

Articles

For Claimants.

For Nations.

T-N<sup>o</sup>-10.

Fitzhugh, John, M. et al,

vs

Chickasaw Nation

N<sup>o</sup> 9.

Southern Dist. Court,

N<sup>o</sup>

Dawes Commission.

Orinda Fitzhugh is Chickasaw  
by blood

Question of Law.

Question of fact.

1. Was Ida Love a Chickasaw.
2. Was marriage of Oct. 1875  
in accordance with Chickasaw  
tribal law.

Pass.

W. B.

see memorandum.

**TRANSCRIPT OF RECORD.**

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**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1898.**

No. 481.

THE CHICKASAW NATION, APPELLANT,

*vs.*

JOHN M. FITZHUGH ET AL.

APPEAL FROM THE UNITED STATES COURT IN THE INDIAN  
TERRITORY.

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**FILED OCTOBER 28, 1898.**

**(17,066.)**

(17,063.)

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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 record." 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

5 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

6 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 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 33rd day of said term, to wit, Wednesday, December 22nd, 1897—present and presiding, the Hon. Hosea Townsend, judge—the following, among other, proceedings were had, to wit:

JOHN M. FITZHUGH ET AL. }  
*vs.* } No. 9. Order.  
 CHICKASAW NATION. }

Come now the applicants herein, by their attorney, C. C. Potter, and, after leave of the court first being had, files substituted application, together with one exhibit thereto, and also files substituted master's report herein (vol. A, Citizenship Record, page 165).

\* \* \* \* \*

JOHN M. FITZHUGH }  
*vs.* } No. 9.  
 CHICKASAW NATION. }

Comes now the defendant nation, by its attorney, W. B. Johnson, and through its said attorney files its two substituted answers herein (vol. A, Citizenship Record, page 166).

\* \* \* \* \*

8 And thereafterwards, on the same day, to wit, December 22nd, 1897, was filed with the clerk of the United States court a substituted application for citizenship in this cause; which said application is in words and figures as follows, to wit:

JOHN M. FITZHUGH, for Benefit of Nannie }  
 Fitzhugh, John Gabe Fitzhugh, Wood } Application for Citizen-  
 Clide Fitzhugh, Kate Fitzhugh, Bettie } ship before the Com-  
 Fitzhugh, Mamie Fitzhugh, and Collin } mission to the Five  
 Fitzhugh, } Civilized Tribes.  
*vs.* }  
 CHICKASAW NATION. }

To the honorable commission:

Your applicant, John M. Fitzhugh, a resident of Pickens county, Chickasaw nation, Indian Territory, represents and shows that heretofore, to wit, in October, 1875, he was married according to the laws of said Chickasaw nation, in Pickens county, Chickasaw nation, Indian Territory, to Miss Ida Love, who was a Chickasaw Indian by blood, being the daughter of Judge Overtou Love; that he lived with his said wife in the said nation and Territory until her death, in April, 1879, which also occurred in said Pickens county, Chickasaw nation; that there *was* three (3) children born unto them, two (2) of whom died quite young; the other, Miss Ovie Lee Fitzhugh,

is still living; that by virtue of said marriage the applicant herein, who was a United States citizen, became a citizen of the said Chickasaw nation, Indian Territory, and entitled to all the rights and privileges of citizenship, which rights and privileges have always been granted to him by the said nation as a citizen thereof; that he has received his annuity as such, has served upon juries in their courts, has voted and held elections, and is upon the roll of citizenship of said nation; that after the death of his first wife, to wit, on the 13th day of January, 1880, he was again married to Miss Nannie Jones, which last marriage was solemnized in Cooke county, Texas, under the Texas laws, but in accordance with the Indian laws; that the said John M. Fitzhugh and his said last wife have at all times since their marriage resided in Pickens county, Chickasaw nation, Indian Territory, and have there accumulated property as citizens of said nation, and have had born unto them during their wedlock the following-named children: John Gabe Fitzhugh, a son aged thirteen (13) years; Wood Clide Fitzhugh, the son aged eleven (11) years; Kate Fitzhugh, a daughter aged nine (9) years; Bettie Fitzhugh, a daughter aged seven (7) years; Mamie Fitzhugh, a daughter aged five (5) years, and Collin Fitzhugh, a son aged three (3) years; that by reason of the citizenship of your applicant, John M. Fitzhugh, as aforesaid, and his said marriage to Miss Nannie Jones, as aforesaid, and the birth of their said six (6) children last aforesaid named, that the said last wife of this applicant, Nannie Fitzhugh, and each and all of the said six (6) children herein named became and are citizens of the

9 Chickasaw nation under the constitution of said nation and the treaties between the said nation and the United States Government, and entitled to all the rights and privileges as such, but that the said Chickasaw nation, while recognizing this applicant, the husband and father of the other applicants herein, as a citizen of said nation, have refused and still refuse to so recognize his wife and children or to enter their names upon the roll of citizenship kept by said nation, and refused to grant to them the privileges and rights granted to members of their said tribe.

Wherefore your applicant makes this application to the honorable commission and prays that his said wife and children herein named be declared and held to be citizens of the said Chickasaw nation, Indian Territory, and members of said tribe of Indians, and that their names be entered upon the roll of citizenship of said nation, and for general relief, etc.

Sworn to and subscribed before me this — day of —, 1896.

*Notary Public in and for the Second Judicial  
Division of the Indian Territory.*

Indorsed: "No. 9. Before the commission to the five civilized tribes. John M. Fitzhugh, for benefit of Nannie Fitzhugh *et al.*, vs. Chickasaw Nation. Substituted application for citizenship. Filed December 22nd, 1897. C. M. Campbell, clerk."

10 Before the Honorable Commission to the Five Civilized Tribes.

In the Matter of the Application for Enrollment in the Chickasaw Nation of JOHN M. FITZHUGH *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, December 22nd, 1897, was filed with the clerk of the United States court a substituted 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 of JOHN M. FITZHUGH *et al.* for Enrollment in the Chickasaw Nation.

