

No 106 Emily J. Zimmert et al.

Emily J. Zimmert, or Emily H. Zimmert.
or Amanda A. Zimmert
Amanda A. Anderson (nee Zimmert)
James H. Whitney

No 106.

Emily J. Zimmwell et al.

vs

Choctaw Nation

No. 233.

Central Dist. Court.

No.

Dawes Commission

Accepted

March 21/1907

Virtuesses.

In Chains

Charles Mule --- *Johnnie*
J. A. Alexander --- *Chickasha*
Wesley Moore --- *Pickens Co. S.T.*
Emily J. Zimmert - Ardmore

*Red
Clay*

In Nations

-2-

South McAlester, Indian Territory, _____ 1903

An examination has been made of all the records of the government of the United States made in pursuance of the treaty of 1830 and there appears no records that any of the ancestors of these people here named were beneficiaries under any of the articles of the treaty of 1830.

Emily J. Zumwalt, et al.,
vs. No. 106: Central District No. 233.
Choctaw and Chickasaw Nations.

- - - - -

Charley Mule, of Tishomingo, Indian Territory, made an affidavit on March 7, 1896 which was filed before the Commission to the Five Civilized Tribes. The evidence thus sought to be given is immaterial and furthermore this person is dead and nothing further is necessary to be done with reference to him.

Memoranda.

Principal applicants allege that they are the children of

William Whitney, an alleged Choctaw Indian by his wife Polly Ann (Allen) Whitney; that William Whitney was the son of Susan Whitney an alleged Choctaw Indian by Wade Whiteny, and that they resided in the state of Mississippi.

Upon the trial of this case in the United States Court for the Central District of the Indian Territory the Special Master in Chancery T. N. Foster, to whom the case was referred held as follows:

"They(the applicants) are the descendants of Wade and Susan Whitney who were Mississippi Choctaws".

It would seem therefore that in response to our motion to make more definite and certain the applicants will class themselves as Mississippi Choctaw Indians. It will therefore be necessary for them to show that they or their ancestors complied with the requirements of article fourteen of the treaty of 1830.

An examination has been made of all the records of the government of the United States made in pursuance of the treaty of 1830 and there appears no records that any of the ancestors of these people here named were beneficiaries under any of the articles of the treaty of 1830.

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Charley Mule, of Tishomingo, Indian Territory, made an affidavit on March 7, 1896 which was filed before the Commission to the Five Civilized Tribes. The evidence thus sought to be given is immaterial and furthermore this person is dead and nothing further is necessary to be done with reference to him.

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J. A. Alexander made an affidavit on August 24, 1896 which was made use of before the Commission to the Five Civilized Tribes but the substance of his affidavit is immaterial and this witness may be passed.

- - - - -

Wesley Moore made an affidavit on the 24th of August 1896 but the substance of his affidavit is immaterial and he may also be passed.

- - - - -

The only evidence other than that here referred to which was taken and filed heretofore was that of the applicants themselves. It would seem therefore that no field work can be done at this time.

We can only await the taking of the affirmative testimony on the part of the applicants themselves and hold them, if possible e to an attempt to establish their status as Mississippi Choctaws and to take such steps as may be necessary and probable looking to the meeting of their testimony after the same has been taken.

In the Choctaw & Chickasaw Citizenship Court, sitting at
South McAlester, March Term, 1904.

Emily J. Zumwalt, et al.
vs. No. 106.

Choctaw & Chickasaw Nations

Memorandum of Argument for Nations.

The principal applicants in this case are Emily J. Zumwalt and her husband, Nathan B. Zumwalt. Each ~~of them~~ claims to be Choctaw Indians by blood. Emily J. Zumwalt states that her father was ~~John~~ Whitney, a half breed Choctaw, who was the son of Susan Whitney, a full blood Choctaw, & Wade Whitney, a white man - Nathan B. Zumwalt nowhere states how he claims his Choctaw blood. These two petitioners were married in Texas in 1873.

The applicants have not introduced any testimony before this court in support of their claim, not even appearing as witnesses in their own behalf. Their attorney has introduced the record made before the Commission & before the United States Court, which record we have always contended, & do still contend, is incompetent ~~to~~ as evidence here.

Aside from the incompetency of these

affidavits, however; there is not a fact stated in any of them, which, admitting ~~them~~ them to be true, would prove that these people are Choctaw Indians and entitled to admission and enrollment.

In as much as the applicants have not seen fit to come into this court and attempt to make out a case, we have not introduced any evidence; for we have not felt it incumbent upon us first to make out applicants' case or then disprove it.

We respectfully submit that the applicants should be denied.

Attorney for Choctaw & Chickasaw Nations -

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP
COURT, SITTING AT SOUTH McALESTER, MARCH
TERM, 1904.

Emily J. Zumwalt, et al, Plaintiffs.

vs. No. 106.

