

J-N°40.

Sports, J. W., et al,

vs

Chickasaw Nation.

N°37.

Santhem Dist. Court.

N°

Dawes Commission.

No record.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT, SITTING AT

TULSA, OKLAHOMA.

No. 40.

J. W. Sparks, et al.,
 Plaintiffs,
 vs.
 Choctaw and Chickasaw Nations.
 Defendants.

MEMORANDUM OF ARGUMENT FOR NATIONS.

Applicant J. W. Sparks seeks, by this proceeding, the enrollment of himself and daughter Syntha, as members of the Chickasaw Nation, alleging that he married with one Sarah Colbert, an alleged Chickasaw Indian by blood and that his daughter, Syntha, was the result of said marriage.

Many cases tried before this Court have surpassed this one in the amount of worthless and fraudulent testimony taken, but none of them have less foundation in fact.

Applicants undertook to prove the Chickasaw blood

of Sarah Colbert. J. W. Sparks testified that she had the

appearance of an Indian and when pressed as to details of her

family and history takes refuge in such dense ignorance that

a member of the Court felt justified in remarking from the

bench "The man seems not to be strong either mentally or

physically."

The only other witness who testified orally was

witness Fletcher, but on the stand by applicants, who under-

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,
SITTING AT TISHOMINGO, I.T.

-oOo-

J. W. SPARKS et al,)	
plaintiffs,	{	
VS.	{	No. 40.
CHOCTAW and CHICKASAW NATIONS,	{	
defendants.)	

Brief of Plaintiffs..

Since attorneys for the Nations are not content to submit this case without a brief but have seen fit to file a brief herein, we desire to answer same.

Barring the pompous assertions of counsel for the Nations and the unjustified assaults upon the applicants and their attorneys, we submit there is nothing serious in the brief.

Counsel for the Nations, by INUENDO, charge the applicant, J. W. Sparks with falsely swearing and cite the remark of Judge Foote while applicant was on the stand to confirm their conclusions. It is true that Judge Foote remarked from the bench: "The man seems not to be strong either mentally or physically", and we do not contend but that this remark was wholly justified by the facts, yet, we do contend that it is unbecoming in counsel to malign this witness because Providence holds even him the scourge of its resentment because of broken laws of nature. The applicant, J. W. Sparks, is a physical wreck, broken down and disfigured by rheumatism and paralysis, and he was assisted by up the stairs and to the stand when he testified in this case, as the court will remember. He couldn't talk audibly. If these facts argue that the witness is a liar and unworthy of belief, then the assault is justified, otherwise, we

took to testify that Sarah Colbert was an Indian, but on being pressed in the cross-examination, he stated that he first met her in about 1865, when she and her family were moving into Grayson County, Texas, from the South, and that so far as he she had never lived in Indian Territory prior to said time. Applicants then introduced a certificate of the Dawes Commission to show the citizenship status of Sarah Hughes, formerly Sarah Colbert, which showed her name on the leased District Pay Roll.

In presenting this certificate to the Court the applicants and their advisers were guilty of an attempt to mislead and deceive the Court, for they could not have discovered the presence of her name on that roll without learning at the same time the nature of a claim to a citizenship status. This information applicants studiously suppressed. Just what an effort J. W. Sparks made not to surrender his information on the subject can be seen by an examination of his testimony in the record.

The Nations, however, introduced the testimony of Sarah herself, given before the Commission when she appeared before it for enrollment. From her evidence it clearly appears that she is not an Indian and was never an applicant as such, but that prior to her marriage to Sparks she was married to a Chickasaw Indian of recognized status, and that her only claim to enrollment was as an inter-married citizen.

Therefore, the only question to be decided by the Court in this case is "Does an Inter-married white woman, who after the death of her Chickasaw husband, marries a white man, confer the rights of Chickasaw citizenship on such white husband and his white children by her?"

This question we have fully discussed in our brief in the Joanna Mickle case, No. ³⁷(2), on the South McAlester

Docket, and to our brief in that case we respectfully refer
the Court.

In our opinion these applicants are not entitled
to enrollment and their petition should be denied.

Respectfully submitted,

ATTORNEYS FOR CHOCTAW AND CHICKASAW NATIONS.



think not.

Counsel for the Nations say: "In presenting this certificate (referring to the certificate that Sarah Hughes, formerly Sarah Sparks, appears upon the leased district roll) to the court, the applicants and their advisers were guilty of an attempt to mislead and deceive the court, for they could not have discovered the presence of her name on that roll without learning at the same time the nature of a claim to a citizenship status. This information applicants studiously suppressed." To put ourselves right before the court and to advise the court fully with reference to what knowledge ~~we~~ we possessed, as well as the applicants, we attach hereto a letter we received from the Commission to the Five Civilized Tribes which conveys this information: "You are hereby informed, however, that from said roll it is impracticable to ascertain whether the persons named thereon are citizens by blood or intermarriage." Unless counsel for the Nations have more information and a different roll from that possessed by the Commission to the Five Civilized Tribes, they certainly made the above statement unadvisedly or with the design on their part to willfully mislead the court. We take it that the attorneys for the Nations would see to it that the Commission to the Five Civilized Tribes had a correct copy of the leased district pay roll, and that the roll referred to by said Commission is a correct copy of that possessed by the Nations, and we do not believe that counsel for the Nations had any other motive than one to mislead when they made their assertions.

The witness, Fletcher, testified, it is true, that he first met Sarah ~~xxxxxx~~ Colbert down in Grayson County, Texas during the war; that he said that she came from the Indian Territory and afterwards returned to the Territory

when the war was over; that she was an indian.

The attorney for the Chickasaws, the Honorable W. B. Johnson, in his answer filed in this case when it was tried in the United States Court at Ardmore, admitted that Sarah Hughes, formerly Sarah Sparks, was a member by blood of the Chickasaw Tribe of Indians and there has never been any contention to the contrary until made by the present counsel for the nations, and when this trial was in progress. It is true the proof as to her citizenship is not as strong as it might be, but it is certainly sufficient in the face of the Nation's admission heretofore, when the court remembers that the applicants appeared for trial with the understanding that there had never been any issue made upon this question. Under such circumstances he would certainly not be required to make that cogent proof which would be required where the controversy hinged mainly upon that issue.

Counsel say that the Nations introduced the testimony of Sarah Hughes herself ⁱⁿ~~in~~ before the Commission when she appeared before it for enrollment, and that from it it clearly appears that she is not an indian and was never an applicant as such, but only claimed by reason of her inter-marriage with Colbert. We were not present when said testimony was offered and this is the first intimation we have had that it had been offered in evidence and we desire to say that if such testimony was offered it was inadmissible and should be disregarded by the court.

In order to make testimony given by a witness since deceased admissible in the cause, the issues and the parties must have been the same. See Fresh vs. Gilson, 41 U.S., 327 (10 L. Ed., 982); McTighe vs. Herman, 42 Ark., 285; Haslan vs. Campbell, 60 Ga., 650; Poorman vs. Miller, 44 Col., 269; Marshall vs. Hancock, 80 Cal., 82; Bryan vs.

Malloy, 90 N.C., 508; Tappan vs. Beardesley, 77 U.S., 427
(19 L. Ed., 974).

The Nation has admitted that Sarah Hughes, formerly Sarah Spraks, was an indian by blood in their answer filed in the United States Court at Ardmore, and the records of the Commission to the Five Civilized Tribes, as shown by the certificate introduced, shows that the name of Sarah Hughes appears upon the Leased District Pay Roll; the evidence shows that she had the appearance of an indian and the witnesses, Sparks and Fletcher, testify that she was an indian while the Nations offer no testimony whatever that she is not.

Under such evidence and upon such record, it occurs to us that the applicants should be admitted to citizenship and we have confidence that this court, which is not saturated with the prejudice of the counsel for the Nations, will so decree.

Respectfully submitted,

Blanton & Andrews
Attorneys for J. W. Sparks.

Michigan

Dmg

J. W. Sparks et al. No 40

+ J. W. Sparks

+ Cynthia Sparks or Cynthia Sparks

SUMMONS.

Duplicate

United States of America,
INDIAN TERRITORY,
Choctaw and Chickasaw Citizenship Court.

SS:

The President of the United States of America,

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

GREETING:

YOU ARE COMMANDED TO SUMMONS P. S. Moseley

Governor of the Chickasaw nation

on behalf of said nation

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

as Governor of said nation

a complaint in Equity filed against the Choctaw and Chickasaw ^{nations} ~~citizenship~~

in the Choctaw and Chickasaw Citizenship Court, in the Indian Territory, *Tishomingo*

by *J. N. Sparks, et al* and warn him that upon his ^{as said Governor} failure to answer, ~~the~~

on behalf of said nation the

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

~~first day of next~~ instanter ~~term of said Court.~~

and you are further commanded to notify said P.S. Moseley, Governor afore-
said that the files, papers and proceedings in the case of *J. N. Sparks et al*
file No. 37 in the District Court for the Southern
District of the Indian Territory, have been transferred to the
Choctaw and Chickasaw citizenship court, and that the certificate of
the clerk of said court for said Southern District has been attached
thereto.

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

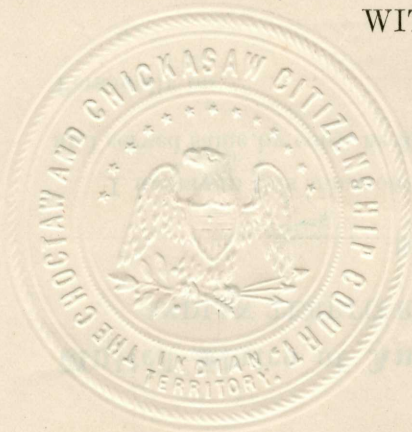
WEAVER and HENRY S. FOOTE, Associate Judges, and the Seal

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

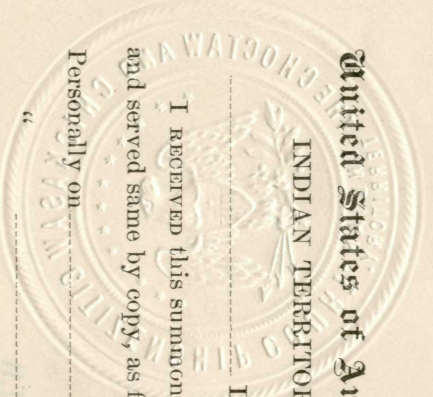
this 14th day of March, A. D. 1903

James B. Cassard
Clerk.

By _____, Deputy.



MARSHAL'S RETURN.



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

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

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

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

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

U. S. Marshal.

By _____, Deputy

5

DUPLICATE

No. 407

SUMMONS
IN EQUITY.

J. W. Sparks, et al
vs.
Choctaw & Chickasaw Nations

Summons issued the 14 day
of March, 1903
Returnable instantly Term, 1903

Returned and filed _____, 190____

Clerk.

By _____, Deputy.

MARSHAL'S FEES.

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

Blanton, Anderson,
Lubbert & Bledsoe + 7,
Attorney for Plaintiff.
Anderson J. T.

SUMMONS.

Duplicate

United States of America,)
INDIAN TERRITORY,)
Choctaw and Chickasaw Citizenship Court.

ss:

The President of the United States of America,

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

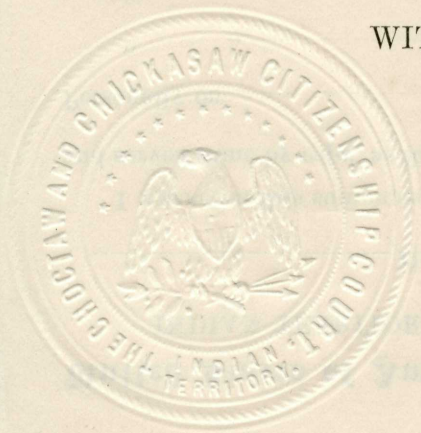
GREETING:

YOU ARE COMMANDED TO SUMMONS Green McCurtain,
Principal Chief of the Choctaw Nation,

on behalf of said Nation
to answer in twenty days after the service of this summons upon him
as Principal Chief of said Nation
a complaint in Equity filed against the Choctaw and Chickasaw Nations

in the Choctaw and Chickasaw Citizenship Court, in the Indian Territory, Seihominy
by J. W. Spacks, et al and warn him that upon his failure to answer, the
on behalf of said Nation
complaint will be taken for confessed, and you will make return of the summons on the

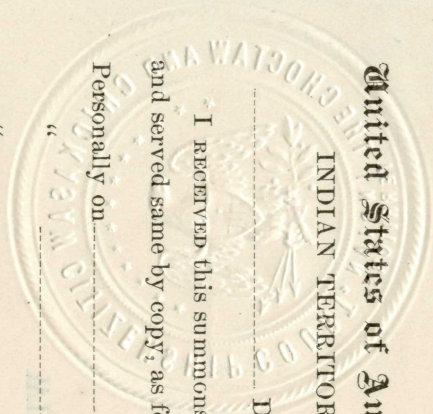
first day of next instanter Term of said Court.
and you are further commanded to notify said Green McCurtain, Principal
Chief aforesaid, that the files, papers and proceedings, in the case of
J. W. Spacks, et al file No. 37, in the District Court
for the Sauthem District of the Indian Territory have been trans-
ferred to the Choctaw and Chickasaw Citizenship Court, and that the
certificate of the Clerk of said Court for said Sauthem
District, Indian Territory has been attached thereto.



WITNESS the Honorable SPENCER B. ADAMS, Chief Judge, WALTER L.
WEAVER and HENRY S. FOOTE, Associate Judges, and the Seal
thereof, at South Mc Alester, I.T., aforesaid,
this 14 day of March, A. D. 1903.

James R. Cassada
Clerk.
By _____, Deputy.

MARSHAL'S RETURN.



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

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

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

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

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

By _____, Deputy
U. S. Marshal.

No. 407
SUMMONS
IN EQUITY.

J. W. Sparks et al
vs.
Choctaw & Chickasaw Nations

Summons issued the 14 day
of March, 1903

Returnable instantly Term, 100

Returned and filed _____, 190____

Clerk.
By _____, Deputy.