Now comes 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:

First. The Chickasaw Nation admits that Ida Love was a Chickasaw Indian by blood, but that her marriage with the applicant, John M. Fitzhugh, was not solemnized according to the laws of the Chickasaw nation, and that for that reason such marriage conferred no right of citizenship in the Chickasaw nation upon the said John M. Fitzhugh. The Chickasaw Nation admits that Lovie Lee Fitzhugh, the issue of said marriage, is a Chickasaw Indian by blood and entitled to be enrolled as a citizen of said nation.

Second. The Chickasaw Nation shows that Nannie Jones, the second wife, was a white woman and a citizen of the United States,

and that by her alleged marriage with applicant, John M. Fitzhugh, she acquired no rights of citizenship in the Chickasaw nation; that by reason of said second marriage the said John M. Fitzhugh lost and forfeited whatever rights of citizenship he may have acquired by his first marriage, if any; that the children, the issue of said second marriage, could acquire no right of citizenship in the Chickasaw nation, because neither of their parents were such citizens.

Wherefore the Chickasaw Nation prays that said application herein be rejected.

THE CHICKASAW NATION,  
By Its Attorneys.

Indorsed: "No. 9. John M. Fitzhugh *et al.* vs. Chickasaw Nation. Substituted answer. Filed December 22nd, 1897. C. M. Campbell, clerk."

13 And thereafterwards, to wit, on the 20 day of Feb'y, 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,  
VINITA, INDIAN TERRITORY, — —, 1896.

JOHN M. FITZHUGH ET AL. vs. CHICKASAW NATION.	{	Jno. M. Fitzhugh Admitted as an Intermarried Citizen; His Child, Lovie Lee, Admitted as a Citizen by Blood; His Wife Mamie, <i>née</i> Jones, Denied; Their Children, Jno. G., Wood C., Kate, Bettie, Mamie, & Colin Fitzhugh, Denied.
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I, H. M. Jacoway, Jr., secretary, do hereby certify that the above and foregoing is a true and correct copy of Chickasaw Record —, page —, of the commission to the five civilized tribes.

Given under my hand and official signature this — day of —, 1897.

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

The above and foregoing judgment is indorsed in words and figures as follows, to wit: John M. Fitzhugh *et al.* vs. Chickasaw Nation, Filed February 20th, 1897. Jos. W. Phillips, clerk.

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

JOHN M. FITZHUGH ET AL., Plaintiffs, }  
*vs.* } U. S. Dist. Court for the  
 CHICKASAW NATION, Defendant. } Southern Dist., Ind. Ter.

To the Honorable C. B. Kilgore, judge :

Comes now the Chickasaw Nation, — feeling itself aggrieved by the decision of the Dawes commission in the above cause, admitting certain of the applicants therein to citizenship, hereby prays an appeal from said decision to this honorable court.

W. B. JOHNSON,  
*Attorney for Chickasaw Nation.*

The foregoing appeal is allowed this 12 day of Dec., 1896.  
 C. B. KILGORE, *Judge.*

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

JOHN M. FITZHUGH ET AL., Plaintiff, }  
*vs.* } U. S. Dist. Court for the  
 CHICKASAW NATION, Defendant. } Southern Dist., Ind. Ter.

To the Honorable C. B. Kilgore, judge :

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

POTTER & POTTER,  
*Attorneys for Applicants.*

The foregoing appeal is allowed this 12 day of Dec., 1896.  
 C. B. KILGORE, *Judge.*

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

JOHN M. FITZHUGH 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 John M. Fitzhugh *et al.* 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 12th day of Dec., 1896.

[SEAL.]

JOS. W. PHILLIP-, *Clerk.*

17 And thereafterwards, to wit, on December 20th, 1897, present and presiding aforesaid, the following further proceedings in said cause were had, to wit:

JOHN M. FITZHUGH ET AL., Plaintiffs,	}	No. 9. 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: "John M. Fitzhugh *et al.*, plaintiffs, vs. Chickasaw Nation, defendant. Plea to jurisdiction. Filed in open court '*nunc pro tunc*' Dec. 20, 1897. C. M. Campbell, clerk."

18 And thereafterwards, on the same day, to wit, December 22nd, 1897, was filed with the clerk of the United States court a substituted master's report in said cause; which said report is in words and figures as follows, to wit:

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

JOHN M. FITZHUGH ET AL. }  
 vs. } Report of the Master in Chancery.  
 CHICKASAW NATION. }

Now comes the master in chancery and begs to make the following report in the above entitled cause:

In 1875 the said John M. Fitzhugh, being a white man and a citizen of the United States, was lawfully married to Miss Ida Love; that there was born unto him by said marriage one child, to wit, Lovie Lee Fitzhugh; that in the year 1879 the said Lizzie Fitzhugh died.

Later the said John M. Fitzhugh was married to Miss Nannie Jones, who was a white woman and a citizen of the United States, by whom he has several children.

For the reasons stated by me in my report in the Wiggs case, I recommend that said John M. Fitzhugh and Lovie Lee Fitzhugh, his child by his Indian wife, be admitted to citizenship; but I recommend that the other applicants be rejected.

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

Indorsed: "No. 9. John M. Fitzhugh *et al.* vs. Chickasaw Nation. Substituted master's report. Filed December 22nd, 1897. C. M. Campbell, clerk."

19 I, C. C. Potter, one of the att'ys for the applicants in the above and foregoing cause, do on oath state that the above and foregoing papers are substantial copies of the original papers in said cause.

C. C. POTTER.

Sworn to and subscribed before me this the 24th day of Dec., 1897.

C. B. POTTER,  
*Notary Public in and for Cooke Co., Tex.*

It is hereby agreed that the above and foregoing papers may be substituted for the original papers in the above cause, which were destroyed in the fire that burned the court-house at Ardmore. It is also agreed that the case was properly appealed from the Dawes commission by both the applicants and the Chickasaw Nation.

POTTER & POTTER,  
*Attorneys for Applicants.*  
W. B. JOHNSON,  
*Attorney for Chickasaw Nation.*

Indorsed: "No. 9. John M. Fitzhugh *et al. vs.* Chickasaw Nation. Substituted papers. Filed December 22nd, 1897. C. M. Campbell, clerk."

20. 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:

*Order.*

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

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).

21 *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

22 Government undertook to remove certain settlers, 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

23 "all claim to any territory west of one hundredth degree 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 forever secure and guarantee the lands embraced within the said limits to the members of the Choc-

taw 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 time of the selection; and should the said absentee fail to remove  
24 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 coun-

try 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 their present country, that every tract of land so reserved in  
25 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 severally 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  
26 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, do-n'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 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 intermarried 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.”

