No 101.

John Mitchell et. al.

vs.

Choctaw Nation

No. 116.

Central District Court.

No

Dawes Commission

Peter Folsom

92 50

Pay to
M. McCartan & Co

For
Joe Burns (minor)
Kizzie Barnett
Jerry Folsom Apl 5th

Pd

OFFICE
NET PROCEEDS COMMISSION
CHOCTAW NATION.

...sses

For Claimants.

Sam Perry ----	Wiley. I.T.
Rachel Colbert --	
Andrew J. Mitchell -	Jeffs. I.T.
Tom York. ----	~~Simpson~~ McAlester I.T.
John Mitchell --	Jeffs. I.T.
Green W. Taylor --	Stringtown
J. J. Gardner --	
Ruff Gardner.	Atoka
A. D. Durant --	Durant
Jerusha Carter	Durant

For Nations.

Mrs. Serena Robb ---	Atoka.
J.C. Folsom ---	"
J.C. Wiley ----	Nashville Howard Co. Ark.
C. von Weise	Tishomingo I.T.
Jerry Folsom	Colbert

Board of Green McCutcheon
Very interesting papers
about guardianship

Self Emigration
and
Lost Property.

Scullyville, C.N.

The Choctaw Nation,
To Peter Folsom Dr.

To Self Emigration of his father Edmund Folsom and his family from the State of Alabama Sumpter County in the year 1831 to the Choctaw Nation, West - namely his wife Yo-Koh-to-nah and their two children Rachael and Coffee Folsom and Nak-Ko-nay - Five (5) Persons in all at $27 60/100 — 138 00

" Lost Property.

" 1 Mare — 40 00

200 Hogs (from one to three year old) at $4 each — 800 00

allowed $2.50/100 for hogs.

Deduct $300 overcharge in Hogs. Total $978 00

Scullyville C.N. }
July 2nd A.D. 1875 } On this day personally appeared before me, Sandy Walker, Chief Commissioner of the Court of Claims for Moshulatubbe District of the Choctaw Nation, under and by virtue of an Act of the General Council of the Choctaw Nation, passed Nov. 6th A.D. 1872. Creating a Court of Claims &c. Peter Folsom, whose name is attached to the above account, being duly sworn, declares - that his father Edmund Folsom emigrated himself and his family from the

POWER OF ATTORNEY.

County of .....
CHOCTAW NATION,
Ind. Ter.

Know all Men by These Presents:--

That I, I. Green McCurtain as Guardian for in the County of Sans Bois, Choctaw Nation, have made, constituted and appointed, and by these presents DO MAKE, CONSTITUTE AND APPOINT McCurtain & Co, of Choctaw Nation my true and lawful attorney for me and in my name, place and stead to present to the proper authorities, my claim against the Choctaw Nation, under the XII Article of the treaty of 1855, by virtue of the payment to and acceptance by the Choctaw Nation of the NET PROCEEDS MONEY, and to collect, receipt for and to account to me for the same, giving my said attorney full power to do everything whatsoever, requisite and necessary to be done in the premises, as fully as I could do if personally present, with full power of substitution, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do, or cause to be done, by virtue hereof.

IN WITNESS WHEREOF I have hereunto set my hand and seal the 4 day of April A. D. 1889.

Signed, sealed and delivered in the presence of

.....

.....

I. Green McCurtain [SEAL]
Guardian for Joseph Burns, Minor.

N B.—Claimant must sign both English and Choctaw name, if he is known by both. Two witnesses who write must witness claimant's signature or mark.

Phoenix Steam Print, Muskogee, I. T.

POWER OF ATTORNEY.

FOR CHOCTAW CLAIMANTS.

CLAIMANT:

Grant McCurtain Guardian

ATTORNEY:

McCurtain & Co

No 33

CHOCTAW NATION,

.....County.

I hereby appoint ..... *as my substitute, with full power to act for me as fully as I myself could do, hereby confirming all his acts hereunder as my own. This* ..... *day of* ..... *A. D. 188*.....

Attorney for .....

