OPINIONS DELIVERED BY THE

C H O C T A W & C H I C K A S A W C I T I Z E N S H I P C O U R T

IN CHOCTAW & CHICKASAW CITIZENSHIP CASES

Tried and disposed of by it

at

SOUTH McALESTER & TISHOMINGO, INDIAN TERRITORY,

under

THE ACT OF CONGRESS APPROVED JULY 1,1902,

ENTITLED:

"An Act To ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes."

INDEX TO CASES ON SOUTH McALESTER DOCKET.

PLAINTIFFS	DOCKET NO.	PAGE
Glenn-Tucker, et al	31	
No case docketed under this No.	32	
Thomas Brown, alias Thomas P. Brwwn, alias Thomas B. Brown, et al	33	
Mary Ann Thompson, et al	34	
John T. Hayes, et al	35	
W. R. Sessums, et al	36	
Joanne Mickle, et al	37	
B. F. Thompson,	38	
Susan S. Benight, et al	39	
Lula B. Trahern, alias Lula E. Trahern	40	
Robert L. Reagan	41	
F. K. West, et al	42	
Mary A. Sanders, et al	43	
Samuel C. Caldwell	44	
R. L. Crudup, et al	45	
S. G. Trout	46	
No case docketed under this No.	47	
Francis L. Stroud, et al	48	
Gray W. Phillips, et al	49	
William E. Moore, et al	50	
Sarah E. Kizer, et al	51	
W. R. Cross	52	
J. W. Blasingame,	53	
R. H. Hawkins, et al	54	
Julia A. London, et al.,	55	
Elizabeth Casey, et al	56	
William C. Mitchell, et al	57	
Zora P. Lewis, et al	58	
Ophelia S. Edwards, et al.,	59	
Lydia A. Garvin, et al	60	
Henry E. Miller, et al	61	
Susan Dehart	62	
Jennie Brazell, et al	63	

Plaintiffs.	DOCKET NO.	PAGE
Preston Early, et al	64	
Sarah D. Brogden, et al	65	
W. M. Vandergriff, et al	66	
Mary M. Harvey, et al	67	
✓ William E. Moore, et al	68	
A. W. Cope	69	
George H. Cook	70	
Helen V. Newton, et al	71	
William Mitchell, et al	72	
John M. Grady, et al	73	
Abram H. Nail, et al	74	
Joseph B. Glenn, et al	75	
Glenn-Tucker, et al	76	
W. H. Stallings	77	
✓ Epsie Underwood, et al	78	
Frances C. Neely, et al	79	
Nellie J. Gideon, et al	80	
D. B. Vernon, et al	81	
Hiram Lancaster, et al	82	
Joanna Horne, et al	83	
Polly Hill, et al	84	
Mattie E. Standley, et al	85	
Eliza A. Alexander, et al	86	
Louis Hill, et al	87	
Noah W. Cooper, et al	88	
Calvin Wright Meek, et al	89	
John Skaggs	90	
Frances E. Husbands	91	
Bettie Stewart	92	
Mary W. Whaley, et al	93	
H. B. Rowley	94	
J. M. Human, et al	95	
E. J. Petty, et al	96	

Plaintiffs.	DOCKET NO.	PAGE
Marth Arnold, et al	97	
Samuel H. Carroll, et al	98	
✓ Verna D. Potts, et al	99	
Viney Davis, et al	100	
John Mitchell, et al	101	
G. W. Johnson	102	
William Sledge, et al	103	
James A. Tucker, et al	104	
Sarah A. Kelton, et al	105	
Emily J. Zumwalt, et al	106	
G. P. Phillips, et al	107	
S. B . Riddle, et al	108	
✓ Jane Marrs,et al	109	
Rebecca C. Harris, et al	110	
George Wooldridge, et al	111	
Nancy Henderson, et al	112	
J. L. C. Pate	113	
✓ Ella Bennett, et al	114	
Frank P. Morgan,	115	
Charles D. Sullenger, et al	116	
Mary Goddard, et al	117	
W. T. Stevens, et al	118	
Glenn-Tucker, et al	119	
✓ George Lee White, et al	120	
Molsie Butler	121	
Emma Botteroff, et al	122	
Geo. W. Paul, et al	123	
A. J. Crowson, et al	124	
✓ Geo. Lee White, et al	125	
Annie J. Hamilton, et al	126	
S. J. Garvin	127	
Wilson H. James, et al	128	
Anna Smith, et al	129	

INDEX TO CASES ON TISHOMINGO DOCKET.

PLAINTIFFS.	DOCKET NO.	PAGE
Robt. Goings, et al	31	
T. D. Arnold, et al	32	
Wm. F. Cobb, et al	33	
Lewis Clay Stinnett, et al	34	
H. J. Sorrells	35	
John T. Boyd, et al	36	
Mary Huffman, et al	37	
Geo. M. Poe, et al	38	
Sarah Palmer, et al	39	
J. W. Sparks, et al	40	
Nannie Watkins, et al	41	
John P. Holder, et al	42	
Annie May Paul	43	
Althea Paul, et al	44	
S. J. Garvin	45	
Mary E. & Eli Nail, et al	46	
Geo. W. Brooks, et al	47	
✓ J. W. Hyden, et al	48	
John T. Hunter, et al	49	
David Davis, et al	50	
Mrs. A. J. Love,	51	
Charles Goodall, et al	52	
J. C. Hill, et al	53	
J. W. Thompson	54	
J. M. Dorchester, et al	55	
John A. Tidwell, et al	56	
James L. Ivey, et al	57	
Winter P. Bradley, et al	58	
✓ Mattie Lee Armstrong, et al	59	
Mrs. A. O. Mallory, et al	60	
Geo. M. D. Holford, et al	61	
Wm. J. Forsythe, et al	62	
Frank Standifer	63	
Martha Jones, et al	64	

PLAINTIFFS.	DOCKET NO.	PAGE
Martha Jones, et al	64	
O? W. Seay, et al	65	
Evans Hill, et al	66	
Wm. W. Arnold, et al	67	
✓ J. H. Hill, et al	68	
J. N. Forbes, et al	69	
A. B. Hill, et al	70	
D. C. Lee, et al	71	
Annie James	72	
William Neighton Brown, et al	73	
Sarah Jones, et al	74	
Z.T? Bottoms, et al	75	
Mary Underwood	76	
Daniel McDuffie, et al	77	
Sallie Duncan	78	
W. R. Pittman	79	
W. V. Alexander, et al	80	
A. H. Law, et al	81	
Margaret E. Law, et al	82	
Nancy A. Laflin, et al	83	
U. S. Joins, et al	84	
Joe N. Love	85	
J. E. C. Albright, et al	86	
Burton S. Burkes, et al	87	
John Cornish	88	
L. F. Rhodes, et al	89	
Sarah Shields, et al	90	
Elizabeth A. Evans	91	
W. W. Poyner, et al	92	
A. E. Sooby	93	
William L. Thomas, et al	94	
Anna Smith (nee Agee)	95	
Joseph H. Brown, et al	96	
Henry Dutton, et al	97	

PLAINTIFFS.	DOCKET NO.	PAGE
L. L. Blake, et al	98	
Arthur E. Scoby	99	
I. E. Parks, et al	100	
Nettie Howell	101	
Wm. Duncan	102	
E. W. Cotton, et al	103	
Lydia M. Johnson, et al	104	
Sarah Jane Reynolds, et al	105	
Harriet Gordon, et al	106	
Walter W. Jones, et al	107	
Rosa Tapp, et al	108	
Ida Marler, et al	109	
John Sartin	110	
W. G. Howard, et al	111	
N. B. Woolsey, et al	112	
M. D. Carson, et al	113	
Walter L. Beavers, et al	114	
I. E. Parks, et al	115	
Bertie Cotton, et al	116	
T. J. Miner, Jr.	117	
J. M. Crabtree, et al	118	
Anna Smith (nee Agee), et al	119	
Annie J. Hamilton, et al	120	
Nettie Howell	121	
Nelson H. Norman, et al	122	
W. R. Story, et al	123	
J. S. Layman, et al	124	
Sarah E. Kizer, et al	125	
Mary L. Jennings, et al	126	
William Sledge, et al	127	
James A. Tucker, et al	128	
G. W. Johnson	129	
Frances E. Husbands	130	

PLAINTIFFS.	DOCKET NO.	PAGE
Mary Ann Thompson, et al	131	
Louis Hill, et al	132	
Wm. F. Perry, et al	133	
Agustus K. Perry, et al	134	
Mansfield, McMurray & Cornish	135	

S.OUTH McALESTER DOCKET.

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

Choctaw and Chickasaw Nations,
or Tribes of Indians, Plaintiffs.

vs No. 1.

J. T. Riddle, et al,
Defendant.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

C. M. Coppedge, et al.,

vs. No. 2.

Choctaw and Chickasaw Nations.

Dismissed. No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

J. T. Marshall,

vs. No. 3.

Choctaw and Chickasaw Nations.

Dismissed. No written opinion.

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

1 9 0 4.

OLA MAY McPHERREN,

VS. No. 4.

CHOCTAW AND CHICKASAW NATIONS.

STATEMENT OF FACTS AND OPINION

BY ADAMS, CHIEF JUDGE.

On the 8th day of August, 1902, the plaintiff, under and by virtue of authority contained in section 32 of an Act of Congress approved July 1, 1902, filed a petition in this Court, alleging that she is a bona fide resident of the Choctaw Nation and a Choctaw Indian by blood, and entitled to be enrolled as such; and praying that her case be transferred from the United States Court for the Central District of the Indian Territory to this Court, where she asks that her rights as a Choctaw Indian be adjudicated.

The record in this case discloses the fact that the United States Court for the Central District of the Indian Territory, by a judgment rendered on the 3rd day of December, 1898, denied the right of plaintiff to citizenship and enrollment as a Choctaw Indian, upon the ground that she was at that time a non-resident of the Indian Territory, but did admit in said judgment a greatmany people who are related

to this plaintiff, and who claim their Indian blood from the same source that this plaintiff claims her Indian blood.

This cause came on for hearing in this Court on the 25th day of May 1903, after the case had been continued from the 4th day of May 1903, upon the application of plaintiff, on account of her sickness. On this date the plaintiff, through her attorney, J. G. Ralls, introduced several ex parte affidavits, among them an affidavit of Eliza A. Alexander, and also an affidavit of James Franks. After the introduction of these affidavits the case was again continued for the plaintiff until the November term, 1903, of thid Court, when on said date J. G. Ralls, attorney for plaintiff, appeared before the Court and declined to offer any further testimony in the case. The case was then set down to be heard on January 6, 1904, for the purpose of allowing the defendants to introduce their testimony, at which time James Franks was introduced as a witness for defendants. Witness is shown the alleged affidavit offerred by the plaintiff in this case, and after an examination of same says he did not make the affidavit, and that the statements contained therein are not true.

Mrs. Eliza A. Alexander is then introduced as a witness for defendants, and says she is an aunt of Ola May McPherren, plaintiff in this case. Witness says she was in the original application to the Commission to the Five Civilized Tribes in 1896, and also a party to the proceedings in the United States Court for the Central District of the Indian Territory, wherein this witness was admitted as a citizen of the Choctaw Nation and the plaintiff in this case

was rejected. Witness further says that at the time she alleged in her application that Tobithia Dyer was a daughter of Bill Dyer, and was witness' mother and married a man by the name of David Powers, and that the said Bill Dyer was a full blood Choctaw Indian and resided in the State of Mississippi, she thought she was stating the truth, but that since that time witness has ascertained that such is a mistake, and she now swears that her grandfather's name was Howsley, and that she does not know whether she has any Indian blood in her or not.

There is no evidence which tends to show that the plaintiff is a Choctaw Indian, but there is abundant evidence to show that she is not.

A Judgment will be entered by this Court dismissing the appeal of the plaintiff, etc.

(Signed) Spencer B. Adams
Chief Judge.

We concur:

(Signed) Walter L. Weaver
Associate Judge.

(Signed) Henry S. Foote
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

Augustus K. Perry, et al.,

vs. No. 5.

Choctaw and Chickasaw Nations.

Transferred to the Tishomingo Docket, where it appears as number 134.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

Wm. F. Perry, et al.,

vs. No. 6.

Choctaw and Chickasaw Nations.

Transferred to the Tishomingo Docket, where it appears as No. 133.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, in the Indian Territory.

Glenn-Tucker, et al.,	:	
Plaintiffs,	:	
vs.	:	No. 7.
	:	Choctaw Docket.
Choctaw and Chickasaw Nations,	:	
Defendants.	:	

OPINION, by FOOTE, Associate Judge.

There are several hundred parties to this appeal claiming different degrees of Choctaw Indian blood, or by reason of intermarriage with persons claiming Choctaw blood, and all claiming by virtue of their descent, or intermarriage with those claiming descent, from a woman named Abigail Rogers, who died in the State of Arkansas many years ago, and who never was in the Indian Territory.

It is not practicable to set out the names of the parties in extenso, who have appealed to this Court from a judgment of the United States Court for the Central District of the Indian Territory, although they will all be set out in the judgment rendered herein.

These claimants have been long contesting for their asserted rights as Choctaw Indians by blood, or intermarriage as the case may be.

They applied to the Choctaw Council for admission as citizens of the Choctaw Nation many years ago, and were

rejected. They applied to the Commission to the Five Civilized Tribes for recognition of their alleged rights, and they were there denied any recognition. The same results as I have first written attended their efforts before the United States Court for the Central District of the Indian Territory.

In the determination of this case I do not deem it necessary to discuss but one question herein involved, and that is, are, or are not, these claimants of Choctaw blood; as the conclusion I have reached on all the competent evidence in the case, renders the adjudication of any other issue involved herein, unnecessary.

The affidavits of Andrew McGee and George Washington, by which mainly, in the beginning of this contest, the appellants sought to establish their Choctaw Indian blood, (both of which persons are now dead), are proved to be utterly unreliable by the oral evidence taken before us, of many reputable witnesses, namely, Thomas D. Ainsworth, John Taylor, Benj. Watkins, T. J. Wall, Simon Lewis, Robert J. Ward, Wm. A. Welch, J. W. Jackson, J. W. Riddle, and Mrs. Fannie Riddle, and charity towards weak minded and improperly influenced old men, now dead, renders it proper that I should not animadvert further against them. But the use of such testimony and the manner in which it was obtained, smacks strongly of fraud on the part of these applicants.

There is no evidence whatever in the record that shows the ancestress of these claimants, Abigail Rogers, to have ever been recognized, in Mississippi or elsewhere, as a Choctaw Indian by blood by any competent authority.

She seems, according to the statements of one of her older descendants, Amanda Coker, also an applicant herein, and a grand-daughter of Abigail Rogers, to have been born in the State of South Carolina many years before the treaty of 1830, and it is a well known historical fact that the country inhadited by the Choctaws since the time when Hermando De Soto first gave an account of them, was always in the State of Mississippi, until they removed, under the treaty of 1830, to the Indian Territory; and that this country of theirs was many hundreds of miles from the State of South Carolina; and so far as location was concerned, as she was born nearer the confines of the old Cherokee Nation, than that of the Choctaws, she might with more force have claimed Cherokee blood, than Choctaw, as some of the acts of the claimants seemed to indicate was their view of the matter. The statement on that subject of Amanda Coker, as being against her interest here, is likely to be true.

It appears from the evidence here of some of the applicants and others, as I think, that they were themselves uncertain, at the beginning of this affair, whether they would claim Cherokee or Choctaw blood. And there are some facts and circumstances which, to my mind, seem to point to the fact that they were at first inclined to get recognition from the Cherokee Nation.

Then again, it appears in evidence here, that the declaration of one of the oldest of the relatives of these claimants, one Johnathan Glenn, is to the effect that he had no Choctaw blood and claimed none. This is a most significant circumstance throwing discredit on the claim of these parties.

Again one of the applicants, a great-grand-daughter of Abigail Rogers, swears in her oral evidence that some of the claimants, went from the State of Arkansas into the Cherokee Nation, and into the Creek Nation, and that there had been some family tradition that abigail was a Cherokee Indian, and their purpose was to find out in what tribe they could establish citizenship.

There is in the record here, and used many years ago before the Indian Commissioner, Robt. L. Owen, and them before the Secretary of the Interior, the sworn statements of Dr. Benj. George Harrison and his wife, wherein it appears that some of these parties had a man in their employment named Morris Nail, a lawyer, and that they had him to prepare an application to the Cherokee council claiming citizenship in that Nation, as descended from Abigail Rogers, a Cherokee woman. This document is perhaps admissible under the head of old affidavits taken prior to the time when the Commission to the Five Civilized Tribes took charge of this matter, and it is proved before us that both the affiants were dead when the document was offered by the Nations before us. This is additional to other proof offered, that these people did not know whether they were Cherokees or Choctaws, and if they did not know, I do not think it possible for a Court to conclude that Abigail Rogers was a Choctaw by a preponderance of evidence, and I do not believe she was a Choctaw Indian.

The records of the Cherokee council were found, on examination, by a witness for the defendants, to be so incomplete as not to show what action, if any, was ever taken by that council on the alleged claims of these people.

The evidence of Thomas C. Wall also, tends to show that some of these people were seen by him on their way to the Cherokee council. To the same effect, but not conclusively as to the identity of these people, is the evidence of Mrs. King.

Judge H. C. Barnes and Rev. J. F. Thompson, citizens by blood of the Cherokee Nation, testified on that head before us, and an examination of their evidence, in my judgment, tends to show at least the same facts.

I pass over, without special comment, many other matters and circumstances which point to the fact, unerringly in my judgment, that the Abigail Rogers through whom these appellants claim, is not shown to be a Choctaw Indian woman, and I find that in the Seventh Volume of the American State Papers, a very important portion of the archives of the United States Government, under the Public Lands Section, at page420 of said volume, that one David Glenn, an alleged ancestor of some of these people, purchased at the United States Land Office at Chocouma, in the State of Mississippi, 80 and 11/100 acres of land, this land having been acquired by the United States Government under the treaty of 1830 from the Choctaws; also, I find at page 432 thereof, that William Tucker, another alleged ancestor of these people, purchased the same kind of land; I find also, at page 438 of said volume, that Joseph B. Glenn, also an alleged ancestor of these claimants, purchased the same kind of land, all said land, so purchased, having been obtained by them sometime in 1833 or 1834.

Further I have made a patient and thorough search in that volume of all the rolls which show Choctaw Indians as claimants of land in any wise, and although I find in some

instances that claims were made and parties put on some of the various rolls as "white men" apparently claiming as Indians, and many thousands of Indians, I do not find any reference in any manner whatsoever, to the three men above mentioned, as having at any time claimed to be, or appearing in any wise as, Indians. And the list on which they do appear, shows few if any Indian claimants or purchasers, but most of them are the names of white men, many of whom were well known and prominent citizens of the State of Mississippi at that time.

These facts certainly tend to show, in my mind, that had these people, apparently men of some degree of means and desire for property, been entitled to be enrolled as Indians, they would have made a claim, and appear on some roll as such.

While Ward, the first Indian Agent, appears to have been remiss in his duties in this respect, it does not appear that Armstrong, and others who followed Ward, werenot painstaking in their rolls and lists.

I, therefore, from the foregoing state of facts, believe that these three alleged ancestors of the claimants, had no Indian blood in them, much less, Choctaw Indian blood.

Then again, before us in open Court, these claimants introduced an old Indian named John Lewis, and sought to prove by him that he knew about the time of the making of the treaty of 1830, at Dancing Rabbit Creek, and that he was there and saw Abigail Rogers, and that she was a Choctaw Indian.

This old man first said, on page 158 of the evidence, that Abigail Rogers was a white woman; then he says she did not look like a white woman but an Indian. In answer to a question, (at page 159, same testimony), as to what kind of Indian she was, he said, "there are no Nations". At page 161 of his testimony he says she was a half breed Choctaw; at page 162 he says she was living with what they called a white man, "they called him Frenchy", but does not remember his name: and again he says, at page 163, that he could not remember the name unless it was called over to him. He says, on the same page, that Abigail Rogers was at that time about fifty years old. This was in 1830, and this would make her to have been born about 1780, which does not correspond with the time claimed by her descendants as the date of her alleged birth. At another place, (page 168, same Testimony), he says, as to his memory, he is telling all he knows, his senses are coming and going. He says at page 169, that as a witness in citizenship cases, where hehas testified, that some have paid him for his testimony and some have not. He says at page 169, that a man named Breshers paid him ten dollars in this Rogers case. He says at page 171, that he is a beggar and lives by begging.

There is much more of this poor old creature's testimony, which serves to show, in my opinion, that he was a professional witness in citizenship cases; that he was of feeble mind, and would testify to anything that ~~xxxx~~ those seeking his aid would suggest.

The presentation and use of such and other similar evidence by the applicants, shows the utter want of merit in

their case, and the straits to which they have been driven, and the utter absence of good faith as to the whole matter.

The truth is the facts of this case appear to me to be such as to require the exercise of much self control, in not dealing with some of its features in severer language than I have used.

I do not believe that the evidence presented in anywise even tends to prove that this woman Abigail Rogers, was a Choctaw Indian.

I am, therefore, of the opinion that none of the parties appellant here, are entitled to be enrolled as citizens of the Choctaw Nation by blood or otherwise, or to any rights or privileges flowing therefrom; AND IT IS SO ORDERED.

H. S. Foote,
Associate Judge.

We concur:

Spencer B. Adams,
Chief Judge.

Walter L. Weaver,
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.

P. D. Durant, et al., Appellants,	:	
vs.	:	No. 8.
Choctaw and Chickasaw Nations, Appellees.	:	

OPINION, by FOOTE, Associate Judge.

This cause comes here in the regular way on appeal from the United States Court for the Central District of the Indian Territory.

The parties named in the petition to this Court are as follows: P. D. Durant, Estella C. Durant, Jessie May Green (nee Durant), Sarah Francis Conner (nee Durant), Robert Conner Durant, Ernest A. Durant, Mary Butts, Horace F. Butts, Vera Butts, Sarah C. Daley, James Daley, Margaret J. Black, William N. Black, Maggie E. Ward, James Q. Ward, John P. Ward, James E. Ward, Sidney J. Cundiff, Idress J. Cundiff, William Fisher Arledge, Walter Arledge, Margaret C. Shoemaker, A. L. A. Shoemaker, Alvis Shoemaker and Mary Laurin Shoemaker.

In the Court below the cause was consolidated with that of Verna D. Potts, et al., vs Choctaw Nation, but in this latter cause a separate opinion will be rendered by this Court, and I will here deal with those persons only who are parties to this appeal, although the evidence so far as applicable is to be used in both cases.

The application of all parties to this appeal was denied by the United States Court for the Central District of the Indian Territory, on the 24th day of August, 1897, upon the ground that they were non-residents of the Indian Territory, supposedly at the time of their application for citizenship.

The applicants in this case as well as in the case of Verna D. Potts, et al., above emntioned, claim to be members of the Choctaw tribe of Indians, by blood or marriage, which said blood they allege, is derived from one common ancestor, to wit, Jefferson Durant.

It is further claimed that on or about the 8th day of November, 1895, proof was made to the Choctaw Coundil, of the Indian blood of the said Jefferson Durant, and that pursuant to an Act of said Council, Nancy Lee Cundiff, a daughter of said Jefferson Durant, and her child Mattie L. Armstrong, and the children of said Mattie L. Armstrong, namely, Donnie Durant and Layton Burford Armstrong, were recognized as descendants of said Jefferson Durant and as Choctaw Indians by blood.

It is also claimed that Nancy L. Cundiff, P. D. Durant, Mrs. Mary Butts, Sarah Caroline Daley, Margaret Jane Black and Maggie E. Ward, are children Jefferson Durant; that Margaret C. Shoemaker is his grand-daughter, through her mother Mrs. Elizabeth McGill, and the other claimants are descended from or related to some one of these by consanguinity of affinity.

The record which comes to us from the Court below, even if the ex parte affidavits and other evidence had therein, are entitled to be considered by the Court, and we do not decide that they are, in favor of appellants, throws little or no light upon the one question of fact involved in this case. It

consists of marriage licenses issued to various members of this family in Texas, and a large number of petitions for enrollment before the Commission to the Five Civilized Tribes, and ex-parte affidavits in support thereof. Practically all of these petitions and affidavits are made by the different applicants, and set forth merely that they are related to each other in one way or another, and that they are relatives or descendants of Nancy Lee Cundiff, a citizen of the Choctaw Nation by virtue of the Act of the Choctaw Council. So far as I am able to ascertain there is not a single particle of evidence in this record, competent or incompetent, which connects these people in any way, with their alleged ancestor Jefferson Durant, nor is there even an effort made to do so. They confine their entire efforts to establishing their relationship with Nancy Lee Cundiff, who they claim was recognized in 1895, by the Choctaw Council as a daughter of said Jefferson Durant. Even the application for enrollment of P. D. Durant, for himself and his six children and their families, merely alleges as a ground of his claim "That he is a brother of Nancy Lee Cundiff, recognized citizen per act of the General Council of the Choctaw Nation" etc., and there is attached thereto the affidavits of I. T. Ward and A. N. Perkins, to the effect that they know Phillip David Durant; that he is a brother of Nancy Lee Cundiff, and that they know his children, naming them, to be his children. Of the same character is all the other evidence in the record which comes here from the Court below.

There is no doubt in my mind that the applicants here are all members of one family. The question involved is,(aside from the other questions which need not, for the purposes of this case, be discussed in this opinion), are they the descend-

ants of Jefferson Durant, a Choctaw Indian?

The applicant P. D. Durant testified before this Court that all of these applicants except himself, Estelia, Robert and Ernest Durant, live in the State of Texas. He also testifies that he was born in Mississippi in 1836, and that he is 64 years of age. He does not know in what County he was born, and says that he probably lived in several counties in Mississippi, among then being Tsihomingo, where he lived a year or a half a year. That he left Mississippi with his father in 1845 or 1846, when he was seven or eight years old, and they came to the Indian Territory, where they resided for one month, and then went to Texas where he remained until 1896, when he came to the Choctaw Nation. That all of the applicants here are his relatives by blood or marriage. That his fathers' name was Jefferson Durant; that he died in 1864 or 1865 and was living in Texas at the time of his death, and was never in the Indian Territory but one month. That he never saw any of his father's brothers or sisters; that he learned from his father and mother that his grandfather on his father's side was called Piere, and that he heard from them that his uncles and aunts were called George, Sylvester, Joe and Fisher. He sates positively on cross examination that his father spelled his name "Jefferson Durant", and that he was never known by any other name except Jeff or Jefferson Durant. In the next breath he admits that his father sometimes went by the name of Duren, and he had letters from him that way, but that his father told him Durant. He further admits that most of the time in Texas, he transacted business and signed his name as Duren; that sometimes he signed it Durant, but cannot recollect a particular occasion. He cannot tell as a fact whether his father's name was Jesse Duren. He and his

father lived and bought and sold land in various counties in Texas, as did other members of the family. He voted at the Texas elections. He thinks his father and family moved to Texas alone and that no other family accompanied them.

His statement that he only came to the Indian Territory as a claimant in 1896 is not accompanied by particular mention of what day or month of that year, hence I cannot say where his residence was when he made his application originally. He does not know where his father was born and often swears that his father's name was Durant. He says in answer to this question on cross examination:

"Q. You have no knowledge of your father going by any other names than these two. (Meaning Jeff or Jefferson Durant)?
A. Duren sometimes, I have letters that way, but he told me Durant".

He then admits that some of his business is signed as Duren. He knows of but one man now living, who prior to 1890, ever called him anything but Duren, and that man, a Mr. Lewis; then he mentions a man named Ward. Then he is asked this question.

"Q. Now Mr. Durant answer me this question, is it not a fact that you were known by the name of Duren in Texas and that your father had the same name and that you signed the name and transacted business under the name of Duren? He answers: "Yes sir, most of the time". And when asked if he had ever signed business papers as Durant, cannot recollect that he ever had. He afterwards admits that a certain bond as guardian, a copy of which was shown him, was signed by him in Texas before the County Court in the State of Texas in 1898, (after he had applied for citizenship under the name of Durant) and by the

Miss Lou Duren and the other as Miss Maggie E. Duren, and the names of these licenses changed afterwards.

As bearing upon the name of these applicants and their ancestor, the appellees have introduced in this Court, certified copies of the following Texas records: A certified copy of the petition of J. F. Duren for temporary letters de bonis non, of the estate of his grand-father Jesse Duren; a certified copy of an order of the County Court of Houston County, Texas, made January 31st, 1868, in a case of W. H. Cundiff, administrator of the estate of Jesse Duren, deceased, vs. Donley and Anderson; a certified copy of an order of the same Court, made August 27, 1867, directing certain papers to be delivered to W. H. Cundiff, administrator of the estate of Jesse Duren; a certified copy of the bond of P. D. Duren as guardian of the person and estate of Minnie D., Essie C., Robert C., and Ernest A. Duren, and a certified copy of the Final account and Petition for discharge of P. D. Duren as such guardian, verified by the said P. D. Duren. In none of these papers does the name Durant anywhere appear.

The contradictory statements of this man P. D. Durant, his evasions and evident insincerity, utterly destroys the force of his evidence, and not to speak of other facts, which show clearly, by Court documents introduced in evidence here by the appellees, and the many admissions the witness made that his father was one Jesse Duren and his own real name was P. D. Duren, and that he was not descended from Jefferson Durant, a Choctaw Indian.

Then an Indian, as he claims to be, is introduced as a witness for the claimants, named Jones, and he says that he never knew the claimant (meaning P. D. Durant) was a son of Jefferson Durant, except that the claimant told him so; and on

cross examination he does not know where Sylvester Durant, a brother of Jefferson Durant, lived, except from hearsay. This witness' testimony as to his knowledge of Nancy Lee Cundiff, the sister of P. D. Durant, is utterly worthless. He admits he has no knowledge that Mrs. Cundiff is the girl Nancy he knew in Mississippi, and the witness is 75 years old.

Mrs. Nancy Lee Cundiff, the sister of the claimant P. D. Durant, as a witness for him, thinks her father's name was Jesse or Jeff, "Jesse, I think" but does not know which; "Jesse or Jeff Duren or Durant", and that he received letters that way. She does not know her grandfather's name, not even by family tradition. Does not know of her own knowledge why her father went sometimes by the name of Duren and sometimes Durant.

It is not necessary to discuss the evidence further.

After an examination of all the competent evidence in this record, documentary and otherwise, it is clear to me and beyond doubt, that P. D. Durant, as he now calls himself, who has to me none of the personal appearance of an Indian of any kind, because of the fact, and based on the fact that his sister had by some means unknown to this Court, but in the light of the evidence here, unjustly obtained admission to citizenship before the Choctaw Council, a year or so before, the claimant commenced his efforts to be a citizen of the Choctaw Nation, and that he undertook, most of his family always remaining in Texas and never coming to the Indian Territory, to get a claim through the Commission to the Five Civilized Tribes. That he failed there, and failed before the United States Court, because he and most of the other claimants were non-residents of the Indain Territory. His efforts on appeal here, relying on his ability

as he thought perhaps, to show himself a son of Jefferson Durant, a recognized Choctaw Indian, have proved that he is not the son of Jefferson Durant, but of a man named Jesse Duren, and I forbear to say more, except that it is shocking thing to see an effort made and in such a manner, to obtain property and property rights.

I am of the opinion, therefore, that none of the appellants here, all depending for their rights as having the blood of Jefferson Durant, are entitled to citizenship in the Choctaw Nation, 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.

Walter L. Weaver,
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

Jack Amos, et al.,

vs. No. 9.

Choctaw and Chickasaw Nations.

No written opinion.

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

JAMES A. McLELLAN, ET AL.,

VS. NO. 10.

CHOCTAW AND CHICKASAW NATIONS.

STATEMENT OF FACTS AND OPINION, BY ADAMS, CHIEF JUDGE.

The record in this case shows that, under the Act of Congress approved June 10, 1896, James A. McLellan, on the 24th day of July, 1896, filed a petition with the Commission to the Five Civilized Tribes, in which he alleges that he is a son of Dorothy McLellan, whose maiden name was Dorothy Foster; that Dorothy Foster was a daughter of James Foster, who was a Choctaw Indian by blood and who lived in the old Choctaw Nation in the State of Mississippi.

A.

Petitioner James McLellan further alleges that at the time of the filing of the petition he had three children, born to him and his wife Mary E. A. McLellan, to-wit: John F. McLellan, a boy 19 years of age; James C. McLellan, a boy 14 years of age; and Robert D. McLellan, a boy one year of age. He also allegesin said petition that he and his three children are Choctaw Indians by blood, and as such are entitled to enrollment, and prays said Commission to enroll them accordingly.

On the 24th day of July 1896, Wade H. McLellan, also

filed a petition with the Commission to the Five Civilized Tribes, alleging that he is a son of Dorothy McLellan, whose maiden name was Dorothy Foster, she being a daughter of James Foster, a Choctaw Indian by blood, who resided in the old Choctaw nation in the State of Misissippi. The petition further alleges that this applicant has seven children by his wife Kitty McLellan, to-wit: Joseph M. McLellan, 16 years of age, a boy; John F. McLellan, a boy 14 years of age; Abner D. McLellan, a boy 10 years of age; Adeline McLellan, a girl 8 years of age; Dolly, a girl 3 years of age; Wade McLellan, a boy 3 years of age, and Monroe McLellan, a boy one month of age, at the time of the filing of said petition. Petitioner further alleges that he, together with the above named seven children, are entitled to enrollment as Choctaw Indians by blood, and prays said Commission to enroll them as such.