27 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

28 Chickasaw nation shall confer any right of citizenship, or 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.

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

HOSEA TOWNSEND, *Judge*.

30 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 33rd day of said term, to wit, Wednesday, December 22nd, 1897—present and presiding, the Honorable Hosea Townsend, judge—the following, among other, proceedings were had, to wit:

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 33rd day of said term, to wit, Wednesday, December 22nd, 1897—present and presiding, the Hon. Hosea Townsend, judge—the following, among other, proceedings were had, to wit:

JOHN M. FITZHUGH ET AL. }  
 vs. } Judgment.  
 CHICKASAW NATION.

This cause come on to be heard upon the report of the master in chancery, as well as upon the entire record, with all the evidence therein contained; and the court, being fully advised in the premises, is of the opinion that said master's report should be corrected in so far as it attempts to exclude any of the applicants herein to citizenship in the Chickasaw nation, except as to Mrs. Nannie Fitzhugh, and, as thus corrected, the court is of opinion that said master's report should be in all things confirmed, and it is so ordered. The court finds that John M. Fitzhugh, a white man and a citizen of the United States, in the year 1875 was lawfully married, according to the laws of the Chickasaw nation, to Miss Ida Love, a native Chickasaw Indian, and that by her he had one child, to wit. Lovic Lee Fitzhugh; that in the year 1879 the said Mrs. Ida Fitzhugh died, and that thereafter the said John M. Fitzhugh was lawfully married to Miss Nannia Jones, who was a white woman and a citizen of the United States, but said marriage was solemnized according to the laws of the State of Texas; that during said last marriage there was born unto the said John M. Fitzhugh and his said wife, Mrs. Fitzhugh, six children as follows: John Gaber Fitzhugh, Ward Clide Fitzhugh, Kate Fitzhugh, Bettie Fitzhugh, Nannie Fitzhugh, 30½ and Collier Fitzhugh; that the said John M. Fitzhugh has continuously resided in the Chickasaw nation since his first marriage, and has claimed the rights of citizenship therein. The court finds that all of the applicants are entitled to citizenship except Mrs. Nannie Fitzhugh, and it is ordered that her application be rejected; but it is considered, ordered, and decreed that said John M. Fitzhugh and said Lovic Lee Fitzhugh, John Gabe Fitzhugh, Wood Clide Fitzhugh, Kate Fitzhugh, Bettie Fitzhugh, Nannie Fitzhugh, and Collier Fitzhugh be, and they are hereby, admitted to citizenship in the Chickasaw nation and to enrollment as members of said tribe of Chickasaw Indians, with all the rights and privileges appertaining to such relation. It is further ordered that this decree be certified to the Dawes commission for their observance. It is ordered that plaintiff do have and recover of the Chickasaw Nation all costs by him in this behalf expended; to all of which defendants excepts (vol. A, Citizenship Record, page- 166 and 167).

31 \* \* \* \* \*

JNO. M. FITZHUGH ET AL. }  
 vs. } No. 9.  
 CHICKASAW NATION.

Comes now the defendant nation, by its attorney, W. B. Johnson, and, after leave of the court first being had, files motion for a new trial herein (vol. A, Citizenship Record, page 200).

And on the 40th day of said term, to wit, Friday, January 21st, 1898, present and presiding aforesaid, the following further proceedings were had in said cause, to wit.

JOHN M. FITZHUGH ET AL. }  
 vs. } No. 9.  
 CHICKASAW NATION. }

Now, on this day, comes the defendant nation, by its attorney, W. B. Johnson, and, after leave of court first being had, files its plea to the jurisdiction of the court, *nunc pro tunc*, as of December 20, 1897 (vol. A, Citizenship Record, page 227).

32 And thereafterwards, to wit, on Wednesday, December 22nd, 1897, present and presiding aforesaid, the following further proceedings in said cause were had, to wit:

JOHN M. FITZHUGH ET AL., Plaintiffs, }  
 vs. } No. —. Motion for a New  
 CHICKASAW NATION, Defendant. } Trial.

Now comes the defendant, Chickasaw Nation, and respectfully moves the court to set aside the judgment heretofore rendered in this cause for the following reasons, to wit:

First. Because the judgment was contrary to law.

Second. Because the same was contrary to the evidence.

Wherefore it prays that said judgment be set aside and held for naught.

CHICKASAW NATION.

The above and foregoing is indorsed in words and figures as follows, to wit: "John M. Fitzhugh *et al.* vs. Chickasaw Nation." "Motion for a new trial." "Filed in open court Dec. 22nd, 1897." "C. M. Campbell, clerk."

33 And thereafterwards, to wit, on Monday, March 7th, 1898, present and presiding aforesaid, the following further proceedings in said cause were had, to wit:

JOHN M. FITZHUGH ET AL., Plain- }  
 tiff, } No. —. Order Overruling Plea  
 vs. } to the Jurisdiction and Motion  
 CHICKASAW NATION, Defendant. } for a New Trial.

On this 7th day of March, 1898, came on to be heard the defendant's plea to the jurisdiction of the court herein and its motion for a new trial, and the court, after hearing said plea and motion, is of the opinion that the same should be and is in all things overruled and denied; to which judgment of the court the defendant duly excepted.

34 And at the April, 1898, term of said court, to wit, on the 11th day of July, 1898—present and presiding, the Hon.  
 3—481

Hosea Townsend, judge—the following, among other, proceedings were had, to wit :

JOHN M. FITZHUGH ET AL. }  
 vs. } No. 9. Order of Substitution.  
 CHICKASAW NATION. }

It appearing to the court by the affidavit of William B. Johnson, attorney for the Chickasaw Nation, that some of the papers in the hereinafter-styled cause were destroyed by fire, and that the same 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.)

JOHN M. FITZHUGH ET AL. }  
 vs. } No. 9. 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 22nd day of Dec., 1897, 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.