Choctaw Nation County of Sansbois
Know all men by these presents
that we, Green McCurtain
of the county of Sansbois in the
Choctaw Nation, as principal and
J. N. Hampton as securities are held
firmly bound unto Jerry Folsom,
Judge of the County Court of Sansbois
County, and to his successor in office
in the penal sum of four hundred
dollars, for the payment of which,
well and truly to be made, we bind
ourselves, our heirs, executors and
administrators firmly by these presents,
the Condition of the above obligations is
such that whereas the said, Green.-
McCurtain, was on the 22nd day of March
1889 appointed by the County Court, and
by the probate side of said County Court
for the County of Sansbois, Guardian
of Joe. Burns a minor under the
age of 18 years,
Now if the said Green. McCurtain
shall duly render according to law,
just and true accounts of guardian-
ship, and if the said Green McCurtain,
his heirs, executors or administrators
upon the termination or ceasing of
such Guardianship, shall deliver

and pay to the said Jos. Burns his executors or administrators, or any guardian that may be appointed to the said Jos. Burns, after the termination or ceasing of the guardianship of the said Green. McCurtain all the money, property and effects belonging to Jos. Burns in the possession, or or under the control of the said Green. McCurtain and if the said Green. McCurtain shall in all things, faithfully perform and fulfill the duty as guardian as aforesaid, then this obligation shall be void and of none effect, otherwise to be and remain in full force and virtue. Witness our hands and seals this 22nd day of March 1889.

Signed in presence of us

Green. McCurtain (seal)
S. W. Hampton (seal)

I do hereby certify that this is a true and correct copy of the original now on file in my office this the 22nd day of March, 1889.

Wallace Bond
County Clerk
Sans Bois Co

Approved
this Mar. 22nd. AD 1889
Jerry. Folsom
County Judge
Sanbois Co.
C.N.

Filed in the office
of the County Clerk
of Sans Bois Co. C.N.
this 22nd day Mch 1889

Wallace Bond
County Clerk
Sans Bois Co

Cases Nos -
33 and 241
1st Dist -

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

John Mitchell, et al.,

vs. No.101.

The Choctaw & Chickasaw Nations.

MEMORANDUM OF ARGUMENT FOR NATIONS.

Applicants filed their petition before the Commission to the Five Civilized Tribes, alleging that Ned Folsom, a white man, married a full blood Choctaw woman by whom he became the father of a daughter named Rebecca Folsom who married a man named David Mitchell by whom she had two sons, John and Andrew. John Mitchell and his descendants are the applicants here.

The record brought to this court is the usual aggregation of affidavits and depositions filed before the Dawes Commission and the United States Court and are incompetent for reasons so often urged before this Court, but as applicants have offered them for the consideration of the Court we shall comment briefly thereon.

The first suspicious circumstance in the case is that Samuel Perry's affidavit appears in the record, by which it appears that David and Rebecca Mitchell (nee Folsom) resided in Pontotoc County, Mississippi in 1850; that they were the parents of John Mitchell; that David Mitchell was a white man; that witness knew John Mitchell's maternal grandparents and that his maternal grandmother was a full blood Choctaw Indian.

Perry is followed by Rachel Colbert who also knew about

the same facts as Perry, but who knew the Mitchell family in Cotton Gin County, Mississippi. This county has entirely disappeared from the map, but this discrepancy is rendered harmless by Andrew J. Mitchell, who immediately followed her, and who snatched the family back to Pontotoc County and locates it securely "near the town of Pontotoc".

The claims of geography, however, are to receive no consideration in this case for Tom York, who was born in Leake County, Mississippi, in 1822, testified to the birth of Rebecca Folsom in 1800; that he got acquainted with her and her husband in 1830, but did not get acquainted with their son until 1845, when they met in Pontotoc County, some six or seven counties north of where York lived; he also fixes the residence of David and Rebecca Mitchell as early as 1830 in Pontotoc County, Mississippi.

The testimony of Tennessee Gardner is instructive only as to the methods of examination which prevailed before the Committee of Council which passed on these cases.

T. C. Wiley, who claims to have known John Mitchell since his birth, says that said Mitchell was born in Pontotoc County, Mississippi.

Samuel Perry again rushed into the breach and furnished applicants with a deposition for use in the United States Court, in which he as usual showed himself as full of information as an egg is of meat, but unfortunately for applicants the more Sam knows about a case the more suspicious it becomes.

