

# TRANSCRIPT OF RECORD.

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United States Circuit Court of Appeals  
EIGHTH CIRCUIT.

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No. 2685.  
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BETTIE LIGON, ET AL., APPELLANTS,  
vs.  
DOUGLAS H. JOHNSTON, ET AL., APPELLEES.

—————  
APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
IN THE INDIAN TERRITORY.

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FILED AUGUST 12, 1907.

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vs.  
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In the United States Court of Appeals in the Indian Territory.

Bettie Ligon et al.,

No. 858. v. Equity.

Douglas H. Johnston, et al., Green McCurtain, et al., and James R. Garfield, Secretary of the Interior, Appellees.

Citation.

To Douglas H. Johnston, Green McCurtain, and James R. Garfield, Secretary of the Interior—Greeting:

Whereas, Bettie Ligon et al, appellants in the above named cause, have lately appealed to the United States Circuit Court of Appeals for the 8th Circuit, from a decree lately rendered in the United States Court of Appeals in the Indian Territory, made in favor of you, the said Douglas H. Johnston, et al., Green McCurtain et al., and James R. Garfield, Secretary of the Interior, and filed the security required by law: You are therefore hereby cited to appear before the said United States Circuit Court of Appeals for the 8th Circuit, in the city of St. Louis, on the 17th day of August, 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, Indian Territory, this the 18th day of June, 1907.

HOSEA TOWNSEND,

Judge of the United States Court of Appeals, in the Indian Territory.

I hereby, this 18th day of June, 1907, accept due personal service of this citation on behalf of James R. Garfield, Secretary of the Interior.

GEORGE R. WALKER,

U. S. Attorney Southern District, Ind. Ter.

We hereby, this 22 day of June 1907, accept due personal service of this citation on behalf of Douglas H. Johnston and Green McCurtain.

MANSFIELD, McMURRAY & CORNISH,  
Attorneys for Douglas H. Johnston and Green McCurtain.

United States of America,

Indian Territory,

In the Court of Appeals—Sct.

Pleas and Proceedings in the United States Court of Appeals in the Indian Territory, at a term begun and held at the Court

b

LIGON, ET AL. VS. JOHNSTON, ET AL.

House in the City of South McAlester, Indian Territory, on the 11th day of June, A. D. 1907, Present and presiding:

Hon. Joseph A. Gill, Chief Justice, Hon. Wm. H. H. Clayton, Associate Justice, Hon. Hosea Townsend, Associate Justice, Hon. William R. Lawrence, Associate Justice, George K. Pritchard, U. S. Marshal and Wm. P. Freeman, Clerk.

Bettie Ligon et al., Appellants,  
No. 858. vs.  
Douglas Johnson et al., Appellees.

Be it Remembered, That heretofore, to-wit, on the 23rd day of May, A. D., 1907, there was filed in the office of the Clerk of the United States Court of Appeals in the Indian Territory, at South McAlester, a transcript of the record and proceedings of the United States Court for the Southern District of the Indian Territory, sitting at Ardmore, in the above entitled cause, which is in the words and figures following, to-wit:

In the United States Court of Appeals in the Indian Territory.

No 858

BETTIE LIGON ET AL Appellants  
vs.  
DOUGLAS H JOHNSON, ET AL. Appellees

Appeal from the United States Court for the Southern District of the Indian Territory, Sitting at Ardmore, Indian Territory.

Filed May 23 1907

In the United States Court of Appeals at South McAlester, Indian Territory.

Bettie Ligon et al, Appellants.

vs.

Douglas H. Johnston, et al, Appellees.  
HAGLER, LEE & SAMS,  
WEBSTER BALLINGER,  
CHARLES VON WEISS,

Attorneys for Appellants.

MANSFIELD, McMURRAY & CORNISH.

Attorneys for Appellees.

GEORGE R. WALKER, U. S. District Attorney.  
JAMES E. HUMPHREY, Asst. U. S. Attorney,

Attorneys for James R. Garfield, Secretary of the Interior.

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

Be It Remembered, That on the 10th day of May, 1907, the

same being the eleventh day of the regular April, 1907, Term, present and presiding Honorable Hosea Townsend, Judge, after court being opened in due form of law, the following, amongst other proceedings, were had, to-wit:

7071

Bettie Ligon et al, Plaintiffs,

vs.

D. H. Johnston et al, Defendants.

Amended Complaint *filed*

Which said amended complaint is in words and figures as follows to-wit:

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

Equity No.

Bettie Ligon et al., Plaintiffs

vs.

Douglas H. Johnston, et al., Green McCurtain et al., and James R. Garfield, Secretary of the Interior Defendants.

Amended Complaint

The plaintiff for herself and for, and on behalf of Russell Franklin, Ellen Gibson, Gracie Perkins, Virgie Adams, Mable Smith, Pearlie Gibson, Kissie Gibson, Mervin Gibson, Sorena James, Solomon Gilbert, Abigail Hill, Celestine Hill, Roger Hill, Ed Johnson, Julia Smith (nee Johnson), Albert Johnson, Shirley Johnson, Linton Johnson, Clarence Johnson, Fleetwood Johnson, Alda Johnson, Lafate Johnson, Amanda Duncan, Mintora Duncan, Anna May Duncan, Lydia Jackson, Josie Jackson, Jennie Davidson, Dora Johnson, John Jackson, Frank Jackson, Effie Johnson, Rayford Johnson, Arrena Jackson, Gaddis Jackson, Marietta Jackson, Flossie Jackson, Calvin Jackson, Kelton Jackson, William Jackson, Bessie Jackson, DeWitt Jackson, Cal Humdy, Mandy Peters, Rosa Ray, Peter Humdy, Arthur Humdy, Hattie Patterson, Jack Ray, Corbin Ray, Lillie Bell, Ray Bell, Zora Patterson, Ed Humdy, Jack Humdy, Minerva Patton, Harriet Powers, Royal Humdy, Simon Humdy, Retta Jones, Tom Humdy, Frank Humdy, Mandy Humdy, Jennie Humdy, Mary Humdy, Clarence Humdy, Lawrence Humdy, Maria Humdy, Bessie Humdy, Caroline Humdy, Nancy Patton, Maudie Patton, Nelly Patton, Toliver Patton, Mary Patton, Marceda Patton, Davie Powers, Tjirston Powers, Odessa Powers, Lee Powers, Macy Powers, Tarson Powers, Alberta Jones, Ora Jones, Agnes Cobb, Willie

Jones, Fish Jones, Nettie Haines, Victoria Allen, Ida Edwards, Irabell Johnson, Lillie Jones, Lolee Jones, Sam Jones, Eddie Allen, Tommie Allen, Frank Edwards, Charlie Edwards, Lee Edwards, Corea Johnson, Curtis Johnson, Isaac Humdy, Icie Jacobs, Loius Edwards (enrolled as Louis Jacobs), Pearlie Edwards (enrolled as Pearlie Jacobs), Jesse Edwards (enrolled as Jesse Jacobs), Salina Edwards (enrolled as Salina Jacobs), Ralph Edwards (enrolled as Ralph Edward Jacobs), Mary Edwards, Clarence Ligon, Mitchell Ligon, Gladys Ligon, Lesder Ligon, Chadwick Ligon, Mable Douglas, Sophia Myrtle Douglas, Mat Ligon, Kittie Love, nee Williams (enrolled as Malsy Williams), Charlie Williams (enrolled as Charley Williams), Jimmie Williams, Martha Harris, (enrolled as Martha Williams), Tommie Williams, Lula Williams, Beulah Williams, Mandy Williams, Kittie Miller, George Miller, Pollina Miller, Rena Miller, Cromwell Griffiths, Cleveland Griffiths, Thurmond Griffiths, Malinda Griffiths, Delius Griffiths, Calvin Newberry, Bertha Newberry, Ison Newberry, Ben Newberry, Lillie Newberry, Mary Newberry, Willie Newberry, Effie Newberry, Wiley Newberry, Willie Newberry, Jr., Sadie Newberry, Louis Newberry, Lula Newberry, Mira Stevenson, Grady Stevenson, Lula Stevenson, Loan Stevenson, Dick Stevenson, Joe Stevenson, Dave Stevenson, Myra Stevenson, Robert Stevenson, Alfred Stevenson, Brown Stevenson, Channie Stevenson, Annie Stevenson, Ada Stevenson, Lucy Williams, Richard Williams, Francis Williams, Chubb Williams, Mattie Williams, Timothy Williams, Johnnie Williams, Serina Stevenson, Manley Stevenson, Johanna Williams, Della May Williams, Edward Stevenson, Carnelis Stevenson, Viola Stevenson, Elizabeth Lanie, Dewey Lanie, Robert Lanie, Peter Stevenson, J. C. Stevenson, Angeline Stevenson, Monroe Stevenson, Gaddis Stevenson, Amos Stevenson, Nancy Tyner, Ally Tyner, Riley Stevenson, Elijah Stevenson, Cora Stevenson, Anderson Stevenson, Jackson Stevenson, Amanda James, Gertie Knowles, Laura Richardson, Annanda Richardson, Robert Richardson, Mira Richardson, Sylvia Alexander, Flora James, Lanie Colley, Oliver Colley, Maudie Colley, Mary Colley, Winchester Colbert, Leford Colbert, Thomas Colbert, Claudia Colbert, Mary Kindricks, Nelson Stevenson, Cornelia Stevenson, Lucy Stevenson, Matildy Johnson, Ellis Stevenson, Edward Stevenson, Fleet Stevenson, Sam Stevenson, Ellen Williams, Mattie Williams, Irine Williams, Pearlina Franklin, Hellen Franklin, Alice Hamilton, Gurda Newberry, Dave Stevenson, Lydia Franklin, Solomon Franklin, Wellington Williams, Henrietta Williams, Callie Sherley, Bell Sherley, Albert Sherley, Victor Sherley.

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George Hamilton, Stand Watty Stevenson, Lillie Eight, Ernest Eight, Celles Walters, Bertha Walters, Lila Franklin, Ed Franklin, Arthur Franklin, Rupert Stevenson, Abraham Stevenson Banks, Stevenson, May Williams, Benjamin Williams, Katie Williams, Albert Williams, Carrie Williams, Rutha Williams, Fulson Williams, Sical Williams, Thomas Stevenson, Anna Stevenson, Dud Stevenson, Henry Stevenson, Houston Stevenson, Carrie Butler, Moseley Butler, Moseley Plummer, Lischice Munds, Annie Mands, Levi Stevenson, Benjamin Stevenson, Belle Williams, Wade Williams, Mary Williams, Henrietta Williams, Laura Colbert, Andrew Colbert, Beulah Colbert, Bettie Colbert, Sarah Colbert, Lester Colbert, Lorondo Abrahams, Ross Williams, Della May Williams, Liza Williams, Manuel Williams, Elnora Williams, Willie Williams, Amy Hooks, Savannah Hooks, Sam Wright, Willie Wright, Ellis Williams, Emma Lewis, (as Emma Mitchell,) Kenzie Williams, (as McKenzie Williams, Robert Williams, Joe Williams, Lula Williams, Henry Williams, Reuben Williams, Angie Williams, (as Angeline Williams), Jennie Walker, Ellis Drain, Ellen Franklin, Susie Ponder, (as Susie Stanfield, Carrie Anderson, (as Carrie Colbert), Ora Colbert, Nellie Franklin, Madge Franklin, (as Madgie Franklin), Lethis Franklin (as Letha Franklin), Liza Franklin (as Eliza Franklin, Sue Eskew (as Louisa Stanfield), Sadie Bell Stanfield, (as Belle Stanfield), William Stanfield, Samentha Stanfield, Lenore Stanfield, (as Lenora Stanfield), Jack Stanfield, (as Jack Stanfield), Harry Stanfield, Roberta Stanfield, (as Roberta Bennett), Alberta Stanfield, as Alberta Bennett, Katy Peters (as Katie Peters), Savannah Love, Earnest Newberry (as Ernest Newberry), Essie Newberry, Ophelia Newberry, Robert Jackson, Julia Williams, (as Julia Love, Sam Jackson, (as Samuel Jackson), Wiley Jackson, Ben Love, Lolla Love, (as Leora Love), Oda Love (as Odee Love, Lula Love, Maggie Love (as Maggie Love, Nealie Bell Jackson (as

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Nelia Jackson, Wilburn Jackson, (as Welburn Jackson, Lula Jackson, Liddie Ann Taylor (as Liddle Taylor, Willie Taylor, Ora Taylor, (as Orie Taylor, Noma Taylor, (as Nonie Taylor), Lindsey Taylor, as (Linzy Taylor), McKinley Taylor, (as Wm. N. K. Taylor) Nereta Taylor (as Nevada Taylor, Edna Taylor, Calvin James, Charley Bias, Arthur James, Ora James, Nona James, Willie James, Rosella James, Anda James (as Andy James), Charley Prince, Lize Prince, (as Eliza Prince), Matilda Prince, Jessie Prince, (as Jesse Prince) Matie Prince, Volet Childs, Joe Peters, Minerva Franklin, Margaret Taylor, Leola Peters, (as Leora Peters), Mosley Childs, (as Malsy Peters), Swain

Peters, Willis Childs, (as Willis Peters), Helen Childs, Emma Childs, Brown Peters, Nettie May Peters, Sam Johnson Peters, (as Samuel J. Peters,) Phoebe Franklin (as Phoebe Franklin), Maude Franklin (as Maud Franklin, Margaret Heard, Humdy Heard, as Mahomedy Heard, Ida Heard, Mary Williams, Liza Williams, Agnes Williams, Robert Williams, Minnie May Williams, Hattie E. Stanfield, Lawrence Franklin, Albert Franklin, Raymey Williams, John Henry Williams, Buell Jackson, Robert Jackson, Columbus Jackson, George Richardson, Julia Richardson, Mattie Richardson, Franklin James, Jackson Heard, Martha Colbert, Nathaniel Franklin, Otis Franklin, Minerva Jackson, Jersey Bell, Jackson, Furmon Jackson, Melton Jackson, Richard Thompson, Annie McGee, all Chickasaws; John Alexander, Elva (Elvie) Alexander, Earnest Alexander, Charlie Alexander, Georgeann Alexander, Joe Battiece, Ollie Bettiece, Lila Bettiece, Francis Benson, Thomas Benson, Columbus Benson, Joe Benson, Pearlle Benson, Thomas Benson, Mary J. Burton, Bettie Allean Burton, Susan Brashears, Mary Jane McCoy, Michael McCoy, Elizabeth Roebuck, Francis Boatright, Emily Cook, Oliver Boatright, Tommie Boatwright, Jimmie Boatright, Isaac Cook, Lila Cook, Nellie Cook, William Cook, Eva Cook, Marion Boatright, Cleaton Victor Boatright, George Washington Boatright, Amelia Brashars, Josie Brown, Mattie Brown, John Willis, Renzo Wilson, Lonso Wilson, Willie McCoy, Emma Brown, Pearlle Butler, Noah Butler, Ida Butler, Emmet Butler, Phyllis Butler, (as Phyllis Jackson), Lewis