35 And thereafterwards, on the 50th day of said term, to wit, on the 11th day of July, 1897, 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 :

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

JNO. M. FITZHUGH ET AL., Plaintiff, }  
 vs. } Assignment of Errors.  
 CHICKASAW NATION. }

The defendant in this action, in connection with his petition for appeal, makes the following assignment of errors, which he 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 applicant 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 the said Chickasaw nation with the United States.

36 Fifth. The court erred in holding that the applicant herein, who had failed to comply with the laws of the Chickasaw nation regulating his citizenship therein, was still entitled to all the rights and immunities of a citizen and entitled to be enrolled as such.

Sixth. The court erred in holding that it was unnecessary of the applicant, in order to retain his citizenship in the Chickasaw nation, which he acquired by the laws of said nation by marriage into the said tribe, to further comply with the laws of said nation by not again marrying any United States citizen.

Seventh. The court erred in holding that a United States citizen could marry a Chickasaw citizen by blood, according to their laws, and become a citizen thereof, and after the death of said Chickasaw Indian that said United States citizen could marry another United States citizen, according to the laws of the Chickasaw nation, and thereby confer the right of citizenship in the said Chickasaw nation upon the second spouse and the issue thereof, and so on to all succeeding issues.

Eighth. The court erred in holding that the United States citizen acquiring citizenship in the Chickasaw nation did not forfeit his right to citizenship by again marrying a United States citizen.

Ninth. The court erred in holding that a United States citizen who had married a Chickasaw Indian and acquired citizenship in said nation by reason of said marriage did not forfeit the same when he had been divorced from his Indian wife.

Tenth. The court erred in holding that any United States citizen divorced from an Indian wife had the right to confer citizenship in the said Chickasaw nation upon the second wife, who was a United States citizen, and the issue thereof.

Eleventh. The court erred in holding that where a United States citizen had married an Indian citizen, according to the laws of the Chickasaw nation, and the Indian citizen died, the United States citizen could confer the right of citizenship in the Chickasaw nation on the issue of the second marriage with a United States citizen not in accordance with the laws of the Chickasaw nation.

37 Twelfth. The court erred in holding that when a United States citizen whose Chickasaw Indian wife had either died or been divorced from him, and he then married a United States citizen, that the issue of said second marriage, by marrying according to

the Chickasaw laws, could confer citizenship upon the spouse and children of said issue.

Thirteenth. The court erred in that after the papers in this case were destroyed and order was made that such papers be substituted within a certain date during the same term of court in which said order was made.

Fourteenth. The court erred in overruling defendant's exception to the report of the master in chancery.

Fifteenth. The court erred in granting this decree upon the substituted pleadings and evidence of the plaintiff alone, the pleadings and evidence of both plaintiff and defendant having been destroyed.

Sixteenth. The court erred in granting a decree upon the report of the master in chancery alone.

Seventeenth. The court erred in overruling the motion of the defendant for a new trial.

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

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

W. B. JOHNSON,  
*Attorney for Chickasaw Nation.*

Indorsed: "No. 4. Jno. M. Fitzhugh *et al.* vs. Chickasaw Nation. Assignment of errors. Filed in open court July 11th, 1898. C. M. Campbell, clerk."

38 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:

JOHN M. FITZHUGH ET AL., Plaintiff,	} No. —. Bond on Appeal.
vs.	
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, John M. Fitzhugh *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 John M. Fitzhugh *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 John M. Fitzhugh *et al.*, citing and admonishing — 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: "John M. Fitzhugh *et al.* vs. Chickasaw Nation. Defendant's bond. Filed in open court July 11th, 1898. C. M. Campbell, clerk."

39 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.)

JOHN M. FITZHUGH ET AL. }  
*vs.* } No. 9. 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.)

JOHN M. FITZHUGH ET AL. }  
*vs.* } No. 9. Order Granting Extension  
 CHICKASAW NATION. } of 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.)

40 THE UNITED STATES OF AMERICA, ss :

To Jno. M. Fitzhugh *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 Jno. M. Fitzhugh *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 in 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 21st day of July, 1898, accept due personal service of this citation on behalf of John M. Fitzhugh *et al.*, appellees.

POTTER & POTTER,  
*Solicitors for Appellees.*

[Endorsed:] 9. Jno. M. Fitzhugh *et al. v.* Chickasaw Nation. Citation. Original. Filed in open court Jul- 11, 1898. C. M. Campbell, clerk.

41 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 :

JOHN M. FITZHUGH ET AL., Plaintiff,	} Affidavit for Substitution of Papers.
<i>vs.</i>	
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. 9. Jno. M. Fitzhugh *et al.* vs. Chickasaw Nation. Affidavit for substitution of papers. Filed in open court July 11th, 1898. C. M. Campbell, clerk."

42 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.

JOHN M. FITZHUGH ET AL., Plaintiffs, <i>vs.</i> CHICKASAW NATION ET AL., Defendant.	}	Bill of Exceptions.
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Be it remembered that on the 15th day of Aug., 1896, John M. Fitzhugh *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 1 day of Sept., 1896, the Chickasaw Nation filed with the said Dawes commission its answer to the application of the said John M. Fitzhugh *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 applicants.

That thereafter, to wit, on the 15 day of Nov., 1897, the said Dawes commission denied the application of certain of the applicants herein and admitted certain others of the same.

That thereafter, to wit, on the 15 day of Dec., 1896, said plaintiffs did appeal from the decision of the said Dawes commission, and the said defendant did cross-appeal from the same, said appeals each being duly perfected upon notice to the opposite party.

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

43 order of the court the defendant objected, and, said objection being overruled, the defendant then and there duly excepted and still excepts.

That thereafter, to wit, on the 15 day of May, 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 the said John M.

Fitzhugh and his child by his Indian wife to be citizens of the Chickasaw nation, but rejected the second wife of the said John M. Fitzhugh and the issue of said second marriage; to which report admitting John M. Fitzhugh 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 Southern District of Indian Territory,  
at Ardmore.

JOHN M. FITZHUGH ET AL., Plaintiffs, <i>vs.</i> CHICKASAW NATION, Defendant.	}	Exceptions to Master's Report.
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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.*

That thereafter, to wit, on the 22 day of Dec., 1897, when said exceptions came on to be heard by the court, the same were overruled; to which the defendant then and there objected, and, said objection being overruled, the defendant at the time in open court duly excepted and still excepts.