The testimony of Green Taylor and D. D. Durant we have purposely not taken up for the reason that they both were witnesses before this Court and we shall discuss all of their testimony at one time.

Green Taylor, who testified twice for applicants before appearing in this Court, at all times showed himself possessed of

a most intimate and detailed knowledge of applicants' family affairs, but when on the stand it appears that when eight or nine years of age he moved into the neighborhood where applicants lived, in Pontotoc County, Mississippi, and lived there for about nine years. He left there when little more than a boy and if he is to be believed he must have spent much of his boyhood in discussing the family relationships with the mother of John Mitchell. The credit that is to be given this witness' testimony may be judged when it is recalled that he testified to Pontotoc County being in the old Choctaw Nation and that he knew Tom York, a Choctaw Indian who lived in that County. Tom York has been thoroughly impeached in this Court and it was established in the case of John McCarty, et al., No.29, that he lived only in Leake County in Mississippi, which is in the old Choctaw country and which agrees with the well known fact that Tom York was a full blood Choctaw Indian. It also appears conclusively from an examination of the maps that Pontotoc County is in the old Chickasaw Nation and not in the old Choctaw Nation. These contradictions and false statements are sufficient, we submit, to show that the testimony of this witness is not entitled to weight.

D. D. Durant, who testified twice in this case before it reached this Court, was, according to the statement of applicants' counsel, brought to South McAlester to testify, but on account of having made conflicting statements refused to go on the stand and returned home without testifying. Later his testimony was secured by the personal attendance of a member of the Court at Durant. His statement now is that he became acquainted with the family of applicants when, as a child, he returned on a visit to Mississippi. That he had no previous acquaintance with them and stopped at their house when on his way from Indian Territory to the neighborhood of Durant, Mississippi, at the request of David Folsom. He says distinctly that he made this visit to Mitchell on his first trip back to Mis-

sissippi, at which time he was returning to Durant, Mississippi. If this be true, he went more than two-hundred miles out of his way and as he was only a child and stayed in the family only fifteen days, it is a little remarkable that he should have obtained so intimate a knowledge of the family history.

This is the first time the witness ever told of this trip to Mississippi although he has twice before testified in regard to the matter.

The testimony of this same witness was taken in the Hiram Lancaster case and has been introduced by the Nations for the purposes of impeachment in this case. It seems that his knowledge of the Lancaster family, which has been shown to have no foundation in fact, was obtained on one of these flying trips to Mississippi.

More than that, this witness acknowledges, in his testimony before one of the Judges of this Court, to have signed two affidavits,differing materially from his present testimony,which he says he signed and swore to knowing them to be untrue and that it was his universal custom to make any kind of an affidavit he was asked to make.

We protest this this man's evidence is wholly unworthy of belief and that his confessed contempt for his oath is sufficient of itself to cast doubt on any case in which he appears as a witness.

This record, aside from the testimony of J. C. Folsom, fails to prove applicants' claim, but his evidence conclusively excludes them from the family to which they seek to attach themselves. Had they been really related to the well known Folsom family they would not have waited until they were attempting to prove their citizenship claim to establish the relationship and would not have considered it necessary to offer to pay J. C. Folsom for his assistance.

Applicants have not attempted to prove any compliance on

the part of themselves or their ancestors with the requirements of the treaty of 1830.

Having failed upon both of the essential issues in the case, their application should be denied.

Respectfully submitted,

Mansfield McMurray Counsel

Attorneys for Choctaw & Chickasaw Nations.

No. 101.

John Mitchell, et al.,

vs.

Choctaw and Chickasaw Nations

Memorandum of Argument for Nations.

Manypenny, McMurray & Cornish

Attorneys for Nations

In the ~~United States~~ Choctaw and Chickasaw Citizenship Court - Sitting at South McAlester, I.T.

John Mitchell et al
Plaintiffs

v

The Choctaw and Chickasaw Nations
Defendants

Memorandum of Argument for Nations

Applicants filed their petition before the Commission to the Five Civilized Tribes, alleging that Ned Folsom, a white man married a full blood Choctaw woman by whom he became the father of a daughter named Rebecca Folsom who married a man named David Mitchell by whom she had two sons, John and Andrew. John Mitchell and his descendants are the ap

plicants here.

