

No. 52.

Wm R. Cross

vs

Choctaw Nation

No. 180

Central Dist. Court.

No.

Dawes Commission.

Denied - 1

Witnesses.

For Claimants.

R. D. Bates -----

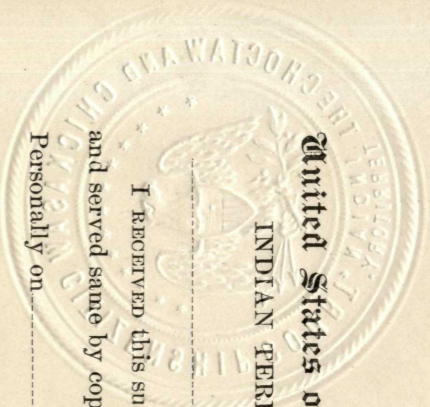
William Livingston

Caddo, T.T.

" " "

For Stationers

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.

Duplicate

No. 52-M

SUMMONS
IN EQUITY.

W R Cross

vs.

Choctaw + Chickasaw
Nations

Summons issued the 20 day
of March, 1903

Returnable *instanter* Term, 1907

Returned and filed _____, 190____

Clerk.

By _____, Deputy.

MARSHAL'S FEES.

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

Potter, Furman + Potter
Attorney for Plaintiff.

Gainesville, Tex

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. Mosley, 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,

in the Choctaw and Chickasaw Citizenship Court, in the Indian Territory, So McAlester
by W R Cross and warn him that upon his failure to answer, ~~the~~
as said Governor, 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 instant, Term of said Court

and you are further commanded to notify said P.S. Mosley, Governor
aforesaid, that the papers, files and proceedings in the case of
W R Cross File No. 143, in the District
Court for the Central 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 Central
District, Indian Territory, has been attached thereto.

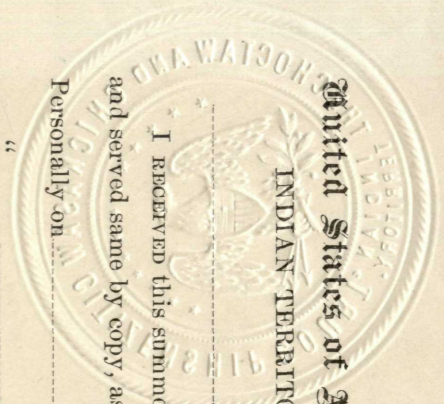
WITNESS the Honorable SPENCER B. ADAMS, Chief Judge, WALTER L.

WEAVER and HENRY S. FOOTE, Associate Judges, and the Seal
thereof, at Southern Mc Alester, I.T., aforesaid,
this 20th, day of March, A. D. 1903.

By gas B. Lassada Clerk.
E. L. Bewitt, Deputy.



MA RSHAL'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 _____ 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 _____ Ind. Ter. this _____ day of _____ 190____, _____ o'clock _____ m.

At Residence of _____ 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.

U. S. Marshal.

By _____ Deputy

Duplicate
No. 52-M

SUMMONS
IN EQUITY.

W R Cross
vs.

Choctaw & Chickasaw
nations

Summons issued the 20th day
of March, 1903

Returnable instantly Term, 1903

Returned and filed _____, 1903

Clerk.
By _____, Deputy.

MARSHAL'S FEES.

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

Potter Sumner & Potter
Attorney for Plaintiff.

Gainesville, Tex

5762b5m10-02

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, So. McAlester

by W R Cross and warn him that upon his failure to answer, the

~~as said Principal Chief, 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 Green Mc Curtain, Principal Chief aforesaid, that the files, papers and proceedings in the case of

W R Cross File No. 143 in the District Court for the Bentley 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 Bentley 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 20th day of March, A. D. 1903.

Jas B Bassada Clerk.

By E O Beville, Deputy.



IN THE CHOCTAW AND CHICKASAW CITIZENSHIP
COURT, SITTING AT SOUTH McALESTER, FEBRU-
ARY TERM, 1904.

W. R. Cross, Plaintiff.
vs.
Choctaw and Chickasaw Nations, Defendants.

BRIEF OF DEFENDANTS.

The facts in this case show that the applicant, W. R. Cross was married about the year 1875 to Hannah Wells, nee Hannah Arrington, who he claims was a Choctaw Indian by blood. At the time this marriage was consummated, as appears from the testimony of Cross himself, he knew that Hannah Wells was the lawful wife of Sam Wells; that Sam Wells had been convicted and sent to the penitentiary and was living at the time of the marriage. We quote from the cross-examination of W. R. Cross:

- Q.--You say your first wife had been married prior to your marriage to her?
A.--Yes sir.
Q.--To whom had she been married?
A.--Sam Wells.
Q.--When did she marry him?
A.--I don't recollect.
Q.--How long before your marriage to her?
A.--I think it was something over three years.
Q.--Was Sam Wells living or dead at the time you married her?
A.--I think he was living; he was sent to the pen and I never heard anything more of him.
Q.--How long prior to your marriage to her was he sent to the pen?
A.--I suppose it was a year, not much over a year.
Q.--By what Court was he convicted and sent away?
A.--It was in Texas some place.
Q.--Don't you know about these people?
A.--He moved off after they married.
Q.--Was the woman living as his wife with Sam Wells at the time of his conviction?
A.--Yes sir.
Q.--Had this woman been divorced at the time you married her?
A.--No sir, not that I know of.
Q.--Then you married her without knowing whether or not she had been divorced?
A.--I don't know whether they had any seperation, but

she said she would never live with him now."

This is the testimony of the applicant, W. R. Cross as to the circumstances under which his attorney claims the presumption of death has arisen.

It might be well to further state that Hannah Wells, through whom the plaintiff claims rights as an intermarried Choctaw is now dead, and the plaintiff has since remarried to a white woman.

The position taken by counsel for plaintiff is utterly untenable, granting that the facts were as stated by them in their brief. The presumption spoken of and relied on by attorneys for applicants in their brief cannot possibly, under the authority set forth by them, avail them, since it appears that the marriage which they seek thus to validate occurred before any presumption of death could have arisen, and the presumption of death could not have been made to relate back to validate a marriage in that way.