Be it further remembered that on the 20 day of Dec., 1897, the defendant filed its plea to the jurisdiction of the Dawes commission and of this court to pass upon this cause upon appeal from said Dawes commission, which plea was overruled by the court; to which the defendant objected, and, said objection being overruled by the court, the defendant then and there duly excepted and still excepts.

Be it further remembered that on the 22 day of Dec., 1897, this 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 attorney, and the following, among other, proceedings were had, to wit:

The plaintiffs introduced the following testimony :

44	INDIAN TERRITORY, } <i>Chickasaw Nation.</i> }
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Personally appeared before me, the undersigned authority, ———, who, each being duly sworn, deposes and says: I am personally acquainted with John M. Fitzhugh, whose full name is John Marion Fitzhugh. I have known him for — years; that he was married to Miss Ida Love, daughter of Judge Overton Love, who

was an Indian by blood. I know that the said Fitzhugh married her about the year 1875, and they lived together as husband and wife until her death, in 1879; that they have one living child by said marriage, whose name is Lovie Lee Fitzhugh; that after the death of the said Ida Fitzhugh the said John M. Fitzhugh married Miss Nannie Jones, a white woman, in January, 1880, with whom he, the said John M. Fitzhugh, has lived ever since; that by his last marriage there has been born to John M. Fitzhugh and his last wife, Nannie Fitzhugh, six children, named John Gabe Fitzhugh, Wood Clyde Fitzhugh, Kate Fitzhugh, Bettie Fitzhugh, Mamie Fitzhugh, and Collin Fitzhugh; that the said John M. Fitzhugh and his family have lived in the Chickasaw nation all the timesince his first marriage, as above stated; that the said John M. Fitzhugh has been recognized by the Chickasaw authorities as an Indian by marriage, and has since the marriage of his last wife been so recognized, having drawn his annuity money as such and sat on juries in their courts. Each of us have been personally and well acquainted with the said Fitzhugh during the times indicated in this affidavit.

\_\_\_\_\_  
 \_\_\_\_\_

Sworn to and subscribed before me this — day of —, 1896.

*Notary Public in and for the Southern Division  
 of the Indian Territory.*

Indorsed: Before the commission to the five civilized tribes. John M. Fitzhugh, for benefit of Mrs. Nannie Fitzhugh *et al.*, vs. Chickasaw Nation. Evidence to sustain application.

45 Plaintiffs here closed their testimony and their case. Whereupon the defendant, in addition to its answer in this cause before the Dawes commission, did introduce the following exceptions; which exceptions were heretofore introduced before the Dawes commission, and, being by said commission overruled, defendant objected.

46 Before the Honorable Commission to the Five Civilized Tribes.

In the Matter of the Application for Enrollment in the Chickasaw Nation of JOHN M. FITZHUGH *et al.*

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.*

Which exceptions being by the court overruled, the defendant then and there in open court duly excepted and still excepts.

47 This being all the testimony introduced upon the trial of the cause by either plaintiffs or defendant, the court rendered its decree in favor of plaintiffs; to all of which decree, save and except that part which admitted Lovie Lee Fitzhugh, the issue of the marriage of John M. Fitzhugh and Ida Love, the defendant in open court then and there excepted and still excepts.

Be it further remembered that on the 7 day of March, 1898, the defendant presented its motion for a new trial to the court for reasons set forth in said motion; which motion was on March, — 1898, by the court overruled and denied; 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 29 day of Sept., 1898, and within the ninety days allowed by the judge of this court for filing this bill of exceptions, and prays that the same be allowed, signed, sealed, and made a part of the record in this case, which is accordingly done.

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

HOSEA TOWNSEND,

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

48 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 47 pages contain full, true, and complete 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.* Jno. M. Fitzhugh *et al.*, appellee, No. 9, as the same remain upon the files and records of the United States court, southern district, Indian Territory, 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. 17,066. Indian Territory U. S. court. Term No., 481. The Chickasaw Nation, appellant, vs. John M. Fitzhugh *et al.* Filed October 28th, 1898.

John M. Fitzhugh et al. }  
vs. Chickasaw Nation. } T. No. 10. Sov. Dist. 9.

Petition to Dawes Commission: 1896

- 1. John M. Fitzhugh. (white man).
- 2. Ovie Lee " " (child of No. 1, by Chick. wife)
- 3. Nannie " " (white wife of No. 1).
- 4. John Gabe " " }
- 5. Wood Elide " " } Children of Nos. 1 & 3.
- 6. Kate " " }
- 7. Bettie " " }
- 8. Mamie " " }
- 9. Collin " " }

Admitted by Dawes Commission.

John M. Fitzhugh  
Ovie Lee "

Denied by Dawes Commission.

Nannie, (white wife) and John G. Wood C.,  
Kate, Bettie, Mamie and Collin (white children).

Appeal and cross appeal were taken both by applicants and Chickasaw Nation

To U. S. Court, Lou. Dist., Dec. 12, 1896.

Judgment U. S. Court, Dec. 22d, 1897.

Admitted

1. John M. Fitzhugh
2. Lovie Lee "
3. John Gabe "
4. Woodie Clide "
5. Kate "
6. Bettie "
7. Mammie "
8. Collin "

Demied.

Mrs. Nannie Fitzhugh.

The child Ovie (Lovie) Lee Fitzhugh is a Chickasaw Indian by blood and is undoubtedly entitled to enrollment.

The further disposition of the case is a question of law.

John M. Fitzhugh, a white man married Ida Love, a Chickasaw Indian in Oct. 1875, by whom he had one child the

applicant, Ori Lee Fitzgerald.

Lived with his Chickasaw wife until her death in April, 1879.

Then married Nannie Jones, a white woman by whom he had 6 children.

---

Query:

1. Was Ida Love, a Chickasaw.
2. Was marriage of Oct. 1875 in accordance with Chickasaw tribal law.

John M. Fitzhugh et al. No. 10

Chickasaw Army

- + Wannie Fitzhugh
- + John Gabe Fitzhugh
- + Wood Clide Fitzhugh
- + Katie Fitzhugh or Kate Fitzhugh
- + Bettie Fitzhugh
- + Wannie Fitzhugh
- + Lollie Fitzhugh

~~Fitzhugh~~

John M. Fitzhugh et al No 10

John M. Fitzhugh  
Lovie Lee Fitzhugh, now Drake

Admit - John M. Fitzhugh by Intermarriage +  
Lovie Lee Fitzhugh by blood - Chikassaw

Others not passed on

JohnM. Fitzhugh, et al.<sup>2</sup>

vs. No. 9, Judgment, Southern District, December, 22m 1897.