Choctaw and Chickasaw Nations, Defendants.

MEMORANDUM OF ARGUMENT FOR NATIONS.

The principal applicants in this case are Emily J. Zumwalt and her husband, Nathan B. Zumwalt. Each claims to be a Choctaw Indian by blood. Emily J. Zumwalt states that her father was William Whitney, a half breed Choctaw, who was the son of Susan Whitney, a full blood Choctaw, and Wade Whitney, a white man. Nathan B. Zumwalt nowhere states how he claims his Choctaw blood. These two petitioners were married in Texas in 1873.

The applicants have not introduced any testimony before this court in support of their claim, not even appearing as witnesses in their own behalf. Their attorney has introduced the record made before the Commission and the United States Court, which record, we have always contended, and do still contend, is incompetent as evidence here.

Aside from the incompetency of these affidavits, however; there is not a fact stated in any of them, which, admitting them to be true, would prove that these people are Choctaw Indians and entitled to admission and enrollment.

Inasmuch as the applicants have not seen fit to come into this court and attempt to make out a case, we have not introduced any evidence, for we have not felt it incumbent

upon us first to make out applicants case and then disprove
it.

We respectfully submit that the applicants should
be denied.

ATTORNEYS FOR CHOCTAW AND CHICKASAW NATIONS.

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, Same District

by Emily J. Bunnwell, et al and warn him that upon his failure to answer, ~~the~~

as said Governor, on behalf of said Nations, the complaint will be taken for confessed, and you will make return of the summons on the ~~XXXXXX~~

~~XXXXXXXXXXXXXXXXXXXX~~ instanter ~~XXXXXXXXXXXXXXXXXXXX~~ 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

Emily J. Bunnwell et al File No. 233 in the District Court, for the Civil District of the Indian Territory, have been transferred to the Choctaw and Chickasaw Citizenship Court, and that the seal and certificate of the Clerk of said Court for said Civil District, Ind. Ter, 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, Ind. Ter., aforesaid,

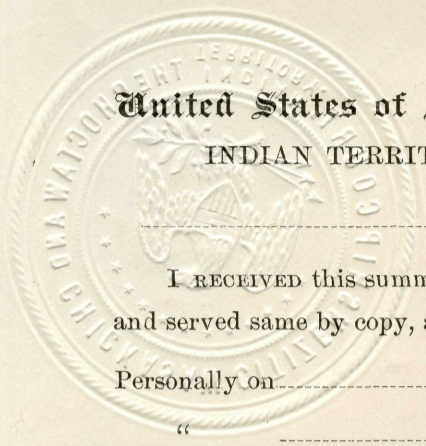
this 20th, day of March, A. D. 1903.

James B. Casson
Clerk.

By _____, Deputy.



MARSHAL'S RETURN.



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

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

DUPLICATE

No. 106-22

SUMMONS
 IN EQUITY.

Emily J. Zimmwail et al
 vs.
Chas. J. Chapman
Attorney

Summons issued the *20* day _____, 190*3*
 of *March*
 Returnable *at 100*

Returned and filed _____, 190____

By _____, Deputy
 Clerk.

MARSHAL'S FEES.

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

J. P. S. Miller
 Attorney for Plaintiff.
Chapman J. J.

5762b5m10-02

Duplicate

SUMMONS.

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 nation

in the Choctaw and Chickasaw Citizenship Court, in the Indian Territory, So. Mc Alester
by Emily J. Gurnwalt et al as said Prin. Chief
and warn him that upon his 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.

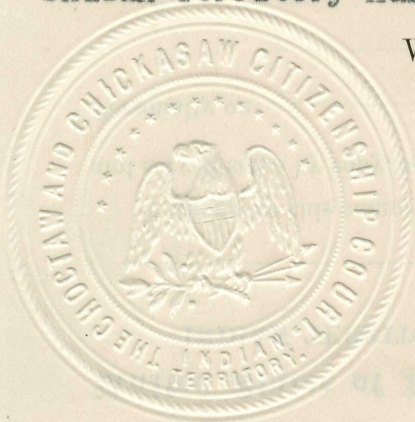
and you are further commanded to notify said Green McCurtain, principal
Chief aforesaid that the files papers and proceedings in the case of
Emily J. Gurnwalt et al File No. 233 in the District court for the
6 District of the Indian Territory, have been
transferred to the Choctaw and Chickasaw citizenship 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 South McAlester, I.T., aforesaid,

this 20 day of March, A. D. 190-3

James B. Cussard
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 106-m

SUMMONS
IN EQUITY.

Emily J. Gurnea et al
vs.
*Choctaw & Chickasaw
Natives*

Summons issued the 20 day
of March, 1903

Returnable instant Term, 190____

Returned and filed _____, 190____

Clerk.

By _____, Deputy.