The authorities relied on by them are not applicable here, either to the law or the facts. Attorneys for the applicant cite Greenleaf on Evidence, Volume Section forty-one as supporting their contention, but the contrary will appear from an examination of that section, which we quote:

"Other presumptions are founded on the experienced continuance or permanency, of longer or shorter duration, in human affairs. When, therefore, the existence of a person, a personal relation, or a state of things, is once established by proof, the law presumes that the person, relation, or state of things continues to exist as before, until the contrary is shown, or until a different presumption is raised, from the nature of the subject in question. Thus, where the issue is upon the life or death of a person, once shown to have been living, the burden of proof rests upon the party who asserts the death. But after the lapse of seven years, without intelligence concerning the person, the presumption of life ceases, and the burden of proof is devolved on the other party."

Counsel for applicant say in their brief that "Greenleaf, in his work on evidence, in section forty-

one, lays down the rule, in effect as follows:

'Absence of seven years justifies presumption of death, and the burden of proving the party living after a absence of this time is on the party asserting life.'

It is incredible to say that counsel could have drawn such a conclusion from reading section forty-one of

Mr. Greenleaf's Great work. An examination of section forty-one will, we think convince even them that it is a very strong authority against their present position.

The presumption of death after a absence of seven years was of itself, as shown by note four of section forty-one, adopted with some hesitancy, but such a presumption could never be indulged in except by explaining the otherwise unexplainable absence of a party from his home and family. The presumption only arises after a lapse of seven years when no intelligence exists concerning the whereabouts of the person, and the presumption can only be indulged in in the absence of any information. If information exists as to the whereabouts of a person, no presumption arises, because there is no necessity for a presumption, it being known what caused the man's absence from his wife and family, there is no necessity for a presumption upon the subject and none could be indulged in.

Counsel also make the mistake of supposing that any duty rests upon the Nations to show that the death of Wells occurred and what time it occurred. It occurs to us that even a cursory examination of the authorities on this subject would lead counsel to the discovery that it devolves upon them to show that at the time of this marriage Wells was dead.

From the record as it now stands, from the testimony of Mr. Cross himself, the presumption would be that Wells was still in the penitentiary, since Cross says that

at the time he married Mrs. Wells, she was the wife of Sam Wells who had, about a year before that time been convicted and sent to the penitentiary in Texas. Now in the absence of any proof upon that point, we must either assume that Wells is still in the penitentiary alive, or if we wish to wander in the domain of speculation, we might imagine that Wells, that Cross had appropriated his wife immediately upon his conviction, that he got out of the penitentiary having no wife and home to return to, that he continued in the opposite direction, as it seems he was, under any authority, Greenleaf, Texas or Indian Territory imply justified in doing, particularly in view of the fact that Mr. Cross states that he married Mrs. Wells, because she stated she was not going to live with Wells "no how". So it appears that there was no lack of knowledge of the whereabouts of Wells, that any intelligence of his whereabouts during the seven years was sought, and that neither Cross or Mrs. Wells wanted his absence explained "no how".

Horton on Evidence, Volume two, second edition, section 1276, lays down the rule as follows:

"When there has been an unexplained absence for seven years, death, so it has been ruled, is presumed to have taken place at the close of the seven years; or, as it is sometimes put, the party is assumed to have continued in life until that period has expired. But in England it is now said that the time of death, whenever it is material, must be a subject of distinct proof by the party interested in fixing the time; for there is no presumption as to when, during the seven years he died; and this view is accepted by a preponderance of authority in the United States."

Thus, the court will understand 'is in cases of unexplained absence abroad, and it has been held that persons not heard of in another state is equal to absence beyond the seas; but how could this presumption arise, when Cross in his own testimony says that he knew the man was in the penitentiary, and had just been sent there when he married

the wife? The contrary is the case. The presumption is that the man is alive, not only that he was living at the date of the marriage, because that is proven absolutely by the testimony of Cross, and that is the only vital point in the case. If the husband was known to be living at the date of the marriage, the marriage was bigamous and void, and no presumption except that of life could arise, and if such presumption could arise, and if at the expiration of seven years, under which it could by no possibility be held that Wells was presumably dead, the presumption would not relate back to the time when this unlawful marriage took place.

The claim of Cross to enrollment as a member of the Choctaw tribe, resting upon his supposed marriage to Hannah Wells must therefore necessarily fall, and his rejection by the Court follow as a matter of course.

Respectfully submitted,

ATTORNEYS FOR CHOCTAW AND CHICKASAW NATIONS.

Also not married according to
Antai's laws
Act of Oct 1840, P. 76, Federal Code

Next Act was Nov 9, 1871 -
See Brown's Code P. 277

Matthew's returned in pack to Ark
April 14, 1871 -

South McAlester, Indian Territory, September 14, 1903.

Messrs Potter & Potter,
Gainsville, Texas,

Dear Sirs:

On this morning we called attention to your request in the Cross case, and the Court stated it would be agreeable for it to be continued until the 22nd or 23rd.

Such is agreeable with us.

Yours truly,

Yours truly,

Potter & Potter

GAINESVILLE, TEXAS,

Sept. 11,

190

3.

Messrs. Mansfield, McMurrey, & Cornish,

South McAlester, I. T.

Gentlemen:-

We notice from the papers to-day that the case of W. R. Cross vs the Choctaw and Chickasaw nations is set for Sept. 18th for trial. We had not been aware of this before, though we received a copy of your demurrer a few days ago. We wish to ask that the setting of this case be changed until the 22nd or 23rd of the month, as we have to be in South McAlester that day any way, and it will save us the expense and labor of an extra trip. We presume we could be ready for trial on the 18th. Know we can be by the 22nd or 23rd. Will you be kind enough to speak to the court about this and advise us, or have Mr. Cassada advise us? When our C. C. was in South McAlester a few days ago, had he known of this setting he would then have asked for the change.

Yours truly,

Potter & Potter

South McAlester, Indian Territory, September 22, 1903.

Muskogee, Indian Territory, September 23, 1903.
Commission to the Five Civilized Tribes,
Muskogee, Indian Territory.

