baker, Edwin Baker, Mary Joe Baker, and Wm. G. Baker and Franklin Baker be admitted to enrollment, and that the other applicants, to wit, the wife and other children of Joseph H. Brown, be rejected.

W. H. L. CAMPBELL.
Master in Chancery.

V.

The judgment of the district court was rendered on April 25, 1898, as follows:

JOSEPH H. BROWN ET AL.)
vs. No. 14. Judgment.
THE CHICKASAW NATION.)

On this the 25th day of April, 1898, came the plaintiffs and the defendant, by their respective attorneys, and at the same time came on to be heard the defendant's exceptions to the report of the master in chancery heretofore filed herein, and the court, after hearing said report and the exceptions thereto and the defendant's plea to the jurisdiction of the court and the evidence and argument of counsel, and being fully advised in the premises, is of the opinion that said exceptions to said report should

SUMMONS.

United States of America,

Indian Territory,

SS

Choctaw and Chickasaw Citizenship Court.

The President of the United States of America,

to the United States Marshal for the Indian Territory, Southern District,

GREETING:

You are hereby Commanded to Summons P. S. Moseley, Governor of the Chickasaw Nation, to answer on behalf of said nation, 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 nation in the Choctaw and Chickasaw Citizenship Court, in the Indian Territory, at Leshomingo, by Joseph H. Brown et al

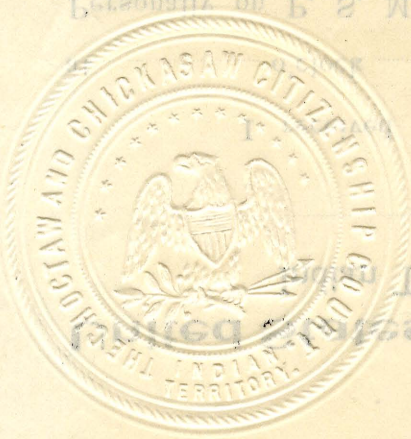
and warn him that upon his failure as said Governor to answer on behalf of said nation, the complaint will be taken for confessed, and you will make return of the summons instanter;

And you are further commanded to notify said P. S. Moseley Governor aforesaid, that the papers, files and proceedings in the case of Joseph H. Brown et al File No. 14 in the District Court for the Southern District of the Indian Territory, has been transferred to the Choctaw and Chickasaw Citizenship Court, and that the certificate of the clerk of said court for said Southern 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, Indian Territory, aforesaid, this 23 day of March A. D., 1903.

James B. Cassady Clerk.

By _____ Deputy.



MARSHAL'S RETURN

be, and the same are, in all things hereby overruled and denied, and it appearing to the court from the report of the master in chancery and from the evidence herein that all the plaintiffs herein are members of the Chickasaw tribe of Indians, and that this is an appeal taken to this court from the decision of the commission of the United States to the five civilized tribes of Indians, who denied the application of plaintiffs to be enrolled as members of said tribe of Indians, it is therefore considered, adjudged, and decreed by the court that the decision of said commission be, and the same is hereby, reversed; that the report of the master in chancery be, and the same is hereby, confirmed, and that the plaintiffs, Joseph H. Brown and James R. Brown, Jessie J. Brown, Lawrence J. Brown, Winnie D. Brown, and Joseph H. Brown, Jr., minors, by Joseph H. Brown, as next friend, and Mrs. Annie G. Baker and Edwin Baker, Mary Joe Baker, Franklin Baker, and Wm. G. Baker, minors, by Mrs. Annie G. Baker, as next friend, be, and the same and each of them are hereby, decreed to be members of the tribe of Chickasaw Indians, and as such are entitled to have their names enrolled as members of said tribe; the said Joseph H. Brown as a member thereof by intermarriage and the other applicants as descendants of said Joseph H. Brown.

It is further adjudged and decreed by the court that the said plaintiffs do have and recover from the defendant, the Chickasaw Nation, all costs in this behalf expended and incurred, for which execution may issue, and that this judgment by the clerk of this court be certified to said commission aforesaid for its observance; to which judgment of the court the defendant, the Chickasaw Nation, in open court, at the time of the rendition thereof, duly excepted (vol. A, Citizenship Record, pages 337 and 338).

VI.

The assignments of error are printed on pages 21, 22, and 23 of the record.

VII.

The evidence introduced on behalf of the appellees is printed on pages 27 to 39 and the appellant's evidence on pages 39 to 46 of the record.

ARGUMENT.

I.

The judgments rendered in this case by the Dawes Commission and the district court are both void, for want of jurisdiction. The grounds on which this contention is based are stated on pages 59 to 65 of my "General Brief."

II.

The statutory enactment of June 28, 1898, authorizing these appeals is constitutional and valid. Its constitutionality is denied on two grounds:

1. It is contended that the enactment is an invasion of the judicial department of the government by the legislature.

2. It is contended that it disturbs vested rights.

1. I submit that the provision is not an invasion of the judiciary by the legislature.

(1) The act which the legislature performs when it authorizes appeals is not a legislative act like the act performed when a new trial is granted; it is a legislative act. It is only a judicial act when and so far as it vacates the judgment. The statute under consideration vacates no judgments.

(2) If the granting of these appeals were a judicial act it would not be an invasion of the federal judiciary by the federal legislature; for the Dawes Commission and the district court are not component parts of the constitutional judiciary of the United States; but are mere legislative courts like the tribunals so characterized by Chief Justice Marshall in *Ins. Co. v. Canter*, 1 Pet. 513, 546.

The grounds on which my answer to this contention of the appellees is based are stated at length on pages 8 to 20 of my brief in opposition to the motion to dismiss the appeal in No. 496.

2. The act authorizing these appeals does not disturb vested rights.

The law conferred upon the district judge no power to vest any property rights in anybody. It purported to authorize him to decide who were citizens; but it did not

purport to authorize him to decide what rights the citizen possessed, and, thereby, vest in him those rights. There are three classes of Chickasaw citizens—citizens by blood, citizens by marriage, and citizens by adoption. The law purported to empower the judge to find, as he did erroneously find, that the appellees in this case were citizens by marriage. But it did not authorize him to decide that the rights of citizens by marriage were the same as those of citizens by blood, and, by such decision, vest in citizens by marriage all the property rights of citizens by blood. Having found that the appellees were "*citizens by marriage*," he proceeded to decree that they were "*citizens*," and thereupon accorded to them "all the rights and privileges appertaining to such relation," meaning all the rights and privileges of citizens by blood. His decision that these persons had this or that property right was a nullity. It vested no property right in either of the appellees. Their status, so far as vested property rights are concerned, is fixed, not by the decision of the district judge,—nor by his construction of the treaties and laws,—but by the treaties and laws themselves. That the treaties and laws vest in neither of them any property rights whatever I have endeavored to show, on pages 37 to 45 of my "General Brief."

III.

Upon the grounds above stated, and upon those set forth on pages 45 to 59 of my "General Brief;" and in the answer of the Chickasaw Nation, printed on pages 5 to 9 of the record; and in the evidence printed on pages 39 to 46 of the record, I respectfully submit that the judgment of the district court ought to be reversed.

HALBERT E. PAINE,
Atty. for Chickasaw Nation.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 486.

THE CHICKASAW NATION, APPELLANT,

vs.

JOSEPH H. BROWN ET AL.

APPEAL FROM THE UNITED STATES COURT IN THE INDIAN
TERRITORY.

FILED OCTOBER 28, 1898.

(17,071.)

(17,071.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 486.

THE CHICKASAW NATION, APPELLANT,

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JOSEPH H. BROWN ET AL.

APPEAL FROM THE UNITED STATES COURT IN THE INDIAN
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1-3 Be it remembered that at the stated term of the United States court in the Indian Territory, southern district, at Ardmore, begun and holden at Ardmore on the 5th day of October, 1896, and on the 40th day of said term, to wit, the 8th day of December, 1896—present and presiding, the Hon. Constantine B. Kilgore, judge—the following, among other, proceedings were had, to wit:

In re cases of citizenship appeal.

It is ordered by the court that the following rules be, and the same are hereby, adopted as rules of practice and procedure in appeals to this court from the decision of the tribal authorities or the United States commission to the five civilized tribes, appointed to treat with said tribes, which are provided for by act of Congress upon questions arising upon applications made by persons to be enrolled as citizens of the respective tribes of Indians.

The party desiring to appeal from the decision of any such tribunal or commission may, within sixty days after notice of the rendition of the decision thereon, file with the clerk of this court an application or petition, duly verified, setting out the style of such case; that the same has been decided adversely to the party filing the application for appeal, and praying that the said commission or tribunal be notified of said appeal and ordered to forward the papers to the clerk of this court, together with a duly certified transcript of all judgments and entries made and rendered by said tribunal or commission in said cause; whereupon the clerk shall issue a notice to said tribunal or commission notifying that an appeal has been taken, and to immediately forward all papers in said cause, together with a duly certified copy of all judgments and entries made and entered by said tribunal, to the clerk of this court.

The application for citizenship, amendments thereto and answer thereto, and amendments thereto, shall constitute the pleadings of all of the parties in this court, and no pleadings shall be held invalid for want of form. In accordance with the practice before the commission, any party aggrieved may present and prosecute an appeal herein for the use and benefit of the entire family, including the wife, lineal descendants, and collateral kindred, to the United States court for the southern district of the Indian Territory. Where one or more of the applicants for citizenship reside in the southern district of the Indian Territory, the appeal shall be taken to the United States court for the southern district, and if all the applicants are non-residents of the Indian Territory, then said appeal shall be taken to the United States court held in the division in this Territory wherein the nation of the tribe to which said applicants claim to belong is situated. The clerk of the court shall file said papers and docket the case in a separate book to be kept for that purpose, and known as the "Citizenship docket," and the clerk shall also keep a separate record book, in which shall be recorded the proceedings of this court in reference to citizenship cases, to be known as the "Citizenship rec-

ord." The party desiring to appeal from any decision rendered by an Indian tribunal or the commission shall, at the time he files his notice of appeal with the clerk of the United States court, also lodge with said clerk evidence of the fact that notice of some kind has been served upon the opposite party, or his attorney in the case, that said application would be made. The notice need not be formal, but shall be required to be only so drawn as to inform the opposite party of the intention to appeal from said decision. After the expiration of the ten days after such service, waiver of appearance or the filing of such papers with the clerk, where notice of appeal is given before the commission, the case shall stand ready for trial, and the court shall be deemed open at all times for the purpose of hearing and determining such cases, and either party to said action may introduce such other evidence as they may have in support of their cause of action or defense, regardless of whether the same was presented to the commission or not.

The court may, in its discretion or when agreed to by the parties, refer all papers in these cases to a special master, with instructions to take the testimony and report upon the law and facts presented in the record, pleadings, and service. Such reports shall be made at the earliest time practicable, not exceeding thirty days from the time each cause is referred to said master, and either party shall have ten days after the report of said master is filed to file exceptions thereto, both as to questions of law and fact, and after five days from the filing of the exceptions to said report the cause shall stand ready for trial before this court on the exceptions presented to the master's report and may be taken up and finally passed upon by the court.

The special master shall be allowed as compensation \$5 for each cause heard, provided not more than one day's time is devoted to said cause, and in case more than one day's time is consumed he shall have \$10 and no more as his compensation for hearing the same.

Should the United States commission or the tribunal created by the tribal authorities refuse to permit any party to a proceeding to establish citizenship and desiring to appeal from the decision of such tribunal or commission to withdraw the original papers for the purpose of filing the same in this court, such party may, upon petition to this court setting forth the fact of such refusal, obtain an order of the court commanding such commission or tribunal or the clerk or the secretary thereof to surrender such papers and a transcript of the entries made therein, as heretofore provided.

Appeals in citizenship cases must be taken only at Ardmore, and for the purpose of hearing and determining such cases the court at that place shall be deemed open at all times.

Any case when submitted as required by these rules may, in the discretion of the court, be transferred by the court on the application of either party to either Ryan, Chickasha, Purcell, or Paul's Valley for hearing and determining, when the court is in session at such places, but the decision of the court, when rendered,

and all papers in the case shall be filed with the clerk at Ardmore (Court Journal 9, page- 283-'4-'5).

7 And thereafterwards, on the 4th day of February, 1897, was filed with the clerk of this court the original application in said cause; which said application is as follows, to wit:

INDIAN TERRITORY, }
Southern Judicial District. }

To the honorable commission of the United States to the five civilized tribes of Indians:

The undersigned petitioners, Joseph H. Brown and his five minor children, to wit, James R. Brown, Jesse J. Brown, Lawrence J. Brown, Winnie D. Brown, and Joseph H. Brown, Jr., by their next friend and father, and the daughter of the said Joseph H. Brown, viz., Mrs. Annie G. Baker, and the four minor children of said Annie G. Baker, viz., Edwin Baker, Mary Joe Baker, Franklin Baker, and William G. Baker, by their mother and next friend, represent and show to this honorable commission that they and each of them are members of the tribe of Chickasaw Indians, and that they and each of them are of right entitled to have their names enrolled on the roll of citizenship to be prepared by this honorable commission; for these petitioners say:

First. That on the 17th day of October, 1856, Amanda Bourland, the daughter of William H. Bourland, was, by act of the legislature of the Chickasaw nation, adopted as a member of the tribe of Chickasaw Indians, and by reason thereof became and was, *as* the law and constitution and treaties then existing, a member of the tribe of Chickasaw Indians, as much so as a native-born Chickasaw.

Second. That petitioner Joseph H. Brown, on the 29th day of July, 1869, was duly and legally married to said Amanda Bourland, and lived with her as his wife up to the time of her death, in the month of March, 1874, and that by reason and by virtue of this
8 marriage to said Amanda Bourland, under the laws and constitution as it then existed, he became and ever since has been a member of the tribe of Chickasaw Indians, as much so as a born citizen, with all the rights, privileges, and immunities of a native-born Chickasaw, except the right to hold the office of governor of said nation.

Third. That petitioner Annie G. Baker is the legitimate daughter of said Joseph H. and Amanda Brown, and is therefore a member of the tribe of Chickasaw Indians; that petitioners Edwin Baker, May Joe Baker, Franklin Baker, and William G. Baker are the legitimate minor children of Annie G. Baker and the legitimate grandchildren of said Joseph H. Brown and his deceased wife, Amanda Brown.

Fourth. That James R. Brown, Jesse J. Brown, Lawrence J. Brown, Winnie D. Brown, and Joseph H. Brown, Jr., minors, are the legitimate children of the said Joseph H. Brown by his second and third wives, to whom said Brown was legally married.

Fifth. That the act of the legislature of the Chickasaw nation passed October 17, 1856, adopting said Amanda Bourland, has been ratified and confirmed by a vote of the Chickasaw Indians, and ever since the marriage of Joseph H. Brown to Amanda Bourland, July 29th, 1869, he has resided in the Chickasaw nation, Indian Territory, and has been recognized and treated as a member of the Chickasaw tribe of Indians.

In support of and as the evidence of the foregoing statement petitioners hereto attach the affidavits of A. H. Law, William H. Bourland, P. Archard, Grove Chase, W. B. Burney, all members of the tribe of Chickasaw Indians, and the affidavits of Joseph H. Brown and W. H. Baker, together with certain documentary evidence, and by indorsement hereon show that the principal chief or governor of the Chickasaw nation has been duly served with a true copy of this application and the evidence hereto attached.

Wherefore, the premises considered, these petitioners pray that their names be duly enrolled upon the roll of citizenship to be prepared by this honorable commission as members of the tribe of Chickasaw Indians, and will ever pray.

JAMES R. BROWN,
 JESSE J. BROWN,
 LAWRENCE J. BROWN,
 WINNIE D. BROWN,
 J. H. BROWN, Sr., *Minors*,
 By J. H. BROWN,
Father & Next Friend.

EDWIN BAKER,
 MARY JOE BAKER,
 FRANKLIN BAKER,
 WM. G. BAKER, *Minors*,
 By ANNIE G. BAKER,
Mother & Next Friend.