MARSHAL'S FEES.

Services, - - - - \$ _____

Miles, - - - - \$ _____

Expense, - - - - \$ _____

TOTAL, - - - - \$ _____

J. P. & J. S. Mullen
Attorney for Plaintiff.
Admon 57

I N D E X.

| | |
|--------------------------------------|----|
| Application to Commission | 1 |
| Application to Commission | 2 |
| Affidavit of Charles Mule | 3 |
| Affidavit of J. A. Alexander | 4 |
| Affidavit of Weslry Moore | 4 |
| Affidavit of R. M. Riner | 5 |
| Affidavit of Mbran Scott | 6 |
| Judgment of Commission | 7 |
| Petition for appeal | 8 |
| Report of Special Master in Chancery | 9 |
| Deposition of Emily J. Zummwalt | 10 |
| Judgment, U. S. Court | 12 |

APPLICATION FOR CITIZENSHIP.

To The Honorable Henry L. Dawes Frank C. Armstrong? Archibald S. McKennon, Thomas B. Cabiness and Alexander H. Montgomery, United States Commissioners authorized by an Act of Congress of June 4, 1896, to hear and determine claims for citizenship in the Choctaw nation.

Gentlemen:

The undersigned your petitioner Emily J. Zummwalt for and on behalf of Nathan B. Zummwalt her husband and heirs, this day makes this her application to you for the purpose of being placed on the rolls of the Choctaw Indians and of those entitled to share in the distribution of funds and allotments of land in the Choctaw nation by virtue of their his her Choctaw blood, and herewith submit the affidavits of Isaac Williams, George Dillard and J. H. Dillard. in support of said claim and respectfully await the time when her application shall be heard and tried.

Respectfully submitted

A. R. Durant

Enrollment of family with relationship attached as follows:

| Names | Age | Relationship |
|--------------------|-----|-----------------|
| Nathan B. Zummwalt | 44 | Husband |
| James H. Whitney | 27 | Brother |
| Amanda A. Zummwalt | 12 | Sister's child. |

In witness of which I hereunto set my hand on this 4 day of Aug, 1896.

Emily Jane Zummwalt

Subscribed and sworn to before me this the 4 day of Aug, 1896

J. C. Gibbens
U. S. Commr for East Dist Texas

To the Hon. The Dawes Commission,
Veneta, Ind Ter

Gentlemen:

Staw Redemptio

Your petitioner Nathan B. Zummwalt represents that he is a resident citizen of Pickens county Chickasaw Nation That he was born in the Choctaw Nation, Ind Ter in the year 1852 and that he is a Choctaw Indian by blood. That in the year 1873 he married Emily Jane Whitney a Choctaw Indian by blood. Your petitioner says that in the year 1891 he and his wife Emily Jane Zummwalt made application to the citizenship commission of the Choctaw Nation at Tuscahoma for the purpose of being enrolled as members of the Choctaw Tribe of Indians That said application was filed with the Nat Sec. and docket on page 50 to 64. That B W Carter was the attorney of petitioner at the time who has since died and died before said application was acted upon by said committee. Petitioner says that this application is made for the purpose of being placed on the role of Choctaw Indians and of being entitled to share in the distribution of the funds and allotment of lands in the Choctaw nation by virtue of his Choctaw blood and herewith submits the affidavit of Charlie Mule Wesley Moore and J.A. Alexander and in support of said claim and respectfully await the time when his application shall be heard and tried.

John G Fleming atty for applicant

Nathan B Zummwalt

Subscribed and sworn to before me this the 26 day of Aug, 1896

J.C. Gibbins
U.S. Commissioner for
the West Dist Texas

Southern Division
Chickasaw nation
Indian Territory

On this 7th day of March A D 1896, before me th
the undersigned authority personally appeared Ch arley Mule,
to me known to be a reputable full blood ~~of the~~ Indian of
the Chickasaw Tribe, and after being duly sworn says: I have
known N.B.Zumwalt for about ten years. I was captain of
the militia of Pickens county Chickasaw Nation, Indian Terri-
tory and N.B.Zumwalt was a duly enlisted member of my company
of the Chickasaw militia, and that he has always drawn his
money from the Chickasaw Nation for his services as an Indian,
and he has always been recognized by the authorities of said
Nation and territory as an Indian. His permits to his tenants
have always been recognized by the authorities of said Chickasaw
Nation, Indian Territory.

Charles x Mule

Subscribed and sworn to before me this the 7th day of March
A.D.1896.