Gentlemen:

Mansfield, McMurray & Cornish,

The purpose of this letter is to ask that the Commission
Attorneys for the Choctaw & Chickasaw Nations,
kindly advise us if William Airington of Caddo, I.T; Orlando
South McAlester, Indian Territory.
Cross and George Washington Cross are applicants for enrollment

Gentlemen:

as citizens by blood of either the Choctaw or Chickasaw Nations
Receipt is hereby acknowledged of your letter of the 22nd
and if so the present status of their application.

instant, requesting to be advised if William Airington of Caddo,
Respectfully,

Indian Territory, Orlando Cross and George Washington Cross are ap-
plicants for enrollment as citizens by blood of either the Choctaw or
Chickasaw Nation and if so the present status of their application.

You are informed it appears from our records that William
Airington, now about fifty-six years of age, of Caddo, Indian Terri-
tory, has been enrolled as a citizen by blood of the Choctaw Nation
by this Commission and his enrollment as such approved by the Secre-
tary of the Interior March 10, 1903.

It further appears from our records that George W. Cross,
now about twenty-two years of age, of Overbrook, Indian Territory,
has been enrolled as a citizen by blood of the Choctaw Nation by
this Commission and his enrollment as such approved by the Secretary
of the Interior December 12, 1902.

You are further advised it appears from our records that

TAMS BIXBY,
THOMAS B. NEEDLES,
C. R. BRECKINRIDGE,
W. E. STANLEY.

DEPARTMENT OF THE INTERIOR,
COMMISSION TO THE FIVE CIVILIZED TRIBES.

7-3929
7-211

ALLISON L. AYLESWORTH,
SECRETARY.

ADDRESS ONLY THE
COMMISSION TO THE FIVE CIVILIZED TRIBES.

Muskogee, Indian Territory, September 28, 1903.

Mansfield, McMurray & Cornish,

Attorneys for the Choctaw & Chickasaw Nations,

South McAlester, Indian Territory.

Gentlemen:

Receipt is hereby acknowledged of your letter of the 22nd instant, requesting to be advised if William Airington of Caddo, Indian Territory, Orlando Cross and George Washington Cross are applicants for enrollment as citizens by blood of either the Choctaw or Chickasaw Nation and if so the present status of their application.

You are informed it appears from our records that William Airington, now about fifty-six years of age, of Caddo, Indian Territory, has been enrolled as a citizen by blood of the Choctaw Nation by this Commission and his enrollment as such approved by the Secretary of the Interior March 10, 1903.

It further appears from our records that George W. Cross, now about twenty-two years of age, of Overbrook, Indian Territory, has been enrolled as a citizen by blood of the Choctaw Nation by this Commission and his enrollment as such approved by the Secretary of the Interior December 12, 1902.

You are further advised it appears from our records that

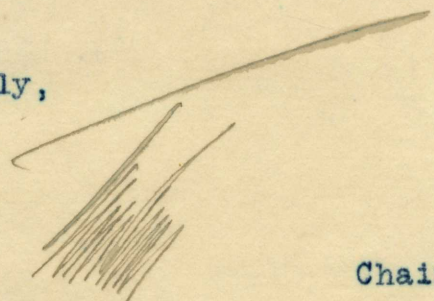
M.McM.& C.

-2-

A. G. Cross has been enrolled as a citizen by blood of the Choctaw Nation by this Commission and his enrollment as such approved by the Secretary of the Interior December 12, 1902.

From the testimony of Rillie J. Cross, taken before the Commission at South McAlester, Indian Territory, December 23, 1902, in the matter of her application for enrollment as an intermarried citizen of the Choctaw Nation, it is stated that the name of her Choctaw husband is Allander G. Cross. It is believed by this office that Allander G. Cross is the party referred to in your letter as Orlando Cross.

Respectfully,



Chairman.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,
SITTING AT SOUTH MC ALISTER.

W. R. Cross,
vs
Choctaw and Chickasaw Nations.)

BRIEF OF PLAINTIFF.

We respectfully submit that the only question in this case is the validity of the marriage between W. R. Cross, the plaintiff, and his Indian wife, Hannah Arrington or Hannah Wells. This marriage occurred before the Choctaw Nation had prescribed any regulations as to the form of marriage, and therefore cannot be obnoxious to that objection, but the marriage, if invalid at all, is invalid for want of capacity on the part of the wife to contract marriage. The facts appear to be that Hannah Arrington, a Choctaw Indian woman, was first married to a man by the name of Wells. Soon after their marriage he committed some offense in Texas, and was arrested and was supposed to have been sent to the penitentiary. Hannah returned to her father's house, where some time afterwards she married the plaintiff. Just how long, the testimony is indefinite, but some time from one to three years after her separation from her former husband she married the plaintiff. She and the plaintiff lived together until her death as husband and wife, her death occurring some nine years after, and they had four children, two of whom are dead, and the other two have been enrolled as members of the Choctaw tribe by the Dawes Commission, as shown by certificate of the ^{Civil} court on file in this case. There is no evidence of Wells' death, or that any legal divorce was ever obtained. This marriage occurred some twenty-five or thirty years ago. Wells has never been heard of since. He has never returned to claim his wife, he has never returned to the community where he married her.

Our contention is that his continuous absence for this length of time raised a presumption of Wells death, and that presumption having arisen, the burden of showing that he was alive at any time during this long period rests upon those asserting his continued existence.

There are two rules of legal decision on this subject. One is that an absent and unheard of party will be presumed to have died at the end of the statutory period defining when death shall be presumed, or in the absence of such statute at the end of seven years, the common law period. The other rule is that while death will not be presumed until after the expiration of the statutory or common law period as the case may be, but when the presumption does arise, it will not be presumed that the absent party was alive at any period during his absence, and in order to defeat this presumption, he must be shown to have been alive at some time during his absence. Greenleaf in his work on Evidence in section 41 lays down a rule in effect as follows: "Absence of seven years justifies presumption of death, and the burden of proving a party living after an absence of ~~the~~ this time is on the party asserting life." In note 2 in this text this language is used. "The presumption in such cases is that the party is dead but not that he died at the end of seven years." The Supreme Court of Maine in the case of Stevens vs McNayara reported in 58 Am. Dec. 740, lays down the rule in the following words: Ordinarily the continuance of life is presumed, but when a party is shown to have been absent for seven years the burden of showing that he was alive at any time during that time is on the party asserting life. This same doctrine is held in Johnson vs Johnson, 114 Ill. 611. This case reviews extensively both the American and English cases, and reaches the conclusion that where the validity of a marriage depends upon the death of an absent party, though the marriage occurred before the statutory period, still if at the time of the trial the statutory period had elapsed, in the absence of any proof showing that the absent party was living during the time, the presumption will obtain that he was dead, and the marriage be held valid. We trust the court will give this case a thorough examination.