INDIAN TERRITORY, }
 Southern Judicial District. }

Before me, the undersigned notary public within and for the southern district of the Indian Territory, on this day personally appeared Joseph H. Brown for himself and as father and next friend of James R. Brown, Jesse J. Brown, Lawrence J. Brown, Winnie D. Brown, and Joseph H. Brown, Jr., minors; also personally appeared Annie G. Baker for herself and as mother and next friend of Edwin Baker, Mary Joe Baker, Franklin Baker, and Wm. G. Baker, minors; and the said Joseph H. Brown and Annie G. Baker each, having been by me duly sworn, deposes and says that the statements in the foregoing petition or application for citizenship are true.

J. H. BROWN.
 ANNIE G. BAKER.

Subscribed and sworn to before me this 14th day of August, 1896.

[SEAL.]

T. E. ROWLAND,
Notary Public, Southern District, Indian Territory.

Indorsed: "No. 14. J. H. Brown *et al.* vs. Chickasaw Nation. Filed September 7th, 1896. H. M. Jacoway, cl'k. Filed February 4th, 1897. Joseph W. Phillips, clerk."

10 Before the Honorable Commission to the Five Civilized Tribes.

In the Matter of the Application for Enrollment in the Chickasaw Nation of Jos. H. BROWN *et al.*

Exception- to Application Filed before Dawes Commission.

Now comes the Chickasaw Nation, by its attorneys, and respectfully shows to this honorable commission that the application herein is insufficient in law.

Wherefore it prays that said application be dismissed.

Second. For further special exception the Chickasaw Nation respectfully shows to this commission that the evidence produced by the applicant is insufficient to show any claim of citizenship in the Chickasaw tribe of Indians.

Wherefore it prays that said application be dismissed.

Third. For further special exceptions the Chickasaw Nation shows that said application is insufficient, in that it shows that said applicant has not complied with the laws of said nation, and therefore is not entitled to any of the rights, privileges, and immunities as such citizen.

Wherefore it prays that said application be dismissed.

THE CHICKASAW NATION,

By Its Attorneys.

11 And thereafterwards, on the same day, to wit, February 4th, 1897, was filed with the clerk of said court the original answer in said cause; which said answer is as follows, to wit:

Before the Honorable Commission to the Five Civilized Tribes.

In the Matter of the Application for Enrollment in the Chickasaw Nation of JOSEPH H. BROWN, JAMES R. BROWN, JESSE J. BROWN, LAWRENCE J. BROWN, WINNIE D. BROWN, JOSEPH H. BROWN, JR., MRS. ANNIE G. BAKER, EDWIN BAKER, MARY JOE BAKER, FRANKLIN BAKER, and WILLIAM G. BAKER.

Comes now the Chickasaw Nation, by its attorneys, and without waiving any exception heretofore taken to the application filed herein, and without consenting to, but denying, the jurisdiction of this honorable commission to pass upon a question of citizenship in the Chickasaw tribe of Indians, presents this its answer to said application, and respectfully represents:

The said Chickasaw Nation denies that any or either of the applicants herein are members of the Chickasaw tribe of Indians, or that they have any right to be enrolled as members thereof. It denies that on the 17th day of October, 1856, the legislature of

the Chickasaw nation adopted the heirs of William H. Bourland, viz., Amanda, Nancy, Matilda, Gordentia, and Run Hannah, but it alleges the fact to be that on the said 17th day of October, 1856, the said William H. Bourland, who had then become a citizen of the Chickasaw nation by intermarriage in the Chickasaw tribe of Indians, applied to the said legislature asking that an act be passed conferring upon him the right to keep the said Nancy, Amanda, Matilda, Gordentia, and Run Hannah with him as members of his family, the same being children of his by a United States citizen as the issue of a former marriage; that in accordance with the said request the act referred to in the application was passed by the legislature on the date named for that purpose only. A copy of his petition asking for the passage of this act and the purposes therein named is hereto attached and marked "Exhibit A."

Now, the Chickasaw Nation alleges the fact to be that this was the first session of the legislature for the Chickasaw nation in the Indian Territory; that Judge Overton Love was the first speaker of the house; that an affidavit of the said Love is hereto attached, marked "Exhibit B," setting forth all the facts connected with the pretended adoption of said children and the objects and purposes of the same. It alleges the fact to be that its members at that time were unacquainted with the forms of legislation and the expressions necessary to be used in the English language to convey the objects or meaning of the acts of their legislature; that at the following session of said legislature, to wit, on November 25, 1857, an act of the legislature was passed repealing all laws and acts of the legislature that had been enacted by the legislature at its session in 1856, a copy of which said act is hereto attached, marked "Exhibit C," and that the act adopting the heirs mentioned in the application in 1856 was among the laws so repealed.

That at the time of the adoption aforesaid the Chickasaw nation had a constitution which provided how and in what manner and what effect should be given by the adoption of all persons belonging to a different race of people than the Chickasaw Indians; which said section of the constitution is as follows:

"SEC. 11. The legislature shall have the power by law, to admit or adopt any person to citizenship in this nation, except a negro, or descendant of a negro: Provided, however, that such an admission, or adoption, shall not give a right, further than to settle and remain in the nation, and to be subject to its laws."

13 That by the said section of the constitution the legislature of the Chickasaw nation was limited in its powers to be conferred by it upon adopted citizens, and any act which sought to confer greater powers than therein provided for was unconstitutional and would confer no right upon such persons so adopted further than permitted by said constitution.

That afterward, to wit, upon the adoption of the treaty of 1866, it became necessary for the Chickasaw nation to adopt a new constitution and enact new laws not in conflict with said treaty. Thereupon an act of the legislature was passed authorizing the governor

of the Chickasaw nation to appoint a committee of five men suitable for the purpose of amending said constitution and laws, and one man from each county and one floater from the said nation, said floater to be the chairman for the said convention, whose duties it should be to change or amend said constitution to conform to the treaty stipulations of 1855 and 1866 between the said Chickasaw nation and the United States; that the said committee or members of the said convention should have the right to reject all existing laws, and to make such amendments as they saw proper; it further provided that the said constitution and amended laws should thereafter be submitted to the people of the Chickasaw nation for their approval or rejection by general ballot, to be specified by a proclamation of the governor to the people; that the said constitution and laws should be printed and submitted to the people, and authorized the governor to announce the result of said election by his proclamation. A copy of said act is hereto attached and marked "Exhibit D." That in accordance with the said act of the legislature, said committee was duly appointed, and the laws revised and amended in compliance with the act; that before the adoption of said amended laws, as so required by said act, said convention or committee caused such amended laws and all laws which were to remain in force to be printed and circulated among the people, so that they might
14 be advised of their contents when the vote was to be taken, upon the issuance of the proclamation by the governor; that by mistake, among said laws, the committee reported the law adopting the heirs of said William H. Bourland, and the same was published for submission to the people; that afterward the governor of the Chickasaw nation issued his proclamation calling the election for the adoption or rejection of the new constitution and laws, as aforesaid, which said election was to occur on the 29th day of June, 1868.

That afterward, to wit, on the 21st day of July, 1868, the governor of the Chickasaw nation issued his proclamation declaring the result of said election held on the 29th day of June, 1868; a copy of which said proclamation is hereto attached and marked "Exhibit F;" that said vote as shown rejected the adoption of said heirs of said William H. Bourland by a majority of 50 votes.

That afterwards it was ascertained that a mistake had been made in the calculation of the figures giving the returns of said election, and the said governor issued another proclamation at once giving the exact figures from each county to all the propositions voted upon; a copy of which said proclamation is hereto attached and marked "Exhibit G," and which shows that the law adopting said heirs of the said William H. Bourland received the following votes: Total No. of votes cast in favor of William Bourland's family, 47; number of votes against adopting, 91; majority of votes cast against adopting the heirs of William Bourland, 44. A copy of a letter from the governor to the national secretary on this question is hereto attached and marked "Exhibit H."

That by reason of the fact that the convention had published the laws agreed upon by them, the same were not republished, because

all the laws provided by them were adopted by said election, except that law adopting the heirs of William Bourland, the applicants herein. Therefore said law remained in the book published as a general law of the Chickasaw nation, but had been repealed, 15 as aforesaid, and not adopted by the vote of the people as required by law.

That afterward, to wit, at the meeting of the legislature in October, 1883, it having been discovered that the codified laws which had been published in 1876 still contained the act adopting the heirs of William H. Bourland, the applicant herein, the said legislature, at its session in 1883, passed an act annulling the said act adopting the heirs of William H. Bourland, so that the same would not again become a part of the published laws of the Chickasaw nation; which said act annulling said act adopting the heirs of William H. Bourland is still in full force and effect, a copy of which is hereto attached and marked "Exhibit I."

The Chickasaw Nation alleges the fact to be the claim- set up by the applicant Joseph H. Brown, that he has been recognized as a citizen of the Chickasaw nation by the acts alleged by him, were all caused by the mistake in the publication of the laws of the Chickasaw nation, which mislead the officers of the Chickasaw nation and caused them to believe that the law adopting the heirs of said William H. Bourland was still in full force and effect, when as a matter of fact, which was well known to the applicant, said law had been repealed on numerous occasions, and at the time of its adoption only gave the heirs of the said William H. Bourland the right to remain and no other right in the Chickasaw nation.

That on numerous occasions since 1866 the Chickasaw Nation has appointed a board known as a committee on citizenship in order to complete the rolls of its citizens and in order that the question of the heirs of William H. Bourland (under which right the applicant now claims) might be fully passed upon; that the said applicant has on more than one occasion been legally notified to appear before said committee and have his rights passed upon, but has failed and refused at all times to do so.

Now, the Chickasaw Nation alleges that if for any reason it should be held that the act of its legislature for the year 1856 16 adopted the heirs of the said William H. Bourland, it says that it was only for the purposes as alleged in section II of the constitution, viz., to settle and remain in the nation and to be subject to its laws, and with no other and additional rights, but it denies that said adoption was had, and avers the fact to be that long prior to said Brown acquiring any pretended rights to citizenship the said act of the year 1856 had, to wit, in the year 1857, been repealed and annulled, and that by the vote of the people on the adoption of said heirs in 1868 they were rejected.

That at the date of the marriage of the said Joseph H. Brown to the said Amanda Bourland, to wit, on the 29th day of July, 1869, as alleged by him in his application, there existed in the Chickasaw nation laws regulating the marriage of citizens of the Chickasaw nation with citizens of the United States; but, disregarding said

laws, the said Joseph H. Brown was united with the said Amanda Bourland in marriage in the State of Texas; that since the death of the said Amanda Bourland he married a second time in the State of Texas, again in disregard of the laws of the Chickasaw nation, to a citizen of the United States; that after the death of his said second wife the said Brown was for a third time married, and again to a citizen of the United States, under a license obtained in Montague county, in the State of Texas; which said third marriage was consummated in the Indian Territory and in the Chickasaw nation, but in disregard of the laws of the said nation in force at that date; that the laws of the Chickasaw nation required a marriage between a United States citizen and a citizen of the Chickasaw nation in order to confer any rights upon any person to be consummated after first procuring a license from the authorized clerk of said nation, and said marriage certificate to be recorded with said clerk after said marriage; that all of said marriages were in total disregard of the laws of said nation and therefore could confer no rights upon any of the parties.

17 Now, the Chickasaw Nation alleges that if by any kind of construction it should be held that the marriage of Joseph H. Brown with the said Amanda Bourland was a marriage between a United States citizen and an adopted citizen of the Chickasaw nation, and that the said Amanda Bourland had ever acquired any rights in said nation, it avers that the said Amanda Bourland could confer no rights by said marriage upon the said Joseph H. Brown which could by him be transmitted to other and different persons, and that all the marriages and the issue of marriages with the said Joseph H. Brown since the death of the said Amanda Bourland have conferred and received no rights as members of the Chickasaw nation; that the said Brown is now and has at all times, together with his descendants, been a United States citizen, entitled to no rights or privileges as a Chickasaw citizen.

Wherefore, the premises considered, the Chickasaw Nation most emphatically requests this honorable commission to reject the application of the said Joseph H. Brown for enrollment as a citizen of the Chickasaw nation, together with that of all of his descendants, and will ever pray, etc.

THE CHICKASAW NATION,

By Its Attorneys.

Indorsed: "No. 14. Before the honorable commission to the five civilized tribes. In the matter of the application of Joseph H. Brown *et al.* for enrollment in the Chickasaw nation. Answer. Filed Oct. 17, 1896. H. M. Jacoway, sec'y. Filed Feb. 4, 1897. Joseph W. Phillips, clerk."

18 And thereafterwards, to wit, on the — day of —, 1897, was filed in the office of the clerk of the United States court, southern district of Indian Territory, at Ardmore, the following judgment from the Dawes commission:

DEPARTMENT OF THE INTERIOR,
 COMMISSION TO THE FIVE CIVILIZED TRIBES,
 FORT SMITH, ARK., Nov. 23rd, 1896.

J. H. BROWN and ANNA G. } Filed Sept. 7, 1896. Answer Filed.
 Baker *et al.* } Application Denied. Furman
vs. } and Herbert, Ardmore, I. T.
 CHICKASAW NATION.

I, H. M. Jacoway, Jr., secretary, do hereby certify that the above and foregoing is a true and correct copy of Chickasaw Record "C," page 47, of the commission to the five civilized tribes.

Given under my hand and official signature this 30 day of Jan'y, 1897.

H. M. JACOWAY, JR., *Secretary*,
 By HENRY STROUP.

The above and foregoing judgment is indorsed in words and figures as follows, to wit: Joseph Brown *et al. vs.* Chickasaw Nation. Filed Feb. 4, 1897. Jos. W. Phillips, clerk.

19 In the United States Court for the Southern District of the Indian Territory, at Ardmore.

JOSEPH BROWN ET AL., Plaintiff, } Petition for Appeal to the U. S.
vs. } Dist. Court for the Southern
 CHICKASAW NATION, Defendant. } Dist., Ind. Ter.

To the Honorable C. B. Kilgore, judge:

Comes now the applicants herein, —, feeling themselves aggrieved by the decision of the Dawes commission in the above cause, hereby prays an appeal from said decision to this honorable court.

FURMAN & HERBERT,
Attorneys for Applicants.

The foregoing appeal is allowed this 14 day of Dec., 1896.

C. B. KILGORE, *Judge.*

20 In the United States Court in the Indian Territory, Southern District, at Ardmore.

JOSEPH BROWN ET AL. }
vs. } Notice of Appeal.
 CHICKASAW NATION. }

To the Hon. Henry L. Dawes, chairman of the commission of the United States to the five civilized tribes of Indians.

SIR: You are hereby notified that an appeal has been granted in the matter of the application of — — to be enrolled as members of the Chickasaw tribe of Indians from your commission to the United States court for the southern district in the Indian Territory, at Ardmore. You are therefore notified and ordered

to immediately forward to the clerk of this court all of the original papers filed, used, and considered in said cause by your commission, together with a duly certified copy of all orders, judgments, and entries made and entered by you in the trial and consideration of said cause.

Witness the Hon. C. B. Kilgore, judge of said court, and the seal thereof, at Ardmore, Indian Territory, this 14 day of Dec., 1896.

[SEAL.]

JOS. W. PHILLIP-, *Clerk.*

21 And thereafterwards, to wit, on Tuesday, February 1st, 1898, present and presiding aforesaid, the following further proceedings in said cause were had, to wit:

JOSEPH BROWN ET AL., Plaintiff,	} No. 14. Plea to Jurisdiction.
<i>vs.</i>	
CHICKASAW NATION, Defendant.	

Comes now the defendant, The Chickasaw Nation, and respectfully avers that this court has no jurisdiction to hear this cause, for the reason that the act creating the Dawes commission and the right of this court to pass upon causes appealed to it from said commission, determining the question of citizenship in the Chickasaw nation, is unconstitutional and void; that said act gives this defendant no right to cross-examine the witnesses of the applicant and the same is contrary to the treaty of 1866 entered into by the United States Government and the Chickasaw nation, by which said Chickasaw nation reserved the right to pass upon all matters concerning said tribe and all civil and political rights of the individual members thereof; that said treaty is still in full force and effect and was at the time of the act of Congress creating the commission to the five civilized tribes and authorizing this court to pass upon appeals from the same was enacted.

II.

Because said act deprives the Chickasaw nation and the individual members thereof of property without due process of law.

III.

Because said act is class legislation, in that the same deprives either party of an appeal, as in other cases, to the higher courts of the Territory and of the United States.