MARSHAL'S FEES.

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

TOTAL, - - - - \$ _____
Blanton, Anderson &
Ladbetter, Bledsoe & C
Anderson J. T.
Attorney for Plaintiff.

JOS Parks et al #40

Take testimony of John O. Gillum,
Berwyn, S. C.,

Also furnish certificate of Dawes
Commission showing that Sarah Hughes
wife of applicant was enrolled on roll
of 1893 as citizen by intermarriage

J. W. Sparks, et al.

Vs. No. 37

Judgment, Southern Dist. March 12, 1898.

Chickasaw Nation.

This day this cause coming on to be heard, upon the pleadings, proof, exhibits, Master's report, and the exceptions~~s~~ filed thereto and the court being advised, is of the opinion that the exception filed to the Master's report herein by the applicants should be and the same are hereby sustained, and said report is in all other respects confirmed; and the court being sufficiently advised upon the whole case: Doth order, adjudge and decree, that the applicants, J. W. Sparks, be and he is hereby admitted as a member of the Chickasaw Tribe of Indians by intermarriage; and that the applicant Cynthia Sparks be and she is hereby admitted as a member of the Chickasaw Tribe of Indians by blood, and that they each and both have all the rights privileges and immunities as members of the Chickasaw Tribe of Indians in the way and manner above indicated.

The Clerk of this court is hereby ordered to transmit a certified copy of this judgment to the Commission to the Five Civilized Tribes of Indians for their proper enrollment, which said Commission is hereby directed to place their names upon the rolls made out by it for the Chickasaw Nation as members of said tribe of Indians.

To this judgment the Chickasaw Nation excepts.

In the Choctaw and Chickasaw
Citizenship Court.

Jes Sparks et al
v Plaintiff No 40

Choctaw & Chickasaw Nations
Defendants

Memorandum of Argument
for Nations in
reply to Brief
of Applicant

The only evidence on which
applicant seeks enrollment

is the proof of the mar-
riage of Jw Sparks to a
woman whose name ap-
pears on the tribal roll
of 1892.

To meet this testimony
the Nations introduced the
testimony given by the woman
herself when she applied

to the Dawes Case for en-
rollment on the ~~tribe~~ final
roll in pursuance of
such tribal enrollment.

Since the entire claim
rests on the tribal status
of this woman it will
not require ~~evidence~~ authorities to
support its competency.

~~The record shows that~~

Resp Sub

Atty C + C Mahers

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT, SITTING
AT SOUTH MCALESTER, IN THE INDIAN TERRITORY.

-----oOo-----

J.W. Sparks, et. al.,....Plaintiffs,)

 Vs.)

The Chickasaw Nation,...Defendant.)

-----oOo-----

PETITION TO THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT REQUESTING THAT A WRIT OF ERROR BE ISSUED TO THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF THE INDIAN TERRITORY, REQUIRING SAID COURT TO TRANSFER AND CERTIFY TO THE SAID CHOCTAW AND CHICKASAW CITIZENSHIP COURT THE FILES, PAPERS AND PROCEEDINGS IN CITIZENSHIP CASE NO. 377 AND STYLED J.W.SPARKS, ET. AL., VS. THE CHICKASAW NATION.

-----oOo-----

Now come the petitioners, J.W. and Synthia Sparks, and respectfully show to the court that prior to the 10th day of September, A.D. 1896, and within the time prescribed by the act of Congress approved June 10th, 1896, conferring jurisdiction of citizenship cases upon the Commission to the Five Civilized Tribes, the petitioners herein filed their application with the said Commission to the Five Civilized Tribes for citizenship and membership in the Chickasaw tribe of Indians; that in due course of time said Commission heard said application, and admitted said applicants herein to citizenship to the said Chickasaw Nation or tribe of Indians; that thereafterwards the said Chickasaw Nation or tribe of Indians appealed from the decision of the Commission to the Five Civilized Tribes, to the United States Court for the Southern District of the Indian Territory, at Ardmore,

said petition being styled in said court, J.W. Sparks, et. al., vs. the Chickasaw Nation, number 37; that thereafter, in
wards the said United States Court for the Southern District of the Indian Territory, at Ardmore, a full, complete and final trial was had of the claim of these petitioners to citizenship in the Chickasaw Nation, and by judgment and decree of said court entered on the 13th day of March, A.D. 1898, the petitioners herein were adjudged to be citizens of the Chickasaw Nation.

Petitioners state that on the 16th day of August, A.D. 1880, the applicant, J.W. Sparks, was lawfully intermarried with Mrs. Sarah Colbert, a member of the Chickasaw tribe of Indians, by license issued by the proper authorities of said Nation, and the said marriage ceremony in all things being in conformity with the laws of said Nation; that the applicant, J.W. Sparks thereby became, under the law of said Nation, a member of the Chickasaw tribe of Indians; that the applicant, Synthia Sparks, is the issue of said marriage; that ever since said date the applicant, J.W. Sparks, has been recognized as treated as a member of the said tribe of Indians.

The petitioner, J.W. Sparks, shows that subsequent to said marriage aforesaid, the said Mrs. Sarah Colbert, without reason or cause therefor, deserted the applicant, J.W. Sparks, and on her own account secured a divorce from him in the tribal courts of the Chickasaw Nation; that ever since said marriage aforesaid, and the birth of the applicant, Synthia Sparks, both applicants have continuously resided in the Chickasaw Nation, and now reside therein.

That in addition to these facts, which were duly proved before the said Commission to the Five Civilized Tribes, and in the trial now on said case in the United

states Court for the Southern District of the Indian Territory, the said Chickasaw Nation filed an answer in said cause, a part of which is in words and figures as follows, to-wit:

"For farther answering, it admits that the said J.W. Sparks was married to Mrs. Sarah Colbert, an Indian by blood, as alleged in the application, and that Synthia Sparks is a child of said union, and that the said Synthia Sparks is a member of the said tribe of Indians by blood. But it denies that the said J.W. Sparks is a member of the Chickasaw tribe of Indians by intermarriage, for the reason that he, after his marriage with the said Mrs. Sarah Colbert, was divorced from her, and by reason of the said divorce he forfeited all rights he had as a member of the Chickasaw tribe of Indians by intermarriage."

✓
Petitioners further show that by its judgment rendered on the 17th day of December, 1902, in the case of the Choctaw and Chickasaw Nation or Tribe of Indians, vs. J.T. Riddle, et al, this court adjudged and decreed all judgments and decisions of the United States Courts in the Choctaw and Chickasaw Nations admitting persons to citizenship and enrollment as citizens of said Nations upon appeal from the Commission to the Five Civilized Tribes to the citizenship committees of said tribes to be null and void both as to the defendants named in said cause, and all other persons claiming citizenship in the Choctaw and Chickasaw Nations by virtue of the judgments rendered in the United States Court for the Southern and Central Districts of the Indian Territory under act of June 10th, 1896.

2
Your petitioners state that they were not parties to said case of the Choctaw and Chickasaw Nations vs. J.T. Riddle, et. al., and are not bound by the judgment rendered therein, and that said court had no jurisdiction or power under the pleadings and evidence of said case to set aside or vacate the judgment of the United States Court for the Southern District of the Indian Territory,

admitting them to citizenship in the Chickasaw Nation ,and
that said judgment of the United States Court for the
Southern District of the Indian Territory is still in full
force and effect.

omit

But your petitioners further state that should
this court hold that they are bound by the judgment render-
ed in the said case of the Choctaw and Chickasaw Nations
or Tribes of Indians, Vs. J.T.Riddle, et. al., and that
the judgment rendered by the United States Court for the
Southern District of the Indian Territory admitting them
to citizenship in the Chickasaw tribe of Indians is null
and void and of no effect whatever, then the effect of
said decision would be only to annul and vacate the judg-
ment rendered by the United States Court for the Southern
District of the Indian Territory, and would leave in full
force and effect the original judgment of the Commission
to the Five Civilized Tribes admitting these petitioners^{Im. Gov.}
to citizenship in the said Chickasaw Tribe of Indians.

Your petitioners therefore state that they insist
that this court has no jurisdiction whatever, and the
authority is not conferred upon them under the provisions
of sections 31 and 32 of the act of Congress entitled "AN
ACT TO RATIFY AND CONFIRM AND AGREEMENT WITH THE CHOCTAW
AND CHICKASAW TRIBES OF INDIANS, AND FOR OTHER PURPOSES,"
to pass upon, or in any way interfere with any judgment
rendered by the said Commission to the Five Civilized Tribes.
And that the decision of this court annulling and vacating
the judgments of the United States Courts in and for the
Southern and Central Districts of the Indian Territory
which had been appealed by the said Nations from the
judgments rendered by the said Commission to the Five
Civilized Tribes admitting applicants to citizenship, has
the effect of leaving said favorable judgments by the said

Commission in full force and effect.

Now, therefore, said petitioners, still insisting upon their rights as members of said tribe, and for the validity and finality of the said judgment of the United States Court for the Southern District of the Indian Territory, and the Commission to the Five Civilized Tribes, admitting them to citizenship, and without waiving any of the rights adjudged and decreed to belong to them and conferred upon them by law and by virtue of said judgment of the United States Court for the Southern District of the Indian Territory and the Commission to the Five Civilized Tribes, said petitioners most respectfully pray that an order be made in the nature of a writ of error or otherwise, directing the clerk of the United States Court for the Southern District of the Indian Territory, at Ardmore, to certify and deliver to this court all files, papers, dockets, evidence and proceedings had in this cause number 37, and styled J.W. Sparks, et. al., vs. The Chickasaw Nation, heretofore pending in the United States Court for the Southern District at Ardmore, and the Commission to the Five Civilized Tribes, and that all proper writ or otherwise be issued upon the principle chief of the Choctaw Nation and the Governor of the Chickasaw Nation, in order that said case may be fully and properly lodged in this court for all lawful and proper proceedings therein.

Attorneys for Petitioners.

J. W. Sparks, et al,
vs
C. & C. Nations.

Petition for appeal.

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

J. W. Sparks, et al,

vs. No. 40.

Choctaw and Chickasaw Nations,

Blanton and Thompson, Attorneys for Plaintiffs.

Mansfield, McMurray & Cornish, for Defendants.

Present and presiding the Honorable Henry S. Foote, Associate Judge.

MAY 27, 1904. This day this cause coming on to be heard, both plaintiffs and defendants being represented by Counsel, the following proceedings were had, to-wit:

Mr. Blanton:

If the Court please Mr. Blanton and myself are in number forty. Some of our witnesses have not got in yet, I was just down to see the old man himself, the principal applicant in the case, he is hardly able to walk, and we will be ready after dinner:

JUDGE FOOTE:

You can hear it this morning. I am not going to wait. I don't think you can fix the time when the case will be heard without the permission of the Court.

Mr. Blanton:

I conferred with Mr. Thompson about it.

JUDGE FOOTE:

Where is he.

Mr. Blanton:

He has a case before the Commission.

JUDGE FOOTE:

I am not going to postpone my business for the business of the Commission.

Mr. Blanton:

Yes sir.

JUDGE FOOTE:

Have you any witnesses ~~opc~~ that are here now.

Mr. Blanton:

Yes sir.

JUDGE FOOTR:

Bring them up here.

Mr. Blanton:

I saw my client and they were gettinga hack to bring him around here when I left there.

JUDGE FOOTE:

Is it an intermarried case.

Mr. Blanton:

One applicant by blood.

JUDGE FOOTE:

I have got to go take testimony at Sulphur tomorrow, and while it would be a good excuse if your client was not here, the idea of coming in here and saying that the Clerks at the Dawes Commission are trying a case and that you will try this case at two o'clock.

Mr. Blanton:

I advised the Court that Mr. Thompson, my associate counsel was up there this morning.

JUDGE FOOTE:

How did Mr. Thompson ~~xxxx~~ have any right to suppose that this Court would not take anything up until afternoon. This Court has been very patieint and kind, and the idea of coming in here and telling me that the case would be heard~~xx~~ at two o'clock.

Mr. Blanton:

I told the Court I supposed the case would be taken up

this afternoon.

JUDGE FOOTE:

You should have made your application in due form.

I propose to postpone my cases for the Clerks of the Dawes Commission. We have the jurisdiction of a Circuit Court of the United States. I have got to go off this afternoon for Ravia and then to Sulphur and then to Hickory this afternoon, and you see what an inconvenience it puts to the Court to.

JUDGE FOOTE:

We will take a recess until a quarter after eleven, resumed sitting at eleven fifteen.

J. W. SPARKS, being called as a witness in his own behalf, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Blanton:

Q.--State your name Mr. Sparks and your age and where you live?

A.--Name is J. W. Sparks, my age is sixty-seven the 12th day of January.

Q.--Where do you live?

A.--Ada, Chickasaw Nation.

Q.--Mr. Sparks, you made application, did you make an application to the Dawes Commission in 1896 for enrollment as an intermarried citizen of the Chickasaw Nation, while they were at Muskogee?

A.--Yes sir.

Q.--Are you the J. W. Sparks mentioned in this petition here, you are the J. W. Sparks that is complainant are you. Are you the J. W. Sparks mentioned in this petition here?

A.--Yes sir.

Q.--There is another party, Cynthia Sparks, what relation is

she to yourself?

A.--My daughter.

Q.--When were you married ~~thx~~ to this party through whom you claim your citizenship, and whose name was Sarah Colbert?

A.--Year of eighty.

Q.--You know where your original license are that you were married by?

A.--No sir, I don't know I gave them to the judge.

Q.--What judge did you give them to?

A.--Barnett.

Q.--Who was he?

A.--Lawyer at Paul's Valley.

Q.--What has become of Mr. Barnett:

A.--He is dead, died four years ago.

Q.--Have you any knowledge now of where your original license are?

A.--No sir, I have n ot

Q.--Will ask you if you remember who married you?

A.--Yes sir.

Q.--Who was it?

A.--John E. Anderson, li ved here in town.

Q.--What kind of a license did you procure for the ceremony?