Samuel J. McLellan also, on the 13th day of July 1896, filed with the Commission to the Five Civilized Tribes, a petition alleging that he is a son of Dorothy McLellan, whose maidenname was Dorothy Foster, she being a daughter of James Foster, who was a Choctaw Indian by blood and resided in the old Choctaw nation in the State of Mississippi, and died near Lexington, Mississippi. Petitioner further alleges that he is lawfully married to Sarah McLellan, and has the following children born to him of said marriage: Oma, aged 18 years; Edmond, aged 15 years; Mary, aged 12 years; Samuel, aged 11 years; Ollie, aged 9 years; George, aged 4 years, and Susan, aged 1 year.

The petitioner further alleges that Susan McLellan, widow of Abner D. McLellan, is the mother of Franklin

McLellan, aged 3 years and Abner D. McLellan, aged 1 year; and that they are all children of Abner McLellan, a brother of petitioner and son of Dorothy McLellan. Petitioner further allegesthat he and all others named in his petition are Choctaw Indians by blood, and as such are entitled to enrollment, and prays the Commission to enroll them accordingly.

These petitions were acted upon by the Commission to the Five Civilized Tribes on the 8th day of December, 1896, and denied by said Commission. Thereafter a petition was filed in the United States Court for the Central District of the Indian Territory, praying an appeal to said Court from the judgment of the Commission to the Five Civilized Tribes denying the right of these applicants to citizenship and enrollment as Choctaw Indians.

On the 13th day of April, 1897 the cause came on to be heard in said Court, sitting at South McAlester, when and where it was ordered, adjudged and decreed by said Court that James A. McLellan, John F. McLellan, James C. McLellan, Robert D. McLellan, Wade H. McLellan, Joseph M. McLellan, John F. McLellan, Hattie McLellan, Abner D. McLellan, Adaline McLellan, Dolly McLellan, Wade McLellan, Samuel J. McLellan, Oma McLellan, Edmond McLellan, Mary McLellan, Samuel McLellan, Ollie McLellan, George McLellan, Susie McLellan, Franklin McLellan, and Abner D. McLellan are members by blood of the Choctaw nation; and that Mary E. A. McLellan, Kitty McLellan, Sarah McLellan and Susie McLellan are members by intermarriage of the Choctaw Nation; and that the petitioners aforesaid are entitled to be placed upon

the roll of membersof the Choctaw Nation as such members, and to all the rights, privileges, immunities and benefits as such members.

After the decision of this Court in the case of the Choctaw and Chickasaw nations vs. J. T. Riddle, et al., known as the "Test Case", these petitioners filed a petition in this Court praying an appeal hereto under Section 31 of an Act of Congress approved July 1, 1902, which was granted; and the case came on regularly to be heard in this Court on June 3, 1903, T. N. Foster being present as attorney for applicants, and Mansfield, McMurray & Cornish being present as attorneys for the nations, when the following proceedings were had.

Plaintiffs offerred as evidence a certified copy of the Register of Choctaw names as entered by the United States Agent, W. Ward, prior to the 24th day of August, 1831, who wished to become citizens according to article 14 of the Treaty of 1830. Upon this roll is found the name of James Foster, a half breed Indian, and shows that he had four children under the age of ten years. The roll also shows the name of Hugh Foster, a half breed Indian, who also had four children under ten years of age. At the bottom of this roll appears the following certificate:

> "I do hereby certify that the foregoing persons did apply to me as Agent, to have their names registered to remain five years and become citizens of the State before the 24th of _____ 1831.
>
> (Signed) "W. Ward
> United States Agent."

Plaintiffs next offerred in evidence a certified copy of an act establishing the citizenship of W. F. Foster and others, passed by the Choctaw council and approved November

5, 1888.

Plaintiffs next offer in evidence a certificate from the Commission to the Five Civilized Tribes, showing that James L. Paddock, William A. Paddock and Reuben W. Paddock, the children of Reuben Paddock, a non-citizen, and Eliza Paddock, now deceased, had been enrolled by said Commission as citizens by blood of the Choctaw nation, and that their names appear upon the final rolls of the citizens of the Choctaw Nation, and that their enrollment as such by said Commission was approved by the Secretary of the Interior February 4, 1903. This certificate is signed by T. B. Needles, Commissioner, and bears date May 29, 1903.

Plaintiffs next offer in evidence a report of J. W. Denver, Commissioner of Indian Affairs, dated November 15, 1858. This report is made to J. Thompson, Secretary of the Interior at that time, in which the Commissioner says in part:

> "In conformity with the stipulations of said Treaty, James Foster was entitled to one and three quarter sections of land, or 1120 acres, and Otemansha Foster, to one section, or 640 acres, which were subsequently located by Col. G. W. Martin the agent of the government as follows: (Then follows a description of said tracts).
>
> And then adds:
>
> "Since these locations were made, it has been found by a careful examination of a copy of a plat procured from the Local Land Office at Columbus, Mississippi, and a comparison of the same with the Township plat on file in the General Land Office, that there is a disagreement in the aggregate number of lots, embraced in the aforesaid fractional sections, as designated on the respective plats referred to."
>
> The Commissioner further says:
>
> This discrepancy has occasioned a mistake in describing the lands, as designated on the last mentioned

plats, whereas they were selected for the reservees in accordance with the Township plats in the Land Office at Columbus."

He further says:

The reserve of Otemansha Foster, was approved by President Fillmore, on the 7th day of January 1853, in accordance with a recommendation made by the x x x x x x x x then Commissioner of Indian Affairs."

The Commissioner then recommends that certain corrections be made in the description of the tracts located for the two Fosters.

Attached to the certified copy of this recommendation of the Commissioner of Indian Affairs, I find the following entry:

"Office Ind. Affrs.
Nov. 15, 1858.

"Comr. reports in regard to an apparent conflict between the locations made for James Foster and Otemansha Foster, reservees under the 14th Art. of the Choctaw treaty of 1830, and suggests that the tracts described should be approved by the President, as the locations made by the proper agent of the Government for the respective reservees.
Respectfully referred to the President for his approval.
(signed) "J. THOMPSON
Secretary of Int."

"Approved Dec. 24th, 1858.
JAMES BUCHANAN."

Plaintiffs then introduce as a witness Ephriam Foster, who says he is a Choctaw Indian and is the son of James Foster, whose name was on Ward's roll; that his mother's name was Womack, a sister of A. Womack; that his father drew land as a 14th article Choctaw in Mississippi; that Dorothy McLellan is his sister and a daughter of James Foster by the marriage of his mother, whose maiden name was Womack; that his sister Dorothy was the oldest child, and that he, this witness, is the youngest; that he knows Samuel J. McLellan, Wade H. McLellan and James A. McLellan, and also

knew Abner McLellan before he died; that the above named McLellans are the children of Dorothy McLellan, witness' sister; that their father's name was Frank McLellan; that Abner McLellan is dead; that he knows W. F. Foster, who is present as a witness, and that he is witness' son and a grandson of James Foster. Witness further says that he and his son W. F. Foster have been admitted as Choctaw Indians by the Choctaw council; that they were admitted at the same time; that they were admitted by an act of the council, approved November 5, 1888. Witness further says that he knew Eliza Paddock who is now dead; that she was the granddaughter of James Foster; that he knows James L. Paddock, William A. Paddock and Reuben Paddock; that they are the children of Eliza Paddock and Reuben Paddock; that these Paddock children have been enrolled as Choctaw Indians by blood. Witness further says that he has lived either in the Choctaw or Chickasaw nation for about twenty years; that he has moved about from place to place, but always in the nations.

Upon cross examination witness says he was 75 years old on the 15th day of last April, according to the old record; that this is what he has been told; that the record of his birth has been lost; that he was born in 1828. Witness says that he was taught by his mother that his father's name was on Ward's roll; that he knows nothing of this of his own knowledge, but gained the information from his mother's teachings; that he was also taught that his father drew land under the 14th article of the treaty of 1830, but knows nothing of this of his own knowledge; that he was born in Holmes county, Mississippi. Witness says his father had four children, Dorothy, Ellen, James and himself; that these were the only

children his father had; that Dorothy was the oldest, James next and this witness was the youngest. Witness says that he has no personal knowledge as to where his father died; that he was small at that time; that when he could first remember he was in the State of Mississippi; that his mother, after his father died, moved down into Rankin county, Mississippi; that he satyed with his mother in Rankin county, Mississippi until he was a "great big boy", and then moved to Jackson Parish, Louisiana. Witness says that his brother James died and was buried at Copenhagen, Louisiana; that the reason they went to Louisiana was because they had to go anywhere their step-father desired; that they were children. Witness says he has always been taught that he is an Indian, and never knew anything else. Witness was then asked why he did not come West with the other Indians and says that he could not because he was only a child; that he heard his mother speak of having rights here, but she was only a woman and had to go where her "man" went. Witness says he thinks his father had three brothers, naming Mose and Hugh Allen; that he is not certain about the names; that he does not know what became of his uncle Mose, but thinks Hugh Allen is buried at Old Town in the nation. Witness says he thinks his grandfather's name was Mose; that he does not know what his grandmother's name was ; that he thinks his grandfather Mose was a white man, and that he has been taught that his grandmother was a fullblood Indian. Witness says his mother married Samuel McLellan when witness was very small; that McLellan made a living in Rankin county by farming; he thinks he owned a small place. Witness further

says that neither he, his brother or sister received and benefits from the sale of lands conveyed to his father from the Government of the United states; that he was told there was was land but they got swindled out of it; that he was told the land was located in Holmes county, Mississippi. Witness says he lived in Jackson Parish, Louisiana, after moving there from the State of Mississippi, until he was a grown man; that he went from Louisiana to Texas, Montague county; that he lived in that county six years and then moved to Boss county; that he lived in the latter county seventeen years, where he bought land; that he was accused of killing his brother-in-law Price, but that he did not leave Louisiana on that account; that he had some trouble with his brother-in-law Price before he, witness, left Louisiana, but did not at that time know he was accused of killing him. Witness further says that their attorney before the council in 1888 was Capt. Standley of Atoka; that they paid Capt. Standley several hundred dollars; that they paid him $500.00 right at the start.

On re-direct examination witness says that he does not know where he was born except what his mother taught him; that he doesnot remember anything about Holmes county. Witness says he remembers going from Rankin county to Jackson county with his step-father on one occasion and they crossed Pearl River. Witness further says that all the parties included in the act of the Choctaw council, approved November 5, 1888, are his relatives, some of them being his children and grandchildren. Witness says his son William killed a man in the State of Texas, was tried for it and came clear.

Witness says that the McLellans, who are the applicants in this case, applied to the Choctaw council for admission and were rejected, he thinks. Witness further says that the Womacks are his mother 's brother's children; that they wanted to come in as Indians and wanted to be put in with witness' claim, but that he knew they were not Indians and could not swear they were, and that none of his folks could. Witness says he did not get his Indian blood from his mother's side, but got it from his father's side. Witness says the Womacks got mad about it because they would not swear they were Indians; that he hates to tell about kin folks falling out, but that was the way it stood.

William Foster is then introduced as a witness for plaintiffs, and says that he is the William Foster mentioned in the act of the Choctaw council, admitting himself and others to citizenship. Witness says that James L., William A., and Reuben W. Paddock, who are children of Eliza Paddock, are his second cousins; that these Paddock children have been admitted by the Dawes Commission, and their admission approved by the Secretary of the Interior on February 4, 1903.

On cross examination witness says he is 47 years old; that he was born in Louisiana, Jackson Parish, near Bernon the county seat, on Caney Creek; that his father moved from that place the year before the War, he thinks it was, to Montague county, Texas; that his father owned land in Montague County, Texas; thathe then moved to Boss county, Texas; that he lived there until 1875, when he had some trouble; that he was charged with murder; that he then went

to the State of Arkansas and remained there about five years. Witness says that Capt. Standley represented them as attorney before the Choctaw council, and each family paid him $50.00; that he thinks there was about sixteen families, and that in all they paid him about $1800.00. Witness says that he lived in the Choctaw Nation about eight years before he made application for citizenship; that par t of this time he lived on Mrs. Folsom's farm and paid her rent; that he also worked for a man named Brittain for wages.

James A. McLellan is then introduced as a witness for plaintiffs, and says that he is the same James A. McLellan who made application to the Commission to the Five Civilized Tribes in 1896; that Mary E. A. McLellan is his wife, and that she is now living. Witness says that he has four children, to-wit: John F. McLellan, James C. McLellan, Robert D. McLellan and Levy LcLellan, who is now six years old. Witness says that he has resided in the Indian Territory aince the application was made to the Commission to the Five Civilized Tribes and still resides here.

On cross examination witness says that he is 50 years old; that he was born in Louisiana, Jackson parish, and moved from there to Boss county, Texas; that he moved from Boss county, Texas, toLamar county and from Lamar county back to Louisiana, where he lived five or six months and then came back to Texas. While in Texas, witness says, he rented land and paid rent; that he contracted for a piece of land in Texas, but did not get it; that he moved from the State of Texas to the Choctaw Nation in 1894; that he and

his brother applied to the Choctaw council in 1895; that William Foster and Ephriam Foster were their witnesses; that council rejected witness and his brother.

Samuel McLellan is then introduced as a witness for plaintiffs and says he is a Choctaw Indian by blood partly and the rest is white; that he is lawfully married to his wife Sarah, and by which marriage he has the following children: Oma, Edmond, Mary, Samuel, Ollie, George, Susan, Orvil Dickie. Witness says he had a brother named Abner D. McLellan who is now dead; that his mother's name was Dorothy Foster, and that she was a sister of Ephriam Foster; that his mother married Frank McLellan, and that witness is a child of that marriage, and that his brother Abner was also a child of that marriage, as well as Wade and James A.; that his brother Abner D., who is now dead, married Susan Black, and had born to him by that marriage Franklin Black McLellan and Abner D. McLellan; that his brother Wade married Kitty Blocker and has children by that marriage. Witness says he has been taught since he can remember that his mother was a one-fourth Choctaw Indian, and a daughter of James Foster that lived in Holmes county, Mississippi, whose land was set apart for him and he died. Witness says his grandmother lived nearly a year after witness was married and that was what she always taught him. Witness further says that his grandmother taught him that his grandfather went to the Land Office to file on his land, came back home, took sick, went to bed and never got up any more. Witness says he thinks his grandmother had to live on the place five years before she could get a deed. Witness says he was living at

his grandmother's house when this claim was first being worked up and that is what she told him. That he is 48 years old; that he never saw his grandfather , James Foster; that he has always been taught that his grandfather's name was on Ward's roll; that he has seen Ward's roll, and the name of his grandfather appears thereon. Witness says he was local trustee to the local schools, -national school-for one year in the Choctaw Nation; that he has been granted permits for his renters by the Choctaw authorities; that he now lives in the Choctaw Nation and has lived there about 13 years; that he never received any of the "leased district" money. On cross examination witness says that the information he has given relative to his grandfather was taught him by his mother and grandmother; that his grandmother died in Texas after his mother died; that she died prior to his removal to the Territory; that he has been taught that his grandmother lived on the land of his grandfather for about five years after his grandfather's death; that witness' mother also lived there; that she then married Samuel McLellan. Witness says the last he heard of the land his grandmother told him it had been sold for taxes; he got this information about twenty one or twenty two years ago. Witness further says that he knows the children of Eliza Paddock, that they are his second cousins; that the Paddock children have been admitted by the Commission to the Five Civilized Tribes as Choctaw Indians, and that they derive their Indian blood from James Foster, witness' grandfather.

Susie McLellan is then introduced as a witness for the plaintiffs and says that her postoffice is Caddo, Blue County, that she is the widow of Abner McLellan, to whom she was

lawfully married, and by which marriage had the following children: Franklin McLellan, aged 10 years and Abner D. McLellan, aged 8 years; that these children live with witness in the Choctaw Nation.

Wade H. McLellan is then introduced as a witness for plaintiffs, and says that his wife's name is Kitty, and that they have eight children, to-wit: Joseph, Hattie, John, David, Adeline, Dolly, Wade and Mamie, and that they are all residing with this witness and his wife in the Choctaw nation. On cross examination witness says that he is older than his other brothers; that he is 52 years old; that he came to the Territory about 11 years ago; that he left Louisiana and came to Texas and remained in Texas until he came to the Territory; that he rented land in Texas; that he applied to the Choctaw council for citizenship with his other brothers; that Capt. Standley was his lawyer.

This is the evidence as offerred by the plaintiffs.

The case was then continued and came on again to be heard on the 7th day of January, 1904, when the nations introduced the following testimony:

The first evidence offerred is a certified copy of a patent to land which was conveyed to Ephriam Foster as a homestead in 1860, in the State of Louisiana.

The defendants next offer in evidence Volume VII, American State Papers, Public Lands section, and make reference to page 90 thereof, from which it appears that James Foster, having twelve acres of land in cultivation and having a family consisting of five persons, none of whom were under sixteen years of age, applied for benefits under the

19th article of the Treaty of 1830. And on page 133 of the same book it appears that a person by the name of James Foster, being a half breed man, and having four children under ten years of age, applied to W. Ward, the United States Agent, to have his name registered to remain five years and become a citizen of the State, according to the 14th article of the Treaty of 1830. And on page 135 of the same book it appears that a person of the name of James Foster, having 12 acres in cultivation, and having a total acerage of 160, applied to be listed for additional reservation in Greenwood Laflore's district.

This is all the competent evidence offerred by the defendants.

It will be seen by an examination of the record that James A. McLellan, Wade H. McLellan and Samuel J. McLellan, claim that they are Choctaw Indians by blood, having derived their Indian blood from their grandfather, James Foster, who lived and died in Holmes county, Mississippi. The plaintiffs further contend that James Foster, their grandfather, complied with the 14th article of the Treaty of 1830, by signifying his intention to the agent to remain and become a citizen of the State. Plaintiffs further contend that their grandfather and grandmother had four children; that Dorothy, the mother of the three named plaintiffs, was the eldest of the four; and that the other plaintiffs are the children of the three principal plaintiffs, except Mary E. A., who is the wife of James A. McLellan; Kitty, who is the wife of Wade H. McLellan; Sarah McLellan, who is the wife of S. J. McLellan, and Susie McLellan, who is the widow of the

deceased brother, Abner D. McLellan, and is the mother of Franklin McLlellan and Abner D. McLellan.

The nations, however, contend that the plaintiffs, nor any of them, are descendants of either of the James Fosters who applied to Ward, the agent of the United States and signified their intention to remain and become citizens of the state, in accordance with the 14th article of the Treaty of 1830.

The article of the treaty referred to is as follows:

> "ARTICLE XIV. Each Choctaw head of a family being desirous to remain and become a citizen of the States, shall be permitted to do so, by signifying his intention to the Agent within six months from the ratification of this Treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one half that quantity for each unmarried child who is living with him over ten years of age; and a quarter section to each child as may be under ten years of age, to adjoin the location of the parent. If they reside upon said lands intending to become citizens of the States for five years after the ratification of this Treaty, in that case a grant in fee simple shall issue; said reservation shall include the present improvement of the head of the family, or a portion of it. Persons who claim under this article shall not lose the privilege of a Choctaw citizen, b t if they ever remove are not to be entitled to any portion of the Choctaw annuity."

It would seem, by this article of the Treaty, that if a Choctaw Indian who wasthe head of a family desired to remain and become a citizen of one of the States, he should be permitted to do so by signifying his intention to the agent within six months after the ratification of the Treaty. Upon his doing this he was entitled to certain benefits, one of which was that he should not lose the privilege of a Choctaw citizen; but if he or his descendants ever removed they would not be entitled to any portion of the Choctaw annuity.

So the question in this case is, are the plaintiffs descendants of either of the James Fosters, who are shown by Ward's roll to have applied to the agent of the Government and signified their intentions to remain and become citizens of the States. There were, evidently, two James Fosters who did this; one of them had five children in 1831 under the age of ten years. This one could not have been the ancestor of these applicants, for the testimony shows that the father of Dorothy McLellan, who was the mother of the principal applicant, had only four children. The other James Foster who seems to have complied with the 14th article of the Treaty of 1830, the record, shows, had four children under the age of ten years when he applied to Agent Ward.

Ephriam Foster says thathis father had four children, and lived and died in Holmes county, Mississippi, Ephriam being the youngest child, and was born in 1828, his sister Dorothy being the oldest. Witness further says that his father died when he was small; that he does not remember him, but has seen his name on Ward's roll, and that he applied for land under article 14 of the Treaty of 1830.

James A. McLellan testified that he has always been taught that the James Foster whose name appears on Ward's roll, is his grandfather.

Samuel McLellan testified to about the same facts, as did two or three other witnesses.

O P I N I O N.

It is a well known fact that it is hard to produce strictly competent evidence to establish facts with reference to transactions which took place over seventy years ago, and especially as to what Indians did or did not do as long ago as that; and particularly the names of Indians whom the present generation of Indians are descended from. These Indians seem to have been exceedingly derelict in keeping a record of their ancestors.

Many of these plaintiffs' relatives have been admitted by the Choctaw council, and several of their relatives have been admitted and enrolled by the Commission to the Five Civilized Tribes, and the latter enrollments approved by the Secretary of the Interior,all of whom derive their Indian blood, if such they possess, from the same ancestry as do the plaintiffs in this case. While this is not binding upon this Court, still it is a circumstance showing that another tribunal, which is a quasi court, and a legislative body of the Indians, as well as the Secretary of the Interior, have decided that the ancestorsof these plaintiffs were Choctaw Indians by blood, and as such entitled to citizenship and enrollment.

In view of all the evidence and the circumstances surrounding this case, I am of the opinion that the evidence is of sufficient strength to establish the fact that Dorothy Foster, the mother and grandmother of applicants, was a daughter of James Foster, who signified his intention to W. Ward, United States Agent, to remain in Mississippi and become a citizen of the States, according to article 14 of

the Treaty of 1830, and who at that time had four children under ten years of age. The description of James Foster as shown by Ward's roll and the description given by witnesses in this case are the same.

I am, therefore, of the opinionthat James A. McLellan, John F. McLellan, James C. McLellan, Robert D. McLellan, Wade H. McLellan, Joseph M. McLellan, John F. McLellan, Hattie McLellan; Abner D. McLellan, Jr., Adeline McLellan; Dolly McLellan; Wade McLellan, Samuel J. McLellan, Oma McLellan, Edmond McLellan, Mary McLellan, Samuel McLellan, Ollie McLellan, George McLellan, Susan McLellan and Franklin McLellan are members by blood of the Choctaw tribe of Indians; and that Mary E. A. McLellan, Kitty McLellan, Sarah McLellan and Susie McLellan are Choctaw Indians by intermarriage, (The evidence shows that Abner D. McLellan, whose name appears in the judgment of the United States Court for the Central District of the Indian Territory, and also in the petition for appeal to this Court, is dead, but has a son, Abner D. McLellan, Jr., named above); and are each entitled to citizenship and enrollment as Choctaw Indians. A Judgment of this Court will be entered accordingly.

Spencer B. Adams
Chief Judge.

We concur:

Walter L. Weaver
Associate Judge.

Henry S. Foote
Associate Judge.

dead. These affidavits are not such as are competent evidence to support the claim of the applicants, and further it is shown here by several credible witnesses, not only that these two old people had been witnesses to the Choctaw blood of various claimants in other similar cases, entitling them to be considered standing witnesses in such cases, so to speak, but also their credibility is destroyed by the statements of other witnesses, that they are not to be believed on oath, either from their feeble ness of intellect, or being easily pursuaded to swear to matters about which they knew nothing, or that they were untruthful or accepted money for giving evidence.

Furthermore Thomas York and Billy Baker swear in their affidavits that they knew well, Eli Sanders, the father of Ann Thompson, in the State of Mississippi, and they are shown by unimpeachable testimony to have always lived in Leake county, Mississippi, which is in the old Choctaw Nation, while the evidence of Ann Thompson and others conclusively show that Eli Sanders lived in Lee County, Mississippi, a long way off from Leake County, and that Lee County is in the Chickasaw Nation, having several counties south of it between it and Leake County. From the affidavit of York and deposition of Baker it further appears that affiants were about the same age as Eli Sanders. York was seventy four years of age in 1896 and Baker was seventy four in 1897. Mrs. Thompson testified in 1897 that she was sixty years of age. Hence, if the statements of York and Baker are true, Eli Sanders must have been a father at the age of fourteen. Again, Billy Baker states in his deposition of July 19th, 1897 that he became acquainted with Eli Sanders when he, deponent, was 24 or 25 years old and that said Sanders was about his age.

But Mrs. Thompson, who of all others ought to know, testified before this Court, in 1903, that her father came to Mississippi when she was 12 or 13 years of age; that at the time of her testimony he had been dead eleven years, and that when he died he was within five years of being a hundred years old. Thus it appears that the father of Ann Thompson was some twenty seven years older than the witnesses York and Baker. It is impossible for me to believe that a man 24 or 25 years old could consider one twenty seven years his senior as being about his own age. The statements cannot be reconciled and admit of but one conclusion.

It is evident that Ann Thompson, the principal claimant in this case, and who claims to know more about it than any other, and the one most likely to know about her ancestors, with full knowledge, as I must believe, of the untruthfulness or unreliability of the statements of these two discredited old witnesses, obtained them and their statements in the form of affidavits, and used them in bad faith to obtain a judgment in her favor in the Court below. This inclines me to believe, together with the fact that she is a highly interested witness, and other facts and circumstances in this cause, that she ought not to be credited in this case. In this connection it is a remarkable fact in the record here and coming from the testimony of Ann Thompson herself, that she states in her deposition before the United States Court in 1897, that her grandfather, through whom she claims, formerly lived in Virginia, before his advent to Mississippi; she does not, however know the Christian name of her grandfather; she says in that connection in her deposition filed in the United States Court below:

"My grandfather formerly lived in Virginia. My

father has always told me that he was 12 years old when he was taken from Virginia to Mississippi", and that her "father said his father was a full blood Choctaw Indian and lived among them in Virginia until they were removed to Mississippi."

Now Virginia is many hundreds of miles from the old Choctaw Nation in Mississippi and there are not, and never were, any Choctaws as far as shown here, or by history, tradition or common knowledge in the State of Virginia, so that if this statement was true, it is a strong circumstance to show that if Eli Sanders had any Indian blood, it was not Choctaw: For as I before said the Choctaw Nation never existed in Virginia. But Ann Thompson contradicts this statement in her said deposition when she comes on the stand as a witnessx before us, and these questions and answers appear in the record.

"Q. Do you claim Choctaw blood through your father or mother.

A. Through my father.

Q.--Did he claim his Choctaw blood through his father or mother?

A. Through his father.

Q.m But you didn't know his given name?

A No, sir.

Q. Where was he born?

A. In Alabama somewhere.

Q. Your grandfather was born in Alabama?

A. Yes sir.

Q. Whereabouts?

A. About Madison County.

Q. Your grandfather was born and raised in the State of Alabama?

A.--Yes sir."

It thus appearsthat not only has Ann Thompson used worthless, if not fraudulent, affidavits to bolster up her claim, but she has sworn at least recklessly, if not falsely, as to her knowledge of the birthplace of her grandfather, and his living among the Choctaws in Virginia until the Choctaws were moved to Mississippi, which they never were from Virginia but always had been a tribe, as far as any knowledge of them is to be had, located in Mississippi.

But if her grandfather was born and raised in Madison County, Alabama, strong probabilities would seem to exist that he was not a Choctaw, for the reason that if he had any Indian blood, it would more likely be that of a Creek or Cherokee for these Indians lived much nearer, in their tribal relations, to Northern Alabama where Madison County lies, than to the Choctaw Nation in Mississippi. Then again this father of Ann Thompson, Eli Sanders, did not live or reside or xxx own land in the Choctaw Nation in Mississippi. He lived in Lee County, Mississippi, and owned land there, which is in the old Chickasaw Nation, and far removed from Leake County, Mississippi, where some of the affidavit makers before the Commission to the Five Civilized Tribes, said they knew Eli Sanders, the father of Ann Thompson. Then Ann Thompson married several times either in Mississippi or elsewhere, and after living a considerable number of years in Mississippi moved to Texas, as she says on her way to the Indian Territory, and she says in her deposition, that there the black mud stopped her course to Indian Territory, and her then husband would not come on to that Territory.

The witness Ann Thompson is the only one that shows what is claimed about the early history of her family and she makes her grandfather in one breath a Virginian, living there

amongthe Choctaws as a Nation, and in the next an Alabamian, born in North East Alabama, near the Cherokees and Creeks, and still a Choctaw. Such conflicts of statements are unexplainable. Therefore it is impossible for me to say, in view of her conduct in using the affidavits of Baker and York, and relying mainly on them below, and her contradictory statements as to family history &c., and of the absolute uncertainty she places on the birth and lineage and blood of her grandfather, through whom she claims, that the evidence is such in this case as to warrants any reasonable belief on my part that she is truly of Choctaw blood. Her father may have had some other Indian blood, but he is not shown by any reliable evidence, sufficiently to me, to have had any Choctaw blood. As to the witnesses Boring and Kennedy, even if full faith and credit is to be given to their statements in many respects, this man Eli Sanders the father of Ann Thompson is not shown to be a Choctaw by blood, in fact all that they state as to his residence, his appearance and his habits, would more naturally from his location at least in the Chickasaw Nation, tend to show him, when they knew him, if an Indian at all, to be a Chickasaw. But Ann Thompson's evidence would contradict that theory and make him if an Indian, a Virginia Choctaw Indian, an absurdity, or a Creek or a Cherokee.

After a thorough and painstaking examination of the voluminous record before me, I am deliberately and convincingly of the opinion, that under the evidence adduced, Ann Thompson nor any of the other applicants here are entitled to be deemed and declared citizens by blood or otherwise of the Choctaw Nation or Tribe, or entitled to enrollment as such or to any rights or privileges flowing therefrom, AND IT IS SO

ORDERED.

(Signed) Henry S. Foote,
Associate Judge.

We concur:

(Signed) Spencer B. Adams,
Chief Judge.

(Signed) Walter L. Weaver,
Associate Judge.

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

Lula McKinnon, Myrtle Lee McKinnon,
William Alexander McKinnon and
George Washington McKinnon,

Apellants.

vs. No. 12.

The Choctaw and Chickasaw Nations,

Appellees.

OPINION, By ADAMS, Chief Judge.

This case is properly in this Court on appeal, and the evidence discloses the following facts:

In the year 1871, Mollie Douglas, a white woman, married a one quarter blood Choctaw Indian, whose name was Joseph Harris, and was at the time of his death Supreme Judge of the Choctaw Cuurts in the Indian Territory. There is no question about the right of citizenship of Joseph Harris. Joseph Harris died in the year 1873, in the Choctaw Nation. Sometime during the month of October, 1872, the wife of Joseph Harris, whom he married in 1871 and whose maiden name was Mollie Douglas, gave birth to a child. That child and three of her children are the applicants in this case, she, having in the year 1887, married a G. G. McKinnon, a white man, and a brother of her mother's last husband.

The Nations introduced some evidence tending to show infidelity on the part of Mollie, the wife of Joseph Harris, prior to the birth of the applicant Lula. This was for the purpose of showing that the child was not the child of Joseph Harris, but the result of an act of adultery on the

part of Harris' wife.

When sifted down and incompetent statements of witnesses excluded, I find there is no evidence to establish the alleged fact that the wife ever committed an act of adultery. At the best it was a mere rumor. It is a sad fact but nevertheless true, that a part of the human family is prone to cast aspersions upon the character of others, and in many cases without any foundation in truth whatever. It would not do for courts where justice is supposed to be administered, to discard the well settled rules of evidence in passing upon the rights of litigants and declare that a child born in lawful wedlock was an illegitimate offspring, because someone believed or said they believed, its mother had committed an act of adultery. This would be a monstrous proposition, and can not be tolerated by this court.

When the child was born while the marriage relation existed between the father and mother, it is presumed the child is a legitimate offspring. No evidence was offered in this case to rebut that well settled and humane presumption. The onus lies on the person alleging that the child is an illegitimate offspring, to make that allegation good by sufficient proof.

The appellees have failed to produce such proof in this case, I am of the decided opinion that the appellant, Lula McKinnon, and her three children who are parties to this proceeding, to wit, Myrtle Lee McKinnon, William Alexander McKinnon and George Washington McKinnon, are entitled to citizenship and enrollment as Choctaw Indians by blood.

The evidence developed the fact that the applicant, Lula McKinnon, has three other children born since the institution of the proceedings in this case. The court does not

pass upon their rights for the reason that they are not parties to this proceeding, and hence are not before this Court.

A decree in accordance with this opinion will be entered by this Court.

(Signed) Spencer B. Adams,
Chief Judge.

We concur:

(Signed) Walter L. Weaver,
Associate Judge.

(Signed) Henry S. Foote,
Associate Judge.

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

JAMES F. BIDDIE, et al, Plaintiffs. vs. THE CHOCTAW AND CHICKASAW NATIONS, Defendants.

No. 13.

T. N. Foster, for Plaintiffs.

Mansfield, McMurray & Cornish, for Defendants .

This case came to this court in accordance with the Statute made and provided. The evidence was voluminous and the questions of law involved were exhaustively argued by counsel.

I have carefully examined and weighed the oral testimony presented, and such documentary evidence as was presented and properly before the Court, and find the facts established to be as follows, viz:

All the applicants for citizenship in this case are descendants of, or intermarried with descendants of, one James Jones Biddie, an alleged Choctaw, who came into the Choctaw Nation in 1873. About this there is no dispute. If he was entitled to enrollment as a citizen of said Nation, they are, that is his descendants are and such others as intermarried with any of his descendants in accordance with the tribal laws likewise so entitled. No person has positively testified who the immediate ancestors of James Jones Biddie were, but it isstated by several members of his family that it is a matter of family tradition that he was a descendant of an Indian woman named "Seely" or "Sarah" Jones, who was a daughter of one Jones, whose Christian name was either Alexander or Frederick. There is not

even a tradition in the family regarding ancestry beyond this.