IV.

Because the jurisdiction extended to this court has been limited to controversies between citizens of different tribes or between citizens or members of the tribe of Indians and a United States citizen, and expressly reserving to the Indians controversies arising between themselves.

V.

Because, if this court determines that the applicant is a member of said nation, it is then passing upon rights between citizens of the

same tribe of Indians, and no judgment thereon can be entered for want of jurisdiction in this court.

Wherefore the defendant prays that said cause be dismissed for the above reasons, and that it go hence without day, etc.

Attorney for Chickasaw Nation.

The above and foregoing is indorsed in words and figures as follows, to wit: "Jos. H. Brown *et al.*, plaintiffs, vs. Chickasaw Nation, defendant. Plea to jurisdiction. Filed in open court Feb. 1st, 1898. C. M. Campbell, clerk."

22 And thereafterwards, on the 23rd day of June, 1897, was filed with the clerk of this court the original master's report in said cause; which said report is in words and figures as follows, to wit:

In the United States Court in the Indian Territory, Southern District, at Ardmore.

JOSEPH H. BROWN ET AL. vs. CHICKASAW NATION.	}	No. 14. Report of W. H. L. Campbell, Esq., Master in Chancery, Southern District.
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Conclusions of Facts.

To the Honorable C. B. Kilgore, judge of said court :

That the petitioner Joseph H. Brown, on the 29th day of July, 1869, was duly and legally married to Amanda Bourland according to the laws of the State of Texas; that Amanda Bourland was a daughter of William H. Bourland and a sister of Mrs. Matilda Roff; that shortly after the marriage applicant and wife moved to the Indian Territory, and lived together as husband and wife until March, 1874, when Mrs. Brown died; that ever since the applicant moved to the Indian Territory he has continuously resided here since; that there was born unto them one child, Annie G. Brown, who afterwards married W. H. Baker. There is nothing in the testimony showing the birth of Annie G. Brown definitely, but the testimony does show that her mother died prior to 1876.

The applicant was again married in the year 1878, in Cooke county, Texas, to Miss Mary L. Gilmore, and they lived together as husband and wife until 1880, when she died; that resulting from this marriage was born one child, James R. Brown, now 16 years of age; that in 1885 applicant again married Miss Anna T. Aston and as a result of this last marriage they have four children, and that said last-named wife is still living.

23 It appears that there has been many acts of recognition of the citizenship of applicant Brown, of the Chickasaw nation

Conclusions of Law.

In Roff's case, appeal No. 1, the conclusions there reached was that the Bourland heirs were adopted citizens of the Chickasaw nation.

It appears to me that the rights of the intermarried citizen with an adopted citizen is the same as the second marriage with a non-resident and intermarried citizen; in other words, under the constitution and treaty, the rights of an intermarried citizen and an adopted citizen are identical. However, this is immaterial so far as this case is concerned.

Had Mrs. Amanda Brown been a full-blood Chickasaw Indian, under the ruling in Wiggs' appeal case, No. 5, the same results would follow. The applicant Brown's marriage relations with Amanda Bourland made him a member of the Chickasaw tribe of Indians. His daughter, Annie G. Brown, is also a member of the tribe.

It would be fruitless to discuss what might have been the citizenship of Anna G. Brown had she been born subsequent to 1876; sufficeth to say that, being born prior to the statute of 1876, her citizenship cannot be questioned. It appears that she afterwards married one Baker, a white man, and has by him several children.

Recommendations.

I recommend that Joseph H. Brown, Anna G. Brown, now Mrs. Anna Baker; Edwin Baker, Mary Joe Baker, and Wm. G. Baker and Franklin Baker be admitted to enrollment, and that the other applicants, to wit, the wife and other children of Joseph H. Brown, be rejected.

W. H. L. CAMPBELL,
Master in Chancery.

Indorsed: "No. 14. Jos. H. Brown *et al.* vs. Chickasaw Nation. Master's report. Filed June 23rd, 1897. Joseph W. Phillips, clerk."

24 Be it remembered that at a regular term of the United States court in the Indian Territory, southern district, at Ardmore, begun and holden on Monday, the 15th day of November, 1897, and on the 32nd day of said term, to wit, Tuesday, December 21st, 1897—present and presiding, the Hon. Hosea Townsend, judge—the following, among other, proceedings were had, to wit:

In re Order of Court Allowing Substitution of Papers in Citizenship Cases.

Order.

The papers in a majority of the citizenship cases pending in this court having been burned and destroyed by fire on the morning of the 16th inst., it is ordered that the applicants in each and all of the

said cases have until the 10th day of January, A. D. 1898, to substitute all their papers in the various cases, and that W. B. Johnson, attorney for the Chickasaw nation, have until February 1st, 1898, to substitute the papers of said nation (vol. A, Citizenship Record, pages 128 and 129).

25

Opinion by the Court.

In the Southern District, Indian Territory.

TOWNSEND, J.

In re INDIAN CITIZENSHIP CASES.

COURT: I have examined with some care the treaties between the United States Government and the Choctaws and Chickasaws in order that I might become familiar with all the negotiations. The first treaties were made in 1786 separately with each tribe or nation, as they were called. Not, however, until 1820 was the subject mentioned of taking any land west of the Mississippi river. On October the 18th, 1820, near Doak's Stand, on the Natchez road, a treaty was entered into between the Choctaws and the Government of the United States, in which it was stated in the preamble the purpose was "to promote the civilization of the Choctaw Indians, by the establishment of schools amongst them; and to perpetuate them as a nation, by exchanging, for a small part of their land here a country beyond the Mississippi river, where all who live by hunting and will not work may be collected and settled together." Whereupon in part consideration of the ceding of a part of their reservation then existing the Government ceded "a tract of country west of the Mississippi river, situate between the Arkansas and Red rivers," and by its boundaries being substantially the country now embraced in the Choctaw and Chickasaw nations. In 1825 another treaty was entered into between the Choctaw nation and the Government, by which the Choctaws ceded to the Government all the land ceded to them in 1820, "lying east of a line beginning on the Arkansas, one hundred paces east of Fort Smith, and running thence due south to Red river;" in consideration for which the Government undertook to remove certain settlers, 25½ citizens of the United States, from the west to the east side of said line and to pay certain money consideration for a series of years and certain other provisions not material for consideration in this connection.

On September 27th, 1830, another treaty was entered into between the Choctaws and the Government, in the preamble to which it is recited that "the State of Mississippi has extended the laws of said State to persons and property within the chartered limits of the same, and the President of the United States has said that he cannot protect the Choctaw people from the operation of these laws. Now, therefore, that the Choctaws may live under their own laws in peace with the United States and the State of Mississippi they have determined to sell their lands east of the Mississippi."

It is provided that in consideration that the United States "shall cause to be conveyed to the Choctaw nation a tract of country west of the Mississippi river, in fee-simple to them and their descendants, to inure to them while they shall exist as a nation and live on it," they "cede to the United States the entire country they own and possess east of the Mississippi river, and they agree to remove beyond the Mississippi river."

Under the 14th article it is provided that each head of a family who desires to remain shall have a reservation, and then states that "persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity."

On the 22nd day of June, 1855, a treaty was entered into between the Choctaws, Chickasaws, and the Government, and this was the first treaty at which all three were represented. Its purpose was declared to be "a readjustment of their relations to each other and to the United States" and for a relinquishment by the Choctaws of "all claim to any territory west of one hundredth degree
26 of west longitude." In the first article of said treaty it is provided that "pursuant to act of Congress approved May 28th, 1830, the United States do hereby secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common."

On the 28th of April, 1866, another treaty was entered into between the Choctaws, Chickasaws, and the United States. This treaty seems to have been necessitated by the changed condition of affairs that resulted from the war of the rebellion and attempts to arrange civil government for the Choctaws and Chickasaws and an allotment of their lands in severalty. It provides for the survey and platting of the lands, and that when completed the maps, plats, etc., shall be returned to a land office that was to be established at Boggy Depot for the inspection by all parties interested, and that a notice shall be given for a period of ninety days of such return by the legislative authorities of said nations, or, upon their failure, by the register of the land office; and in article 13 it is provided that the notice shall be given not only in the Choctaw and Chickasaw nations, "but by publication in newspapers printed in the States of Mississippi and Tennessee, Louisiana, Texas, Arkansas and Alabama, to the end that such Choctaws and Chickasaws as yet remain outside of the Choctaw and Chickasaw nations may be informed and have opportunity to exercise the rights hereby given to resident Choctaws and Chickasaws: Provided, that before any such absent Choctaw or Chickasaw shall be permitted to select for him or herself or others, as hereinafter provided, he or she shall satisfy the register of the land office of his or her intention, or the intention of the party for whom the selection is to be made, to become *bona fide* residents in the said nation within five years from the
27 time of the selection; and should the said absentee fail to remove into said nation and occupy and commence an improvement on the land selected within the time aforesaid, the said

selection shall be cancelled and the land thereafter shall be discharged from all claims on account thereof."

This is the last treaty entered into between the Choctaws and the Chickasaws and the United States, but as late as December 24th, 1889, the council of the Choctaw nation passed a resolution calling upon Congress to defray the expense of moving the Choctaws in Mississippi and Louisiana to the Choctaw nation.

It was not until 1832 that the Chickasaws took any steps by treaty to move west. On October 20th, 1832, a treaty was entered into between the Chickasaws and the United States. In the preamble it is set forth that "being ignorant of the language and the laws of the white man, they cannot understand or obey them. Rather than submit to this great evil they prefer to seek a home in the West, where they may live and be governed by their own laws."

In the first article of said treaty it is provided that "the Chickasaw nation do hereby cede to the United States all the land which they own on the east side of the Mississippi river, including all the country where they at present live and occupy."

It is provided by said treaty that their lands shall be surveyed and sold and the proceeds held for their benefit, and they would hunt for a country west of the Mississippi river, and in the 4th article it is provided: "But should they fail to procure such a country to remove to and settle on, previous to the first public sale of their country here, then, and in that event, they are to select out of the surveys a comfortable settlement for every family in the Chickasaw nation, to include their present improvements," and in the supplementary articles entered into October 22nd, 1832, it is provided "that whenever the nation shall determine to move from

28 their present country, that every tract of land so reserved in the nation shall be given up and sold for the benefit of the nation."

On May 24, 1834, another treaty was entered into between the Chickasaws and the United States, making some different provisions about the sale of their lands, but no change in the general purpose.

On January 17, 1837, a convention and agreement was entered into between the Chickasaws and the Choctaws, subject to the approval of the President of the United States, by the terms of which the Chickasaws agree to pay the Choctaws the sum of \$530,000.00 for the territory that they now occupy. Excepting a treaty between the Chickasaws and the United States, adopted June 22nd, 1852, in regard to the disposition of their lands east of the Mississippi river, we are brought down in the history of the treaties of the Chickasaws to the treaty of 1855, heretofore mentioned, between the Choctaws, Chickasaws, and the United States.

In all these various treaties solemnly entered into there is not one line or word to indicate that the Choctaws and Chickasaws who did not remove to the western country were not Choctaw or Chickasaw citizens and members of their respective tribes; on the other hand, in the treaty of 1830 between the Choctaws and the United States it is expressly provided that those who remained should

“not lose the privilege of a Choctaw citizen,” “but if they ever remove, are not to be entitled to any portion of the Choctaw annuity.”

When it was supposed that the lands would be allotted in severalty under the treaty of 1866, it was expressly provided that notice should be published in the papers of several States that absent Choctaws and Chickasaws might come in and obtain the benefits of the allotment, and absentees were to be allowed five years to occupy and commence improvements, and all that was necessary was to satisfy the register of the land office that that was their intention. The allotment did not take place, but if they had not come in they were only to lose their allotment of land; it did not make them any the less Choctaws or Chickasaws or members of the Choctaw and Chickasaw tribes.

It has been said that they could not be put upon the roll as citizens and members of those tribes unless they lived upon the land within the Choctaw or Chickasaw nation. I submit that the action of the Choctaw and Chickasaw nations themselves, when making the treaty of 1866, don't bear out that view, and if they were Choctaws and Chickasaws in 1866 what has occurred to change their relations to those tribes? I have heard of nothing whatever.

It is said that the land was held in common, and certainly some of the tenants in common in possession could hold the possession for all of their cotenants in common. The bulk of the nation living in the territory ceded and maintaining the tribal government or nation certainly met every requirement of residence, and was a compliance in all respects with the treaty stipulations of living on the land.

I shall hold that non-resident Choctaws and Chickasaws who have properly filed their application and established their membership of the tribes shall be admitted to the roll as citizens.

Who is an intermar-ied citizen and who is an adopted citizen of the Choctaw and Chickasaw nations?

Article 38 of the treaty of 1866 is as follows:

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

Does this article apply to future marriages and adoptions or only those prior to its adoption? By article 26 of said treaty it is provided, in regard to the rights to take land in severalty, as follows:

Article 26.

“The right here given to Choctaws and Chickasaws respectively shall extend to all persons who have become citizens by adoption or intermarriage of either of said nations or who may hereafter become such.”

Under section 7 of the general provisions of the Chickasaw constitution, adopted August 16th, 1867, both as originally adopted and as amended, said sections can have but one construction, and that, that they regarded the said 38th article as binding on their future action, and if this is so it would not be within the power of either the Choctaw or Chickasaw nations to pass or adopt any constitution or law in violation of said article, or that would take away the rights, privileges, or immunities that has attached to any white person under and by virtue of its provisions.

Under the constitution of the Chickasaws, above referred to, section 10 of the general provisions gives the legislature power to admit or adopt as citizens of said nations "such persons as may be acceptable to the people at large."

This authority had been exercised frequently by the legislature of both nations, as I am informed, prior to the adoption of said treaty, as well as subsequent to its adoption.

On October 19th, 1876, the legislature of the Chickasaws passed an act in relation to marriage between citizens of the United States and a member of the Chickasaw tribe or nation of Indians. The second section, among other things, provides: "Hereafter no marriage between a citizen of the United States and a member of the Chickasaw nation shall confer any right of citizenship, or
31 any right to improve or select lands within the Chickasaw nation, unless such marriage shall have been solemnized in accordance with the laws of the Chickasaw nation."

This act was amended September 24th, 1887, in some particulars, but the above-quoted provision was retained.

Amongst all civilized nations it is conceded to be a right that each nation and in the United States that each State can exercise and determine by their laws the requirements to be observed in solemnizing marriages, but marriage among civilized nations does not confer citizenship. Under the Choctaw and Chickasaw law it does; besides, it is supposed to carry with it certain property rights. The general rule among civilized nations is that a marriage good where solemnized is good everywhere, but in some States, where marriage is prohibited between certain races of people, they have not been recognized, though they were lawful where solemnized. I think it is within the power of the Choctaw and Chickasaw nations to say by legislation that before a white person shall become one of their citizens, with all the privileges of one, they shall be married according to the forms and requirements of their laws, and that such legislation is not in violation of the 38th article of the treaty of 1866; but when a white person has married a Choctaw or Chickasaw according to their laws, and resides in the Choctaw or Chickasaw nations, he is in all respects "as though he was a native Choctaw or Chickasaw," and his rights under the treaty attaches, and it is not within the power of the Choctaw or Chickasaw nation to take the same away by legislation or otherwise. It has been said that when adoption takes place by an act of their legislature, the same power that granted can take away. I doubt this proposition; if by the adoption treaty rights have attached, and I am firmly of the

opinion that property rights that have attached under the treaty cannot be taken away, and that only political rights could thus be abrogated.

32 Along the lines herein indicated the citizenship cases pending in this court will be disposed of.

HOSEA TOWNSEND, *Judge*.