A.--Regular Chickasaw license.

Q.--Who is John E. Anderson? Was he the judge that performed the ceremony?

A.--Yes sir.

Mr. Blanton:

* Want to introduce a certificate of the marriage. Marked Exhibit "A".

Q.--You were married in Tishomingo?

A.--Yes sir, at the Judges house.

Q.--Was there anyone present?

A.--Ye s sir.

Q.--Who was it?

A.--Thomas Fletcher.

Q.--What particular place did you procure your original license?

A.--Here in Tishomingo, Mr. Judge Anderson went and got the m.

Mr. Cornish:

We object to any further oral evidence with reference to the marriage license. If the original was in existence, that would be the best evidence. If the original is not in existence, then a certified copy, and if the record are destroyed, then secondary evidence would be admissible.

JUDGE FOOTE:

Objections sustained.

You will simply have to introduce the original and if you prove that it was lost you will have to show that you applied for a certified copy.

Mr. Blanton:

I have been trying to see the National Recorder this morning.

Mr. Cornish:

You won't find it in his custody.. That was brought out in the trial of a case the other day. The Clerk of the County is Mr. Harris, who lives about Mill Creek, the National Recorder's office was just created a year ago.

JUDGE FOOTE:

You will have to have that in order to complete your case.

Mr. Blanton.

If I am not able to produce a certified copy, then this would be admissible, if I had subpoenaed that man to show that such a record is not in existence now. This would only be admissible after that proof has been made.

JUDGE FOOTE:

What do you want to do about that.

Mr. Blanton:

I might ask these questions with the understanding that it be stricken out if there is any proof offered showing that such a record is in existence.

JUDGE FOOTE:

No use to encumber the record with that. You will have time within which to get it.

Mr. Blanton:

Yes sir.

JUDGE FOOTE:

I guess the first thing is to show that the woman through whom he claims citizenship was a Chickasaw Indian.

Mr. Blanton:

I thought the best proof of that fact is that she is on the roll, and I could get a certificate to that effect. I wrote the Commission ten days ago for such certificates, but have not received any reply from them.

JUDGE FOOTE:

You can't proceed any further this morning, what do you propose to do. When do you propose to find out whether you can procure that ~~certificate~~ certified copy of the marriage license and the certificate of his wife's enrollment.

Mr. Blanton:

I ought to have a reply from the Commission at this

time.

JUDGE FOOTE:

Have you anything to offer.

Mr. Cornish:

No sir. In these intermarried cases, the Nations are not in the habit of insisting upon harsh rules. Ordinarily we should insist that the case be closed, but I see no reason why a reasonable time should not be set down in June, at which time the case may be closed

JUDGE FOOTE:

You understand what you have to do. You have to have that proof.

Mr. Blanton:

Yes sir.

JUDGE FOOTE:

What time will suit you.

Mr. Cornish:

Any time, not later than the 10th of June.

JUDGE FOOTE:

This case will be set for the 7th of June, and you will produce the other evidence then.

Mr. Blanton:

I had a witness, not subpoenaed, he promised to come, and he has not shown up.

JUDGE FOOTE:

You bring him here then.

Mr. Cornish:

You expect your client to be back here.

Mr. Blanton:

I wish to show this, he is old and feeble and may not be able to come back here, wish to show about a separation,

I understand there will be some contention about these matters.

Q.--Mr. Sparks, how long did you and this woman Sarah Golbert live together as husband and wife?

A.--Eight months.

Q.--Is Cynthia Sparks the daughter of this woman Sarah Sparks and yourself?

A.--Yes sir.

Q.--What was done at the expiration of this eight months, of which you speak, did you live together any after then?

A.--No sir.

Q.--What was done then?

A.--I furnished her money.

Q.--What did she do or what did you do at the expiration of that time.

A.--There was some parties come and tried to get her away, and did so.

Q.--Where did she go?

A.--To her brother-in-law's.

Q.--What did you do with reference to a divorce if anything?

A.--Two years after I come and applied for a divorce.

Mr. Blanton:

We will offer the record themselves.

Q.--You are the one that procured the divorce?

A.--Yes sir.

JUDGE FOOTE:

What were the grounds that you procured the divorce on?

A.--She didn't appear like she wanted to come back, or didn't want to keep house any more, and I thought we had better have a divorce.

Q.--Get a divorce on the ground of her abandoning you?

A.--Yes sir.

Mr. Blanton:

Did she quit you and would not come back, did she actually leave you and would not return?

A.--Yes sir, she did

CROSS-EXAMINATION.

Mr. Cornish:

Q.--What kin folks did this woman have, wjat brothers and sisters did this woman have?

A.--One to my knowledge.

Q.--What was this brother named?

A.--Glad Blevins.

Q.--Is he living now?

A.--No sir.

Q.--What was her sisters name?

A.--I don't know anything about her.

Q.--Where was she living when you married her?

A.--With her brother in law.

Q.--Where in the Nation?

A.--Up here beyond Governor Harris'

Q.--How long did you know her before you married her?

A.--Known her about, I guess ten months.

Q.--Had she been married before she married you?

A.--Yes sir.

Q.--Had she been married more than once?

A.--No sir.

Q.--Who was her former husband?

A.--Jackson Colbert.

Q.--His name was Jackson?

A.--Yes sir.

Q.--Know that he was dead?

A.--Yessir.

Q.--How long before your marriage was it that he died?

A.--Indeed I can't tell you, several years.

Q.--You had a personal knowledge of his death did you?

A.--Yes sir, there when he was buried, used to be Governor here.

Q.--What was the maiden name of this woman?

A.--Her name was Blewins.

Q:--What was her first name?

A.--Sarah.

Q.--Sarah Blewins?

A.--Yes sir.

Q.--Did you know her mother?

A.--No sir.

Q.--Know her father?

A.--I see him, not much acquainted with him.

Q.--You has one child by her?

A.--Yes sir.

Q.--Is she enrolled?

A.--Yes sir.

Q.--Has your child been recognized as a citizen of the Chickasaw Nation?

Mr. Blanton:

I object to the questions, because it calls for a conclusion of the witness.

JUDGE FOOTE:

It is to your advantage.

Mr. Blanton:

He asked if she had been recognized, ~~XXXXXXXXXX~~ I don't understand that any individual had any power to recognize her.

Mr. Cornish:

We should oppose the motion of the applicant to rule

it out. We are simply endeavoring to get at the facts. By recognition I did not mean the recognition of one member by another member, I was asking this man if she was recognized in the legal sense, and if she is now recognized.

JUDGE FOOTE:

He is helping you.

Mr. Blanton:

We do not object as to facts, but as to the conclusions--

JUDGE FOOTE:

I will rule it out.

Mr. Blanton:

I think that the objection is well taken.

JUDGE FOOTE:

It is to your advantage.

Mr. Cornish:

Q.--Where were you living in 1893?

A.--Paul's Valley.

Q.--Did this child live with you at that time?

A.--No sir.

Q.--Where did she live?

A.--With her mother.

Q.--After theseparation, the child lived with its mother?

A.--Yes sir.

Q.--Did this child draw the Leased District money in 1893?

A.--I can't tell you.

Q.--When did her mother die?

A.--Four years ago.

Q.--Did her mother remarry?

A.--I think she did.

Q.--Who did she marry?

A.--Man named Hughes.

Q.--Where did she live after her remarriage?

A.--At Ardmore, where she died.

Q.--If this woman that you married was a citizen, there are plenty of people that know it, what prominent citizens of the Chickasaw Nations that are living at this time that know of the citizenship of your wife; who is it that knows absolutely that your wife was a recognized citizen, give us the names of three or four people that know it, you lived around Ada?

A.--Yes sir.

Q.--You know Tandy Walker?

A.--I used to know him.

Q.--Do you know Humphries Colbert? You know C. A. Burris, don't you?

A.--No sir, I don't.

Q.--You know Governor Byrd, don't you?

A.--No sir, not acquainted with him.

Mr. Cornish:

I insist that the citizenship of the woman be established by competent evidence. There is a very serious doubt in my mind that the woman was a recognized citizen at all.

JUDGE FOOTE:

Q.--What color was your wife?

A.--Very dark complected, she showed like she was a half breed.

Q.--Halfbreed what? What nationality did she look like?

A.--Always claimed to me she was a Chickasaw.

Q.--What she said amounts to nothing.

Q.--Has that child of yours been enrolled by the Dawes Commission?

A.--I don't know.

Mr. Cornish:

The child has been in the suit from the start.

The Court is aware and opposing counsel are aware that in these cases we endeavor to meet the issues fairly and ~~openly~~ and frankly. The questions in this case are, was this woman an Indian of recognized status, and the best evidence of that is record evidence. The second requisite is was the law complied with, and third did the marriage relations continue without interruption or abandonment, and if a separation occurred that it was without the fault of the applicant. It is incumbent upon the applicant to establish these three issues. ~~xxxxixxx~~ If he establishes them, he is entitled to enrollment, and if he does not he is not entitled to enrollment. I have been endeavoring to get at the facts, but inasmuch as the applicant declines to give any information

JUDGE FOOTE:

The man seems not to be strong either mentally or physically.

Mr. Cornish:

I mentioned five or six prominent men in Pontotoc County

Mr. Blanton:

Q.--He asked you about people that lived at Stonewall, did you ever live in the Stonewall country with this wife?

A.--No sir.

Q.--What was your post office?

A.--Mill Creek.

Q.--Know Governor Harris?

A.--Yes sir, used to know the old man, after that I moved away.

Q.--Where did you move to?

A.--Paul's Valley.

Q.--Lived out in the country there several miles?

A.--Yes sir.

Q.--Tell the Court how this woman looked with reference to Indian blood?

A.--Well she was very dark, looked like she was a half breed probably or more, she had dark eyes, very dark eyes, and very dark hair, black hair, and dark complected, very dark complected.

Q.--Did you ever have anything to do with her folks?

A.--No sir.

Q.--Did you like close to her folks at any time?

A.--No closer than twelve miles.

Q.--You stated while ago that she had a half brotherx, do you know whether she had full brothers or sisters or not?

A.--I can't say.

Q.--Know how many times her father was married?

A.--Married three times, I believe, I have heard that.

Mr. Cornish:

How long have you been living in the Chickasaw Nation?

A.--Been living here ever since the year of eighty.

Q.--You have lived in this counrty since 1880, I will ask you this final question, in order that the record may show that the Nations are endeavoring to get at the facts, give the stenographer the names of three or four prominent persons, who are respectable and credible, who know about the facts of the citizenship of your wife, and know about the facts of your seperation from her, give us the names of three or four prominent and respectable persons?

A.--Know Dr. Gillum.

Q.--Where does he live?

A.--This side of Berywn.

Q.--Citizen?

A.--Yes sir.

A.--Intermarried citize ?

A.--Yes sir.

Q.--Dr. John O. Gillum?

A.--Yes sir. Mrs. Susan Brushing.

Q.--Live near you when you seperated?

A.--Yes sir.

Q.--Know of the facts of the seperation?

A.--No sir.

Q.--Who else?

A.--That is all I know k now that know the facts.

Q.--Does he know who this woman was kin to?

A.--Yes sir.

Mr. Cornish:

My advice would be that you have him here.

Mr. Blanton:

Q.--You sent after him, didn't you?

A.--Yes sir.

Q.--You sent after a Mr. Meeks that is supposed to know it
didn't you?

A.--No sir.

Mr. Cornish:

You had better bring them here. You can get them
here by process of this Court. I am anxious to get at the
facts in the case. At this time, I am not at all certain
this this woman was an Indian.

JUDGE FOOTE:

You are liberty to apply to the court for a subpoena.

Mr. Blanton:

I will ask for a subpoena and in the meantime I will
get a certificate

Witness

I was acuginted with Mr. Carter.

Mr. Cornish:

Q.--Judge B. W. Carter?

A.--Yes sir. He is dead.

Q.--This Judge Anderson, who was he?

A.--Lived here when I was married?

Q.--Here in Tishomingo?

A.--Yes sir. Judge of Tishomingo County.

Q.--He dead?

A.--Yes sir, he is dead too.

Q.--Know where he lived in the town of Tishomingo, you got the license from him?

A.--Yes sir.

Q.--Pay any money?

A.--Yes sir.

Q.--How much? What is your best recollection about?

A.--I think it was about the time the license went up.

Q.--How much money did you pay this Judge, what is your best recollection about it?

A.--Been so long, I never thought of it afterwards, I gave ten or fifteen dollars.

Q.--For the license and performing the ceremony?

A.--Yes sir.

Q.--That was in 1880?

A.--Yes sir.

Q.--Where did he live, you are familiar with the town of Tishomingo, you know where the Capitol was at that time and where Ben Kemp lived, Judge Kemp?

A.--I can't tell you.

Q.--You know where Ben Kemp lived, Judge Kemp, know where the old jail used to be?

A.--Yes sir, go that way and leave it to the right, been so long, and I haven't been here but twice.

Q.--Do you know what a marriage license is, you saw that paper this morning, is that a marriage license, that your marriage license?

A.--No sir, I guess not, I don't know .

Q.--You read the marriage license over, how did it read, what did it contain?

A.--I can't tell you just how that read. I seen his name to it and old Mr. Carter.

Q.--What Carter:

A.--Recorder, signed his name to the certificate.

Q.--Who signed his name to the certificate?

A.--Mr. Carter.

Q.--What Carter?

A.--Ben Carter, Judge Carter, he was recorder at that time on Mill Creek.

Q.--He the man that recorded your marriage license?

A.--Yes sir. Judge of the Court afterwards.

Q.--How long after your marriage was it that it was recorded?

A.--I don't recollect, it wasn't a great while.

Q.--Get anybody to recommend you for a marriage license?

A.--Yes sir.

Q.--Who signed your petition?

A.--Dr. Gillum?

Q.--Who else?

A.--Eastman James.

Q.--He living?

A.--No sir.

Q.--Who else besides Eastman James?

A.--White men, I don't recollect.

Q.--Others white men, non-citizens?