James Jones Biddie claimed to have been born in Mississippi and one of his daughters, Mrs. Josephine Bobo, testified to an entry in an old bible recording the fact that he was born in Mississippi in 1809, but that it was so worn and mutilated that the exact place where he was born could not be ascertained. It was testified to, however, by several of his children that they had heard him say, or at least had gained such an impression through him, that he was born in Itawamba County, Mississippi. It is in testimony and undisputed, that he was a resident of Marshall County, Alabama, near Gunter's Landing on the Tennessee River, and some of his children remember that fact, and that he and his family and a number of others, who were white people, moved from there to Arkansas in 1851 or 1852.

Said James Jones Biddie lived in Arkansas after his arrival there, on White River, and in Hempstead and Montgomery Counties, where he engaged in laboring, farming and stock raising, until in 1873, when he removed to the Choctaw Nation in the Indian territory and remained there until his death a few years ago. The testimony further shows that he claimed to be a Choctaw by blood, that he had the appearance of an Indian, especially as to his complexion, that he was known in that portion of the Nation in which he lived as the "Choctaw Preacher" or the "Indian Preacher", and that he was reputed to be a Choctaw by both white and Indian residents of that locality, and that the same repute attached to those of his descendants who resided there. A number of these residents, however, who

were called as witnesses for plaintiffs, when testifying and upon cross examination, said that the basis of this re pute was the claim so set up by said James Jones Biddie, in appearance, and their lack of knowledge to the contrary.

It is further shown that he never claimed any other sort of Indian blood except Choctaw.

I have alluded to the fact that he was known as the "Choctaw Preacher", but the fact is also developed in the testimony that when he preached he did so in English and his remarks would be interpreted to the Choctaws, and as one of his daughters, Mrs. Bobo, stated, he could not speak all of the Choctaw language and did speak it "mighty little."

One of his daughters or xxx granddaughters made application for and was granted a divorce in the Choctaw Court at Wilburton, I. T. and could not have maintained her action in said Court unless she was considered to be a member of the Tribe or Nation.

The facts above set forth are, in substance, all that was produced by the plaintiff's in support of their contention that James Jones Biddie was a Choctaw Indian by blood. True it is that said James Jones Biddie, when he made application to the Choctaw Council for admission and enrollment as a member of the Choctaw Nation, produced certain witnesses, to-wit:- one Miashonabe and one George Washington who testified concerning his ancestry and residence east of the Mississippi River at a period long prior to the time he removed west of the Mississippi. But little credence could be given to these statements as they are in conflict with each other, with the statements of Biddie himself, and the testimony of witnesses for plaintiffs upon the stand. I am therefore brought

face to face with the question whether or not the facts as above stated, which I find exist in the case, are sufficient to warrant me in concluding that the descendants of said James Jones Biddie made satisfactory proof that he was a Choctaw by blood. It is a well known historical fxex and geographical fact and has been proven in this Court, that the county of Itawamba, in the state of Mississippi, was in the lands formerly occupied by the Chickasaw tribe of Indians, and that the Choctaw Nation occupied lands south of the Chickasaws in that State, and their possessions extended into Alabama only to the Tombigbee River. That Marshall County, Alabama, where, according to the testimony, said Biddie settled in early life, and where he remained until he removed with his wife and children and some others, white people, in 1851 or 1852 to Arkansas, lies a distance of not less than one hundred and fifty miles from the nearest point of the old Choctaw Nation. When he removed from Marshall County, Alabama, it appears that he went direct from the one state to the other. This was more than twenty years after the date of the treaty between the United States and the Choctaw Indians by which the Choctaws agreed to and did relinquish their lands east of the Mississippi for lands in the Indian Territory, and seventeen years or more after the said Choctaws who did not intend to remain in Mississippi and take advantage of the rights given to them there under said treaty, had emigrated or agreed to emigrate to the Indian Territory. That he never was a resident of the Choctaw Nation in Mississippi unless possibly as an infant. Then also, the evidence shows that he stopped for twenty years in the State of Arkansas, and after he came to the Territory he delayed for several years before making application to the Council to be

enrolled as a citizen.

In the light of all the evidence in this case, and I feel that we have excluded nothing which could in any way be considered to be competent, I am of the opinion that the plaintiffs have failed to prove that the said James Jones Biddie was a Choctaw Indian by blood. I can not find evidence which satisfies me of the fact that he was born, reared, or ever lived in the Choctaw Nation until he came into this Territory in 1873, being then about sixty-four years of age. The burden of proof rests upon the applicants and in order to make out their case they must show, with sufficient force to satisfy the minds of reasonable men, that their contention is true. This has not been done, although I believe that they have earnestly, honestly and sincerely endeavored to do so. Judgment will be rendered accordingly.

(Signed) Walter L. Weaver,
Associate Judge.

We concur:

(Signed) Spencer B. Adams,
Chief Judge.

(Signed) Henry S. Foote,
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

Serilda J. Harrison,

vs. No. 14.

Choctaw and Chickasaw Nations.

No Written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

P. S. Lester,

vs. No. 15.

Choctaw and Chickasaw Nations.

No written opinion.

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

March Term, 1904.

James T. Leard,

Appellant.

vs. No. 16a

Choctaw and Chickasaw Nations,

Appellees.

OPINION , by FOOTE, Associate Judge.

The applicant for intermarried citizenship was rejected by the Commission to the Five Civilized Tribes, he then appealed to the United States Court for the Central District of the Indian Territory: The Judgment rendered there having been set aside by this Court in the decision by us in the test suit, sometimes called the Riddle case, the appellant brings his cause here under the Act of July 1st, 1902.

It appears from his evidence that he was living in the State of Arkansas for two years before his marriage to his wife, a Choctaw woman and citizen of that nation. He was married to her, then Miss Cora McCarty, on the 10th day of June 1874. He was married without a license and although he had, before he went to Arkansas and lived there two years just previous to his marriage, lived in the Choctaw Nation, he does not appear at that time to have been a citizen of the Choctaw Nation. Since his marriage he has continuously lived in the Choctaw Nation, with his wife who is still living.

Under the Act of October 1840, page 76 and 77 of the Choctaw Laws of 1869, it is provided: "That no white man

shall be allowed to marry in this Nation unless he has been a citizen of the same for two years. That he shall be required to procure a license from some Judge or the District Clerk, and be lawfully married by a Minister of the Gospel, or some other authorized person before he shall be entitled and admitted to the privilege of citizenship."

It is clear that the marriage of Mr. Leard to his Choctaw wife was not in accordance with the conditions of the law above cited, by which alone he could become entitled to citizenship in said Nation; although his marriage was and is a valid one, as a common law marriage.

For this reason I am of the opinion that he is not entitled to be deemed an intermarried citizen of the Choctaw Nation, or to enrollment as such, or to any of the rights and privileges which flow 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.

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.

James H. Womack, et al,
Appellants,

vs. No. 17

Choctaw and Chickasaw Nations,
Appellees,

Eliza J. Apple, et al,
Appellants,

vs. No. 28.

Choctaw and Chickasaw Nations,
Appellees.

These two causes come here in the usual way on appeal from the United States Court for theCentral District of the Indian Territory.

It is agreed on both sides that they be considered together and that one decision shall be rendered covering both cases.

James H. Womack and Eliza J. Apple, claim to be brother and sister, and to be Choctaw Indians by blood, through the same common ancestress, one Polly Campbell, nee Walker, as their grandmother. It is so stated in the petition filed beforethe Commission to the Five Civilized Tribes, apparently on the 24th day of August, A. D. 1896.

It is further stated therein that this grandmother was known to them in the State of Tennessee, and that she died about thirty years before the date of the petition.

The petition being deniedby said Commission the parties to these actions took an appeal to the United States District Court for the Central District of the Indian Terri-

tory, and their claim was there allowed.

The judgments therein being set aside by the judgment of this Court, in what is called the test suit, they appealed to this Court for a re-trail of their causes, as before stated, under the Act of July 2, 1902.

James H. Womack and his sister Mrs. Apple, in their oral evidence in chief before us, claimed that they knew they were of Choctaw blood, but upon cross examination it was developed that their only knowledge as to their racial status, was based on hearsay evidence. This is not sufficient under the decision of the Supreme Court of the United States, to establish racial status, and so far as their evidence is concerned, they have not established sufficiently that they are persons of Choctaw Indian blood.

The other witnesses whom they offered have not done so either.

There are certain affidavits in the record here, taken and filed before the Dawes Commission, which although not such affidavits as are admissible in evidence to support their claim, are of such a nature, as when examined with a view to the credibility of these claimants, and as going to show the good or bad faith of their claims, throw light on those matters, and deserve notice at our hands.

The petition by James H. Womack and another was sworn to before a Notary Public, who was also one of the attorneys for these people, and one of said affidavits, taken exparte, that of Willis Jackson, who makes his mark, was also sowrn to before said Notary, also an attorney for the claimants; this same Willie Jackson was brought before this Court as a witness for the appellee on the trial of the causes, and swore that he had not made the statement that appears in the

affidavit that "he knew the cliamant's mother" that "he never knew it" that he got all the information about which he swore in that affidavit, vital to the claims of these applicants, from what they came and told him.

The statements of this ignorant old man when on the stand show that the claimants when they filed and claimed rights through this affidavit, knew that they were filing a false and fraudulent affidavit, and demonstrate to my mind the simulated nature of their claim. To the same effect is the oral evidence before us of Jennie Nelson and Mary A. Jackson, who also made affidavit for these claimants before the Commission to the Five Civilized Tribes, in 1896, or deposition before the United States Court below in 1897.

It is also shown to the Court here, in two other cases, that of Anne Thompson vs. Choctaw and Chickasaw Nations, No. 11, on this docket, and of Francis C. Neely, et al, vs. Choctaw and Chickasaw Nations, No. 79 on this docket, that William Baker, an affidavit maker for these claimants, was not a credible witness.

James H. Womack himself, states some very doubtful things in which he is not sustained by some of his other witnesses. He says, among other things that his grandfather and mother, as he was told, came to the Indian Territory in 1830, and after staying there a while left and went to Tennessee because when the Choctaws came in (doubtless the immigrant Choctaws from Mississippi) that they conspired to kill the white people and they had to leave; that is his grand father and family, the wife of Campbell, claiming to have been a Choctaw Indian; while his, Womack's, sister Mrs. Apple, remembers no such statement, as being made by her grand parents.

And another of the witneses, John McDonald, says, he never heard of Mrs. Polly Campbell, whom he knew in 1835 in Smith County, Tennessee, ever coming to the Indian country. Then he corrects this and says she said she came to the Choctaw Nation and came back to Tennessee. This witness knows nothing of the blood of these people save from hearsay and he claims to have known them in Smith and Wilson Counties, Tennessee, as early as 1835.

It is evident from all the testimony that these people claiming here never thought of being Choctaws, or claiming to be such, until a rambling brother of Mrs. Apple came out here to the Territory, they being in Tennessee, and brought to their attention that they ought to make a claim to be Choctaws, and Mrs. Apple, in answer to this question: "That was about the first time that your family history pointed to your being Choctaws?", says "Yes, sir". This tells the whole story taken in connection with what she says her father told her; viz., that he was going to the Indian Territory to take up his claim--and he a white man. She says too, that if she had had her preference, she would have been a Cherokee. In fact the evidence, being thoroughly sifted, is utterly worthless to establish Choctaw blood in these claimants. Again of the various brothers and sisters, and their descendants, of Womack and Mrs. Apple, none of them have made similar claims to these people.

Now if this was a good and valid claim it would appear likely that some of them would have coveted and claimed lands and rights in the Choctaw Nation. These people and their ancestors lived for many years in Tennessee and owned property and acted as other citizens of that State, and never seemed to have thought about claiming as Indians until of late years. And even then, if she had had her choice,

Mrs. Apple says she would have beena Cherokee. The whole story they tell appears mythical to me, as affects their blood.

Further this man, J. H. Womack says, in his oral statement, that his grandfather and family had been run out of this Indain country by the Choctaws when they came in, and went to Tennessee, and yet in a statement made by him in a deposition used before the United States Court. of the Central District of the Indian Territory in 1897, on the 15th day of Sptember of that yeqr, he says :

"I can remember my grandmother well; she came to the Choctaw Nation in 1831, and a few years after returned to Mississippi". Not to Tennessee, it seems. Another of the witnesses for plaintiffs, one Hampton, a man who seemed by his statement to have been a mere wandering waif, swore in another case before us, that certain persons spoke the Choctaw language, and that he undesstood it, and yet when asked in Choctaw a few simply questions, by an interpreter, he stated that he did not understand any of it.

These and many other suspicious circumstances and facts appearing in the case, convince me that these claimants and their witnesses, for the most part, either do not speak the truth fully when they claim Choctaw blood, or that they have no competent or sufficient knowledge on the subject.

The evidence is voluminous and tedious, but taking it altogether and considering it carefully as I have done, and the acts of these people in bringing forward worthless and fraudulent evidence, to win their cause, I am convinced that they know that they have no just claim to bee deemed Choctaws

by blood, and that they are not.

Becides, there were no Choctaws in Smith County, Tennessee, where these people came from to this country. It was hundreds of miles from the old Choctaw Nation in Mississippi; there is no sufficient proof that their ancestors ever were in Mississippi, and their Indian blood, if they had any, was just as likely to be Cherokee or Creek Indian, these tribes having originally lived much closer to Smith County, Tennessee, up on the Cumberland River, than to the Choctaw country in Mississippi. The whole conduct of these claimants in inducing ignorant old people, to swear to what they, the appellants, told them to swear to, and many other acts of theirs, convince me that they are not entitled to be deemed and held Choctaw Indians by blood, or entitled to enrollment as such, or any rights flowing therefrom. Neither James H. Womack, or Mrs. Eliza J. Apple, or any of the other appellants herein are so entitled.

A judgment should be entered against all of the appellants here in accordance with this opinion, and IT IS SO ORDERED.

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

We concur.

Spencer B. Adams,
Chief Judge.

(Signed) Walter L. Weaver,
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.

Keturah Leflore,

Appellant,

vs. No.18.

The Choctaw and Chickasaw Nations,

Appellees.

This matter comes here on appeal from the United States Court for the Central District of the Indian Territory.

The facts are these: Keturah Leflore, a white woman, intermarried with Louis C. Leflore, a male citizen by blood of the Choctaw Nation, in the State of Texas; she thereafter removed with her husband to the Choctaw Nation and has continued to reside with him as his wife ever since.

The question involved in this case was decided by this Court in the case of Lula B. Trahern vs. The Choctaw and Chickasaw Nations, being case No. 40 of the Choctaw docket, in which we held that her husband's admission to the rolls as a male Choctaw Indian by blood, after the marriage, in any State or Territory lawfully had, accompanied by her living with him in the Choctaw Nation thereafter and continuously, entitled her to the right personally to be deemed an intermarried citizen of said Nation, and entitled to enrollment as such, and all the personal rights which by law flowed to her by reason of such right of citizenship so obtained.

Therefore I am of opinion that under the facts of this case, Keturah Leflore is entitled to be deemed and declared an

intermarried citizen of the Choctaw Nation, and to be enrolled as such, and to all such rights as pertain to her personally flowing from such citizenship; AND IT IS SO ORDERED.

(Signed) Henry S. Foote
Associate Judge.

We concur:

(Signed) Spencer B. Adams,
Chief Judge.

(Signed) Walter L. Weaver
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

Mary L. Jennings, et al.,

vs. No. 19.

Choctaw and Chickasaw Nations.

Transferred to the Tishomingo Docket, where it appears as No. 126.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. November Term, 1904.

A. A. Springs, et al.,	:	
vs.	:	No. 20.
Choctaw and Chickasaw Nations.	:	
Martha Jones, et al.,	:	
vs.	:	No. 64.
Choctaw and Chickasaw Nations.	:	

OPINION, by FOOTE, Associate Judge.

The first of the above entitled causes comes here on appeal from the United States Court for the Central District of the Indian Territory, and the other comes on appeal from the United States Court for the Southern District of said Territory. This one opinion will cover both cases but separate judgments will be rendered in each case.

The parties appellant claim from the same common ancestor, one Thomas Jefferson Franklin, who they allege to have been of Choctaw Indian blood.

The evidence of Martha Jones, a witness and one of the principal applicants here, upon their part, shows among other things, that he, Franklin, came from South Carolina to Rankin County, Mississippi, and it is not shown that he ever there affiliated with the Choctaw Indians. He must have come there long before the treaty of 1830, and his descendants, as claimed, first went to Louisiana, outside of the Choctaw

Nation, below the Mississippi line, originally about 1810, long before the treaty of 1830.

There is no satisfactory evidence before us, that I have been able to find, which shows that either the Springs family or the Jones family, or any of their descendants, ever lived after that time in Mississippi or had anything to do with the Choctaw Nation.

The only competent evidence at all in this case which tends to prove that they had any Indian blood, is that some of them had dark skins, dark eyes, and, in Louisiana outside of the Choctaw Nation, associated with certain Choctaws, who came into Louisiana, near where the older Springs lived (who came there in 1810) one witness thinks from Tennessee and some from Mississippi; that is to say these wandering Indians evidently outside of their tribal limits, and not affiliating with it, and not obeying or recognizing in any way, the treaty of 1830. This man Springs seems to have had influence over them and to have allowed them to stop on his plantation, which he had and used as white people do and did at that time.

The hearsay talk and neighborhood repute that is sought to be introduced in evidence, although not competent, is not sustained by anything that William Springs ever said, for it is shown that he was never heard to claim Choctaw blood, although he may have claimed to have Indian blood.

One of the witnesses for the plaintiffs states that one of his ancestresses or relatives was called Pocahontas, and seems to infer that she was a descendant of the Virginia Princess of that name. This is an absurdity for Pocahontas was not a Choctaw.

I have some doubt but what Springs had some kind of Indian blood, but that he had Choctaw blood I cannot say that the preponderence of evidence shows that fact.

There are many of this Springs family and other descendants of Thomas Jefferson Franklin, who is said by one of his descendants and one of the principal witnesses in this case to have come from Virginia to Mississippi, who yet live in Louisana and have never claimed any rights of citizenship. There are others who have always lived in Texas and still do. These appellants or their predecessors, descendants of the alleged Franklin and William Springs, have some moved from Louisiana to Arkansas, and then to Texas, and lived like other ordinary white people. Sometime in the eighties some of them tried to get admission to citizenship in the Choctaw Nation, before the Choctaw council, and do not seem to have prevailed.

They lived about in several states of the Union, both before and after the treaty of 1830. They never at any time tried to be enrolled as Mississippi Choctaws under the treaty of 1830, but stayed out of the Indian Territory for more than fifty years after William Springs appeared in Louisiana, and longer than that after Thomas Jefferson Franklin came to Rankin County, Mississippi from Virginia, and never attempted in anywise to become immigrant Choctaws, by coming to the Territory in a reasonable time after 1833 and 1834. Their ancestors were not living in Mississippi at the time the treaty of 1830 was made; took no part and were not, so far as I can see, included in those to take under that treaty; and after the lapse of more than fifty years from the time William Springs appeared in Louisiana as a land holder, they made claim, some of

them, to be Choctaw Indians.

Those of them that I saw in this Court had not the least appearance of Indian blood. They have married and intermarried so long, with white people in several States, and resided with and among white people for such a long time, and acted as such that it is evident they had no intention to comply with the treaty of 1830 in any wise, but belonged to that class of Indians, if Indians at all, who refused to be parties to that treaty, and went off, first to Louisiana, then to Arkansas and Texas, and identified themselves with white people and repudiated for fifty years, the older of them, any tribal relationship.

If these people are Choctaws,(and I do not think they have proved it), and find difficulty in proving it, it is because they abandoned their tribe and repudiated their treaties, and lived around so long among white people, by their own choice, that they could not make the proper showing here as to their Choctaw blood.

I do not believe that they have shown either in their proof, before any tribunal, that they are of Choctaw blood, or that they ever complied or made the least effort to comply, with the treaty of 1830.

There is to my mind no merit whatever in their contention, and none of them should be declared citizens of the Choctaw Nation, or entitled to any rights as such.

N. S. Ford
Associate Judge.

We concur:

Spencer B. Adams
Chief Judge.

Walter L. Brown
Associate Judge.

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

QUINTUS HERNDON, Plaintiff.	:	No.21.
vs	:	J. E. GRESHAM, for plaintiff.
THE CHOCTAW AND CHICKASAW NATIONS, Defendants.	:	MANSFIELD, McMURRAY & CORNISH, for Defendants.

By Weaver, J.

This case comes into this court on appeal from the decision of the United States District Court for the Central District of the Indian Territory.

The plaintiff claims a right to citizenship in the Choctaw Nation as an intermarried citizen, by reason of his marriage on the 17th day of April, 1887, with one Rosa Pebsworth, a Choctaw Indian. The evidence clearly shows; that plaintiff is a white man; that he was married to the said Rosa Pebsworth on the day named; that said marriage was in all respects in conformity with the marriage laws of the Choctaw Nation then in force; that said Rosa Pebsworth was then a resident of the Choctaw Nation; that said plaintiff has continuously lived with his said wife in the bonds of matrimony; and that she is duly enrolled and recognized citizen of that Nation.

I am therefore of the opinion that the said Quintus Herndon is entitled to citizenship as an intermarried citizen, in the Choctaw Nation, with all the personal rights flowing therefrom and incident thereto.

Judgment will be rendered accordingly.

Walter L. Weaver.

We concur,
Spencer B. Adams,
Chief Judge.
Henry S. Foote.

Associate Judge

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

W. F. Cobb, et al.,

vs. No. 22.

Choctaw and Chickasaw Nations.

Erroneously entered on the South McAlester Docket.

See No. 33 on the Tishomingo Docket.

Thomas Brinnon, State of case and
Opinion by
vs. No. 23. Adams, Chief Judge.

Choctaw and Chickasaw Nations.

The facts in this case are uncontroverted and are as follows:

The applicant is a white man by blood; is now a resident of the Choctaw Nation in the Indian Territory, and has been continuously for the past twenty-two years. In the year 1885 this applicant married in the Choctaw Nation, Indian Territory, according to the tribal laws of said nation, Mary Jones, a widow, whose maiden name was Mary Jefferson, a Choctaw woman by blood, who, previous to this marriage, had married a white man named Jones, who had died prior to her marriage to this applicant. Applicant lived with the said Mary Jones as his wife for about two years when she left applicant without cause and refused to live with him thereafter as his wife. The applicant insitutted proceedings against her, sometime after she left his domicile, seeking a divorce in the Choctaw courts of said nation, alleging as a cause for having the marriage between them annulled, adultry on the part of his wife. These facts were proven to the satisfaction of the court, and the applicant obtained a decree annulling said marriage. The wife had died, however, prior to the granting of such decree, but the fact was unknown at the time to the applicant or the court. After obtaining said decree, to-wit, in the year 1890, applicant married Nancy Frazier, a white woman, by blood.

O P I N I O N.

This applicant claims that he is entitled to a judg-

ment by this Court admitting him to citizenship, by reason of his marriage to Mary Jones, a full blood Choctaw woman; said marriage being in accordance with the provisions of Article 38 of the Treaty of 1866. The applicant further contends that certain rights became vested in him upon his marriafe to Mary Jones, a full blood recognized Choctaw Indian woman, and his residing in the Choctaw Nation. The nations, who are the defendants in this case, contend, however, that if the applicant ever had any rights under Article 38 of the Treaty of 1866,--which they do not concede, however,--he has forfeited such rights by reason of his subsequent marriage to Nancy Frazier, a white woman by blood, and cite in support of this contention an act of the Choctaw Council, approved November 9, 1875, which is as follows:

> "Should any man or woman, a citizen of the United States, or of any foreign country, become a citizen of the Choctaw Nation by inter-marriage, as herein provided, and be left a widow or widower, he or she shall continue to enjoy the rights of citizenship; unless he or shall shall marry a white man or woman or person as the case may be, having no rights of Choctaw citizenship by blood; in that case all his or her rights acquired under the provisions of this act shall cease."
> Durant's Digest 226.

To determine whether or not the applicant had forfeited his rights, which he acquired under Article 38 of the Treaty of 1866 by virtue of his marriage to Mary Jones, a Choctaw woman by blood, by reason of his subsequent marriage to Nancy Frazier, a white woman by blood, it becomes necessary to construe that article of the Treaty, which is as follows:

> "Article xxxviii. Ever white person, who, having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw Nation, or who had been adopted by the legislative authorities, is to be deemed a member of said nation, and shall be subject to the laws of the Choctaw and Chickasaw Nations, according to his domicile, and to prosecution and trial before their tribunals, and to punishment according to their laws in all respects as though he was a native Choctaw or

Chickasaw."

It will be seen by reference to this article that two things were necessary to be done by a white person in order to become a member of the Choctaw nation by intermarriage; First, he or she was required to marry a Choctaw or Chickasaw Indian; Second, he or she shall reside in the Choctaw or Chickasaw nations.

The proof shows conclusively, and in fact it is admitted, that applicant in this case married a full blood Choctaw Indian woman, according to the Choctaw intermarriage laws. It is further admitted that this applicant, Thomas Brinnon, has been a resident of the Choctaw Nation continuously for twenty two years, covering the period of his marriage to the Indian woman. Then he has done what article 38 required him to do in order to become a member of said nation. That question being settled we will next determine whether he has forfeited his rights, or has committed such an act as will exclude him as a member of said Choctaw nation, by reason of his second marriage to Nancy Frazier, a white woman by blood. And this leads us to consider the act of the Choctaw council above set out. This act provides, as will be seen by reference to same, that if the applicant marries a white woman who has no Indian blood, then and in that case he ceases to be a citizen of the nation. The Treaty of 1866 provided that ~~that~~ the applicant should be a member of the Choctaw nation upon his complying with the Treaty by marrying a Choctaw or Chickasaw Indian and residing ~~x~~ in either the Choctaw or ~~Chickasaw~~ Chickasaw nation. If the act of council, as above referred to and set out, was an attempt to withdraw from the applicant that right which had been conferred by the Treaty, which is paramount to an act of the Choctaw council, of course the council would have no such right. What rights

did the applicant acquire, under the Treaty of 1866, by reason of his marruage to a Choctaw Indian and his residence in the Choctaw Nation? Did a membership in the tribe simply mean a right on the part of the Choctaw nation to try the applicant in its courts, and subject him to the pains and penalties of its laws, without bestowing upon him any further rights that the real Indian had by reason of his membership in the tribe? We hardly think those who made the Treaty intended to impose these requirements upon those admitted as members of this tribe by intermarriage, without also bestowing upon them some other benefits guaranteed to the real Indian. When a white man marries an Indian woman and became a member of a tribe of Indians he forsook his own people; became isolated from his own race, and became an Indian for many intens and purposes, then why whould he be deprived of all these rights other members of the tribe were entitled to enjoy?

It is our opinion that when the applicant complied with article 38 of the treaty by marring an Indian woman by blood, according to the laws of that nation, and had resided in the Territory continuously since that time, he became vested with certain personal rights, which rights he could not be divested of by a subsequent act of the Choctaw council.

We are, therefore, of the opinion that this applicant is entitled to citizenship in the Choctaw Nation, and is, therefore, entitled to a judgment by this Court admitting him as such, and a judgment will be entered accordingly.

(Signed) Spencer B. Adams,
Chief Judge.
(Signed) Walter L. Weaver,
Assictae Judge
(Signed) Henry S. Foote,
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.

Alice Luesaw et al

Apellants,

vs. No. 24.

Choctaw and Chickasaw Nations,

Appellees.

The petitioner, Alice Luesaw, claims to be the daughter of William Scandlin, nee Walker, whose mother was named Walker, and that they were Choctaws by blood, and she likewise through them.

She is married to James M. Luesaw and had one son by said Luesaw, viz: John W. Luesaw, eleven years of age at the date of her application for citizenship and enrollment before the Commission to the Five Civilized Tribes, on the 3rd day of December, 1896. She claims to be one quarter Choctaw Indian blood, and asks the enrollment of herself and son &c.

In her evidence she states that she does not know where she was born, but has been told it occurred in the State of Mississippi; and that she was brought to the State of Arkansas, when she was small. She married James M. Luesaw in the State of Arkansas, he being a white man, about the year 1880. She came from Arkansas to the Choctaw Nation when her son was about four years of age; she married her husband about 22 or 23 years ago in Arkansas and lived there with him until she came to the Choctaw Nation with him and

her son as above set forth.

She exhibited an enlarged, coarsely made and colored photographic picture, which she says was that of her father, and it has the appearance of a man who might have had some Indian blood in his veins; and one also of a person she says was her sister. She says her father was a half breed Choctaw Indian and that his name was Willian Scandlin. Her father and mother are dead; her mother died when she was an infant; her father when she was five years old. That she was brought from Mississippi after her parents died there, to Arkansas, by an uncle who was a white man; that she lived with him until he died.

On cross examination, she knows nothing of her pedigree or blood, except what her sister told her and other persons, not relations, and knows not where she was born. All she knows is hearsay as to the above matters just mentioned.

She does not know how long she lived in Arkansas, but says she has lived in the Choctaw Nation sixteen years, and in Arkansas before that time from a small child. Does not know how old she was when she married. Her sister never moved from Mississippi, but told her in Arkansas, when on a visit there, to come to he Indian country and claim her rights; she had no other brother or sister. This is about the purport of her evidence.

The next witness is Mingo Natonabe who says he lives in the Chickasaw Nation; has lived in the Indian Territory one year and came from Mississippi, and that he is 77 years old at this time. He further testified he knew a man in Mississippi named William Scandlin, and being shown the picture Mrs. Luesaw exhibited in Court, said that it was that of the

man he knew there. He says that Scandlin was either a Choctaw or a Chickasaw,he thinks. Says Scandlin died in Mississippi 40 years ago; that he had two girls; that he knew Scandlin's mother and she was a full blood Choctaw woman. Says her Choctaw name was Ashtima; that she was a Walker; that he knows all William Scandlin's children came to the Indian Territory somewhere; never saw Mrs. Luesaw before this time; that he lived in Jasper County, Mississippi all his life before coming here. Says he bought land there; that he knew Scandlin before the Civil War; about 20 years before that war, and he, witness, was a boy then. He lived about from place to place in Mississippi. Says William Scandlin when he knew him 20 years before the war, was about his age and a boy. Did not see him again for a long time, then Scandlin had children; that Scandlin's wife was named Dustina; that the name of his oldest child was Josephine and the other Alice; that Scandlin died forty years ago in Mississippi; that he, Scandlin, and his family would be wandering about all the time in Mississippi. Thenhe testified that Scandlin and all his family died in Jasper _____ County, Mississippi, as he had heard. The witness was old and of feeble intellect.

The husband Luesaw testified:

That he married Mrs. Luesaw twenty years ago in Arkansas; that he has been living here in the Indian Territory 16 years, and now has a son 18 years old--John William Luesaw. He knew his wife's sister who came to Arkansas about twenty years ago to see him and his wife; that the sister was then living in Mississippi and is now dead. He says that she told his wife "to come out here and settle and

she would come out here and prove her right". (All of which and nearly the whole evidence being objected to on various grounds, hearsay and others). He understood from the said sister to Mrs. Luesaw, that her father's name was William Scandlin and that he was close to the Tombigbee River in Mississippi. William Scandlin was dead at that time. All evidence of this witness as to blood and pedigree of his wife was hearsay, derived from this alleged sister.

This is the evidence rather fully stated.

It appears that Mrs. Luesaw knows nothing of her pedigree or blood of her own knowledge. That her husband is equally ignorant; that the witness Mingo Natonabe contradicts himself in his statement about William Scandlin; that he says in one part of his testimony that Scandlin's children came to the Indian Territory somewhere, and then declares that so far as he knows by what he has heard, that they died in Mississippi, and that Scandlin was either a Choctaw or Chickasaw Indian, he thinks. He could not have been able to identify Mrs. Luesaw as the daughter of William Scandlin that he knew in Mississippi, as she was a small child if he ever saw her there, and he says he had not seen her since then until the day before he testified in this case. His evidence, if competent at all, is of not the least convincing force, and really shows, if he is to be credited, that he did not know if the Scandlin he knew was a Choctaw or a Chickasaw.

The case stands without sufficient evidence to show that Mrs. Luesaw has any Choctaw blood, by the testimony on the part of all the witnesses, and the fact that she married and lived in Arkansas for years thereafter, and all the attendant circumstances surrounding the case tend to that view.

evidence

There being no sufficient to show that she is a Choctaw, without considering any other questions in the case, impels me to the belief, that neither she or any other appellant claiming through her is entitled to citizenship in the Choctaw Nation, or to enjoy any rights flowing therefrom.

The judgment of the Court, therefore, should be, that none of the appellants here are entitled to citizenship in the Choctaw Nation, 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.

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.

A. F. COWLING,

Appellant,

vs. No.25.

CHOCTAW AND CHICKASAW NATIONS,

Appellees.

OPINION, by ADAMS, Chief Judge.

This cause is here on appeal from the United States Court for the Central District of the Indian Territory.

According to the statement of A. F. Cowling, the applicant, he was born in Little River County, Arkansas, in the year 1844, and moved to the Choctaw Nation, Indian Territory, about the year 1875, and has resided here continuously since that time. He further says that he has been taught that he is a Choctaw Indian by blood. That he has been recognized as such Indian by the Choctaw authorities. That in the year 1881 he married a white woman who had formerly had a Choctaw Indian husband.

The applicant insists that he is a Choctaw Indian by blood. He claims to have derived his Choctaw Indian blood through his mother, Sarah or Martha, whose maiden name was Kemp.