33 Be it remembered that at a regular term of the United States court in the Indian Territory, southern district, at Ardmore, begun and holden on Monday, the 11th day of April, 1898, and on the 13th day of said term, to wit, on April 25, 1898—present and presiding, the Hon. Hosea Townsend, judge—the following, among other, proceedings were had, to wit :

JOSEPH H. BROWN ET AL. } vs. } THE CHICKASAW NATION. }	No. 14. Judgment.
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On this the 25th day of April, 1898, came the plaintiffs and the defendant, by their respective attorneys, and at the same time came on to be heard the defendant's exceptions to the report of the master in chancery heretofore filed herein, and the court, after hearing said report and the exceptions thereto and the defendant's plea to the jurisdiction of the court and the evidence and argument of counsel, and being fully advised in the premises, is of the opinion that said exceptions to said report should be, and the same are, in all things hereby overruled and denied, and it appearing to the court from the report of the master in chancery and from the evidence herein that all the plaintiffs herein are members of the Chickasaw tribe of Indians, and that this is an appeal taken to this court from the decision of the commission of the United States to the five civilized — of Indians, who denied the application of plaintiffs to be enrolled as members of said tribe of Indians, it is therefore considered, adjudged, and decreed by the court that the decision of said commission be, and the same is hereby, reversed; that the report of the master in chancery be, and the same is hereby, confirmed, and that the plaintiffs, Joseph H. Brown and James R. Brown, Jessie J. Brown, Lawrence J. Brown, Winnie D. Brown, and Joseph H. Brown, Jr., minors, by Joseph H. Brown, as next friend, and Mrs. Annie G. Baker and Edwin Baker, Mary Joe Baker, Franklin Baker, and Wm. G. Baker, minors, by Mrs. Annie G. Baker, as next friend, be, and the same and each of them

34 are hereby, decreed to be members of the tribe of Chickasaw Indians, and as such are entitled to have their names enrolled as members of said tribe; the said Joseph H. Brown as a member thereof by intermarriage and the other applicants as descendants of said Joseph H. Brown.

It is further adjudged and decreed by the court that the said plaintiffs do have and recover from the defendant, The Chickasaw Nation, all costs in this behalf expended and incurred, for which execution may issue, and that this judgment by the clerk of this court be certified to said commission aforesaid for its observance; to which judgment of the court the defendant, The Chickasaw

were not substituted prior to the judgment rendered in this court, it is ordered that the said record be supplied in order that the record of appeal may be in all things complete.

(Signed) HOSEA TOWNSEND, *Judge.*

(Court Journal, vol. 11, pp. 114, 115, and 116.)

JOSEPH BROWN ET AL. }
 vs. } No. 14. Application for Appeal.
 CHICKASAW NATION. }

Thereupon the said defendant in said cause, the said Chickasaw Nation, deeming itself aggrieved by the said decree made and entered of record on the 25 day of April, 1898, appeals from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors filed herewith, and it prays that this appeal may be allowed and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

(Signed) W. B. JOHNSON,
Solicitor for Defendant.

This 11th day of July, 1898.

38 And thereafterwards, to wit, on the 11th day of July, 1898, was filed with the clerk of this court the assignment of errors in this cause; which assignment of errors is in words and figures as follows, to wit:

JOSEPH H. BROWN ET AL., Plaintiff, }
 vs. } Assignment of Errors.
 CHICKASAW NATION, Defendant. }

The defendant in this action, in connection with *his* petition for appeal, makes the following assignment of errors which it avers occurred upon the trial of the cause, to wit:

First. The court erred in holding that the act of Congress creating the commission to pass upon the citizenship of applicants in the Chickasaw nation and their right to appeal to said court was constitutional.

Second. The court erred in overruling the plea to the jurisdiction of the Dawes commission and said court to pass upon the citizenship of the applicants herein.

Third. The court erred in holding that the laws, customs, and usages of the Chickasaw nation did not control and govern the admission of the applicants to citizenship.

Fourth. The court erred in holding that the Chickasaw nation did not have a right to pass a law relative to citizenship in the Chickasaw nation when said law in any way modified or changed the treaty of said Chickasaw nation with the United States.

Fifth. The court erred in holding that children of Wm. Bourland by his first wife acquired any right by the act of 1856 other than to reside in the Chickasaw nation and be subject to its laws.

39 Sixth. The court erred in holding that the Chickasaw legislature could grant any other rights to the children of Wm. Bourland than were mentioned in the constitution of the Chickasaw nation in force in the year 1856, said rights being limited by said constitution to residing in said nation and being subject to its laws.

Seventh. The court erred in holding that the Chickasaw legislature did not repeal in the year 1857 the act of 1856 relating to the children of Wm. Bourland.

Eighth. The court erred in holding that the Chickasaw legislature had no power to repeal said law of 1856 granting to the children of Wm. Bourland the right to live in the Chickasaw nation and be subject to its laws.

Ninth. The court erred in holding that said act of 1856 granting to the children of William Bourland the right to reside in and be subject to the laws of the Chickasaw nation was not further declared to be repealed by a vote of the members of the Chickasaw tribe of Indians taken on the 29th day of June, 1868.

Tenth. The court erred in holding that when prior to the vote taken on the 29th day of June, 1868, a convention had caused to be printed, as required by the act creating said convention, a copy of the laws of the Chickasaw nation and said convention had inserted the act of 1856 relating to the children of Wm. Bourland, which copy of said law was to be submitted to the members of said nation for their adoption or rejection, that said act continued to be unrepealed, because it was permitted to remain in said copy after a vote of said members rejecting the children of Wm. Bourland.

Eleventh. The court erred in holding that the act of the Chickasaw legislature in 1883 annulling and repealing the act of 1856 relating to the children of Wm. Bourland was for the purpose of first time annulling or repealing the same and was not for the purpose of curing the error in said copy of the laws printed and submitted to a vote of the tribe in the year 1868, as aforesaid.

Twelfth. The court erred in issuing a general order permitting the introduction of new testimony on appeal to this court.

40 Thirteenth. The court erred in granting this decree upon insufficient evidence.

Fourteenth. The court erred in holding that the plaintiff and his descendants, if they ever had any rights, by virtue of the act of 1856, granting to the children of William Bourland the right to live in and be subject to the laws of the Chickasaw nation, could move to Texas, reside there for many years, intermarry with United States citizens, exercise the right of suffrage, as a citizen of the United States, claim all privileges due such citizens, and not utterly expatriate themselves from all interest, either as citizens or otherwise, in the Chickasaw nation.

Fifteenth. The court erred in holding that the plaintiff could after death of the child of William Bourland marry a white woman not a member of the Chickasaw nation, and not forfeit whatsoever rights he may have had theretofore.

Sixteenth. The court erred in holding that any of the children

of this plaintiff, by either the child of William Bourland or his second wife, or their wives or husbands, or their issue, are entitled to citizenship in the Chickasaw nation by virtue of the said act of 1856 relating to the children of William Bourland.

Seventeenth. The court erred in referring this cause to a master in chancery.

Eighteenth. The court erred in overruling the defendant's exceptions to the report of the master in chancery.

Nineteenth. The court erred in entering a decree for plaintiff in this cause.

W. B. JOHNSON,
Att'y for C. N.

Indorsed: "No. 14. Joseph H. Brown *et al.* vs. Chickasaw Nation. Assignment of errors. Filed July 11th, 1898. C. M. Campbell, clerk."

41 And thereafterwards, to wit, on the 11th day of July, 1898, there was filed in the clerk's office of the United States court, southern district, at Ardmore, the following appeal bond; which bond is in words and figures as follows, to wit:

JOSEPH H. BROWN ET AL., Plaintiff,	} No. 14. Bond on Appeal.
<i>vs.</i>	
CHICKASAW NATION, Defendant.	

Know all men by these presents that we, The Chickasaw Nation, as principal, and R. M. Harris, gov., and Richard McLish and Walter Colbert, as sureties, are held and firmly bound unto the plaintiff, Joseph H. Brown *et al.*, in the full and just sum of 100 dollars, to be paid to the said plaintiff, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 11th day of July, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a court of the United States for the southern district of the Indian Territory, in a suit pending in said court between Jos. H. Brown *et al.*, plaintiff, and The Chickasaw Nation, defendant, a decree was rendered against the said Chickasaw Nation, and the said Chickasaw Nation having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Joseph H. Brown *et al.*, citing and admonishing them to be and appear at a session of the Supreme Court of the United States, to be holden at the city of Washington, in the month of October next:

Now, the condition of the above obligation is such that if the said Chickasaw Nation shall prosecute said appeal to effect and answer all damages and costs if *he* fail to make this said plea good, then

the above obligation is to be void ; otherwise to remain in full force and effect.

CHICKASAW NATION.
R. M. HARRIS, *Gov.*
RICHARD McLISH.
WALTER COLBERT.

Sealed and delivered in the presence of—
FRED C. CARR.
PHIL BARRETT.

Approved by—
HOSEA TOWNSEND,
*Judge of the United States Court for the Southern
District of the Indian Territory.*

The above and foregoing bond is indorsed in words and figures as follows, to wit: "Jos. H. Brown *et al. vs.* Chickasaw Nation. Defendant's bond. Filed in open court July 11th, 1898. C. M. Campbell, clerk."

42 The foregoing claim of appeal is allowed and bond for costs fixed at \$100.
(Signed) HOSEA TOWNSEND, *Judge.*

This 11th day of July, 1898.

(Court Journal, vol. 11, pp. 114, 115, and 116.)

JOSEPH H. BROWN ET AL. }
vs. } No. 14. Order.
CHICKASAW NATION. }

Thereupon, upon motion of William B. Johnson, attorney for the Chickasaw nation, it is ordered that the defendant have ninety days in which to prepare and file its bill of exceptions.

(Signed) HOSEA TOWNSEND, *Judge.*

(Court Journal, vol. 11, pp. 114, 115, and 116.)

JOSEPH H. BROWN ET AL. }
vs. } No. 14. Order Granting Extension of
CHICKASAW NATION. } Time for Return Day.

Thereupon comes William B. Johnson and moves the court that the return day of the citation in this cause be extended sixty days, and it appearing to the court that owing to the great number of cases to be appealed by the Chickasaw Nation it would be impossible to immediately perfect the appeal by said nation in all of said cases, it is ordered that the return day of said citation be extended sixty days.

(Signed) HOSEA TOWNSEND, *Judge.*

(Court Journal, vol. 11, pp. 114, 115, and 116.)

43 THE UNITED STATES OF AMERICA, ss :

To J. H. Brown *et al.*, Greeting :

Whereas the Chickasaw Nation has lately appealed to the Supreme Court of the United States from a decree lately rendered in the United States court for the southern district of the Indian Territory, made in favor of you, the said J. H. Brown *et al.*, and has filed the security required by law :

You are, therefore, cited to appear before the said Supreme Court, at the city of Washington, on the first day of the fall term next, to do and receive what may appertain to justice to be done on the premises.

Given under my hand, at the city of Ardmore, in the southern district of the Indian Territory, this 11th day of July, in the year of our Lord one thousand eight hundred and ninety-eight.

HOSEA TOWNSEND,
*Judge of the United States Court for the
Southern District of the Indian Territory.*

Original.

I hereby, this 16th day of July, 1898, accept due personal service of this citation on behalf of J. H. Brown *et al.*, appellees.

FURMAN, HERBERT & HILL,
Solicitors for Appellees.

[Endorsed:] # 14. J. H. Brown *et al.* v. Chickasaw Nation. Citation. Original. Filed in open court Jul- 11, 1898. C. M. Campbell, clerk.

44 And thereafterwards, on the 11th day of July, 1898, was filed with the clerk of the United States court for the southern district of the Indian Territory the following affidavit for substitution of papers, to wit :

JOSEPH H. BROWN ET AL., Plaintiff,	} No. 14. Affidavit for Substitution of Papers.
vs. CHICKASAW NATION, Defendant.	

Comes now William B. Johnson, attorney for the Chickasaw Nation, who, being duly sworn, upon oath deposes and says :

That in the above numbered and styled cause a great many of the papers were destroyed by fire and have not been substituted, and that said record is incomplete and the appeal cannot be perfected without the same are supplied.

WM. B. JOHNSON.

Subscribed and sworn to before me this 9th day of July, 1898.

[SEAL.]

PHIL BARRETT,
Notary Public.

The above and foregoing affidavit is endorsed in words and figures as follows, to wit: " No. 14. Joseph Brown *et al.* vs. Chickasaw
4—486

Nation. Affidavit for substitution of papers. Filed in open court July 11th, 1898. C. M. Campbell, clerk."

45 And thereafterwards, to wit, on the 29 day of Sept., 1898, was filed with the clerk of this court the bill of exceptions in said cause; which said bill of exceptions is in words and figures as follows, to wit:

In the United States Court for Southern District of Indian Territory, at Ardmore.

J. H. BROWN ET AL., Plaintiffs,	}	Bill of Exceptions.
<i>vs.</i>		
CHICKASAW NATION, Defendant.		

Be it remembered that on the 7th day of September, 1896, J. H. Brown *et al.* filed with the Dawes commission, at Vinita, Indian Territory, their application for citizenship in the Chickasaw nation.

That thereafter, to wit, on the 15 day of Sept., 1896, the Chickasaw Nation filed with said Dawes commission its answer to the application of the said J. H. Brown *et al.*, in which the said Chickasaw Nation, after objecting to and denying the jurisdiction of said Dawes commission to pass upon a question of citizenship in the Chickasaw tribe of Indians, did answer in detail the allegations of the applicant.

That thereafter, to wit, on the 15 day of Nov., 1896, the said Dawes commission denied the application of J. H. Brown *et al.* for citizenship in the Chickasaw nation.

That thereafter, to wit, on the 3rd day of February, 1897, the said applicants, J. H. Brown *et al.*, did appeal to the United States court for the southern district of the Indian Territory, at Ardmore, said appeal being duly perfected upon notice to the Chickasaw nation.

46 Be it further remembered that on the 8 day of Dec., 1896, an order was made referring said cause to a master in chancery.

And when said cause came on to be heard before said master the defendant, The Chickasaw Nation, objected to said hearing and the authority of the master to pass upon this cause, and then and there excepted to the action of said master.

That thereafter, to wit, on the 20 day of July, 1897, this cause, having been referred, as aforesaid, to a master in chancery, was heard before said master in chancery in the town of Ardmore; and after hearing the same, said master in chancery found J. H. Brown *et al.* to be members of the tribe of Chickasaw Indians, and recommended that they be enrolled as such; to which report the defendant then and there excepted.

Said exceptions to the master's report are in words and figures as follows, to wit:

In the United States Court for the Southern District of Indian Territory, at Ardmore.

J. H. BROWN ET. AL., Plaintiffs, }
 vs. } Exceptions to Master's Report.
 CHICKASAW NATION, Defendant. }

Comes now the Chickasaw Nation, by its attorney, and respectfully excepts to the report made by the master in said cause because :

First. Same is not supported by the evidence.

Second. The decision is not in conformity with the law in force governing such cases in the Chickasaw nation, Indian Territory.

Wherefore it prays that said report be disapproved and the applicants rejected.

W. B. JOHNSON,
Attorney for Chickasaw Nation.

47 And thereafter, to wit, on the 25 day of April, 1898, when said exceptions came on to be heard, the same were overruled by the court; to which the defendant then and there objected, and, said objection being overruled, the defendant in open court duly excepted and still excepts.

Be it further remembered that on the 25 day of April, 1898, the defendant filed its plea to the jurisdiction of the Dawes commission and of this court to pass upon said cause upon appeal from said Dawes commission; which plea was overruled by the court; to which the defendant objected, and, said objection being overruled, the defendant in open court then and there excepted and still excepts.

Be it further remembered that on the 25 day of April, 1898, the above cause came on to be heard before the Honorable Hosea Townsend, judge of the above court; whereupon came the plaintiffs, by their attorneys, and the defendant, by its attorneys, and the following, among other, proceedings were had, to wit:

Plaintiffs introduced the following testimony:

48 INDIAN TERRITORY, }
Southern District. }

Before me, the undersigned authority, on this day personally appeared A. H. LAW who, after being by me first duly sworn, deposes and says:

That he is a resident citizen of the town of Ardmore, Chickasaw nation, Indian Territory, and is a member of the tribe of Chickasaw Indians by intermarriage, by virtue of his marriage to Margaret E. Burney, who was a member of said tribe of Chickasaw Indians by blood; that affiant is now 51 years of age and has resided in the Chickasaw nation, Indian Territory, since the year 1869; that this affiant is personally well acquainted with Joseph H. Brown, who married Amanda Bourland, a daughter of William H. Bourland, deceased; that this affiant since the year 1883 has practiced as an

attorney-at-law at various times in the Indian courts of the Chickasaw tribe of Indians, and is familiar with the statutes, laws customs, usages of said tribe of Indians. This affiant states that from his knowledge of said laws there was an act of the legislature of the Chickasaw nation passed on the 17th day of October, in the year 1856, by which the children and nephew of William H. Bourland, now deceased, were adopted as members of the tribe of Chickasaw Indians; that said act as originally enacted read as follows:

"Be it enacted by the legislature of the Chickasaw nation, That the right of citizenship is hereby granted to the following-named children and nephew of William H. Bourland: Nancy, Amanda, Matilda, Gordentia, and Reece Hannah."