Another rule will be found to aid us in our contention, and that is the presumption of innocence. Because if Wells was still living at the time of the second marriage his wife was guilty of a violation of the law by a re-marriage, and where the presumption of innocence and the presumption of life conflict, that of life will give way to that of innocence. This is clearly the rule in criminal cases, and has been

universally recognized by all of the courts, and it has also been recognized in some civil cases, and we think ought to obtain in this proceeding.

The second marriage in this case was considered by the parties as valid. It was considered by the community in which they lived as valid. These parties lived together as husband and wife and reared a family. For thirty years Wells has not been heard of. Had Mrs. Wells waited five or seven years to marry, there would have been no doubt of the conclusiveness of the presumption of death in favor of the validity of her second marriage, and we beg to suggest that if there is any case in which the presumption could arise that the death was before the end of the statutory period, this is certainly a case calling for such construction.

All of which is respectfully submitted.

Peter H. Wells Atty

for appellants

I N D E X.

Application to Commission	1
Affidavit of R. D. Betts and William Arlington	2
Certificate of marriage	3
Judgment of Commission	4
Petition for Appeal	5
Answer	6
Judgment U. S. Court	6

Before the Commission to the Five Civilized Tribes.

In the matter of the claim of William R. Cross for Citizenship in the Choctaw Nation.

The applicant states for his claim that his age is 43 years and that his Post Office is Overbrook, Chickasaw Nation, I.T.

The applicant further states that he is an intermarried Citizen of the Choctaw Nation, having married Mrs. Hannah Wells (Aftington) a Choctaw Indian by blood and that he was married in the State of Arkansas under the laws of said State by William W. Green, an ordained Minister of the Gospel of the Baptist Church on the 14 day of April 1875 as will be seen by a marriage certificate filed herewith and made a part of this application and marked "Exhibit A"

The applicant would ask the Commission to extend Citizenship to him in the Choctaw Nation and enroll him on the roll; prepared by them for the Choctaw Nation.

(SIGNED) WILLIAM R. CROSS.

SEAL.

M Subscribed and sworn to before me this the 3rd day of August, 1896.

(SIGNED) J. L. ROPPOLER.
Notary Public/

State of Arkansas,
County of Polk.

:
:
:
:
:

April 14", 1875.

I do hereby certify that I am a legally ordained Minister of the Gospel of the Primitive Baptist faith, and am legally authorized to solemnize matrimony. I do further certify that I did this day join in matrimony William R. Cross and Hannah Wells,

In witness whereof, my hand and seal the date above written.

SEAL.

(SIGNED), WILLIAM W. GREEN, M. G.

Commissioners.
Henry L. Dawes,
Frank C. Armstrong,
Archibald S. McKennon,
Thomas B. Cabiness
Alexander B. Montgomery.

H. M. Jacoway, Sec'y

DEPARTMENT OF THE INTERIOR.
Commission to the Five Civilized Tribes.

Ft. Smith, Ark., Dec. 3", 1896.

761

Wm. R. Cross,

vs

Choctaw Nation

Filed Sept. 7 -- 1896, Answer filed,
Application denied, no proof of his wife being a
Choctaw.

Caddo, I.T.

I, H. M. JACOWAY, JR., Secretary, do hereby certify that the above and
foregoing is a true and correct copy of Choctaw Record C page 327
of the Commission to the Five Civilized Tribes.

Given under my hand and official signature this
the 16 day of Feb'y 1897

(SIGNED) Henry Strup,
ACTING Secretary

IN THE UNITED STATES COURT FOR THE CENTRAL DISTRICT
OF THE INDIAN TERRITORY AT SOUTH McALESTER.

-----o-----
Wm. R. Cross, Plaintiff,

vs.

PETITION FOR APPEAL.

THE CHOCTAW NATION, Defendant.
-----o-----

The Choctaw Nation, your petitioner, represents that heretofore, to-wit, on the _____ day of)) _____, 1896, Wm. R. Cross, who was then a white man, and not a Choctaw Indian, presented his claim to the Dawes Commission to be admitted as a citizen of the Choctaw Nation; and thereafter on the _____ day of December, 1896, said Dawes Commission, by its order, admitted said Wm. R. Cross to citizenship in the Choctaw Nation.

The said Wm. R. Cross based his claim to citizenship upon the fact that he had married _____, a Choctaw Indian by blood. But your petitioner represents that said marriage was in no wise in accordance with the laws of the Choctaw Nation, but was solemnized in the State of Ark., and under the laws of said State, and conferred no right to citizenship upon the said Wm. R. Cross.

Wherefore, your petitioner makes this its appeal, and prays that the order of the Dawes Commission admitting said Wm. R. Cross to citizenship be set aside, and that he may be declared by this court to be a non-citizen of the Choctaw Nation.

(SIGNED), WM. M. CRAVENS,

(SIGNED), STUART, GORDON & HAILEY
Attorneys for Choctaw Nation.

In the United States Court, Central District, Indian Territory, At

S O U T H M C A L E S T E R .

William R. Cross, :
Plaintiff, :
#180 vs. :
Choctaw Nation, :
Defendant. :

A N S W E R .

Now comes William R. Cross, and for answer to the application of
~~the~~
the Choctaw Nation, says that it is not true that he is a white man and not
a Choctaw Indian by blood, and says that it is true that he married a Choctaw
Indian by blood, and that said marriage was solemnized in the State of
Arkansas, and in accordance with the laws of said State, but says it is
not true that said marriage conferred no right to citizenship upon him.