Summers Hardy

Notary Public

(SEAL)

Chickasaw Nation,
Indian territory
Pickens county

Before me the undersigned authority personally appeared J.A.Alexander who being by me sworn says. That he is a Chickasaw Indian by blood residing in Pickens county Indian Territory. That he is 30 years of age. That I have known of the said Zumwalt since I can remember but have been personally acquainted w with him for about 6 years. I know that the said Zumwalt was an enlisted member of the Chickasaw militia (Capt Mule's company) and served as such and was paid for said se services by the Chickasaw nation. That since I have been acquainted with the said uZumwalt he has been recognized by the authorities of said nation and Territory as an Indian. That he leases the public domain, permits his tenants and exercises all the rights privileges and immunities of any other Indian

J.A.Alexander

Sworn to and subscribed before me this the 24 day of Aug.1896

C.M.Setmay, Notary Public

Southern Division
Indian Territory
Chickasaw Nation.

On this the 22 day of Aug.1896, personally appeared Wesley Moore who being by me sworn on oath deposes and says that he is a full blood Chickasaw Indian. That I have known Nathan B Zumwalt for about 6 years. That the said Zumwalt has been and is now recognized by the authorities of said Nation and Territory as an Indian by blood ~~xxxxxxx~~ That I know that the said Zumwalt was duly enlisted as a member of Charley Mule's company and served as such and was paid by the Chickasaw Nation for said services?. That the said Zumwalt has since I have known him permitted tenants, leased the public domain and has all the rights privileges and immunities of any other Indian

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Wesley Moore

Subscribed and sworn to before me this the
24 day of Aug, 1896.

C.M. Setmay

Notary Public

SEAL)

Indian Territory

Southern District

On this 24 day of August A.D., 1896,
personally appeared before me the undersigned a Notary Public
within and for the Southern District of the Indian Terri-
tory, R M Riner of lawful age who being by me first duly
sworn on his oath deposes and says: My name is R M Riner, I
am 62 years old. I live at Ardmore, Indian Territory . I
have read and compared the original application and evidence
in support thereof of N B Zumwalt for citizenship in the
Choctaw Nation and know them after careful comparison to be
exact copies of each other word for word in both original and
copy

R M Riner

Subscribed and sworn to before me this 26th day of August, 1896.

Notary Public Southern
District of Ind Ter.

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Chickasaw Nation,
Indian Territory
Pickens County

Before me the undersigned authority appeared Moran Scot who being by me sworn on oath says. That he is the Postmaster at Ardmore, Indian Territory; that he has examined the application for citizenship of Nathan B. Zumwalt and that a true and correct copy of the original application with the affidavit of Charlie Mule taken before Summers Hardy a Notary Public on the 7th day of March 1896, also the affidavit of J.A. Alexander taken before J.M. Sitman on the 24 day of Aug. 1896, and the affidavit of Wesley Moore taken before C.M. Silman on the 24 day of Aug 1896. I have examined the application of Mrs Emily Jane Zumwalt and the affidavits of Isaac Williams taken before P V Dallins on the 30 day of Nov 1895 and that of Geo. Dillard taken before J.C. Gibbons U S Com on the 6 day of Aug 1894, also the affidavit of J N Dillard taken before Henry Hardy a Notary Public on the 7 day of March 1895, together with applicant's own affidavit taken before N H McCoy, on the 19 day of Aug 1896 and certify that a copy of each application with affidavits of witnesses heretofore named has been by me this day duly registered to the Governor of the Choctaw Nation, Tuskehoma Choctaw Nation.

Moran Scot

Subscribed and sworn to before me this the 26 day of
Aug. 1896.

Summers Hardy

(SEAL)

6

(1881)

Shumera 1819

Aug. 1881.

Subscribed and sworn to before me this 20 day of

Nov 20 1881

Notary, Dakota Territory.

me this day duly registered to the Governor of the State
with witnesses heretofore named
to day of Aug 1881 and certify that a copy of each
with sufficient oaths and affidavits taken before M H McCoy, on the
day of Nov 1881 on the day of March 1882, together
1881, also the affidavit of J M Dillman as en before Henry
and taken before J.C. Stephens D S Com on the 9 day of Aug
1881 B A Dillman on the 30 day of Nov 1881 and that of Geo. Dill
Lane Dillman and the affidavits of Isaac Dillman taken be-

fore 1881. I have examined the application of the
affidavit of Wesley Moore taken before C.M. Dillman on the 24 day
and taken before J.M. Dillman on the 24 day of Aug. 1881, and the
on the 24 day of March 1881, also the affidavit of J.V. Dillman
of Charles Dillman taken before Shumera 1819
and collect copy of the original affidavits
collection for affidavit of Wesley Dillman
Wesley Dillman. I certify that no
copy was returned by me as of the day. That
before me the undersigned and notary

Dakota Territory

Wesley Dillman

Notary

Dakota Territory

233

Emily H. Dillman
Chadwick Dillman

DEPARTMENT OF THE INTERIOR

COMMISSION TO THE FIVE CIVILIZED TRIBES

Fort Smith, Ark. Dec. 7, 1896

1164

Emily Jane Zumwalt et al

v

Choctaw Nation,

Filed Sept 8 1896 Answer filed
44
Nathan B Zumwalt an intermarried
Citizen and Emily Jane Zumwa
lt 44 Amanda Zumwalt 12 and James
H. Whitney 47 citizens by blood,
all admitted.