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Jackson, (as Louis Jackson), Charles Jackson, Mary Butler, Willie Roberts, Henry Butler, George Butler, Lemon Butler, Julius Butler, Fannie Colbert, Oliver Colbert, Lillie Colbert, Georgia Conley, Ada Crittenton, Jack Crittenton, Sarah Dod, William Daney, (as William Dan), James Daney (as James Dana), Emma Butler, (as Emmie Butler), Emma Daney (as Emma Danna), Alberta Daney (as Alberta Dana), Willie Daney (as William Dana), Bessie Daney (as Bessie Dana), Emmet Daney (as Emmet Dana), Lizzie Daney (Lizzie Dana, Jr.) Sammie Daney (Sammie Dana), (Sarah Dana), Neomi Daney (Neomi Dana) Calvin Davis, Elizabeth Davis, Violet Maybelle Hines, Moses Douglas, Gabrella Douglas, Emaly Douglas, Walter Durant, Carrie English, Wilson Everidge, Violet Everidge, Bryant Everidge, Josie May Everidge, Mary Murphy, May Everidge, Lillie Everidge, Manuel Everidge, Ella Fischer, Martin Fisher, Tillie Fisher, Osborne Fisher, Reason Fisher, Charlie Fisher, Harrison Fisher, Ellen Fisher, Nownig Fisher, Abigail Fisher, Emma Fisher, Henry Fisher, Alexander Fisher, Jordon Folsom,

Victoria DeFlore, Johnson Folsom, Levenia McDaniels, Jordon Folsom, Jr., Martin Byrd, Gertrude Byrd, Martha Brashears (LeFlore), Ephriam Folsom, Dexey Folsom (Dixie Folsom), Permealia Folsom (Parmelia), Georgia Folsom (Georgie), Jennie McDaniels, Henry McDaniels, Nona McDaniels, Bessie Folsom, Andrew Folsom, McKinley Folsom, Sam LeFlore, Lee Folsom, Arthur Folsom, Ada Folsom, Cleaven Mills, Napoleon Mills, Irriella Mills, Lucinda Mills, Rose Mills, Agnes Frenchman, Atlas Frenchman, Clarence Frenchman, Jerry Fulsom, Mary Jane Fulsom, Nancy Garlands, Sam Cole, Zizzie Fulsom, Henderson Allen, Birdie Allen, Jefferson Allen, Moses Fulsom, Martha Fulsom, Dora Fulsom, Emma Fulsom, Edgar Fulsom, Violet Fulsom, Henry Fulsom, Arthur Fulsom, Iserina Ward, Parthenia Nolen, Willie Fulsom, Francis Fulsom, Robert Noelen, Louis Nolen, Gertrude R. Nolen, Willie Nolen, Pearlle Nolen, Leverne Nolen, Cooper Fulsom, Lula Clayton, Ida Fulsom, Jennie Fulsom, Ida Fulsom, Junnie Fulsom, Vivia May Fulsom, Ora Fulsom, Joe Gardner, Morris Garland, Mary Garland, William Garland, Rodella Giddens, Leanna Woods, Tennessee Edwards, Alberta Parker, Prudence Giddens, Lola Bell Giddens, Fancy Giddens, James Ashley Giddens, Curley Giddens, William Giddens, Conda Lee Butler, Percy Butler, Redella May Butler, Jacob Green, Addie Goldsmith, Christie Goldsmith (as Crisey), Tecumseh Goldsmith, Carrie Goldsmith, Stanley Goldsmith (as Capt. S), Otis Goldsmith, Orange Goldsmith, Rose Goldsmith, Solomon Goldsmith, Lloyd Goldsmith, (as Lloyd Levi) Henry Goldsmith, Mabel Goldsmith, Lincoln Jefferson, Goldsmith, Guy Goldsmith, Mattie Graham, Isabella Guess, (as Isabelle), Wilson Guess, Martha Guess, Thomas Guess, Columbus Guess, Elba Guess, Jessie Guess, (as Jesse,) Bessie Guess, Vernetta Guess, Katie Everidge, Pearlle Guess, John Guess, Jr., Jimmie Guess, Anna Guess, Patsy Hall, Wilburn Hampton, Linz Hampton, (as Lyinc), Mary Hampton, Jesse Hampton, James Hampton, Amelia Hill (as Hills), Mary Shoals, (as Mary Hampton, Pearlle Hill, Bessie Lee Hill (as Bessie Hills) Rosa Lee Hill (as Hills) Jackson Harkins, Dave Harkins, Nelson Harris, Lula Harris, Julia Ann Jackson, Ella Freeman, Martha Redford, (as Margaret), Robert Jackson, Phoebe Williams, Willy Jackson (as Willie), Ben Jackson, Andrew Jackson, (as Anderson,) Mitchell Jackson, Josephine Jackson, Anna Jackson, Lu Jackson, Celia Thompson, Elizabeth Willis (as Washington), Sarah Ewing (as Hardy), George McHardy (as George McHardy), Mary Ann Jackson (as Mary Jackson, Claxborn Washington (as Claxburn, Sarah Washington, Ida Washington, Charley Washington, George Cleborn Willis (as

George Cleveland Willis), Thelma McHardy (as Thelma L.), Eldridge Jackson (as Elbridge), Horace Jackson, (as Harris Elwood), Jackson James, Cleofus James, as Telephus, Luenda Littrell (as Lucinda James, Luanna Walker (as Luanna James), Daniel James, Guy James, Willie James, Jimmie James, Sylvia James (enrolled as Sylva, Lucie Hillard (enrolled as Hilliard), Janie Hillard (as Janie B. Hilliard) McKinley Hillard (as McKinley Hilliard), Lonza Hillard (as Lonza Hilliard), Ephreum Hillard (as Ephreum Hilliard), Plina Jackson (as Pauline Jackson), Earnest Jackson, Laura Jackson, Marina Walker, Wilmena Walker, Zola Littrell, Lorena Littrell, Lorenna Hilliard, Carrie Jackson, 8 Hickman James, George Ann (as Georgia James) Lonso James, Vina James (as Viney), Bessie James, Lila James, (as Lida James, Elsie James, Charlie James, Callie James, Galetia James, Tommie King, Melvina King, Clara King, Earnest King, Robert King Joe Lawrence, Lavotia Lawrence, Eschariah Lawrence, Edna Lawrence, Grant Lawrence, Emily Lawrence, Douglas Lawrence, Eli Lawrence, Mary Ann LeFlore, Sherman Fry, Stella Fry, Malinda Fry, Alice Fry, Mattie Fry, Frank Fry, Becken Fry, Clarence Fry, Alphonsa Fry, Francis Lynch, Katy Logan, Elvira Anderson, Nicholas Lynch, Lila Lynch, Caroline Pickens, Ella Harris, Lela Tombs, Hickman Prince, Henrietta Prince, Josephine Prince, Sim Prince, Leona Prince, Emma Scott, (nee Prince) Martha Hunley, Ruthie Wright, Warrick Smith, Lena Scott, Katie Nunley, Mary Nunley, Eddy Nunley, Perry Nunley (as Carrie Nunley), Warrick Prince, Hattie Kirk (as Hattie Milton), Cordelit Galloway (as Cordie Prince), Leavy Brown, George Brown, Toney Brown, Pitman Brown, Willie Brown, Della Brown, Lorenzo Russell, Jesse Maytubbe, Della Maytubbe, Fannie McNair, Alex Miller, Jennie Miller, William Mills, Cora Everidge, Lucy Thompson, Emma Hampton, Ed Thompson, Walt Thompson, Jimmie Thompson, Freeman Thompson, Lonzo Hampton, Mary Hampton, Violet Vinson, Isaac Gardner, Lizzie Gardner, Florid Gardner, Magnolia Gardner, Johnson Vinson, Louisa White, Cretia Shosles (as Creassie), Tena Woods, Laura Woods, Caroline Smith, Wheeler Wilson, Aaron Wilson, Delia Wilson, Thomas Wilson, Daniel Wilson, Johnny Wilson, Mary Smith, Henry D. Smith, Maybelle Smith, Hannah Stanley, Tanda Stanley, Eva Stanley, Gertrude Walker, John Williams, Clarissa Jackson, Ida Williams, Hattie Halford, Rosie Freeman (nee Williams) Garfield Williams, Mary Lena Freeman, Rosie Willis, Thomas Willis, Walter Willis, Emma Willis, Georgia Jefferson (as Jeffers), Ida Byrd, Ruth Willis, Frances Thomas (nee

Willis), Cora Grant (nee Willis), Rosa Murphy (by Mitchell Willis administator), Mary Murphy (by Mitchell Willis guardian), Mollie Wilson, Cora Lundia, Rosa Lundia, Margaret Lundia, Rayfields Lundia, James Wilson, Joe Wilson, Nettie Wilson, Emma Wilson, Eddie Wilson, Harrison Wilson, Shub Wilson, Johnny Wilson, Jeff Walton, (nee Waldron), Jesse Walton, (as Jesse Waldron), George Walton (as George Waldron), Henry Walton (as Henry Waldron), Sophy Walton (as Sophy Waldron), Sophie Lenox, Thomas Lenox, Ariella Lenox, (Arella Beaver), Lela Lenox, Ruthy Brown, Solomon Brown, Henry Brown, Lula Brown, George Brown, Willie Thomas (as Willie Brown) Icie Thomas (as I. C. Thomas) Kitty Butler, George Walton, Jr., Luvicy Washington, Epolian Williams (as Napoleon Williams), Thomas Williams, Heady Williams (as Nettie Williams), Texana Camel (as Texana Campbell) Walter Camel (as Walter Campbell), J. D. Camel (as J. D. Campbell), Bessie Camel (as Bessie Campbell) Jeff Camel (as Jeff Campbell) Edward Camel (as Edward Campbell), Cato Newberry, Louisa Webster, Sam LeFlore, David LeFlore, Cleavan LeFlore, Lelar Robins, Bessie Robins, Zora Robins, Andrew McAfee, Terry McAfee, Louvetia McAfee, McKinley McAfee, Jerry Hampton, Delbert Green, Robert Burns, Jim Burns, John Burns, Isiah Burns, Viola Burns, Edna Burns, Ben Burns, Laura Burns, Martha Burns, Richard Thompson, Rebecca Samuels, Ivason Montgomery, Bertha Samuels, Clarence Samuels, Kiziah Harrison, (as Kiziah Harrison), Emma Gordon (as Emaline Gordan), Brigam Young Harrison (as Brigon Y. Harrison, James Harrison, Cora Harrison, (as Cora H. Harrison) Catherine Harrison, Thomas Harrison, Louisa Harrison, Hattie Harrison, Willie Boyd (as Willie Voyd) Edna Gordan, Lela Gordan, (as Lelia Gordan) Earnest Gordan (as Elmer Gordan), Clara-bel Gordan (as Carrie Bell Gordan), Paul Harrison, Florid Harrison (as Floyd Harrison Clyde Harrison, Morte Mable Harrison (as Monte Mabel Harrison) Carl Harrison, Brillie May Harrison, Mable Harrison, Harold Boyd, (as Mary Inez Voyd), Burnis Boyd (as Bernice Voyd, (William Boyd (as Will Lee Voyd), Junie Boyd (as Junie V. Voyd), Ezkial Boyd (as Ezkial Voyd) Emma Boyd, Jimmie James, (Jim James), Jesse James, Minerva James, Eva James, Joseph James, Clarissa James, Martin James), Emerson James, Mary James, Peggie Fields (as Peggy Fields, Mollie Moss, Lula Fields, Arthur Fields, John Fields, Catherine, Dunford, Minnie Carr (as Minnie Gooding) Emma Hodgkins, Jesse Matubby, Rena Dunford, Vicy Powell (as Vicy Dunford), Elsie Dunford, Tommie Carr (as Tommie