Chickasaw nation.

This cause came on to be heard upon the report of the Master in Chancery as well as upon the entire record with all the evidence therein contained, and to court being fully advised in the premises is of the opinion that said Master's report should be corrected in so far as it attempts to exclude any of the applicants herein to citizenship in the Chickasaw Nation, except as to Mrs. Nannie Fitzhugh, and as thus corrected, the court is of the opinion that said Master's report should in all things be confirmed and it is so ordered.

The court finds that JohnM. Fitzhugh a white man and a citizen of the United States, in the year 1875 was lawfully married according to the law of the Chickasaw Nation, to Miss Ida Love, a native Chickasaw Indian, and that by her he had one child, to-wit: Lovix Lee Fitzhugh, that in the year 1879 the said Mrs. Ida Fitzhugh died and that thereafter the said JohnM. Fitzhugh was lawfully married to Miss Nannie Jones, who was a white woman and a citizen of the United States; that said marriage was solemnized according to the laws of the state of Texas. That during said latter marriage there was born unto the said JohnM. Fitzhugh and his said wife, Mrs. Fitzhugh, six children, as follows:

JohnGaber Fitzhugh, Woode Clide Fitzhugh, Kate Fitzhugh, Bettie Fitzhugh, Mamie Fitzhugh and Collin Fitzhugh.

That the said JohnM. Fitzhugh has continuously resided in the Chickasaw Nation since his first marriage, and has claimed the rights of citizenship therein. The court finds that all of the applicants are entitled to citizenship except Mrs. Nannie Fitzhugh, and it is ordered that her application be rejected, but is is considered ~~and~~ ordered and decreed that said JohnM. Fitzhugh and said Lovix Lee Fitz

Fitzhugh, Mamie Fitzhugh and Collin Fitzhugh be and they are hereby admitted to citizenship in the Chickasaw Nation and to enrollment as members of the Tribe of Chickasaw Indians, with all the rights and privileges appertaining to such relation.

It is further ordered that this decree be certified to the Dawes Commission for their observance. It is ordered that plaintiff do have and recover of the said Chickasaw Nation, all costs by him in this behalf expended.

To all of which defendan excepts.

JOHN M. FITZHUGH, ET AL.

John M. Fitzhugh applies for citizenship for the benefit of Nannie Fitzhugh, John Gabe Fitzhugh, Wood Clyde Fitzhugh, Kate Fitzhugh, Bettie Fitzhugh, Mamie Fitzhugh, and Collin Fitzhugh.

Application to the Dawes Commission states that John M. Fitzhugh is a resident of the Chickasaw Nation, Pickens County; that in Oct. 1875 he was married according to the laws of the Chickasaw Nation to Miss Ida Love, the daughter of Judge Overton Love, and a Chickasaw Indian by blood. Said marriage was performed in Pickens County, Chickasaw Nation. Applicant lived with his said wife until her death which occurred in Pickens Co. in April, 1879. During said marriage there were three children born to them only one of whom, Miss Ovie Lee Fitzhugh, is now living. By virtue of said marriage the applicant became a citizen of the Chickasaw Nation, and was accorded all the rights and privileges of any other citizen of said Nation. He has received annuity money, has served upon juries in their courts, has voted in their elections, and is upon their roll of citizens. On the 13th day of January, 1880, after the death of his first wife, applicant married Miss Nannie Jones, which marriage was solemnized in Cooke County, Texas, and under the Texas laws, but in accordance with the Indian laws. (How could that be?) Applicant and his second wife have ever since lived in the Chickasaw Nation, have accumulated property, and they have had six children born to them. Applicant claims that he conferred citizenship upon his second wife and his children by her. Says that the Chickasaw authorities recognize him as a citizen, but refuse to recognize his second wife and her children. Prays for enrollment.

The Dawes Commission admitted John M. Fitzhugh as an intermarried citizen, and his daughter, Ovie Lee Fitzhugh, as a citizen by blood. Denied all the others. The Chickasaw Nation appealed to the U.S. Court for the Southern District against those admitted, and the applicants appealed to the same court in behalf of those denied. The case was referred to W. H. L. Campbell, Master in Chancery, who reported in favor of the admission of John M. Fitzhugh and his daughter Ovie Lee Fitzhugh, and against the admission of all the others. The Court admitted all of the applicants except Mrs. Nannie Fitzhugh, applicant's last wife, whom the Court rejected. The Chickasaw Nation appealed to the Supreme Court of the United States.

The only testimony found in the record is the following affidavit which seems to have been made by several persons, the names of none of whom are given. Nor is there any signature to the affidavit.

Affiants are acquainted with John Marion Fitzhugh; have known him for blank years. Know that he was married to Miss Ida Love, daughter of Judge Overton Love who was an Indian by blood. They were married about the year 1870 and lived together as man and wife until her death about the year 1879; they have one living child by said marriage whose name is Lovie Lee Fitzhugh. After the death of his first wife Fitzhugh married Miss Nannie Jones a white woman in January 1880 with whom he has lived ever since. By that marriage he has six children. Fitzhugh and his family have lived in Chickasaw Nation since the time of his first marriage. He has been recognized, etc; has sat on juries, drawn annuity money,. Affiants are personally well acquainted with Fitzhugh and know the truth of what they speak.

The applicant married out. The Dawes Commission should have admitted Ovie Lee Fitzhugh, and no other applicant.

2120202

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT

AT SOUTH MC ALESTER, INDIAN TERRITORY.