After a careful consideration of the evidence in this case, and without setting forth the same here in detail, as I do not consider it important to do so, I am of the opinion that the evidence is not of such convincing force as would warrant this Court in finding as a fact that the

applicant, A. F. Cowling, is a Choctaw Indian, or that the applicant has any Indian blood. In fact by reference to the record in this case, it will be seen, in the year 1881 the applicant applied to the Choctaw authorities for a license to marry an intermarried Choctaw woman, and alleged in his sworn affidavit that he wasa citizen of the United States; and it would at least seem that he entertained at that time, himself, some doubts as to his Indian blood.

The contention that the applicant was recognized as a Choctaw Indian by the Choctaw authorities, is easily explained by the fact of his marrying an intermarried citizen, even if such a recognition was binding upon this Court, which I do not concede.

A judgment will be entered in accordance with this opinion.

(Signed) Spencer B. Adams,
Chief Judge.

We concur:

(Signed) Walter L. Weaver,
Associate Judge.

(Signed) Henry S. Foote,
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER, INDIAN

TERRITORY.

LOUIS ROCKETT, et al,

vs NO. 26.

THE CHOCTAW AND
CHICKASAW NATIONS.

Horton & Brewer,
for plaintiffs

Mansfield, McMurray & Cornish,
for Defendants.

BY THE COURT:

This cause comes into this court on appeal from the United States District Cort for the Central District of the Indian Territory by authority of Sec . 31 of the Act of Congress approved July 1st, 1903. The plaintiff, Louis Rockett, on the _____ day of S_____, 1896, made application to the Commission to the Five Civilized Tribes on behalf of himself and others therein named for admission and enrollment as members of the Choctaw Nation; for himself as an intermarried citizen, and for the others joined with him in said application, as citizens by blood . He was admitted as an intermarried citizen, and an appeal was taken by the Choctaw Nation from the decision of said Commission as to him, to the United States District Court for the Central District of the Indian Territory, by which Court the finding

and judgment of said Commission was sustained.

After the decision by this Court of the suit of the Choctaw and Chickasaw Nations vs. J. T. Riddle, et al, commonly known as the "Test Case", the said Louis Rockett filed his petition in this Court, praying that "he have judgment admitting him to the rights of an intermarried citizen or member of said Choctaw Nation and further, that if, in the judgment of the Court, the same be right and lawful, that the names of his children, Louis Henry Rockett and Francis Marion Rockett and also of his wife, Ida B. Rockett be included in said judgment, admitting them to citizenship in said Nation."

Upon consideration of the evidence adduced, we find the following to be proven facts in the case, ~~xxxxxx~~ viz,:

The plaintiff, Louis Rockett, is a white man 43 years of age, a citizen of the United States by birth, who came to the Choctaw Nation in the Indian Territory in 1890 and has lived at Wilburton in said Nation ever since. On the 4th day of November, 1891, he married, in accordance with the Choctaw tribal laws, Mrs. Lizzie McKenney, a full blood Choctaw woman, widow of Ex-Gov. Thompson Mc Kenney of said Nation, and lived with her as her husband until her death, October 2nd, 1893. One child, Thompson Rockett, was born of this marriage, but is now dead. The said Louis Rockett had not been married prior to the marriage above referred to. On September 25th, 1895, he was again married, to Miss Ida B. Moore, a white woman who claimed to be a citizen of the Choctaw Nation, but not by blood. There was born of this marriage, two sons, viz,: Louis Henry Rockett, ~~xx~~ and Francis Marion Rockett, both of whom are now living; and they, together with applicant's present wife, Ida B. Rockett, are the persons whom ~~xxxx~~ said Louis Rockett prays

may be "likewise adjudged to be citizens or members of said tribe."

This Court has no jurisdiction to consider or pass upon the question of the status of either of said parties. The wife, Ida B. Rockett, attempted to have her status adjudicated by the Dawes Commission and whatever was decided there was not appealed from by either party to that proceeding to the United States District Court. The two children referred to were not born at that time and of course they would not have been parties to the proceeding before either said Commission or Court. As the jurisdiction of this Court is limited to matters that come to them through such channels, we can not assume the right to even make them parties to this proceeding at this time. Whatever rights they claim to have must be determined elsewhere, if determined at all.

Therefore, following the decision of this Court, in the case of Thomas Brinnon, et al, vs. The Choctaw and Chickasaw Nations, we hold, that the said Louis Rockett is entitled to a judgment of this Court entitling him to all the rights of an intermarried citizen of the Choctaw Nation. And it is so ordered.

(Signed) Spencer B. Adams,
Chief Judge.

We concur:

(Signed) Walter L. Weaver,
Associate Judge.

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

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT.

James R. Kelly, et al.,

Plaintiffs.

vs. No. 27.

The Choctaw and Chickasaw

Nations,

Defendants.

John McCarty, et al.,

Plaintiffs.

vs. No. 29

The Choctaw and Chickasaw

Nations,

Defendants.

T. N. Foster, for Plaintiffs, Mansfield, McMurray and Cornish, for Defendants.

O P I N I O N.

The Plaintiffs in the above entitled causes, claim citizenship in the Choctaw Nation from a common source, and although the causes were seperately heard, certain evidence taken in each of them was by agreement of ~~portion~~ parties and counsel, and with the consent of the Court, made applicable to the other, and as the questions of both law and fact are similar this opinion will cover both suits.

The Plaintiffs (except such as claim through intermarriage), base their right to the recognition sought herein, as descendants in a direct line from one Martha Smith, nee Jones, whom they assert was a half breed Choctaw Indian woman.

The evidence shown with sufficient certainty that they are thus descended, and hence the only disputed question of fact involved is as to the blood of the said ancestor.

The testimony is very voluminous, as many witnesses were examined in open Court here, and also a large amount of evidence was taken on application of the plaintiffs, by one of the Judges of this Court in the State of Mississippi, and the defendants likewise offered a considerable amount on their behalf. It can however be summed up, and when condensed, its substances is as follows:

As above stated, the relationship of the Kelly's and McCarty's to the Smiths whose ancestor was Martha (Jones) Smith, and who lived in Mississippi at an early date was clearly proven.

A witness for the plaintiffs, one M. V. Smith, now sixty-three years old, testified that he is the son of John J. Smith, who formerly lived in Scott County, Mississippi, but who afterwards removed to Texas and died there in 1866, when witness was about twenty-five years of age. Witness says they lived among the Choctaws in Mississippi and that his father had something to do with bringing portions of the tribe to their present location. That his father was born in the Edgefield District in South Carolina in 1796. He states that his father's mother's name was Martha (Jones) Smith---the alleged Choctaw Indian ancestress of the plaintiffs. He further stated that he never heard any claim made by his father that he was of Indian blood in any degree, and that neither the witness or any other of his father's family make any such claim, but that on the contrary they claimed and exercised all the rights of white citizens in both Mississippi and Texas. Two brothers of his father

lived in Mississippi. One was A. B. or "Dick" Smith and the other was S. J., or "Sebe" Smith.

Plaintiffs also called as a witness, one Anderson Parker, who testified that he knew Captain "Jack" Smith or J. J. Smith in Mississippi, who was engaged in bringing Choctaws to this Territory. Said he also knew "Dick" Smith and that Dick was son of "Captain Jack" Smith. In this the witness must have been mistaken as the family history shows that they were brothers. He further stated that both "Jack" and "Dick" spoke the Choctaw language, but that his father could do the same although not an Indian. Witness also said that he had heard people, older than himself, in Mississippi say that these folks were Indians, meaning that they were Choctaws. Personally this witness had no knowledge on that subject.

R. F. Hampton, now a resident of Atoka, Indian Territory, but until fifteen years ago a resident of Mississippi, testified that he knew "Dick" Smith and "Sebe" Smith and had often heard them talk the Choctaw language. That Dick had the appearance of a Choctaw, being of short stature and dark complection. This witness claimed to be of mixed white and Choctaw blood, but upon questions being propounded to him, in open Court in the Choctaw language, utterly failed to understand them.

C. M. McCarty, one of the plaintiffs herein, now a resident of this Territory, testified that he lived in Mississippi when a boy, but afterwards moved to Texas where he exercised all the rights of white citizenship. He knew Dick Smith, who was a cousin to his father, in Mississippi, but never heard him talk in Choctaw. Witness further stated that he did not know and had never heard, while he lived in Mississippi, that he had any Choctaw blood in his

veins.

A large amount of testimony was offered for the purpose of showing that Dick Smith and Sebe Smith were reputed in Mississippi to be Choctaw Indians?

They are both dead, and a singular fact in connection with this class of testimony is that none of their immediate descendants, who are still living in Mississippi, were called to give evidence.

Unfortunate as it may be for these plaintiffs, and perchance in some instances a denial of right, yet this Court cannot set aside the long established rule of evidence that hearsay testimony is not sufficient to establish racial status. As every lawyer knows, there are exceptions to the general rule excluding hearsay evidence, arising from the lack of other evidence, by reason of lapse of time, ~~xxxxxxxx~~ &c., and I had hoped to find at least some authority, by following which, that kind of evidence could be made competent in these cases, but a diligent and exhaustive search of the text books and reported decisions of courts of last resort has failed to produce any precedent ~~for~~ touching such conclusions. There are exceptions to the rule in cases of pedigree, and in matters of general public interest and importance, such as ancient right of common, of roads, of ferries, and in a few instances of boudaries, in which the public and not the individual alone was interested. Proof of racial status however does not seem to come within the exception. This is clearly established by the Supreme Court of the United States in the well known case of "Mima Queen" in 7th Cranch, where the opinion was rendered by Chief Justice Marshall.

I am of the opinion that the plaintiffs have not sustained their contention by competent evidence. Their

alleged Choctaw Indian ancestress was a resident of South Carolina in 1796 when her son John J. Smith was born. This was across two states from where the Choctaw Indians were located. Nothing is known or attempted to be proven in regard to her history prior to that time. Her oldest son and his descendants claim no Indian origin. Her sons, "Sebe" and "Dick", so far at least as any tribal affiliations are concerned, asserted no right. True they associated more or less with the Indians, engaged in or attended their sports spoke of them as "our people", "the best people on earth" &c. &c., but sought to take nothing as Indians. And as one of these plaintiffs testified, he never knew or heard as long as he lived in Mississippi that he had any Choctaw blood in his veins.

Judgment will be rendered accordingly.

(Signed) Walter L. Weaver,
Associate Judge.

We concur:

(Signed) Spencer B. Adams,
Chief Judge.

(Signed) Henry S. Foote,

Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

Eliza J. Apple, et al.,

vs. No. 28.

Choctaw and Chickasaw Nations.

Identical with case of James H. Womack, et al., vs. Choctaw and Chickasaw Nations, No. 17 on this Docket. See opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

John McCarty, et al.,

vs. No. 29.

Choctaw and Chickasaw Nations.

Identical with case of James R. Kelly, et al., vs. Choctaw and Chickasaw Nations, No. 27 on this Docket. See opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

Joseph B. Glenn, et al.,

vs. No. 30.

Choctaw and Chickasaw Nations.

Dismissed. Same parties appearing in another case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

Glenn-Tucker, et al.,

vs. No. 31.

Choctaw and Chickasaw Nations.

Dismissed. Same parties appearing in another case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

No. 32.

No case docketed under this number.

In the Choctawand Chickasaw Citizenship Court, sitting at South McAlester, in the Central District of the Indian Territory, in the Choctaw Nation.

Thomas Brown, alias
Thomas P. Brown, alias
Thomas B. Brown, et al

vs. No .33 .

The Choctaw and Chickasaw Nations.

This cause comes here by appeal in the usual way in such cases, from the United States Court for the Central District of the Indian Territory.

The appellant, Thomas P. Brown, as he now styles himself, claims to be of Choctaw Indian blood, and the rest of the appellants claim through him as persons of that blood, some, if not most of them, his wife as an intermarried citizen with him, and several other persons as intermarried citizens with some of his descendants .

The only question necessary to be decided here, being whether the said Thomas P. Brown, alias Thomas B. Brown, alias Thomas Brown, is, as he claims, of Choctaw Indian blood.

He testifies and claims that he is the son of one Roland Brown, a white man, and a woman of Chocyaw Indian blood, named, before her alleged marriage to Roland Brown, Margaret Pitchlyn, or Peachlin (as Brown pronounces the name) who was sometimes called Peggy instead of Margaret. He declares that he has always been taught by his mother that she was the daughter of one Jack Pitchlyn, a Choctaw Indian by blood, and that the said Jack Pitchlyn, was a brother of one Thomas Pitchlyn, also of

Choctaw Indian blood. He further claims that his maternal grand-father, Jack Pitchlyn, died in the State of Mississippi, and that his, Brown's, mother came to the Indian Territory, and that he, Brown, was born in the Indian Territory. That his mother died about thirty years ago; that he was then twenty-one or twenty-two years of age; he says he is now about sixty-one years of age. He claims to have known his grand-father's half brother, Thomas Pitchlyn, and to have stayed a good deal with him in his, Brown's, earlier days, in the Choctaw Nation. He does not know what his maternal grandfather's name was, from any knowledge of his own, but only as he says "by what he has been taught".

He left the Indian Territory when he was fifteen years old, as he says, and went down to Texas; he then served in the war of the Rebellion, in the Confederate Army, with the Choctaw and Chicasaw Indians. He came back to the Indian Territory as he testifies, after the war, to his alleged uncle, Tom Pitchlyn's house, who was a very distinguished member of a very prominent and well known family of the Choctaw Nation. He says he then went back to Texas, married a white woman there, and remained there until about eighteen years ago, when he returned to the Indian Territory. This is about the purport of Brown's evidence and there was no other oral evidence in his behalf taken before this court. He further testified that a certain man named Lewis Davis, who had made theretofore an affidavit or affidavits in his, Brown's, behalf, attempting to sustain Brown's contention, was dead, from inquiry he, Brown, alleged he had made.

It appears in evidence before us that Lewis Davis was not dead at that time, and was living two months ago, by

at least two respectable and intelligent white witnesses, who contradict Brown on this point.

Mrs. Rhoda Howell, the undoubted and undisputed sister of Thomas Pitchlyn, referred to by Brown in his evidence, and of Peter P. Pitchlyn, a distinguished Choctaw Chief, and a half sister of the Jack Pitchlyn, whom Brown claims was his maternal Grand father, a venerable and most respectable and intelligent, though feeble woman physically, testifies, and her evidence is unchallenged except by what Brown has said, that the Pitchlyns above mentioned were related to her as above set forth; that Jack Pitchlyn never had any daughter at all; that he had three sons by his only wife; that they were named Levi, John and Hiram; that she, Rhoda Howell, lived near her half brother, Jack Pitchlyn, for many years, and until his death in Mississippi, and knows that these were all the children he ever had born to him. She states also where those children went, and to a large extent what became of them in after life, and in fact shows such an intimate knowledge of her full brothers and half brother, Jack Pitchlyn, and their families, as to make her testimony both most valuable and reliable. She says she had a daughter named Margaret Howell, and that she was the only female of the name of Margaret that she, Rhoda Howell ever knew or heard of as being of the Pitchlyn blood. She, Mrs. Rhoda Howell, lived for many years in the neighborhood of her brother, Thomas Pitchlynn in the Indian Territory, whom Brown claims to have been his uncle, and she never saw or heard of the father of Brown or of Brown himself, and on that head in answer to the question of "she knows a man named Thomas Pitchlyn Brown who claims Choctaw citizenship and who now claims to be of kin to the Pitchlyn family", she declares "No, sir, I don't know him, I don't recollect anything about

him at all". She says that before Jack Pitchlyn died or was killed in Mississippi, his only wife being then dead that she and her husband, Mr. Howell, used to go to Jack Pitchlyn's place and stay with him, and that after his death her father took the children of Jack Pitchlyn and would "never give them to anybody".

Thus Brown's claim is left without any evidence to support it, of the least particle of value. He is contradicted in the flatest and most positive and conclusive manner, and he is without a shadow of a claim, either he or the other applicants, or any of them, to be admitted as Choctaw citizens.

I am, therefore, of the opinion that his petition to be declared a citizen or member of the Choctaw Nation should be denied, and that he be declared, and the other applicants, not entitled to citizenship or enrollment as a member or members of said Nation, and it is so ORDERED and ADJUDGED.

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

We concur.

(Signed) Spencer B. Adams,
Chief Judge.

(Signed) Walter L. Weaver,
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

Mary Ann Thompson, et al.,

vs. No. 34.

Choctaw and Chickasaw Nations.

Transferred to the Tishomingo Docket, where it appears as No. 131.

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

John T. Hayes, et al.,

Appellants,

vs. No.35.

The Choctaw and Chickasaw Nations,

Appellees.

This cause comes here on appeal from the United States Court for the Central District of the Indian Territory, in the ordinary way in which such cases are brought to this Court, for adjudication.

The appellants are John T. Hayes and his alleged sisters Mary Darough and Laura Fleming and their descendants who claim to be Choctaw Indians by blood and entitled to be enrolled as citizens of said Nation.

The three first named persons aver that their father was named Lewis Alfred Hayes and that his father was named "Billy Hayes" and that they both lived and died in the State of Mississippi.

The father of John T. Hayes and his sisters, who they claim to have been a Choctaw Indian, is long since dead, (forty or fifty years ago), and their mother was a white woman, and it is not claimed that these last two or "Billy Hayes" ever lived in any part of the Indian Territory. The claim is also made that Lewis Alfred Hayes, above mentioned, lived at one time in the State of Mississippi, in the County of Tishomingo, which lies in what was

once the Chickasaw Nation and there is no evidence offered that any of these parties either themselves, or any ancestor of theirs, ever lived in that part of the State of Mississippi, which was, in 1830, occupied and claimed by the Choctaw Indians.

John T. Hayes, in his oral testimony taken before this Court, states that he had one brother and five sisters, and that of them, he and the two sisters above mentioned, are all that are parties to this application. He was born in the County of Tishomingo, State of Mississippi.

He does not know how long he and his sisters and brother lived in Mississippi; says they were "principally raised round and about Mississippi, in Mississippi and Alabama close to the line of Mississippi, Alabama and Tennessee, right there in Tishomingo County". He says his mother was a white woman and he does not know exactly what degree of Choctaw blood his father had; "supposed" he had one fourth; and that his father died in Tishomingo County; that he and one of his sisters have been in the Indian Territory about twelve years and the other sister about one year less. He says his father spoke the Choctaw language.

On cross examination he says that he is about fifty-five years of age at this time, and that he was about eight or nine years old when his father died, and that he went to the State of Alabama sometime during the war and left Mississippi in 1861, 1862, or 1863. That he lived in Alabama until he went to the State of Texas; that he lived in Beauregard County, Alabama; that he went from there to Texas about 1880 or 1881, and came to the Choctaw Nation about twelve years ago; that he made his living by farming and rented land for that purpose and paid taxes in Texas, and voted in State elections there. He cannot tell how long his father lived in Tishomingo County, Mississippi, near Eastport, before his death,

and his father never lived, so far as he, John T. Hayes, knows, anywhere except in that part of Mississippi and Alabama above mentioned. Many of the descendants of some of his sisters live in Tennessee and have never moved West. His only brother, William, is in the Insane Asylum in Texas. He says he himself cannot speak the Choctaw language but his father talked a language at times that he, the witness, could not understand, and that his father was dark in complexion and resembled the Indian race. He does not know where his father lived from 1830 to 1840. His, John T. Hayes', sister, Mrs. Fleming, says her mother died in Alabama; that she has been taught she was a Choctaw Indian by her mother and people who knew her, and her school-mates; that she was principally raised by her mother, and in Alabama; that she was twenty years old when her mother died. Her father she does not remember; she went to Lauderdale County, Alabama from Mississippi when she was six months or a year old and lived there until she went to Texas, a period of about nineteen years. She was married in Texas and is now forty-three years old.

Mrs. Darough the next witness, a party herein, states that she is forty-eight years old and says that she is a Choctaw Indian; she thinks her father died about thirty-nine or forty years ago; that she was small then. She has obtained the knowledge that she is a Choctaw Indian (as must also her brother John T. Hayes) from what his father told him, and his recollection that his father was dark in complexion and spoke an unknown language at times. She says as to her father, also in this part of her evidence, that he died in 1839 or 1840 to the best of her knowledge. She at another time says, "I reckon he (her father) died in 1840", but in correcting her statement she says, "her information is her father died in 1841 or 1842. She has no information as to when her alleged grandfather "Billy Hayes" died. She went to Texas after going from

Alabama into Tennessee, where she remained and lived about two years. She married a second time a white man in Texas and lived there in several countiesof that State; she had previously been married in Alabama to a white man. One of her husbands owned land and farmed in Fannin County, Texas, and he died in Texas and she again married a white man before she came to the Choctaw Nation, Indian Territory, about twelve years ago. She and her brother, John T. Hayes, when they came to the Indian Territory, leased land from a citizen of the Choctaw Nation named Sam Bacon, and she was born in 1854. Her father died two years after that, she now says. Her statements, as will be seen, are very difficult to reconcile as to the time of the death of her father.

This is all the evidence given by the appellants in person.

It will be observed that none of the children of the alleged Lewis Alfred Hayes and grandchildren of the alleged "Billy Hayes" ever lived in the old Choctaw Nation in Mississippi. They seem to have lived either in the Chickasaw Nation in Mississippi, or in what was once the Creek Nation in Alabama, for a considerable time, and being very young at the time of the alleged death of their father, could have known little or nothing, about his racial status. And the fact that they lived in other Indian Nations than the Choctaw, with their father while he lived, is just as much proof, if they have Indian blood at all, that it was Chickasaw or Creek, as that it was and is Choctaw blood.

Again none of the other children, than appellants, of the alleged quarter blood Indian, Lewis Alfred Hayes, ever came to the Indian Territory or applied for citizenship, and it does not appear that either the alleged father or grandfather of John T. Hayes and his two sisters above mentioned, ever had any intention to remove to the Indian Territory, or that any of the appellants had any such intention until fifty years after the adoption of the

Choctaw treaty of 1830; or attempted to claim under the treaty of 1830, as those who elected to remain in Mississippi; or that any of their ancestors living as late as 1842, or later, ever entertained any intention or made any effort in that direction, to remove to the Choctaw Nation.

As John T. Hayes was only a boy of nine or ten when his father died as he says, and the date of that death according to their evidence may have been from 1839 to 1842, and as Hayes knew nothing of the Choctaw language, and did not know what exact language his father spoke, it remains very uncertain whether, if he spoke any Indian dialect at all, it may not have been Chickasaw or Creek; so that such evidence is of little value in determining the racial status of "Billy Hayes", or of his son Lewis Alfred Hayes, the person through whom these applicants claim. In short, from all the evidence offered by the appellants, it is not at all certain that they possess any Choctaw blood, for it is just as probable, if they have any Indian blood, that it is Creek or Chickasaw, as that it is Choctaw.

Robert Le Roy Hodge, for the appellants, says he was born in 1844. He has lived in the Indian Territory three years; has known John T. Hayes since about 1859. He knew him in Tishomingo County, Mississippi, and that he, Hayes, then lived with his father who was alive. He knew John T. Hayes and Bill Hayes his brother, boys at that time.

He never saw John T. Hayes from that time until he saw him a prisoner of war about 1865. All he knows about John T. Hayes' father which is of importance is that he lived at Savannah, about three quarters of a mile above Eastport; and that in the community thereabouts people called him the Indian, and that he talked broken English and his color was dark and compared well with that of a Choctaw Indian. He first remembers himself in Savannah,

Tennessee, about a days ride from Tishomingo County, Mississippi. He did not know that the father of John T. Hayes was named Hayes; he never was at his house but heard him called the Indian and a Choctaw Indian by people about there; he first says he never saw this father of John T. Hayes and then says he did see him once or twice. He himself came to the Indian Territory from Texas about three years ago and has seen these applicants here since then and has known them that long. He never saw John T. Hayes or Bill Hayes after 1865 until he saw him (John T. Hayes) in Hardin County, Tennessee, and Bill and his father and mother; but they left there and went to Texas. This witness conflicts with the statement of the applicants, that the father of John T. Hayes died in Mississippi. He doesnot agree with the children of Lewis Alfred Hayes as to the time of the death of the man he knew as the Indian.

The children, some of them, put his death at 1839, 1840, 1842, while this witness says he saw him in Tennessee in 1858 or 1859.

Thus there is created quite a material variance on an important point, viz; the time of the death of the father of John T. Hayes, and also his identity with the Indian this witness speaks of, and he differs as to where "the Indian" lived with John T. Hayes. The one says he lived about Savanna and Tennessee and the other that he lived in Tishomingo County, Mississippi. In truth upon quite a number of points, as to the contention of applicants, of the racial status of Lewis Alfred Hayes as being a Choctaw Indian and the time of his death, as affected by proof of identity of their alleged father, there is much conflict among these witnesses, and their statements on various points are such that I am unable to reconcile them.

The defendants, the Choctaw and Chickasaw Nations, then

introduced Joe Nelson, a Choctaw Indian man, and Jennie Nelson, a woman also of the same blood.

They testified that they never lived in Mississippi and never knew any one of the name of "Billy Hayes" there; that they knew a Billy Hayes or William Hayes that lived and died in the Choctaw Nation about three or four years ago, and that he was the only Billy Hayes they ever knew; that this Billy Hayes had a son named Harris Hayes, who is now living and a girl named Seele who is dead; that they never made to the Hayes people or any one for them any statement different from that above set forth, although filed in this record is what purports to be statements in the form of depositions taken before a Notary and made by Joe Nelson and Jennie Nelson, wherein Joe Nelson states that he knew John T. Hayes, Mary Darough and Laura Fleming and that they are Choctaw Indians &c. This so called deposition is taken before W. D. Poole, Notary Public, and is written out in affidavit form and signed and sworn to by Joseph Nelson. Another paper sworn to by Jennie Nelson and her mark subscribed thereto, taken and made before said W. D. Poole, Notary Public, says that she knew the family of Billy Hayes in Mississippi; that they came from Mississippi and lived near Dokesville, Indian Territory; that Billy Hayes and family were Choctaw Indians by blood and that Billy Hayes himself did not come to the Indian Territory but part of the family came and located in the Indian Territory. She says she knew that Billy Hayes had a son by the name of Lewis Hayes who was a half breed Choctaw Indian. She said therein also that she was well acquainted with John T. Hayes, Mary Darough and Lawrence Fleming, and that they are Choctaw Indians by blood and the children of Lewis Hayes, the son of Billy Hayes. That her grand mother was a niece of Billy Hayes' and it is through

the relationship to the family that she is so well acquainted with their history.

Although these statements now repudiated in open court by those who are claimed to have made them, are not competent evidence, for the appellants to prove their case, yet they show how these Indian people were used, unconsciously perhaps, to bolster up the simulated claim of these appellants and to illustrate in some measure the bad faith in which this claim is prosecuted by them.

Mr. William S. Stanford, a white man living in Texas, was the next witness for the defendants. He states, among other things, that he knows John T. Hayes and his sisters Mrs. Darough and Mrs. Fleming, claimants, and their brother Bill who is in the insane asylum in Texas. He knew them in Texas and in Alabama in Colbert County; that then they moved to West Tennessee; that he got acquainted with them in Colbert County Alabama in 1875 when John T. Hayes was not quite grown; he never saw said Hayes' father there; that four of the Hayes family, John, William and two girls, he knew there about three years, and then they moved to West Tennessee. That never while they lived in Alabama did he hear them or any one say that <u>they were Choctaw Indians,</u> and <u>never did he hear them say while he knew them in Texas before they came to the Indian Territory that they were Choctaw Indians.</u> He never heard of them claiming citizenship as such Indians, and continuing he says "Hayes (meaning John T. Hayes) came back from living in Durant", which is in the Choctaw Nation, "He said he was about to work up a right here", meaning in the Choctaw Nation, "and I said to him if he traced his character too far he might make it a nigger"; and that was the first time he ever heard of Hayes claiming Choctaw Citizenship. He said Hayes told him "he was going to work up a claim as being an Indian, and I was joking him about it".

This is all the important evidence in the case, stated at some length.

It is impossible for me to believe, taking all the facts before us, and circumstances appearing in the record and evidence, that these appellants or any of them, are of Choctaw blood.

Therefore I am of the opinion that all the appellants should be denied any and all rights of citizenship or enrollment in the Choctaw Nation, AND IT IS SO ORDERED.

(Signed) Henry S. Foote.
Associate Judge.

We concur:

(Signed) Spencer B. Adams,
Chief Judge.

(Signed) Walter L. Weaver
Associate Judge.

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

W. R. SESSUMS, et al, Plaintiffs.	)	NO. 36
vs.	)	LEDBETTER & BLEDSOE, for Plaintiffs.
THE CHOCTAW AND CHICKASAW NATIONS, Defendants.	)	MANSFIELD, McMURRAY & CORNISH for Defendants.

By Weaver, J.

This cause comes into this Court on appeal from the United States District Court for the Central District of the Indian Territory.

Briefly stated, the claim of the plaintiffs in this cause is that they are descendants of, or possess kinship to the said W. R. Sessums who is still living and a party to this suit. That said W. R. Sessums is a son of one Redding Sessums, who was the son of Jacob Sessums, and that he, the said Jacob Sessums, had intermarried with one Penny Fisher whom they allege was a Choctaw Indian woman of the full blood.

The only oral testimony offered by the plaintiffs was that of a Mr. Harrison, who had intermarried with one of the plaintiffs and who testified only in reference to the residence of certain members of the Sessums family and of certain witnesses in the Court below and to the fact that certain persons who had testified on behalf of the plaintiffs, when application was made by them for enrollment as citizens of the Choctaw Nation to the Commission to the Five Civilized Tribes, or in the United States District

Court for the Central District of the Indian Territory, are dead, Plaintiffs counsel, however, had several of said plaintiffs present at the time the testimony above mentioned was taken, and without examining them tendered them to the counsel for the Nations. One of these, to-wit, W. R. Sessums, was examined by counsel for the Nations, and testified that he was the son of Redding Sessums; was born in Copiah county, Mississippi, in 1832, removing from there with his parents to Kemper county, Mississippi, when six months old, and resided in Kemper county until he was seven years old, and in 1839 was taken by his parents to Texas where he lived and owned land as a citizen of Texas until he moved into the Indian Territory about 1893. When he came from Mississippi, about 1839, to Texas, he accompanied his father and lived with or near him until he died which was about 1883. During this period of more than forty years, his father remained a resident of Texas, carried on farming there, homesteaded land and bought and sold real estate the same as any other citizen of that State. So far as the evidence discloses none of the plaintiffs ever lived in the Indian Territory prior to about 1890, and a considerable number of the members of the Sessums family as nearly related to Jacob Sessums as these plaintiffs are, never resided in the Indian Territory, nor made application for rights as citizens of the Choctaw Nation.

Said W. R. Sessums testified that he had been taught by his parents that his grandmother on his father's side, to-wit, Penny Fisher Sessums, was a full blood Choctaw woman, but that he did not know anything about her, had never heard where she was born or where she lived except that it was said she lived in Mississippi. He was not able to state where his father was born but stated

his understanding was that his father was born in 1800. He had no information, family history or tradition as to his alleged grandmother, Penny Fisher Sessums, except that his parents had told him she was a Choctaw Indian woman.

The plaintiffs offered as evidence in this cause the record of the proceedings and evidence in their application for enrollment made to the Commission to the Five Civilized Tribes, and also the record of the proceedings and evidence in their behalf in the United States District Court for the Central District of the Indian Territory, but none of the persons who gave evidence in the said cause either before said Commission or before said Court, appeared to testify in this cause before this Court, except as above stated. The witness Harrison, above referred to, testified that of said witnesses who had testified in the tribunals referred to, Mary Ann Smith, Mitchell Nelson and Ed McGee are dead. An inspection of the record sent up to this Court of the proceedings referred to, shows that these three together with one S. P. Perry are the only persons who testified in either of these proceedings as having personal knowledge of the alleged fact that Penny Fisher was a Choctaw Indian woman, was married to Jacob Sessums, and was the mother of Redding Sessums. The affidavits, or alleged affidavits of these persons, on file in this cause and made a part of the record above referred to, are not original nor certified copies of original affidavits. They are all and entirely in the same handwriting, including signatures of the affiants and of the officers before whom they were said to have been taken, and are simply marked as copies. Under such conditions, which are entirely unexplained, if for no other reason, these affidavits could not be considered as competent evidence in this Court.

In 1897 Ed McGee, above referred to, testified, by way of deposition, in the United States District Court for the Central District of the Indian Territory, that he was acquainted with Penny Fisher in Mississippi; that she was a Choctaw Indian; that she was married to Jacob Sessums, and had a son by the name of Redding Sessums. We do not regard said depositions as competent evidence in the trial of this cause in this Court. This is a proceeding against both the Choctaw and Chickasaw Nations, and the cause in which said deposition was taken was against only the Choctaw Nation, the Chickasaw Nation having no legal notice of the pendency of said suit or of the taking of said deposition. But even if I am wrong in this conclusion, the said McGee has been so often and so completely impeached in this Court as to his general reputation for truthfulness, that but little weight, or none at all, should be attached to his testimony unless the same was corroberated by other and competent testimony. S. P. Perry, also gave a like deposition under similar circumstances, which together with the deposition of said McGee was offered as evidence in this case, but the said Perry is living and within the jurisdiction of this Court and was not produced as a witness to give oral testymony in this cause. This Court knows that such is the case, because the said S. P. Perry has appeared and testified in numerous causes which have been heard in this Court.

I am of the opinion that the plaintiffs in this cause, by any sufficient and competent evidence, have not shown that they are of Choctaw Indian blood. Their ancestor, Redding Sessums, according to the evidence before this Court, was born in 1800, but whether in or near the confines of the Choctaw Nation in Mississippi, or whether in Mississippi at all does not appear. That he was living in Copiah county, Mississippi, in 1832, is apparant. That he then removed to Kemper county in that State and lived

there until 1839 is clear. During the period between 1832 and 1839 the Choctaw Indians were removing from their old domain in Mississippi to their new possessions in the Indian Territory. Redding Sessums did not come with them. On the contrary he went directly from Mississippi to Texas and remained there until he died in 1883, and none of his descendants came into the Indian Territory until after his death.