That this affiant is this day shown a certified copy of said act approved October 17, 1896, and recognizes the same as a true and correct copy of the said act adopting the children and nephew of the said William H. Bourland.

Affiant further states -hat this act adopting the children and nephew of the said William H. Bourland was in keeping with the constitution of the Chickasaw nation adopted by the Chickasaw tribe of Indians on the 18th day of August, 1856, by a vote of the members of said tribe; that it was provided in said constitution, in section 7 of general provisions, that the legislature of the said Chickasaw nation may by legislative act adopt such persons as members of said tribe who are acceptable to the said tribe of Indians; and this affiant further states that on the 16th day of August, 1867, the constitution of the Chickasaw nation, section seven, under the general provisions, reads as follows:

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

That section 10 of said constitution, under the same head, reads as follows:

"SEC. 10. The legislature shall have power, by law, to admit, or adopt, as citizens of this nation, such persons as may be acceptable to the people at large."

This affiant further states that after the treaty of 1866 between the United States and the Chickasaw and Choctaw tribes of Indians that delegates of the Chickasaw nation convened at Camp Harris, who were elected by a popular vote of the Chickasaw Indians, and codified the laws of the Chickasaw nation and prepared a constitution for the Chickasaw tribe of Indians, and that this convention was held at old Camp Harris, near Tishomingo, and that the laws as codified by said delegates, together with the constitution prepared by them, was submitted to a popular vote of the Chickasaw Indians

and was by the vote of said Indians adopted. This affiant
 50 further states that in the year 1876 a committee was appointed
 to revise and codify the laws of the Chickasaw nation, and in
 such revision the act of 1856, above referred to, adopting the children
 and nephew of William H. Bourland, deceased, was reaffirmed and
 appears on page 76 of the Constitution, Laws, and Treaties of the
 Chickasaws, as published in 1878, and is in words and figures as
 follows:

“An act granting citizenship to the heirs of William H. Bourland.

“SEC. 1. Be it enacted by the legislature of the Chickasaw nation,
 That the right of citizenship is hereby granted to the following-
 named children and nephews of William H. Bourland: Amanda,
 Matilda, Gordentia, and Ruu Hannah.

“Approved Oct. 7, 1876.

“B. F. OVERTON, *Governor.*”

Affiant further states that said last-named act was purported to
 have been passed by the legislature October 7, 1876, but affiant states
 that it is a recognized fact among the lawyers and judiciary of the
 Chickasaw nation that such an act is but a reaffirmation of the act
 of 1856; that this occurred in the following manner: That the said
 committee appointed to revise and codify said laws made their re-
 port, and their report was, by the legislature of the Chickasaw nation,
 adopted; that after said report was made the said laws as recom-
 mended by said committee *after* adopted by the legislature; they
 were signed by B. P. Overton, as governor of the Chickasaw nation,
 and by him dated the day of signing.

And this affiant further states that ever since he has known the
 said Joseph H. Brown that the said Brown, up to the time the inter-
 married citizens were disfranchised as Chickasaws, participated in
 all the elections held by the Chickasaw tribe of Indians and sat
 upon juries in the courts of said tribe of Indians and has been
 clerk of elections held by said tribe of Indians, and in every way
 has been considered and recognized as a member of the tribe of
 Chickasaw Indians.

51 And this affiant further states that he knows of his own
 personal knowledge that the said Joseph H. Brown lived
 with his wife, whose maiden name was Amanda Bourland, after
 his marriage up to the time of her death, and that as result of said
 marriage there was born unto them a daughter, whose name was
 Annie G. Brown, but who is now the lawful wife of W. H. Baker,
 and together with her husband and children reside in the Chickasaw
 nation, Indian Territory.

(Signed)

A. H. LAW.

Subscribed and sworn to before me th-s 11th day of August,
 1896.

(Signed)

[SEAL.]

JESSE H. HILL,
*Notary Public for Southern District
 of Indian Territory.*

52 INDIAN TERRITORY, }
Southern District. }

Before me, the undersigned authority, on this day personally appeared William H. Bourland, who, after being by me first duly sworn, deposes and says:

That he was acquainted with William H. Bourland, now deceased, during his lifetime, who was an own brother of the father of this affiant, Reuben R. Bourland, and with his daughters, to wit, Nancy, Amanda, Matilda, Gordentia Bourland; that affiant is 49 years of age, is a member of the Chickasaw tribe of Indians by blood, and is now judge of county court of Pickens county, Chickasaw nation, Indian Territory; that this affiant was born in the Choctaw nation, Indian Territory, and removed from that nation to the Chickasaw nation in the fall of the year 1856, where he has ever since continuously resided; that this affiant knows that in the year 1856 the legislature of the Chickasaw nation passed an act adopting the said children of the said William H. Bourland, deceased, and his nephew, to wit, Reece Hannah; and this affiant further states that in the year 1867 and after the treaty of 1866 of the United States with the Choctaw and Chickasaw Indians, either in the year 1866 or 1867, that a convention of delegates, composed of Chickasaws, assembled at Camp Harris, a point about 12 miles from Tishomingo, and revised and codified the laws of the Chickasaw nation and prepared a constitution to be submitted to the Chickasaw people; that said laws were prepared, and that said constitution was prepared, and, to the certain knowledge of this affiant, *was* submitted to a vote of the Chickasaw Indians, and by vote of said tribe of Indians the same, as prepared by the delegates, were adopted, and this affiant knows of his personal knowledge that the act of the legislature of 1856, in adopting the heirs and nephew of William H. Bourland, deceased, was included in said laws so revised by said committee and

53 was submitted to a vote of the people, together with other laws revised by them and the constitution prepared by them.

Affiant further states that the said Amanda Bourland, the daughter of William H. Bourland, was duly and legally married to Joseph H. Brown in Delaware Bend, in Cooke county, Texas, at the residence of Colonel James Bourland, on the 29th day of July, 1869, and that shortly after her marriage and in the same year 1869 she and her husband moved to the Chickasaw nation, where she resided with her husband from that time until her death, about the year 1874, and that her said husband, Joseph H. Brown, since his marriage to the said Amanda Bourland has continuously resided in the Chickasaw nation, Indian Territory.

This affiant states that after the marriage of the said Joseph H. Brown, as aforesaid, up to the time that the Chickasaw Indians disfranchised intermarried citizens that the said Joseph H. Brown was recognized as a member of the tribe of Chickasaw Indians and participated in their elections, and that this affiant knows that his name was and is yet, as far as he knows, upon the roll of citizenship, and that three years ago the said Brown's name was upon the

annuity roll of the Chickasaw Indians, and that affiant knows that said rolls were prepared by an officer of the Chickasaws, whose duty it was to purge the rolls and to discard all persons who were not recognized Chickasaws, and that after said rolls were so purged and said persons so discarded that the name of Joseph H. Brown appeared upon the rolls as a member of the Chickasaw Indians.

Affiant further states that the marriage ceremony of the said Joseph H. Brown to Amanda Bourland was performed by Reverend E. Couch, and that this affiant was present and was an eyewitness to said marriage.

Affiant further states that as a result of said marriage of Joseph H. Brown to Amanda Bourland that there was born unto them a daughter, whose name was Annie G. Brown and who is now the lawful wife of W. H. Baker, with whom she is now living, and that since her marriage has lived in the Chickasaw nation, Indian Territory.

This affiant further states that as result of the marriage of said Baker to Annie G. Baker there was born unto them four children, whose names and ages this affiant cannot give. This affiant also states that as a member of the Chickasaw tribe of Indians he has held the following positions: The office of national secretary of the Chickasaw nation for about eight years, jailor, sheriff of Tishomingo county, secretary of the senate, clerk of the house of representatives, member of the legislature, secretary of the senate several times, and three years ago affiant was secretary of the finance committee, whose duty it was to adjust the accounts between the treasurer of the Chickasaw nation and the Chickasaw government.

(Signed.)

W. H. BOURLAND.

Subscribed and sworn to before me this 10th day of August, 1896.

(Signed)

JESSE H. HILL,

[SEAL.]

*Notary Public, Southern District of the
Indian Territory.*

55 INDIAN TERRITORY, }
Southern District. }

Before me, the undersigned authority, on this day personally appeared P. Archard, who, after being by me first duly sworn, deposes and says:

That he is 43 years old and has resided in the Chickasaw nation since the year 1871; that affiant is a member of the Chickasaw tribe of Indians by marriage. Affiant further states that he is acquainted with Joseph H. Brown and has known him since the year 1875; that during all of said time the said Joseph H. Brown has been recognized by the Chickasaw Indians as a member of said tribe by marriage.

Affiant further states that he has been upon juries in the courts of the Chickasaw Indians and has set on juries with Brown repeatedly; that the said Indians never allowed any one to sit as a juror in their courts unless said person is recognized by the tribe as a member of the said tribe either by blood or by marriage; all

other persons are excluded from jury service in the Indian court. Affiant states that he is acquainted with the said Brown intimately and has known him well during all these years; that during said time affiant has never heard the citizenship of the said Brown questioned as to his being a member of the Chickasaw tribe of Indians, but that, on the contrary, the said Brown has been at all times recognized as a member of the tribe of Chickasaw Indians. Affiant says that prior to the time that the intermarried were disfranchised by the Chickasaw Indians affiant has been present at elections and seen the said Brown acting as clerk of the elections and assisting in holding elections for said tribe of Indians.

(Signed)

P. ARCHARD.

Subscribed and sworn to before me this 10th day of August, 1896.

(Signed)

[SEAL.]

J. H. MATHERS,
*Notary Public, Southern District of the
Indian Territory.*

56 INDIAN TERRITORY, }
Southern District. }

Before me, the undersigned authority, on this day personally appeared Grove E. Chase, who, after being by me first duly sworn, deposes and says that he is a member of the Chickasaw tribe of Indians and is a resident of the Chickasaw nation, Indian Territory; that he was born and raised in the Indian Territory and was well acquainted with Joseph H. Brown, and that he has been the permit collector for the said Pickens county, in said Chickasaw nation, and knows that said Joseph H. Brown is recognized as a member of the Chickasaw tribe of Indians; that it is the law in the Chickasaw nation that all non-citizens shall pay a permit of five dollars per year to the Chickasaw government, and that he has never demanded the payment of a permit of Mr. Brown, owing to the fact that he is considered a member of the Chickasaw tribe of Indians; that affiant has issued permits to him for non-citizens tenants residing upon his premises.

Affiant further states that he is permit collector for Pickens county, Chickasaw nation, Indian Territory, at the present time.

(Signed)

GROVE E. CHASE.

Subscribed and sworn to before me this the 10th day of August, 1896.

(Signed)

[SEAL.]

JESSE H. HILL,
Notary Public, Southern District Indian Territory.

57 INDIAN TERRITORY, }
Southern District. }

Before me, the undersigned authority, on this day personally appeared W. B. Burney, who, after being by me first duly sworn, deposes and says that he is 47 years old; that he was born and raised in Pickens county, Chickasaw nation, Indian Territory, and that he is a member of the Chickasaw tribe of Indians by blood.

Affiant further states that he is acquainted with Joseph H. Brown and has known him for the past twenty-five years, and that during all of said time Joseph H. Brown has been recognized by the Chickasaw Indians as a member of said tribe by marriage. Affiant has known of said Brown sitting on the juries in the courts of the Chickasaw tribe of Indians several times. The Indians never summoned any one to sit as a juror in their courts unless they were recognized as a member of their tribe either by blood or marriage. All other persons are excluded from jury service in the Indian courts.

Affiant also knows of the said Brown being arrested and placed under bond by the Chickasaw authorities, affiant being one of his bondsmen, upon the charge of violating the Chickasaw law in using non-citizen labor upon his ranch. This was early in the 80's.

Prior to the time that intermarried citizens were disfranchised by the Chickasaw tribe of Indians affiant used to see Joseph H. Brown at nearly all elections voting as a Chickasaw Indian, and his, the said Brown's, vote would be received by the officer as well as that of any other Chickasaw Indian.

(Signed)

W. B. BURNEY.

Subscribed and sworn to before *be* this 10th day of August, 1896.

(Signed)

JAMES H. MATHERS,

[SEAL.]

Notary Public, Southern District Indian Territory.

58 INDIAN TERRITORY, }
Southern District. }

Before me, the undersigned authority, on this day personally appeared Joseph H. Brown, who, after being by me first duly sworn, deposes and says:

That he is 52 years of age, and resides on Mud creek, in the Chickasaw nation, Indian Territory, near the town of Grady, and has resided at that place about 15 years; that affiant states that he was married on the 29th day of July, 1869, to Amanda Bourland, who was a daughter of William H. Bourland, long since deceased, in Delaware Bend, Cooke county, Texas, at the residence of Colonel James Bourland, and that the marriage ceremony was performed by the Rev. E. Couch; that Captain William H. Bourland, a Chickasaw Indian by blood, and now judge of the county court of Pickens county, Indian Territory, was present at said marriage and was an eyewitness to the same.

Affiant hereto attaches a certified copy of his marriage license and the return thereon. As further evidence of his marriage to the said Amanda Bourland, this affiant further states that shortly after his marriage, as aforesaid, he and his said wife removed to the Chickasaw nation, Indian Territory, where he and — lived together as husband and wife up to March, 1874, when his wife died; and that affiant has continually since said date resided in the Chickasaw nation, Indian Territory; that there was born unto them one child, whose name was Annie G. Brown, but who is now married to and living with W. H. Baker; that the said Annie G. Brown and her

husband have four children, whose names and ages are as follows : Edwain Baker, born September 18, 1891 ; Mary Joe Baker, born December 25, 1892 ; Franklin Baker, born June 2, 1894 ; William Graham Baker, born January 24, 1896. Affiant further states that at the time of his marriage to the said Amanda Bourland that her sister, Matilda Bourland, was deceased ; that the said Matilda Bourland, during her lifetime, was married to A. B. Roff ; that

59 this affiant was not personally acquainted with the said Matilda Bourland, but was acquainted with Gordentia Bourland, who married C. J. McKinney and who is now living with him as his wife, at Van Alstyne, Grayson county, Texas ; that this affiant was never acquainted with Reece Hannah, a nephew of William H. Bourland, deceased, he having died before affiant became acquainted with the said Amanda Bourland.

Affiant further states that he always understood that in the year 1856 the legislature of the Chickasaw nation, by an act by it passed, adopted as members of the tribe of Chickasaw Indians the children and nephew of William H. Bourland, to wit : Amanda, to whom this affiant was married ; Matilda, to whom A. B. Roff was married ; Gordentia Bourland, to whom C. J. McKinney was married, and Reece Hannah, sometimes called Run Hannah ; and that subsequent to affiant's marriage, as aforesaid, that he and his wife were always recognized as members of the tribe of Chickasaw Indians ; that this affiant always participated in the elections held by the tribe of Chickasaw Indians up to the time the intermarried citizens were disfranchised ; that affiant has always been considered and recognized as a member of the tribe of Chickasaw Indians, has frequently sat upon juries empaneled in the courts of said tribe, has assisted in holding elections held by said Chickasaw Indians, and in every way has been recognized and treated as a member of the tribe, and has been denied no rights, except the right of suffrage, up to this time ; that, as far as this affiant knows, his name is upon the roll of citizenship of the Chickasaw tribe of Indians, and that about three years ago his name was upon the roll of recognized members of said tribe who were paid annuities, and this affiant, as a member of said tribe, received his annuity from the proper officer of the Chickasaw nation, and that prior thereto he had received annuity just the same as other members of the tribe.