Hicks) Ella Carr, (as Ella Jeffers), Maggie Matubby, William Matubby, Hattie Dunford, Albert Dunford, Zack Powell, Ester Powell, Melvina Jones, Ellis Johnson, Martin Johnson, Malinda Hall (as Malinda Jones), Annie Johnson, Martin Johnson, Katy Johnson (as Mandy Johnson), Si Johnson, Charley Johnson, Porter Johnson, Lue Johnson, (as Luella Johnson) Sissie Johnson, Maudie Johnson, Minerva Ann Hall, (as Minerva Powell), Lillie Hall (as Lilly Jones), Lee Hall (as Levi Jones) Martin Hall (as Martin Lee Hall), Estoria Hall( Mamie Hall, Betty Prince (as Bettie Prince), Henrietta Butler, Isabel Gardner (as Isabelle Gardner) Albert Wilson, Herbert Frazier (as Hubard Frazier, Wallace Frazier, Milana Prince (as Melinda Prince), Josephine Vincent (as Josephine Jefferson), Sarah Butler, Rosa Butler, Sallie Butler, Edward Butler, Bennie Butler, Julia Gardner, Jesse Gardner (as Jessie Gardner), Nelson Gardner, George Vincent, Lula Gardner, Nellie Hall, Thomas Hall, Ramsey Hall, Jake Hall, Patsy Whitaker (as Patsy Whittaker), Sapherna Byrd (as Sophina Hall), Jane Butler (as Janie Butler), Josephine Evans (as Josephine Hall), Annie Green (as Anne Green), Austin Byrd (as Austin Child) Alice Byrd, Ida Byrd, Sorena Willis, Robert Johnson, Brit Johnson, Charlottee Johnson, Lila Graham (as Lila Williams), Minnie Williams (as Minnie Freeman), Louis Freeman, Neat James (as Neat Colbert), Maggie Colbert, Dollie Johnson, Lena Edwards, (as Lena Johnson, James Johnson, Johnny Freeman, Willis Wilson, Jack Wilson, Sophie Wilson, Louis Wilson, Lillie Wilson, Lennie Wilson, Grant Wilson, Joel Wilson, Even Wilson, Ardeales Wilson, Cerneler Wilson, Johnnie Wilson, Alice Roberts, Lyman Roberts, Sylvester Roberts, Maudie Roberts, Carter Roberts, Samuel Roberts, Delora Roberts, Jack Roberts, George Roberts, Willie Roberts, Winnie Richard, Jordan Richard, Mathew Richard, Thomas Richard, Sylvia Richard, William Richard, William Richard, Annie Richard, James Richard, Mayahall Richard, Cyrus Richard, John Richard, Bettie Brown, nee Richard, Francis Smith, Jim Smith, Bill Smith, Ed Smith, Andy Smith, Ethel Smith, Nannie Smith, Clifton Smith, Albert Butler, Ned Burris, Jeffie Burris, Clayton Burris, Robbie Burris, Lee Burris, Norman Harper, Alfred Lewis, Shepherd Lewis, Lena Lewis, Georgie Lewis, George Lewis, Georgia Colbert, Bud Womack, Fannie Womack, Robert Womack, Thomas Womack, Deady Womack, Dolly May Womack, Rosettie Womack, Levi Wilson, Charlott Finley, Cornelius Donegay, Joe Beryman, Arthur Beryman, Robert Sully, Frances Graham, Estelle Finley, Richard Mills, John Finley, Jeff Brooks, Thomas Richards, Norah Richards, Me-

rable Richards, Ruffin Gardner, James Reynolds, Robert Hampton, Lizzy Durant, Esther Durant, Eliza Durant, Lilly Durant, Louisa Yocuby, Lille Clark, Emma Mobley, Turner Moses, Rube Moses, Frank Moses, Turner Moses, Jr., Stella Moses, Minerva Moses, Emily Moses, Jim Moses, Martha Moses, Mary Moses, Lewis Moses, Silvia Abram, nee Alexander, Gray Willard Abram, Isabella Gillespie, Christopher C. Gillespie, George H. Gillespie, Rufus C. Gillespie, Benjamin B. Gillespie, Friendly J. Gillespie, Frank M. O. Gillespie, Cluna L. Gillespie, Julia A. Gillespie, Teddy E. Gillespie, Redo Gillespie, Alberta Savannah Gillespie, Andrew J. Gillespie, Martha Young, Felix Alexander, Israel Blue, Gladdis Blue, Frances Williams, Hattie Williams, Raford Williams, Anna Williams, Leeford Williams, Alberta Williams, Cassey Jackson, Charley Frazier, Jordan Richards, Evrit Richards, Serena Richards, Alberta Richards, Mary Richards, Mary Eliza Bissell, Alberta Bissell, Delia Bissell, Albert Lewis, Alonso Lewis, Nettie Burris, Cora Lewis, Buller Johnson, Omer Johnson, Judy Brown, Cricket Brown, Bulah Brown, Ben Pitchlynn, Sam Barris, Jennie Cable, Alec Fisher, Martin Fisher, Tilly Fisher, Osborn Fisher, Reason Fisher, Charley Fisher, Harris Fisher, Ellen Fisher, Nuney Fisher, Abigil Fisher, Emma Fisher, Henry Fisher, Henry Powell, Ollie Powell, Anne  
12 Bell Powell, Richard Powell, John Powell, Mont Powell, Mattie Powell, Frankie Carson, Amanda Lathers, Kurte White, Lennie White, Irene White, Cresey Morris, nee White, Sam Morris, Alex Dick, Ed White, Lizzie Lawrence, Llayra Durant, William Watters, Hattie Williams, all Choctaws. Henry Kemp, Madrid Gas, Consie Gas, Sam Gas, Alter Barber (or Allen), Meline Kemp, Louis P. Kemp, Gabriel Kemp, Smith Kemp, Smith Kemp, Jr., Nathaniel Kemp, Malina Kemp, Missouri Kemp, Thelma Kemp, Lottie Wright, nee Kemp, Malinda Hall, Ebenezer Daniel, Nitch Wright, Malinda Sears, Ebenezer Kemp, Fred Douglas Kemp, General T. Kemp, Laurel Kemp, Arminta Hennessy, Ernest Hennessy, Sayre Hennessy, Moody Hennessy, Ludie Hennessy, Jimmie Hennessy, Joe Williams, Mattie Williams, Irene Williams, Lorena Kemp, Shoniko Jackson, Minnie Butler, Nellie Carson, Ownie Smith, Emily Kemp, Ina Allen, Arden Allen, Verna N. Allen, Armona Allen, Cecil N. Allen, Yock Johnson, Frank Jackson, Virginia Blue, Minnie Blue, Tom Blue, Isabella Blue, Cornelius Blue, Hillie Blue, Lewis Blue, Israel Blue, Clarissa Blue, Charley Blue, all mixed Choctaw and Chickasaw blood. Nelson Colbert Sampson Alexander, Dalton Alexander, Sinev Alexander, Lula Stevenson, Lon Stevenson, Ramon Stevenson, Willie Newberry, Effie Newberry, Riley Newberry, Willie Newberry, Jr., Sadie Newberry, Barbary

Newberry, Mattie Newberry, Simon Newberry, Isom Newberry, Bertha Newberry, Mary Newberry, Ben Newberry, Lillie Newberry, Louis Newberry, Gertie Newberry, Charles Brown, Luvian Carlina, Stephen Alexander, Jackson Foreman, Frances Foreman, Ned Foreman, George Hamilton, Winchester Colbert, Leeford Colbert, Claudie Colbert, Thomas Colbert, Addie May Colbert, Elizabeth Lamey, Dewey Lamey, Robert Lamey, Mandy Jones, Mary Kendrick, Tennie Kendrick, Peter Hamilton, Willis Hamilton, Mary Hamilton, Annie Hamilton, Sallie Hamilton, Persia Hamilton Oliver Colley, Mandy Colley, Mary Colley, Savannah Colley, Maggie Hoppy, Claude Williams, Bertha Stevenson, Leander Miles, Roosevelt Williams, Letha Jackson, Mary Grayson, Boston Colbert, Robert Colbert, Richard Colbert, Rachel Williams, Sallie Burton, Robert Cravat, Silphia Grayson Cohee, Gladys Cohee, Rose Burris, Frances Grayson, Edmond  
13 Grayson, Fannie Grayson, Chubbie Grayson, Julious Grayson, Roxie Anderson, Sarah Bruner, Douglas Colbert, John Brown, Harrison Brown, Margaret Brown, Jamie Brown, Walter Brown, Callie Brown, Viney Brown, Frank Brown, Sallie Brown, Mitchell Brown, Dink B. Brown, Douglas Brown, Cephas Brown, Jimmie Brown, Wesley Brown, Benjamin Brown, Susie Brown, William McKinley Brown, Toney Brown, Agus Brown, Parlee Clark, Jesse Clark, Albert Clark, Lanie Clark, Dallas Clark, Ephriam Clark, Louisa Black, Leftie Black, Willie Black, Cleveland Black, French Black, Mary Black, Jane Perry, Nephi Black, Agnes Brown, Marietta Frazier, Josie Black, Alex Brown, Seber Johnson, Matt Brown, Mitchel Brown, Ben Brown, Thomas Brown, Craven Brown, George Brown, Bertha Brown, Arthur Brown, Lizzie Brown, Maggie Brown, Seran Watson, Alice Franklin, Norah Franklin, Irena Watson, Sarah May Watson, Bedelia Watson, Sampson Lamey, Dewey Lamey, Robert Lamey, Simmion Lamey, Bessie Lamey, Mary Lamey, Tippie Lamey, William Lamey, Florey James, Carrie Franklin, James Brown, Liday Newby, Mary Newberry, McAbelle Newby, Marcus Newby, Maggie Newby, Dave Newby, Fannie Newby, Linnie Newberry, Barney Kemp, Mattie Stuart, Ben Stevenson, Malinda Stevenson, Jake Stevenson, Garfield Stevenson, Hardy B. Brown, Ella Love, Amos Love, Aaron Love, Richmond Love, Lawrence Love Jr. Lucy Ann Love, Linton Love, Benzora Love, Emily Brewer, Lillie Huntly, Eddie Brown, Parnelia Griffin, James Henry Griffin, Silverter T. Colbert, Agnes Grayson, James Grayson, Nellie Grayson, Lovina Davis, Mary Gordon, Abner Harris, Ed Powell, Peter Gordon, Maria Green, nee Kemp, Maris Stevenson, Grady Douglas, Mary Russell,

Donie Greer, nee Paul, Addie Green, Henrietta Franklin (or Roberts, Lizzie Roberts, Minnie Roberts, Eddie Lamey (deceased) Mattie MaHardy, (deceased), Heanne MaHardy, Alethia MaHardy, Beauty B. Colbert, Amy Blue (deceased) Catherine Perry, Lizzie Stevenson, Angaline Stevenson, Jay C. Stevenson, Patsy Harper, Leona Harper, Ellen Harper, Tommie Lamey, Charley Gibson, Lottie Gibson, Joanna Corney, Simpson Corney, Stella Kemp, William Lamey, Albert Lamey, Carlie Lamey, Daisy  
 14 Lamey, Evilina Lamey, Tom Alberson, Noah Lamey, Robert Nolitubby, Sarah Nolitubby, Ella Nolitubby, Dicy Nolitubby, John Riddle, Clarence Riddle, (or Cheadle), Addie Riddle, (or Cheadle) Ella Riddle (or Cheadle) Thomas Riddle (or Cheadle), Elsie Riddle (or Cheadle), Cleveland Riddle (or Cheadle), Eveline Riddle (or Cheadle) Mariah Riddle (or Johnson, Evan Riddle, Edgar Riddle, Alice Bennett, Adolphus Bennett, Isaac Frazier, Sam Nolitubby, Selina Johnson, Tishie Milton, (Formerly Greenwood) Lucy Greenwood, George Greenwood, Annie Greenwood, Martha Adkins, Arthur Adkins, Serena Reed, Effie Francis Eastman, Mageline Eastman, Annie Eastman, Patsy Eastman, Ruby Eastman, Theoda Sparks, nee Hines, Lizzie Douglas (or Mason), Amy Guinn Leler Younger, Louisa Kemp, Lula Kemp, Levi Kemp, Willis Kemp, Louis Kemp, Green Burton, Reindy Grundy, Julia Wolf, Sallie Hampton, Jack Gamble, Zilphia Foster, Mattie Kelso, Andrew Kelso, Houston Kelso, Charles Kelso, Paul Kelso, Maud Kelso, Lee Anna Kelso, Caroline Wilson, Katie Wilson, Grove Wilson, Ruthie Wilson, Rose Wilson, Richard Wilson, Spencer Sefronia Oliver, Hallett Oliver, Willie Oliver, Delila Cole, Theodora Gibbs, Lillian Gibbs, Sarah Gibbs, Sam Gibbs, Sam Perry, William Alexander, Malinda Salone, Mitchell Wright, Melvin Taylor, Elsie Stevenson, Paul Stevenson, Nora Stevenson, Pearl Stevenson, Annie Stevenson, Buel Stevenson, Ollie Stevenson, George Stevenson, Lylie Stevenson, Daniel Stevenson, Tobias Colbert, Isadora Bennett, Roosevelt Bennett, Samuel Bennett, Frazier Dendy, Becky Dendy, Sallie Dendy, Edmond Dendy, Oscar Dendy, George Dendy, Minnie Dendy, Charlotte Wright, Katie Smith, Amanda Smith, Clarence Smith, Lula Smith, Columbus Smith, Lucy Smith, Lon Roebuck, Mattie Roebuck, James Roebuck, Garnett Roebuck, Sam Roebuck, Josie Roebuck, Rebecca Dendy, Lizzie Burke, John Alfred, Mary Petty, Katie Mills, Nealie Kemp, Cornelia Walker, nee Frazier, George Burton, Mary Abram, Laura Walker, Angie Brown, Termissa Askew, Frederic Askew, Maggie Askew, Lillie Askew, Mary Harris, Francis Harris, Josephine Roberts, nee Harris, Valmore Harris.

15 Burney Harris, Tommie Harris, Sallie Williams, Marcus Williams, Cora Williams, Kemble Williams, Maise Williams, Joe Williams, Elsie Curry, Charley Moore, Lizzie Moore, Silva Cass, Lucy Cass, Pearl Cass, Alfred Cass, Simpson Cass, Walter Cass, Jincey Luckey, Sissie Luckey, Henry Loman, Henry Brown, Josephine Roberts, Tom Harris, Frank Harlan Brown, Hugh Brown, Lewis Brown, Joe Lovard Brown, Jessie Brown, Sallie Brown, Mandy Brown, Valmire Williams, Eugene Roberts, all Chickasaws all persons similarly situated, being of Choctaw and Chickasaw Indian descent and blood, and members of the Choctaw and Chickasaw tribes or communities of Indians, and who were before the Commission to the Five Civilized Tribes under the provisions of the Act approved June 28, 1898, complains against the defendants, Douglas H. Johnston and Green McCurtain, residents of the Chickasaw and Choctaw Nations respectively, and citizens of the United States, and against all persons whose names appear on the rolls of the Chickasaw and Choctaw nations with the names of the said Douglas H. Johnson and Green McCurtain, as approved by the Secretary of the Interior on the 4th day of March, 1907, and against James R. Garfield, Secretary of the Interior of the United States, and who is sued herein in his official capacity as secretary of the Interior, and petition this court to exercise its equity  
 16 powers in determining and protecting their lawful rights. Plaintiff represents to this court and complains as follows:  
 I.

That by the terms and provisions of a treaty entered into by and between the government of the United States and the people then comprising the Choctaw nation or community of Indians, and proclaimed as a law on the 24th day of February, 1831, and commonly known as the Dancing Rabbit Creek Treaty of 1830, the United States agreed, for valuable consideration, more specifically described in Article 3 thereof, to convey, a certain tract of country situated west of the Mississippi river, and described in Article 2 thereof by metes and bounds, "to the Choctaw nation in fee simple, to them and their descendants, to inure to them while they shall exist as a Nation and live on it;" that said tract of country included the identical lands now and heretofore held in common by the people comprising the Choctaw and Chickasaw Nations, or communities of Indians, and such portions thereof as have been lawfully allotted and patented to persons entitled to share in the communal lands of said tribes.

The pertinent articles of said treaty follow:

Article II. The United States under a grant specially to be

made to the President of the U. S. 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. \* \* \* \* \*

The boundary of the same to be agreeably to the Treaty made and concluded at Washington City in the year 1825. The grant to be executed as soon as the present Treaty shall be ratified.