Ardmore, 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 394 of the Commission to the Five Civilized Tribes.

Given under my hand and official signature this the
15th day of Feby 1897

H.M. Jacoway Jr, Secretary

By Henry Stroup Act

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

Emily H Zumwalt
Plaintiff

vs

Petition for Appeal

The Choctaw Nation,
Defendant

The Choctaw Nation, your petitioner represents that heretofore to wit on the _____ day of _____ 1896, Emily J Zumwalt presented their petition to the Dawes Commission to be admitted as citizens of the Choctaw Nation and thereafter on the _____ day of December, 1896, said Dawes Commission, by its order admitted the said Emily J Zumwalt as citizens of the Choctaw Nation

That said Emily J J Zumwalt based their claim to citizenship upon their blood as Choctaw Indians, but your petitioner represents that they are not Choctaw Indians by blood, and therefore have no right to citizenship in the Choctaw Nation, nor have they ever been admitted to citizenship in said Nation prior to this judgment

Wherefore, your petitioner making this its appeal, prays that the order of the Dawes Commission, admitting said Emily J Zumwalt to citizenship in the Choctaw Nation be set aside, and that they be declared to be noncitizens of the Choctaw Nation.

W m.M.Cravens
Stuart Gordon & Hailey
Attorneys for Choctaw Nation

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In the United States Court for the Central District of the
Indian Territory

Emily J. Zummwalt et al

vs

The Choctaw Nation.

To The Honorable Wm. H. Clayton

Judge of the said Court

having been appointed special master in the above entitled
cause, I find from the pleadings and the evidence therein that
the applicants have made their application to the Dawes Com-
mission for enrollment in due time and that the said Commis-
sion on the 7th day of December, 1896, admitted Nathan B Zummwalt
as an intermarried citizen and Emily Jane Zummwalt and Amanda
Zummwalt and James H. Whitney as citizens by blood, : That
on the second day of February 1897, The Choctaw Nation
appealed from said decision.

From the affidavit of Isaac Williams and R. F. Vowel
and the depositions of applicant Emily Jane Zummwalt, I
find that Emily J Zummwalt and James H. Whitney are Choctaw
Indians by blood and that their blood is Choctaw and white
only and that they have resided in the Indian Territory for
several years last past and now reside there in the Chickasaw
Nation

That they are the descendants of Wade and Susan Whitney
who were Mississippi Choctaws. I further find that Nathan B
Zummwalt was lawfully married to Emily J Zummwalt in the year
1872 at Sherman Texas, but was never married according to the
laws of the Choctaw Nation. All of which is respectfully
submitted,

T N Foster, Special Master.

On this day personally appeared Emily J Zummwalt who being ~~only~~ first duly sworn testified as follows:

My name is Emily J Zummwalt
My age is 45 years My postoffice is Ardmore, I am an
applicart in this case for enrollment. My grand father
was Wade Whitney and my grand mother was Susan Whitney. They
lived in Mississippi, They came to the Choctaw Nation Indian
Territory Susan Whitny was a Choctaw Indian. My grand mother
and grand father had several children, among them William Whit-
ney who was my father. My father was a half breed Choctaw
and his blood was Choctaw and white only. My father married
Polly Ann Allen. They had three children by my mother,
James H Whitney, Amanda Ann and myself. Amanda Ann who is an
applicart in this case is my dead sister's daughter My sister
married B F Zummwalt my husband's uncle. I married N.B.Zumm-
walt in 1872. Amanda A Zummwalt lives with me near Ardmore,
Ind Ter. James H. Whitney lives on Canadian River near Center
In Chickasaw Na ion. I have lived in the Ind Ter nearly all
my life. We were all living in the Ind Ter when the application
to the Dawes Commission. I know Isaac Williams who made an
affidavit in this case. He is dead. I know R.F.Vowell
who made an affidavit in this case. He lives in Te xas
the last I heard of him . My husband was a member of the
Chickasaw militia in Capt.Mule's company. I own a farm in the
Chickasaw Nation and have permits for my tenants and have been
fully recognized as an Indian citizen.

Cross Examination by Mr.J.H.Gordon.

My ~~permits~~ permits were grnted by the Chicka
saw Nation. I was at Ardmore at the enrollment of Choctaw
citizens about three years ago and my attorney Judge Carter
told me I was enrolled. That is the only act of the Choctaw
authorities in the matter of recognition of my citizenship
that I know of

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I applied to the Choctaw Council for admission; I dont know whether my application was ever decided. My mother told me my grand mother Susan Whitney was a full blood Choctaw Indian. I dont know exactly how much Choctaw blood I have. I know I am a Choctaw and have always claimed one fourth blood.