John M. Fitzhugh et als, Plaintiffs, )  
 )  
 vs )  
 )  
 Choctaw and Chickasaw Nations, Defendants. )

Now comes John M. Fitzhugh and his wife, Nannie Fitzhugh, who sue in their own right, and the said John M. Fitzhugh as next friend for Lovie Lee Fitzhugh, John Gabe Fitzhugh, Wood Clide Fitzhugh, Katie Fitzhugh, Bettie Fitzhugh, Mamie Fitzhugh, and Collin Fitzhugh, minors, *Left no name Fitzhugh* and represent to the court that these petitioners on the 22nd day of Dec. 1897, recovered in cause No. 9, a valid judgement against the Chickasaw nation in the United States court for the Indian Territory at Ardmore, ~~admitting~~ admitting these plaintiffs to citizenship and enrollment as members of the Chickasaw tribe of Indians, from which judgement an appeal was taken to the Supreme court of the United States, in which court said judgement was in all things affirmed and approved. That said judgement is still a valid and subsisting judgement. But these plaintiffs show that this honorable court did on the 17th day of Dec., 1902, in the case of the Choctaw and Chickasaw nations vs J.T. Riddle et als, to which cause these plaintiffs were not parties, rendered a judgement and decision by which this honorable court attempted and seeks to set aside and nullify the said judgement of these plaintiffs obtained in the United States court as aforesaid, and for this reason these plaintiffs pray for an appeal in this cause to this honorable court. These petitioners show that they are entitled to enrollment as members of the Chickasaw tribe of Indians by reason of the judgement aforesaid, and for the further reason that the plaintiff John M. Fitzhugh, then being a white man and a citizen of the United States, in the year 1875 lawfully married in and according to the laws of the Chickasaw nation one Miss Ida Love, a native Chickasaw Indian by blood. And that by her he had one child, to wit, Lovie Lee Fitzhugh. That in the year 1879 the said Mrs. Ida Fitzhugh nee Love, died. And that thereafter the plaintiff John M. Fitzhugh was

lawfully married. to Miss Nannie Jones, who was a white woman and a citizen of the United States, but said marriage was not solemnized according to the laws of the Chickasaw or Choctaw nation, but was solemnized according to the laws of Texas. That during their said marriage there were born unto these plaintiffs the following children to wit: John Gabe Fitzhugh, Wood Glide Fitzhugh, Katie Fitzhugh, Bettie Fitzhugh, Mamie Fitzhugh, and Collin Fitzhugh. That by the judgement of said United States court the plaintiff Mrs. Nannie Fitzhugh was excluded from citizenship and enrollment as members of the Chickasaw tribe of Indians, because her marriage was not solemnized according to the laws of either the Choctaw or Chickasaw nations. That the said John M. Fitzhugh has continuously resided in the Chickasaw nation since his first marriage and has claimed his rights to citizenship therein; and that the petitioner Mrs. Nannie Fitzhugh has continued to reside in said Chickasaw nation and claimed citizenship therein every since her marriage to the said John M. Fitzhugh. That the other plaintiffs have lived in the Chickasaw nation all their lives.

wherefore these plaintiffs pray that they be allowed an appeal in this case, and that the same be brought before this honorable court to be tried herein, and that the writs of error and summons as provided by the rules of this honorable court do issue herein.



IN THE CHOCTAW AND CHICKASAW CITIZENSHIP  
COURT, SITTING AT TISHOMINGO, INDIAN TERRI-  
TORY, MAY TERM, 1904.

May 4, 1904.

John M. Fitzhugh, et al.,

vs.

No. 10.

Choctaw and Chickasaw Nations.

C. C. Potter, attorney for plaintiffs.

Mansfield, McMurray & Cornish, for defendants.

Judge Adams:

The case of J. B. Sparks, et al., is the first case for today.

Mr. Potter:

If it please the Court we would like to take up No.10 for this reason only--Judge Love is here as a witness in this case and is feeling unwell and would like to return home and I would like to get this case through so that he may leave on the noon train.

Mr. Cornish:

There are no objections.

Judge Adams:

Take up No.10, John M. Fitzhugh, et al.

Mr. Potter:

For the purpose of identifying the parties and showing the jurisdiction of the Court, I will read the judgment of the United States Court for the Southern District, Indian Territory.

(Judgment read)

Judge Adams:

Are all those children by his last wife?

Mr. Potter:

One of them was by his Indian wife, Lovie Lee; the others were by his second wife.

Judge Adams:

The court admitted the children by both marriages?

Mr. Potter:

Yes sir.

The court house at Ardmore was burned up and all the papers in this case were burned. After Congress allowed an appeal

the Tribes asked the Court to order the applicants to substitute the papers and the court made that order.

Overton Love, witness on behalf of plaintiffs, being first duly sworn testified as follows:

Direct examination by Mr. Potter:

Q What is your name?  
A Overton Love.  
Q Where do you reside?  
A In the Chickasaw Nation.  
Q What is your postoffice?  
A Marietta.  
Q Are you a member of any tribe of Indians?  
A Yes sir.  
Q What tribe?  
A Chickasaw.  
Q Did you know Ida Jitzhugh?  
A Yes sir.  
Q Was she related to you in any way?  
A She was my daughter.  
Q Her maiden name then was Ida Love?  
A Yes sir.

Judge Adams:

You are speaking of his first wife?

Mr. Potter:

Yes sir, his Indian wife.

Q Whom did she marry?  
A John Fitzhugh, John M. Fitzhugh.  
Q What year did they marry in?  
A About '75.  
Q Where did they marry?  
A It was; I don't remember the particulars of the marriage--I don't believe it was at home and I don't know as I could state just where it was. I don't think it was at home though.  
Q Where did they live after the marriage?  
A They lived with me and about me. They were living at my house when she died.  
Q How long did they live together before she died?  
A I think four or five years.  
Q Did they live in the Chickasaw Nation continuously after their marriage until her death?  
A Not continuously--not all the time--they were a few months in the Choctaw Nation.  
Q Did they have any children?  
A I think she was the mother of three children.  
Q Are any of them living?  
A One.  
Q What is her name?  
A Lovie Lee--she's now married to Doak. We know him as Nail Doak--I forget his initials.

Cross examination by Mr. Cornish:

Q You have reference to John M. Fitzhugh--this man present in the court room?  
A Yes sir.  
Q That is the man who married your daughter?  
A Yes sir.

Q And father of the child Lovie Lee?

A Yes sir.

Q Who is the wife of Doak?

A Yes sir.

Judge Adams:

Is Mrs . Doak an applicant?

Mr. Potter:

Yes sir.