Article III. In consideration of the provisions contained in the several articles of this Treaty, the Choctaw nation of Indians consent and hereby cede to the United States, the entire country they own and possess, east of the Mississippi river; \* \* \* \* \*

(Indian Laws and Treaties, Vol. 2, p. 221.)

## II.

17 That pursuant to, and in execution of, the terms and provisions of Article 2 of said treaty, the Government of the United States of America did, on, to-wit, the 23rd day of March, 1842, cause to be duly issued a patent to the Choctaw nation reading as follows:—

Whereas, by the second article of the treaty began and held at Dancing Creek on the fifteenth day of September in the year of our Lord One Thousand Eight Hundred and Thirty, (as ratified by the Senate of the United States, on the 24th of February, 1831) by the Commissioners on the part of the United States, and the Mingoos, chiefs, captains and warriors of the Choctaw Nation on the part of said nation, it is provided that "The United States, under a grant specially to be made by the President of 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 insure to them while they shall exist as a nation, and live on it: Beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas river, running thence to the source of the Canadian fork, if in the limits of the United States, or to those limits; thence due South to Red River, and down Red River to the west boundary of the territory of Arkansas; thence North along that line to the beginning. The boundary of the same to be agreeably to the treaty made and concluded at Washington City in the year 1825.

Now, Know Ye, that the United States of America in consideration of the premises, and in execution of the agreement and stipulation in the aforesaid treaty, have given and granted and by these presents do give and grant unto the said Choctaw Nation the aforesaid "Tract of country west of the Mississippi," to have and to hold the same, with all the rights, privileges, immunities and

appurtenances thereunto belonging, as intended "to be conveyed" by aforesaid article "in fee simple to them and their descendants to inure to them, while they shall exist as a nation and live on it." liable to no transfer or alienation except to the United States, or with their consent.

## III.

That by the terms and provisions of a treaty entered into by and between the people comprising the Choctaw and Chickasaw Indian communities and existing as nations, ratified by the Senate of the United States and proclaimed as a law on the twenty-fourth day of March, 1837, the Choctaw people agreed, for and in consideration of the sum of five hundred and thirty thousand dollars, to be paid by the Chickasaw people, that the Chickasaw people should have the privilege of forming a district within the limits of 18 the Choctaw country, to be held "on the same terms that the Choctaws held it, except the right of disposing of it," the lands to be held in common by the people of both of said tribes or communities.

The pertinent portions of the articles of this treaty follows:

Article I. It is agreed by the Choctaws that the Chickasaws shall have the privilege of forming a district within the limits of their country, to be held on the same terms that the Choctaws now hold it, except the right of disposing of it (which is held in common by the Choctaws and Chickasaws) \* \* \* \* \*

Article III. The Chickasaws agree to pay the Choctaws, as a consideration for these rights and privileges, the sum of five hundred and thirty thousand dollars. \* \* \* \* \*

(Indian Laws and Treaties, Vol. 2, P 361.)

## IV.

That thereafter and on to wit: the twenty second day of June, 1855, a treaty was negotiated by and between the Choctaw and Chickasaw tribes of Indians and agreed to by them, which treaty was duly approved by the United States, being ratified by the Senate thereof on the twenty-first day of February, 1856, and proclaimed as a law on the fourth day of March, 1856; that said treaty states the object for which it was negotiated to be to secure a readjustment of the relations existing between the Choctaw and Chickasaw people and the United States, and to more clearly define the respective property rights of the people of said tribe. Under the terms and provisions of this treaty it was stipulated and mutually agreed, the United States concurring therein, that the said tribe should hold all of the lands embraced in a certain district, and which lands included the identical lands now and heretofore held

in common by the people of said tribe, and such portions thereof as have been lawfully allotted to members of said tribes, in common "so that each and every member of either tribe shall have an equal undivided interest in the whole."

The pertinent provisions of said treaty are as follows:—

19 Article I. The following shall constitute and remain The boundaries of the Choctaw and Chickasaw country, viz: \* \* \* \* \* (Boundaries described) And pursuant to an Act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limit to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common so that each and every member of either tribe shall have an equal, undivided interest in the whole; Provided, however, no part thereof shall ever be sold without the consent of both tribes, and that said lands shall revert to the United States if said Indians and their heirs become extinct or abandon the same.

Article II. A district for the Chickasaws is hereby established, bounded as follows:— \* \* \* \* \*

Article III. The remainder of the country held in common by the Choctaws and Chickasaws, shall constitute the Choctaw district. \* \* \* \* \* (II Stats. P. 611.0)

VI

That under and by virtue of the terms and provisions of the said treaties hereinabove set out and the patent issued in 1842, every person who was a member of the Choctaw community of Indians at the date of the treaty of 1830, or who was a member of the Chickasaw community of Indians at the date of the treaty of 1837, or who is a descendant of any such member, is vested with an undivided indefeasible interest in the communal lands and other property resulting from said treaties and grant, and that each and every one of your petitioners who is of Choctaw or Chickasaw blood and descent is today so vested.

VII.

That at the date of said grant to the Choctaw Nation, as set out in specification III herein, all free persons affiliated with or who were members of the Choctaw or Chickasaw communities were beneficiaries thereunder, without regard to the quantum of Indian blood or the admixture of negro blood, or the blood of any other race.

VIII.

20 That section 21 of the act approved June 28, 1898, and entitled "An Act for the Protection of the People of the In-

dian Territory and for Other Purposes," (Ch. 617 30 stat L. 495.) authorized and directed a commission therein designated as "The Commission to the Five Civilized Tribes" to make correct "Rolls of citizenship" of the Choctaw and Chickasaw people and to enroll as citizens, all persons entitled to such enrollment under existing law, the said Commission was specially directed to enroll all persons who were of Choctaw or Chickasaw blood, as citizens of said nations or tribes, provided only, that they had removed to and in good faith, settled in said nations or tribes, on or before June 28, 1898; that said Act further directed said Commission to make "such rolls" descriptive of the "persons thereon," so that they may be thereby identified;" and said Commission was further authorized to take a census of the Choctaw and Chickasaw people preparatory to the preparation of correct rolls of citizenship, or to adopt any other means by said Commission deemed necessary to enable it to make "correct rolls." Said Commission was, by the provisions of said Act, clothed with plenary power to compel the attendance of all persons, having or claiming any right in and to the communal property of the Choctaw and Chickasaw nations or communities, to appear before it for examination and identification, in order that said Commission might ascertain their legal rights and correctly enroll them; to compel the tribal authorities to deliver over to it all tribal rolls and records; to compel the production of any and all papers pertaining or appertaining to the rights of any person to share in the communal property of said nations or communities; to administer oaths, to compel witnesses to give testimony in any case wherein the rights of any person were involved, and on refusal, to punish as for contempt.

The same section authorized and directed the Commission to make "correct rolls" of the Choctaw and Chickasaw freedmen entitled to any rights or benefits under the treaty of 1866, and their descendants thereafter born. Said section of said law then provided that when said commission had "so made" the rolls of citizenship as therein provided, and said rolls were approved by the Secretary of the Interior, that they "shall be final" and that 21 the persons whose names are found thereon, with their descendants thereafter born to them, with such persons as may intermarry according to tribal laws, shall alone constitute the several tribes which they represent."

The pertinent portion of said section relating to the preparation by said Commission of "rolls of citizenship" and of rolls of freedmen are in haec verba as follows:

Section 21. That in making rolls of citizenship of the several

tribes as required by law \* \* \* \* \*

Said Commission is authorized and directed to make correct rolls of the citizens by blood of all the other tribes, eliminating from the tribal rolls, such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made, with such intermarried white persons as may be entitled to Choctaw and Chickasaw citizenship under the treaties and laws of said tribes.

It shall make a correct roll of all Choctaw freedmen entitled to citizenship under the treaties and laws of the Choctaw nation and all their descendants born to them since the date of the treaty.

It shall make a correct roll of Chickasaw freedmen entitled to any rights or benefits under the treaty made in Eighteen Hundred and Sixty Six between the United States and the Choctaw and Chickasaw tribes and their descendants born to them since the date of said treaty and forty acres of land, including their present residence and improvements, shall be allotted to each, to be selected, held, and used by them until their rights under said treaty shall be determined in such manner as shall hereafter be provided by Congress.

No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship.

Said Commission shall make such rolls descriptive of the persons thereon, so that they may be thereby identified, and it is authorized to take a census of each of said tribes or to adopt any other means by them deemed necessary to enable them to make such rolls. They shall have access to all rolls and records of the several tribes, and the United States court in Indian Territory shall have jurisdiction to compel the officers of the tribal governments and custodians of such rolls and records to deliver same to said Commission, and on their refusal or failure to do so to punish them as for contempt; as also to require all citizens of said tribes, and persons who should be so enrolled, to appear before said Commission, for enrollment at such times and places as may be fixed by said Commission, and to enforce obedience of all others concerned, so far as the same may be necessary, to enable said Commission to make rolls as herein provided, and to punish any one who who may in any manner or by any means obstruct said work.

22 The rolls so made, when approved by the Secretary of the Interior, shall be final and the persons whose names are found thereon with their descendants thereafter born to them, with such persons as may intermarry according to tribal laws, shall

alone constitute the several tribes which they represent.

The members of said Commission shall, in performing all duties required of them by law, have authority to administer oaths, examine witnesses, and send for persons and papers; and any person who shall wilfully and knowingly make false affidavit or oath to any material fact or matter before any member of said Commission, or before any other officer authorized to administer oaths, to any affidavit or other paper to be filed or oath taken before said Commission, shall be deemed guilty of perjury, and on conviction thereof, shall be punished as for such offenses (30 Stat. L, 495.)

#### IX.

That section II of said Act approved June 28, 1898, provided that when the "rolls of citizenship" of the Choctaw and Chickasaw Nations or tribes were "fully completed as provided by law," and a survey of the lands of said tribes is completed, the Commission to the Five Civilized Tribes, but therein designated as the "Dawes Commission" "shall proceed to allot the surface of the lands of said tribes," except mineral and other lands which were reserved from allotment" among the citizens thereof, as shown by the tribal rolls, giving to each, so far as possible his fair and equal share thereof, considering the nature and fertility of the soil and the location and value of the same, "provided that no authority or direction given the Commission to do or perform anything or act found in any section of said law, should in any way, impair any vested legal rights theretofore granted by Act of Congress. The pertinent provisions of this section are as follows:

Section II. That when the roll of citizenship of any one of said nations or tribes is fully completed as provided by law, and the survey of the lands of said nation or tribe is also completed the Commission heretofore appointed under Acts of Congress and known as the "Dawes Commission" shall proceed to allot the exclusive use and occupancy of the surface of all the lands of said nation or tribe susceptible of allotment among the citizens thereof, as shown by said roll, giving to each, so far as possible, his fair and equal share thereof, considering the nature and fertility of the soil, location, and value of same.

23 When such allotment of the lands of any tribe has been by them completed, said commission shall make full report thereof to the Secretary of the Interior for his approval;

Provided, That nothing herein contained shall in any way affect any vested legal right which may have been heretofore granted by Act of Congress, nor be so construed as to confer any additional rights upon any parties claiming under any

such Act of Congress. (30 Stat. 1-495.)

X.

That there was attached to and made a part of said Act approved June 28, 1898, and designated therein as section 29, an agreement entered into by and between the Choctaw and Chickasaw people, existing as nations, or tribes, in which agreement is provided that the provisions thereof should not become effective unless ratified before the first day of December, 1898, by a majority of those people entitled, under the tribal laws to participate in the elections of said tribes: "and if said agreement as amended be so ratified, the provisions of this Act shall then only apply to said tribes where the same do not conflict with the provisions of said agreement; but the provisions of said agreement, if so ratified, shall not in any manner affect the provisions of section fourteen of this Act;" that thereafter and, on to-wit the twenty fourth day of August, 1898, at a general election held for the purpose of ratifying said agreement, said agreement was ratified; that said agreement as ratified provided among other things:

Section 29.

Paragraph 4. That all the lands within the Indian Territory belonging to the Choctaw and Chickasaw Indians shall be allotted to the members of said tribes so as to give to the members of these tribes so far as possible a fair and equal share thereof considering the character and fertility of the soil and the location and value of the lands.

Paragraph 10. That each member of the Choctaw and Chickasaw tribes, including Choctaw and Chickasaw freedmen, shall where it is possible, have the right to take his allotment of land the improvements on which belong to him and such improvements shall not be estimated in the value of his allotment. In the case of minor children, allotments shall be selected for them by their father, mother, guardian, or the administrator having charge of their estates, preference being given in the order named, and shall not be sold during his minority, allotments shall be selected for prisoners, convicts, and incompetents by some suitable person akin to them and due care taken that all persons entitled thereto have allotments

24 made to them.

Paragraph 16. That as soon as practicable, after the completion of said allotments, the principal chief of the Choctaw Nation and the governor of the Chickasaw nation shall jointly execute, under their hands and seals of the respective nations, and deliver to each of the said allottees patents conveying to him all the

right, title, and interest of the Choctaws and Chickasaws in and to the land which shall have been allotted to him in conformity with the requirements of this agreement, excepting all coal and asphalt in or under said land.

Said patents shall be framed in accordance with the provisions of this agreement, and shall embrace the land allotted to each patentee and no other land, and the acceptance of his patents by such allottee shall be operative as an assent on his part to the allotment and conveyance of all the lands of the Choctaws and Chickasaws in accordance with the provisions of this agreement, and as a relinquishment of all his right, title and interest in and to any and all parts thereof, except the land embraced in said patent, except also his interest in the proceeds of all lands, coal, and asphalt herein excepted from allotment. (30 Stat. L. 495.)

XI.