A.--Yes sir

Q.--Did you ever marry before?

A.--Yes sir.

Q.--Where did you marry and who did you marry before?

A.--Married in Indiana.

Q.--In what year?

A.--About fifty-eight.

Q.--Who did you marry?

A.--Lady named Gardner.

Q.--What became of her?

A.--Died with consumption.

Q.--Live with her until she died?

A.--Yes sir.

Q.--Ever married again before you married here?

A.--No sir.

Q.--Married since the death of this wife you married in this country?

A.--No sir.

Q.--In what year did this child of yours come back to you?

A.--After her mother died, I think it was was years ago this Spring.

Q.--The child is living with you now?

A.--No sir, married.

Q.--What is her name now?

A.--Sparks, married a man named Sparks.

Q.--Any relation of yours?

A.--No sir.

Q.--Now Mr. Sparks, what kin folks if any has your daughter living in this country, has she a blood relative in this Nation so far as you know

A.--I don't know.

Q.--That daughter is living now?

A.--Yes sir.

Q.--How old is she?

A.--Born January 12, 1882.

Q.--Now you don't know of a single blood relative that she has in the Chickasaw Nation?

A.-- No sir.

Q.--Among the Indian people?

A.--No s ir, never been down there.

Q.--This first husband of her, Colbert, who was he kin to, he was an Indian?

A.--Yes sir.

Q.--What Colbert family did he belong to, old man, Colbert, Governor Colbert, Winchester Colbert?

A.--Yes sir.

Q.--He was related to Humphries Colbert?

A.--Yes sir.

Q.--This first husband of your wife was related to Humphries Colbert?

A.--I think so.

Q.--Know George Colbert that lives up there that is Attorney General of the Nation now?

A.--No sir.

JUDGE FOOTE:

Q.--How old is your daughter now.

Mr. Cornish:

He responded twenty some odd.

JUDGE FOOTE:

Q.--Know whether she knows anything about her relatives?

A.--I don't know whether she does or not.

Q.--Ever live with any of them?

A.--Lived with her mother until she died about four or five

years ago, and then she came to me five years ago this Spring.

Mr. Blanton:

Q.--Your wife, remarried a man named Hughes?

A.--Yes sir.

Witness excused.

_____ FLETCHER, being called as a witness on behalf of plaintiffs, after being duly sworn testified as follows:

DIRECT EXAMINATION.

Mr. Blanton:

Q.--What is your name?

A.--Fletcher.

Q.--Where do you live?

A.--Live up near Berwyn.

Q.--Know Mr. J. W. Sparks?

A.--Yes sir.

Q.--Know a woman that he married named Sarah Colbert?

A.--Yes sir.

Q.--Were you present when they were married?

A.--Yes sir.

Q.--State to the Court where it was and what occurred and where he got the license?

A.--Got the license at Tishomingo. He was married here at Tishomingo, and I disremember the mans name he got the license from.

Q.--Who married him?

A.--John Anderson.

Q.--Remember when that was?

A.--I won't be positive, eighty or eighty-one, I won't be positive.

Q.--You were present at the time?

A.--Yes sir.

Q.--Live up there in the community in which they lived?

A.--Yes sir.

Q.--Do you know what kind of a license they got?

A.--No sir, I don't know.

Q.--I mean by that, you know whether they got that from the United States authorities or the Indian authorities?

A.--Indian authorities.

Q.--Know this woman ~~xxxxxxx~~ Sarah Colbert, see her about that time?

A.--Yes sir.

Q.--Describe her appearance to the Court?

A.--Well she was dark complected woman, very dark, that is she was dark complected. Dark black hair, straight.

Q.--What did she look like, what race of man?

A.--Of course she showed Indian blood considerable.

Q.--What part of Indian blood did she possession in your opinion?

A.--There is different shades.

Q.--Judging from your experience in that line?

A.--I can't get that down. She sowed considerable Indian blood, because there is full bloods a good deal lighter than others, and half breeds be brothers and one will be light and the other dark.

Q.--Are you acquainted around Tishomingo?

A.--No sir.

Q.--Know any of the Chickasaw recognized citizens?

A.--No sir.

Q.--Know Dick McLish at Ardmore?

A.--No sir.

Q.--Know Charley Carter at Ardmore?

A.--~~Yes sir.~~

A.--Yes sir.

Q.--Was she as dark as Charley Carter?

A.--Yes sir.

Q.--Any darker?

A.--Yes sir.

Q.--What prominent Indian do you know up your way?

A.--Well she was something near as dark as John Thomas.

Q.--He a prominent Indian.

A.--Yes sir.

Q.--How long have you lived in the Chickasaw Nation?

A.--Been living here ever since the fall of sixty-five?

CROSS-EXAMINATION.

Mr. Cornish:

Q.--Are you an applicant for citizenship of any kind?

A.--No sir.

Q.--White man?

A.--Yes sir.

Q.--How long did you know this woman before Mr. Sparks
married her?

A.--Known her for several years.

Q.--Before that time?

A.--Yes sir.

Q.--You had lived in the same neighborhood with her?

A.--Yes sir.

Q.--What kin folks did she have?

A.--I don't know any but the Blevins.

Q.--What Blevins were they?

A.--Geese Blevins was her father.

Q.--Living now?

A.--Yesssir.

Q.--Where does he live?

A.--On Blue, between Pennington and Blue.

Q.--Indian or x white man?

A.--White man, I suppose.

Q.--Was he an intermarried citizen?

A.--His wife was just like his daughter, she had considerable Indian blood.

Q.--His wife was a citizen you say?

A.--Never claimed any citizenship here, I don't know that.

Mr. Blanton:

Are you willing for a statement to go in as to a disposition to claim citizenship.

Mr. Cornish:

It would cerarly be competent as brought out on cross examination, it would not be competent to substantiate a claim.

Mr. Blanton:

I don,t think it should be permitted to go in the record.

JUDGE FOOTE:

Wasen't it hearsay.

Mr. Cornish:

It is a declaration against interest.

JUDGE FOOTE:

If they didn't claim it of course it would be competent as against interest.

Mr. Cornish:

That is the point.

JUDGE FOOTE:

Then it would be competent.

Mr. Cornish:

Q.--They didn't claim citizenship here?

A.--Not that I know of. If they did I never heard of it.

Q.--You had known them for several years?

A.--Yes sir.

Q.--Where did they come from into this country?

A.--Grayson County.

Q.--What State?

A.--Texas.

Q.--Know them in Grayson County?

A.--Yes sir.

Q.--Was the mother of this woman living at that time?

A.--Yes sir.

Q.--How long had you known them in Grayson County, Texas?

A --Up to the time they come over here in the fall of sixty-five.

Q.--You had known them prior to that time?

A.--Right along then, they came over.

Q.--How long had you known them down there?

A.--Short while.

Q.--What were they doing down there?

A.--Come in there during the war.

Q.--Where did they come from?

A.--Territory somewhere.

Q.--What did they do in Grayson County?

A.--Made a crop.

Q.--Whose place did they live on?

A.--Public land.

Q.--Took up public land

A.--Yes sir, just settled on land there.

Q.--Any personal knowledge of where they came from into Grayson County?

A.--No sir.

Q.--Q.--The first time you knew them they were living in

Grayson County on public land?

A.--No sir. The first I ever knew them they were moving.

Q.--Where?

A.--In Texas, moving up into Grayson County.

Q.--Been a little further down in Texas?

A.--Yes sir.

Q.--Coming from the South into Grayson County?

A.--Yes sir.

Q.--Know where they had been?

A.--No sir.

Q.--Know how long they had been there?

A.--No sir.

Q.--No knowledge of them previous to the time you saw them moving from the South into Grayson County?

A.--No sir.

Q.--You say them in the late sixties, just after the war?

A.--Yes sir. Just after the war.

Q.--where did they live after that time?

A.--Moved in here.

Q.--Did you know them from the time they moved in here in the late sixties up until the present time?

A.--Yes sir.

Q.--Moved around from place to place?

A.--Yes sir.

Q.--Whose places have they lived on, so far as you know?

A.--Well they lived on a place called the Norton farm.

Q.--Who owned that?

A.--Belonged to the heirs of Mrs. McLish?

Q.--The McLishs were Chdckasaws and this family lived on their place?

A.--Yes sir, and then they went on this Mrs. Sparks place.

Q.--She had married a man named Colbert, who was a Chickasaw?

A.--Yes sir.

Q.--And lived on the place which he had owned?

A.--Yes sir.

Q.--How long did they live on that place?

A.--I don't remember how many years.

Q.--Where did they go then?

A.--Up on Blue where they live now.

Q.--Is the mother of this woman living now?

A.--No sir.

Q.--I mean the wife of Blevins, is Blevins wife living now?

A.--Not the mother of this woman.

Q.--I am speaking about the mother of the woman that Sparks married?

A.--She is dead.

Q.--When did she die?

A.--Must ~~xxxx~~ have been dead some twenty-eight or twenty-nine years..

Q.--Did you live about Sparks when they seperated, lived near them when they seperated?

A.--Yes sir.

Q.--Have any personal knowledge of the facts of the ~~xxxxxx~~ seperation?

A.--No sir.

Witness excused.

JUDGE FOOTE:

We will hear the rest of the testimony on the 7th of June.

Mr. Comish:

These facts develop a condition which is clear to our mind that these people are not citizens of the Chickasaw

Nation, and it will be impossible to establish to the Court that she was a citizen of the Chickasaw Nation, our view being as heretofore stated the first issue is was the woman, the whom the right to enrollment as a citizen by intermarriage of the Choctaw or Chickasaw Nations, a citizen of the Choctaw or Chickasaw Nations and duly enrolled as such. I don't understand that the Court would have the right to inquire primarily into the right of the person through whom the citizenship is claimed, and if it developed that they were Chickasaws to admit the persons for the purpose basis of citizenship by intermarriage at this time. The condition developed here is conclusive to our minds that the woman was not a citizen of the Chickasaw Nation, and so far as further proof in this case is concerned, we will ~~xxxxxxx~~ insist on the strictest evidence.

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

J. W. Sparks, et al,

vs. No. 40.

Choctaw and Chickasaw Nations.

Blanton & Andrews, Attorneys for plaintiffs.

Mansfield, McMurray & Cornish, for Defendants

Present and presiding the Honorable Henry S. Foote, Associate Judge.

JUNE 7, 1904. This day this cause coming on to be heard, both plaintiffs and defendants being represented by counsel, and both having announced ready for trial, the following proceedings were had, to-wit:

Mr. Rennie:

I am appearing simply for these lawyers.

JUDGE FOOTE:

Are you ready.

Mr. Rennie:

I wish to present in behalf of these attorneys a certificate from the Chairman of the Dawes Commission as to the citizenship of Sarah Hughes. It is a certificate to the effect that she appears on page one ~~thirty-six~~ hundred and thirty-six of the Least District Pay Roll of the Chickasaw Nation, opposite number eighteen on said page, and wish to state to the Court as these attorneys requested me to do, that they have made a search of the records of the County Clerk to get certificates to introduce in this matter, and they have not been able to get the certificates on account of not finding the Clerk, and they want it to go until the 20th.

Mr. Cornish:

With reference to this certificate of the Dawes Commission, the Court is aware that our position is that that a certificate from the Commission to the Five Civilized Tribes of the citizenship status of some person is not binding upon this Court, and in this case in referring to this certificate I wish to state that the Choctaw and Chickasaw Nations deny that this person is a citizen of the Choctaw or Chickasaw Nations, and ask that this certificate be not considered as conclusive and binding upon this Court. We object further for the reason that it has not been shown by competent evidence that the person to whom the applicant was originally married is the person who is mentioned in the certificate. Our view is that this woman is not a citizen and not in a position to confer citizenship upon this man. Our view is that since this certificate is not binding upon the court it is necessary to show first that this woman was a Chickasaw Indian by blood, and secondly that she was such a Chickasaw Indian by blood as is entitled to enrollment and distribution of the tribal property.

JUDGE FOOTE:

You have not filed a written motion for a continuance.

Mr. Cornish:

What is it you want to offer in addition to that.

Mr. Rennie:

My understanding is that it is a certified copy of the marriage license.

JUDGE FOOTE:

Number forty, evidently set for today for further hearing. Case is closed except for documentary evidence.

Mr. Rennie:

They wish now to ask the court for a further postponement

that they may have further time to procure that documentary evidence that up to this time they have not been able to obtain.

JUDGE FOOTE:

Closed except for that documentary evidence, and if they do not have it by the time the court reaches it, we will go on with out it.

- - - - -

In the Choctaw and Chickasaw Citizenship Court,
Sitting at Tishomingo, Ind. Ter, June 24, 1904.

-----o-----

J.W.Sparks, et al,

--vs--

No. 40.

The Choctaw and Chickasaw Nations.

-----o-----

June 24, 1904; This day this cause coming on to be heard before the Hons. Spencer B. Adams, Chief Judge, and Walter L. Weaver and Henry S. Foote, Associate Judges of said Court, the Defendants being represented by their Counsel, the following proceedings were had to-wit;

Mr. Cornish;

We submit the case with the exception that we will wish to file some documentary evidence with^w the next few days.

-----o-----

In the Choctaw and Chickasaw Citizenship Court,
Sitting at Tishomingo, I.T., June 30, 1904.

--O--

J.W.Sparks, et al,

--vs--

No. 40.

The Choctaw and Chickasaw Nations;

---O---

June 30, 1904; This day this cause coming on to be heard before the Hons. Spencer B. Adams, Walter L. Weaver and Henry S. Foote, Judges of said Court, the Defendants being represented by their Counsel, Mansfield, McMurray & Cornish, the following proceedings were had to-wit;

Mr. Cornish;

This case was closed, with the exception that the Nations were given permission to introduce some documentary evidence. I have a certified copy of the evidence of the woman, through whom this applicant claims by intermarriage.

This applicant, J.W.Sparks, claims through a woman named Sarah Hughes, and he has offered a certificate showing her name to have been on the "Leased District" Rolls of 1893; we now have a certified copy of her evidence before the Commission to the Five Civilized Tribes, in support of her application for enrollment. Ex. "AA".