My father and mother were born in Mississippi and they told me they were Choctaws and came from Mississippi to this country. U was born near Doaksville, Choctaw Nation. I was married at Sherman Texas,. I then lived in Texas. I was married under Texas license in 1872 as I remember. After father died mother married a white man We then lived along on Red River first one side and then the other. I lived in Texas about 9 or 10 ~~yeaxxxx~~ months after we were married and then moved to the Chickasaw nation and Choctaw Nation and have lived in the Indian Territr y from that time to this. James H. Whitney is about 46 ~~ye~~ or 7. He owns some farms at Center and live s in the Chickasaw Nation and has lived there several year s. Amanda Zummwalt has lived with me about 2 years.

Emily J. Zummwalt

Attest

John G. Fleming

Emily H. Zumwalt, et al.,

vs. No. 233, Judgment, Central District, August, 25, 1897.

Choctaw Nation.

This cause came on to be heard upon this 25 day of August, 1897, in open court, whereupon both plaitiffs and defendant announced ready for trial, and the court having heard the evidence in the case and argument of counsel, and the same being submitted to the court for judgment herein.

The court findsthat the plaintiffs, Emily H. Zumwalt, a f3male 45 years old, James H. Whitney, a male 28 years old, and Amanda A. Zumwalt, a female 12 years old, are all citi zens and members of the Choctaw Nation and Tribe of INdians by blood and as such are entitled to all the rights, privileges, immunities and benefits of citizens and members by blood of the Choctaw Nation and Tribe of Indians.

It is therefore ordered, adjudged and defreed by the court that the plaintiffs, Emily H. Zumwalt, James H. Whitney and Amanda Zumwalt, and each of them be admitted to and granted all the rights, privileges, immunities and benefits of citizens by blood of the Choctaw Nation by blood, and that each of their names be placed on the rolls of of members by blood of the Choctaw Nation by the Commission to the Five Civilized Tribes, that Nathan B. Zumwalt is not a Choctaw citizen, and that his name be excluded from said rolls.

It is further ordered that the clerk of this court transmit to the Commission to the Five Civilized Tribes, a certified copy of the defree and judgment in this cause, and an order that said Commission ~~place~~ place the names of the above named plaintiffs upon the rolls as herein commanded.

2 It is further ordered, adjudged and decreed that the plaintiff have

and recover of and from the defendant, the Choctaw Nation, all their costs herein laid out and expended, for all of which let execution issue.

In witness whereof, I have hereunto set my hand and the seal of the said Court, at the City of Washington, this 15th day of August, 1857.

That the said Court do hereby certify that the within and foregoing copy of the said report, as the same appears in the original, is a true and correct copy of the same, as the same appears in the original, and that the said report is a true and correct copy of the same, as the same appears in the original.

Attest my hand and the seal of the said Court, at the City of Washington, this 15th day of August, 1857.

John C. Calhoun, Chief Justice of the Supreme Court of the United States.

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

Petition of Parties Plaintiff, In an Action in the United States Court for the Central District, Indian Territory, Sitting at South McAlester, styled Emely J. Zumwalt, et al., plaintiffs. v. Choctaw Nation, Defendant, for an Order and Writ of Error from This Court to said Court of the Central District, Indian Territory, Directing and Commanding the Transfer and Certification of the Files, Papers, Proceedings and Records in Said Action in said Court to this Court.

Emely J. Zumwalt, et al.-----Plaintiffs

v.

Choctaw and Chickasaw Nations-----Defendants.

Com e now the plaintiffs herein Emily J. Zumwalt, in her own behalf and in behalf of her niece Amanda A. Anderson (nee Zumwalt) as next friend, and James H. Whitney, and respectfully represent and shew to this Honorable Court that proceeding under an act of congress, approved June 10th, 1896, they filed a joint written application, on or about the ____ day of September, 1896, with the Commission to the Five Civilized Tribes, commonly known as the "Dawes Commission", asking for citizenship in the Choctaw Nation or tribe of Indians, and for enrollment on the official rolls of said nation or tribe of Indians. As grounds for such admission to Choctaw citizenship and for such Choctaw enrollment they allege in their application, and do here so allege in this petition that in truth and in fact they are Choctaw Indians by blood and by descent; that the said Emely J. Zum-

walt and James Whitney are the children of the late William Whitney *who was the son of Josie Whitney, nee Norton a full blood Choctaw* and the said Amanda Anderson, nee Zumwalt, is the daughter of the late Amanda Zumwalt *who was the daughter of the said William Whitney, who was the son of Josie Whitney, nee Norton a full blood Choctaw*; that the said Josie Whitney *was a half blood Choctaw Indian*; and the said Emily J. Zumwalt and James H.