The record ~~before this~~ brought to this court is the usual aggregation of affidavits and depositions ~~taken~~ filed before the Dawes Commission and the United States Court and are incompetent for reasons so often urged before this court, but as applicants have offered them for the consideration of the court we shall comment briefly thereon.

The first suspicious circumstance in the case is that Samuel Perry's affidavit appears in the record ~~who say~~ by which it appears that David and Rebecca Mitchell (nee Folsom) resided in Pontotoc County Mississippi in 1850; that they were the parents of John Mitchell; that David Mitchell was a white man; that witness knew John Mitchell's maternal grand parents and that his maternal grandmother was a full blood Chactaw Indian.

Perry is followed by Rachel Colbert who also knew about the same facts as Perry, but who knew the Mitchell family in Cotton Gin County, Miss. This county has entirely disappeared from the map, but this discrepancy is

rendered harmless by Andrew J Mitchell who immediately followed her and who snatched the family back to Pontotoc County and locates it securely "near the town of Pontotoc,"

The claims of geography, however, are to receive no consideration in this case for Tom York who was born in Leak County, Mississippi, in 1822, testified to the birth of Rebecca Folsom was born in 1800; that he got acquainted with her and her husband in 1830, but did not get acquainted with their son until 1845 when they met in Pontotoc County, some 6 or 7 counties north of where York lived; He also fixes the residence of David and Rebecca Mitchell as early as 1830 in Pontotoc Co Miss.

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The testimony of Green Taylor and D D Durant we have purposely not taken up for the reason that they both were witnesses befor this court and we shall discuss all of their testimony at one time

Green Taylor who testified twice ~~befor~~ for applicants befor appearing in this court and at all times showed himself possessed of a most intimate and detailed knowledge of Applicants family affairs, ~~when confronted, however, with the affidavit made before D A Richardson shields himself behind his inability to see and and trys to cast doubt on the~~

~~accuracy with which his statements were written down, but even by his own admissions enough of the affidavit is correct to prove the inaccuracy of his testimony~~

but when on the stand it appears that when 8 or 9 years of age he moved into the neighborhood where applicants lived in Pontotoc County Mississippi and lived there for about 9 years. He left there when little more than a boy and if he is to be believed he must have spent much of his boyhood in discussing the family relationships with the mother of John Mitchell The credit that is to be given this witnesses testimony may be judged when it is recalled that he testified to Pontotoc County being in the old Choctaw Nation and that he knew Tom York ~~in Ponto~~ a Choctaw Indian who lived in that County. Tom York has been thoroughly impeached in this court and it was established in ~~another case~~ the case of John W. Carty et al vs. 29 that he lived

only in Leak County in Mississippi which is in ~~the~~ the old Choctaw Country, and which agrees with the well known fact that Tom York was a full blood Choctaw Indian. (over) ~~It also appears conclusively from an examination of the Maps that Pontotoc County is (over)~~

D. D. Durant, who testified twice in this case before it reached this court, was, according to the statement of applicant's Counsel brought to South McAlester to testify, but on account of having made conflicting statements refused to go on the stand ~~and~~ and returned home without testifying. Later his testimony was secured by the personal attendance of a member of the court at Durant. His statement now is that he became acquainted with the family of applicants when as a child he returned on a visit to Mississippi. That he had no previous acquaintance with them and stopped at their house when on his way from Indian Territory to the neighborhood of Durant, Mississippi

It also appears conclusively from an examination of the maps that ~~the~~ Pulotoe County is in the old Chickasaw Nation + not in the old Choctaw Nation. —

~~These~~ These contradictions and false statements are sufficient we submit to show that the testimony of this witness is not entitled to weight +

at the request of David Dolson. He says distinctly that he made this visit to Mitchell on his first trip back to Mississippi at which time he was returning to Durant, Miss. If this be true he went more than 200 miles out of his way and as he was only a child and stayed in the family only 15 days, it is a little remarkable that he should have obtained so intimate a knowledge of the family history.

This is the first time the witness ever told of this trip to Mississippi although he has twice before testified in regard to the matter.