That proceeding under the authority contained in section 21 of said Act approved June 28, 1898, said Commission did take what purported to be a census of the Choctaw and Chickasaw "Indians by blood" and of the Choctaw and Chickasaw freedmen in the years 1898 and 1899, but plaintiff represents that said census was not a correct census for the reason among others that her name as well as the names of all other persons in whose behalf this suit is brought were enumerated on said census rolls as freedmen, whereas had they been correctly enumerated their names would have appeared on the rolls of "Indians by blood" of said nations; and plaintiff further represents that the Commission did not attempt to ascertain the Indian blood and descent of any of the parties plaintiff herein as it was directed to do by the statute, and did not receive and make of record, the actual representations made by plaintiff or any of the persons in whose behalf this suit is brought, when they, or some person representing them were before said Commission, under the provisions of said Act, for examination, identification and enumeration on such census roll as their descent, blood and residence entitled each and every one of them to; that said Commission did not bring before it for personal examination, each and every one of the parties plaintiff herein but permitted in many instances a negro ancestor to appear for certain of them; that said negro ancestors were ignorant and unlettered in many cases, but notwithstanding this fact was well known to the Commissioner in charge he did not summon the real parties in interest and others who knew them and of their Indian blood and ascertain or attempt to ascertain their Indian descent and blood; that said commission did not have before it all the complete tribal rolls

of said tribes then in the possession and custody of the Secretary of the Treasury, which rolls were tribal rolls and upon which the said Secretary of the Treasury had disbursed annuity funds among the members of said tribes whose names appeared thereon, and that on the complete tribal rolls of said tribes appear the names of the plaintiff and the names of each and every one of the persons in whose behalf this suit is brought, or the names of their ancestors; that as said Commission did not have the complete tribal rolls before it, it did not enroll all persons whose names had been lawfully placed thereon and their descendants; that the only examination made by the Commission of any of the parties plaintiff, was for the sole purpose of ascertaining his or her negro blood and descent.

XII.

That thereafter said Commission proceeded to make up the "rolls of citizenship" and rolls of freedmen of said tribes, which rolls were, (when made in conformity with the provisions of the statutes, and approved by the Secretary of the Interior) to become final; that said Commission erroneously and illegally placed the names of each and every one of the parties plaintiff herein on the freedmen rolls, which rolls have since been approved by the Secretary of the Interior; that said rolls were not made as the statute directed, viz: that the names of all citizens by blood of said tribes should be placed thereon, and the names of all persons whose names had been lawfully placed on any of the tribal rolls and their descendants, as appears from the fact; that the names of the plaintiffs herein, who were bona fide residents of said Nations on the 28th day of June, 1898, do not appear therein; that in some cases the names of blood citizens of said tribes, which blood citizens are brothers and sisters of certain of the plaintiffs herein, appear on the blood citizenship rolls of said tribes; that in many cases the names of persons who are blood citizens of said tribes, which persons are the fathers or mothers of certain of the plaintiffs herein, appear on the blood citizenship rolls of said tribes; as approved by the Secretary of the Interior on or before the 4th day of March, 1907, while plaintiffs herein are enrolled as freedmen; that said rolls are not descriptive of the persons whose names appear thereon, and therefore the said blood citizenship rolls although approved by the Secretary of the Interior, are not final.

XIII.

That section 11 of the Act of Congress approved July 1, 1902, ratifying an agreement with the Choctaw and Chickasaw Nations or tribes, which agreement was thereafter submitted to the people of said nations or tribes and was by them ratified, provided, among

other things, that there should be allotted to each and every member of the Choctaw and Chickasaw tribes, as soon as practicable, after the approval by the Secretary of the Interior of his enrollment as herein provided, land equal in value to three hundred and twenty acres of the average allottable land of the Choctaw and Chickasaw Nations, and to each Choctaw and Chickasaw freedman, as soon as practicable after the approval by the Secretary of the Interior, of his enrollment, in accordance with existing law, land equal in value to forty acres of the average allottable land of the Choctaw and Chickasaw Nations.

That the pertinent portions of sections 27, and 28 of said Act approved July 1, 1902, provided:

27 Section 27.

The rolls of the Choctaw and Chickasaw citizens and Choctaw and Chickasaw freedmen shall be made by the Commission to the Five Civilized Tribes in strict compliance with the Act of Congress approved June 28 1898 (30 Stats. 495), and the Act of Congress approved May 31, 1900, (31 Stats. 221) except as herein otherwise provided. \* \* \* \* \*

Section 28.

The names of all persons living on the date of the final ratification of this agreement entitled to be enrolled as provided in section 27 hereof shall be placed upon the rolls by said commission; \* \* \* \* \* (32 Stat. 641.)

XIV.

That the Act of Congress approved May 31, 1900, (31 Stats. 221) in strict compliance with which it was provided in section 27 of the agreement with the Choctaw and Chickasaw people, contained in the act approved July 1, 1902, (30 Stats. 641) the rolls of Choctaw and Chickasaw citizens and freedmen should be made provided as follows:

That said Commission shall continue to exercise all authority heretofore conferred on it by law. But it shall not receive, consider or make any record of any application of any person for enrollment as a member of any tribe in Indian Territory who has not been a recognized citizen thereof and duly and lawfully enrolled or admitted as such, and its refusal of such application shall be final when approved by the Secretary of the Interior.

Plaintiff represents that this act did not preclude the Commission and the Secretary from correctly enrolling plaintiffs herein as citizens of said nations in accordance with the provisions of sec-

tion 21 of the Act approved June 28, 1898, but that if it did so it was unconstitutional, null and void.

## XV.

That section 30 of the agreement with said Choctaw and Chickasaw tribes, and made a part of the act approved July 1, 1902, authorized the Secretary of the Interior to approve partial schedules or lists containing the names of persons found by said Commission to be entitled to enrollment as Choctaw and Chickasaw citizens and

freedmen, and that upon the approval of said partial lists, 28 land should be allotted to the persons whose names appeared thereon; said section being in full as follows:

For the purpose of expediting the enrollment of the Choctaw and Chickasaw citizens and Choctaw and Chickasaw freedmen, the said Commission shall, from time to time, and as early as practicable, forward to the Secretary of the Interior lists upon which shall be placed the names of those persons found by the Commission to be entitled to enrollment. The lists thus prepared, when approved by the Secretary of the Interior, shall constitute a part and parcel of the final rolls of citizens of the Choctaw and Chickasaw tribes and of Choctaw and Chickasaw freedmen, upon which allotment of land and distribution of other tribal property shall be made as herein provided. Lists shall be made up and forwarded when contests of whatever character shall have been determined and when there shall have been submitted to and approved by the Secretary of the Interior lists embracing names of all those lawfully entitled to enrollment, the rolls shall be deemed complete. The rolls so prepared shall be made in quintuplicate, one to be deposited with the Secretary of the Interior, one with the Commissioner of Indian Affairs, one with the principal chief of the Choctaw Nation, one with the Governor of the Chickasaw Nation, and one to remain with the Commission to the Five Civilized Tribes. (31 Stat. 641.)

## XVI.

That said Commission has from time to time since the first day of January, 1902, made up partial lists, of Choctaw and Chickasaw freedmen, but said lists were erroneously made not being made as the statute directed, which erroneous and illegal lists included the names of parties plaintiff herein and which erroneous and illegal lists were, on or before the fourth day of March, 1907, approved by the Secretary of the Interior.

## XVII.

That after the approval of said erroneous and illegal partial

lists of Choctaw and Chickasaw freedmen, which lists illegally included the names of parties plaintiff herein, said Commission, did, without authority of law, allot each and every one of the parties plaintiff, lands of said nations as freedmen, allotting each and every one of them lands equal in value to forty acres of the average allottable lands of said tribes.

## XVIII.

29

That after being informed of the action taken by the Commissioner to the Five Civilized Tribes in erroneously and illegally placing the names of the parties plaintiff herein on the freedmen rolls of said Nations or tribes and of the erroneous and illegal action taken by the Secretary of the Interior in approving the erroneous and illegal enrollment of plaintiffs herein as freedmen, plaintiffs filed, or caused to be filed, by their attorneys, before the Commission to the Five Civilized Tribes and the Secretary of the Interior, motions for a correction of their erroneous and illegal enrollment as freedmen and praying for a transfer of their names from the freedmen rolls to the rolls of citizens of said tribes; that said motions were erroneously and fraudulently considered and adjudicated by said Commission in that one Wm. C. Beall, while an employe of the Commission to the Five Civilized Tribes and occupying the position of Chief Clerk of the Choctaw and Chickasaw Enrollment Division, and while on furlough, during the month of June, 1903, though actually in the employ of said Commission was employed by the firm of Mansfield, McMurray and Cornish, Attorneys for the Choctaw and Chickasaw nations, said firm of attorneys being employed mainly to defeat the rights of certain persons claiming citizenship in said nations, among which persons said attorneys then sought to prevent the enrollment of were the plaintiffs herein; that the said Beall remained in the employ of said attorneys, assisting in the preparation of certain cases for the tribes and against the applicants therein until the 30th day of June, 1903, with the knowledge and consent of certain members of the Commission to the Five Civilized Tribes; that on the first day of July, 1903, the said Beall resumed his duties as Clerk in charge of the Choctaw and Chickasaw Enrollment Division of said Commission; that although not a lawyer, he directed the preparation of decisions in citizenship cases, involving the rights of parties plaintiff herein, instructing the attorneys of said Division as to questions of law and directing them to deny the petitions of plaintiffs herein; that he publicly asserted that the plaintiffs were not entitled to enrollment as citizens by blood; that they were mere chattels of

30

said nations being descended from ancestors held in slavery and that if he could prevent it they should never be enrolled as citizens of said nation; that thereafter the said William C. Beall, was promoted to the office of Secretary to the said Commission and was in the absence of the Commissioner Acting Commissioner in charge of the work of the said Commission; that notwithstanding the fact that the said Beall was no longer officially connected with the Choctaw and Chickasaw Enrollment Division, he continued to consider, approve and initial every case coming from said Division wherein the right of any person to enrollment as a citizen of said tribes was involved, and before said case went to the Commissioner for his official approval and signature; that while occupying the position of Secretary to the Commission he presided at hearings had in cases of plaintiffs herein and passed on questions of law determinative of their rights; that at such hearings he quoted provisions of bills then pending in Congress which had not been enacted into law and which were not then laws and determined the rights of the plaintiffs herein thereunder; that he refused to permit certain of the parties plaintiff herein to have included in the official record of their case documentary evidence of their right to enrollment as citizens by blood, which documentary evidence was then in his possession, and likewise refused to permit the official stenographer to make a record at the request of the petitioners or their counsel to have said documentary evidence included in said record or permit to be made of record the exceptions or objections duly made of plaintiff's counsel; that he withheld information from the Secretary of the Interior of the legal rights of plaintiffs herein that said decisions written by the law clerks of said Choctaw and Chickasaw Division of said Commission after being approved and initialed by the said Beall, were approved pro forma by the Commissioner to the Five Civilized Tribes who was not a lawyer and who did

31 rely upon the decisions prepared by the law clerks under the supervision and direction of the said Beall; that the Commissioner to the Five Civilized Tribes, Tams Bixby, withheld information of the rights of plaintiffs herein from the Secretary of the Interior, said information showing the Indian blood and descent of plaintiffs herein and being known to said Commissioner and being of record on the field cards prepared by said Commission and then in its custody; that he likewise failed to certify to the Secretary applications for enrollment as citizens of said nations of certain of the plaintiff's herein which resulted in the denial by the said Secretary of their legal rights to such enrollment; that during the month of October or November, the Secretary of the Interior, au-

thorized and directed the said Commissioner in charge of the work of the Commission to the Five Civilized Tribes to prepare a bill, to be thereafter introduced in the Congress of the United States, and by it to be enacted into law, for the purpose of winding up the affairs of the Five Civilized Tribes, among which tribes were the said Choctaw and Chickasaw tribes; that the said Commissioner was given discretionary powers; that with the aid and assistance of the said William O. Beall the said Commissioner included in the draft of the said proposed bill a provision which sought to prevent a correction of the erroneous enrollment of the parties plaintiff herein, said section being known as section four of the Act approved April 26, 1906; that thereafter said proposed draft of a bill was forwarded to the Secretary of the Interior and by the said Secretary of the Interior was referred to a committee of officers of his Department for a full and complete examination and report thereon; that said Committee approved the provision in the draft of the proposed bill inserted by the said Commissioner, Tams Bixby, which sought to prevent a correction of the erroneous enrollment of the plaintiffs herein; that the report made by said Committee to the Secretary of the Interior did not

32 state the objects for which the said section was inserted, but adroitly concealed the real objects and the true facts; that thereafter the said Secretary of the Interior transmitted the proposed bill to the Congress of the United States with the erroneous and misleading reports made thereon by his subordinates; that thereafter said proposed bill was introduced in Congress and subsequently became a law; that during the pendency of said bill before the Secretary of the Interior and the Congress of the United States, the cases then pending before the Commissioner to the Five Civilized Tribes of plaintiffs herein were not considered adjudicated or finally acted upon; that after the enactment of said law, the applications for correction of the erroneous enrollment of parties plaintiff herein as freedmen were retained in the office of the Commission at Muskogee, Indian Territory, or the great majority of them, and were not passed upon and decided by said Commission until the months of October, November and December in the year 1906; and the months of January and February in the year 1907; that the time existing between the date of the reports or decision of said Commission in said cases and the fourth day of March, 1907, on which day the jurisdiction of the Secretary of the Interior, to lawfully add any names to the citizenship rolls of said nations, expired, by operation of law, precluded a complete consideration and adjudication of said cases by said Secretary, as under the rules of the Department the plaintiffs herein were entitled, upon a proper

showing of error to a reconsideration by said Secretary of his first decision in said cases; that the said Secretary did not have before him when he adjudicated and determined the rights of parties plaintiff herein the complete record in their separate cases; that said Secretary did not give due consideration to said petitions, or in fact, give such consideration to their petitions as would enable hm to ascertain their rights and correctly enroll them under the law; that by reason of the limitation of time in which the said Secretary could legally adjudicate and determine the rights of petitioners the erroneous and fraudulent decisions or reports made by said

33 Commission were pro forma affirmed by said Secretary on or before the fourth day of March, 1907, and that in no case of any party plaintiff herein did said Secretary adjudicate and determine his or her right as the law directed it should be determined; that during the week ending March 4, 1907, said Secretary decided 2,023 citizenship cases involving the property rights of more than seven thousand persons to enrollment as citizens and freedmen of the Choctaw, Chickasaw, Cherokee, Creek and Seminole tribes, and that the petitions of many of the parties plaintiffs herein were among said cases determined without due consideration by the Secretary and contrary to law, and the erroneous and fraudulent decisions or reports therein or thereon made by said Commissioner were affirmed which action sought to deprive parties plaintiff herein of their property contrary to the guarantee contained in the fifth amendment to the Federal Constitution.

XIX.