2.

Whitney are one-fourth Chectaw blood, and three fourths white blood, and the said Amanda Andersen, nee Zumwalt, is at least one-eighth Chectaw blood, and three-fourths white blood. That at the time of their making application for citizenship aforesaid, and for several years theretofore, they were in good faith residents of the Chickasaw Nation, Indian Territory, and of the Southern District, and have resided in the Chickasaw Nation ever since the filing of said application and are now residents of the Chickasaw Nation, Indian Territory;

that by virtue of the foregoing facts they are entitled to citizenship in said nations, and to enrollment as such on the rolls of the Chectaw Nation or tribe of Indians. That the said Commission to the Five Civilized Tribes, on the ____ day of December, 1896, rejected your petitioners, who due and apt time appealed to the United States Court for the Central District, Indian Territory, sitting at South McAlester in which court the said case was duly filed, and docketed number 233 on the citizenship docket thereof; and that in that Court your petitioners obtained judgment admitting them to citizenship in the Chectaw Nation and enrollment as Chectaw citizens.

That thereafter, and on the 17th day of December, 1902, this Honorable Court proceeding under the provisions of what is commonly known as the Supplementary Agreement made with the Chectaw and Chickasaw Nations or tribes of Indians, in an action styled The Chectaw and Chickasaw Nations or Tribes of Indians, plaintiffs v. J. T. Riddle, et al. defendants, annulled and vacated the judgment obtained by your petitioners in said Court in said Central District, Indian Territory, and held the same for naught.

WHEREFORE, considering the above, your petitioners respectfully request that they have an order and writ of error from this Court directing and commanding the said Court for the Central District, Indian Territory, to certify the papers, files, proceedings and records in said case to this Court; and that they have all other relief which in equity and good conscience they are entitled to.

James Whitney
Emily Zumwalt

By A. P. Scull
Attorneys for plaintiffs.

United States of America,

Seuther n District, Indian Territory.

I, James H. Whitney, do solemnly swear that I am one of the parties plaintiff in the foregoing petition, and that to my own personal knowledge the facts and statements contained in the same are true and correct.

James H. Whitney

Subscribed and sworn to before me, on this the 9 day of
March, 1903.

J. McClean
Notary Public .



No.

Emily J. Zummalt Et al

Vs.

Choctaw and Chickasaw Nations

Petition

J. P. + J. S. Mellen
attys for Plaintiffs

Emily J. Zimmwalt, et al, No-106.

Ask for judgment on record.

No evidence offered by applicants.

Emily Zumwalt et al., :
vs. : No. 106.
The Choctaw and Chickasaw Nations. :

--o--

J. P. & J. SMullin and Redwine & Jones, for plaintiffs,
Mansfield McMurray & Cornish, for defendants.

Present and presiding Judges Spencer B. Adams, Walter L.
Weaver and Henry S. Foote.

December 3rd, 1903.

This day this cause coming on to be heard both
plaintiffs and defendants being present by their counsel,
the following proceedings were had, to wit:

MR. JONES. This is the case in which we agreed to repre-
sent J. P. and J. S. Mullin. I will introduce the record
for them:

We offer the application for citizenship. (Exhibit A).

We offer either another application or a copy, dated
August 24th, 1896. (Exhibit B.)

We offer the affidavit of Charles Mule. (Exhibit C.)

The affidavit of J. R. Alexander. (Exhibit D.)

The affidavit of Wesley Moore. (Exhibit E.)

The affidavit of R. M. Riner, which I know is not prop-
erly authenticated. (Exhibit F.)

The answer of the Choctaw Nation. (Exhibit G.)

The judgment of the Dawes Commission. (Exhibit H.)

The notice of appeal. (Exhibit I.)

Petition for appeal. (Exhibit J.)

Motion for extension of time, to take proof in the United States Court. (Exhibit K.)

Affidavit of Moran Scott. (Exhibit L.)

Affidavit of Emily Zumwalt. (Exhibit M.)

Report of the Master in the case. (Exhibit N.)

Judgment of the United States Court. (Exhibit O.)

MR. CORNISH. The Choctaw and Chickasaw Nations object to the papers referred to and in support of that objection state: As to all papers filed and made a part of the proceedings before the Dawes Commission, because they are parts of a void proceeding, which proceeding is void because the Choctaw and Chickasaw Nations were both necessary and interested parties, and the Choctaw Nation only was served and made a party. As to affidavits and other papers filed before the Dawes Commission the Nations object because they are ex parte and taken without notice to the interested parties: Further, it has not been shown that the persons who gave the affidavits are dead: The matter contained in them is incompetent because it does not bear upon the essential issues in this case. As to all papers filed before and made use of before the United States Court, except depositions, the Nations object to them because they are parts of a void proceeding, which proceeding is void for the reason that bot the Choctaw and Chickasaw Nations wereneccessary and interested parties, and the Choctaw Nation only was served and made a party. Further, the action of the United States Court should have been confined to a review of the record made before the Dawes Commission and should not have extended to a trial de novo of the case. As to depositions, the

Nations object and set forth the objections urged against the affidavits before the Commission to the Five Civilized Tribes, and all objections urged against other papers filed before the United States Court.