It seems to me that it is reasonable to suppose, if Redding Sessums was a half breed Choctaw Indian as is claimed in this case, that there would have been offered some proof, at least tending to show that he claimed his identity as such, and that he would have made some effort during the eighty-three years of his life to establish that fact, but so far as the testimony in this case extends it is apparent he never did so.

Judgment will be rendered accordingly.

(Signed) Walter L. Weaver

We concur:

(Signed) Spencer B. Adams
Chief Judge.

(Signed) H. S. Foote
Associate Judge.

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

Joanna Mickle, et al.,
Plaintiffs.

vs. No. 37

Choctaw and Chickasaw Nations,
Defendants.

OPINION.

WEAVER, J.

None of themx plaintiffs in this action are or claim to be members of the Choctaw Nation, or entitled to enrollment as such, by blood. They base their claim entirely upon the fact that Harmon Mickle, to whom the plaintiff, Joanna Mickle was married, prior to his said marriage with her, had been intermarried with one Susanna Morris, who was a Choctaw Indian by blood, thus becoming vested, he being a "white person", with all the rights of a native born Choctaw, and that by his subsequent lawful marriage to the said Joanna Mickle, she being a white woman, she and her descendants and other white persons who had intermarried with certain of her descendants, were entitled to be enrolled as members of the tribe. In other words if the said Harmon Mickle was not lawfully a member of said Nation, they and each of them are not.

The proof shows that Harmon Mickle was married to Susanna Morris about the year 1847. That she was a Choctaw Indian by blood. That after her death and in the year 1852 he was again married, to the plaintiff, Joanna, whose maiden name was McSweeney and that the other plaintiffs herein are their descendants, except such as are intermarried with some of her descendants.

The first thing to determine is whether or not the said Harmon Mickle was a member of the Choctaw Nation by intermarriage with Susanna Morris. This can be determined only after a consideration of the evidence touching upon that question. The only competent evidence offered upon that subject was given by the witness, Jane F. Page, who testified that she was a cousin of Susanna Morris and was present at her marriage with Harmon Mickle, which occurred when the witness was a girl of fourteen or fifteen. As the witness is now seventy-one years of age the said marriage must have occurred in 1847 or 48. Witness does not know whether they had a license to marry or not.

In 1840 the Choctaw Council passed a law regulating the intermarriage of white men with the female members of the tribe and that law was in full force and effect at the time of this marriage. This Court has held (Thomas Brinnon vs. The Choctaw and Chickasaw Nations) that before a white man could be vested with any rights and privileges as a member of said tribe by intermarriage it must be shown that he has fully complied with all the provisions of said law. It has not been made to appear that such was the case in this instance. In the absence of evidence this Court cannot presume that such was the case.

On account of the failure of proof of such fact, if fact it was, I am of the opinion that the claim of the plaintiffs herein must fail, and it is consequently unnecessary to pass upon any other questions involved in their application to this Court.

Judgement will be rendered accordingly.

(Signed) Walter L. Weaver,
Associate Judge.

We concur:
(Signed) Spencer B. Adams,
Chief Judge.
(Signed) H. S. Foote,
Associate Judge.

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

1 9 0 4.

B. F. THOMPSON

VS. NO. 38.

CHOCTAW AND CHICKASAW NATIONS.

STATEMENT OF FACTS AND OPINION

BY ADAMS, CHIEF JUDGE.

On the 27th day of August, 1896, the plaintiff, B. F. Thompson, filed a petition with the Commission to the Five Civilized Tribes, in which he alleged that he was an inter-married white citizen of the Choctaw Nation, and a resident thereof; that on the 11th day of November, 1888, in the county of Skullyville, Choctaw nation, Indian Territory, the petitioner was legally and lawfully married to Nannie Womack, a Choctaw Indian woman by blood, who was at that time duly enrolled on the authenticated rolls of the Choctaw nation, and recognized by the authorities thereof, etc.

On the 2nd day of December, 1896, the Commission

to the Five Civilized Tribes passed upon the petition of plaintiff and declared that the said B. F. Thompson was entitled to citizenship and enrollment as an inter-married citizen in accordance with said petition.

An appeal was taken by the Choctaw nation from this finding of the Commission, to the United States Court for the Central District of the Indian Territory, where the case came on for trial on the 1st day of June, 1898, before his Honor W. M. Springer, (the resident Judge seemed to be disqualified for some reason) when the said Court held that B. F. Thompson was a citizen of the Choctaw Nation, and entitled to be enrolled as such.

After the decision if this Court in the case of Choctaw and Chickasaw nations vs. J. T. Riddle, et al., known as the "Test Suit", the plaintiff filed a petition here and asked that his rights be adjudicated by this Court, where on J u n e 17, 1903, the case came on to be heard, and the following proceedings were had:

B. F. Thompson, the plaintiff, is introduced as a witness in his own behalf and says that he resides at Bocheta, Skullyville county, Choctaw nation, Indian Territory; that he has resided in said nation and Territory continuously for the past sixteen years; that he is the same B. F. Thompson who applied to the Dawes Commission in 1896 for enrollment as an intermarried citizen; that said Commission admitted him and the nation appealed the case, and he was enrolled by the Court. (Meaning that he was adjudged to be entitled to enrollment). Witness further says that he married Nancy Womack in Skullyvillecounty, in 1888;

that the marriage ceremony was performed by Judge Kribbs, a Choctaw Indian who was Judge of the Choctaw Court; that he filed a petition signed by ten persons, Choctaw citizens, asking for a license, which was granted according to the Choctaw laws, and that he paid therefor $110.00.

Plaintiff then offers in evidence the original petition of John Taylor and nine other persons, addressed to N. F. Kribbs, county Judge of Skullyville county, Choctaw nation, Indian Territory, in which the petitioners ask that a license be granted to this plaintiff to marry a Choctaw woman.

Plaintiff then introduces in evidence a license issued by N. F. Kribbs, county Judge, Skullyville county, Choctaw nation, which bears date the 10th day of March, 1888, which license authorizes the marriage of the plaintiff to Mrs. Nancy Womack, a recognized citizen of the Choctaw nation. On the back of said license is a certificate of the said N. F. Kribbs, as Judge aforesaid, in which he certifies that he joined in matrimony the persons named in the license, on the 11th day of March, 1888.

(These papers show that they are recorded on page 918 of the Record Book, Volume 1, in the office of the Circuit Clerk, First judicial district, Choctaw nation).

The examination of the plaintiff, B. F. Thompson, is then resumed, and witness says that he had two children by this marriage, Minnie and Bessie; that these children have been enrolled as Choctaw Indians; that his wife, Nancy, was enrolled and recognized when they married, on the 11th day of March, 1888. Witness further says that he was a resident of the Choctaw nation, Indian Territory, at the time of

said marriage, and that he has continuously resided here since that time. Witness further says that he lived with this woman Nancy for seven years, but that he is not now living with her; that while he lived with her he treated her right; that he observed his marriage vows, and in all respects conducted himself as a husband should towards his wife. Witness says the first time he and Nancy seperated they lived up on the hills about 11 miles from the bottoms; that he got in debt $1600.00 and told his wife that he would not make any more improvements about the place until he got out of debt; that his wife Nancy told him that if that was the case she did not want to have anything more to do with him; that she moved to the bottoms and took charge of the bottom place. Witness says that when he took charge of the bottom place there were thirty five acres cleared, and that there were three hundred acres cleared in that place when the seperation occurred; that when Nancy left him it was in the Spring of the year, and that sometime thereafter they agreed to fix the matter up and he moved to the bottoms with Nancy; that the next Spring after that Nancy got so bad he could not stay with her any longer, and he then moved back to the home place. Witness says that Nancy left him at the home place where he had been residing; that when they seperated he gave Nancy $25.00 per month to take care of their little children. Witness says that a divorce was obtained and that Nancy then married a man named Nichols; that she and Nichols lived together and made a crop; and she then ran Nichols off; that Nancy got a divorce from Nichols and married another fellow by the name of Joe Coley.

Upon cross examination witness says that after he and Nancy had been seperated for about a year and a half she sued witness for a divorce and obtained same in the Choctaw courts; that he does not know what she alleged as grounds for divorce; that he was not notified. Witness says that about six years ago he married Becky Gilberry, a white woman.

Plaintiff then introduces a certificate from the Commission to the Five Civilized Tribes showing the enrollment of Nancy Croley, formerly Nichols, daughter of Neal and Orpie McFarland.

The caseis then continued until January 27, 1904, for the defendants to introduce their testimony? The case came on again to be heard on that date and was continued until February 1, 1904 for the nations, and on that date was again continued until February 4, 1904, for the nations, at which time defendants introduced as a witness Nancy Croley who says she resides at Atlee, Chickasaw nation; that she is a Choctaw citizen by blood; that she married B. F. Thompson, applicant in this case, on the 11th day of March, 1888, and they lived together as husband and wife for about six years. Witness says that the plaintiff, she guesses, got tired of living with her; that he went to dances and sported about with other women until she got tired of it, and asked him to stay at home, which he refused to do; that Tompson told her he had his rights and that was all he wanted; that she begged Tompson to stay at home and live like a man. When this witness is asked by the attorney for the nations if she knows as a fact that the plaintiff

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was running about after other women she failed or refused to answer the question. Witness then says she got a divorce from the plaintiff, and the court declared that she should have the two children, Minnie and Bessie; that she kept the children until the next March, and then Tompson took them away from her; that Tompson came to her and asked her to let the older child stay with hima few days, and then he came and took the other one and told witness if anybody came to get them he would kill them. Witness says she obtained a divorce from plaintiff in May and he married the following July.

On cross examination witness says her maidenname was McFarland; that she first married Bill Womack and he died; that she then married B. F. Thompson, the plaintiff, secured a divorce from him and then married a man by the name of Nichols; that she lived with Nichols nine months and then procured a divorce from him; that she next married a man named Croley, who is now in Colorado. Witness says that Nichols was worthless and wanted to spend her property; that Tompson had spent $10,000.00 of her money; and that Nichols left and went to Oklahoma. Witness further says that she got the children in the decree of divorce; that she lived with Croley, her last husband, six months and he went to Colorado; that Croley would do nothing but drink and gamble. Witness further says that Tompson did not come and take the children from her until she had married Nichols. That she gave all her husbands money to leave on except Tompson; that she tried to get Tompson to stay, because she had two children by him. Witness says that Tompson married

a woman by the name of Gilberry, and then insinuated that Tompson was too intimate with her before he married her, but finally admitted that they were respectable people, as far as she knew. Witness further says that both her children are now with Thompson; that she and Tompson were recently subpoenaed to go before the Commission to the Five Civilized Tribes for the Commission to ascertain which one of them should allot land for the two children; that they went to Atoka on the same train, the two children being on the train also; that she spoke to her little daughter Bessie and that Tompson motioned for witness to go back and sit down. Witness says that the children told the Commission that they desired their father to choose the land for them.

The case is then continued until February 23, 1904, for the plaintiff to offer rebuttal testimony, on which date B. F. Tompson, the plaintiff, is recalled, and says that either on the 27th or 28th of last month witness went to Atoka to appear before the Dawes Commission; that in going to Atoka with his children, his former wife, who is now Nancy Croley, boarded the train at Crowder City; that she took a seat immediately in front of the children, near the center of the car, and this witness had a seat in the rear of the car; that at no time during the trip, either on the train or after they reached Atoka, or at any other time or place, has he ever refused to allow his children to speak to their mother. Witness says it is not true that he waived his hand to his daughter to sit down, as testified to by Nancy; that if Nancy spoke to the children on the trip he does not know it; that he has never refused to allow

his children to speak to their mother, but has always told them to speak to her and treat her right; that he has never forbidden her to come to his house to see the children; that the children and their mother meet often and talk. That the Commission to the Five Civilized Tribes told witness to qualify as guardian for his children and come back and select their land. Witness further says thatit is not true that he ran about after other women while living with Nancy as testified to by her. Witness further says that the first trouble that he and Nancy had was like this; That he and her married and when they married they went to the bottoms; that at that time he had six head of good horses, six head of mules and eight head of cattle, and that Nancy had about thirty five acres of cleared land and 390 acres uncleared; that he cleared up a farm for Nancy's son by a former marriage, and one for Ida Maxwell, who was Nancy's daughter, and one for Lee Maxwell, Nancy's son-in-law, and he then cleared one for himself; that was 113 acres; that that fall after clearing up this land he was $1600.00 in debt to Rayburn Brothers; that he told his wife Nancy that he was not going to clear any more that winter, that he desired to get out of debt; that there was nothing more said about it until a man by the name of Long came to witness and said that witness' wife Nancy wanted him to clear fifty acres, but that he would not clear it unless witness would pay him for it, and that witness told Long he would not pay for it until he had paid for the farm; and that after that his wife Nancy said that if witness could not put in

more land she would not have any further use for him; that this was about a year and a half before she applied to the Court and received a divorce. Witness further says that after he and Nancy seperated that he had Nancy's son-in-law and her daughter take care of the two children; that he gave them $25.00 per month to take care of the children, and furnished Maxwell and his wife a house to live in; that Maxwell and his wife kept the children for about three months after the divorce was obtained, and then witness moved down into the house where Maxwell lived, and took charge of the children and has had them ever since; that when he first took the children Nancy did not object, but said that she did not want them. Witness says that in the decree of divorce she was awarded the custody of the children and he was awarded one half of the farm in the bottom; that she took charge of the farm and that he has never gotten a cent for it; and that she refused to take the children; that she refused after the seperation to provide the children with any kind of clothes, and that witness boarded them, clothed them and schooled them. Witness further says that he did not want the children simply because they had rights in the Choctaw nation; that he would have taken them if they did not have a right to a foot of land. Witness further says that the children have visited their mother often, and always returned to his house on their own accord and that Nancy, his former wife, had been to his house on several occasions to see the children.

This is the evidence in the case. It is admitted that B. F. Tompson, who is a white man, married Nancy Womack, who is a Choctaw Indian by blood, on the 11th day of March, 1888, according to the Choctaw inter-marriage laws existing at that time, and that they lived together for several years as man and wife, but the nations contend that the plaintiff abandoned his wife Nancy and refused to live with her, and thereby forfeited whatever rights he may have acquired by reason of said marriage.

I do not think the evidence is sufficient to warrant the Court in finding as a fact that he did in fact abandon his wife, if such an abandonment would work a forfeiture of his acquired rights, which I do not intend to intimate.

Taking the testimony as set out in the record, and also the appearance and conduct of the witnesses on the stand, I do not think the seperation was entirely the fault of the plaintiff. This woman Nancy, according to her own testimony, has been married several times, and the plaintiff seems to have lived with her longer than any of her other husbands were able to.

I am of the opinion that the applicant, B. F. Tompson, is entitled to citizenship and enrollment in the Choctaw nation as an intermarried citizen.

A judgment will be entered by this Court accordingly.

(Signed) Spencer B. Adams
Chief Judge.

We concur:

(Signed) Walter L. Weaver
Associate Judge.

(Signed) Henry S. Foote
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, April Term, 1904 .

Susan S. Benight, et al.,

Appellants.

vs. No. 39.

Choctaw and Chickasaw Nations,

Appellees.

OPINION, by FOOTE, Associate Judge.

This case comes here by transfer or appeal, under the Act of July 1, 1902, from the United States Court for the Central District of the Indian Territory.

The parties to this appeal are Susan S. Benight, Richard S. Benight, Jessie D. Benight, Annie E. Benight and Linnie Benight, adults, appearing for themselves, and James Luther Benight, Winn Benight and Dora Jeff. Benight, appearing as minors by Richard S. Benight, their father and next of kin, and Millard Benight and Evy G. Benight, by Jessie D. Benight, their father and next of kin. Susan S. Benight, Richard S. Benight, Jessie D. Benight, James Luther Benight, Winn Benight, Dora Jeff Benight, Millard Benight and Evy G. Benight, claim to be Choctaw Indians by blood. Annie E. Benight claims to be an intermarried citizen of the Choctaw Nation as the wife of Richard S. Benight, and Linnie Benight claims in the same capacity, as the wife of Jessie D. Benight.

Their application to the Commission to the Five Civilized Tribes was denied, they being then included with

many others in a suit styled J. J. Benight, et al., vs. The Choctaw Nation, on the 4th day of December, 1896, and on an appeal from that judgment to the United States Court for the Central District of the Indian Territory, and on the 11th day of September, 1897, the cause was heard on appeal, and Richard S. Benight, Luther Benight, Winn Benight and Dora Jeff Benight were adjudged by that Court to be Choctaw Indians by blood and entitled to enrollment as such, and that Annie Benight, as the wife of Richard S. Benight was entitled to enrollment as an intermarried citizen, and that Susan S. Benight, Jessie D. Benight, Millard Benight and Evy G. Benight, were Choctaw Indians by blood but not entitled to enrollment as such for the reason that they were not residents at the time of the institution of their suit, of the Choctaw Nation. I do not find the name of Linnie Benight, joined in this petition for appeal here, mentioned in the judgment of the Court below, therefore, this Court has no jurisdiction to determine her rights, if she have any, although her husband who claimed to be an Indian of Choctaw blood, was denied enrollment as such in the decree aforementioned and she, in the petition for appeal is mentioned as his wife, and an intermarried citizen only.

The judgment of said Court was set aside as to the parties mentioned in it, in what is called the Riddle or test suit, by this Court, and they who are mentioned in that judgment, and who are properly before us, being mentioned therein, and in the petition for appeal or transfer to this Court, under the Act of July 1, 1902, are now before us for adjudication of their rights.

It seems that Susan S. Benight and the other persons here, who claim by reason of their alleged Choctaw Indian

blood, declare that they are the descendants of one of the three head chiefs of the Choctaw Nation in Mississippi mentioned in the treaty of that Nation with the United States, in 1830.

The first matter to be determined here is whether or not the competent and reliable evidence before us is sufficient to show that the claim of these applicants on that head is correct.

Susan S. Benight is the person in this case through whom as alleged to be descended from Mashulatubbee, as aforesaid.

It is alleged in the petition filed by her and others that she has three sixteenths of Choctaw Indian blood; that she was the daughter of one Isabelle Cogbill, nee Williams, and that Isabelle Cogbill's mother was named Rebecca Williams, and that the said Rebecca, a three fourths Choctaw woman by blood, was the wife of a Mississippi white man named Sam Williams; that the said Rebecca came West about the year 1848 with her daughter Isabelle, and that the said Rebecca died near the Arkansas line in the Choctaw Nation, about the year 1865, and that her alleged father Masholatubbee, came to the Choctaw Nation, Indian Territory, about the year 1831, and died near Sans Bois, in said Nation.

The evidence submitted to the Commission were certain ex parte affidavits, taken after the 10th day of June, 1896, and the parties them making them are not shown to have been dead or beyond the jurisdiction of said Commission when said ex parte affidavits were taken and offered in evidence. Before the United States Court below they were also offered, as well as certain depositions taken in 1897, for the purpose of being so offered as evidence, and they were so offered.

and she an interested one, who gave oral testimony before us, as to her pedigree and Choctaw blood.

On page 12 of her evidence before us, she declares that she lived at Pocola in the Choctaw Nation, when she applied for citizenship to the Commission to the Five Civilized Tribes in 1896, yet in her affidavit filed before that tribunal and made on the 28th day of August, 1896, she stated: "My name is Susan S. Benight; my age is 53 years; my residence is Sebastian County, Arkansas, just across the Territory line". And the finding of the Court below was that she was a non-resident of the Choctaw Nation when she instituted her suit before the said Commission. In her evidence before us, page 14 thereof, she declares that her grandmother, Rebecca Williams, was born in Hinds County, Mississippi, four or five miles from Vicksburg, Mississippi. Now the City of Vicksburg is in the extreme Western edge of Warren County, Mississippi, as shown by the maps, and it is also well known as a geographical fact, and the Big Black River is the boundary line between the County of Warren on the East side thereof and the County of Hinds on the West side is the State of Mississippi, and it is more than twice five miles from Vicksburg to the Big Black River.

Now Warren County, Mississippi, is not in the Northern part of the State. It is rather in the middle West part thereof, and yet Eliconchitubbi, one of the affidavit makers for these people, on August 19th, 1896, states that he himself lived in the Northern part of the old Choctaw Nation in said State, and that Rebecca Williams lived in one mile of him, and Washulatubbee her alleged father within fifteen miles of him. And Olachachubbee, another of these affidavit makers, on the 19th of August, 1896, says that he

was born on the Tombigbee River in Mississippi and that he lived in the same neighborhood with Mashulatubbee in Mississippi, and came with him to the Indian Territory in 1831. The recognized maps and the known geography of Mississippi, shows that the Tombigbee River in its course does not touch any part of Mississippi except the North Eastern part thereof, and many miles from the County of Warren and Vicksburg in said State. How could Rebecca Williams at the same time according to that evidence, live in North East Mississippi, and near Vicksburg, the two sections being about a hundred ~~xxxx~~ miles apart.

Besides the recognized maps showing the bundaries of the Nation, disclose the fact that Vicksburg is about fifty miles, perhaps a mile or two more, from Rankin County which was the closest Western boundary of the Choctaw Nation to Vicksburg in Warren County, which was not a part of the Choctaw Nation.

Besides all this, Mashulatubbee, one of the three great Chiefs of the Choctaw Nation, was granted in the treaty of 1830, four sections of land, two of which were to be located so that they should include and adjoin the improvements he then had, and the other two sections to be located where he pleased.

In the printed record of the case of Choctaw Nation vs. United States, at page 27, it is shown that Mushulatubbee took as the two sections of land adjoining his improvements, Sections 3 and 10, in Township 14 North, Range 15 East. These lands taken and adjoining and including his homestead are in Attala County, Mississippi, near the County seat of that County, Kosciusko, and is probably near eighty or ninety miles from Vicksburg, with the Counties of Warren, Madison and a part of Attala between his place and Vicksburg. These

facts serve to show the utter unreliability of such evidence.

Susan Benight also, at page 30 of her testimony before us, says that her grand mother Rebecca Williams had, as she heard from Kliconchitubbi and Olachachubbee, "Hiram King, that was her own brother, I think that was older children, and that her grandmother told her she had a brother named James."

Now the applicants claim that Rebecca Williams had only three fourths Choctaw Indian blood, and yet the archives of the United States Government show that James and Hiram King were full blood Indians. In volume VII of the American State papers, page 14, in a letter to Honorable Lewis Cass, then Secretary of War, of date September 20th, 1833, it was said by Walter S. Colquhoun; "Masholatubbee's two sons (full blooded Indians) James and Hiram King were allowed a section each at the treaty (at their father's old place) on the great military road leading to Lake Pontchartrain, a most valuable location"; and it is a well known physical and geographical fact that this road was the one upon which General Jackson's Tennesseans marched down to New Orleans in 1814, and it passed almost North and South through Attala County, Mississippi, towards that lake. Comment on this evidence as contradictory to the claims of these people is unnecessary.

Olachachubbee in his deposition says, July 19th, 1897, that he came to the Indian Territory with Masholatubbee; that they left Rebecca Williams in the State of Mississippi; that Rebecca was then married, and that she had no children in 1832. Yet Susan Benight says that she was born in 1843. Now if according to Olachachubbee, Rebecca Williams had not a child in 1831 or 1832, when he says she had no children, and had a child born after that called Isabelle, the alleged mother of Susan S. Benight could not have been, when she be-

came the mother of Susan S. Benight, more than ten or eleven years old. While the statements in these affidavits are inadmissible for the claimants, yet as declarations against the interests of the plaintiffs, made by the interested parties themselves, and as showing the contradictions in the record, they go to show the incredibility of her evidence and the want of good faith in presenting such evidence in behalf of the claim ~~of~~ the appellants set up.

The defendant Nations, introduced, among other witnesses, Mrs. Lucy Bohannon, the grand daughter of Mashola-tubbee, an elderly lady of prepossessing appearance. She stated that she had lived with Susan Cooper, her aunt and the daughter of Mashola-tubbee, during the lifetime of her aunt; that she had ample opportunity to become familiar with the family history of Mashola-tubbee, and she states that neither did her aunt ever speak of a sister such as Susan Benight claims her mother was, nor did she, Mrs. Bohannon, ever hear ofsuch a person.

The story of Mrs. Susan Benight about her grand mother Rebecca Williams, who lived in Mississippi until 1849, who was 53 years of age in 1830, the date of the treaty between the United States and the Choctaw Nation, of whom no record is ever made in the old archives relating to Mashola-tubbee and his children; who moved to Arkansas and lived in Drew County of that State from 1849 to 1856, then moved to Sevier County and died in that State, and no one appearing to know anything about her, except these applicants as they claim, or that she had Indian blood or was the daughter of Mashola-tubbee; no record of her having drawn any annuities; her children scattered over different States, and for many years not even showing any desire to affiliate with their

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

Lula B. Trahern, alias
Lula E. Trahern,
Appellant,

vs. No. 40.

The Choctaw and Chickasaw Nations,
Appellees.

The treaty of 1866 with the Choctaw and Chickasaw Nations provided, in Section 38 thereof, that

"Every white person who having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw Nation &c. x x x x x x x is to be deemed a member of said Nation, x x x x x ".

As has heretofore been declared in cases decided in this Court, to entitle a white person to be deemed a member of said Nation or Nations, the white person must have married a Choctaw or Chickasaw, and must reside in the Choctaw or Chickasaw Nation after said marriage.

That is to say, a valid marriage to a Choctaw or Chickasaw, must be followed by a residence in one of said Nations, as the case may be.

A male Choctaw, under the laws and regulations of said Nation, can contract a marriage which is legal, outside said Nation and under the laws of any other State, and then bringing his white wife to reside in said Nation of which he is a member, and she afterwards there resides as his wife, she is to be deemed a member of said Nation.

Two things must concur. The valid marriage must take place by a male member of the tribe or Nation to a white woman; and she must live and reside with her husband in said Nation in which he resides.

The question involved in this case is whether a Choctaw man by blood, married in Mississippi, before he has been enrolled as a Choctaw by blood, in the Choctaw Nation, Indian Territory, can by removing and living in the Choctaw Nation with his wife so married, convert her, so to speak, without re-marrying her, into a member of said tribe? That is to say, doesthe marriage, valid in all respects as such, and followed by residence, entitle the white woman to membership in the Nation of her husband from the time of her husband's enrollment as a Choctaw by blood (under the existing laws and treaties,) by the Commission to the Five Civilized Tribes and the approval thereof by the Secretary of the Interior?

I think that these things are sufficient under Section 38 of the treaty of 1866.

There is, of course, a vast difference between the status of a white man marrying a Choctaw or Chickasaw woman, and a white woman marrying a Choctaw or Chickasaw man.

The white man must marry in the Nation he wishes to become a member of by intermarriage, according to its laws and regulations, and reside therein thereafter and remain with his wife. A white woman can be validly married to a Choctaw man in any jurisdiction outside the Nation, and by then residing in said Nation in the marital state with her Choctaw husband, be deemed from such marriage and residence a member of that Nation.

I can not see how a marriage, valid before her husband, a Choctaw by blood, became identified and entitled to enrollment in the respective Nation, and valid thereafter, and followed by her residence continuously after his recognition and identification, does not entitle the white wife to be deemed a member of the Nation of which her husband is a member.

This conclusion, it seems to me, is according to the letter and spirit of Section 38 of the treaty of 1866, and in accordance with the laws and regulations of the Choctaw Nation.

Such a state of facts and conditions brings about what the treaty intended, to wit; a valid marriage (& insuring the legitimacy of the offspring, if any, of such marriage,) and residence in the Nation as a member thereof; which are the two essential things the said treaty seeks to effectuate.

I think that the appellant here, Lula B. Trahern, sometimes called Lula E. Trahern, should be declared entitled to intermarried citizenship in the Choctaw Nation, and all rights accruing therefrom, and IT IS SO ORDERED.

(Signed) Henry S. Foote
Associate Judge.

We concur:

(Signed) Spencer B. Adams
Chief Judge.

(Signed) Walter L. Weaver
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

Robert L. Reagen,

vs. No. 41.

Choctaw and Chickasaw Nations.

No written opinion.

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

F. K. WEST, et al,
Plaintiffs.

vs.

THE CHOCTAW AND CHICKASAW NATIONS.
Defendants.

No. 42.

A. Eddleman,
for Plaintiffs.
Mansfield, McMurray & Cornish,
for Defendants.

By WEAVER, J.

John Shockley, who was the ancestor of the plaintiffs herein, made application for citizenship for himself and family to the authorities of the Choctaw Nation at a date prior to the enactment of the statute creating the Commission to the Five Civilized Tribes, and said application was denied by said Nation. He then appealed to the Honorable Leo Bennett, United States Indian Agent, of the Union Agency, at Muskogee, Indian Territory, who passed upon his claim and declared him and his said family to be entitled to such citizenship as prayed for, which said decision was affirmed by the Secretaryof the Interior. The plaintiffs aver that in accordance with said decision, and in persuance thereof said Shockley and the then members of his family were enrolled as members of said Tribe and have since participated in the annuities of said Tribe. This averment, with others setting forth in detail the claims of all the plaintiffs herein, is contained in the application made by these plaintiffs to the Commission to the Five Civilized Tribes, which was filed with said Commission on the 9th day of September, 1896, said Commission afterwards, on December 5th, 1896, rendered its decision on said application admitting certain of said applicants

to citizenship and enrollment, and denied the right to certain others of them. Appeal was taken from this decision of said Commission to the United States District Court for the Central District of the Indian Territory, by which Court the said decision of said Commission was affirmed substantially.

After the decision by this Court, of the suit of the Choctaw and Chickasaw Nations vs. J. T. Riddle, et al, commonly known as the "Test Case", the plaintiffs filed their petition in this Court, praying for an adjudication of their said cause by this Court in accordance with the statute therefor made and provided. Such further proceedings were had in this Court that said cause was regularly assigned for hearing therein, and A. Eddleman, a practicing attorney living at Ardmore, in the Indian Territory, and the attorney of record for the said plaintiffs in this Court, was duly notified of the day the said cause was assigned for hearing, but neither the plaintiffs nor their said attorney of record appeared, at the day set for the trial of said cause nor at any other time, to present their cause for hearing by this Court, and failed to produce or offer any evidence whatsoever in support of their claim. Nevertheless I have examined the record of this proceeding, both before the Dawes Commission (the Commission to the Five Civilized Tribes), and before the United States District Court for the Central District of the Indian Territory, with a view to ascertaining whether or not there is competent evidence contained therein to authorize a finding and judgment of this Court sustaining the claims of the plaintiffs herein, but failed to find sufficient evidence competent for that purpose.

I am therefore of the opinion that the plaintiffs have failed to show by any competent evidence produced to this Court,

that they or anyoof them are entitled to citizenship or enrollment as members of the Choctaw Nation.

Judgment will be rendered accordingly.

(Signed) Walter L. Weaver
Associate Judge.

We concur:

(Signed) Spencer B. Adams
Chief Judge

(Signed) Henry S. Foote
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

Mary A. Sanders, et al.,

vs. No. 43.

Choctaw and Chickasaw Nations,

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT

SITTING AT SOUTH McALESTER, INDIAN TERRITORY,

FEBRUARY TERM, 1 9 0 4.

Samuel C. Caldwell,
Nancy Caldwell,
Willie Caldwell,

vs. No. 44.

Choctaw and Chickasaw Nations.

Statement of Facts and Opinion
by Adams, Chief Judge .

The applicant, Samuel C. Caldwell, and his wife, Louisa Caldwell, and their children, Nancy and Willie Caldwell, on the _____ day of September, 1896, filed a petition with the Commission to the Five Civilized Tribes, under an Act of Congress, approved June 10, 1896, alleging that in the year 1873 the aforesaid Samuel C. Caldwell was lawfully married to Lottie David, within the Choctaw Nation, and that the other two petitioners, Nancy and Willie Caldwell, are the lawful children and descendants of the aforesaid Samuel C. Caldwell and Lottie Caldwell, the latter then being deceased. That Louisa Caldwell was, in the year 1883, lawfully married to the said Samuel C. Caldwell, and has since resided in said Nation. That the aforesaid Lottie Caldwell, nee David, was a Choctaw Indian by blood and did, prior to and at the time of her marriage to the said Samuel C. Caldwell, reside within the Choctaw Nation and enjoy all the rights of a Choctaw Indian, and was recognized by the authorities of said Nation as a member of the Choctaw Nation of Indians. The petitioners allege further that the said Samuel C. Caldwell has, since his marriage to the said Lottie David, lived within the Choctaw Nation and enjoyed all the

rights of a Choctaw citizen; and that, according to the treaties, laws and customs of the Choctaw Indians, the petitioners are entitled to enrollment as members of said Nation. The petitioners, therefore, prayed said Commission to enroll them as such. The petition purports to be signed by the above named applicants and sworn to by Samuel C. Caldwell, before a Notary Public.

The record on appeal from the Commission to the Five Civilized Tribes, shows that the petition of these applicants was passed upon by said Commission at Fort Smith, Arkansas, December 3, 1896, and that the Commission to the Five Civilized Tribes did, on that date, admit Samuel C. Caldwell as an inter-married citizen, and Nancy Caldwell and Willie Caldwell as citizens by blood . The petition of Louisa Caldwell, the second wife of Samuel C. Caldwell, was denied. (It seems there was no appeal taken in her case from the decision of the Commission to the Five Civilized Tribes, hence she is not before this Court).