Judge Love just keep your seat a minute. In No. 11, case of Charles L. Jones, there is another man who married a daughter of Judge Love and I would like to have him give his testimony in that case.

I now offer the certificate of the land office here, of the Chief Clerk, as to the enrollment of Judge Love.

(Certificate filed--marked "Exhibit-A")

John M. Fitzhugh, witness on behalf of plaintiffs, being first duly sworn, testified as follows:

Direct-examination by Mr. Potter:

Q What is your name?

A John Fitzhugh.

Q Where do you reside?

A Velma, Indian Territory.

Q Did you know Ida Love?

A Yes sir.

Q Were you and she ever married?

A Yes sir.

Q When were you married?

A 1875.

Q What time in '75, do you recollect?

A October.

Q Where were you married?

A Married at her sister's, Mrs. Morrisons.

Q Where was that?

A About three miles above where the Judge lived, in there on Red River.

Q What county was that?

A In Pickens County, Chickasaw Nation.

Q Who performed the ceremony?

A Parson Richards.

Q Preacher?

A Yes sir.

Q How long had you been living in the Territory when you married her?

A I'd been here off and on about two years but hadn't been here permanently only about twelve months, but I considered this my home for about two years.

Q Where did you live after you married her?

A Lived there in the valley for a long time and then went to Stonewall and then went back down there and still lived there when she died.

Q Where have you lived ever since you married her, in what country?

A In Red River and Wild Horse, my present home.

Q In the Chickasaw Nation?

A Yes sir, except what time I was at Stonewall.

Q Were there any children born to you and Ida Love?  
A Yes sir, three.  
Q Are any of them living?  
A Lovie is living.  
Q Lovie Lee?  
A Yes sir.  
Q After your Indian wife died, did you marry again?  
A Yes sir.  
Q Whom did you marry?  
A I married Miss. Jones, lived in Texas.  
Q Given name?  
A Nannie.  
Q Where did you marry her?  
A At her mother's where she lived, near Dexter.  
Q Where did you live with her after you married her?  
A Been in the Chickasaw country ever since then.  
Q Is she still living?  
A Yes sir.  
Q Your present wife?  
A Yes sir.  
Q Have you any she any children?  
A Yes sir, six children.  
Q I wish you would now give their names and also give the ages of each one?  
A I don't know whether I can give the ages or not, the oldest one is 21, John Gaber is his name. Then Wood Clide and Kate--  
Q Give their ages as near as you can?  
A The oldest boy is 21 and the other boy is about 17 and the girl is about 16. John Gaber is 21, 21 last January. Wood Clide is 17--I don't know exactly the date. Kate Clide 16--Bettie 14--Mamie 12--Collin 10.

Cross-examination by Mr. Cornish.

Q Mr. Fitzhugh, your present wife is a white woman?  
A Yes sir.  
Q Her name is Nannie?  
A Yes sir.  
Q You are a white man?  
A Yes sir.  
Q Your children John G. and Wood C. and Kate and Bettie and Mamie and Collin are your children by your second wife?  
A Yes sir.  
Q They have no Choctaw blood?  
A No sir.  
Q Your child Lovie Lee who is now the wife of Doak is the child of your first wife, the daughter of Judge Love?  
A Yes sir.  
Q When you were first married did the preacher who married you give you a certificate of marriage?  
A Yes sir, it got burned at the court house.  
Q You had it in the court?  
A Yes sir, Judge Love was the Judge at that time.  
Q And for that reason you are unable to produce the original?  
A Yes sir.  
Q You kept the original?  
A I lost it, I don't know what became of it.

Mr. Potter:

Q Do you know whether while Guy Keel was clerk of Pickens County the records were burned or not?  
A That's my understanding --I don't know it to be a fact.

Mr. Potter:

That's all the testimony.

Mr. Cornish:

As I understand your contention is that this first marriage was prior to the intermarriage law of the Nation?

Mr. Potter:

Yes sir.

Judge Adams:

Is that your case?

A Mr. Potter:

Yes sir.

Mr. Cornish:

The case is submitted to the court.

Judge Adams:

No. 10 submitted, Mr. Clerk.

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In the Choctaw and Chickasaw Citizenship Court, sitting at  
Tishomingo, in the Southern District of the Indian Territory,

June Term, 1904.

John M. Fitzhugh, et al.,

vs.

No. 10.

Choctaw and Chickasaw Nations.

DECREE OF COURT.

On this 30th day of June, 1904, this cause coming on for 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 plaintiff, John M. Fitzhugh, is entitled to be deemed a citizen by intermarriage of the Chickasaw Nation, and to enrollment as such, and to all the rights, privileges and immunities, personal to himself, flowing therefrom; and that the plaintiff, Lovie Lee Fitzhugh (now Doak), is entitled to be declared a citizen by blood of the Chickasaw Nation, and to enrollment as such, and to all the rights, privileges and immunities flowing therefrom.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the petition of the plaintiffs, John M. Fitzhugh and Lovie Lee Fitzhugh (now Doak), be granted, and that the plaintiff John M. Fitzhugh, be deemed a citizen by intermarriage of the Chickasaw Nation, and entitled to enrollment as such citizen, and entitled to all the rights, privileges and immunities, personal to himself, flowing therefrom; and that the plaintiff, Lovie Lee Fitzhugh (now Doak), be declared a citizen by blood of the Chickasaw Nation, and entitled to enrollment as such citizen, and entitled to all the rights, privileges and immunities flowing

therefrom; and the petition of the other parties to this cause  
is not passed upon in this decree.

.....  
Chief Judge.

.....  
Associate Judge.

.....  
Associate Judge.

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

John M. Fitzhugh, et al.,

vs.

No. 10.

Choctaw and Chickasaw Nations.

DECREE OF COURT.

On this 29th day of November, 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, Nannie Fitzhugh, John Gabe Fitzhugh, Wood Clide Fitzhugh, Katie Fitzhugh or Kate Fitzhugh, Bettie Fitzhugh, Mamie Fitzhugh, and Collin Fitzhugh, 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, Nannie Fitzhugh, John Gabe Fitzhugh, Wood Clide Fitzhugh, Katie Fitzhugh or Kate Fitzhugh, Bettie Fitzhugh, Mamie Fitzhugh, and Collin Fitzhugh, 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.