(Over) The testimony of this same witness was ~~taken by applicants in the Wayne Lancaster case in this case before and the same was introduced by Defendants in their cast at his home Dorow, Ind. Ta. The cross examination of this witness.~~ It seems that his knowledge of the Lancaster family, which has been shown to have no foundation in fact, was obtained on one of these flying trips to Mississippi.

More than that this witness

Mr Coke in the Henam Lancaster Case
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peachment, in this Case —

in his ~~testimony~~ before one of the Judges of this Court to acknowledges have signed two affidavits differing materially from his present testimony which he says he signed and swore to knowing them to be untrue and that it was his universal custom to make any kind of an affidavit he was asked to make.

We protest that this man's evidence is wholly unworthy of belief and that his ~~appearance~~ confessed contempt for his oath ~~as a witness~~ is sufficient of itself to cast doubt on any case in which he appears as a witness.

This record aside from the testimony of J C Folsom ~~disproves~~ fails to prove applicant's claim, but his evidence conclusively excludes them from the family to which they seek to attach themselves. Had they been really related to the well-known Folsom family they would not have waited until they were attempting to prove their citizen-ship claim to establish the relationship and would not have considered it necessary to offer to ~~buy evidence~~ pay

J C Folsom for his assistance

Applicants have not attempted to prove ~~it~~ any compliance on the part of themselves or their ancestors with the requirements of the treaty of 1830. ~~and cannot be denied on that ground.~~

~~The testimony fails to prove a single fact material, to~~ ~~the~~ applicants ~~claim~~

Applicants having utterly failed to ~~prove their claim~~, their petition should be denied

~~Respectfully Submitted~~

~~Atty for Choctaw Nation~~

Having failed upon both the essential issues in the case, their application should be denied —

Respectfully submitted

Attorney for Choctaw & Chickasaw Nations

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

JOHN MITCHELL, ET AL., - - - Plaintiffs,	()	Number_____
-vs-	()	APPLICATION TO TAKE THE
CHOCTAW AND CHICKASAW NATIONS, Defendants.	()	DEPOSITION OF D.D.DURANT.

Comes now the petitioners and move the court here to grant an order permitting them to take the deposition, before one of the Judges of this Court, of D. D. Durant, who resides at Durant, Indian Territory, and represent that on the trial of this cause the said D. D. Durant had been subpoenaed to appear and testify as a witness; but, on account of being taken sick a few days prior to the calling of this case he was forced to return home, and has been confined to his bed and room ever since. That he is, at present unable to leave his room; is about 68 or 70 years of age, and appears to be a full-blood Choctaw Indian, and speaks the Choctaw and English languages.

Your petitioners state that they are informed and believe that if present, or if his deposition can be taken, he will testify that he was acquainted with the father and mother of the applicant, John Mitchell; that the mother was a Choctaw Indian by blood, being about one-half, and that the father was a white man. That he was also acquainted with the father and mother of the applicant's mother's mother, and that her said mother was a full-blood Choctaw Indian, and the father was a white person. That they lived in the state of Mississippi and were recognized as Choctaw Indians and spoke the Choctaw language. That they lived in that part of the state of Mississippi, known as the old Choctaw Nation .

Wherefore, your petitioners pray that an order be granted that one of the Judges of this Court take the deposition of said D. D. Durant, at his home, in the town of Durant, in the Choctaw Nation, Indian Territory, on the 26th day of February, 1904.

_____
Attorney for Applicants.

UNITED STATES OF AMERICA,)
INDIAN TERRITORY, (ss.
CENTRAL DISTRICT.)

J. G. Ralls, having been by me first duly sworn, according to law, states on his oath that he is attorney for the applicants in the above-entitled cause, and that from his conversations with said D. D. Durant, and from reading his deposition given in this cause, he believes that the said D. D. Durant will testify, in substance, as above set out.

_____

Subscribed and sworn to before me on this the 22nd. day of February, A. D., 1904.

_____
Notary Public.

Mrs. Serina Robb is thoroughly acquainted with all of the applicants in the John Mitchell case, S. #101. See her and take from her such a statement as will be of value to the Nations. We suggest that when you see her that you have the papers in the case with you for reference.

In the case of John Mitchell, et al I was directed to see Mrs. Czarina Robb. I saw Mrs. Robb and took from her an affidavit emboding the history of the Folsom family, and her family is appended hereto.