The Choctaw Nation in apt time prayed and obtained an appeal to the United States Court for the Central District of the Indian Territory, sitting at South McAlester, from the decision of the Commission to the Five Civilized Tribes admitting Samuel C. Caldwell, Nancy Caldwell and Willie Caldwell, to citizenship and enrollment as members of the Choctaw tribe of Indians. The matter came up and was tried in the United States Court for the Central District of the Indian Territory, sitting at South McAlester, on the 27th day of August, 1897, when and where a judgment was entered by said Court in favor of the said Samuel C. Caldwell and his children, Nancy Caldwell and Willie Caldwell, declaring Samuel C. Caldwell to be a citizen of the Choctaw

Nation by inter-marriage, and Nancy Caldwell and Willie Caldwell to be Choctaw Indians by blood, and directing the Commission to the Five Civilized Tribes to enroll the said persons as members of the Choctaw tribe of Indians; and directing that the cost of said proceeding be paid by the Choctaw Nation, and that an execution issue for same.

On the 4th day of September, 1897, the Choctaw Nation, through its attorneys, filed a petition in the United States Court for the Central District of the Indian Territory, in which it was alleged that since the former trial of this case and the entry of judgment therein, defendant had discovered new evidence, setting out the same in detail, and asking that the Choctaw Nation be given a new hearing and that a new trial be granted in this cause. In furtherance of this petition a new trial was granted and the case came on to be further heard in the United States Court for the Central District of the Indian Territory, on the 8th day of October, 1897, when a judgment was rendered by said Court in favor of the Choctaw Nation, and declaring that the applicants were not citizens of the Choctaw Nation.

By virtue of authority contained in section 32 of an Act of Congress approved July 1, 1902, these applicants, Samuel C. Caldwell, Nancy Caldwell and Willie Caldwell, on the 10th day of March, 1903, filed a petition in this Court, praying an appeal hereto in accordance with said section, and the case is regularly here for trial.

The applicants offered the following testimony in this Court:

Samuel C. Caldwell, one of the applicants, is the first witness, and says that he came to the Choctaw Nation

in the Fall of 1871, and was married on the 25th day of November, 1873, to a widow whose name was Lottie ~~Xxxxxx~~ Walker, and whose maiden name was David; that there were two children born of this marriage, to-wit; Nancy and Willie Caldwell, who are the other two applicants in this case. Later on witness says that Nancy is a daughter of his first wife by her first husband Walker, but that Willie is a child of his wife Lottie by this applicant. Witness says that the marriage took place in this, Tobucksy, county; that his wife Lottie was always recognized as an Indian, and told this witness she was an Indian, and her people always claimed that she was an Indian; that at the time of his marriage his wife Lottie was living with a man named Dawson, a half breed Indian; and that his wife Lottie claimed to be one-eighth Choctaw and one sixteenth Cherokee; that his wife's grandmother's name was Brown and lived at Stringtown; that the grandmother of his wife was also recognized as an Indian and looked like a half breed; that everybody pronounced her such; that she claimed to be part Choctaw and Cherokee; that his wife looked like an Indian; that her hair and complexion were dark. Witness further says that he procured a license to marry this woman Lottie from the Clerk of the Court and that the Judge of the Court performed the ceremony, (meaning the Clerk and Judge of the Choctaw Court). The witness is then shown by his counsel a paper which witness says is his marriage license. This paper is here introduced by the applicant and marked by the court as exhibit "A.-2" and is as follows: "Nov. 25, 1873, Tobucksy Co. Choctaw Nation. I do hereby certify that I did duly join in matrimony Samuel C. Caldwell 24 years of age to Lottie Walker age 20 years according to the Choctaw Law. This

given under my hand Nov. 25, 1873." Signed "Judge Campabulee, Co. Judge." This witness further says that Judge Campabulee was the County Judge of the Choctaw Nation and was a full blood Indian, and gave this witness this paper the next county court that met; and that this Judge was well acquainted with his wife's mother. Witness further says that his wife Lottie has been dead a little over twenty years. Upon cross examination this witness says that his wife Lottie claimed her Indian blood through her mother whose maiden name was Brown, but who now bears the name of Miller; that his wife has a half sister named Martha, who married a man named Watson; that his wife's mother told this witness in 1896 that she was a Choctaw Indian, but that she was going to deny the blood. Witness further says that his wife's mother is mad with him.

Nancy Higgins, nee Caldwell, one of the applicants in this case, is then introduced as a witness in her own behalf, and says that she is a daughter of Lottie Caldwell; that she was born in the Choctaw Nation and was two years old when her mother married Samuel C. Caldwell. This witness says that her mother always claimed that she was a Choctaw Indian; and that witness was ten years old when her mother died; that she lived, after the death of her mother, with her grandmother, Mrs. Miller, and that her grandmother taught her she was an Indian; that her grandmother never denied that she was an Indian until 1896, when she told this witness that she was going to deny that she was a Choctaw, that she did not want her daughter's husband to have anything to do withthe Indians. Upon cross examination this witness says thather mother claimed that she was one-sixteenth Choctaw. The witness further says that she has been living at Robert Lee,

Coke County, Texas; that she went there six years ago and came back here about three weeks ago; thatshe had a home at Robert Lee, Texas, but that she had sold her home there and come back here to the Territory to get a home; that it was so dry in Texas she could not raise anything; that if they had had more rain in Texas she would have remained there; that her husband and children are there now, but if she gets this matter fixed up alright her husband and children are coming here.

Hannah Bell is then introduced as a witness for the applicants and says she is 56 years old and lives in the Choctaw Nation; that she has resided here since 1873; that Samuel C. Caldwell married her oldest daughter the last time, who is his present wife; that witness lives with the said Caldwell and her daughter; that witness knew Caldwell's first wife, Lottie, for about two years; that at the time she knew her she was living with John Dawson, a half breed Indian; that she was living with him at old Perryville, a few miles south of here, at the time of her marriage to Caldwell. Witness says that Lottie told her that she was a Choctaw Indian, and that Lottes' mother and grandmother told her the same; that Lottie's grandmother lived at Stringtown, and was a large woman with dark hair and very dark eyes; that Lottie told witness she was a Choctaw and and had a little Cherokee blood. Witness says her daughter, the present wife of Caldwell, is a white woman; that she married Caldwell in 1883. On cross examination witness says she could tell by their looks, (meaning Lottie, her mother and grandmother), that they had more Choctaw than Cherokee.

This is the evidence offered on the part of the applicants.

Eliza Grubbs is then introduced as a witness on the part of the Nations and says that she is 44 years old, resides at Perryville, Choctaw Nation, is a white woman and an intermarried citizen. Witness says she knows the applicant, Samuel C. Caldwell, and also knew his father, who was this witness's step-father; that she knew his first wife, Lottie Walker, and was present at the marriage of Caldwell and Lottie Walker; that a minister of the Gospel named Bass performed the ceremony at the minister's house out on Cole Creek, eight or nine miles from here. On cross examination this witness says that there was no one present at the marriage of Caldwell and Lottie, except herself, the minister's family and an old lady named Bull; that the minister left this country about four years after performing the ceremony, and witness doesn't know where he went. Witness says that she lived, at the time of this marriage, in the house with Samuel C. Caldwell's father, who was this witness's step-father; that the old woman Bull lived there also; that Caldwell went down and got Lottie and brought her to her father's house, and this witness and the old woman Bull went with them to the preacher's house to get married; that they travelled in a wagon; that they had no marriage license and witness does not know in what year this marriage took place but that she was fifteen years old.

Martha Watson is then introduced as a witness for the Nations, and says she is thirty two years old and the wife of Joe Watson and resides at Old McAlester; that she has been residing in the Territory since she was four years of age. Witness says that Lottie Walker, the first wife of Samuel C. Caldwell, was her sister; that they had the same mother. Witness doesn't know the year in which her

sister married Caldwell, but the marriage took place soon after she came to the Territory. Witness says that she is not a Choctaw, that her Mother is not a Choctaw and that none of her people ever claimed to be Choctaw Indians; that she never knew that Caldwell claimed to be an Indian before. Upon cross examination witness says that her sister's children came to her house sometimes, but this witness does not associate with them. Witness says that she claimed to be a Cherokee Indian, and that her mother's brother made application to the Cherokee Council; that her husband went with him; that witness doesn't know whether her mother made application as a Choctaw or not, but knows that her mother never claimed to be a Choctaw. Witness says that her mother is old and too feeble to attend upon this Court; that a subpoena was issued on the part of the Nations for her mother to attend Court to-day, but she was to unwell. Witness says that her mother looks like an Indian; says that she has Indian blood in her; that witness's grandmother also looks like an Indian.

The nations then offered in evidence the evidence of the applicant, Samuel C. Caldwell, taken before the Commission to the Five Civilized Tribes on the 22nd day of January, 1901, tending to show that the applicant had gone before the Commission on that date and filed an application seeking to have the Commission enroll him as what is known as a "Mississippi Choctaw Indian". In furtherance of this application the applicant went upon the stand before the Commission, in that proceeding, and testified in part as follows:

"Q. Did you or anyone in your behalf, in 1896, under the Act of Congress of June 10, 1896, make ap-

plication to the Commission to the Five Civilized Tribes for citizenship in the Choctaw Nation?

A. No sir.

Q. Have you ever been admitted to citizenship in the Choctaw Nation by a judgment of the United States Court in the Indian Territory on appeal from the decision of the Choctaw tribal aurhtorities or the decision of this Commission?

A. No sir.

Q. Have you ever, prior to this time made application to either the tribal authorities or the authorities of the United States, for either citizenship or enrollment as a Choctaw?

A. No sir.

Q. Is this the first application of any kind you have ever made?

A. This is the first?"

A. W. McClure is then introduced as a witness for the nations, and says he is a Choctaw Indian by blood, and was Clerk of the County Court of Tobucksy County, in the Choctaw Nation, from October 1896 to October 1899; that he has known the applicant, Samuel C. Caldwell, for the last eight or nine years; that in the Spring of 1898 or 1899 the applicant, Samuel C. Caldwell, came to this witness' office, while he was Clerk of said Court, and requested this witness to examine the records of his office, and ascertain if an iron seal was used by the County Court of Tobucksy County in 1873; that in compliance with this request he and the applicant, Caldwell, thoroughly examined the records in the office and ascertained the fact that the first iron county seal used by said Court was in 1874. Witness further says, upon giving the applicant this information the applicant exhibited to the witness certain old records issued from the County Court of Tobucksy County in 1873, and told this witness that he (Caldwell) had a farm near here that he would turn over to this witness if the witness would place the iron county seal on said old records. Witness says that in reply he told the said Caldwell that he could not comply with such a proposition under any condition. Upon cross-xxx

examination witness says that the records exhibited by the applicant Caldwell in no way bore upon his rights as a citizen. Witness further says that this applicant, Samuel C. Caldwell, exhibited to him, at the time he visited his office for the purpose of making this examination, the marriage certificate introduced by the applicant, and heretofore noted in this record, and marked exhibit "A-2", and that said certificate at that time had x the iron county seal thereon, as it now has.

Columbus Kompelubbee is then introduced as a witfor the nations, and says that he is 42 years old; that he was born and raised in the Choctaw Nation and is a Choctaw Indian by blood; that his father was a full blood Choctaw Indian, and was County Judge of this, Tobucksy, County, at one time; that his father is now dead, having died about six years ago. This witness says that his father spelled his name Kompelubbee; that this was all the name his father had, and that is the way he signed it. In other words witness says his father had no given name. The certificate of marriage introduced in this case and noted above, marked exhibit "A. 2"., is then shown this witness, and upon an examination of same witness says the signature thereon is not the signature of his father; that his father commenced his name with the letter K; the next letter that he used was C, and then he used two Bs., etc. It will be observed on this paper purporting to be a marriage certificate that the name is spelt "Compalubbee", and is not spelt like this witness says his father spelled his name.

The applicant Samuel C. Caldwell, claims his right to citizenship as a citizen of the Choctaw Nation and enrollment as a Choctaw Indian by reason of his alleged mar-

riage to Lottie Walker, nee David, whom he claims was a Choctaw Indian by blood; that she, Lottie, claimed her Indian blood from her mother, whose name is now Mrs. Miller. The applicants, Nancy and Willie, claim their right to such citizenship and enrollment by reason of the fact, they allege, that they are the children of Lottie. Then it would seem that the first question that arises is, is this evidence sufficient to warrant the Court in finding as a fact that the woman Lottie was a Choctaw Indian by blood. If the Court should find as a fact that she was a Choctaw Indian by blood, then it would be necessary to determine whether or not the applicant, Samuel C. Caldwell, and this woman Lottie were married according to the Choctaw laws in force at the time of their alleged marriage, and whether the applicants have residedin the Choctaw Nation according the Article 38 of the Treaty of 1866. If the Court should find all these issues in favor of the applicants, then the next inquiry would be as to the applicants Nancy and Willie. Are they such Indians, and is their mother, were she living, such an Indian, as would be entitled to citizenship and enrollment as Choctaw Indians by blood, under the Treaty of 1830?

I will now consider the evidence bearing upon the first issue. Is this evidence sufficient to warrant the Court in finding as a fact that the woman Lottie was a Choctaw Indian by blood? The evidence upon that issue is as follow: Samuel C. Caldwell, principal applicant, says that his wife Lottie claimed to be one-fourth Choctaw and one sixteenth Cherokee; that she looked like an Indian, and that her hair and complexion were dark. Nancy Higgins, another of the applicants, who is a daughter of the woman Lottie says that her mother always claimed to be an Indian;

that she was one-sixteenth Choctaw. Hannah Bell, who is the mother of the present wife of Caldwell and lives with him, states that the woman Lottie claimed to her that she was a Choctaw Indian; that she was a large woman and had dark hair and eyes.

It will be seen that the statements made by these witnesses are vague and uncertain.

Mrs. Watson, who is a half sister to this woman Lottie, both having the same mother, says that the family never claimed any Choctaw blood, but claimed Cherokee Indian blood. Samuel C. Caldwell is contradicted in many of his statements, as will be seen by an examination of the record in this case. His own statement before the Commission to the Five Civilized Tribes in 1901, in his application as a Mississippi Choctaw, is in direct conflict with his statements contained in the record in this case. There is no way to reconcile his statements here and his statements there; and then if the evidence of A. W. McClure, Mrs. Grubbs and Columbus Kompelubbee is to be believed, I am unable to see how any weight at all can be given this witness's testimony.

In fact, in view of the many absurdities, inconsistent statements and flat contradictions of the witnesses on the part of the applicants, and the total lack of competent evidence on part of applicants, and in view of the facts and circumstances which this record discloses, I am led irresistibly to the conclusion that this evidence would not justify the Court in finding as a fact that the woman Lottie possessed a particle of Choctaw Indian blood; and if she did possess Choctaw Indian blood she was not such an Indian as under the Treaty of 1830 , would entitle her descendants

to citizenship and enrollment as members of the Choctaw Tribe of Indians. Such being my conclusion I deem it unnecessary to pass upon the other issues in the case.

I am, therefore, clearly of the opinion that the appeal of the applicants to this Court should be dismissed, and that the applicants take nothing thereby; and it is so ordered.

(Signed) Spencer B. Adams,
Chief Judge.

We concur:

(Signed) Walter L. Weaver,
Associate Judge.

(Signed) Henry S. Foote,
Associate Judge.

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

R. L. CRUDUP, et al,	
vs	J. O. POOL and POTTER & POTTER, for Plaintiffs.
THE CHOCTAW AND CHICKASAW NATIONS.	MANSFIELD, McMURRAY & CORNISH, for Defendents.
	--NO. 45--

OPINION.

BY WEAVER, A. J.

This case comes into this Court on appeal from the United States District Court for the Central District of the Indian Territory.

The plaintiffs claim to be citizens of the Choctaw Nation by descent (and intermarriage) from one Thomas Barron, and that Thomas Barron was the son of John Barron, a white man, and Martha (Perryman) Barron, hiswife, who was a full blood Choctaw woman.

The evidence clearly shows the connection of these plaintiffs with Thomas Barron and there is evidence tending to show that he, Thomas Barron, had the appearance of an Indian to a considerable degree in color and contour of face. There is also evidence that he spokean Indian tongue, but it was of a kind that could be, and was,understood not only by the Choctaws, but by the Chickasaws, the Commanches, the "Tonks" and the Wacos. There is no evidence that he ever lived in the Indian Territory, even from his own declaration, unless possibly for a short time at a very early period. It is shown by the witnesses for the plaintiffs that he was already located near Waco, Texas, at least several years prior to 1860, when they first got acquainted with him and was then the owner of a stock farm or ranch, carried on a shingle mill and farmed. To all intents and purposes he was a citizen of Texas, voting, paying taxed and educating his family at the public schools. He asserted no other rights than that of a citizen of that State. There is no evidence of his origin or pedigree before this Court. None of his children, some of whom are plaintiffs in this case, and some of whom are not, were called upon to testify, although their information, if they had any to sustain their contentions, would have been competent for that purpose. The deposition of George Colbert and L. J. McDaniel touching these matters are not competent, if for no other reason, because there is no foundation laid for the same by proof that either of said persons are dead or living beyond the jurisdiction of this Court for the purpose of properly taking their evidence.

I am therefore of the opinion that none of the said plaintiffs are entieled to citizenship or enrollment in the Chootaw Nation or Tribe of Indians.

Judgment will be rendered accordingly.

_____
Associate Judge.

We concur,

_____
Chief Judge.

_____
Associate Judge.

S. G. Trout, Plaintiff,

vs.

Choctaw and Chickasaw Nations, Defendants.

Statement of Facts and
Opinion, by Adams, Chief Judge.

The undisputed facts in this case are as follows:

The applicant, S. G. Trout, about the year 1883, married, in accordance with the Choctaw laws, Annis Stanton, a Choctaw Indian woman by blood, and has resided in the Choctaw nation continuously since that time. The applicant and his said wife, after this marriage, lived together for about six years as man and wife, when a divorce was obtained by these parties annulling said marriage. (The said Annis thereafter married twice, but these two marriages are unimportant in the consideration of this case).

About four years ago the applicant and this Choctaw Indian woman remarried, after the woman's former marriages had all been dissolved, either by death or divorce, and are now living together in the Choctaw nation as man and wife.

The applicant insists that he is entitled to a judgment by this Court adjudging him a citizen of the Choctaw nation, by reason of his first marriage to Annis Stanton, a Choctaw Indian woman by blood, in the year 1883,--the said marriage being in accordance with the Choctaw laws, and his continuous residence in the Choctaw nation since that time.

There is some evidence tending to show that the appli-

cant abandoned this woman about six years after their first marriage; and the nations contend that the applicant is not entitled to citizenship by reason of this abandonment.

Without expressing an opinion as to what the effect would be provided the Court found as a fact that the applicant did abandon his wife, I do not think the evidence in this case warrants such finding, and the Court, therefore, is not called upon in this case to pass upon the effect such finding of fact would have upon the applicant's rights.

I am, therefore, of the opinion that this applicant is entitled to a judgment by this Court admitting him to citizenship by intermarriage in the Choctaw Nation, by virtue of his marriage in 1883 to Annis Stanton, a Choctaw Indian woman by blood, --the marriage having been in accordance with the Choctaw intermarriage laws--and the applicants continuos residence in the Choctaw nation since that time.

(Signed) Spencer B. Adams
Chief Judge.

We concur in this opinion:

(Signed) Walter L. Weaver
Associate Judge.

(Signed) H. S. Foote
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

No. 47.

No case docketed under this number.

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

FRANCIS L. STROUD, et al,
Plaintiffs.

vs.

THE CHOCTAW AND CHICKASAW NATIONS,
Defendants.

No.48.

Horton & Brewer, for Plaintiffs.
Mansfield, McMurray & Cornish, for Defendants.

BY THE COURT:

This case comes into this Court in accordance with the provisions of Section 31 of the Act of Congress approved July 1, 1902.

There has been no oral testimony offered in this case. It was assigned for hearing on June 30, 1903, at which time the attorney for the plaintiffs stated that he had no witnesses present; that the plaintiff, Francis L. Stroud's, husband had been writing to him with reference to their inability to come on account of smallpox, but he did not know whether that prevented them from coming or not, and asked leave to offer, at that time, portions of the record in this case which had been sent to this Court from the United States District Court for the Central District of the Indian Territory, and to file an application for the taking of oral testimony later. He thereupon offered an affidavit of one Olasechubbie made September 3, 1896, in support of the claim of Francis L. Stroud, et al in her application for citizenship before the Commission to the Five

Civilized Tribes, which affidavit was filed with said Commission on September 7, 1896. Also the depositions of Francis L. Stroud, Charles A. Stroud and John S. Stroud, ~~all of whom are plaintiffs~~ in this action, and the depositions of Olasechubbie and Wesley McKinney, each of which said depositions were taken in July, 1897, in the suit of Francis L. Stroud, et al, vs The Choctaw Nation, then pending in the United States District Court for the Central District of the Indian Territory.

Also the answer of the Choctaw Nation to the application of said Francis L. Stroud, et al, to said Commission.

Also the report of the Master in Chancery in said case made to said United States District Court for the Central District of the Indian Territory.

Also a certified copy of the judgment of said Court, of date September 9, 1897, admitting these plaintiffs to citizenship.

Also the affidavits of Francis L. Stroud and Charles A. Stroud, filed with the Commission to the Five Civilized Tribes, in support of their original application to said Commission. This was all the evidence offered to this Court on the part of the plaintiffs at this time.

On November 16, 1903, this cause came on for further hearing, same having been regularly assigned for trial at that date, at which time one of the attorneys for the plaintiffs appeared and stated on behalf of his clients that they had no witnesses present to introduce. That after being notified of the setting of the case he had written to the husband of Mrs. Stroud and received a reply from him, thus showing that not only the counsel, But the plaintiffs themselves had had due and ample notice that this case was to be heard on that day. Counsel further stated that he did not know whether his client would be able to procure any evidence as to the

blood of their ancestors or not, and if the Court would grant the favor to leave the case open he would correspond further with his clients. Thereupon the Court refused to continue the case but stated that if at any time before the case was finally closed plaintiffs had any testimony, the Court would hear it. Since that date there has been no further testimony offered, either oral or documentary.

Without discussing or deciding whether or not any or or all of the documentary evidence offered in this case is competent, and certainly not intending to hold that it is, I have, nevertheless, examined the same, with a view of ascertaining, since no oral evidence was before us, what the basis of the plaintiffs' claim is, and I find, from the whole record sent to this Court from the United States District Court for the Central District of the Indian Territory, that the plaintiff, Francis L. Stroud, and her descendants likewise plaintiffs herein, claim to be Choctaw Indians by blood. Francis L. Stroud, in her application to the Commission to the Five Civilized Tribes, states that she was then (in 1896) about forty-eight years of age, that her maiden name was Francis L. Butler, and that she was a daughter of Andrew or Anderson Butler, who was a Choctaw Indian of mixed blood. She stated either in her application, in her affidavit in support of the same, or in her deposition taken while her case was pending on appeal from the decision of said Commission to the United States District Court for the Central District of the Indian Territory, that her father had emigrated from the old Choctaw Nation in Mississippi to this country, and had lived in the Choctaw or Chickasaw Nations the remainder of his life. She evidently had no accurate knowledge of him, and states, at one time, that he died when she was about three years old, and at another that he died in 1855, and at still another that he died in 1856.

Butler, was dead in 1856, and if he died whenMrs. Stroud was three years old, his death occurred in 1851. Yet testimony was offered of witnesses in this case in said District Court for the purpose of showing that he was still living during the Civil War and probably for two or three years after the war ended. Either Mrs. Stroud and her husband and Olasechubbie and Wesley McKinney are not referring to the same Andy Butler, or are, to say the least, grossly mistaken, either as to his identity or the date of his death. There is not a particle of testimony here, even if the same was competent, to show that the ancestor of the plaintiffs was a Choctaw Indian in any degree, or that he belonged to or was recognized by the Choctaw Nation either east of the Mississippi or in this Territory. I doubt if even Mrs. Stroud herself knows that she is a Choctaw by blood, for she says in her affidavit, filed in support of her application to the Commission to the Five Civilized Tribes, "That she has been taught by her neighbors and the public that her father was a Choctaw Indian by blood." And her testimony shows that this alleged teaching was all the information she had upon the subject. She testified, and the testimony given by some of the others above referred to, is to the effect that while she was not requires to pay taxes or to get permits as a white person, from the Choctaw authorities, she was not recognized as an Indian by the officials of the Nation in any other respect, was not upon the rolls of the Nation and did not participate in the distribution of any of the tribal funds. I am therefore of the opinion that she and the other plaintiffs in this case are not entitled to citizenship and enrollment as citizens of the Choctaw Nation. I have come to this opinion not only by reason of the fact that they tendered no evidence ti this Court, which would have been clearly competent in its character, as they might have done, because not only the parties but a portion of the witnesses

are living and within the jurisdiction of this Court, but for the equally strong reason that the record testimony offered, whether competent or not, in my opinion fails to make out their case.

Judgment will be rendered accordingly.

(Signed) Walter L. Weaver

Associate Judge.

We concur

(Signed) Spencer B. Adams

Chief Judge.

(Signed) Henry S. Foote

Associate Judge.

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

Gray W. Phillips, et al.,
Plaintiffs.

vs.

The Choctaw and Chickasaw Nations,
Defendants.

No. 49.

T. N. Foster, for plaintiffs.

Mansfield, McMurray & Cornish,
For Defendants.

G. P. Phillips, et al.,
Plaintiffs.

vs.

The Choctaw and Chickasaw Nations,
Defendants.

No. 107.

Charles E. McPherren,
for Plaintiffs.

Mansfield, McMurray & Cornish,
for Defendants.

OPINION.

By WEAVER, J.

These two causes raise the same questions and consequently have been considered together. All of the parties plaintiffs in both actions were embraced in an application for enrollment as citizens of the Choctaw Nation made to the Commission to the Five Civilized Tribes, and upon their rejection there they appealed to the United States District Court for the Central District of the Indian Territory, by whose judgment certain of them were declared to be entitled to enrollment as citizens of said Nation and others of them were denied the right of citizenship therein. These latter appealed from this judgment to the Supreme Court of the United States, by which tribunal the judgment of the District Court was affirmed. These causes then came into this Court in the usual manner as prescribed by the Act of Congress of date July 1st, 1902.

such, and some of the witnesses said they were reputed to be "Choctaws"; but as this Court has heretofore held, following the decisions of the Supreme Court of the United States in numerous cases, notably what is known as the "Mima Queen" case, reported on 7th Cranch, page _____, racial status cannot be proven by hearsay or repute, such evidence was not entitled to weight in forming an opinion of the merits of these causes.

An attempt was made to connect the family of Gabriel Pickens with that of James Pickens and John Pickens who were recognized Choctaws at the time of the emigration of that Nation to the lands west of the Mississippi, and Vol. 7 of American State Papers was introduced in evidence (page 133), for the purpose of showing that James and John made application for the allotment of lands in the old Nation, in accordance with the provisions of the treaty of 1830. They however failed utterly to prove that the said James and John were in any way connected with Gabriel, who was the ancestor of these plaintiffs.

The evidence further shows that none of these plaintiffs came to the Indian Territory until 1873, at which time one branch of the family removed here. The rest of them remained in Mississippi and one of them, Gray W. Phillips, a grandson of Gabriel Pickens, and one of the principal plaintiffs herein, was a candidate for and held office as a citizen of that State. He did not personally make application for enrollment as a Choctaw Indian to the Commission to the Five Civilized Tribes, but the application was madefor him, but without his knowledge, by one of his nephews then living in the Territory. After his cause had been appealed to the District Court for the Central District of the Indian Territory, he removed to this

country where he has since resided.

So, taking all the evidence which has been produced in this cause, and having carefully and painstakingly weighed and considered it, I am of the opinion that the plaintiffs have failed to prove that they are Choctaw Indians and entitled to enrollment as such.

Judgment will be rendered accordingly.

(Signed) Walter L. Weaver,
Associate Judge.

We concur:

(Signed) Spencer B. Adams,
Chief Judge.

(Signed) K. S. Foote,
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.

William E. Moore, et al,

Appellants,

vs. No. 50

Choctaw and Chickasaw Nations,

Appellees.

OPINION, by FOOTE, Associate Judge.

In this cause which is number 50 on the Choctaw Docket of this Court, the appeallants claim under the same ancestor as they did in the case of William E. Moore et al., No. 68 of the Choctaw Docket, which we have just decided.

There were two appeals to this Court one in this case and one in case No. 68, but in the Court below they were all joined in the same action, and the judgment therein entered admitting them to citizenship by blood or intermarriage in the Choctaw Nation, was one and the same.

All the persons mentioned in that judgment are appellants in this case save those who appealed to this Court in case No. 68 above mentioned, so that a judgment will be rendered in this case affecting only those included in the judgment below who have appealed in this case.

It was agreed on the trial of these two cases that the evidence used in the one case should be considered by the Court in the determination of the other case, and vice versa.

The parties to this appeal appear to be Daisy Dean Moore, Carl D. Moore, Anna G. Moore, Maggie E. Moore, and Edgar B.

Harper, as Choctaw Indians by blood, and Victory Moore as an intermarried citizen the alleged wife and now widow of John N. Moore, deceased.

The parties in both the cases above set forth, claiming from the same source, and the evidence in both cases and the questions of law involved, being practically identical, it is only necessary to say that none of the parties here before us on this appeal have shown themselves to be possessed of Choctaw Indian blood, or entitled to be declared citizens by blood or intermarriage, as they respectively claim, or to enrollment as such, or to any of the rights and privileges 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.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER?

Sarah E. Kizer, et al.,

vs. No. 51.

Choctaw and Chickasaw Nations.

Transferred to the Tishomingo Docket, where it appears as No. 125.

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 years 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.

J. W. Blasingame,

vs. No.53.

Choctaw and Chickasaw Nations.

Statement of Facts and Opinion,

by Adams, Chief Judge.

The record in this case discloses the following facts:

The applicant, J. W. Blasingame filed a petition on the 6th day of October, 1884, before B. W. Carter, one of the Judges of the Chickasaw Courts, in which he alleges that he believes that he is descended from the Chickasaw tribe of Indians.

On the 20th day of October 1885, this petition was acted upon by the citizenship committee of the Chickasaw Nation, and the application for citizenship rejected. On the 22nd day of October 1885, this citizenship committee made its report to the legislature of the Chickasaw Nation, through its chairman, George Wilson, in which it is stated:

> "After an investigation this committee fails to find sufficient proof to enable this committee to declare said applicants entitled to Chickasaw rights; but finds ample proof that the applicant has no rights whatever as a citizen of the Chickasaw Nation."

The applicant J. W. Blasingame, together with the other applicants in this case, after their citizenship rights had been rejected by the legislature, filed a petition on the 31st day of August, 1896, before the Commission to the Five Civilized Tribes, commonly known as the Dawes Commission, in which it is alleged that he is a Chickasaw Indian by blood, being a descendant of Margaret Richardson, sometimes called Peggy Richardson, who was a half breed Chickasaw Indian, and the grandmother of the principal applicant J. W. Blasingame. (Ella Blasingame is the wife of J. W. Blasingame, and the other applicants in this case are his children).

After the above allegations, the applicants pray the Dawes Commission to admit and enroll them as citizens and members of the Chickasaw Nation. On the 23rd day of November 1896, the Dawes Commission denied the application of these applicants to citizenship as Chickasaw Indians. The applicants thereafter appealed their case to the United States Court in the Indian Territory, and the same was passed upon by the United States Court for the Central District of the Indian Territory, sitting at South McAlester, on the 7th day of September, 1897, before his Honor W. H. H. Clayton, Judge presiding.

A judgment was that day rendered by said court in which it is stated in part:

> " . . . . this cause came on for trial the plaintiffs appeared by their attorneys of record, Hodges and Brown, the defendant wholly made default, " etc.
>
> "The Court is . . . of the opinion that the law and the facts are for the plaintiffs, Jas. W. Blasingame, Ella Blasingame, Dorsey Blasingame, Edward Blasingame, and Walter Blasingame."
>
> "It is the opinion of the Court that James W. Blasingame, Ella Blasingame, Dorsey B. Blasingame, Edward Blasingame, and Walter Blasingame are Chickasaw Indians by blood and have resided in the Indian Territory since 1885," etc.
>
> "It is therefore ordered, adjudged and decreed by the Court that James W. Blasingame, Dorsey B. Blasingame, Edward Blasingame and Walter Blasingame are Chickasaw Indians by blood, and are entitled to all the property and political rights privileges and immunities of full blood Chickasaw Indians residing in the Choctaw Nation. That Ella Blasingame is an intermarried white woman, and the wife of J. W. Blasingame, and entitled to all the rights, privileges and immunities of an intermarried citizen of the Chickasaw Nation. . . . . (and) are each entitled to be enrolled upon the Chickasaw Indian roll of citizenship."

And then follows a directionto the Dawes Commission to place these parties on the rolls accordingly; and a judgment was entered against the Chickasaw Nation in favor of plaintiffs for all costs.

After this Court declared this, and all other similar judgments, void for want of notice to both nations, and because

the trial took place in the United States Court de novo, in the test case known as the Riddle case, the applicants, through their attorneys Brown, Ledbetter & Bledsoe, did on the 12th day of March, 1903, file a petition in this Court praying an appeal thereto, and the same was granted. The case was set down in this Court for a he hearing of the testimony desired to be offered by the applicants, on the 18th day of September, 1903. The attorneys for applicants were notified to be present and offer such evidence as they might desire on that date. The case was called for trial, attorneys for both sidesbeing present. The attorney representing the applicants announced that he was not ready to go into a trial of the cause, and asked for a continuance of same. Upon the request of the attorney for applicants the case was continued until November 6, 1903. The case was again called in this Court on that date and W. A. Ledbetter, one of the attorneys for applicants, being present, and the attorneys representing the nations, Mansfield, McMurray & Cornish, also being present. The attorney for applicants requested and urged a further continuance of the case upon the ground that he was not ready for trial. While Mr. Ledbetter, the attorney presented to the court no legal ground for a further postponment of the case, the Court being anxious to give the applicants every opportunity to offer such testimony as they possessed, granted a further continuance of the case until the 18th day of November, 1903, at which time the case came on to be heard, the same attorneys being present as were present on the 6th day of November. The attorney for applicants announced his readiness to proceed to a trial of the cause and introduced as a witness the principal applicant, J. W. Blasingame, who, according to his statement was born about fifty one years ago in the State of Arkansas, where he resided until he moved to the State of Texas, and moved from the State of Texas to the Territory, and has resided here at least twenty years.