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT, SITTING AT
TISHOMINGO, IN THE INDIAN TERRITORY,
NOVEMBER TERM, 1904.

J. W. Sparks, et al.,
vs. No. 40.
Choctaw and Chickasaw Nations.

DECREE OF COURT.

On this the 28th day of November, 1904, this cause coming on for final decision, the same having heretofore been submitted upon the law and the evidence, and the Court being well and sufficiently advised in the premises, doth find that the plaintiffs, J. W. Sparks and Synthia Sparks or Cynthia Sparks, are not entitled to be deemed or declared citizens of the Chickasaw Nation, or to enrollment as such, or to any rights whatever flowing therefrom.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the petition of the plaintiffs, J. W. Sparks and Synthia Sparks or Cynthia Sparks, be denied, and that they be declared not citizens of the Chickasaw Nation, and not entitled to enrollment as such citizens, and not entitled to any rights whatever flowing therefrom.

.....
Chief Judge.

.....
Associate Judge.

.....
Associate Judge.

J-N^o 40.

Sparks, J. W., et al,

vs

Chickasaw Nation.

N^o 37.

Eastern Dist. Court.

N^o

Dawes Commission.

No record.

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

J. W. Sparks, et al., :
 :
 Plaintiffs, :
 :
 VS. : No. 40.
 :
 Choctaw and Chickasaw Nations. :
 :
 Defendants. :

MEMORANDUM OF ARGUMENT FOR NATIONS.

Applicant J. W. Sparks seeks, by this proceeding, the enrollment of himself and daughter Synthia, as members of the Chickasaw Nation, alleging that he married with one Sarah Colbert, an alleged Chickasaw Indian by blood and that his daughter, Synthia, was the result of said marriage.

Many cases tried before this Court have surpassed this one in the amount of worthless and fraudulent testimony taken, but none of them have less foundation in fact.

Applicants undertook to prove the Chickasaw blood of Sarah Colbert. J. W. Sparks testified that she had the appearance of an Indian and when pressed as to details of her family and history takes refuge in such dense ignorance that a member of the Court felt justified in remarking from the bench "The man seems not to be strong either mentally or physically."

The only other witness who testified orally was witness Fletcher, put on the stand by applicants, who under-

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,
SITTING AT TISHOMINGO, I.T.

-oOo-

J. W. SPARKS et al,)	
plaintiffs,	{	
VS.	{	No. 40.
CHOCTAW and CHICKASAW NATIONS,	{	
defendants.)	

Brief of Plaintiffs..

Since attorneys for the Nations are not content to submit this case without a brief but have seen fit to file a brief herein, we desire to answer same.

Barring the pompous assertions of counsel for the Nations and the unjustified assaults upon the applicants and their attorneys, we submit there is nothing serious in the brief.

Counsel for the Nations, by INUENDO, charge the applicant, J. W. Sparks with falsely swearing and cite the remark of Judge Foote while applicant was on the stand to confirm their conclusions. It is true that Judge Foote remarked from the bench: "The man seems not to be strong either mentally or physically", and we do not contend but that this remark was wholly justified by the facts, yet, we do contend that it is unbecoming in counsel to malign this witness because Providence holds ~~even~~ him the scourge of its resentment because of broken laws of nature. The applicant, J. W. Sparks, is a physical wreck, broken down and disfigured by rheumatism and paralysis, and he was assisted ~~by~~ up the stairs and to the stand when he testified in this case, as the court will remember. He couldn't talk audibly. If these facts argue that the witness is a liar and unworthy of belief, then the assault is justified, otherwise, we

took to testify that Sarah Colbert was an Indian, but on being pressed in the cross-examination, he stated that he first met her in about 1865, when she and her family were moving into Grayson County, Texas, from the South, and that so far as he she had never lived in Indian Territory prior to said time. Applicants then introduced a certificate of the Dawes Commission to show the citizenship status of Sarah Hughes, formerly Sarah Colbert, which showed her name on the leased District Pay Roll.

In presenting this certificate to the Court the applicants and their advisers were guilty of an attempt to mislead and deceive the Court, for they could not have discovered the presence of her name on that roll without learning at the same time the nature of a claim to a citizenship status. This information applicants studiously suppressed. Just what an effort J. W. Sparks made not to surrender his information on the subject can be seen by an examination of his testimony in the record.

The Nations, however, introduced the testimony of Sarah herself, given before the Commission when she appeared before it for enrollment. From her evidence it clearly appears that she is not an Indian and was never an applicant as such, but that prior to her marriage to Sparks she was married to a Chickasaw Indian of recognized status, and that her only claim to enrollment was as an inter-married citizen.

Therefore, the only question to be decided by the Court in this case is "Does an Inter-married white woman, who after the death of her Chickasaw husband, marries a white man, confer the rights of Chickasaw citizenship on such white husband and his white children by her?"

This question we have fully discussed in our brief in the Joanna Mickle case, No. ³⁷(2), on the South McAlester

Docket, and to our brief in that case we respectfully refer
the Court.

In our opinion these applicants are not entitled
to enrollment and their petition should be denied.

Respectfully submitted,

ATTORNEYS FOR CHOCTAW AND CHICKASAW NATIONS.



think not.

Counsel for the Nations say: "In presenting this certificate (referring to the certificate that Sarah Hughes, formerly Sarah Sparks, appears upon the leased district roll) to the court, the applicants and their advisers were guilty of an attempt to mislead and deceive the court, for they could not have discovered the presence of her name on that roll without learning at the same time the nature of a claim to a citizenship status. This information applicants studiously suppressed." To put ourselves right before the court and to advise the court fully with reference to what knowledge ~~we~~ we possessed, as well as the applicants, we attach hereto a letter we received from the Commission to the Five Civilized Tribes which conveys this information: "You are hereby informed, however, that from said roll it is impracticable to ascertain whether the persons named thereon are citizens by blood or intermarriage." Unless counsel for the Nations have more information and a different roll from that possessed by the Commission to the Five Civilized Tribes, they certainly made the above statement unadvisedly or with the design on their part to willfully mislead the court. We take it that the attorneys for the Nations would see to it that the Commission to the Five Civilized Tribes had a correct copy of the leased district pay roll, and that the roll referred to by said Commission is a correct copy of that possessed by the Nations, and we do not believe that counsel for the Nations had any other motive than one to mislead when they made their assertions.

The witness, Fletcher, testified, it is true, that he first met Sarah ~~xxxxxx~~ Colbert down in Grayson County, Texas during the war; that he said that she came from the Indian Territory and afterwards returned to the Territory

when the war was over; that she was an indian.

The attorney for the Chickasaws, the Honorable W. B. Johnson, in his answer filed in this case when it was tried in the United States Court at Ardmore, admitted that Sarah Hughes, formerly Sarah Sparks, was a member by blood of the Chickasaw Tribe of Indians and there has never been any contention to the contrary until made by the present counsel for the nations, and when this trial was in progress. It is true the proof as to her citizenship is not as strong as it might be, but it is certainly sufficient in the face of the Nation's admission heretofore, when the court remembers that the applicants appeared for trial with the understanding that there had never been any issue made upon this question. Under such circumstances he would certainly not be required to make that cogent proof which would be required where the controversy hinged mainly upon that issue.

Counsel say that the Nations introduced the testimony of Sarah Hughes herself ^{in person} ~~in person~~ before the Commission when she appeared before it for enrollment, and that from it it clearly appears that she is not an indian and was never an applicant as such, but only claimed by reason of her inter-marriage with Colbert. We were not present when said testimony was offered and this is the first intimation we have had that it had been offered in evidence and we desire to say that if such testimony was offered it was inadmissible and should be disregarded by the court.

In order to make testimony given by a witness since deceased admissible in the cause, the issues and the parties must have been the same. See Fresh vs. Gilson, 41 U.S., 327 (10 L. Ed., 982); McTighe vs. Herman, 42 Ark., 285; Haslan vs. Campbell, 60 Ga., 650; Poorman vs. Miller, 44 Col., 269; Marshall vs. Hancock, 80 Cal., 82; Bryan vs.

Malloy, 90 N.C., 508; Tappan vs. Beardesley, 77 U.S., 427
(19 L. Ed., 974).

The Nation has admitted that Sarah Hughes, formerly Sarah Spraks, was an indian by blood in their answer filed in the United States Court at Ardmore, and the records of the Commission to the Five Civilized Tribes, as shown by the certificate introduced, shows that the name of Sarah Hughes appears upon the Leased District Pay Roll; the evidence shows that she had the appearance of an indian and the witnesses, Sparks and Fletcher, testify that she was an indian while the Nations offer no testimony whatever that she is not.

Under such evidence and upon such record, it occurs to us that the applicants should be admitted to citizenship and we have confidence that this court, which is not saturated with the prejudice of the counsel for the Nations, will so decree.

Respectfully submitted,

Hanton & Andrews

Attorneys for J. W. Sparks.

Michigan
Dung

J. W. Sparks et al. No 40

+ J. W. Sparks

+ Cynthia Sparks or Cynthia Sparks

SUMMONS.

Duplicate

United States of America,
INDIAN TERRITORY,
Choctaw and Chickasaw Citizenship Court.

SS:

The President of the United States of America,

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

GREETING:

YOU ARE COMMANDED TO SUMMONS P. S. Moseley

Governor of the Chickasaw nation

on behalf of said nation

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

as Governor of said nation

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

in the Choctaw and Chickasaw Citizenship Court, in the Indian Territory, *Teshoriny*

by *J. N. Sparks, et al* and warn him that upon his failure to answer, he

on behalf of said nation the

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

first day of next instanter term of said Court.

and you are further commanded to notify said P.S. Moseley, Governor afore-
said that the files, papers and proceedings in the case of *J. N. Sparks et al*
file No. 37 in the District Court for the Southern
District of the Indian Territory, have been transferred to the
Choctaw and Chickasaw citizenship court, and that the certificate of
the clerk of said court for said Southern District has been attached
thereto.

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

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

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

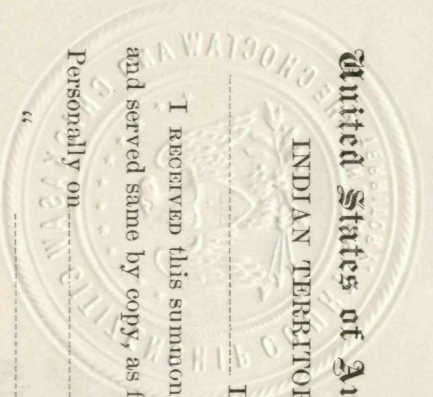
this 14th day of March, A. D. 1903

James B. Cassack
Clerk.

By _____, Deputy.



MARSHAL'S RETURN.



United States of America,
INDIAN TERRITORY,
DISTRICT.

ss:

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

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

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

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

By _____, Deputy

U. S. Marshal.

5

DUPLICATE

No. 407

SUMMONS
IN EQUITY.

J. W. Sparks, et al
vs.
Choctaw & Chickasaw Nations

Summons issued the 14 day
of March, 1903
Returnable instantly

Returned and filed _____, 190____

Clerk.

By _____, Deputy.

MARSHAL'S FEES.

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

*Blanton, Andrews,
Ladwin & Bledsoe + 7,*
Attorney for Plaintiff.
Anderson J. T.

SUMMONS.

Duplicate

United States of America,)
INDIAN TERRITORY,) SS:
Choctaw and Chickasaw Citizenship Court.

The President of the United States of America,

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

GREETING:

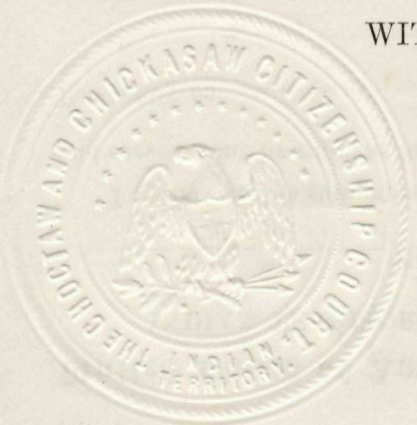
YOU ARE COMMANDED TO SUMMONS Green McCurtain,
Principal Chief of the Choctaw Nation,

~~on behalf of said Nation~~
to answer in twenty days after the service of this summons upon him
~~as Principal Chief of said Nation~~
a complaint in Equity filed against the Choctaw and Chickasaw Nations

in the Choctaw and Chickasaw Citizenship Court, in the Indian Territory, Seihominy
by J. N. Spaeks, et al and warn him that upon his failure to answer, ~~the~~
~~on behalf of said Nation~~
complaint will be taken for confessed, and you will make return of the summons on the

~~first day of next instanter~~ instant Term of said Court.
and you are further commanded to notify said Green McCurtain, Principal
Chief aforesaid, that the files, papers and proceedings, in the case of
J. N. Spaeks, et al file No. 37, in the District Court
for the Sauchoon District of the Indian Territory have been trans-
ferred to the Choctaw and Chickasaw Citizenship Court, and that the
certificate of the Clerk of said Court for said Sauchoon
District, Indian Territory has been attached thereto.

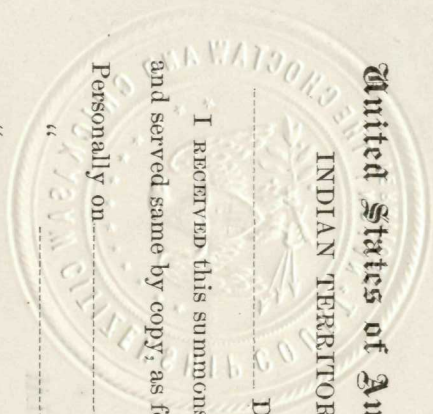
WITNESS the Honorable SPENCER B. ADAMS, Chief Judge, WALTER L.
WEAVER and HENRY S. FOOTE, Associate Judges, and the Seal
thereof, at South McAlester, I.T., aforesaid,
this 14 day of March, A. D. 1903.



James R. Cassada
Clerk.