Affiant further states that in the year 1878, in Cooke county, Texas, he was again married to Mary L. Gilmore, with whom this

60 affiant lived until the year 1880, when said wife died ; that as a result of their marriage there was born unto him and his said wife one child, viz., a son, whose name is James R. Brown, now 16 years of age, and who resides with this affiant in said nation and Territory ; that thereafterwards, to wit, in the year 1885, affiant was again married, in the Chickasaw nation, to Annie P. Aston, on Wild Horse, at the residence of Mrs. Colbert ; that he was married to her by virtue of a license issued by the clerk of the county court of Montague county, Texas, and that the marriage ceremony was performed by the Rev. J. W. Davenport, an ordained minister

of the gospel. A copy of said license, together with the return, is hereto attached and made a part of this affidavit.

Affiant states as a result of this last marriage there has been born unto him and his said wife four children, whose names and ages are as follows, to wit: Jesse J. Brown, age 9 years; Lawrence J. Brown, age seven years; Winnie D. Brown, age 5 years, and Joseph H. Brown, Jr., about one week old; and that his said wife and his said children are now living in the Chickasaw nation, Indian Territory; that at no time since this affiant has lived in the Chickasaw nation since his marriage to Amanda Bourland, as above stated, has he ever been required or requested to pay a permit, as is required of non-citizens residing in said nation, but, on the contrary, he has been engaged in farming and cattle-raising, and as such has permitted persons working under him and tenants renting lands from him as a citizen of said nation and a member of the tribe of Chickasaw Indians. As evidence of this fact he attaches to this affidavit receipts of the permit collector, and as evidence of the fact that the courts of the Chickasaw nation have recognized this affiant as a member of said tribe he attaches to this affidavit a receipt showing that he was at one time fined by the judge of the district court of the Chickasaw nation for not promptly attending such court as witness in obedience to a subpœna served upon him; and at one time, whilst B. F. Overton was governor of the Chickasaw nation, this affiant was arrested and placed under bond by the Chickasaw authorities, upon the charge preferred against him in the courts of said nation, where he was charged with using non-citizen labor upon his ranch.

(Signed)

J. H. BROWN.

Subscribed and sworn to before me this 11th day of August, 1896

[SEAL.]

(Signed)

JESSE H. HILL,

Notary Public, Southern District, Indian Territory.

62 Joseph H. Brown to Amanda Bourland, ss :

Be it remembered that on this 21 day of July, 1869, the following marriage license was issued, to wit :

TEXAS, }
Cooke County, } To wit, ss :

To all who shall see these presents, Greeting :

Know ye that any person legally authorized to celebrate the rites of matrimony is hereby licensed to join in marriage as husband and wife J. H. Brown and Amanda Bourland, and for so doing this shall be his sufficient authority.

In testimony whereof I, F. L. Cleaves, deputy clerk of the Cooke county court, hereunto subscribe my name and affix the seal of said court this 21st day of July, 1869.

(Signed)

F. L. CLEAVES,
Dep'ty Clk.

Be it further remembered that on this 18th day of August, 1869, the following certificate was filed in my office, to wit:

TEXAS, }
Cooke County, } To wit:

This certified that I joined in marriage as husband and wife J. H. Brown and Amanda Bourland on the 29th day of July, 1869.
(Signed) E. COUCH, M. G.

I, A. J. Thompson, clerk of the county court in and for Cooke county, Texas, hereby certify that the foregoing is a true and correct copy of the marriage license of Joseph H. Brown and Miss Amanda Bourland, as same appears of record on page 285, vol. 2, marriage record of Cooke county, Texas.

To certify which I hereunto set my hand and affix the seal, at office, in the city of Gainesville, Texas, this July 29, A. D. 1896.
[SEAL.] (Signed) Q. J. THOMPSON,

County Clerk.

63 STATE OF TEXAS, }
Cooke County. }

To any judge of the county or district court, regularly licensed or ordained minister of the gospel, Jewish rabbi, or justice of the peace in and for said county of Cooke, Greeting:

You are hereby authorized to solemnize the rites or matrimony between Mr. J. H. Brown and Miss Mary Gilmore and make due return to the clerk of the county court of said county within sixty days thereafter, certifying your action under this license.

Witness my official signature and seal of office, at office, in Gainesville, this 16th day of Oct., A. D. 1878.

E. F. BUNCH,
Clerk of the County Court, Cooke County, Texas.
JAMES F. LILLY, Deputy.

I, J. P. Hall, J. P., Cooke Co., hereby certify that on the 23rd day of Oct., A. D. 1878, I united in marriage J. H. Brown and Mary Gilmore, the parties above named.

Witness my hand this 30th day of Oct., A. D. 1878.

J. P. HALL,
J. P., Cooke Co.

Returned and filed for record the 4th day of Nov'r, A. D. 1878, and recorded the 4th day of Nov'r, 1878.

E. F. BUNCH, Clerk.

STATE OF TEXAS, }
County of Cooke. }

I, A. J. Thompson, county clerk of Cooke county, Texas, hereby certify that the foregoing is a true and correct copy of a marriage license of J. H. Brown to Miss Mary Gilmore, as it appears of record in my office in vol. 3, page 134, record of marriages of Cooke county, Texas.

To certify which I hereto set my hand and official seal this 12th day of August, 1896.

[SEAL.]

A. J. THOMPSON,
County Clerk, Cooke County, Texas.

Indorsed: Marriage license. J. H. Brown to Miss Mary Gilmore.

64 Office of collector of permits, Pickens county, C. N., No. 84.

This is to certify that Joe Threadgill has complied with the late permit law, and is registered accordingly as being under the employ of J. H. Brown for twelve months from Jan. 2, 1893, as a farmer.

B. W. CARTER,
Permit Collector, Pickens County, C. N.,
Per ———, D. C.

Indorsed: Jonas Wolfe, governor C. N.

Office of collector of permits, Pickens county, C. N., No. 81.

This is to certify that A. W. Johnson has complied with the late permit law, and is registered accordingly as being in the employ of J. H. Brown for twelve months from Jan. 2, 1893, as a farmer.

B. W. CARTER,
Permit Collector, Pickens County, C. N.,
Per ———, D. C.

Indorsed: Jonas Wolfe, governor C. N.

Office of sheriff and constable, Pickens county, Chickasaw nation,
I. T.

To all whom it may concern:

Know ye that Fount Morris has complied with the late permit law, and is registered accordingly as being under the employ of Joe Brown as a farmer for the term of twelve months from date.

Given under my hand and seal of office this the 2nd day of Jan., 1882.

J. C. HARDWICK,
Sheriff P. C., C. N.

65 OFFICE OF DISTRICT ATTORNEY, C. N.,
TISHOMINGO CITY, C. N., *January 5, 1887.* *

This certifies that I have received of Joe Brown \$10 dollars as a payment of a fine assessed against him at January term of district court this the day and date above written.

W. H. JACKSON,
District Att'y, C. N.

Marriage Certificate.

STATE OF TEXAS, }
County of Montague. }

This instrument witnesseth that on the 29th day of October, A. D. 1885, there was issued out of the office of the clerk of the county

court of said county a license for the marriage of Mr. J. H. Brown and M- Anna Aston, and on the 10 day of November, A. D. 1885, said parties were legally united in marriage by a properly authorized person named in said license and due return thereof made to this office in the manner and form required by law; all of which is duly entered upon the marriage record of my office, in vol. "C," page 269.

Witness my hand and official seal, at my office, in Montague, Texas, on the 20th day of August, A. D. 1896.

S. L. NEWMAN,
Clerk County Court, Montague County, Texas,
By W. T. NEWMAN, Deputy.

[SEAL.]

Indorsed: Mr. J. H. Brown and Anna Aston. Marriage certificate. Issued August 20, 1896. S. L. Newman, clerk, by W. T. Newman, deputy.

66 INDIAN TERRITORY, }
Southern District. }

Before me, the undersigned authority, on this day personally appeared W. H. Baker, who, after being by me first duly sworn, deposes and says:

That he is 33 years of age, and resides on Mud creek near Grady, in the Chickasaw nation, Indian Territory, and that on the 18th day of December, 1890, affiant was legally married to Annie G. Brown, a daughter of Joseph H. Brown, at the court-house, in the town of Ardmore, in said nation and Territory, by A. D. Mathis, a United States commissioner for the Indian Territory, and as evidence of said fact he hereto attaches his marriage license in return and makes it a part of this affidavit.

Affiant states that since his marriage he has lived near Grady, in said nation and Territory, together with his wife, and is yet living with her, and that since their marriage there were born unto them the following-named children: Edwin Baker, born September 18, 1891; Mary Joe Baker, born December 25, 1892; Franklin Baker, born June 2, 1894, and William G. Baker, born January 24, 1896; that all of said children — now living with the said Baker and his wife in said nation and Territory.

(Signed)

W. H. BAKER.

Subscribed and sworn to before me this 11th day of August, 1896.

(Signed)

[SEAL.]

JESSE H. HILL,
Notary Public, Southern District Indian Territory.

67

No. 357.

Marriage License.

UNITED STATES OF AMERICA, }
Indian Territory, Third Judicial Division, } ss :

To any person authorized by law to solemnize marriage, Greeting :

You are hereby commanded to solemnize the rites and publish the banns of matrimony between Mr. W. H. Baker, of Grady, in the Chickasaw nation, age 25 years, and Miss Annie Brown, of Grady, in the Chickasaw nation, age 18 years, according to law, and do you officially sign and return this license to the parties therein named.

Witness my hand and official seal this 18th day of December, A. D. 1890.

WILLIAM NELSON,
Clerk of the United States Court,
 By A. D. MATTHEWS, *Deputy.* [SEAL.]

Certificate of Marriage.

UNITED STATES OF AMERICA, }
Indian Territory, Third Judicial Division, } ss :

I, A. D. Matthews, United States commissioner and *ex officio* notary public, do hereby certify that on the 18th day of December, A. D. 1890, I did duly and according to law, as commanded in the foregoing license, solemnize the rite and publish the banns of matrimony between the parties therein named.

Witness my hand this 18th day of December, A. D. 1890. My credentials are recorded in the office of the clerk of the United States court for the Indian Territory, — judicial division, Book —, page —.

A. D. MATTHEWS,
 [SEAL.] *U. S. Commissioner and ex Officio Notary Public.*

68

Indorsed.

" INDIAN TERRITORY, }
Third Division, } ss :

I, William Nelson, clerk of the United States court in the Indian Territory, do hereby certify that the within license for and certificate of marriage between Mr. W. H. Baker and Miss Annie Brown were — on the 18th."

— — —
 The plaintiffs here closed their testimony and rested their case. Whereupon the defendant introduced the following testimony, to wit:

69

"EXHIBIT A."

To the honorable the legislature of the Chickasaw nation, now sitting :

The undersigned would most respectfully represent to your honorable body that he is connected with the Chickasaw nation by marriage and is desirous of becoming a citizen thereof, but having the children, the issue of a first wife, not having any claim on the Chickasaw nation, to wit, Nancy, Amanda, Matilda, and Gordentia, and a nephew, Reece Hannah, your petitioner respectfully asks that an act or resolution be passed granting the right of citizenship to th-se children under my paternal charge ; and, as in duty bound, will ever pray, &c.

October 13th, 1856.

WM. H. BOURLAND.

(Copied from the original petition, now on file in the office of the national secretary of the Chickasaw nation, at Tishomingo, Chickasaw nation, Indian Territory.)

70

"EXHIBIT B."

Before the Honorable Commission to the Five Civilized Tribes.
In the Matter of the Application for Enrollment of JOSEPH H.
BROWN *et al.*

Affidavit of Judge Overton Love.

INDIAN TERRITORY, }
Chickasaw Nation. }

Before me, the undersigned authority, on this day personally appeared Overton Love, who, being by me duly sworn, on oath deposes and says :

That he is a Chickasaw Indian by blood, and emigrated from Mississippi to the Indian Territory in the year 1843 ; that he is 73 years of age ; that he was the first speaker of the house of representatives of the first legislature of the Chickasaw nation in 1856, and has been connected, more or less, with the public affairs of said nation since said date ; that he has filled the positions of county judge, district judge, representative, senator, and delegate to Washington ; that he in 1856 and prior thereto and until his death was intimately acquainted with William H. Bourland ; that the said William H. Bourland, who was a United States citizen, *and* the father of Nancy, Amanda, Matilda, and Gordentia and the uncle of Reece Hannah. These were his children by his first wife, who was a United States citizen ; that some time in the fifties he married Caroline Willis, a Chickasaw citizen, who is yet living ; that in the year 1856, at the first session of our legislature, William H. Bourland presented an application to the legislature, asking that these children be adopted under the constitu-

tion as it then existed, so that they might live with him while he lived in the Chickasaw nation, the only object being that they might have the right of residence and not be ejected by the Chickasaw authorities. In accordance with his application the act of October 17, 1856, was passed. Some time during the year 1856 the laws of the Chickasaw nation, not having been published, became misplaced and lost, and at the session of the legislature in 1857 an act was passed repealing all the laws enacted in 1856 except those especially adopted by the legislature in 1857. The act adopting the children of William H. Bourland and his nephew, Reece Hannah, was among those repealed, and about that time said William H. Bourland, having abandoned the idea of having them adopted and setting up no claim that they had been adopted, left the Chickasaw nation and removed to Texas, where he afterwards died. I was intimately acquainted with the whole family, and after he removed to Texas his three daughters boarded at my house and attended school. From that date until after A. B. Roff had married Matilda Bourland and her death in Texas I never heard of any claim being made that said children had been adopted. About that time A. B. Roff came to see me and to learn whether or not his first wife and her sister had been adopted, his object being to learn so that he could move over into the Chickasaw nation. I then informed him that they had not been adopted except as stated above, but told him that I thought that if he wanted to move in the Chickasaw nation and would keep quiet—go on
 71 and attend to his own business—that the Indians would not object to his staying in the Chickasaw nation. After that he moved over into the Chickasaw nation, and has continued to reside here ever since. I am personally acquainted with the fact that at no time after the repeal of the law adopting said children said law was published as such in any of the books containing the laws of the Chickasaw nation until after the treaty of 1866 between the Chickasaw nation and the United States. When this treaty was made it became necessary for the Chickasaws to revise their laws and the constitution. A committee was appointed by the governor to codify the laws and amend them and have the same published, after which they were to be voted upon by the people for adoption or rejection. About 1868 this election was held. It then developed that this convention or committee had had published the old law adopting the Bourland heirs, and this, among other laws, was specially mentioned to be voted upon by the people for adoption or rejection. After the act adopting them was rejected by the people, and the governor issued his proclamation declaring the result. This was the only act rejected, and by some oversight, in 1876, when the laws were published again, it was again placed in the published laws. Of my own personal knowledge I know nothing further than to say that since about 1876 whenever the matter was agitated a little it was by some manner suppressed. I will further state that Joseph Brown, who married Amanda Bourland, sister of Alvia Roff's wife, in about 1870 or 1871 went to my uncle, Judge Robert Love, and employed him to have his right established as an adopted citizen.

Upon learning this fact I went to him and then to Colonel Bourland and told them that if he insisted on doing this that it would be my duty to tell what I knew about how they were adopted and what I have stated above, but that, his being a friend of mine, if he kept quiet he could remain here and I would say nothing; whereupon no further action was taken by him. I further state

72 that Joe McKinney, who married Gordentia, a sister of Alva Roff's wife, about the year 1880 moved into the Chickasaw nation from Texas and settled near me as a neighbor. He frequently talked to me about his wife's right, and I explained it fully to him, and after living here about two years he moved back to Texas. Since then I have known nothing further about him.

(Signed)

OVERTON LOVE.

Subscribed and sworn to before me this the 2nd day of October, A. D. 1896.

G. W. ADAMS,
Notary Public.

73

“ EXHIBIT C.”

An act repealing all the acts of 1856, which were not adopted.

Be it enacted by the legislature of the Chickasaw nation, That from and after the passage of this act, all the certified copies of the laws that were passed in the legislature of 1856 that were not adopted by the legislature of 1857, are hereby repealed.

C. HARRIS, *Governor.*

Approved November 25, 1857.

(X Copied from pages 87 and 88 of the Laws of the Chickasaw Nation of 1857.)

74

“ EXHIBIT D.”

And act changing the constitution and amending the laws.

Be it enacted, &c., after the passage of this act, That the governor of the Chickasaw nation shall appoint five men, suitable for the purpose of amending the present constitution and laws, and one man from each county, and one floater from each nation; said floater is to be the chairman of the convention.