Indian Territory }
Central District }

My name is Mrs. Serena Robb. I am a Citizen of the Choctaw Nation and reside at Atoka, Ind. Ter. I am 70 years old. I have known the Folsom family as long as I can remember. My father was a Folsom. His name was Israel Folsom. He had no relatives whatever by the name of Ned Folsom. I knew the whole Folsom family of Choctaw Indians, and I know that there was never a one in that family named Ned. My father had a sister by the name of Rebecca Folsom, but her father and my father's father was named Nathaniel Folsom & not Ned. Rebecca Folsom, my aunt, married a man by the name of Campbell. I had an aunt named Mollie Folsom, who married a man by the name of Samuel Mitchell. He was a United States Indian Agent in Mississippi. That was the only one of the Folsom family of Choctaw Indians who ever married a Mitchell. I never heard of David Mitchell. I never heard of the applicants in the John Mitchell case.

Mrs Serena Robb

Subscribed & sworn to before me this 5th day of June, 1903.

D. A. Richardson,
Notary Public.

D. A. RICHARDSON NOTARY PUBLIC CENTRAL DISTRICT IND. TER.

John Mitchell

Affidavit of
Mrs. Azarina Lobb

In the case of John Mitchell et al, S. #101.

J. C. Folsom, of Atoka, is acquainted with all of the applicants and will be able to give you definite information in regard to their family history. See him and take such a statement from him as will be of value.

attended to

In the case of John Mitchell, et al, I was dircted to see J. C. Folsom of Atoka and take from his an affidavit in regard to the family history of the Folsom's. I saw said J. C. Folsom and took from him the affidavit appended hereto. From this affidavit it will be seen that the Mitchells cannot be the relatives of the Choctaw Indianffamily of Folsom's.

Indian Territory }
Central District }.

My name is J.C. Folsom. I am a citizen of the Choctaw Nation by blood, 72 years of age, and live at Atoka, I.T. I am a member of the Folsom family of Choctaw Indians, and I know the history of said family from its founding, and I know all the members of the family. Nathaniel Folsom, my grandfather, was the founder of the Choctaw Indian family of Folsoms. He was a white man who married a Choctaw Indian woman in the old Choctaw Nation in Miss. By her he had five children, Mollie, David, Rebecca, Israel, & Rhody Folsom. Israel Folsom was my father. The descendants of these five children of Nathaniel Folsom constitute the entire Folsom family of Choctaw Indians. I never knew or heard of a Ned Folsom and know that there was no one of that name in our family. Rebecca Folsom married a man by the name of Campbell. She was my aunt. Mollie Folsom married a man by the name of Samuel Mitchell in the old Choctaw Nation in Miss. He was the Indian Agent. I never knew or heard of David Mitchell. These applicants in the case of John Mitchell et al are not members or descendants of the Choctaw Indian family of Folsoms.

J.C. Folsom

Subscribed & sworn to before me this 5th day of June, 1903.

D.A. Richardson.
Notary Public.

D.A. RICHARDSON NOTARY PUBLIC SEAL CENTRAL DISTRICT IND. TER.

John Mitchell, et al,

Affidavit of

J. C. Folsom

In the case of John Mitchell, et al., No. S-101, applicants claim that Ned Folsom was a white man, that he married a full blood Choctaw woman, that they had a daughter named Rebecca Folsom who married David Mitchell and had two sons named John and Andrew Mitchell. John and Andrew are the applicants in this case and claim to be quarter blood Choctaw Indians.

Attended to

D.D. Durant testified in this case that he knew John Mitchell and his brother Andrew; that he knew their father and mother in Mississippi, their mother being a Miss Folsom and her mother was the wife of Ned Folsom. Ned Folsom's wife was a full blood Choctaw Indian and so recognized in the State of Mississippi. That the applicants are 1/4 Choctaw, that the witness knew their mother and that she was a half blood and that she spoke the Choctaw language well.

We think the testimony of D.D. Durant is untrue. You are directed to see him and question him very carefully about it.