Said Cross further alleges that at and before the time of his
marriage, he and his wife resided in the Choctaw Nation, and that they went
into the State of Arkansas to be married for the reason that they could not
procure a minister in the Choctaw Nation to perform the ceremony, and that
they were married as aforesaid, legally under the laws of Arkansas, and
after their marriage they returned immediately to the Choctaw Nation and
resided there continuously until the death of his wife, and that he has re-
sided in the Choctaw and Chickasaw Nations continuously ever since.

WHEREFORE, he asks that he be admitted as a citizen of the Choctaw
Nation, and that his name be placed upon the rolls as such.

(SIGNED), POTTER & BOWMAN
Attorneys for WM. R. CROSS.

Wm. R. Cross,

vs . No. 180 Judgment, Cent. Dist. Aug. 25, 1897.

Choctaw Nation.

On this day this cause came on to be heard and hereupon came both parties by their attorneys and announced ready for trial and submitted all matters ~~xx~~ as well of facts as of law to the court, and the court having heard the evidence and argument and being fully advised in the premises finds that the claimant, Wm. R. Cross was heretofore legally married in accordance with the laws of the Choctaw Nation to Hannah Wells, who was a Choctaw Indian by blood, and that he thereby became and now is entitled to be enrolled as an inter-married citizen of the Choctaw Nation.

It is therefore ordered, adjudged and decreed by the court that the said Wm. R. Cross be, and he is hereby admitted ~~xxx~~ as an intermarried citizen of the Choctaw Nation or Tribe of Indians, and to all the rights and privileges of such citizens, and that he be duly enrolled on the rolls of inter-married citizens of said Choctaw Nation.

It is further ordered that a copy of this judgment be certified by the clerk to the Commission to the Five Civilized tribes of Indians and that said Commission duly enter the name of said Wm. R. Cross on the roll of citizens of the Choctaw Nation.

It is further ordered that the said W. R. Cross have and recover of the Choctaw Nation all costs in this behalf incurred.

BEFORE THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,
SITTING AT SOUTH McALESTER, INDIAN TERRITORY,
FEBRUARY TERM, 1904.

William R. Cross

vs.

No. 52.

Choctaw & Chickasaw Nations.

DECREE OF COURT.

On this February 29, 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 plaintiff, William R. Cross, is not entitled to admission to enrollment as a citizen of the Choctaw Nation and to participation in the distribution of the tribal property of the Choctaws and Chickasaws.

IT IS THEREFORE ordered, adjudged and decreed that the petition of the plaintiff, William R. Cross, be denied and that he be not admitted to enrollment as a citizen of the Choctaw Nation.

In the Choctaw and Chickasaw Citizenship Court,
Sitting at South Mc Alester, I.T., Sept. 22, 1903.

-o-

W.R. Cross,

-vs--

The Choctaw and Chickasaw Nations,

No. 52.

Present and presiding the Hons. Walter L. Weaver,
and Henry S. Foote, Associate Judges of said Court.

-o-

Potter, Bowman & Potter, Attorneys for Plaintiffs.

Mansfield, McMurray & Cornish, for Defendants.

-o-

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. Potter;

We desire to offer in evidence the judgment of the Dawes
Commission in this case, filed Sept. 17th. 1896. bearing
notation " Application denied, no proof of his wife being a
Choctaw. (Ex. "A".)

We now offer in evidence a certified copy of the judgment
of the United States Court for the Central District, admitting
this man to citizenship as an intermarried citizen. (Ex. "B")

Mr. Cornish;

The Choctaw and Chickasaw Nations object to the intro-
duction of the ~~affidavit~~ paper referred to except in so far as it
identifies the present applicant as being the person, whose case
was passed on by the United States Court, for the Central Dis-

trict, of the Indian Territory, and in support of that objection state that it is a proceeding had before the United States Court, for the Central District of the Indian Territory, which proceeding is void for the lack of parties, secondly, the case was tried de novo, when the action of the Court should have been confined to a review of the record of the Commission to the Five Civilized Tribes.

Mr. Potter:

I now wish to read in evidence the certificate of the minister who performed the marriage ceremony in the State of Arkansas, County of Polk. (Read the certificate which is marked Ex. "C".)

-0-

W.R.Cross,

being sworn as a witness in his own behalf, testified as follows;--

Mr. Potter:

Q.- What is your name?

A.- W.R.Cross.

Q.- What is your Postoffice?

A.- ~~Overbrook~~ Overbrook.

Q.- Indian Territory?

A.- Yes, sir; Chickasaw Nation.

Q.- How old are you?

A.- 52.

Q.- How long have you resided in the Territory?

A.- Forty two years.

Q.- When were you first married, Mr. Cross?

A.- In 1895.

Q.- To whom were you married?

A.- Hannah Airington; her maiden name was Airington; she was Hannah Wells at that time.

Q.- Was she a widow at that time?

A.- Yes, sir.

Q.- Are you a white man, a citizen of the United States?

A.- Yes, sir.

Q.- What was Hannah Wells; what race she belong to?

Mr. Cornish;

The Choctaw and Chickasaw Nations object to the question and the answer sought to be elicited by it and in support of that objection state that the only and best evidence of the citizenship of the woman, to whom this man is alleged to have been originally married is the record evidence of the adjudication of ^{her} ~~his~~ status under existing laws, if she is living, and if she is dead, the adjudication of the living relatives of this woman.

The testimony sought to be elicited by this question is grossly incompetent and should not be considered by this Court.

Mr. Potter;

I think the testimony as it proceeds will explain itself.

Judge Weaver;

The objection will be noted and reserved for consideration by the Court.

Mr. Potter;

Q.- State whether she was an Indian; if so, what kind?

A.- Choctaw Indian.

Q.- How do you know she was a Choctaw?

A.- Her mother claimed to be a half breed, or said she was.

Mr. Cornish;

We renew the ~~same~~ objection just urged and in addition to that we further object to this testimony for the reason that it is hear say testimony and for that reason it is not competent.

Mr. Potter.

Q.- Is her mother living or dead?

A.- She is dead.

Q.- Where did this woman live when you married her?

A.- She lived in the Choctaw Nation, Neshoba County.

Q.- How long did you live near her?

A.- Ever since I was ten years old.

Q.- Where had she lived while you knew her?

A.- On the same place there in about five miles of the Choctaw Line on the Mountain Fork, I was raised on one side and she was raised on the other.

Q.- Her father's name was Airington?