His father's name was Anderson Blasingame, who moved to the State of Arkansas from Tishomingo County, Mississippi, and died in the State of Arkansas when witness was quite a boy. The father of Anderson Blasingame was a white man and his mother was Margaret, sometimes called Peggy Blasingame; that his grandmother died in the State of Arkansas when this witness was about ten years old. He further says that his father and grandmother told him they were Indians, and they were so reputed by people who knew them; he says that he believes that he is a Chickasaw Indian, deriving his Indian blood from his father, and his father derived his Indian blood from his mother Margaret or Peggy. Witness further says his mother is now living in the State of Arkansas.

Upon the conclusion of the testimony of this witness the Court inquired of the attorney for applicants if he had further testimony to offer, and he announced that he had none present, but the applicant, J. W. Blasingame, desired to take the testimony of his mother who is now living in the State of Arkansas, but is too feeble to attend Court, whereupon the Court announced to the attorney that upon a proper application made to the Court under the rules of the Court by the applicant or his attorney, some member of this Court would go to the State of Arkansas and take the testimony of this witness, or the testimony of any other witnesses the applicants might desire. The case was left open for such application to be filed until the 15th day of December, 1903, and was on that date set on the calendar to be again heard for the purpose of allowing the nations to introduce such testimony as they might have. On the 2nd day of February, 1904, the case came on again to be heard and finally determined.

The defendants introduced as a witness William H. Hickey, who says he is 81 years old, and now resides in the State of Texas,

having moved there about the year 1858. This witness says that in the year 1834 or 1835 he resided in the State of Mississippi, Tishomingo County, for two or three years; that he knew the Blasingames in Mississippi who were the ancestors and kin people of J. W. Blasingame, and never heard them or any one else claim they were Indians until this citizenship claim came up. This witness says a part of the family now reside in the State of Texas and he knows them well.

W. H. Jackson is then introduced as a witness for defendants, and says he is 51 years old and a Chickasaw citizen by intermarriage; that about the year 1889 he was the district attorney in the Chickasaw courts; says that he first got acquainted with J. W. Blasingame in the year 1874; that Blasingame at that time resided at Denison in the State of Texas, and was in the hide business; that he never knew that said Blasingame claimed to be an Indian until 1889, when he came to the Chickasaw country to have his citizenship rights determined; that said Blasingame offered the Chickasaw Court $500.00 to try his case.

O P I N I O N .

I feel that this Court has offered the applicants every opportunity to secure their evidence and establish their rights as Chickasaw Indians, if such evidence is in existence, and if they have failed it is certainly no fault of this Court.

It is rather a peculiar fact that the judgment admitting these applicants to citizenship as Chickasaw Indians sets out the fact that when the case came up for trial in the United States Court for the Central District of the Indian Territory the defendant, that is the Chickasaw nation, "wholly made default", when the record discloses the fact that the Chickasaw nation had contested the

rights of these applicants as Chickasaw Indians throughout the different stages of this proceeding up to that important and vital period in the case. It is another peculiar fact that the applicant J. W. Blasingame states upon oath that his mother is still living in the State of Arkansas: It is natural to be assumed that there are other persons living who knew the witness's grandmother, who, according to his testimony, has not been dead over forty one years; and also knew his father, and were acquainted with them, and might at least know whether they looked like Indians or not, who it seems this applicant might have secured as witnesses to prove his case, if he is a Chickasaw Indian. When he is offered the opportunity to take this testimony, if such is in existence, he is silent, and fails to make an application as suggested by the Court.

I am of the opinion that this application should be denied, as the evidence is not sufficient to warrant the Court in finding that these applicants have any Chickasaw Indian blood, or any other Indian blood, in their veins.

The applicants attorney insisted on the Court considering some ex parte affidavits, many of them taken in the year 1896, without any proof whatever that the witnesses who made them are dead, or beyond the limits of this Territory. Upon an examination of these affidavits suffice it to say, if they were considered manyof of them instead of aiding these applicants in establishing their claim, would have the opposite effect.

A judgment will be entered dismissing this appeal, and declaring that the applicants, or either of them, are not entitled to citizenship as Chickasaw Indians.

SPENCER B. ADAMS
Chief Judge.

We Concur:

WALTER L. WEAVER
Associate Judge.

HENRY S. FOOTE
Associate Judge.

(COPY)

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

R. H. Hawkins, et al.
Plaintiffs.

vs.

The Choctaw and Chickasaw Nations.
Defendants.

No.54.

TOM W. NEAL,
for Plaintiffs.
MANSFIELD, McMURRAY & CORNISH,
for Defendants.

By Weaver, J.

This case comes into this Court on appeal from the decision of the United States District Court for the Central District of the Indian Territory.

The attorney for the plaintiffs appeared in Court the day this cause was assigned for trial, and stated on behalf of his clients that they would have no oral evidence, and submitted the case on the record. He presented no oral argument or brief to the Court, upon the question of the admissibility by this Court of the evidence contained in said record, or upon the main issue of the suit, and apparently abandoned the case.

I have carefully examined the record with a view to ascertaining whether or not there was any evidence contained therein which it would be competent for this Court to consider. There is no such evidence there. I am therefore of the opinion that the plaintiffs and each of them, have failed to show that they are entitled to citizenship or enrollment as Choctaw Indians by blood, as claimed by them, in the said Choctaw Nation or Tribe.

Judgment will be rendered accordingly.

(Signed) Walter L. Weaver.

Associate Judge.

We concur,

(Signed) Spencer B. Adams
Chief Judge.

(Signed) Henry S. Foote
Associate Judge.

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

JULIA A. LONDON, ET AL.,

VS. NO. 55.

CHOCTAW AND CHICKASAW NATIONS.

STATEMENT OF CASE AND OPINION, BY ADAMS, CHIEF JUDGE.

The record in this case discloses the following facts:

Under the Act of June 10, 1896, on August 20, 1896, Julia London and John London, for themselves and as next friends for their daughter Jessie London; Dillard London; Molly Shoop and William Shoop, for themselves and as next friends for their sons Daniel, William and George, and their daughter Sadie Shoop; Charles W. Broome and Annie Broome; Alhanan Broome and Mary Broome, for themselves and as next friends for their son Alhanan, Jr., and their daughters Eunice and Irene Broome; Thomas W. Broome and Mariah Broome, for themselves and as next friends for their son James C. Broome, and their daughter Mary E. Broome; Frank P. Broome; Elizabeth Broome and J. E. Broome, filed a petition with the Commission to the Five Civilized Tribes alleging that they and each of them are Choctaw Indians, and asking said Commission to enroll them as such.

The petition further alleges that they are descendants of Frances Riley, whose maiden name was Frances Chambers,

who was a full blood Choctaw Indian, her father 's name being John Chambers, who was also a full blood Choctaw Indian, both of whom resided in Alabama with their tribe, the Choctaw Indians, where was born to the said Frances Riley and Cornelius Riley, her husband, the following children; John, James, Josephus, George and Thomas, sons and Jane, Willie A., and Mariah E., daughters; that said Mary E., inter-married with J. C. Broome; and that she was the mother of Julia, who inter-married with John London in the year 1882, with whom she is now living; of Molly who inter-married with William Shoop in the year 1879, and with whom she is now living; of Thomas Broome, who married his wife Mariah in the year 1884, with whom he is now living; of Alhanan Broome, who married Mary in the year 1890, and with whom he is now living; Frank P. Broome, who married his wife Elizabeth in the year 1891, and with whom he is now living; Charles W. Broome, who married Annie Broome in the year 1896, and with whom he is now living; and J. E. Broome is unmarried; these being all the children of Mary E. Broome, now deceased.

The petitioners further allege that after the marriage of the mother of plaintiffs to J. C. Broome they, with a number of other Indians, re-moved from Choctaw County, Alabama, to Mississippi, where they remained until 1870, and where the said J. C. Broome died, when the mother of these petitioners, who were then children, took them and removed to the present Choctaw Nation, for the purposes, they allege, of receiving the benefits to which they were entitled from the Choctaw Nation, etc.

This petition shows that it was sworn to and subscribed by each of the above named applicants on the 25th day of August, 1896, before J. H. Bolling, Notary Public.

On the 8th day of December, 1896, the Commission to the Five Civilized Tribes acted upon the above petition and denied the application of applicants as Choctaw Indians, and refused to enroll them as such.

On the 9th day of February, 1897, the above petitioners filed a petition in the United States Court for the Central District of the Indian Territory, asking that they be permitted to appeal their case from the judgment of the Commission to the Five Civilized Tribes to said court. Said petition was granted and the case was referred by said court to W. B. Rutherford, Master in Chancery.

On the 31st day of August, 1897, the Master in Chancery filed his report in the United States Court for the Central District of the Indian Territory, in which he finds as a fact that the petitioners Thomas Broome, J. E. Broome, Frank P. Broome, Alhanan Broome, Charles W. Broome, Molly Shoop and Julia London are one-fourth Choctaw Indians by blood, and that the children, who are applicants, are one eighth Choctaw Indians by blood.

A judgment was rendered by the United States Court for the Central District of the Indian Territory, sitting at South McAlester, on the 1st day of September, 1897, approving the report of the Master in Chancery and declaring that Thomas W. Broome, J. E. Broome, Frank P. Broome, Alhanan Broome, Charles W. Broome, Molly Shoop, Julia London, Jessie London, Dillard London, Daniel Shoop, William C. Shoop, George Shoop, Sadie Shoop, Alhanan Broome, Jr., Eunice Broome, Irene Broome, James C. Broome and Mary A. Broome are each Choctaw Indians by blood, and are each entitled to be enrolled as Choctaw Indians; and that they are each en-

titled to all the rights, privileges and immunities of full blood Choctaw Indians residing in the Indian Territory; and that Mariah Broome, Elizabeth Broome, Annie Broome and Mary Broome, are each inter-married white women, having married Indian husbands, and are each entitled to all the rights, privileges and immunities of white persons who inter-marry with Indians and reside in the Choctaw Nation; that John London and William Shoop are white men and entitled to nothing by this suit, etc.

After the decision of this court in the case of the Choctaw and Chickasaw Nations, or Tribes of Indians, vs. J. T. Riddle, et al, known as the "test case", in which it was held by this court that the judgment in this case, rendered by the United States court for the Central District of the Indian Territory, as well as judgments in all similar cases, was void, a petition was filed in this court, to-wit, on or about March 12, 1903, by Julia London, Thomas W. Broome, J. E. Broome, Frank P. Broome, Alhanan Broome, Charles W. Broome, Molly Shoop, Jessie London, Dillard London, Daniel Shoop, W. B. Shoop, George Shoop, Sadie Shoop, Alhanan Broome, Jr., Eunice Broome, Irene C. Broome, James C. Broome, Mary E. Broome, Mariah Broome, Elizabeth Broome, Annie Broome and Mary Broome, alleging that they are citizens of the Choctaw Nation, and members of the Choctaw tribe of Indians, but that all their rights, privileges and citizenship as members of the Choctaw tribe of Indians are disputed by the lawful authorities of the Choctaw nation. The petitioners further pray an appeal to this court under Section 31 of the Act of July 1, 1902, which was granted, and the case placed upon the calander of this court for trial; when on the 1st day of February, 1904, the case came on regularly to be heard in

this court, plaintiffs being represented by T. W. Neal, and the defendants by Mansfield, McMurray & Cornish, at which time the attorney representing the applicants stated in open court that he did not desire to offer any oral testimony in this case. The case was then set on the calander for hearing on the 9th day of February, 1904, at which time the nations were notified to produce such testimony as they might desire.

I find in the record as offered by the plaintiffs an ex-parte affidavit of Mrs. Jane Hullett, who signs by mark, and whose signature is witnessed by J. E. London. This affidavit bears date the 25th day of August, 1896, and, is purported to be sworn to before J. H. Bollings, Notary Public, in the State of Arkansas. In this affidavit Mrs. Hullett says that she is a resident of the State of Mississippi; that she is a sister of Mrs. Mary E. Broome, who died at Alma, Arkansas, in the year 1885; that her family are Choctaw Indians, and that her mother, whose maiden name was Chambers, and whose father was John Chambers, lived with the Indians in the State of Alabama; that both her mother and grandfather talked the language of the Choctaw Indians and taught it to their children, and that they were all recognized as being Indians bythe tribe.

There is also an affidavit in the record as offered by petitioners of one Henry S. Ramsden, in which the witness says he is a resident of Mulberry, Crawford County, Arkansas, that he is the editor and publisher of the Crawford County Leader; that he has known Mrs. Mary E. Broome and her family for the past twenty years, and that they have always been

considered Choctaw Indians; that he has frequently heard Mrs. Mary E. Broome speak of her Indian origin and ancestry; and that he has seen a portrait of some of her ancestors which shows them to be full blood Indians; that she and her children show their Indian blood in marked degree, in the hair, features, complexion and general appearance; that all of them talk both the Choctaw and English language. This is also an ex-parte affidavit, and bears date of August 25, 1896, and is supposed to have been sworn to before J. H. Bolling, Notary Public, in Crawford County, Arkansas.

There is an affidavit of J. E. London, offered by petitioners, in which the witness says that he knew Mrs. Mary E. Broome for twenty years prior to her death; that he had frequent conversations with Mrs. Broome in her life time, and has heard her talk about her mother and grandfather, John Cambers, being x Choctaw Indians; and that she bore a striking resemblance to the Choctaw Indians, and that her sons particularly not only looked like Indians but had all the characteristics of the Indians. This is also an ex-parte affidavit and bears date of August 29, 1896, and is supposed to have been sworn to before J. H. Bollings, Notary Public, in Crawford County, Arkansas.

There is also an ex-parte affidavit offered by petitioners, of Mrs. Nancy Bollings, who signs by mark, and her signature is witnessed by William R. Bollings. This affidavit bears date August 20, 1896, and is supposed to have been sworn to before J. H. Bollings, Notary Public, Crawford County, in the State of Arkansas. This witness says that she is 76 years old, and is a resident of Alma, Crawford County, Arkansas; that she formerly resided in Choctaw County, State of xAlabama; that she was personally well acquainted with Cornelius Riley and his wife Frances

Riley, and that she is well acquainted with their family; that Frances Riley formerly named Frances Chambers, intermarried with Cornelius Riley, and moved from Goose Creek, North Mississippi to Choctaw County, Alabama; that said Frances Riley was always known and recognized as a Choctaw Indian, and that the said Cornelius Riley was always known and recognized as being an Indian; that they talked the Choctaw language and taught it to theirchildren, etc. This affidavit plainly shows that it has been changed in many parts since it was originally drafted.

There is also an ex-parte affidavit, offerred by the petitioners, bearing date August 18, 1896, purporting to have been signed by William R. Bolling and sworn to before J. H. Bolling, Notary Public, Crawford County, Arkansas, in which it is stated that witness formerly lived in Choctaw County, Alabama; that he was personally well acquainted with Frances Riley, whose maiden name was Chambers; that the said Frances intermarried with Cornelius Riley on Goose Creek in North Mississippi, and moved from there in the year 1834 to Choctaw County, Alabama, and lived on an adjoining farm to this affiant for many years; that said Frances Riley was always known and recognized as a Choctaw Indian; that she talked the language perfectly and had the exact features of an Indian, and that she was recognized as such, etc. This affidavit also shows that it has been changed since it was originally drafted.

There is also an ex parte affidavit offerred by petitioners, of John Manuel, bearing date August 22, 1896, and purports to have been sworn to before J. H. Bolling, Notary Public, Crawford County, Arkansas, in which the said Manuel states that he is a citizen of Crawford County, State

of Arkansas; that he came from Mississippi to Arkansas in the year 1870; that he was well acquainted with Mrs. Mary E. Broome while in Mississippi and aftershe came to Arkansas; that he was also acquainted with her father Cornelius Riley while in Mississippi, and with his wife Frances Riley, whose miaden name was Chambers; that the said Cornelius Riley and his wife Frances Riley and their daughter Mary E. Broome were always considered and said to be Choctaw Indians; that they all talked the language, and looked like and acted like Indians; that they were called the Indian family while in Alabama and Mississippi; that a brother William Riley, came west with the Choctaw Indians when they moved from the old nation to the new or present one, etc.

There is also an ex-parte affidavit offerred by the petitioners, of Sampson Lucase, bearing date July 3, 1896, and sworn to before E. L. Matlock, Notary Public, Crawford County, Arkansas, in which the said Lucas says that he is a Choctaw Indian by blood; that he resides at Sans Bois, Choctaw nation, Indian Territory; that in the year 1835 he was personally well acquainted with William and Cornelius Riley, who were brothers; that William Riley moved to the Choctaw nation about the year 1835, and that Cornelius Riley moved to Choctaw county, Alabama, about the same time; that he was well acquainted with Frances Ri ley, wife of Cornelius Riley; that her maiden name was Chambers; that she intermarried with Cornelius Riley; that they were both Choctaw Indians by blood.

There is also an ex-parte affidavit of John West which is signed by mark and sworn to on the 19th day of August, 1896, before J. S. Lucas, Notary Public, in which it appears that the said John West is 86 years of age at the time of the signing of the affidavit, and a citizen of the Choctaw

nation, residing at Whitefield, Indian Territory; that he moved to the present nation with the Choctaw tribe after the treaty and has resided in the Choctaw nation ever since; that he was well acquainted with Frances Chambers who married Cornelius Riley on Goose Creek, North Carolina in or about 1825 or 1828; that Frances had a brother named Joseph Chambers and another named William who were Choctaw Indians and who now reside somewhere in the Choctaw nation, if they are not dead; that he knew Cornelius Riley who was also a Choctaw; that he and Frances started west with the balance of the tribe but they stopped in Alabama and did not come west until about the year 1870 when this affiant saw and talked with said Cornelius, and that Cornelius told affiant that he had come to the nation for the purpose of proving his right; affiant also saysthat he was well acquainted with Mary E. Broome, who was a daughter of Cornelius Riley and Frances Riley; that she was a Choctaw Indianx and spoke the language perfectly; that he met the sad Mary E. Broome in the year 1870 when she came with her father to the Choctaw nation to prove up their rights as Choctaw Indians.

On the 9th day of February, 1904, this cause came on further to be heard, at which time the nations introduced Capt. W. R. Bolling, who says he is a white man and resides at Alma, Crawford county, Arkansas; that he is president of the bank at that place and a fruit grower; that he has lived at Alma since 1869; that he was born in Perry county, near Selma in the State of Alabama; that his father moved from that County to Choctaw county, Alabama, and then moved west when witness was eight or nine years of age; that he has known John London for 23 or 24 years; also knows his wife Julia, whose maiden name was Broome; also knew Julia's

mother, whose maiden name was Riley; that he knew Mrs. Riley in Choctaw county, Alabama; that he has heard that John London and his wife Julia had a case pending for citizenship, but that witness has not been called upon to, or gave any testimony in the case before; that John London had a talk with witness prior to starting up his claim, but that witness has never appeared before any officer of any character and given testimony in the case. Witness is then shown the ex-parte affidavit introduced in this court by the petitioners, bearing date August 18, 1896, with this witness' named signed thereto, and purporting to be sworn to before J. H. Bolling, N. P., Crawford county, Arkansas, and says, after an examination of same that he did not sign the affidavit, and that he made no such affidavit or any other affidavit with reference to this case; witness further says that his name to said affidavit resembles his hand writing a good deal, but he did not sign it and never gave one in his life; says had he signed an affidavit he would have remembered it. Witness then wrote his name in the presence of the court, and entered upon a detailed explanation of the discrepencies in the signature to the affidavit and his genuine signature. Witness says that about twenty years ago John London was in the mercantile business at Alma, Crawford county, Arkansas, and he bought goods from him, and in fact had a good many business transactions with said London, and that London was well acquaint d with witnesses handwriting and knew his signature well; witness says further that while the signature to the affidavit is not genuine it is a close imitation of his signature. This witness is then shown the purported affidavit, offerred by plaintiffs, of witness's mother Nancy Bolling, which bears date August 20, 1896, and to which

this witness's name appears as a witness to his mothers signature, and says that his mother Nancy Bolling lived about two miles from the home of witness; that in the Spring of 1896 she was taken sick and this witness brought her from her home to his house; that she remained in his house until the time of her death, which occurred in September, 1896, that during the year 1896 his mother was stricken with paralysis, from which she never recovered, and never left her room thereafter; that about August 26 or 28, 1896, John London came to the witness's house and asked witness if his mother was in her right mind; witness told him he thought she was, and London then stated that he desired to see her, and witness accompanyed said London into the room where Mrs. Bolling was confined to her bed; London asked witness' mother questions about his grandmother Riley, and left the house; witness did not see London again for a long time. Witness says that he was in the room all the time London was there and heard the conversation that took place between London and his mother; that it was dark at the time they were in the room and there was no light in there. Witness further says that the signature to the affidavit of his mother purporting to be signed by him as a witness to her signature is not his, and that he sees no difference in the signature to this paper and the one to the alleged affidavit of witness. Witness further says that he knew a woman named Jane Hullett in the State of Alabama; that she afterwards moved to Lauderdale County, Mississippi; witness went to school w th her; that if she ever left Mississippi he has no knowledge of it.

J. H. Bolling is then introduced as a witness for the nations, and says he is 50 years of age, and resides at

Alma, Crawford County, Arkansas, is a brother of witness W. R. Bolling and a son of Nancy Bolling, now deceased; that he has been a Notary Public for the past sixteen years; that he has heard that London had a claim for citizenship pending; London that he has no recollection of ever having taken any affidavits or depositions for London in a citizenship case. The application of these applicants, filed before the Commission to the Five Civilized Tribes in 1896, is shown to witness, and he is asked if these persons sworn to that purported affidavit before him on the 28th day of August, 1896. Replying to this question witness says: "No sir; that signature looks very much like my hand writing; I wrote very much like that at thattime. Some of these people have not been near that town for years that I know of." Witness says that he as never executed a paper unless the person making the affidavit was personally present, and that Thomas Broome, one of the alleged affiants, has not been in that county for twenty years. Witness further says that John London was residing at Alma, Crawford County, Arkansas in the year 1896. Witness then calls the attention of the court to the discrepencies in his alleged signature to the application and his genuine signature, signing his name in the presence of the court. The discrepency was perfectly patent. The alleged affidavit of Jane Hullett is then shown the witness and he says he did not swear Jane Hullett to the alleged affidavit offerred by plaintiffs; that he knew Jane Hullett when he was a small boy either in Alabama or Mississippi; that if she has ever been in Crawford County, Arkansas, witness does not know it. Witness for a number of years has been manager of a large mercantile house at Alma, Crawford County, Arkansas, and is acquainted with most of the people of that vicinity. The alleged affidavit of H. S. Ramsden, offerred by plaintiffs and alleged to have been taken on the 25th day

August, 1896, before this witness as Notary Public, is shown to witness and he says the same was not taken before him. The alleged affidavit of J. E. London, offerred by plaintiffs, was also shown witness and he says the same was not taken before him. Witness says that he knows J. E. London; that he is a brother of John London and is a practicing attorney in the State of Arkansas. The alleged affidavit, offerred by plaintiffs, of Nancy Bolling, is then shown the witness, the same purporting to hev been taken before this witness on the 20th day of August, 1896, and witness says Nancy Bolling was his mother; that early in the Spring of 1896 she was stricken with paralysis and died the latter part of August or the first of September in that year; that a part of the time she was unconscious. Witness further says that this affidavit was not taken before him. Witness is then shown the alleged affidavit of W. R. Bolling, offerred by plaintiffs, bearing date August 18, 1896, and purporting to have been sworn to before this witness as Notary Public, and witness says this affidavit was not sworn to before him. Witness further says that these affidavits show that at one time they had a seal on them but the seal has been erased. (Which is apparent). Witness says that he executes from fifteen to twenty affidavits each day, and that John London is well acquainted with his signature. Witness is then shown the alleged affidavit of John Manuel, offered by plaintiffs, and purporting to have been sworn to and signed before this witness. Witness says the said was not sworn to before him. Witness further states, without objection, that John Manuel lived about five miles from Alma, and that witness knew him well; that after witness heard about this matter John Manuel was in the store one day and witness asked Manuel about it, and

, and Manuel told witness that he had nevergiven John London any testimony in this case. Witness further says that John London never talked to him about the case at all.

E. L. Matlock is then offerred as a witness for the nations and says he is 37 years of age; that he is a practicing attorney and lives at Van Vuren, Crawford County, Arkansas; that he has been a Notary Public for the past fifteen years. The alleged affidavit of Sampson Lucas, which purports to have been taken before this witness in Crawford county, Arkansas, in the year 1896, is shown the witness, and he says positively that the affidavit was not taken before him, and that he never knew such a person as Sampson Lucas; that he has seen the allegdd affidavit of said Lucas, that observes that Lucas states that he is a Choctaw Indian; that while witness would not undertake to state the names of all persons of whom he has taken affidavits, still he is positive he would have remembered had he taken the affidavit of an Indian, as it is a very uncommon occurrence in the State of Arkansas.

Green McCurtain is then introduced as a witness for the nations, and says that he is 56 years old and resides at Sans Bois in the Choctaw nation; that he is now principal chief of the Choctaw nation; that he has been connected with the public affairs of the Choctaw nation for many years; that he was born in Sugar Loaf County in the Western part of the nation about fifty miles from where he now resides; that he has spent his entire life in that portion of the Choctaw nation. Witness further says that there was no Indian by the name of Sampson Lucas, or any other person of that name of any nationality, residing at Sans Bois in 1896; that there was a Sampson Lucas but he died in 1882; that he lived three miles from Sans Bois; that he was a Choctaw and

might have had a little white blood; that since he died in 1882 there has been no man by the name of Sampson Lucas in that vicinity; that Lucas was a Methodist preacher and was well known throughout that country. This witness further says that intruders were ordered to be put out by the President and troops were sent to assist them in 1881; that this witness was appointed by the principal chief at that time Captain of the millitia, and that Lucas was one of the men under witness; that in the following year the Choctaw council made appropriation to pay this militia, and in paying them witness had to make out certificates and in order to get the certificates they had to come in person; and that Lucas did not get his but was dead at that time; that he does not know what time in 1882 he died. Witness further says that he knows every Indian in Sans Bois county and most of the white people . Witness states that Whitefield is nearly ten miles from where he now lives; that no Indian ever lived at Whitefield by the name of John West; that he is well acquainted with the people at Whitefield, and that he had a business there the year they started the town; that he has never known a man in Sans Bois county by the name of John West; that there is an Indian in the Territory by the name of John West who is a Cherokee, and is now Captain of the Indian police force. Witness further says that he has never known a man in Sans Bois County by the name of J. S. Lucas; (it will be noted that the alleged affidavit of John West bears the name of J. S. Lucas as Notary Public) that the only John West he ever knew in the Territory has always lived in the Cherokee nation; that if there had been a Choctaw Indian 85 years of age by the name of John West residing at Whitefield, or anywhere in the Choctaw nation in 1896, he would have known him; that during that year he elec-

tioneered throughout Sans Bois county.

Elias Folsom is then introduced as a witness for the nations, and testified through Capt. Peter Maytubby as interpreter. He says he is a little over 55 years of age; that he lives near Kintah, sans Bois county; that he is a Choctaw by blood; that he has lived in Sans Bois county all of his life; that he knew Sampson Lucas, who has been dead "long time ago"; that this is the only Sampson Lucas he ever knew in that country; witness says he is well acquainted with the Choctaw people in that countxy and that he never knew a Choctaw Indian named John West; that there was a Cherokee Indian by that name; that he knew him and that he lived in the Cherokee nation; that this John West is a little over fifty years old; that West is an Indian policeman. Wit-ness says that he lived at Whitefield for twenty-seven years; that he moved from there last December and that if John West had lived at Whitefield witness would have known it; and that no such person lived there. Witness further says that Sampson Lucas was his first cousin.

There are several purported depositions in the record. I have not set them out for the reason that they are discredited as the alleged affidavits are, with the exception of the deposition of J. E. London, who is a brother of John London who was one of the principal applicants in the application filed before the Commission to the Five Civilized Tribes, and is the husband of Julia London, the principal applicant in this case. The said J. E. London was also the attorney for all the applicants in the proceedings when these alleged affidavits and depositions were taken.

This is the evidence in the case set out in detail with the exception above noted, and presents to my mind a condition most appalling; a condition that it is hard to believe

can exist in a civilized and christianized country.

The record in this case discloses the fact that twenty-two persons were admitted to citizenship and declared to be Choctaw Indians, such adjudication carrying with it the right to participate in the distribution of the vast property interest belonging to the Choctaw and Chickasaw tribes; and by this adjudication these twenty-two applicants were fastened upon these helpless wards of our Nation, and but for the fostering care and humane protection furnished them by the strong arm of the Government these wards would have long since been deprived of their substance. This adjudication was based upon the alleged affidavits of supposed witnesses, some of whom have come into this court and solemnly sworn that they made no such affidavits. In fact, if the evidence in this case is to be believed, not one of the affidavits offerred by the plaintiffs is genuine, and not one of the witnesses ever saw the affidavits before or when they were signed, except possibly the witness J. E. London, who was the attorney in the case at that time.

Witness W. R. Bolling is evidently a man of character, and he says he did not make the affidavit or deposition offerred by the applicants. His brother J. H. Bolling, also a man of character, before whom the alleged affidavits of W. R. Bolling, Nancy Bolling, Jane Hullett, H. S. Ramsden and John Manuel were taken, solemnly swears that no such affidavits were taken before him, and that his name signed to same is not his signature; he further says that the seals that were evidently placed upon these affidavits have been erased and the affidavits changed in many respects.

Mr. Matlock, whom we may assume is a reputable attorney of Crawford county, Arkansas, and a man of character, says that Sampson Lucas made no such affidavit before him as

offered by plaintiffs.

Green McCurtain, who is now the principal chief of the Choctaw nation, and is shown to be a man of character and standing, says that he has spent 56 years in the Choctaw nation, his entire life, and a greater part of that time in Sans Bois county, and is personally acquainted with every Indian in the county, and that no such man as John West ever lived there, and no such Notary Public as J. S. Lucas ever lived there; and no such man as Sampson Lucas lived there in 1896. Elias Folsom, an Indian, also testified along the same line.

If this evidence is to be believed the applicants or some one of them, or some one for them, in order to enhance their claim, have deliberately filed a lot of supposed affidavits of persons who never saw the affidavits; of persons who never existed, and of persons who died prior to the date of the making of such alleged affidavits. If this evidence is to be believed the names of the notaries public have been forged by some one; seals placed upon papers and then erased; the alleged affidavits changed in many particulars; the name of a Notary public used who never existed; a supposed affidavit, offered in evidence, of an old lady who was lying upon a bed of affliction and suffering from a stroke of paralysis, and dying before the affidavit was filed. These facts are testified to by reputable witnesses; they are uncontradicted, although the plaintiffs were given an opportunity by this court to offer evidence, if such existed, to rebut the evidence of the nations. They have failed to do this; and in view of the evidence and the circumstances surrounding the case, I am led irresistibly to the conclusion that this

evidence is true, and feel that further comment thereon is unnecessary.

I am of the opinion that this evidence is totally insufficient to warrant the court in finding as a fact that the applicants are Choctaw Indians; and a judgment will be entered by this court denying the applicants citizenship or enrollment as Choctaw Indians.

(Signed) Spencer B. Adams,
Chief Judge.

We concur:

(Signed) Walter L. Weaver,
Associate Judge.

(Signed) Henry S. Foote,
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, April Term, 1904.

Elizabeth Casey, et al.,

Appellants,

vs. No. 56.

Choctaw and Chickasaw Nations,

Appellees.

OPINION, by FOOTE, Associate Judge.

This cause comes here by transfer on appeal from the United States Court for the Central District of the Indian Territory, under the Act of July 1st, 1902.

The matter was heard on the petition of the appellants before the Commission to the Five Civilized Tribes in 1896. The application for citizenship by blood in the Choctaw Nation, was denied, and appeal taken to the United States Court aforesaid, and there the parties were declared Choctaw Indians by blood, and it is now before us for adjudication, the judgment of the United States Court aforementioned having been set aside by us in the Riddle or test suit.

The affidavits taken ex-parte and filed before the Dawes Commission in 1896, are incompetent and of little force if they were competent. The depositions, so called, used before the United States Court in 1897, on a trial de novo, and the Choctaw Nation alone being a party, are likewise incompetent.

But there are certain features connected with them which we think requires some notice. Andy McGee and George Washington,

two aged men, one colored, and the other an Indian, made affidavits before the Indian Council below in 1876, which were used in evidence. They have both been shown before us in cases pending, not to be at all reliable, and the use of such evidence throws a dark cloud on the good faith and truthfulness of the appellants' case.

Then certain other of those who made sworn statements for these people, afterwards in other sworn statements, showed conclusively that their original statements in behalf of the claimants, were false, or placed without their knowledge or consent, and in fraud, in the statements purporting to be sworn to by them, some of them admitting that they received money for so swearing. Particularly was this the case as to Sallie Lucas, Nellie Smith and Lucy Bohannon. This stamps the case of these appellants as fabricated and fraudulent.