Central District
Indian Territory

My name is D. D. Durant. I am a citizen by blood of the Choctaw Nation & live at Durant. I never knew anybody by the name of Ned Folsom. I never knew anybody by the name of David Mitchell. I have never known a woman by the name of Rebecca Folsom. I have never known Andrew Mitchell. I knew John Mitchell, but I never knew who his father or mother was, and I do not know anything about him. I do not know whether he has Indian blood or not. I did not make the statements contained in what purports to be my testimony in the John Mitchell case. All that I know about the John Mitchell case is what John Mitchell himself told me.

D. D. Durant

Subscribed & sworn to before me this 8th day of June 1903.

D. A. Richardson
Notary Public

D. A. RICHARDSON NOTARY PUBLIC CENTRAL DISTRICT IND. TER.

John Mitchell case

D. D. Durant's affidavit

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

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The testimony of Green Taylor and D. D. Durant we have purposely not taken up for the reason that they both were witnesses before this Court and we shall discuss all of their testimony at one time.

Green Taylor, who testified twice for applicants before appearing in this Court, at all times showed himself possessed of

a most intimate and detailed knowledge of applicants' family affairs, but when on the stand it appears that when eight or nine years of age he moved into the neighborhood where applicants lived, in Pontotoc County, Mississippi, and lived there for about nine years. He left there when little more than a boy and if he is to be believed he must have spent much of his boyhood in discussing the family relationships with the mother of John Mitchell. The credit that is to be given this witness' testimony may be judged when it is recalled that he testified to Pontotoc County being in the old Choctaw Nation and that he knew Tom York, a Choctaw Indian who lived in that County. Tom York has been thoroughly impeached in this Court and it was established in the case of John McCarty, et al., No.29, that he lived only in Leake County in Mississippi, which is in the old Choctaw country and which agrees with the well known fact that Tom York was a full blood Choctaw Indian. It also appears conclusively from an examination of the maps that Pontotoc County is in the old Chickasaw Nation and not in the old Choctaw Nation. These contradictions and false statements are sufficient, we submit, to show that the testimony of this witness is not entitled to weight.

D. D. Durant, who testified twice in this case before it reached this Court, was, according to the statement of applicants' counsel, brought to South McAlester to testify, but on account of having made conflicting statements refused to go on the stand and returned home without testifying. Later his testimony was secured by the personal attendance of a member of the Court at Durant. His statement now is that he became acquainted with the family of applicants when, as a child, he returned on a visit to Mississippi. That he had no previous acquaintance with them and stopped at their house when on his way from Indian Territory to the neighborhood of Durant, Mississippi, at the request of David Folsom. He says distinctly that he made this visit to Mitchell on his first trip back to Mis-

sissippi, at which time he was returning to Durant, Mississippi. If this be true, he went more than two-hundred miles out of his way and as he was only a child and stayed in the family only fifteen days, it is a little remarkable that he should have obtained so intimate a knowledge of the family history.

This is the first time the witness ever told of this trip to Mississippi although he has twice before testified in regard to the matter.

The testimony of this same witness was taken in the Hiram Lancaster case and has been introduced by the Nations for the purposes of impeachment in this case. It seems that his knowledge of the Lancaster family, which has been shown to have no foundation in fact, was obtained on one of these flying trips to Mississippi.

More than that, this witness acknowledges, in his testimony before one of the Judges of this Court, to have signed two affidavits,differing materially from his present testimony,which he says he signed and swore to knowing them to be untrue and that it was his universal custom to make any kind of an affidavit he was asked to make.

We protest this this man's evidence is wholly unworthy of belief and that his confessed contempt for his oath is sufficient of itself to cast doubt on any case in which he appears as a witness.

This record, aside from the testimony of J. C. Folsom, fails to prove applicants' claim, but his evidence conclusively excludes them from the family to which they seek to attach themselves. Had they been really related to the well known Folsom family they would not have waited until they were attempting to prove their citizenship claim to establish the relationship and would not have considered it necessary to offer to pay J. C. Folsom for his assistance.

Applicants have not attempted to prove any compliance on

the part of themselves or their ancestors with the requirements of the treaty of 1830.

Having failed upon both of the essential issues in the case, their application should be denied.

Respectfully submitted,

Mansfield McMurray & Cornish

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No. 101.

John Mitchell, et al,

vs.

Choctaw and Chickasaw Nations

Memorandum of Argument for Nations.

Mansfield, McMurray & Cornish

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