In addition to these objections the Nations urge that the affidavits offered in this case are not properly authenticated, and in addition, suggest they are not proper evidence in this case.

JUDGE ADAMS. This case is closed as far as the applicants are concerned.

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

Emily J. Zummwalt, et al.,

vs.

No.106.

Choctaw & Chickasaw Nations.

All Judges present.

Mansfield, McMurray & Cornish, attorneys for defendants.

February 29, 1904. The following proceedings were had in the
above entitled cause on this date.

Judge Adams:

The case of Emily J. Zummwalt, et al., comes next.

Mr. Cornish:

If the court please in this case no testimony has been
taken before this court and inasmuch as no facts are alleged
or attempted to be proven which if true would warrant the court
in admitting the applicants the nations feel entitled to a
judgment upon the record.

Judge Adams:

Case submitted.

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

Emily J. Zumwalt, et al., :
 :
 vs. : No. 106.
 :
 Choctaw and Chickasaw Nations. :

DECREE OF COURT.

On this 21st day of March, 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, Emily J. Zumwalt or Emily H. Zumwalt, Amanda A. Anderson (nee Zumwalt) or Amanda A. Zumwalt, and James H. Whitney, are not entitled to be deemed or declared citizens of the Choctaw 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 Emily J. Zumwalt or Emily H. Zumwalt, Amanda A. Anderson (nee Zumwalt) or Amanda A. Zumwalt, and James H. Whitney, be denied and that they be declared not citizens of the Choctaw Nation, and not entitled to enrollment as such citizens, and not entitled 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, March Term, 1904.

Emily J. Zumwalt, et al.,

Appellants.

vs.

No. 106.

Choctaw and Chickasaw Nations,

Appellees.

OPINION by FOOTE, Associate Judge.

Emily J. Zumwalt, Amanda A. Anderson (nee Zumwalt), and James H. Whitney, prayed an appeal to this Court in the usual form, from the United States Court for the Central District of the Indian Territory.

These parties, in conjunction with Nathan B. Zumwalt, the alleged husband of Emily J. Zumwalt (nee Whitney), made application to the Commission to the Five Civilized Tribes, for enrollment as Choctaw Indians, on the 4th day of August, 1890. The claim was granted by said Commission declaring N. B. Zumwalt an intermarried citizen with Emily J. Zumwalt, and the other parties as Choctaws by blood. An appeal was taken to the United States Court for the Central District of the Indian Territory, on the 9th day of March, 1897. Afterwards, on the 25th day of August, 1897, a judgment was rendered against said N. B. Zumwalt by said Court, denying him the rights as an intermarried citizen, and he has taken no appeal to this Court. The judgment admitting the other parties to enrollment as citizens of the Choctaw Nation by blood.

The case came on before this court for trial and no oral evidence was offered by the appellants.

They offered the various papers in the record, containing ex parte affidavits of several persons before the Commission to the Five Civilized Tribes, taken and filed therein, including a sworn statement of Nathan B. Zumwalt. One of the ex parte affidavits was taken before a Notary Public on the 7th day of March, 1895; the rest, two in number, were taken before a Notary Public, on the 24th day of October, 1896. These affidavits do not in any wise disclose the blood of any of the parties except that of N. B. Zumwalt, but state that Nathan B. Zumwalt had served as a member of Captain Mule's Company of Chickesaw Militia, and was recognized as an Indian by the Chickasaw authorities. None of the persons making these affidavits are shown to be dead, and none of the affidavits are competent evidence here.

The only evidence besides these affidavits before the United States Court below, which we find in the record here, was the so called deposition of the applicant Emily J. Zumwalt, purporting to be taken before John G. Fleming, who attests it as John G. Fleming, but whose official character does not appear. This paper, therefore, is incompetent as evidence, on two grounds; first, it was taken in a trial de novo on appeal to the United States Court aforesaid; second, it is not properly authenticated. But if admissible, which it is not, it claims Choctaw blood only by hearsay.

The record before us is utterly destitute of any competent evidence whatever to establish the claim of any of the applicants, and, in my opinion, none of them are entitled

to be declared citizens of the Choctaw Nation by blood, or to enrollment as such, or to any rights flowing therefrom, AND IT IS SO ORDERED.

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

We concur:

(Signed) Spencer B. Adams,
Chief Judge.

(Signed) Walter L. Weaver,
Associate Judge.