That the act approved March 3, 1905, and entitled "An Act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulation with various Indian tribes for the fiscal year ending June 30, 1906, and for other purposes" contained the following provision of law:

That the work of completing the unfinished business, if any, of the Commission to the Five Civilized Tribes shall devolve upon the Secretary of the Interior, and that all the powers heretofore granted to the said Commission to the Five Civilized Tribes are hereby conferred upon the said Secretary on and after the first of July, nineteen hundred and five.

XX.

That the Act approved April 26, 1906, entitled, "An Act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory and for other purposes," provided, among other things, as follows:

Section 2.

34

That the rolls of the tribes effected by this Act shall be fully completed on or before the fourth day of March, nineteen hundred and seven, and the Secretary of the Interior shall have no jurisdiction to approve the enrollment of any person after said date:

Plaintiff represents that the rolls of citizenship and rolls of freedmen of the Choctaw and Chickasaw Nations were among the rolls affected by said Act.

Section 4. That no name shall be transferred from the approved freedmen, or any other approved rolls of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes, respectively, to the roll of citizens by blood, unless the records in charge of the Commissioner to the Five Civilized Tribes show that application for enrollment as a citizen by blood was made within the time prescribed by law or for the party seeking the transfer, and said records shall be conclusive evidence as to the fact of such application, unless it be shown by documentary evidence that the Commission to the Five Civilized Tribes actually received such application within the time prescribed by law.

Section 16. That when allotments as provided by this and other Acts of Congress have been made to all members and freedmen of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes, the residue of lands in each of said nations not reserved or otherwise disposed of shall be sold by the Secretary of the Interior under rules and regulations to be prescribed by him and the proceeds of such sales deposited in the United States Treasury to the credit of the respective tribes.

\* \* \* \* \*

The Secretary of the Interior is hereby authorized to sell, whenever in his judgment it may be desirable, any of the unallotted land in the Choctaw and Chickasaw nation, which is not principally valuable for mining, agricultural, or timber purposes, in tracts of not exceeding six hundred and forty acres to any one person for a fair and reasonable price, not less than the present appraised value. \* \* \* \* \*

Section 17. That when the unallotted lands and other property belonging to the Choctaw, Chickasaw, Cherokee, Creek and Seminole tribes of Indians have been sold and the moneys arising from such sales or from any other source whatever have been paid into the United States Treasury to the credit of said tribes, respectively, and when all the just charges against the funds of the respective tribe have been deducted therefrom, any remaining funds shall be distributed per capita to the mem-

bers then living and the heirs of deceased members whose names appear upon the finally approved rolls of the respective tribes, such distribution to be made under rules and regulations to be prescribed by the Secretary of the Interior. (Chap. 1876, Laws 1906.)

35 Plaintiffs represent that the legal officers of the department erroneously construed section four of the Act approved April 26, 1906, so far as it related to the rights of plaintiffs herein, and rendered erroneous decisions thereunder with reference to their right to correct enrollment as citizens by blood of said Nation; that the legal officers of the department did, shortly after the enactment of said law, render an opinion for the guidance of the Secretary in determining the rights of plaintiffs herein, in which it was held that under section four of said Act the name of no person, although theretofore erroneously placed on the freedmen roll could be transferred to and placed on the roll of citizens by blood unless it appeared from the records in charge of the Commission to the Five Civilized Tribes that application for enrollment as a citizen by blood had actually been made, and the request appeared of record, by or for the party seeking the transfer within the time prescribed by law, unless it could be shown by documentary evidence that such application was actually made to the Commission within the requisite time; that said opinion was erroneous and founded upon a mistaken construction of the law, and that under said opinion and by reason of the arbitrary action of the Secretary of the Interior and his subordinates in refusing to enroll certain of the plaintiffs herein even where the records in their cases clearly established the fact that they had made an application for enrollment as citizens by blood of said tribes, and were in fact blood citizens, their right as well as the right of all plaintiffs herein to correct enrollment as citizens by blood of said tribes was denied by the said Secretary.

Plaintiff asserts that under each and every Act of Congress, and each and every agreement entered into with said tribes by the Government of the United States, Congress has sought to protect and secure them in their right to participate equally in the distribution of the communal properties of said tribes, and that as the rolls of citizenship of the Choctaw and Chickasaw tribes were not made as provided in Section 21 of the Act approved June 28, 1898, and in conformity with the provisions of Section 27 of the Act of July 1, 1902, that the rolls of citizenship of said tribes as approved by the Secretary of the Interior on the 4th day of March, 1907, are not final, because they are not made as directed by law; and that the allotments made to parties plaintiff are illegal and void because they

were not made in conformity with the terms and provisions of Section 11, and paragraphs 4, 10, and 16 of Section 29 of the Act approved June 28, 1898, and Section 11 of the supplemental agreement approved July 1, 1902, and plaintiff complains that by reason of the erroneous and fraudulent action of certain officials, hereinbefore referred to, of said Commission, and the failure of the Secretary of the Interior to properly consider their cases, when before him on review, they are today without any legal recognition of their rights, and without complete and adequate remedy at law to enforce their rights to participate in the distribution of the properties of said tribes.

## XXII.

Plaintiff further represents that the Secretary of the Interior has received large sums of money derived from the sale of town site property in the Choctaw and Chickasaw Nations, which property was a part of the communal lands of said tribes; that he has likewise received large sums of money derived from the leasing of mineral lands which are a part of the communal properties of said tribes; that he has distributed per capita a large portion of said funds derived from the sale of said town site property to persons whose names appear upon the rolls of citizens of said tribes approved by him; that the principal plaintiff herein has no definite information of the exact amount so received and disbursed by said Secretary, and is unable to ascertain said facts; that the residue of said money not so disbursed is now deposited to the credit of said tribes in the Treasury of the United States.

## XXIII.

Plaintiff further represents that by virtue of the authority contained in sections 12 and 15 of said Act approved April 26, 1906, said Secretary is authorized to sell upon such terms and under such rules and regulations as he may prescribe, all lots being the common property of the Choctaw and Chickasaw people in towns in said tribes theretofore reserved from appraisal and sale, or sale; to sell and dispose of all school buildings and furniture therein, and the land appertaining thereto belonging to said tribes; that some of said property has been sold and the residue thereof is about to be sold.

37

## XXIV.

Plaintiff further represents that section 16 of said Act approved April 26, 1906, purports to give the Secretary of the Interior authority to sell, whenever in his judgment it may be desirable, any of the unallotted communal lands of said tribes, which are not principally valuable for mining, agricultural or timber purposes, and

plaintiff represents that as the parties plaintiff herein are legally entitled to share equally with all other persons found by the Secretary of the Interior entitled to share in the communal properties of said Nations, and as they have a lawful right to select as their allotments, any lands, not mineral in character, from the communal lands of said tribes, which right has never been denied any person whose name appears upon the rolls of citizenship of said tribes as approved by the Secretary of the Interior, on, or before, the fourth day of March, 1907, and as the sale by said Secretary of such of the communal lands of said tribes as are not principally valuable for mining, agricultural, or timber purposes will deprive parties plaintiff herein of allotments equal in value and extent to those heretofore made to individuals found by said Secretary to be entitled thereto; that so much of said section 16 of said act as purports to give said Secretary such authority is unconstitutional, null and void, because plaintiff asserts that it will deprive all parties plaintiff herein of their right to select land equal in value and extent to the allotments heretofore made to all persons found by the Secretary of the Interior as entitled thereto, the great majority of which persons have already selected their lands and many of which persons have received patents therefor; that such deprivation of such property right would be in violation of the fifth amendment to the Federal Constitution which declares that no person shall be deprived of property without due process of law, and that unless restrained from so doing by order of this court, the said Secretary of the Interior will proceed under said unconstitutional provision of said Act, to sell all unallotted lands in said tribes not principally valuable for mineral, agricultural, and timber purposes, and thus deprive plaintiffs and all other persons in whose behalf this suit is brought, of allotments of land without due process of law.

## XXV.

Plaintiff represents, that section sixteen of said act approved April 26, 1906, directed the Secretary of the Interior "when allotments as provided by this and other acts of Congress have been made to all members and freedmen of the Choctaw and Chickasaw tribes," to sell the "residue of lands in each of said nations not reserved or otherwise disposed of "under rules and regulations to be prescribed by him;" and that section 17 of said Act directs the said Secretary, "when the unallotted lands and other property belonging to the Choctaw and Chickasaw tribes of Indians have been sold and the moneys arising from such sales or from any other source whatever, have been paid into the United States Treasury to the credit

of such tribes, respectively, and when all the just charges against the funds of their respective tribes have been deducted therefrom," to distribute "per capita to the members then living, and the heirs of the deceased members whose names appear upon the finally approved rolls of the respective tribes," any remaining funds, and plaintiff asserts that the Secretary of the Interior is without lawful authority to complete allotments as provided by Section 11 and paragraphs 4, 10 and 16 of Section 29 of the Act approved June 28, 1898, and section 20 of the act approved July 1, 1902, and that under the provisions of section 16 of the Act of April 26, 1906, he has no lawful authority to sell or dispose of the unallotted communal lands of the Choctaw and Chickasaw tribes, until all allotments are completed in conformity with the said provisions of said acts; that unless restrained by order of this court, said Secretary will proceed, upon the completion of allotments to those persons whose names now appear on the citizen and freedmen rolls of said tribes, to sell and dispose of the residue of said unallotted communal lands; and plaintiff further asserts that said Secretary is without legal authority to distribute any funds now in the Treasury of the United States, or that may hereafter be placed therein, to the credit of the Choctaw and Chickasaw tribes respectively, "to the members living, and the heirs of deceased members whose names appear upon the finally approved rolls of the respective tribes," for the reason that the rolls as approved by the Secretary are not final, because they have not been made in conformity with the provisions of section 21 of the Act approved June 28, 1898, and Section 27 of the act of July 1, 1902, and because also, the Secretary of the Interior has no lawful authority to distribute funds belonging to the parties plaintiff herein, among other people not lawfully entitled thereto, but unless restrained by order of this court from so doing, he will proceed to distribute said funds among those persons whose names appear on the citizenship rolls of said tribes, as approved by him, on, or before, the fourth day of March, 1907 and thus without authority of law, and contrary to the inhibition contained in the fifth amendment to the Federal Constitution, deprive parties plaintiff herein of their property rights, without due process of law and that they will thereby sustain irreparable injury.

## (XXVI)

Plaintiff further represents that the said Secretary of the Interior is now delivering or causing to be delivered, patents approved by the Secretary of the Interior and signed by the Governor of the Chickasaw tribe and the Principal Chief of the Choctaw tribe to the parties plaintiff herein for allotments as freedmen, which allot-

ments were not made as the statute directed and are therefore without authority of law, and that said Secretary will, unless restrained by order of this court, continue to deliver said illegal patents to the plaintiffs and all those persons for whose benefit this suit is brought.

The premises considered, Plaintiff prays:

40 a. That copy, subpoena, and all proper process issue making Douglas H. Johnston, a citizen of the Chickasaw tribe, party defendant and that he be required to appear and answer fully the exigencies of this bill.

b. That copy, subpoena, and all proper process issue making Green McCurtain a citizen of the Choctaw Tribe, party defendant and that he be required to appear and answer fully the exigencies of this bill.

c. That after the filing of this bill and service thereof on the defendants herein, that copy, subpoena, and all proper process issue, making Douglas H. Johnston in his official capacity as Governor of the Chickasaw Tribe, and that the Chickasaw Tribe, through such service upon its Chief Executive, be made party defendant and be summoned into this court, as required by section two and twenty nine of the Act approved June 28, 1898, to answer fully the exigencies of this bill.

d. That after the filing of this bill and service thereof on the defendants herein, that copy, subpoena, and all proper process issue, making Green McCurtain in his official capacity as Principal Chief of the Choctaw Tribe, and that the Choctaw Tribe, through such service upon its Chief Executive, be made party defendant and summoned into this court, as required by sections two and twenty nine of the Act approved June 28, 1898, to answer fully the exigencies of this bill.

e. That copy, subpoena, and all proper process issue making James R. Garfield, Secretary of the Interior, party defendant and requiring him to appear and answer fully the exigencies of this bill; that service on the said James R. Garfield, Secretary of the Interior, be made through his special representative in the Indian Territory, J. George Wright, with offices at Muskogee, Indian Territory.

41 f. That a preliminary writ of injunction issue to said defendant, James R. Garfield, or rule to show cause why such writ should not issue, injoining and restraining him in his official capacity as Secretary of the Interior of the United States from selling or disposing of any of the unallotted communal lands of the Choctaw and Chickasaw tribes, except the allotment of such lands to persons whose names appear upon the citizenship rolls

of said tribes as approved by the Secretary of the Interior on, or before, the fourth day of March, 1907, and the sale and disposition of town site and school property belonging to said tribes, and that he be restrained from distributing any of the funds now, or that may hereafter be placed, in the Treasury of the United States to the credit of said tribe, and that he be further restrained from delivering patents to parties plaintiff for allotments as freedmen of said tribes.

g. That upon final hearing of this cause, the right, title, and interest of the principal plaintiff herein and of all those persons in whose behalf this suit is brought, and herein made parties plaintiff, who can show to this court that they are of Choctaw or Chickasaw Indian blood and descent, to share equally with all other persons whose names appear on the rolls of citizens of said Choctaw and Chickasaw Tribes respectively, as approved by the Secretary of the Interior on, or before, March 4, 1907, in and to the communal lands of said tribes, and all funds heretofore derived from the sale or disposal of any lands, properties or other thing of value being a part of, or resulting from the communal lands of said tribe, be by suitable decree declared and to that end, that all necessary orders and decrees be entered and all proper process employed.

42 h. That such writ of injunction, or such rule as shall proceed from this court, restraining the defendant, James R. Garfield, in his official capacity as Secretary of the Interior of the United States, from selling or disposing of any of the unallotted communal lands of the Choctaw and Chickasaw tribes, except the allotment of such lands to persons whose names appear upon the citizenship rolls of said tribes, as approved by the Secretary on, or before, March 4, 1907, and the sale of townsite and school properties belonging to said tribes; or from distributing any of the funds now, or that may hereafter be placed, in the Treasury of the United States to the credit of said tribes or from delivering patents to parties plaintiff herein for allotments as freedmen, be continued in force until the orders and decrees of this court shall have been fully complied with.

i. Plaintiff for herself, and, on behalf of all other persons made parties plaintiff herein and in whose behalf this suit is brought, also prays for general relief.

.....  
HAGLER, LEE & SAMS  
WEBSTER BALLENGER  
CHARLES VON WEISE

Attorneys for Plaintiffs.