By _____, Deputy.

MARSHAL'S RETURN.



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

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

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

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

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

By _____, Deputy
U. S. Marshal.

No. 407
SUMMONS
IN EQUITY.

J. W. Sparks et al
vs.
Chickasaw & Chickasaw Nations

Summons issued the 14 day
of March, 1903

Returnable instantly Term 100

Returned and filed _____, 190____

Clerk.
By _____, Deputy.

MARSHAL'S FEES.

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

TOTAL, \$ _____
Blanton, Anderson,
Ladbetter, Bledsoe & C
Anderson J. T.
Attorney for Plaintiff.

JWS parks et al #40

Take testimony of John O. Gillum,
Berwyn, S. C.,

Also furnish certificate of Dawes
Commission showing that Sarah Hughes
wife of applicant was enrolled on roll
of 1893 as citizen by intermarriage

J. W. Sparks, et al.

Vs. No. 37 Judgment, Southern Dist. March 12, 1898.

Chickasaw Nation.

This day this cause coming on to be heard, upon the pleadings, proof, exhibits, Master's report, and the exceptions~~s~~ filed thereto and the court being advised, is of the opinion that the exception filed to the Master's report herein by the applicants should be and the same are hereby sustained, and said report is in all other respects confirmed; and the court being sufficiently advised upon the whole case: Doth order, adjudge and decree, that the applicants, J. W. Sparks, be and he is hereby admitted as a member of the Chickasaw Tribe of Indians by intermarriage; and that the applicant Cynthia Sparks be and she is hereby admitted as a member of the Chickasaw Tribe of Indians by blood, and that they each and both have all the rights privileges and immunities as members of the Chickasaw Tribe of Indians in the way and manner above indicated.

The Clerk of this court is hereby ordered to transmit a certified copy of this judgment to the Commission to the Five Civilized Tribes of Indians for their proper enrollment, which said Commission is hereby directed to place their names upon the rolls made out by it for the Chickasaw Nation as members of said tribe of Indians.

To this judgment the Chickasaw Nation excepts.

In the Choctaw and Chickasaw
Citizenship Court.

J. W. Sparks et al
v Plaintiff No 40

Choctaw & Chickasaw Nations
Defendants

Memorandum of Argument
for Nations in
reply to Brief
of Applicant

The only evidence on which
applicant seeks enrollment

is the proof of the mar-
riage of Jw Sparks to a
woman whose name ap-
pears on the tribal roll
of 1892.

To meet this testimony
the Nations introduced the
testimony given by the woman
herself when she applied

to the Dawes Case for en-
rollment on the ~~tribe~~ final
roll in pursuance of
such tribal enrollment.

Since the entire claim
rests on the tribal status
of this woman it will
not require ~~authorities~~ ~~substance~~ to
support its ~~competency~~.

~~The record shows that~~

Resp Sub

Atty C + C Mahan

said petition being styled in said court, J.W. Sparks, et. al., vs. the Chickasaw Nation, number 37; that thereafter, in
wards the said United States Court for the Southern District of the Indian Territory, at Ardmore, a full, complete and final trial was had of the claim of these petitioners to citizenship in the Chickasaw Nation, and by judgment and decree of said court entered on the 13th day of March, A.D. 1898, the petitioners herein were adjudged to be citizens of the Chickasaw Nation.

Petitioners state that on the 16th day of August, A.D. 1880, the applicant, J.W. Sparks, was lawfully intermarried with Mrs. Sarah Colbert, a member of the Chickasaw tribe of Indians, by license issued by the proper authorities of said Nation, and the said marriage ceremony in all things being in conformity with the laws of said Nation; that the applicant, J.W. Sparks thereby became, under the law of said Nation, a member of the Chickasaw tribe of Indians; that the applicant, Cynthia Sparks, is the issue of said marriage; that ever since said date the applicant, J.W. Sparks, has been recognized as treated as a member of the said tribe of Indians.

The petitioner, J.W. Sparks, shows that subsequent to said marriage aforesaid, the said Mrs. Sarah Colbert, without reason or cause therefor, deserted the applicant, J.W. Sparks, and on her own account secured a divorce from him in the tribal courts of the Chickasaw Nation; that ever since said marriage aforesaid, and the birth of the applicant, Cynthia Sparks, both applicants have continuously resided in the Chickasaw Nation, and now reside therein.

That in addition to these facts, which were duly proved before the said Commission to the Five Civilized Tribes, and in the trial now on said case in the United

States Court for the Southern District of the Indian Territory, the said Chickasaw Nation filed an answer in said cause, a part of which is in words and figures as follows, to-wit:

"For farther answering, it admits that the said J.W. Sparks was married to Mrs. Sarah Colbert, an Indian by blood, as alleged in the application, and that Synthia Sparks is a child of said union, and that the said Synthia Sparks is a member of the said tribe of Indians by blood. But it denies that the said J.W. Sparks is a member of the Chickasaw tribe of Indians by intermarriage, for the reason that he, after his marriage with the said Mrs. Sarah Colbert, was divorced from her, and by reason of the said divorce he forfeited all rights he had as a member of the Chickasaw tribe of Indians by intermarriage."

✓
Petitioners further show that by its judgment rendered on the 17th day of December, 1902, in the case of the Choctaw and Chickasaw Nation or Tribe of Indians, vs. J.T. Riddle, et al, this court adjudged and decreed all judgments and decisions of the United States Courts in the Choctaw and Chickasaw Nations admitting persons to citizenship and enrollment as citizens of said Nations upon appeal from the Commission to the Five Civilized Tribes to the citizenship committees of said tribes to be null and void both as to the defendants named in said cause, and all other persons claiming citizenship in the Choctaw and Chickasaw Nations by virtue of the judgments rendered in the United States Court for the Southern and Central Districts of the Indian Territory under act of June 10th, 1896.

2
Your petitioners state that they were not parties to said case of the Choctaw and Chickasaw Nations vs. J.T. Riddle, et. al., and are not bound by the judgment rendered therein, and that said court had no jurisdiction or power under the pleadings and evidence of said case to set aside or vacate the judgment of the United States Court for the Southern District of the Indian Territory,

admitting them to citizenship in the Chickasaw Nation ,and
that said judgment of the United states Court for the
Southern District of the Indian Territory is still in full
force and effect.

omit

But your petitioners farther state that should
this court hold that they are bound by the judgment render-
ed in the said case of the Choctaw and Chickasaw Nations
or Tribes of Indians, Vs. J.T.Riddle, et. al., and that
the judgment rendered by the United states Court for the
Southern District of the Indian Territory admitting them
to citizenship in the Chickasaw tribe of Indians is null
and void and of no effect whatever, then the effect of
said decision would be only to annull and vacate the judg-
ment rendered by the United States Court for the Southern
District of the Indian Territory, and would leave in full
force and effect the original judgment of the Commission
to the Five Civilized Tribes admitting these petitioners^{Jm. Gov}
to citizenship in the said Chickasaw Tribe of Indians.

Your petitioners therefore state that they insist
that this court has no jurisdiction whatever, and the
authority is not conferred upon them under the provisions
of sections 31 and 32 of the act of Congress entitled "AN
ACT TO RATIFY AND CONFIRM AND AGREEMENT WITH THE CHOCTAW
AND CHICKASAW TRIBES OF INDIANS, AND FOR OTHER PURPOSES,"
to pass upon, or in any way interfere with any judgment
rendered by the said Commission to the Five Civilized Tribes.
And that the decision of this court annulling and vacating
the judgments of the United states Courts in and for the
Southern and Central Districts of the Indian Territory
which had been appealed by the said Nations from the
judgments rendered by the said Commission to the Five
Civilized Tribes admitting applicants to citizenship, has
the effect of leaving said favorable judgments by the said

Commission in full force and effect.

Now, therefore, said petitioners, still insisting upon their rights as members of said tribe, and for the validity and finality of the said judgment of the United States Court for the Southern District of the Indian Territory, and the Commission to the Five Civilized Tribes, admitting them to citizenship, and without waiving any of the rights adjudged and decreed to belong to them and conferred upon them by law and by virtue of said judgment of the United States Court for the Southern District of the Indian Territory and the Commission to the Five Civilized Tribes, said petitioners most respectfully pray that an order be made in the nature of a writ of error or otherwise, directing the clerk of the United States Court for the Southern District of the Indian Territory, at Ardmore, to certify and deliver to this court all files, papers, dockets, evidence and proceedings had in this cause number 37, and styled J.W. Sparks, et. al., vs. The Chickasaw Nation, heretofore pending in the United States Court for the Southern District at Ardmore, and the Commission to the Five Civilized Tribes, and that all proper writ or otherwise be issued upon the principle chief of the Choctaw Nation and the Governor of the Chickasaw Nation, in order that said case may be fully and properly lodged in this court for all lawful and proper proceedings therein.

Attorneys for Petitioners.

J. W. Sparks, et al,
vs
C. & C. Nations.

Petition for appeal.

Memo

RECORDED & INDEXED

IN THE CHOCTAW AND CHEKASAW CITIZENSHIP COURT,
SITTING AT TISHOMINGO, MAY TERM, 1904.

J. W. Sparks, et al,

vs. No. 40.

Choctaw and Chickasaw Nations,

Blanton and Thompson, Attorneys for Plaintiffs.

Mansfield, McMurray & Cornish, for Defendants.

Present and presiding the Honorable Henry S. Foote, Associate Judge.

MAY 27, 1904. This day this cause coming on to be heard, both plaintiffs and defendants being represented by Counsel, the following proceedings were had, to-wit:

Mr. Blanton:

If the Court please Mr. Blanton and myself are in number forty. Some of our witnesses have not got in yet, I was just down to see the old man himself, the principal applicant in the case, he is hardly able to walk, and we will be ready after dinner:

JUDGE FOOTE:

You can hear it this morning. I am not going to wait. I don't think you can fix the time when the case will be heard without the permission of the Court.

Mr. Blanton:

I conferred with Mr. Thompson about it.

JUDGE FOOTE:

Where is he.

Mr. Blanton:

He has a case before the Commission.

JUDGE FOOTE:

I am not going to postpone my business for the business of the Commission.

Mr. Blanton:

Yes sir.

JUDGE FOOTE:

Have you any witnesses ~~opc~~ that are here now.

Mr. Blanton:

Yes sir.

JUDGE FOOTE:

Bring them up here.

Mr. Blanton:

I saw my client and they were getting a hack to bring him around here when I left there.

JUDGE FOOTE:

Is it an intermarried case.

Mr. Blanton:

One applicant by blood.

JUDGE FOOTE:

I have got to go take testimony at Sulphur tomorrow, and while it would be a good excuse if your client was not here, the idea of coming in here and saying that the Clerks at the Dawes Commission are trying a case and that you will try this case at two o'clock.

Mr. Blanton:

I advised the Court that Mr. Thompson, my associate counsel was up there this morning.

JUDGE FOOTE:

How did Mr. Thompson ~~xxxx~~ have any right to suppose that this Court would not take anything up until afternoon. This Court has been very patient and kind, and the idea of coming in here and telling me that the case would be heard ~~at~~ at two o'clock.

Mr. Blanton:

I told the Court I supposed the case would be taken up

this afternoon.

JUDGE FOOTE:

You should have made your application in due form.

I propose to postpone my cases for the Clerks of the Dawes Commission. We have the jurisdiction of a Circuit Court of the United States. I have got to go off this afternoon for Ravia and then to Sulphur and then to Hickory this afternoon, and you see what an inconvenience it puts to the Court to.

JUDGE FOOTE:

We will take a recess until a quarter after eleven, resumed sitting at eleven fifteen.

J. W. SPARKS, being called as a witness in his own behalf, after being duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Blanton:

Q.--State your name Mr. Sparks and your age and where you live?

A.--Name is J. W. Sparks, my age is sixty-seven the 12th day of January.

Q.--Where do you live?

A.--Ada, Chickasaw Nation.

Q.--Mr. Sparks, you made application, did you make an application to the Dawes Commission in 1896 for enrollment as an intermarried citizen of the Chickasaw Nation, while they were at Muskogee?

A.--Yes sir.

Q.--Are you the J. W. Sparks mentioned in this petition here, you are the J. W. Sparks that is complainant are you. Are you the J. W. Sparks mentioned in this petition here?

A.--Yes sir.

Q.--There is another party, Cynthia Sparks, what relation is

she to yourself?

A.--My daughter.

Q.--When were you married ~~thx~~ to this party through whom you claim your citizenship, and whose name was Sarah Colbert?

A.--Year of eighty.

Q.--You know where your original license are that you were married by?

A.--No sir, I don't know I gave them to the judge.

Q.--What judge did you give them to?

A.--Barnett.

Q.--Who was he?

A.--Lawyer at Paul's Valley.

Q.--What has become of Mr. Barnett:

A.--He is dead, died four years ago.

Q.--Have you any knowledge now of where your original license are?

A.--No sir, I have n ot

Q.--Will ask you if you remember who married you?

A.--Yes sir.

Q.--Who was it?

A.--John E. Anderson, li ved here in town.

Q.--What kind of a license did you procure for the ceremony?

A.--Regular Chickasaw license.

Q.--Who is John E. Anderson? Was he the judge that performed the ceremony?

A.--Yes sir.

Mr. Blanton:

* Want to introduce a certificate of the marriage. Marked Exhibit "A".

Q.--You were married in Tishomingo?

A.--Yes sir, at the Judges house.

Q.--Was there anyone present?

A.--Ye s sir.

Q.--Who was it?

A.--Thomas Fletcher.

Q.--What particular place did you procure your original license?

A.--Here in Tishomingo, Mr. Judge Anderson went and got the m.

Mr. Cornish:

We object to any further oral evidence with reference to the marriage license. If the original was in existence, that would be the best evidence. If the original is not in existence, then a certified copy, and if the record are destroyed, then secondary evidence would be admissible.

JUDGE FOOTE:

Objections sustained.

You will simply have to introduce the original and if you prove that it was lost you will have to show that you applied for a certified copy.