Be it further enacted, That the members of said convention shall have power to change or amend, the constitution, as they may consider necessary for the better government and general welfare of the citizens of the Chickasaw nation, and conformable to the treaty stipulations of 1855 and 1866, between the United States of America and the Chickasaws.

Be it further enacted, That the said members of the convention shall have power to change or reject any and all existing laws contrary to the said treaty, and make the conformable to said treaty and to the constitution, which they are authorized to make or amend.

Be it further enacted, That the new constitution and amended

laws shall be submitted to the people of the Chickasaw nation for their approval or rejection by general ballot, at the most convenient time, to be specified in a proclamation of the governor to the people of the Chickasaw nation.

Be it further enacted, That the governor shall have the said constitution and laws printed and submitted to the people previous to their submission to the people for their approval or rejection.

Be it further enacted, That if the said new constitution and laws are adopted by the people of this nation the said constitution and laws shall be the constitution and laws of this nation.

Be it further enacted, That if the said constitution and laws should be rejected by the people, then the convention shall change or make them agreeable to the express wishes of the people.

75 Be it further enacted, That the members of the convention shall select their own place of meeting, governed by the will of the majority.

Be it further enacted, That each member of the convention shall receive for their services during the time occupied in the same five dollars per day.

Be it further enacted, That the governor is authorized to draw out of the treasury of the Chickasaw nation five hundred dollars to pay for translating, printing, and distribution of said constitution and laws.

Be it further enacted, That the decision of the people in relation to the adoption or rejection of the new constitution and amended laws shall be sent to the office of the national secretary, like other election returns, by the judges of election of the different counties, and the result shall be made known to the governor, who shall in a proclamation, transmit the information to the people.

Passed July 10, 1867.

(Signed)

R. H. LOVE, *Chairman.*

Be it further enacted, That the governor be and is hereby authorized to appoint one or more members of the committee to superintend the printing and correction of the same, as the governor may hereafter direct.

ROBERT H. LOVE.

Attest: B. F. PERRY,
Sec'y Senate.

Passed the senate July 17, 1867.

J. D. HARRIS,
President Senate.

Passed the house rept. July 18, 1867.

LEWIS NEWBERRY,
Speaker House.
W. COLBERT, *Clerk House.*

Approved July 18, 1867.

C. HARRIS, *Governor C. N.*

(Copied from the original act on file in the office of the national secretary of the Chickasaw nation.)

“ EXHIBIT F.”

Proclamation.

I, Cyrus Harris, governor of the Ch. N., by virtue of the authority vested in me by law, do this day issue this my proclamation, notifying the citizens of the Chick. nation of the result of an election held in respt. counties on the 29th day of June, 1868, for the adoption or rejection of the new constitution and amended laws:

		Adopted.	Rejected.
Constitution and amended laws :			
Panola	county.....	10	“
Pickens	“	41	“
Tishomingo	“	50	“
Pontitoc	“	56	3
		<hr/>	
		137	3
Bill of rights, section 16 :			
Panola	county.....	“	“
Pickens	“	“	“
Tishomingo	“	2	48
Pontitoc	“	“	6
		<hr/>	
		2	54
Adoption of heirs of Wm. Bourland :			
Panola	county.....	“	“
Pickens	“	“	2
Tishomingo	“	“	50
Pontitoc	“	“	39
		<hr/>	
		“	91
School law :			
Panola	county.....	“	“
Pickens	“	“	“
Tishomingo	“	“	50
Pontitoc	“	“	“
		<hr/>	
		“	50

(Signed)

C. HARRIS, *Gov. C. N.*

July 21, 1868.

“ EXHIBIT G.”

Copy.

Proclamation.

I, Cyrus Harris, gov. of the Chickasaw nation, by virtue of the authority vested in me by law, do this day issue this my proclama-

tion, notifying citizens of the Chickasaw nation of the result of an election held in respective counties on the 29th day of June, 1868, for the adoption or rejection of the new constitution and laws :

Total number of votes cast in favor of new constitution and laws.	135
“ “ “ against.....	3
Majority in favor	132
Total number of votes cast in favor of adopting Wm. Bourland's family	47
Number of votes against adoption.....	91
Majority of votes against adoption — heirs of William Bourland.....	44
Total number of votes in favor collecting section in constitution.....	84
Number of votes cast against collecting section in constitution.....	54
Majority of votes in favor of collecting law.....	30
Number of votes cast to insert the 14th section, bill of rights, Aug. 30, 1856	39
Number of votes against section 14.....	99
Majority against inserting the 14th section, bill of rights, Aug. 30, 1856.....	60
Majority of votes cast in favor of adopting school law, July, 1867.....	88
Number of votes cast against the adoption of school law, July, 1867.....	50
Majority of votes polled in favor of school law.....	38

78

“ EXHIBIT H.”

Copy.

MILL CREEK, C. N., July 21, 1868.

Mr. Rennie.

SIR: Accompanying this you will find my proclamation in regard to the election of the constitution, which you will use for a sample. On examination of the returns of the former secretary I find that the figures are incorrect, and you will refer to the original election returns deposited in the office of the national secretary at Tish. city and issue one proclamation to each county, making no suggestions or remarks.

(Signed)

C. HARRIS, Gov. C. N.

(Copied from the original letter, on file in the office of the national secretary of the Chickasaw nation, at Tishomingo, Tishomingo county, Chickasaw nation, Indian Territory.)

"EXHIBIT I."

An act repealing an act granting citizenship to the heirs of W. H. Bourland.

SEC. 1. Be it enacted by the legislature of the Chickasaw nation : That the right of citizenship granted to the following-named children and nephew of W. H. Bourland : Amanda, Matilda, Gordentia and Run Hannah, approved October 7th, 1876, — the same is hereby repealed and annulled.

SEC. 2. Be it further enacted : That the Governor is hereby directed and required to remove said parties and their descendants beyond the limits of this nation, and that this act take effect from and after its passage.

Passed the senate October 11th, 1883.

JONAS WOLFE,
Prs. of Senate.

Attest :

JO. BROWN, *Sec. Senate.*

Passed the house of representatives October 13th, 1883.

F. FRAZIER, *Speaker.*

Attest :

A. T. MCKINNEY, *Clerk.*

The above act became a law by reason of limitation.

THOMAS W. JOHNSON,
National Secretary, C. N.

(Copied from page 46, General and Special Laws.)

80 INDIAN TERRITORY, }
Chickasaw Nation. }

I, L. C. Burris, national secretary of the Chickasaw nation, hereby certify that I am the custodian of all the laws of the Chickasaw nation ; that I have made a thorough examination of the records in my office, and I certify that all the laws enacted by the legislature in 1856 were repealed by the legislature of 1857, except a law forbidding the introduction and sale of ardent spirits in the Chickasaw nation.

Witness my hand and seal of office on this the 14th day of October, 1896.

(Signed)
[SEAL.]

L. C. BURRIS,
National Secretary, Chickasaw Nation.

INDIAN TERRITORY, }
Chickasaw Nation. }

I, L. C. Burris, national secretary of the Chickasaw nation, do hereby certify that the above and foregoing exhibits are true and correct copies of the original records now on file in my office, and that I am custodian of the same.

Witness my hand and official seal this the 3rd day of October, A. D. 1896.

(Signed)

L. C. BURRIS, [SEAL.]
National Secretary, Chickasaw Nation.

81 This being all the testimony introduced upon the trial of the cause by either plaintiff- or defendant, the court rendered its decree in favor of all the plaintiffs; to all of which decree and the rendition thereof the defendant then and there in open court duly excepted.

Be it further remembered that on the 25 day of April, 1898, the defendant presented to the court its motion for a new trial for reasons set forth in said motion; which motion was by the court overruled and denied, and to which judgment of the court in overruling said motion the defendant at the time in open court duly excepted and still excepts.

And now comes the defendant on this 28th day of September, 1898, and within the ninety days allowed by the judge of this court for filing this bill of exceptions, and presents and tenders this its bill of exceptions, and prays that the same be allowed, signed, sealed, and made a part of the record in this cause.

To the approval and signing of said purported bill of exceptions the appellees object:

First. Because — the act of Congress of June 10, 1896, the claim of appellees to Chickasaw citizenship has been inquired into, passed upon, and adjudicated by the final judgment of this court duly rendered and entered herein, and because the act of July 1st, 1898, does not confer upon the Supreme Court of the United States the power or jurisdiction to revise or review said final judgment, and confers upon said Supreme Court appellate jurisdiction only to inquire into and pass upon the constitutionality or validity of said act of June 10, 1896.

Second. Because the final judgment herein was duly rendered and entered prior to the passage of the act of July 1, 1898, and by the rendition thereof the appellees, *ipso facto*, were invested with the vested and valuable right of Chickasaw citizenship, which carried with it the vested and valuable right of property, and for the reason that said act of July 1, 1898, which purports to confer upon said Supreme Court appellat jurisdiction of this cause, is unconstitutional and void.

Which said objections are overruled and denied, and the foregoing is approved, signed, sealed, and ordered filed as a part of the record in said cause.

In testimony whereof I, the undersigned, judge of the United States court for the southern district of the Indian Territory, this 28th day of September, 1898, have set my hand and caused to be affixed the seal of said court.

{ Seal United States Court in the Indian Territory, }
Southern District.

HOSEA TOWNSEND,
Judge of the United States Court in and for the
Southern District of the Indian Territory.

82

UNITED STATES OF AMERICA, }
Indian Territory, Southern District. }

I, C. M. Campbell, clerk of the foregoing district and Territory, do hereby certify that the foregoing 81 pages contain full, true, and perfect copies of all the pleadings, proceedings, and record entries, including the opinion of the said court, in the case of The Chickasaw Nation, appellant, *vs.* Jos. H. Brown *et al.*, appellee, No. 14, as the same remain upon the files and records of the United States court, Indian Territory, southern district, at Ardmore.

I further certify that the original citation in said cause, with the admission of service thereon, is hereto attached and herewith returned.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Ardmore, this 29th day of September, 1898.

{ Seal United States Court in the Indian Territory, }
 Southern District. }

C. M. CAMPBELL,
Clerk of the United States Court,
Southern District Indian Territory.

Endorsed on cover: Case No. 17,071. Indian Territory U. S. court. Term No., 486. The Chickasaw Nation, appellant, *vs.* Joseph H. Brown *et al.* Filed October 28th, 1898.

Joseph H Brown et al, No 96

Chickasaw

Group

- + Joseph H. Brown
- + James R. Brown
- + Jesse J. Brown
- + Lawrence J. Brown
- + Winnie D. Brown
- + Joseph H. Brown Jr.
- + Annie G. Baker
- + Edwin Baker
- + Mary Joe Baker
- + Franklin Baker
- + William G. Baker or Wm G. Baker

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2 My name Pineo Archerd; I am an
3 intermarried Chickasaw Indian; my post
4 office is Madill and I am 50 yrs of age
5 I have known Joseph H Brown since 1875
6 and have been informed by himself and
7 others that he was at one time mar-
8 ried to a Chickasaw Indian woman
9 by the name of Amanda Boursland,
10 but I have no knowledge of the
11 fact as she was dead before I
12 knew him. He was a widower when
13 I first knew him and I afterwards
14 heard he was married. I first met
15 Brown in Pickens County at the
16 Court house on Briar Creek and
17 never knew any of his family
18

19 P. Archerd
20 Subscribed in my presence the 8th
21 day of July 1903
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T-96

Joseph H Brown
Case

Statement of
Felix Archer

Vol of July 1898
Impounded in case
No. 24

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Joseph H. Brown, et al. No. 96.

In accordance with instructions I called on P. Archerd, whose address is given as Oakland, but whose correct address is Madill and his statement appears among the papers.

W.H. Hear

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,
SITTING AT TISHOMINGO, JUNE TERM, 1904.

Joseph H. Brown, et al,

vs.

Choctaw and Chickasaw Nations.

JUNE 29, 1904.

Mr. Cornish:

We were permitted to introduce a certified copy of the
Act of the Chickasaw Legislature of October 17, 1876,
and we have a certificate that it could not be found.

We have been unable to find the Act. Marked Exhibit
A".

- - - - -

In the Choctaw and Chickasaw Citizenship Court, sitting at
Tishomingo, Indian Territory. October Term, 1904.

Joseph H. Brown, et al.,

vs.

No. 96.

Choctaw and Chickasaw Nations.

DECREE OF COURT.

On this 25th day of October, 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, Joseph H. Brown, James R. Brown, Jesse J. Brown, Lawrence J. Brown, Winnie D. Brown, Joseph H. Brown Jr., Annie G. Baker, Edwin Baker, Mary Joe Baker, Franklin Baker and William G. Baker or Wm. G. Baker, are not entitled to be deemed or declared citizens of the Chickasaw 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, Joseph H. Brown, James R. Brown, Jesse J. Brown, Lawrence J. Brown, Winnie D. Brown, Joseph H. Brown Jr., Annie G. Baker, Edwin Baker, Mary Joe Baker, Franklin Baker and William G. Baker or Wm. G. Baker, be denied, and that they be declared not citizens of the Chickasaw Nation, and not entitled to enrollment as such citizens, and not entitled to any rights whatever flowing therefrom.

.....
Chief Judge.

.....
Associate Judge.

.....
Associate Judge.

then existed, a member of the Tribe of Chickasaw Indians, as much so as a native born Chickasaw .

Second: That petitioner, Joseph H. Brown, on the 29th day of July, 1869, was duly and legally married to said Amanda Bourland and lived with her, as her husband, up to the time of her death, in the month of March, 1874, and that by reason and by virtue of his marriage to said Amanda Bourland, under the laws and constitution as it then existed, he became and ever since has been a member of the Tribe of Chickasaw Indians, as much so as a born citizen, with all the rights, privileges and immunities of a native born Chickasaw, except the right to hold the office of Governor of said Nation.

Third: That petitioner, Annie G. Baker, is the legitimate daughter of said Joseph H. and Amanda Brown, and is therefore a member of the Tribe of Chickasaw Indians.

That petitioners, Edwin Baker, May Joe Baker, Franklin Baker and Wm. G. Baker, are the legitimate minor children of Annie G. Baker and the legitimate grand-children of said Joseph H. Brown and his deceased wife, Amanda Brown.

Fourth: That James R. Brown, Jesse J. Brown, Lawrence J. Brown, Winnie D. Brown and Joseph H. Brown, Jr., minors, are the legitimate children of the said Joseph H. Brown by his second and third wives to whom said Brown was legally married.

Fifth: That the Act of the Legislature of the Chickasaw Nation passed October 17th, 1856, adopting said Amanda Bourland, has been ratified and confirmed by a vote of the Chickasaw Nation of Indians, and ever since the marriage of Joseph H. Brown to Amanda Bourland, July 29th, 1869, he has resided in the Chickasaw Nation, Indian Territory, and has been recognized and treated as a member of the Chickasaw Tribe of Indians.

That the application of your petitioners was, by the Commission to the Five Civilized Tribes, rejected and none of them enrolled upon the rolls prepared by said Commission for said Chickasaw Nation. That all of said persons herein set out have resided in said Indian Territory and do ~~now~~ yet so reside.

And your petitioners after being rejected, as aforesaid, by said Commission to the Five Civilized Tribes, in due time perfected their appeal to the United States Court for the Southern District of the Indian Territory, which said Court in its judgment of April 25, 1898, admitted all of said applicants as members of the Chickasaw Tribe of Indians.

which case was duly docketed upon Indian Citizenship Act, styled Joseph H. Brown et al v. Chickasaw Nation, No. 140

That thereafter, on or about the 17th day of December, 1902, this Honorable Court, proceeding under the provisions of the Supplemental Treaty made with the Choctaw and Chickasaw Nations, in an action styled "The Choctaw and Chickasaw Nations, plaintiffs, versus J. T. Riddle et al., Defendants" annulled and vacated the judgment obtained by your petitioners in said court in said Southern District, and held the same for naught.

WHEREFORE, the premises considered, your petitioners respectfully pray that they have an order and Writ of Error from this court, directing and commanding the United States Court for the Southern District of the Indian Territory to transfer and certify the papers, files, proceedings, records and all matters and things pertaining thereto as a part thereof, in said case in said court to this court, and for all other relief to which they may be entitled in equity and good conscience.