A.- Yes, sir.

Q.- Do you know whether she was generally recognized as a member of the Tribe

A.- Yes, sir.

Q.- Do you know whether she was on the Choctaw Roll of citizens, or not?

A.- Yes, sir.

Mr. Cornish;

The Choctaw and Chickasaw Nations object to the question and answer and urge all the objections previously offered and in addition urge that the roll is now in existence and the only competent evidence would be a certified copy of the roll, of such a portion of it, as would be necessary to establish the citizenship of this woman.

Mr. Potter;

I have a case that I want to get hold of the Choctaw Rolls to introduce as well as in this case. I want to know whether the roll books themselves will be required to be brought into Court, or whether a copy of an entry will be sufficient, if certified to by the custodian of the rolls.

Mr. Cornish;

I will answer the inquiry; all of the citizenship records that the Choctaw Nation ever prepared are in the possession of the Commission to the Five Civilized Tribes, under existing laws, to be used by them in making the final rolls of the Choctaw and Chicksaw Nations. All of the citizenship records that have ever been in existence are in the possession of the Commission to the Five Civilized Tribes. Now, our statement is not only, will we be willing to accept it, but we think it is competent testimony to introduce in this Court certificates of the Commission reflecting certain portions of these rolls.

Mr. Potter;

We will ask permission of the Court to do that.

Q.- Mr. Cross, you say you were married in April 1875?

A.- Yes, sir, I think it was the 18th. of April; I am not positive about that.

Q.- Who performed the ceremony for you?

A.- I think it was a man named Green.

Q.- Was he a minister of the gospel?

A.- Yes, sir.

Q.- Where was the ceremony performed?

A.- About five miles from the line in Arkansas.

Q.- Over in the State of Arkansas about five miles from the Choctaw Line?

A.- Yes, sir.

Q.- That was where the preacher lived?

A.- Yes, sir.

- A. (Con) At his house: when I went to him he said you will have to have a license.
- Q.- You went to Polk County and got the license?
- A.- Yes, sir.
- Q.- He said you would have to have a license?
- A.- Yes, sir.
- Q.- You went to Arkansas and got a license and were married under the laws of Arkansas?
- A.- Yes, sir.
- Q.- After your marriage where did you go?
- A.- Back home; I stayed one night with my father-in-law and then went back home.
- Q.- Is your wife living or dead?
- A.- She is dead.
- Q.- When did she die?
- A.- Well, it has been about 18 years ago, I guess.
- Q.- How long did you live with her?
- A.- About nine years.
- Q.- Where did you live while you lived with her?
- A.- Mostly in Blue County, six miles below ~~Durham~~ Caddo.
- Q.- Did you ever live anywhere else with her than in the Choctaw Nation?
- A.- Yes, sir, I moved with her to the Chickasaw Nation.
- Q.- You lived in the Choctaw or Chickasaw Nations from the time you married her until she died?
- A.- Yes, sir.
- Q.- And you have lived in the Indian Territory ever since?
- A.- Yes, sir.
- Q.- Did you have any children?

A.- I had four, there are but two living.

Q.- Did you live together as man and wife all that time?

A.- Yes, sir.

Q.- The witness, Mr. Airington, that has been sworn, is he related to your first wife?

A.- Yes, sir; they were half brother and sister.

C r o s s E x a m i n a t i o n ,

Mr. Cornish;

Q.- You say your first wife had been married prior to your marriage to her?

A.- Yes, sir.

Q.- To whom had she been married?

A.- Sam Wells.

Q.- When did she marry him?

A.- I don't recollect.

Q.- How long before your marriage to her?

A.- I think it was something near three years.

Q.- Was Sam Wells living or dead at the time you married her?

A.- I think he was living; he was sent to the Penn and I never heard anything more of him.

Q.- How long prior to your marriage to her was he sent to the Penn.

A.- I suppose it was a year, not much over a year.

Q.- By what Court was he convicted and sent away?

A.- It was in Texas some place.

Q.- Don't you know; you know about these people?

A.- He moved off after they married?

Q.- Was the woman living as his wife with Sam Wells at the time of his conviction?

A.- Yes, sir.

Q.- Had this woman been divorced at the time you married her?

A.- No, sir, not that I know of.

Q.- Then you married her without knowing whether or not she had been divorced?

A.- I don't know whether they had any separation, but she said she would never live with him no how.

Mr. Potter;

Q.- Had she returned to her father?

A.- Yes, sir.

Mr. Cornish;

Q.- You did not procure a license, under the laws of the Choctaw Nation at the time you married her?

A.- No, sir, I did not know there was any license.

Q.- You did not procure a license.

A.- Not under the Choctaw Law,

Q.- The only license you procured was a license issued by the State Authorities of the State of Arkansas?

A.- Yes, sir.

Q.- You say you now have two children living by this wife?

A.- Yes, sir.

Q.- What are their names and where do they live?

A.- Olando Cross and George Washington Cross.

Q.- Are they living and have they children?

A.- Yes, sir, they live close to Ardmore.

Mr. Potter.

Q.- Had Mrs. Wells, returned to her father when you married her?

A.- Yes, sir.

Q.- How long had she been back in the Territory?

A.- About a year.

Q.- Have you ever seen or heard anything of Wells since?

A.- No, I never have.

Mr. Cornish;

Q.- When was it that you remarried after the death of this wife, in what year.

A.- I don't recollect.

Q.- How long after the death of this first wife was it.

A.- About three years.

Q.- Then you remarried?

A.- Yes, sir.

Q.- To whom were you married the second time?

A.- Selema Hurd, that was her maiden name, she had been married before.

Q.- Was she a white woman?

A.- Yes, sir.

Q.- After the death of your first wife, you lived single about three years and then remarried about 15 years ago to a white woman?

A.- Yes, sir.

Q.- And a citizen of the United States?

A.- Yes, sir.

Witness excused.

W i l l i a m A i r i n g t o n ,

called as a witness on behalf of the plaintiff, being duly sworn testified as follows;

Mr. Potter;

Q.-What is your name?

A.- William Airington.

Q.- What is your postoffice address?

A.- Caddo.

Q.- Indian Territory?

A.- Yes, sir.