Mr. Blanton:

I have been trying to see the National Recorder this morning.

Mr. Cornish:

You won't find it in his custody.. That was brought out in the trial of a case the other day. The Clerk of the County is Mr. Harris, who lives about Mill Creek, the National Recorder's office was just created a year ago.

JUDGE FOOTE:

You will have to have that in order to complete your case.

Mr. Blanton.

If I am not able to produce a certified copy, then this would be admissible, if I had subpoenaed that man to show that such a record is not in existence now. This would only be admissible after that proof has been made.

JUDGE FOOTE:

What do you want to do about that.

Mr. Blanton:

I might ask these questions with the understanding that it be stricken out if there is any proof offered showing that such a record is in existence.

JUDGE FOOTE:

No use to encumber the record with that. You will have time within which to get it.

Mr. Blanton:

Yes sir.

JUDGE FOOTE:

I guess the first thing is to show that the woman through whom he claims citizenship was a Chickasaw Indian.

Mr. Blanton:

I thought the best proof of that fact is that she is on the roll, and I could get a certificate to that effect. I wrote the Commission ten days ago for such certificates, but have not received any reply from them.

JUDGE FOOTE:

You can't proceed any further this morning, what do you propose to do. When do you propose to find out whether you can procure that ~~certificate~~ certified copy of the marriage license and the certificate of his wife's enrollment.

Mr. Blanton:

I ought to have a reply from the Commission at this

time.

JUDGE FOOTE:

Have you anything to offer.

Mr. Cornish:

No sir. In these intermarried cases, the Nations are not in the habit of insisting upon harsh rules. Ordinarily we should insist that the case be closed, but I see no reason why a reasonable time should not be set down in June, at which time the case may be closed

JUDGE FOOTE:

You understand what you have to do. You have to have that proof.

Mr. Blanton:

Yes sir.

JUDGE FOOTE:

What time will suit you.

Mr. Cornish:

Any time, not later than the 10th of June.

JUDGE FOOTE:

This case will be set for the 7th of June, and you will produce the other evidence then.

Mr. Blanton:

I had a witness, not subpoenaed, he promised to come, and he has not shown up.

JUDGE FOOTE:

You bring him here then.

Mr. Cornish:

You expect your client to be back here.

Mr. Blanton:

I wish to show this, he is old and feeble and may not be able to come back here, wish to show about a separation,

I understand there will be some contention about these matters.

Q.--Mr. Sparks, how long did you and this woman Sarah Golbert live together as husband and wife?

A.--Eight months.

Q.--Is Cynthia Sparks the daughter of this woman Sarah Sparks and yourself?

A.--Yes sir.

Q.--What was done at the expiration of this eight months, of which you speak, did you live together any after then?

A.--No sir.

Q.--What was done then?

A.--I furnished her money.

Q.--What did she do or what did you do at the expiration of that time.

A.--There was some parties come and tried to get her away, and did so.

Q.--Where did she go?

A.--To her brother-in-law's.

Q.--What did you do with reference to a divorce if anything?

A.--Two years after I come and applied for a divorce.

Mr. Blanton:

We will offer the record themselves.

Q.--You are the one that procured the divorce?

A.--Yes sir.

JUDGE FOOTE:

What were the grounds that you procured the divorce on?

A.--She didn't appear like she wanted to come back, or didn't want to keep house any more, and I thought we had better have a divorce.

Q.--Get a divorce on the ground of her abandoning you?

A.--Yes sir.

Mr. Blanton:

Did she quit you and would not come back, did she actually leave you and would not return?

A.--Yes sir, she did

CROSS-EXAMINATION.

Mr. Cornish:

Q.--What kin folks did this woman have, wjat brothers and sisters did this woman have?

A.--One to my knowledge.

Q.--What was this brother named?

A.--Glad Blevins.

Q.--Is he living now?

A.--No sir.

Q.--What was her sisters name?

A.--I don't know anything about her.

Q.--Where was she living when you married her?

A.--With her brother in law.

Q.--Where in the Nation?

A.--Up here beyond Governor Harris'

Q.--How long did you know her before you married her?

A.--Known her about, I guess ten months.

Q.--Had she been married before she married you?

A.--Yes sir.

Q.--Had she been married more than once?

A.--No sir.

Q.--Who was her former husband?

A.--Jackson Colbert.

Q.--His name was Jackson?

A.--Yes sir.

Q.--Know that he was dead?

A.--Yessir.

Q.--How long before your marriage was it that he died?

A.--Indeed I can't tell you, several years.

Q.--You had a personal knowledge of his death did you?

A.--Yes sir, there when he was buried, used to be Governor here.

Q.--What was the maiden name of this woman?

A.--Her name was Blewins.

Q:--What was her first name?

A.--Sarah.

Q.--Sarah Blewins?

A.--Yes sir.

Q.--Did you know her mother?

A.--No sir.

Q.--Know her father?

A.--I see him, not much acquainted with him.

Q.--You has one child by her?

A.--Yes sir.

Q.--Is she enrolled?

A.--Yes sir.

Q.--Has your child been recognized as a citizen of the Chickasaw Nation?

Mr. Blanton:

I object to the questions, because it calls for a conclusion of the witness.

JUDGE FOOTE:

It is to your advantage.

Mr. Blanton:

He asked if she had been recognized, ~~XXXXXXXX~~ I don't understand that any individual had any power to recognize her.

Mr. Cornish:

We should oppose the motion of the applicant to rule

it out. We are simply endeavoring to get at the facts. By recognition I did not mean the recognition of one member by another member, I was asking this man if she was recognized in the legal sense, and if she is now recognized.

JUDGE FOOTE:

He is helping you.

Mr. Blanton:

We do not object as to facts, but as to the conclusions--

JUDGE FOOTE:

I will rule it out.

Mr. Blanton:

I think that the objection is well taken.

JUDGE FOOTE:

It is to your advantage.

Mr. Cornish:

Q.--Where were you living in 1893?

A.--Paul's Valley.

Q.--Did this child live with you at that time?

A.--No sir.

Q.--Where did she live?

A.--With her mother.

Q.--After theseparation, the child lived with its mother?

A.--Yes sir.

Q.--Did this child draw the Leased District money in 1893?

A.--I can't tell you.

Q.--When did her mother die?

A.--Four years ago.

Q.--Did her mother remarry?

A.--I think she did.

Q.--Who did she marry?

A.--Man named Hughes.

Q.--Where did she live after her remarriage?

A.--At Ardmore, where she died.

Q.--If this woman that you married was a citizen, there are plenty of people that know it, what prominent citizens of the Chickasaw Nations that are living at this time that know of the citizenship of your wife; who is it that knows absolutely that your wife was a recognized citizen, give us the names of three or four people that know it, you lived around Ada?

A.--Yes sir.

Q.--You know Tandy Walker?

A.--I used to know him.

Q.--Do you know Humphries Colbert? You know C. A. Burris, don't you?

A.--No sir, I don't.

Q.--You know Governor Byrd, don't you?

A.--No sir, not acquainted with him.

Mr. Cornish:

I insist that the citizenship of the woman be established by competent evidence. There is a very serious doubt in my mind that the woman was recognized citizen at all.

JUDGE FOOTE:

Q.--What color was your wife?

A.--Very dark complected, she showed like she was a half breed.

Q.--Halfbreed what? What nationality did she look like?

A.--Always claimed to me she was a Chickasaw.

Q.--What she said amounts to nothing.

Q.--Has that child of yours been enrolled by the Dawes Commission?

A.--I don't know.

Mr. Cornish:

The child has been in the suit from the start.

The Court is aware and opposing counsel are aware that in these cases we endeavor to meet the issues fairly and ~~openly~~ and frankly. The questions in this case are, was this woman an Indian of recognized status, and the best evidence of that is record evidence. The second requisite is was the law complied with, and third did the marriage relations continue without interruption or abandonment, and if a separation occurred that it was without the fault of the applicant. It is incumbent upon the applicant to establish these three issues. ~~xxxxxxx~~ If he establishes them, he is entitled to enrollment, and if he does not he is not entitled to enrollment. I have been endeavoring to get at the facts, but inasmuch as the applicant declines to give any information

JUDGE FOOTE:

The man seems not to be strong either mentally or physically.

Mr. Cornish:

I mentioned five or six prominent men in Pontotoc County

Mr. Blanton:

Q.--He asked you about people that lived at Stonewall, did you ever live in the Stonewall country with this wife?

A.--No sir.

Q.--What was your post office?

A.--Mill Creek.

Q.--Know Governor Harris?

A.--Yes sir, used to know the old man, after that I moved away.

Q.--Where did you move to?

A.--Paul's Valley.

Q.--Lived out in the country there several miles?

A.--Yes sir.

Q.--Tell the Court how this woman looked with reference to Indian blood?

A.--Well she was very dark, looked like she was a half breed probably or more, she had dark eyes, very dark eyes, and very dark hair, black hair, and dark complected, very dark complected.

Q.--Did you ever have anything to do with her folks?

A.--No sir.

Q.--Did you like close to her folks at any time?

A.--No closer than twelve miles.

Q.--You stated while ago that she had a half brotherx, do you know whether she had full brothers or sisters or not?

A.--I can't say.

Q.--Know how many times her father was married?

A.--Married three times, I believe, I have heard that.

Mr. Cornish:

How long have you been living in the Chickasaw Nation?

A.--Been living here ever since the year of eighty.

Q.--You have lived in this counrty since 1880, I will ask you this final question, in order that the record may show that the Nations are endeavoring to get at the facts, give the stenographer the names of three or four prominent persons, who are respectable and credible, who know about the facts of the citizenship of your wife, and know about the facts of your seperation from her, give us the names of three or four prominent and respectable persons?

A.--Know Dr. Gillum.

Q.--Where does he live?

A.--This side of Berywn.

Q.--Citizen?

A.--Yes sir.

A.--Intermarried citize ?

A.--Yes sir.

Q.--Dr. John O. Gillum?

A.--Yes sir. Mrs. Susan Brushing.

Q.--Live near you when you seperated?

A.--Yes sir.

Q.--Know of the facts of the seperation?

A.--No sir.

Q.--Who else?

A.--That is all I know & now that know the facts.

Q.--Does he know who this woman was kin to?

A.--Yes sir.

Mr. Cornish:

My advice would be that you have him here.

Mr. Blanton:

Q.--You sent after him, didn't you?

A.--Yes sir.

Q.--You sent after a Mr. Meeks that is supposed to know it
didn't you?

A.--No sir.

Mr. Cornish:

You had better bring them here. You can get them
here by process of this Court. I am anxious to get at the
facts in the case. At this time, I am not at all certain
this this woman was an Indian.

JUDGE FOOTE:

You are liberty to apply to the court for a subpoena.

Mr. Blanton:

I will ask for a subpoena and in the meantime I will
get a certificate

Witness

I was acuginted with Mr. Carter.

Mr. Cornish:

Q.--Judge B. W. Carter?

A.--Yes sir. He is dead.

Q.--This Judge Anderson, who was he?

A.--Lived here when I was married?

Q.--Here in Tishomingo?

A.--Yes sir. Judge of Tishomingo County.

Q.--He dead?

A.--Yes sir, he is de ad too.

Q.--Know where he lived in the town of Tishomingo, you got the license from him?

A.--Yes sir.

Q.--Pay any money?

A.--Yes sir/

Q.--How much? What is your best recollection about?

A.--I think it was about the time the license went up.

Q.--How much money did you pay this Judge, what is your best recollection about it?

A.--Been so long, I never thought of it afterwa ds, I gave ten or fifteen dollars.

Q.--For the license and performing the ceremony?

A?--Yes sir.

Q.--That was in 1880?

A.--Yes sir.

Q.--Where did he live, you are familiar with the town of Tishomingo, you know where the Capitol was at that time and where Ben Kemp lived, Judge Kemp?

A.--I can't tell you.

Q.--You know where Ben Kemp lived, Judge Kemp, know where the old jail used to be?

A.--Yes sir, go that way and leave it to the right, been so long, and I haven't been here but twice.

Q.--Do you know what a marriage license is, you saw that paper this morning, is that a marriage license, that your marriage license?

A.--No sir, I guess not, I don't know .

Q.--You read the marriage license over, how did it read, what did it contain?

A.--I can't tell you just how that read. I seen his name to it and old Mr. Carter.

Q.--What Carter:

A.--Recorder, signed his name to the certificate.

Q.--Who signed his name to the certificate?

A.--Mr. Carter.

Q.--What Carter?

A.--Ben Carter, Judge Carter, he was recorder at that time on Mill Creek.

Q.--He the man that recorded your marriage license?

A.--Yes sir. Judge of the Court afterwards.

Q.--How long after your marriage was it that it was recorded?

A.--I don't recollect, it wasn't a great while.

Q.--Get anybody to recommend you for a marriage license?

A.--Yes sir.

Q.--Who signed your petition?

A.--Dr. Gillum?

Q.--Who else?

A.--Eastman James.

Q.--He living?

A.--No sir.

Q.--Who else besides Eastman James?

A.--White men, I don't recollect.

Q.--Others white men, non-citizens?

A.--Yes sir

Q.--Did you ever marry before?

A.--Yes sir.

Q.--Where did you marry and who did you marry before?

A.--Married in Indiana.

Q.--In what year?

A.--About fifty-eight.

Q.--Who did you marry?

A.--Lady named Gardner.

Q.--What became of her?

A.--Died with consumption.

Q.--Live with her until she died?

A.--Yes sir.

Q.--Ever married again before you married here?

A.--No sir.

Q.--Married since the death of this wife you married in this country?

A.--No sir.

Q.--In what year did this child of yours come back to you?

A.--After her mother died, I think it was was years ago this Spring.

Q.--The child is living with you now?

A.--No sir, married.

Q.--What is her name now?

A.--Sparks, married a man named Sparks.

Q.--Any relation of yours?

A.--No sir.

Q.--Now Mr. Sparks, what kin folks if any has your daughter living in this country, has she a blood relative in this Nation so far as you know

A.--I don't know.

Q.--That daughter is living now?