43 United States of America  
Indian Territory  
Southern District.—ss.

Bettie Ligon, being by me first duly sworn, deposes and says, that she is the principal plaintiff in the foregoing bill; that she has read the amended Bill, and that the statements therein contained are true to the best of her knowledge, information and belief.

BETTIE LIGON

Subscribed and sworn to before me, this 10 day of May, 1907.

D. J. CLEMENT

Notary Public.

My commission expires 10-3-1910.

44 Endorsed as follows.

In the United States Court For the Southern District of the Indian Territory.

7071

Bettie Ligon et al, Plaintiffs,

vs.

Douglas H. Johnston et al., Green McCurtain et al., and James R. Garfield, Secretary of the Interior, Defendants.  
Amended Complaint.

HAGLER, LEE & SAMS,  
WEBSTER BALLINGER  
CHARLES VON WEISE,

Attorneys for Plaintiffs.

Filed May 10, 1907.

C. M. CAMPBELL, Clerk.

45 And thereafterwards, on the 16th day of May, 1907, the same being the seventeenth day of the regular April, 1907, term, present and presiding Honorable Horsea Townsend, Judge, after court being opened in due form of law, the following, amongst other proceedings, were had, to-wit:

7071

Bettie Ligon et al, Plaintiffs,

vs.

D. H. Johnston, et al, Defendants.

Demurrer to Complaint filed.

Which said demurrer is in words and figures as follows, to-wit:

46 In the United States Court for the Southern District, In-

dian Territory, Sitting at Ardmore.

7071

Bettie Ligon et al, Plaintiffs,

vs.

Douglas H. Johnson, Green McCurtain, and James R. Garfield, Secretary of the Interior, Defendants.

Demurrer.

Now come the defendants, Green McCurtain and Douglas H. Johnson and James R. Garfield, Secretary of the Interior, and demur to the Bill in Equity of the plaintiffs herein and as grounds for such Demurrer state:—

First: That said Complaint does not state facts sufficient to constitute a cause of action against these defendants.

Second: That this court has no jurisdiction of the subject matter set forth in said Complaint and has no power or authority under the law to hear and determine any matters raised by said plaintiffs.

Third: That, as clearly appears from the recitals contained in said Bill, the matters and things complained of and against 46 1-2 which relief is sought were and are to be performed under and by authority of various Acts of Congress in respect to the property and affairs of the Choctaw and Chickasaw Nations or tribes of Indians and that they are matters, the determination of which is clearly within the constitutional authority of Congress, and therefore the questions raised by the Bill in Equity are not a proper subject of judicial cognizance, but are purely political.

MANSFIELD McMURRAY & CORNISH

Attorneys for Douglas H. Johnson and Green McCurtain.

GEO. R. WALKER,

United States Attorney.

JAS. E. HUMPHREY,

Assistant United States Attorney.

Attorneys for James R. Garfield, Secretary of the Interior.

Endorsed:

Filed in open court May 16th 1907.

C. M. CAMPBELL, Clerk.

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

No. 7071. In Equity.

Bettie Ligon, et al.,

vs.

Douglas H. Johnston, et al.,

Decision on Demurrer to Complaint.

I don't know, gentlemen, that I can make an intelligent statement in regard to this question as presented. Of course I have listened to it with a great deal of interest, and I have arrived at a conclusion that to my mind is satisfactory, at least to me. Probably I might elaborate it if I should take some time, but in view of the fact that the matter seems to be one of great importance, and that possibly the parties may desire to appeal, it seemed proper that a decision be announced now; and while there is no elaboration about it at all, I can state simply a few reasons that to me seem conclusive.

The Congress of the United States have always, so far as I understand it, been particularly anxious to take care of every Indian, to give them their rights. They have universally shown that that policy was the policy of the Government, especially as shown by Congress in looking after the rights of all Indians, and I think the legislation of Congress has been along those lines.

This treaty under which the plaintiffs claim seems to be an exception. It is claimed by the plaintiffs that it is an exception to all other treaties with reference to granting title. It is claimed by the plaintiffs in this case that they received a fee simple title under and by virtue of the treaty of 1830. The grant, I believe, was made in 1842, but it was done under the terms of the treaty of 1830. Subsequently the Chickasaws bought a portion of the land, and it is claimed by the plaintiffs that they obtained the same title. Then subsequently they had a convention in 1855, of both of those Nations, with the Government, but under the provisions of that treaty there is no intimation or indication that there was any individual title in the individual members of the tribe, there is nothing in that treaty that disclosed any such purpose or seems to recognize that any such existed.

Then we come down to 1866, and in the meantime slavery had been abolished, and the Government of the United States thought these slaves, or ex-slaves, should be taken care of, and proposed that they should receive some lands, that the slaves and their descendants should receive some lands, and such provision was made, that they should receive I believe forty acres. Then we come along down to the subsequent treaties, and the Government discovered that the administration of affairs by the Indian governments had been very faulty and defective, that they were not properly taking care of and administering the trust that was confided to them; they are treated by the Government as trustees for the Indian members of the tribe. While they are a dependent nation, a dependent peo-

ple, yet the Government, in all its proceedings, has treated them as trustees, has treated the tribal government as trustees for the members of the tribes. And when the Government, on the report of the Dawes Commission, found they were not properly executing the trust for the benefit of the members, determined to take possession of it, and did so, by an agreement in which both nations concurred, that it should be done. That agreement, I believe, is contained in the treaty of 1898, and that provided that they should determine who were the members of the tribe, and they should allot the land to the individual members of the tribe. That was part of the legislation by Congress, and they proceeded to do so, and not only found who were the members of the tribe, but found who these slaves were, and their descendants. Now the Government proceeds by its machinery for the purpose of ascertaining that, and I presume no one will question but what, in the administration of these offices, they were acting in a political capacity. I think it has been decided over and over again that they were simply pursuing a political matter in which the courts could not interfere at all. Congress had regulated all this, and they proceeded to determine who these members were.

Now the plaintiffs come in and say, Here, we have been put upon the roll as slaves, or descendants of slaves, and we are only entitled to forty acres of land. We are of Indian blood. And they make the discovery—Mr. Walker says that Mr. Lee is the discoverer—that in 1830 there was a treaty made which gave them individual rights to the property, and this action of the Government, or tribes themselves endeavoring to give it to the Government, did not bind them, they are not bound by it, at least so far as when we come to the distribution and division of the property; and therefore they come in here, a couple of thousand of them I believe there is in this bill, and want this court to revise the action of Congress, through their administration, in determining who these Chickasaws were, as I understand it. They want this court to go into the investigation and say that Congress in the administration of this Indian estate, has made a mistake, and that they are entitled. What do they ask us to do? They say, here is a great big trust fund which belongs to all of these members of the tribe. We are descendants, and we want you to declare that we are tenants in common with the other members that have been found by the Government Commission. That is what you ask the court to do, to declare that we are entitled in common with them. They do not seek to have this court declare that any particular one of them has suffered any particle of damage, or suffered loss of any property whatever, except

they want to be recognized, by a judgment of this court, that they claim to have a right under and by virtue of being descendants of the Choctaws, and therefore entitled to share in the tribal property.

Now this court, nor any other court, in my judgment, has a right to revise this political action of Congress in determining who were entitled to this property. And in allotting it to them we cannot interfere with the political duties that Congress has assumed, and has assumed all the way through, and the legislation all declared to be constitutional by the Supreme Court of the United States, all this property being regarded as public property on the assumption that the Government is administering a trust fund. Can this court come in and attempt to interfere with that? I don't know where we are given any authority for it.

And what is this equity that is being administered? They are trustees, and the Government in executing it is granting to their members their equitable rights. They have assumed charge of it. The court cannot. You want me to take possession and stop the administration upon seven million acres of land. You might as well ask the court to run the government of the whole Indian Territory, or the government of the United States. That is a pretty big contract for this court to undertake. I don't think we have any jurisdiction. I don't think we have any jurisdiction until the Government has allotted this land to the individual Indians, and then if the officers have made a mistake, then by reason of that mistake a court of equity will come in and say, this man is entitled to that land, to this particular piece of land, and he will be damaged if you take it away and give it to this man. There is an actual damage that he has suffered. It is not merely a declaration of right.

Now equity—By reason of some expressions, it would seem the impression prevails that when you come into a court of equity you find a jurisdiction as extensive as the human imagination. That is not correct. Equity is limited just as much as the law is limited. Equity follows the law, and when the law has done an improper act equity will correct it; but they will not correct it until the Government has got through and acted and passed title, and the title passed by patent. Then if there is a mistake I think a court of equity would have a right to correct it.

Now the gentlemen say, if you can show us any way in the world to get into court and litigate that question, we will dismiss this bill. I don't know how you are going to get into court. It is impossible for me to tell. Congress has regulated this entire mat-

ter, has taken charge of it, and the Supreme Court has sustained its legislation and action. They have declared this property is public property, and that no private individual has any right to say anything about it. If that be true, there is no equity existing in the individual members, and the Government itself is controlling the distribution of this trust, and no court will interfere with that administration, because it is a public political duty that the Government is discharging. My judgment is—I say my judgment is—I should judge, from what Mr. Ballenger stated in regard to the special committee that was down here and the Committee on Indian Affairs, that upon a proper representation the Government might say, We will revise this investigation, and see if these officers of the Government have made any mistakes. I don't know any other way to reach it except in that sort of a manner. If the government has made a mistake, as a matter of course Congress has the power through its officers to correct that mistake.

Of course Mr. Humphrey's position is that this is not a grant in presenti, and he very forcibly presented it. It is a matter you gentlemen should think about; and at any rate, all this administration of this trust fund has been under the legislation of Congress, which has been sustained by the Supreme Court, and the officers of the Interior Department, or the officers selected by the Government, have been executing this trust and administering it, and therefore I don't see where this court has got any jurisdiction

whatever to have anything to do with it. They are not asking for the correction of a mistake which involves a damage to an individual Indian at all. They don't ask even in the bill that it be held to be a damage to a whole lot of them; it is a declaration simply of a right, when the Government has been administering it all the way through as a public political duty in the discharge and execution of its functions, doing it with the consent of the tribes.

Now it occurs to me that that is the end of this proposition. I don't think I can do anything with it. I don't think I have any jurisdiction to touch it. I don't believe I can take charge and run this Indian country. What is it they ask? They want me to enjoin the Secretary of the Interior and the whole administration of this Indian business, stop it, and stop the paying out of the funds, now on hand and their proper distribution. They want me to assume charge of the government of these Indians in the Choctaw and Chickasaw Nations, simply because they claim they have not been properly enrolled, have not been enrolled by these officers of the Government as they should have been, that they made a mis-

take. I don't know whether they made a mistake or not, and I think the proper party to correct it is the Government itself, through its officers. I think you will have to have some legislation to get it corrected. I don't think this court, nor any other court, would ever consider this bill for a moment. That is my private opinion. I don't think there is any ground for it.

Now that is roughly my view of the situation, as it occurs to me. I shall therefore refuse the injunction, I shall sustain the demurrer, and dismiss the bill for want of jurisdiction.

53 Be It Remembered, That on the 18th day of May, 1907, the same being the eighteenth day of the regular April, 1907, term, present and presiding Honorable Hosea Townsend, Judge, after court being opened in due form of law, the following, amongst other proceedings, were had, to-wit:

7071  
Bettie Ligon et al, Plaintiffs,  
vs.

D. H. Johnston, et al, Defendants.

Judgment sustaining Demurrer.

Which Judgment is in words and figures as follows, to-wit:

..54 No. 7071.  
Bettie Ligon et. al.,  
vs.

Douglas H. Johnson, Green McCurtain and James R. Garfield,  
Secretary of the Interior.

Judgment sustaining Demurrer.

Now on this 18th day of May, 1907, the same being one of the days of the regular April term of this court, this cause came on to be heard, the plaintiffs appearing by their attorneys, Hagler, Lee & Sams, Webster Ballinger and Chas. von Weise, and the defendants, Douglas H. Johnson and Green McCurtain appearing by their attorneys, Mansfield, McMurray & Cornish and the Defendant, James R. Garfield, Secretary of the Interior, appearing by his attorneys, George R. Walker, United States Attorney and James E. Humphrey, Assistant United States Attorney.

Whereupon it being shown to the court that the defendants had filed a Demurrer to the Complaint in Equity filed by the plaintiffs herein and this cause was argued before the court by the respective attorneys upon said Demurrer,

And the court being fully advised, it is hereby ordered, adjudged and decreed by the court that the Injunction asked for by the plaintiffs be refused, that the Demurrer be sustained and the

Complaint in Equity be dismissed to all of which plaintiffs then and there excepted and prayed an appeal.

55 United States Court for the Southern District of the Indian Territory at Ardmore.  
Equity No. 7071  
Bettie Ligon et al, Plaintiffs,  
vs.

Douglas H. Johnston et al., Green McCurtain et al., and James R. Garfield, Secretary of the Interior, Defendants.

Assignment of Error

And now on this 21st day of May, 1907, comes the plaintiffs by Hagler, Lee & Sams, and Webster Ballinger, their attorneys, and say, that the decree in said cause sustaining the demurrer to the bill of plaintiffs, was erroneous, and against the just rights of plaintiffs for, among others, the following reasons:

1. Because the court erred in not overruling the demurrer, which demurrer admitted the property rights of plaintiffs in the communal properties resulting from the grant, as claimed in the bill.

2. Because the court erred in holding that the property rights of plaintiffs, as claimed in the bill, presented a political question and one not cognizable by a court of equity.

3. Because the court erred in holding that the action and decision of the administrative officers of the government, based upon misconstruction of law, fraud and gross mistake, which resulted in the denial to plaintiffs of their property rights, and now beyond review by such administrative officers, were not matters reviewable by a court of equity.

56 4. Because the court erred in holding that the relief sought by plaintiffs could not be granted, in that a court of equity could not decree an undivided interest in an estate resulting from lands granted in fee simple to a designated class of persons by letters patent from the United States.

5. Because the court erred in holding that it was without jurisdiction to entertain a suit brought by private parties as plaintiffs against other private parties as defendants.

6. Because the court erred in dismissing the bill of plaintiffs and refusing the relief prayed for.

HAGLER LEE and SAMS  
WEBSTER BALLINGER  
Attorneys for Plaintiffs.

Filed in open court May 21st, 1907.

C. M. CAMPBELL, Clerk.

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

Equity No. 7071

Bettie Ligon et al, Plaintiffs,

vs.