Hubert Walker Cannon
Attorneys for Petitioners.

Joseph H. Brown, one of the parties petitioners in the above and foregoing petition upon his oath states that he is familiar with the matters and things therein set out and to his own personal knowledge the same is in all things correct and true.

Joseph H. Brown

Subscribed and sworn to before me this the 6 day of March 1903.

(Seal)

C. F. Wood
Notary Public

SUMMONS.

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:

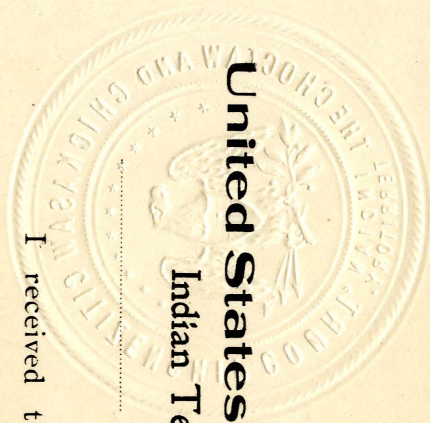
You are hereby Commanded to Summons Green McCurtain, Principal Chief of the Choctaw Nation, to answer on behalf of said nation, in twenty days after the service of this summons upon him, as Principal Chief of said Nation a complaint in Equity filed against the Choctaw and Chickasaw nation in the Choctaw and Chickasaw Citizenship Court, in the Indian Territory, at Tishomingo, by Joseph N. Brown et al and warn him that upon his failure as said Principal Chief to answer on behalf of said nation, the complaint will be taken for confessed, and you will make return of the summons instanter;

And you are further commanded to notify said Green McCurtain, Principal Chief aforesaid, that the papers, files and proceedings in the case of Joseph N. Brown et al File No. 14 in the District Court for the Southern District of the Indian Territory, has been transferred to the Choctaw and Chickasaw Citizenship Court, and that the certificate of the clerk of said court for said Southern 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, Indian Territory, aforesaid, this 23 day of March A. D., 1903.

James B. Cassen Clerk.
By _____ Deputy.





MARSHAL'S RETURN.

United States of America,
Indian Territory,
DISTRICT.

[Signature]
Clerk

I received this summons this 23 day of March, 1903, at 9 o'clock am. and served same by copy, as follows:

Personally on Green McCurtain, at Green McCurtain, Indian Territory,

This 23 day of March, 1903, at 9 o'clock am.

WITNESS the Honorable Spencer B. Adams, Chief Judge

By [Signature] Deputy.

the certificate of the clerk of said court for said Green McCurtain District, Indian Territory, Indian Territory, has been transferred to the Choctaw and Chickasaw Citizenship Court, and that file No. 100 in the District Court for the Choctaw and Chickasaw District of the that the papers, files and proceedings in the case of Green McCurtain District of the and you are further commanded to notify said Green McCurtain, Principal Chief, foregoing, complaint will be taken for confessed, and you will make return of the summons instructed;

Duplicate
No 96-T

**SUMMONS
IN EQUITY.**

Joseph H. Brown et al
vs.
Choctaw and Chickasaw Nations.

Summons issued 23 day of
March, 1903. Returnable instanter.

Marshal's Fees.

Service	-	-	-	\$
Miles	-	-	-	\$
Expenses	-	-	-	\$
TOTAL				\$

Hubert Walker and Cannon
Attorneys for Plaintiff.

Adams, S.T.

Choctaw and Chickasaw Citizenship Court,
Indian Territory,
United States of America,
SUMMONS.

Joseph H. Brown, white man, claims to have been married to Amanda Bourland, July, 29, 1869.

Alleges Amanda Bourland was adopted as a Chickasaw by act of Natl. Legislature Oct. 17, 1856.

After death of Amanda Bourland, the principal applicant twice married white women. Claims for himself, as intermarried citizen, and for one child and four grandchildren by first wife, Amanda Bourland; and for five minor children by two marriages with white women. All were admitted by U. S. Court, Lou. Dist.

Query.

1. Was Amanda Bourland, a white woman or a Chickasaw Indian.
2. Was she ever adopted by Chickasaw legislature?
3. Was Brown's marriage with Amanda Bourland, contracted in Texas of any validity.
4. Was Brown married to the two other white women, by whom he had the five minor applicants?

Question of Law.

Joseph H. Brown ✓
(white man) ✓

married.

1st. Amanda Bourland.
(alleged to have been
adopted as a Chickasaw
in 1856)

2d. Mary L. Gilmore
(white woman)

3d. Annie P. Astor
(white woman)

Annie G. Brown ✓
(w/ married)

W. H. Baker
(white man)

Edwin Baker ✓
Mary Joe Baker ✓
Franklin Baker ✓
William G. Baker ✓

James R. Brown ✓

Jesse G. Brown ✓
Lawrence G. Brown ✓

Winnie W. Brown ✓
Joseph H. Brown Jr. ✓

JOSEPH H. BROWN, ET AL.

The application of Joseph H. Brown, his five children, Mrs. Annie G. Baker, daughter of Joseph H. Brown and her four children.

The applicants state that in October 1856 Amanda Bourland, daughter of Wm. H. Bourland, was adopted by the Chickasaw nation by act of the legislature; Joseph H. Brown was legally married to Amanda Bourland and lived with her until the time of her death in March 1874; that by virtue of said marriage Joseph H. Brown became a member of the Chickasaw tribe of Indians; that Annie G. Baker is the legitimate daughter of Joseph H. and Amanda Brown; that the other applicants are sons of J. H. Brown by his second and third wives to whom Brown was legally married; ask enrollment for all the applicants. The Dawes Commission denied the application; case was appealed to the United States Court, ~~Central~~ District and was referred to W. H. L. Campbell, Master in Chancery, who found that J. H. Brown was married to Amanda Bourland according to the laws of Texas; that said marriage occurred in 1869; that Amanda Bourland was the daughter of Wm. H. Bourland and a sister of Mrs. Matilda Roff; that soon after the marriage said Brown and his wife moved to the Indian Territory and have lived together as husband and wife until the death of Mrs. Brown in 1874; that the applicant was again married in the year 1878 in Cook county, Texas, to Mary L. Gilmore, and they lived together as husband and wife until her death in 1880. The Master recommends that Joseph H. Brown and his children by his first two wives be admitted and enrolled, and that the other applicants, to-wit: the wife and other children of Joseph H. Brown be rejected. Judgment accordingly.

=====
AFFIDAVITS BEFORE DAWES COMMISSION.

A. H. LAW says that he lives in Ardmore; that he is a citizen of the Chickasaw nation by intermarriage; is well acquainted with Joseph H. Brown, who married Amanda Bourland, daughter of Wm. H.

Bourland; affiant was attorney at law in the Indian courts in Chickasaw nation, and is familiar with the statutes, laws and customs of said tribe; there was an act of the legislature of the Chickasaw nation passed October 17, 1856 by which the children and nephew of Wm. H. Bourland were adopted as members of the tribe (quotes the Act); affiant further states that Joseph H. Brown participated in all the election held by the Chickasaw tribe of Indians, sat upon juries in the courts of said Indians, and was in every way considered and recognized to be a member of said tribe. Annie G. Baker is the daughter of said applicant by his first wife, Amanda Bourland; she is now the lawful wife of W. H. Baker.

Wm. H. BOURLAND says that he was acquainted with Wm. H. Bourland now deceased during his life time; the latter was an uncle of affiant's; affiant is 49 years old and is a member of the Chickasaw tribe and is now county judge of Pickins county; in the year 1856 the legislature of the Chickasaw nation passed an act adopting the children of Wm. H. Bourland, deceased and his nephew Reece Hannah; Amanda Bourland is the daughter of Wm. H. Bourland and was legally married to Joseph H. Brown in Cook County, Texas on the 29th day of July, 1869; that she and her husband soon after moved to the Territory where they lived together until her death. Joseph H. Brown was thereafter recognized as a member of the Chickasaw tribe of Indians up to the time that the disfranchisement laws were passed; said Brown's name was on the annuity roll of the Chickasaw Indians. Gives the names of the children born to J. H. Brown by his first wife to-wit: Annie G. Brown, now the wife of W. H. Baker.

P. ARCHORD says he is 43 years old and lives in the Chickasaw nation; he is acquainted with Joseph H. Brown; has known him since the year 1875; during all of said time Brown was recognized by the Chickasaw Indians as a member of their tribe by intermarriage.

Affiant has sat upon juries with Brown; affiant never heard the citizenship of Brown questioned. Prior to the time the intermarried citizens were disfranchised affiant saw the said Brown acting as clerk of elections and assisting in holding elections for the Chickasaw nation.

GROVE E. CHASE says he was born and raised in the Indian Territory and was well acquainted with J. H. Brown; knows that Brown was recognized as a member of the Chickasaw tribe of Indians; affiant was at one time permit collector and during that time he never demanded the payment of a permit from Mr. Brown; affiant is the present permit collector of the Chickasaw nation.

W. B. BURNEY says he is 47 years old; was born and lives in Pickens county; is a Chickasaw by blood; has known J. H. Brown for the past 25 years, during all that time said Brown has been recognized by the Chickasaws as a member of their tribe; has known Brown to sit upon juries and assist in the Chickasaw elections.

JOSEPH H. Brown says he is 52 years old and lives on Mud Creek near the town of Grady, Indian Territory; on the 29th day of July 1869 he was married to Amanda Bourland the daughter of Wm. H. Bourland in Cook county Texas; that said marriage was performed by Rev. E. Couch; (presents a copy of his marriage license) soon after the marriage he and his wife moved to the Chickasaw nation where they lived together as man and wife until her death; affiant has continued to reside in said nation since said time. Gives the names of his children by his first wife. Affiant always understood that in the year 1856 the legislature of the Chickasaw nation adopted as members of the tribe the children and nephew of Wm. H. Bourland; after after affiant's marriage he and his wife were always recognized by members of the Chickasaw nation as citizens of the Chickasaw nation affiant frequently sat upon juries, voted at their election and assisted in holding the same. About three years ago his name was-3-

on the rolls of said tribe as one to whom annuities were paid and he received his annuities; in 1878 in Cook county Texas affiant was again married to Mary L. Gilmore and lived with her until her death in 1880; had one child by her whose name is James R. Brown; in 1885 affiant was married in the Chickasaw nation to Annie P. Aston under a license issued by the Clerk of Montague county, Texas. Gives the names of his children by his last wife. Affiant has been continuously recognized as a member of the Chickasaw tribe of Indians ever since his first marriage.

W. H. BAKER says he is 33 years old and lives near Grady, Indian Territory; that in December 1890 he was legally married to Annie G. Brown, daughter of J. H. Brown. Gives the names of his children. Marriage was performed by A. D. Mathis, United States Commissioner for the Indian Territory, and was according to the laws of the United States.

OVERTON LOVE says he is 73 years old and a citizen of the Choctaw nation. Names the various offices that he has held. Was intimately acquainted with Wm. H. Bourland; said Bourland was a citizen of the United States and the father of several children, among them Amanda. All these children were white children. Some time in the 50's Bourland married Caroline Willis a Chickasaw woman, who is still living, and in 1856 Bourland presented to the legislature an application asking that the children be adopted under the Constitution so that they might live with him while he lived in the Chickasaw nation, the object being that they might have the right of residence and not be ejected by the Chickasaw authorities. In accordance with his application the Act of 1856 was passed; in 1857 said Act was repealed, and Wm. H. Bourland abandoned the idea of having his children adopted, leaving the Chickasaw nation and moving to Texas where he afterwards died. Affiant was intimately

acquainted with the whole family; the daughters of said Bourland boarded with affiant and attended school. From the time they moved to Texas until A. B. Roof married Matilda Bourland affiant never heard of their making any claims of being Chickasaw citizens. About that time A. B. Roof came to affiant and asked whether or not Roof's wife was a member of the Chickasaw nation, his object being to learn whether or not he could move into the nation and live here without being ejected. Affiant explained the situation to him, and told him if he desired to live in said nation, and attended to his own business and would keep quiet, he was sure there would be no objection. The applicants are not citizens of the Chickasaw nation, the act adopting them as citizens was voted upon by the people and was rejected, and so proclaimed by the Governor of the Chickasaw nation.

21290mjs
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Joseph H. Brown, et al.

Vs. No. 14 Judgment Southern Dist. April 23, 1898.

Chickasaw Nation.

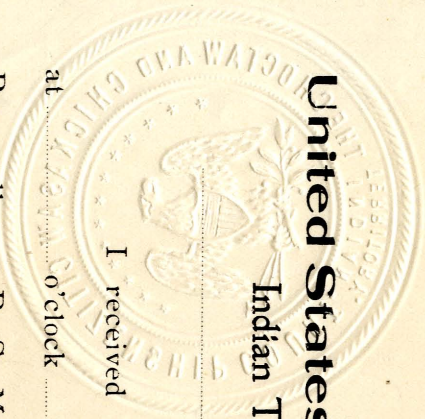
On this the 25th day of April, 1898 came the plaintiffs and defendant by their respective attorneys and at the same time came on to be heard the defendants exceptions to the report of the Master in Chancery heretofore filed herein, and the court after hearing said report and the exception thereto and the defendants plea to the jurisdiction of the court, and the evidence and argument of counsel, and being fully advised in the premises, is of the opinion that said exceptions to said report should be and the same are in all things hereby overuled and denied. And it appearing to the court from the report of the ~~Master~~ Master in Chancery and the evidence herein that all of plaintiffs herein are members of th Chickasaw Tribe of Indians, and that this is an appeal taken to this court from the decision of the Commission of the United States to the Five Civilized Tribes of Indians, who denied the application of the plaintiff to be enrolled as members of said Tribe of Indians. It is therefre, considered, adjudged and decreed by the court that the decision of the said Commission be and the same is hereby reversed that the report of the Master in Chancery be, and the same is hereby confirmed, and that the plaintiffs, Joseph H. Brown, and James R. Brown, Jesse J. Brown, Lawrence J. Brown, Winnie E. Brown, and Joseph H. Brown, Jr., minors by Joseph H. Brown as next friend; and Mrs. Annie G. Baker, and Edwin Baker, Mary Joe Baker, Frankling Baker, and Wm. G. Baker, minors by Mrs. Annie G. Baker, as next friend, be, and the same and each of them, are hereby decreed to be members of the Chickasaw Tribe of Indians, and as such are ent tled to have their names enrolled as members of said Tribe. The said Joseph H. Brown as a member thereof by intermarriage and the ther applicants as the descendants of the said Joseph H. Brown

It is further adjudged and decreed by the court that the said plaintiffs to have and recover from the defendants, the Chickasaw Nation all costs in this behalf expended and incurred, for which execution may issue, and that this judgment by the clerk of this court be certified to the said Commission, aforesaid, for its observance .

To which judgment of the Court the defendant, the Chickasaw Nation in ~~x~~ open court at the time of the rendition thereof duly excepted.

O. K. W. B. Johnson.

MARSHAL'S RETURN.



United States of America,
Indian Territory,
DISTRICT.

Deputy.

I received this summons this 23rd of March 1903, at 5 o'clock p.m. and served same by copy, as follows:

Personally on P. S. Moseley, at Indian Territory,
This 23rd day of March, 1903, m.

WITNESS the Honorable Spencer B. Adams, Chief Judge.

By Deputy.

the certificate of the clerk of said court for said District, Indian Territory,
Indian Territory, has been transferred to the Choctaw and Chickasaw Citizenship Court, and that
the No. 14 in the District Court for the District of the
that the papers, files and proceedings in the case of
And you are further commanded to notify said P. S. Moseley, Governor aforesaid,
complaint will be taken for confessed, and you will make return of the summons instanter.

Duplicate
No 96-7

SUMMONS
IN EQUITY.

Joseph H. Brown, et al
vs.
Choctaw and Chickasaw Nations.

Summons issued 23 day of
March, 1903. Returnable instanter.

Marshal's Fees.

Service	-	-	-	\$
Miles	-	-	-	\$
Expenses	-	-	-	\$
TOTAL				\$

H. H. Walker & C. H. Cannon
Attorneys for Plaintiff.
Admission J. T.

Choctaw and Chickasaw Citizenship Court,
Indian Territory,
United States of America,
SUMMONS.