A.--Yes sir.

Q.--How old is she?

A.--Born January 12, 1832.

Q.--Now you don't know of a single blood relative that she has in the Chickasaw Nation?

A.-- No sir.

Q.--Among the Indian people?

A.--No s ir, never been down there.

Q.--This first husband of her, Colbert, who was he kin to, he was an Indian?

A.--Yes sir.

Q.--What Colbert family did he belong to, old man, Colbert, Governor Colbert, Winchester Colbert?

A.--Yes sir.

Q.--He was related to Humphries Colbert?

A.--Yes sir.

Q.--This first husband of your wife was related to Humphries Colbert?

A.--I think so.

Q.--Know George Colbert that lives up there that is Attorney General of the Nation now?

A.--No sir.

JUDGE FOOTE:

Q.--How old is your daughter now.

Mr. Cornish:

He responded twenty some odd.

JUDGE FOOTE:

Q.--Know whether she knows anything about her relatives?

A.--I don't know whether she does or not.

Q.--Ever live with any of them?

A.--Lived with her mother until she died about four or five

years ago, and then she came to me five years ago this Spring.

Mr. Blanton:

Q.--Your wife, remarried a man named Hughes?

A.--Yes sir.

Witness excused.

_____ FLETCHER, being called as a witness on behalf of plaintiffs, after being duly sworn testified as follows:

DIRECT EXAMINATION.

Mr. Blanton:

Q.--What is your name?

A.--Fletcher.

Q.--Where do you live?

A.--Live up near Berwyn.

Q.--Know Mr. J. W. Sparks?

A.--Yes sir.

Q.--Know a woman that he married named Sarah Colbert?

A.--Yes sir.

Q.--Were you present when they were married?

A.--Yes sir.

Q.--State to the Court where it was and what occurred and where he got the license?

A.--Got the license at Tishomingo. He was married here at Tishomingo, and I disremember the mans name he got the license from.

Q.--Who married him?

A.--John Anderson.

Q.--Remember when that was?

A.--I won't be positive, eighty or eighty-one, I won't be positive.

Q.--You were present at the time?

A.--Yes sir.

Q.--Live up there in the community in which they lived?

A.--Yes sir.

Q.--Do you know what kind of a license they got?

A.--No sir, I don't know.

Q.--I mean by that, you know whether they got that from the United States authorities or the Indian authorities?

A.--Indian authorities.

Q.--Know this woman ~~XXXXXXXX~~ Sarah Colbert, see her about that time?

A.--Yes sir.

Q.--Describe her appearance to the Court?

A.--Well she was dark complected woman, very dark, that is she was dark complected. Dark black hair, straight.

Q.--What did she look like, what race of man?

A.--Of course she showed Indian blood considerable.

Q.--What part of Indian blood did she possession in your opinion?

A.--There is different shades.

Q.--Judging from your experience in that line?

A.--I can't get that down. She sowed considerable Indian blood, because there is full bloods a good deal lighter than others, and half breeds be brothers and one will be light and the other dark.

Q.--Are you acquainted around Tishomingo?

A.--No sir.

Q.--Know any of the Chickasaw recognized citizens?

A.--No sir.

Q.--Know Dick McLish at Ardmore?

A.--No sir.

Q.--Know Charley garter at Ardmore?

A.--~~Yes sir.~~

A.--Yes sir.

Q.--Was she as dark as Charley Carter?

A.--Yes sir.

Q.--Any darker?

A.--Yes sir.

Q.--What prominent Indian do you know up your way?

A.--Well she was something near as dark as John Thomas.

Q.--He a prominent Indian.

A.--Yes sir.

Q.--How long have you lived in the Chickasaw Nation?

A.--Been living here ever since the fall of sixty-five?

CROSS-EXAMINATION.

Mr. Cornish:

Q.--Are you an applicant for citizenship of any kind?

A.--No sir.

Q.--White man?

A.--Yes sir.

Q.--How long did you know this woman before Mr. Sparks
married her?

A.--Known her for several years.

Q.--Before that time?

A.--Yes sir.

Q.--You had lived in the same neighborhood with her?

A.--Yes sir.

Q.--What kin folks did she have?

A.--I don't know any but the Blevins.

Q.--What Blevins were they?

A.--Geese Blevins was her father.

Q.--Living now?

A.--Yes sir.

Q.--Where does he live?

A.--On Blue, between Pennington and Blue.

Q.--Indian or white man?

A.--White man, I suppose.

Q.--Was he an intermarried citizen?

A.--His wife was just like his daughter, she had considerable Indian blood.

Q.--His wife was a citizen you say?

A.--Never claimed any citizenship here, I don't know that.

Mr. Blanton:

Are you willing for a statement to go in as to a disposition to claim citizenship.

Mr. Cornish:

It would cerarly be competent as brought out on cross examination, it would not be competent to substantiate a claim.

Mr. Blanton:

I don,t think it should be permitted to go in the record.

JUDGE FOOTE:

Wasen't it hearsay.

Mr. Cornish:

It is a declaration against interest.

JUDGE FOOTE:

If they didn't claim it of course it would be competent as against interest.

Mr. Cornish:

That is the point.

JUDGE FOOTE:

Then it would be competent.

Mr. Cornish:

Q.--They didn't claim citizenship here?

A.--Not that I know of. If they did I never heard of it.

Q.--You had known them for several years?

A.--Yes sir.

Q.--Where did they come from into this country?

A.--Grayson County.

Q.--What State?

A.--Texas.

Q.--Know them in Grayson County?

A.--Yes sir.

Q.--Was the mother of this woman living at that time?

A.--Yes sir.

Q.--How long had you known them in Grayson County, Texas?

A --Up to the time they come over here in the fall of sixty-five.

Q.--You had known them prior to that time?

A.--Right along then, they came over.

Q.--How long had you known them down there?

A.--Short while.

Q.--What were they doing down there?

A.--Come in there during the war.

Q.--Where did they come from?

A.--Territory somewhere.

Q.--What did they do in Grayson County?

A.--Made a crop.

Q.--Whose place did they live on?

A.--Public land.

Q.--Took up public land

A.--Yes sir, just settled on land there.

Q.--Any personal knowledge of where they came from into Grayson County?

A.--No sir.

Q.--Q.--The first time you knew them they were living in

Grayson County on public land?

A.--No sir. The first I ever knew them they were moving.

Q.--Where?

A.--In Texas, moving up into Grayson County.

Q.--Been a little further down in Texas?

A.--Yes sir.

Q.--Coming from the South into Grayson County?

A.--Yes sir.

Q.--Know where they had been?

A.--No sir.

Q.--Know how long they had been there?

A.--No sir.

Q.--No knowledge of them previous to the time you saw them moving from the South into Grayson County?

A.--No sir.

Q.--You say them in the late sixties, just after the war?

A.--Yes sir. Just after the war.

Q.--where did they live after that time?

A.--Moved in here.

Q.--Did you know them from the time they moved in here in the late sixties up until the present time?

A.--Yes sir.

Q.--Moved around from place to place?

A.--Yes sir.

Q.--Whose places have they lived on, so far as you know?

A.--Well they lived on a place called the Norton farm.

Q.--Who owned that?

A.--Belonged to the heirs of Mrs. McLish?

Q.--The McLishs were Chdckasaws and this family lived on their place?

A.--Yes sir, and then they went on this Mrs. Sparks place.

Q.--She had married a man named Colbert, who was a Chickasaw?

A.--Yes sir.

Q.--And lived on the place which he had owned?

A.--Yes sir.

Q.--How long did they live on that place?

A.--I don't remember how many years.

Q.--Where did they go then?

A.--Up on Blue where they live now.

Q.--Is the mother of this woman living now?

A.--No sir.

Q.--I mean the wife of Blevins, is Blevins wife living now?

A.--Not the mother of this woman.

Q.--I am speaking about the mother of the woman that Sparks married?

A.--She is dead.

Q.--When did she die?

A.--Must have been dead some twenty-eight or twenty-nine years..

Q.--Did you live about Sparks when they seperated, lived near them when they seperated?

A.--Yes sir.

Q.--Have any personal knowledge of the facts of the ~~xxxxxx~~ seperation?

A.--No sir.

Witness excused.

JUDGE FOOTE:

We will hear the rest of the testimony on the 7th of June.

Mr. Comish:

These facts develop a condition which is clear to our mind that these people are not citizens of the Chickasaw

Nation, and it will be impossible to establish to the Court that she was a citizen of the Chickasaw Nation, our view being as heretofore stated the first issue is was the woman, the whom the right to enrollment as a citizen by intermarriage of the Choctaw or Chickasaw Nations, a citizen of the Choctaw or Chickasaw Nations and duly enrolled as such. I don't understand that the Court would have the right to inquire primarily into the right of the person through whom the citizenship is claimed, and if it developed that they were Chickasaws to admit the persons for the purpose basis of citizenship by intermarriage at this time. The condition developed here is conclusive to our minds that the woman was not a citizen of the Chickasaw Nation, and so far as further proof in this case is concerned, we will ~~not~~ insist on the strictest evidence.

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

J. W. Sparks, et al,

vs. No. 40.

Choctaw and Chickasaw Nations.

Blanton & Andrews, Attorneys for plaintiffs.

Mansfield, McMurray & Cornish, for Defendants

Present and presiding the Honorable Henry S. Foote, Associate Judge.

JUNE 7, 1904. This day this cause coming on to be heard, both plaintiffs and defendants being represented by counsel, and both having announced ready for trial, the following proceedings were had, to-wit:

Mr. Rennie:

I am appearing simply for these lawyers.

JUDGE FOOTE:

Are you ready.

Mr. Rennie:

I wish to present in behalf of these attorneys a certificate from the Chairman of the Dawes Commission as to the citizenship of Sarah Hughes. It is a certificate to the effect that she appears on page one ~~thirty-six~~ hundred and thirty-six of the Least District Pay Roll of the Chickasaw Nation, opposite number eighteen on said page, and wish to state to the Court as these attorneys requested me to do, that they have made a search of the records of the County Clerk to get certificates to introduce in this matter, and they have not been able to get the certificates on account of not finding the Clerk, and they want it to go until the 20th.

Mr. Cornish:

With reference to this certificate of the Dawes Commission, the Court is aware that our position is that that a certificate from the Commission to the Five Civilized Tribes of the citizenship status of some person is not binding upon this Court, and in this case in referring to this certificate I wish to state that the Choctaw and Chickasaw Nations deny that this person is a citizen of the Choctaw or Chickasaw Nations, and ask that this certificate be not considered as conclusive and binding upon this Court. We object further for the reason that it has not been shown by competent evidence that the person to whom the applicant was originally married is the person who is mentioned in the certificate. Our view is that this woman is not a citizen and not in a position to confer citizenship upon this man. Our view is that since this certificate is not binding upon the court it is necessary to show first that this woman was a Chickasaw Indian by blood, and secondly that she was such a Chickasaw Indian by blood as is entitled to enrollment and distribution of the tribal property.

JUDGE FOOTE:

You have not filed a written motion for a continuance.

Mr. Cornish:

What is it you want to offer in addition to that.

Mr. Rennie:

My understanding is that it is a certified copy of the marriage license.

JUDGE FOOTE:

Number forty, evidently set for today for further hearing. Case is closed except for documentary evidence.

Mr. Rennie:

They wish now to ask the court for a further postponement

that they may have further time to procure that documentary evidence that up to this time they have not been able to obtain.

JUDGE FOOTE:

Closed except for that documentary evidence, and if they do not have it by the time the court reaches it, we will go on with out it.

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In the Choctaw and Chickasaw Citizenship Court,
Sitting at Tishomingo, Ind. Ter, June 24, 1904.

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J.W.Sparks, et al,

--vs--

No. 40.

The Choctaw and Chickasaw Nations.

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June 24, 1904; This day this cause coming on to be heard before the Hons. Spencer B. Adams, Chief Judge, and Walter L. Weaver and Henry S. Foote, Associate Judges of said Court, the Defendants being represented by their Counsel, the following proceedings were had to-wit;

Mr. Cornish;

We submit the case with the exception that we will wish to file some documentary evidence withⁱⁿ the next few days.

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In the Choctaw and Chickasaw Citizenship Court,
Sitting at Tishomingo, I.T., June 30, 1904.

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J.W.Sparks, et al,

--vs--

No. 40.

The Choctaw and Chickasaw Nations;

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June 30, 1904; This day this cause coming on to be heard before the Hons. Spencer B. Adams, Walter L. Weaver and Henry S. Foote, Judges of said Court, the Defendants being represented by their Counsel, Mansfield, McMurray & Cornish, the following proceedings were had to-wit;

Mr. Cornish;

This case was closed, with the exception that the Nations were given permission to introduce some documentary evidence. I have a certified copy of the evidence of the woman, through whom this applicant claims by intermarriage.

This applicant, J.W.Sparks, claims through a woman named Sarah Hughes, and he has offered a certificate showing her name to have been on the "Leased District" Rolls of 1893; we now have a certified copy of her evidence before the Commission to the Five Civilized Tribes, in support of her application for enrollment. Ex. "AA".

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT, SITTING AT
TISHOMINGO, IN THE INDIAN TERRITORY,
NOVEMBER TERM, 1904.

J. W. Sparks, et al.,
vs. No. 40.
Choctaw and Chickasaw Nations.

DECREE OF COURT.

On this the 28th day of November, 1904, this cause coming on for final decision, the same having heretofore been submitted upon the law and the evidence, and the Court being well and sufficiently advised in the premises, doth find that the plaintiffs, J. W. Sparks and Synthia Sparks or Cynthia Sparks, are not entitled to be deemed or declared citizens of the Chickasaw Nation, or to enrollment as such, or to any rights whatever flowing therefrom.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the petition of the plaintiffs, J. W. Sparks and Synthia Sparks or Cynthia Sparks, be denied, and that they be declared not citizens of the Chickasaw Nation, and not entitled to enrollment as such citizens, and not entitled to any rights whatever flowing therefrom.

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Chief Judge.

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Associate Judge.

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Associate Judge.