Q.- How old are you, Mr. Airington?

A.- I am going on 57.

Q.- Are you a member of any Indian Tribe?

A.- I guess so.

Q.- What tribe?

A.- Choctaw, that is what I claim.

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

A.- I have lived in the Choctaw Nation all my life.

Q.- Born here?

A.- Never lived in the States.

Q.- Has there ever been any dispute about your citizenship in the Choctaw Nation?

A.- No, sir. None at all.

Mr. Cornish;

I will state frankly in as much as it has not been held by this Court, as to how these cases shall proceed, in regard to the character of proof ^{that} will be considered, I am at a loss to understand this. If this man is a Choctaw In-

dian, and it would seem that he is, it would be grossly incompetent for him to give oral testimony as to his adjudicated status, for the purpose of fixing the status of his deceased sister. He should furnish this Court with a certified copy of the record that adjudicates his status; we shall object with all the force possible, not only for its effect on this case, but for its effect on a vast number of other cases, to this manner of fixing the status of a person in issue here. It is not difficult at all to comply with this rule; it is extremely easy to do, if the facts exist as the testimony seems to indicate. That is the only testimony to furnish that is competent. If this man has an adjudicated status there is a record of it; that record can be produced in this Court, then the ordinary proof can be resorted to, to establish his relationship with this woman.

Mr. Potter;

I beg to submit that it would be very unnecessary and very troublesome for a man to have to bring into this Court a certificate for every witness that he wants to introduce. I understand that it is very necessary and proper to introduce the rolls, where the parties from whom the citizenship is inherited, are known to be on the rolls. Of course, we know that there are many of these Indians who were never on the rolls, but the great majority of them were. I take it that any man who wants to try his case right will introduce that testimony if he can, but because I ask this witness whether he is a Choctaw Indian and to hold that he is precluded from answering because I have not a certified copy of the roll upon which his name appears, seems to me

would be carrying the rule too far; I ask this in order to show his status and his knowledge of the status of the woman.

Mr. Cornish;

When Judge Potter commenced to speak, I thought that I had anticipated the purpose of the question a little too far, but he now states that in giving this testimony he wishes the witness to fix the status of this ~~woman~~ woman; we object to him giving any testimony as to his status as a Choctaw Indian, without first establishing by competent proof that he is a Choctaw Indian. This country is full of alleged Choctaws; he can't possibly speak upon any proposition based upon the fact that he is a Choctaw Indian until he has furnished this Court with competent testimony that he is a Choctaw Indian. It is stated that it is desired to have this man qualify himself as a Choctaw Indian in order that he may testify that this woman was a Choctaw; there is record evidence of the status of this man, and that is the only competent testimony by which he can fix his status in this Court for the purpose of fixing the status of his relatives.

Judge Weaver;

The same ruling as before?

Mr. Potter;

Q.- Did you know Hannah Wells, that married W.R. Cross?

A.- Yes, sir.

Q.- Was she related to you in any way?

A.- She was a half sister.

Q.- Where was she born and raised?

A.- She was born in ~~W~~ Wolf County, or Nesuba County is the

Indian name.

Q.- What is the Indian name of the County?

A.- Neshoba.

Q.- Do you know whether she was ever married to Mr. Cross or not?

A.- Yes, I did not see them married.

Q.- You went with ^{him} to Dallas in Arkansas?

A.- Yes, sir.

Q.- To get his license?

A.- Yes, sir.

Q.- To marry your half sister?

A.- Yes, sir.

Q.- Your father had been married twice then?

A.- Yes, he married in Mississippi; my mother he married in Mississippi and she died at Wheelock, on Red River, and my Aunt came through just as my mother died and my mother requested her to stay with the children as long as she lived and she stayed with the children about three or four years, before he married her.

Q.- Then your father married sisters?

A.- Yes, sir.

Q.- You were a child by his first wife?

A.- Yes, sir.

Q.- And Mrs. Cross was a child by his second wife?

A.- Yes, sir.

Q.- Do you know whether she was always recognized as a Choctaw Indian or not?

A.- Yes, she was always recognized.

Q.- Well, do you know about her marrying a man by the name of Wells?

A.- Yes, sir.

Q.- What became of Wells?

A.- He went to the Penitentiary, they sent him off. He moved down into Texas and got into trouble.

Q.- Well, do you know whether he was living at the time your sister married Cross?

A.- No, sir, I don't know, I never heard of him after he was sent away.

Q.- Do you know whether your sister obtained a divorce from him in any of the Indian Courts?

A.- I think not.

Q.- After Cross and her married where did they live?

A.- They lived in Wolf County, until they moved to Blue County.

Q.- They lived always in the Territory until she died?

A.- Yes, sir.

Q.- They were always recognized as married people?

A.- Yes, sir.

C r o s s E x a m i n a t i o n ,

Mr. Cornish:

Q.- When did your half sister Hannah marry this man Wells?

A.- I could not tell you?

Q.- Can you fix the time about?

A.- No, sir.

Q.- How long was it from the time she married Wells before she married this man Cross?

A.- Two or three years.

Q.- Where was she married to Wells?

A.- Right there in Wolf County.

Q.- How long did she live with him?

A.- I don't know exactly to tell you the truth about it. But it was two or three years.

Q.- How long after Wells got into trouble was it that she married ~~trouble with~~ this man Cross.

A.- I don't know.

Q.- Fix the time as near as you can. Was it one, two or ten years.

A.- I will say two or three years.

Q.- Then she married this man Cross two or three years after Wells got into trouble and Wells was sent away?

A.- Yes, sir.

Mr. Potter;

Q.- Have you ever heard of Wells since?

A.- No, sir.

Q.- He has never been back into that country?

A.- No, sir, if he has I have never heard of him at all.

Q.-
Mr. Potter;

That is all the testimony we have to offer now; I want an opportunity of getting a copy of her enrollment as it appears upon the rolls of the Dawes Commission and I also want to get a copy of the marriage license of Polk County, I don't know but that I might have secured that before, had I known anything about the case before I came over here; it is possible; I don't know whether this marriage is legal or not-- I want to look into the question of whether there was a divorce or not; I don't know whether under the Choctaw Law that was legal, but if there is any other testimony on that point I want to introduce it.