Douglas H. Johnston et al., Green McCurtain et al., and James R. Garfield, Secretary of the Interior, Defendants.

Petition for Appeal

The above named defendants, conceiving themselves aggrieved by the decree made and entered on the 18th day of May, 1907, in the above entitled cause, a copy of which decree is attached hereto, do hereby appeal from said order and decree to the Court of Appeals for the Indian Territory, for the reasons specified in the assignment of error, which is filed herewith, and they pray that this appeal may be allowed and that a transcript of the records, proceedings and papers, upon which said order was made, duly authenticated, may be sent to said Court of Appeals for the Indian Territory.

HAGLER LEE and SAMS  
WEBSTER BALLINGER  
CHARLES VON WEISE  
Attorneys for Plaintiffs.

Filed in open court May 21 1907

C. M. CAMPBELL, Clerk.

58 United States Court for the Southern District of the Indian Territory at Ardmore

Equity No. 7071

Bettie Ligon et al, Plaintiffs,

vs.

Douglas H. Johnston et al, Green McCurtain et al., and James R. Garfield, Secretary of the Interior, Defendants.

Order.

Upon petition of the plaintiffs in the above entitled cause, an appeal to the Court of Appeals for the Indian Territory is hereby granted from the decree entered therein on the 18th day of May, 1907.

HOSEA TOWNSEND  
Judge U. S. Court, Southern Dist. Ind. Territory.  
Citation.

To D. H. Johnston, Green McCurtain, James R. Garfield, Secretary of the Interior:

You are hereby cited and admonished to be and appear in the United States Court of Appeals for Indian Territory at the City of South McAlester, Indian Territory, sixty days from and after the date this citation bears date, pursuant to an appeal allowed by the Judge of the United States Court for Southern District, Indian Territory, wherein Bettie Ligon et al are plaintiffs in error, and you are defendants in error, to show cause, if any be, why the judgment rendered against the plaintiffs in error, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Hosea Townsend Judge of said Court this 22d day of May, 1907.

HOSEA TOWNSEND  
Judge of the United States Court.

(Seal)

Service of the above is hereby accepted.

GEORGE R. WALKER

Attys for James R. Garfield Secretary of the Interior.

May 22, 1907.

JAMES E HUMPHREY

Asst U S Atty.

I hereby certify that I served a copy of the above Citation on Mansfield McMurray & Cornish by delivering a true copy of same to Melvin Cornish at his office in So McAlester I. T. on the 25th day of May A D 1907

GEO K PRITCHARD

U S Marshal.

By Deputy ED FOSTER

60 Know All Men By These Presents:

That we, Bettie Ligon, J. A. McNaught and D. H. Dawson are held and firmly bound unto the Defendants in the full and just sum of Five hundred dollars to be paid to the said Defendants heirs, 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 22 day of May 1907, in the year of our Lord one thousand nine hundred and seven.

Whereas, lately at the April term of the United States Court for the Southern District, Indian Territory, in a suit pending in said Court between Bettie Ligon et al, plaintiffs, and D. H. John-

ston et al, defendants, judgment was rendered against the said plaintiffs and the said plaintiffs have obtained a Writ of Error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendants citing and admonishing them to be and appear in the United States Court of Appeals in the Indian Territory, at the City of South McAlester, Indian Territory, sixty days from and after the date of said citation.

Now, therefore, the condition of the above obligation is such, that if the said Bettie Ligon et al shall prosecute said ..... to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue.

61 Signed, sealed and delivered by

BETTIE LIGON Seal)  
by Albert Lee of Hagler Lee and Sams  
J. A. McNAUGHT (Seal)  
D. H. DAWSON (Seal)

Approved by

C. M. CAMPBELL  
Clerk U. S. Court.

By W. S. CROCKETT Depty.

Filed at Ardmore May 22, 1907 8:A. M. C. M. Campbell Clerk and ex-officio Recorder District No. 21, Ind. Ter.

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

7071

Bettie Ligon et al, Plaintiffs,

vs.

Douglas H. Johnston et al, Defendants.

Costs.

Clerk's Cost .....\$8.80  
Transcript and Seal .....15.50  
Marshal's Cost ..... 6.00

Total .....\$30.30

Paid by Appellants.

63 Indian Territory,  
Southern District.

I, C. M. Campbell, Clerk of the United States Court, Southern District, Indian Territory, do hereby certify that the above and foregoing is a true and correct transcript in said cause, as the same appears of file and record in my office at Ardmore.

In Testimony Whereof, Witness my hand and official seal, this 21st day of May, A. D. 1907.

(Seal)

C. M. CAMPBELL, Clerk.

By W. S. CROCKETT Deputy.

Endorsed:

No 858

BETTIE LIGON ET AL Appellants

vs.

DOUGLAS H. JOHNSON, ET AL. Appellees

Transcript of Record.

Filed in the Office of Clerk of U. S. Court of Appeals, Ind. Ter.  
May 23 1907

WM P FREEMAN Clerk.

48 And afterwards, to-wit: on the 11th day of June, A. D., 1907, there was filed in the office of the Clerk of said Court a Certificate of the Clerk correcting Transcript, which said certificate is in the words and figures following, to-wit:

Indian Territory,  
Southern District.

In cause No. 7071, Bettie Ligon et al, Plaintiffs, v. Douglas H. Johnston et al, Defendants, in the U. S. Court, Southern District, Indian Territory, at Ardmore.

I, C. M. Campbell, Clerk of the United States Court, Southern District, Indian Territory do hereby certify that a correction should be made in the record in said cause, appealed to the United States Court of Appeals in the Indian Territory. On page 47 of said record, after the words, "In testimony whereof, witness my hand and official seal, this"; in lieu of the words "21st day", the record should read, "22nd day of May, A. D., 1907."

In Testimony Whereof, Witness my hand and official seal, this  
10th day of June, A. D. 1907.

49 [Seal] C. M. CAMPBELL, Clerk.

Endorsed: No. 858. Bettie Ligon et al, Appellant v. Douglas H. Johnson et al, Appellees. Certificate of C. M. Campbell, Clerk, correcting transcript. Filed in the office of Clerk of U. S. Court of Appeals, Ind. Ter., June 11, 1907. Wm. P. Freeman, Clerk.

And afterwards, to-wit: on the 14th day of June, A. D., 1907, being one of the days of the June Term, 1907, of said Court, the following proceedings were had and made of record in said cause, to-wit:

Bettie Ligon et al, Appellants,

vs.

Douglas H. Johnson, et al, Appellees.

Appeal from United States Court, Southern District, Indian Territory.

This cause came on to be heard upon the transcript of the record of the United States Court for the Southern District of the Indian Territory, and was argued by counsel, and the Court being unable to agree,

It is therefore considered by the Court that the judgment

of said Court for the Southern District, in this cause rendered, be and the same is hereby in all things affirmed with costs.

It is further considered that said appellees recover of said appellants all their costs in this Court, in this cause expended, and have execution thereof.

50 And afterwards, to-wit, on the 24th day of June, A. D., 1907, there was filed in the office of the Clerk of Said Court, a Petition for Appeal, in said cause, which is in the words and figures following, to-wit:

In the United States Court of Appeals in the Indian Territory.

Bettie Ligon et al., Appellants,  
No. 858. vs. Equity.  
Douglas H. Johnston et al., Green McCurtain et al., and  
James R. Garfield, Secretary of the Interior, Appellees.

Petition for Appeal.

The above named appellants conceiving themselves aggrieved by the decree made and entered on the 14th day of June, 1907, in the above entitled cause, do hereby appeal from said order, and decree, to the United States Circuit Court of Appeals for the 8th Circuit, for reasons specified in the assignment of error, which is filed herewith, and they pray that this

51 appeal may be allowed, that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the 8th Circuit.

Ardmore, Indian Territory, June 18, 1907.

WEBSTER BALLINGER,  
ALBERT J. LEE,  
ELDON E. SAMS,  
CHARLES VON WEISE.

Endorsed: Filed in the office of Clerk of U. S. Court of Appeals, Ind. Ter. June 24, 1907. Wm. P. Freeman, Clerk.

And on said 24th day of June, A. D., 1907, there was also filed in the office of the clerk of said court in said cause, an Order of Appeal, which is in the words and figures following, to-wit:

In the United States Court of Appeals in the Indian Territory

Bettie Ligon et al., Appellants,  
No. 858. v. Equity.  
Douglas H. Johnston et al., Green McCurtain et al., and James  
R. Garfield, Secretary of the Interior, Appellees.

52

Order.

Upon petition of appellants in the above entitled cause, an appeal to the United States Circuit Court of Appeals for the 8th Circuit is hereby granted from the decree entered therein on the 14th day of June, 1907.

HOSEA TOWNSEND,

Judge, United States Court of Appeals in the Indian Territory.

June 18, 1907.

Endorsed: Filed in the office of Clerk of U. S. Court of Appeals, Ind. Ter., June 24, 1907. Wm. P. Freeman, Clerk.

And on said 24th day of June, A. D., 1907, there was also filed in the office of the Clerk of said Court, an Assignment of Error, in said cause, which is in words and figures following, to-wit:

53 In the United States Court of Appeals in the Indian Territory

Bettie Ligon et al., Appellants,  
No. 858. vs. Equity.  
Douglas H. Johnston et al.; Green McCurtain et al., and James  
R. Garfield, Secretary of the Interior, Appellees.

Assignment of Error.

Now on this the 18th day of June, 1907, come the appellants, through their attorneys, Webster Ballinger, Albert J. Lee, Eldon E. Sams, and Charles Von Weise, and say that the decree in said cause affirming the judgment of the United States Court for the Southern District of the Indian Territory, was erroneous, and against the just rights of appellants.

(1) In that the said court ordered, adjudged and decreed that the decision of the United States Court for the Southern District of the Indian Territory, in sustaining the demurrer, which demurrer admitted the property rights of appellants, in the communal properties resulting from the grant as claimed in the bill, should be affirmed.

54 (2) In that the court ordered, adjudged and decreed that the decision of the United States Court for the Southern District of the Indian Territory, holding that the property rights of appellants as claimed in the bill, presented a political question and one not cognizable by a court of equity, should be affirmed.

(3) In that the said court ordered, adjudged and decreed that the decision of the United States Court for the Southern

District of the Indian Territory, holding that the action and decision of the administrative officers of the government, which resulted in the denial to appellants of their property rights, and now beyond review by such administrative officers, were not matters reviewable by a court of equity, should be affirmed.

(4) In that said court ordered, adjudged and decreed that the decision of the United States Court for the Southern District of the Indian Territory, holding that the relief sought by appellants could not be granted, in that a court of equity could not decree an undivided interest in an estate resulting from lands granted in fee simple to a designated class of persons by letters patent from the United States, should be affirmed.

(5) In that the said court ordered, adjudged and decreed that the decision of the United States Court for the Southern District of the Indian Territory, holding that it was without jurisdiction to entertain a suit brought by private parties as plaintiffs against other private parties as defendants, should be affirmed.

(6) In that the said court ordered, adjudged and decreed that the decision of the United States Court for the Southern District of the Indian Territory, dismissing the bill of appellants and refusing the relief prayed for should be affirmed.

(7) In that said court did not order, adjudge and decree that the decision of the United States court for the Southern District of the Indian Territory should be reversed and the cause remanded to that court.

56 WEBSTER BALLINGER,  
ALBERT J. LEE,  
ELDON E. SAMS,  
CHARLES VON WEISE.

Endorsed: Filed in the office of Clerk of U. S. Court of Appeals, Ind. Ter., June 24, 1907. Wm. P. Freeman, Clerk.

And on said 24th day of June, A. D., 1907, there was also filed in the office of the clerk of said court, an Appeal Bond, in said cause, which is in words and figures following, to-wit:

In the United States Court of Appeals in the Indian Territory.

Bettie Ligon, et al., Plaintiffs,  
No. 858. vs Equity.

Douglas H. Johnston, et al., Green McCurtain, et al., and James R. Garfield, Secretary of the Interior, Appellees.

Bond.

Know All Men By These Presents: That we, Bettie Ligon, as principal, and J. A. McNaught and D. H. Dawson, as sureties, are held and firmly bound unto Douglas H. Johnston, Green McCurtain, and James R. Garfield, in the full and just sum of \$500.00 dollars, to be paid to the said Douglas H. Johnston, Green McCurtain and James R. Garfield, Secretary of the Interior, 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 18th day of June, in the year of our Lord, One Thousand Nine Hundred and Seven.

Whereas, lately in the United States Court of Appeals in the Indian Territory, in a suit pending in said court, between Bettie Ligon, et al., Appellants, and Douglas H. Johnston, et al., Green McCurtain, et al., and James R. Garfield, Secretary of the Interior, Appellees, a decree was rendered against the said Bettie Ligon, et al., and the said Bettie Ligon, et al., 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 Douglas H. Johnston, et al., Green McCurtain, et al., and James R. Garfield, Secretary of the Interior, citing and admonishing them to appear at a session of the United States Court of Appeals for the 8th Circuit, to be holden at the city of St. Louis, in said circuit, on the 2nd day of December next.

Now, the condition of the above obligation is such that if the said Bettie Ligon, et al., shall prosecute her appeal to effect, and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of:

BETTIE LIGON,  
By Albert J. Lee.  
J. A. McNAUGHT,  
D. H. DAWSON.

Witness:  
D. J. Clement.

Approved: HOSEA TOWNSEND,  
Judge, U. S. Court of Appeals, in the Indian Territory.

Endorsed: No. 858. Bettie Ligon, et al., Appellants, vs. Douglas H. Johnson, et al., Appellees. Appeal Bond. Filed

in the office of Clerk of U. S. Court of Appeals, Ind. Ter.  
June 24, 1907. Wm. P. Freeman, Clerk.

59 United States of America,  
Indian Territory—ss.

In the Court of Appeals.

I, William P. Freeman, Clerk of the United States Court of Appeals in the Indian Territory, do hereby certify that the foregoing is a full, true and complete transcript of the record and proceedings, together with all things concerning the same, of the said Court, in the cause therein named, as fully as the same remains of record and on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court, at office in the City of McAlester, Indian Territory, this 10th day of July, A. D., 1907.

Seal  
United States  
Court of Appeals,  
Indian Territory.

WM. P. FREEMAN,  
Clerk United States Court of  
Appeals in the Indian Territory.

Filed Aug. 12, 1907. John D. Jordan, Clerk.