Judge Weaver;

How much time would you like to have, Judge Potter?

Mr. Potter;

It would look like I ought to get a certified copy of the rolls and the marriage license in a few days, I don't know whether there was any divorce or not; I don't know of any; it would not take long to do it; say ten, fifteen or twenty days?

Judge Weaver; Very well.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT, SITTING AT SOUTH MOALESTON, FEBRUARY TERM, 1904.

W. R. Cross, Plaintiff.
vs. No. 52.
The Choctaw and Chickasaw Nations, Defendants.

DE M U R R E R.

Come the Choctaw and Chickasaw Nations and demur to the evidence submitted on behalf of the plaintiff, and in support thereof state that the same is not sufficient to warrant this Honorable court in admitting him to enrollment as a citizen of the Choctaw Nation.

THE CHOCTAW NATION
THE CHICKASAW NATION,

BY _____
ATTORNEYS

W. R. Corss,

vs. No. 52.

The Choctaw and Chickasaw Nations.

Present and presiding the Honorables, Spencer B. Adams, Chief Judge and Walter L. Weaver and Hery S. Foote, Associate Judges.

FEBRUARY 2, 1904. This day this cause coming on to be heard defendants being represented by Counsel, the following proceeding were had, to-wit:

JUDGE ADAMS:

I have a letter from Judge Potter saying that he was sick and unable to be here, and that his understanding was that there was no disagreement about the facts, that you gentlemen had no evidence to introduce and that he had none, except that there was a certificate from the Dawes Commission that had been filed with the papers and that he wanted that introduced. "Reads letter from Mr. Potter."

Mr. Cornish:

That has been filed.

JUDGE ADAMS:

So he says.

JUDGE FOOTE:

I don't know whether it is competent or not, I have not see if.

JUDGE ADAMS:

"Reads certificate from Dawes Commission."

Mr. Cornish:

We will state to the Court that the Nations would not be willing to accept that as conclusively establishing the citizenship of the woman but for a knowledge of the facts. There is no controversy but that she is an Indian woman. There are only questions of law in the case.

JUDGE ADAMS:

I understand from his brief that she was an Indian woman and that she married somebody and that the man left the country and that she married again.

JUDGE FOOTE:

Married Indian woman in Arkansas under arkansas laws?

Mr. Cornish:

No testimony to show that that she was married under the tribal laws, aside from her illegibility to enter into the matrimonial state.

JUDGE FOOTR:

You will file a brief.

Mr. Cornish:

We will file a memorandum of argument today or tomorrow.

JUDGE ADAMS:

Well mark this submitted.

BEFORE THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,
SITTING AT SOUTH McALESTER, INDIAN TERRITORY,
FEBRUARY TERM, 1904.

William R. Cross,

vs.

No. 52.

Choctaw and Chickasaw Nations.

DECREE OF COURT.

On this February 29, 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 plaintiff, William R. Cross, is not entitled to be deemed a citizen, or to admission to enrollment as an intermarried citizen of the Choctaw Nation, or to any rights as such citizen flowing therefrom.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the petition of the plaintiff, William R. Cross, be denied and that he be not deemed an intermarried citizen of the Choctaw Nation and not entitled to enrollment as such, or to any rights whatever flowing therefrom.

.....
Chief Judge.

.....
Associate Judge.

.....
Associate Judge.

In the Choctaw and Chickasaw Citizenship Court, sitting at South McAlester, in the Central District of the Indian Territory, in the Choctaw Nation, February Term, 1904.

W. R. Cross,

Plaintiff.

No. 52.

vs.

Choctaw and Chickasaw Nations,

Defendants.

Opinion by FOOTE, Associate Judge.

This case comes here by appeal in the ordinary way from the United States Court for the Central District of the Indian Territory.

The appellant, Cross, claims to be entitled to the rights of an intermarried citizen of the Choctaw Nation. He alleges himself to have been married according to the laws of Arkansas, and not of the Choctaw Nation, about the year 1875. His alleged wife claimed to be a Choctaw woman; she had been married, it is said, to a white man named Wells, and went with him to Texas. There, in a year or two after his alleged marriage, Wells, was sent to the penitentiary, and never lived with his wife afterwards; and this appellant, as he says, about three years after she had been married to Wells and about one year after Wells was sent to the penitentiary endeavored to marry her and went through the forms of a marriage with her under the laws of the State of Arkansas.

At the time of the appellants' alleged marriage to this Choctaw woman he knew that her husband Wells and she had not been divorced under any law; his knowledge as to

whether Wells was dead or living at that time, is, to quote his own language on cross examination: "I think he was living, he was sent to the Penn and I never heard anything more of him."

Not only had seven years not elapsed after Wells was last heard from, when the appellant married this Choctaw woman, but only at the furthest a year or two had elapsed from the time, when the appellant believed Wells to be living and so testified, when he tried to marry under the laws of Arkansas, the undivorced wife of Wells.

If any presumption could be indulged in at all in this matter, it must be that Wells was alive at the time of the alleged marriage of appellant to Well's Choctaw wife.

The law of 1840 (Laws of the Choctaw Nation 1869, page 76 & 77) relative to marriage by white men with Choctaw women, was still in force when appellant attempted to marry this Choctaw woman. It provided what should be done before a white man could by intermarriage be admitted to the rights of citizenship, and, as we have seen, appellant complied with none of its provisions. In fact the evidence shows that appellant believed that Wells, the first husband, was not dead but living at the time the appellant essayed the Arkansas marriage; that the Choctaw woman was not divorced from Wells, but did not intend, so she said, to live with him again; and so undivorced she and the appellant went into Arkansas and tried to get married there, disregarding the laws of the Choctaw Nation, and disregarding the fact that the presumption at least existed that Wells was still alive.

My conclusion is that under the evidence here adduced the appellant was never married under any binding

or existing law, either Choctaw or any other, to his
alleged Choctaw wife, and that he is not entitled to be deemed
an intermarried citizen of the Choctaw Nation, or to any other
of the rights which flow therefrom, and it is SO ORDERED.

(Signed) H. S. Foote,
Associate Judge.

We concur:

Spencer B. Adams,
Chief Judge.

(Signed) Walter L. Weaver,
Associate Judge.