Again Green McCurtain, the Principal Chief of the Choctaw Nation, with whom Elizabeth Casey and those claiming through her, claim blood kinship, in his deposition before the United States Court below, shows conclusively that their claim is not founded in fact, and so do the depositions, in effect, of Jacob Jackson and Wail Penny. And although these depositions are not admissible in evidence, I have thought proper to mention them, as it is plain, that even on the ex-parte affidavits and depositions improperly used on a trial de novo, these parties never have shown themselves to have any rights as claimed.

As to the oral evidence before us, even Elizabeth Casey, the oldest of the applicants, and the one who might naturally be supposed to know the blood of her ancestors, shows an absolute want of knowledge on the subject, so far as her statements go before us, and all her narrative as to her Indian blood, is of the most absolutely hearsay character and utterly worthless in this, and for its utter uncertainty. She seems to have married in the State

of Texas, lived there a while, then came to the Indian Territory; then went to Sebastian County, Arkansas, and then came to the Choctaw Nation near the border of Arkansas, where her husband hauled wood for a living from land he cleared for a citizen of the Choctaw Nation named Brennon.

The whole case is typical of many others we have passed upon; gotten up recklessly and ignorantly, by people not Choctaw Indians, greedy for the promised land of the Indian country, fortified as well as may be, by the false statements of old colored or Indian people, either deceived into making false statements, or paid for it, and based throughout on deception and falsehood, and pressed on the various tribunals that have passed on the claim.

There is everything in this case that militates against the rights claimed for the appellants, and nothing at all reliable in their favor. In fact it is shocking the extent to which these people have gone, in their improper efforts to secure for themselves, rights and lands of others to which they have not the shadow of a claim.

I am ofopinion that a judgment should be entered denying the right of these appellants to be declared citizens of the Choctaw Nation by blood, or in any other way, or to any right or privilege whatever, either by enrollment as such citizens or in any other way, 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.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP
COURT, SITTING AT SOUTH McALESTER, INDIAN TERRITORY, MARCH TERM,
1 9 0 4 .

WILLIAM C. MITCHELL, ET AL.,

VS. NO. 57.

CHOCTAW AND CHICKASAW NATIONS.

STATEMENT OF FACTS AND OPINION
BY ADAMS, CHIEF JUDGE.

On the 9th day of September, 1897, the following persons, to-wit: Wm. C. Mitchell, Samuel Mitchell, Amanda M. Dobbs, Wm. Criss Mitchell, S. B. Mitchell, Geo. W. Mitchell, Annie B. Mitchell, Joe D. Mitchell, James M. Mitchell, C. R. Mitchell, Clarence Mitchell, were admitted to citizenship and enrollment as Choctaw Indians by a judgment rendered by the United States Court for the Central District of the Indian Territory upon an appeal from the finding of the Commission to the Five Civilized Tribes.

After the decision of this Court in the case of Choctaw and Chickasaw Nations vs. J. T. Riddle, et al., known as the "Test Suit", declaring said judgment of the United States Court for the Central District of the Indian Territory void, the above named persons filed a petition in this Court asking that their rights as Choctaw Indians be adjudicated.

The case was continued by this Court for the plaintiffs to produce evidence in support of their contention,

which they have totally failed to do. There is no oral evidence offerred by the plaintiffs and no evidence in the record showing that the applicants, or any of them, are Choctaw Indians.

I am, therefore, of the opinion that the application of plaintiffs should be denied; and a judgment will be entered by this Court in accordance with this opinion.

(Signed) Spencer B. Adams
Chief Judge.

We concur:

(Signed) Walter L. Weaver
Associate Judge.

(Signed) H. S. Foote
Associate Judge.

In the Choctaw and Chickasaw Citizenship Court,

Sitting at Tishomingo, I. T., December Term, 1904.

Zora P. Lewis, et al.

vs. M. No. 58, Choctaw Docket.

Choctaw and Chickasaw Nationz.

Ophilia S. Edwards, et al.,

vs. M. No. 59, Choctaw Docket.

Choctaw and Chickasaw Nations,

Preston Early, et al.,

vs. M. No. 64, Choctaw Docket

Choctaw and Chickasaw Nations.

O P I N I O N.

Weaver, J.

The plaintiffs in each of the three cases above named, claim to be either citizens by blood of the Choctaw Nation or to have intermarried with persons who are such citizens. They base their claim upon the alleged fact that James M. Lewis, who is the ancestor of each of them, who claim by blood, was a Choctaw Indian and resided in the State of Mississippi prior to the Treaty of 1830. The evidence shows that James M. Lewis did live near Brookhaven, in Lawrence County, Mississippi, where he was born in the year 1814, and that his mother was Susana King before her marriage to his father. There is no evidence tending to show that said James M. Lewis, or any of his ancestors, if they were Choctaw Indians, took advantage of Article 14, of the Treaty of 1830 and thus acquired lands in that State. But

tha evidence does show that he resided in that State as a citizen thereof until 1869 and owned land, paid taxes &c., as any other citizen of the State would have done. In 1869 he removed from Mississippi and lived for a year, or there abouts, long enough to make a crop, in Monroe County, Arkansas, and then removed to Sebastian County, Arkansas, where he located on lands belonging to the State and improved the same and lived thereon until his death, which occurred about the year 1874 and neither he, or any member of his family ever located in the Choctaw Nation prior to his death. Subsequently some of his descendants did locate in the Choctaw Nationand made application to the Choctaw Council for citizenship in said tribe. No action appears to have bean taken on their said application to the Council and they were ordered to be removed from the Choctaw Nation as white intruders. Subsequently, at least a portion of them, went to Oklahoma Territory and homesteaded land as citizens of the United States; and still later they made application to the Commission to the Five Civilized Tribes, and at that time many of them were living in Oklahoma. This application was denied by said Commission and they took an appeal to the United States District Court for the Central District of the Indian Territory and were by said Court admitted to citizenship and enrollment as members of said tribe or nation, and these cases come into this Court, in accordance with the statute, by appeal from said District Court.

In addition to what I have already stated, the evidence shows, the plaintiffs introduced in evidence, and the Court has considered them, the affidavits made by Marcus Lewis and Sarah Lewis, his wife. The affidavit of the latter being dated October 21, 1878, but the affidavit of the former has no date attached to it. It has been stated,

however, by some of the witnesses that each of these affidavits were taken for the purpose of being used in the application of sundry of these plaintiffs, which was made as aforesaid, to the Choctaw Council. These affidavits simply state in substance that affiants were husband and wife, that Marcus Lewis is a relative of James M. Lewis, that said Marcus is a Choctaw and obtained his blood from his mother, who was a daughter of Susana King, who is likewise said to have been the mother of said James M. Lewis, and to have been a Choctaw Indian.

These affidavits contain all of the direct testimony furnished this Court as to the Indian blood of said James M. Lewis, and as I have before pointed out, is contradicted by the testimony of other witnesses as to facts and circumstances tending to show that he was not a Choctaw Indian. For instance such as his long residence in the State of Mississippi after his tribe removed from that state to their newly acquired lands west of the Mississippi River, a period of someting more than thirty-five years, and during that period he exercised all the rights of white citizens of that State; that when he came west, he did not come to the Choctaw Nation, nor to any other point in the Indian Territory, but located in Arkansas where he made himself a home and where he lived until his death, although his home was within a mile of the dividing line between the Choctaw Nation and the State of Arkansas.

I do not think I need comment further upon the evidence in this case; taken as a whole it is far from satisfying to me that these people were Choctaw Indians by blood. But if they were, this Court has already held in numerous cases that members of the Choctaw Nation resid-

ing east of the Mississippi River, in order to acquire any interest in the tribal lands and property, west of the Mississippi River, in accordance with the provisions of Article 3, of the Treaty of 1830, and with the citations and provisions contained in the grant by the government of the United States to the Choctaw Indians, of the land west of the Mississippi River, must have removed within a reasonable time after the making of said treaty and occupy the lands ceded to the Nation in this Territory, which it is evident that these people did not do.

It surely cannot be contended that the removal of the Choctaw Indians from the State of Mississippi, to the Choctaw Nation in the Indian Territory in 1874, forty-four years after the treaty was made and forty-one years after the time fixed by said treaty when they should be removed, is a reasonable time within which to make said change of location and acquire the rights they now claim they are entitled to.

For these reasons, I am of the opinion that these plaintiffs are, none of them entitled to citizenship, or enrollment in the Choctaw Nation, or tribe.

These cases were not consolidated by action of the Court, but upon application of the plaintiffs, in suit Nos. 59 and 64, the evidence taken in number 58 was made to apply in those cases, and seperate judgments in accordance with this opinion will be rendered in each of said cases.

(Signed) Walter L. Weaver,
Associate Judge.

We concur:

(Signed) Spencer B. Adams,
Chief Judge.
(Signed) Henry S. Foote,
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

Ophelia S. Edward, et al.,

vs. No. 59.

Choctaw and Chickasaw Nations.

Identical with case of Zora P. Lewism et al., vs. Choctaw and Chickasaw Nations, No. 58 on this Docket. See opinion in that case.

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

Lydia A. Garvin, et al.,

Appellants,

vs. No . 6 0.

Choctaw and Chickasaw Nations,

Appellees,

OPINION, by FOOTE, Associate Judge.

Lydia A. Garvin, one of the appellants here, applied to the said Commission to the Five Civilized Tribes for the enrollment of herself and her descendants, viz., Miranda Vinson, Wiley Allen Garvin, Robert Hawkins Garvin, and Margaret Welch, now Margaret Phebus, claiming that they were Choctaw Indians by blood, and that application was made as of date ~~of~~ the 22nd of August, 1896.

On the same date Margaret Welch made application to the Commission for the enrollment of herself as a daughter of Lydia Garvin, and also claims her marriage to a man named Gillum Jefferson, as a full blood Choctaw Indian , who is dead, and that she and her two children Emaline and Phoebe, by said Jefferson, should be enrolled. She states her blood as a Choctaw Indian.

The Commission to the Five Civilized Tribes denied the application of the first mentioned parties hereto, set out in the application of Lydia A. Garvin, with the exception of Margaret Welch, now Margaret Phebus, and admitted her and

her two children, Emaline and Phoebe Jefferson, she as an intermarried citizen, and the children as hers and Gillum Jefferson, the alleged Choctaw Indian.

An appeal was taken to the United States District Court for the Central District of the Indian Territory, where both cases seem to have been consolidated. There Lydia A. Garvin, Miranda Vinson, Wiley Allen Garvin, Robert Hawkins Garvin and Margaret Welch were declared Choctaw Indians by blood, and a judgment rendered in their favor as suhh, but the two children of said Margaret Welch, viz., Emaline and Phoebe Jefferson, were not mentioned therein. This judgment was set aside by this Court in the Riddle or test suit, under the Act of July 1st, 1902, and a petition for appeal and transfer was filed in this Court.

It will be seen that as to Emaline and Phoebe Jefferson this Court has no juridiction to determine their status in anywise whatever, as they are not mentioned in the judgment of the United States Court for the Central District of the Indian Territory.

The documentary evidence offered in behalf of appellants consists of ex parte affidavits, taken in 1896, and used before the Commission to the Five Civilized Tribes, and of so called depositions used in a trial de novo, in the said United States Court in 1897. While this kind of evidence is not admissible or competent, yet I have examined it very carefully, and find that as to the descent of these parties, as claimed, from an alleged Choctaw Indian named Moss, it is hearsay entirely, unsatisfactory and worthless.

The old lady Lydia Garvin, through whom these parties claim their Indian blood, was alive when the original applications were made. She does not appear from the record

to have made any effort, by affidavit or otherwise, to substantiate her claim, and the oral evidence offered is all of a hearsay character and utterly unsatisfactory in all respects.

The witnesses for appellants say that Lydia Garvin at one time lived in Mississippi, many years ago. They do not know where or when. One of her children claims that Lydia went from Mississippi to Tennessee, thence to Arkansas and then to Indian Territory. Another child of hers, Miranda Vinson, claims that "her father came from Alabama, and he said they travelled round and did not live like people do now, he was right with them and moved around like Indians; he came from Alabama to Tennessee and lived there a year or two and then went to Mississippi and the people, because he was an Indian, were going to starve him to death, and grandfather said he would never starve a fellow man to death, and said his wife could come and give them meat and flour; he made rails to pay for this meat; father and mother were married in Mississippi, and then all came to Arkansas. Grandpa was a cooper and he coopered then as long as he lived."

This is about a fair sample of the strength of the evidence in behalf of these people as to their Choctaw Indian blood.

There is some evidence in this case from a man named John Simpson, a Choctaw Indian and United States Indian policeman, and a man of apparent truthfulness and intelligence, which tends to show that Gillum Jefferson was a Choctaw by blood, and that he was present at the marriage of Margaret Welch to said Jefferson, and that they were married as said Simpson says, under the Choctaw laws, but the facts attending the marriage and before do not appear. On the other hand

Margaret Welch who claims to have married Jefferson, swears in her petition to be herself an Indian by blood, and to be entitled to the rights of an intermarried citizen, that is as a whitewoman, and it must be shown here satisfactorily that Jefferson Gillum was an enrolled Choctaw citizen, or entitled to such, and that she was not an Indian, in order for her xx successfully to claim that she is entitled to enrollment as an intermarried citizen, under the Choctaw laws and treaties.

There has been no sufficient proof made here that the said Gillum Jefferson was a Choctaw Indian and entitled to enrollment as such, nor is there clear proof as to what her blood is. She swears in her petition that she is of Choctaw blood and married to a full blood Choctaw Indian, and there is no proof in therecord to show that she is such, and it would seem a very singular thing for her to claim as an intermarried white woman and xx be admitted by the Commission aforesaid as such, and yet truthfully swear in her petition that she is a Choctaw by blood.

And there is no evidence offered here by any certificate of enrollment, or in any other way than the mere statement of John Simpson, that Gillum Jefferson was a Choctaw Indian, which goes to show that he was in fact such an Indian by blood, and none as to where he was born or whence he came, or when, to the Choctaw Nation, or how he, Jefferson, claimed to be entitled to enrollment as such Indian, or was such Indian, in truth and fact.

I cannot on the evidence believe with any kind of certainty, that Margaret Welch is an intermarried citizen of the Choctaw Nation, according to the laws and treaties thereof, or that she, or any of the other appellants here, properly

before us, are entitled to admission as citizens by blood of the Choctaw Nation, or entitled to enrollment as such, or to any rights whatever flowing therefrom, and judgment will be entered in accordance with this opinion.

(Signed) H. S. Foote,
Associate Judge

We concur:

(Signed) Spencer B. Adams,
Chief Judge.

(Signed) Walter L. Weaver,
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.

Henry E. Miller, et al.,

Appellant,

vs. No. 61.

Choctaw and Chickasaw Nations,

Appellees.

OPINION, by FOOTE, Associate Judge.

This cause comes here by appeal from the United States Court for the Central District of the Indian Territory, under the Act of Congress of July 1st, 1902.

The appellant, Henry E. Miller, for himself and those claiming from a common ancestress alleged to be a Choctaw Indian woman, applied for citizenship and enrollment as a Choctaw Indian, to the Commission to the Five Civilized Tribes, on or about the 2nd day of September, A. D. 1896. His claim and many other claiming with him under the same common ancestress being denied, by the said Commission, on or about the 12th day of February 1897, an appeal was taken to the United States Court for the Central District of the Indian Territory, and the cause was there tried de novo by the Honorable W. H. H. Clayton, Judge of said Court, and on the 25th day of August, 1897, judgment was rendered by said Court that Henry E. Miller and others were members of the Choctaw Nation by blood, and certain other claimants were adjudged intermarried citizens by virtue of marriage with some of the H. E. Miller people. This judgment was set aside by us in

the test suit sometimes called the Riddle case.

The affidavits in the record which were taken and used in 1896, before the Commission aforesaid, where the Choctaw Nation alone was a party defendant, were also used as the basis of the judgment of the United States Court aforesaid in favrr of the claimants. While none of these ex parte affidavits are such as are competent evidence before this Court in favor of sustaining these claims, they deserve nevertheless, some notice at our hands, in this, that in some of them, even notably that of Edward Miller the father of Henry E. Miller, it is not claimed that he knew that the claimants are of Choctaw blood, or even believed or heard so. He believed them Indians, however, and states that some of them looked like half breeds. That affiant who certainly ought to be in a position to know better than any other person, what blood his wife had, and what his descendants, can go on further than to declare, "that he was well acquainted with the Hawkins family in Missouri, that he knew them when they first emigrated there from Tennessee and for thirty years thereafter, and that they were known as Indians and so considered by everyone who knew them, and that he knew this from themselves"; and yet that not one word is uttered or written by him about what tribe of Indians they belonged to or claimed to belong to and is against the contention of the claimants. This witness married the mother of one of the claimants, Henry E. Miller, and he says she was ax daughter of Josia Curtis and Sarah Hawkins, the last being a woman claimed to be a Choctaw by blood born in Tennessee. He does not mention anywhere nor is it so set down in any of these affidavits, used to obtain citizenship in the Choctaw Nation before the United States Court, that any of the predecessors of this

Sarah Hawkins, or she, had ever lived in the State of Mississippi at any time.

To the same effect are the affidavits of Lunsford B. Shockley and of Margaret Lucinda McDaniel, whose affidavit is a printed form filled in with what she says, which, in addition to what Shockley swears to, states that from her complexion and what the public generally said of him, H. E. Miller, he is of Choctaw blood &c. All of which is merely hearsay, or of little or no force as evidence.

A most remarkable feature too in this matter is that the petitions filed herein before the Commission to the Five Civilized Tribes, and sworn to by H. E. Miller and Edward Miller and other Millers, declare on oath that their ancestress Sarah Curtis (nee Hawkins) was not only a Choctaw Indian by blood, but that she was duly recognized as such by the proper authorities in the State of Tennessee, and enjoyed all the rights, privileges, benefits and immunities of other Choctaw Indians by blood.

It is a matter of history and geography, and almost common knowledge, that the Choctaw Nation had no lands or tribal relations in Tennessee, but were a tribe of Indians in Mississippi and that between their lands and place of habitation, and the State of Tennessee, there intervened the lands and Nation of the Chickasaw Indians. Here then are persons neither themselves or ancestors having been or lived in Mississippi, but emigrated from Tennessee to Missouri, and into Texas, and then some of them of late years to the Indian Territory, making claim in the main by hearsay evidence to be Choctaw Indians by blood.

Afterwards we had before us as a witness M. D. Shockley, for the claimants, and Mr. Shockley, among other

things in his evidence in chief, in answer to this question, "How do you know whether the Hawkins family are Indians or not, and if so to what tribe did they belong", said, "No sir, I don't know anything about their Indian blood or what tribe". On cross examination he says he knew these people nearly all his life, ever since he could recollect and that they emiragted to Missouri from Tennessee, and that he never heard of these Hawkins people and the Millers descended from this Hawkins woman, being Indians, until their application to the Dawes Commission in 1896.

John H. Miller, a claimant, also testified that his father was James J. Miller amd his mother's name was Mollie, and his grandfather was Edward Miller, also a claimant. This witness says he claims to be a Choctaw Indian and bases ~~hixxx~~ that claim on what he "was taught by his father and mother". That his father died when he, the witness, was about eight or nine years old, and he was about twelve or thirteen years old when his mother died. He also states that to the best of his information his ancestress came from Tennessee to Missouri. He knows nothing of his ancestress or people, except hearsay.

This is all the evidence of the least importance in this cause.

It is perfectly plainto me that there is not a particle of competent evidence before us, taking the whole record, to show that the applicants are Choctaw Indians by blood. In fact many of the statements made in petitions and affidavits, seem to negative even a remote presumption that they are Choctaw Indians by blood.

By their statements they were emigrants to Missouri from Tennessee many years ago, and not from any known part of the Choctaw Nation in Mississippi; then they went to Texas,

and then some of the family of late years to the Indian Territory, and never even pretending to have lived or resided in Mississippi where the Choctaws lived; and yet they declare under oath, in petitions filed in this cause, that they were recognized as Choctaws in Tennessee (presumably by the tribal authorities there) when none such existed, and making as they do, other improbable statements, it is impossible to believe that even the claimants themselves can entertain any serious belief that they are Choctaws by blood.

Transfers of property and property rights, by a declaration here of this Court that these claimants are citizens of the Choctaw Nation, and entitled to enrollment as such, are not to be obtained by any such evidence or testimony as is here adduced, as I think.

There is, therefore, not the least doubt in my mind that of these appellants, none of them, are entitled to be deemed or declared citizens of the Choctaw Nation, or entitled to enrollment as such, or to any rights and privileges flowing therefrom, and IT IS SO ORDERED.

(Signed) Henry S. Foote,
Associate Judge,

We concur:

(Signed) Spencer B. Adams,
Chief Judge.

(Signed) Walter L. Weaver,
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

Susan Dehart,

vs. No. 62.

Choctaw and Chickasaw Nations.

No written opinion.

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

JENNIE BRAZELL, ET AL.,

VS. NO. 63.

CHOCTAW AND CHICKASAW NATIONS.

STATEMENT OF FACTS AND OPINION BY ADAMS, CHIEF JUDGE.

On the 5th day of September, 1896, Edward Brazell filed a petition with the Commission to the Five Civilized Tribes, in which he alleged that he was a grandson of Cyrus Wilson, who was a Choctaw Indian by blood and resided in the State of Mississippi; that applicant was the son of Jennie Brazell, a daughter of the said Cyrus Wilson. Applicant further alleged that he was entitled to enrollment as a Choctaw Indian by blood .

Jennie Brazell also filed a petition with said Commission on the same date, in which she alleged that she was the daughter of Cyrus Wilson, who was a Choctaw Indian by blood and resided in the State of Mississippi; and that she emigrated from Lee County, Mississippi, to the Territory. She further alleged that her husband's name was Jack Brazell, and that at that time they had the following children, to-wit: James Brazell, Edward Brazell and Mary Brazell and that her husband and three children above named were entitled to citizenship as Choctaw Indians.

James Brazell also filed a petition alleging that

he was the son of Jennie Brazell and grandson of Cyrus Wilson, a Choctaw Indian, and that he had married Maggie Brazell, who was at that time his wife.

These petitions were denied by the Commission to the Five Civilized Tribes on the 1st day of December, 1896, whereupon the above petitioners appealed their case to the United States Court for the Central District of the Indian Territory from the findings of the Commission. On the 24th day of August, 1897, the case came on to be heard in said United States Court, sitting at South McAlester; when and where said Court found as a fact that Jennie Brazell, Mary Brazell, James Brazell and Edgar Brazell, were Choctaw Indians by blood, and citizens of the Choctaw Nation, and emtitled to citizenship in the Choctaw Nation and tribe of Indians; and that Maggie Brazell was entitled to citizenship by virtue of her lawful marriage to James Brazell, a member of the Choctaw tribe of Indians by blood; and that Jack Brazell, the husband of Jennie Brazell, was not entitled to citizenship by reason of the fact that he had not married his wife according to the Choctaw laws, etc.

After the decision of this Court in the case of the "Choctaw and Chickasaw Nations vs. J. T. Riddle, et al." in which this judgment, as well as all similar judgments, were declared void for certain irregularities therein pointed out, Jennie Brazell, James Brazell, Edgar Brazell and Mary Brazell, who since the judgment in the United States Court had been obtained, had married a man named Hinds, filed a petition in this Court praying that their case be transferred from the United States Court for the Central District of the Indian Territory to this Court, under section 31 of an Act of Congress approved July 1, 1902, to be here adjudicated.

On the 28th day of September, 1903, the case came regularly on to be heard in this Court, when the following proceedings were had:

The plaintiffs introduced the record in the case, consisting of ex parte affidavits, all of which were taken after the passage of the Act of Congress approved June 10, 1896, and are, therefore, incompetent to consider in passing upon the questions involved in this case. I have, however, examined these ex parte affidavits in order to satisfy my own mind as to whether or not there was any merit in the contentions of the plaintiffs that they are Choctaw Indians. The affidavits are made by persons who have been impeached in this court in such a manner as to destroy their testimony in a great measure, especially when they are unsupported by other affirmative testimony.

Jennie Brazell, the principal applicant, is introduced in her own behalf, and says that she married Jack Brazell in the State of Mississippi, and by that marriage has the following children: James, Edgar and Mary; that she was born in Lee County, Mississippi, and resided there until she was 25 or 30 years old; that she is now 53 years of age; that her father's name was Josiah Wilson, and was called Vyrus Wilson; that her father had three boys and three girls; that the boys are now dead; that two of the girls reside in the Indian Territory and one in Chicago; that her father died in Mississippi when she was four or five years old, and that her mother died last March; that she has heard her father say that he was an Indian, but witness does not know whether he was an Indian or not; that she does not remember how he looked, and in fact remembers very little about him. Witness says that she has claimed to be an Indian ever

since she has been grown. Witness says that when she left Mississippi she went to Texas and remained there for six years, and then moved to the Indian Territory 18 or 20 years ago; that her husband works on the railroad. Witness further says that her understanding is that her father was a half breed Indian; that her mother told her just before she died that witness's father was an Indian, but did not say how much Indian; and that this is the best proof she has on the subject; that her mother did not talk about her father being an Indian until just before she died.

James Brazell, one of the applicants, was also introduced as a witness. I do not set his testimony out for the reason that there is not a syllable in his testimony bearing upon the issues in this case.

In the petition of Jennie Brazell to the United States Court praying for an appeal, she alleged that she was a lineal descendant and lawful daughter of Cyrus Wilson, a full blood Choctaw Indian, while in her evidence before this Court she says her understanding is he was a half breed.

It will be seen by this evidence that there is no testimony which tends to show that these applicants or any of them are Choctaw Indians. It is rather a significant fact that if they are Indians they have produced no competent proof to establish that fact, not even having introduced the mother and grandmother, whom, the evidence shows, was living at the time the case was heard before the Commission to the Five Civilized Tribes and the United States Court; and as far as the record goes, they never mentioned the mother until her lips were closed in death, and she can not now contradict them or corroborate their statements. There are many descrepencies and inconsistent statements

which I do not refer to because I deem it unnecessary.

We may assume, from the record and the facts established in this case, that Mrs. Jennie Brazell and her husband Jack, moved from Mississippi in order to better their condition in life. At any rate they followed the advice of a wise man in his day and came West. They desired a more congenial clime, so they moved to the State of Texas, where they resided for a time, and then came to the Indian Territory, where Jack secured a job with the Choctaw Railroad Company. After reaching here they must have seen these fertile fields covered with browsing cattle, and learning of the great mineral wealth of the Choctaw Nation, the whole family seem to have been simultaneously and violently seized with the idea that it would be a pretty good thing to be a Choctaw Indian. Whether or not the greed, in this commercial age, to get rich quick suggested the idea, or the name of the railroad with which Jack had a job, I know not; but certain it is they have made the effort and done all they could to become Choctaws.

A judgment will be entered by this Court denying the applicants or any of them, citizenship or enrollment as Choctaw Indians.

(Signed) Spencer B. Adams,
Chief Judge.

We concur:

(Signed) Walter L. Weaver,
Associate Judge.

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

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

Preston Early, et al.,

vs. No. 64.

Choctaw and Chickasaw Nations.

Identical with the case of Zora P. Lewis, et al., vs. Choctaw and Chickasaw Nations, No. 58 on this Docket. See opinion in that case.

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

Sarah D. Brogden, et al.,

Appellants,

vs. No. 65.

Choctaw and Chickasaw Nations,

Appellees.

OPINION by FOOTE, Associate Judge.

The appellants here in this cause claim to be of the same blood as in the case of Susan S. Benight, et al., vs. Choctaw and Chickasaw Nations, No. 39 of our Choctaw Docket.

The evidence in the Benight case, supra, was examined as applicable to this case as by agreement of all the parties. What is said as to it in the Benight case is applicable here, and I am of the opinion that none of the parties appellant in this case are entitled to be deemed citizens of the Choctaw Nation by blood or in any other way, or entitled to be enrolled as such, or to any rights whatever flowing therefrom, AND IT IS SO ORDERED.

(Signed) Henry S. Foote,
Associate Judge.

We concur:

(Signed) Spencer B. Adams,
Chief Judge.

(Signed) Walter L. Weaver,
Associate Judge.

In the Choctaw and Chickasaw Citizénship Court, sitting at south McAlester, in the Central District of the Indian Territory, in the Choctaw Nation, April Term, 1904.

W. M. Vandergriff, et al.,
Appellants,

vs. No. 66.

Choctaw and Chickasaw Nations,
Appellees.

OPINION, by FOOTE, Associate Judge.

The appellants here claim the same source of their alleged Choctaw Indian blood as was claimed in the case of Susan S. Benight, et al., vs. Choctaw and Chickasaw Nations, No. 39 on our Choctaw Docket.

The evidence taken there was, by agreement, used in this case, and vice versa, that in this case was used in that case.

I am of opinion that none of the appellants here are Choctaw Indians by blood, or entitled to citizenship or enrollment for that, or any other reason, and that their petition should be denied, and they be declared not citizens in any way of the Choctaw Nation, and not entitled to be enrolled as such, or to any rights flowing therefrom, AND IT IS SO ORDERED.

(signed) Henry S. Foote
Associate Judge.

We concur:

(Signed) Spencer B. Adams
Chief Judge.

(Signed) Walter L. Weaver
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP
COURT, SITTING AT SOUTH McALESTER, IND-
IAN TERRITORY, MARCH TERM,
1 9 0 4.

MARY M. HARVEY, ET AL.,

VS. No.67.

CHOCTAW AND CHICKASAW NATIONS.

STATEMENT OF FACTS AND OPINION
BY ADAMS, CHIEF JUDGE.

On the 11th day of September, 1897, the following persons were admitted to citizenship and enrollment as Choctaw Indians by blood by the United States Court for the Central District of the Indian Territory, upon the report of T. N. Foster, Special Master in Chancery, after having been denied citizenship by the Commission to the Five Civilized Tribes, to-wit: Mary Marinda Harvey, Dovey Belle Holland, Mathias Reynolds, Douglas Dugan Harvey, Millard Carver Holland, James Porter Reynolds, and George Grover Reynolds.

On the 17th day of December, 1902, the said judgment of the United States Court for the Central District of the Indian Territory, as well as all similar judgments, was declared void by this Court, in the case of Choctaw and Chickasaw Nations vs., J. T. Riddle, et al., known as the "Test Suit"; and on the 13th day of March, 1903, the following persons, to-wit: Mary Marinda Harvey, Dovey Belle Holland, Douglas Dugan Harvey,

Millard Carver Holland, James Harvey Holland, James Porter Reynolds and George Grover Reynolds, filed a petition in this Court, under section 31 of an Act of Congress approved July 1, 1902, asking that their cause be transferred from the United States Court for the Central District of the Indian Territory to this Court, and petitioning this Court to adjudicate their rights as Choctaw Indians; and the transfer prayed for was granted and the case heard accordingly.

The plaintiffs claim their right to citizenship and enrollment as Choctaw Indians by reason of their descent from Aaron Reynolds, who, they claim, was a Choctaw Indian by blood. The oral evidence taken in this Court covers ninety-eight pages of closely typewritten matter, besides the record offered by plaintiffs' attorney, T. N. Foster; and shows that these parties went from the State of Kentucky to the State of Texas, where they remained until a few years ago, when they moved into the Indian Territory, and have resided here since.

After a close examination of the entire evidence, as well as the record in the case, I find no competent testimony which tends to show that these applicants, or any of them, are Choctaw Indians. The statement of Sam Perry, a witness offerred in this Court by plaintiffs, if believed, comes nearer connecting the plaintiffs with Indians than any other witness does, but his evidence does not so connect them. Perry is a colored man who is ninety-one years old, according to his statement, very infirm and his mind very much impaired. This witness has testified in at least twenty-five citizenship cases recently, his statements in nearly all of them being exceedingly conflicting, and he seems to be a poor, old ignorant colored man, a pliant tool in the hands of designing persons,

in his present condition.

I do not think it necessary to set the evidence out in detail, as it is totally inadequate to establish the contentions of the plaintiffs.

I am of the opinion that the evidence is not sufficient to establish the fact that any of the applicants are Choctaw Indians, and the application of plaintiffs is, therefore denied.

A judgment will be entered by this Court in accordance with this opinion.

(Signed) Spencer B. Adams
Chief Judge.

We concur:

(Signed) Walter L. Weaver
Associate Judge.

(Signed) H. S. Foote
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.

William E. Moore, et al.,

Appellants.

vs. No. 68.

Choctaw and Chickasaw Nations,

Appellees,

OPINION, by FOOTE, Associate Judge.

The cause was originally one wherein other parties were joined in the case below, which was number 7 in that Court, but this appeal is prosecuted by William E. Moore, Kathrine Moore, Absolom L. Moore, Jackson Moore , William L. Moore,, Lizzie D. McMurtry who was in th Court below called Lizzie B. Moore, and Marshal J. Moore. These persons, as do those who are included in the appeal prosecuted here in case No. 50 of our Choctaw Docket, and styled Wm.WR Moore, et al., vs. Choctaw and Chickasaw Nations, claim that they are the descendants of a certain William McCagee Moore, and of his father a noted chief of the Choctaw Nation in the State of Mississippi, whose name appears signed to the treaty of 1830 as "Nittucachee". It also appears in the 15Mth article of that treaty as Nutachachie". He was, according to the last ~~xxxxxx~~ mentioned artidle of that treaty, one of three chiefs, viz., Greenwood Leflore, Nutachachie and Mushulatubbe, who were each granted lands in Mississippi consistings of four sections as a reservation, "two of which should adjoin their present improvements, and the other two located where they please, but upon unoc cupied

unimptoved lands; such sections shall be bounded by sectional lines, and with the consent of the President they may sell the same". Also to them was "to be paid two hundred and fifty dollars annually, while they shall continue in their respective offices" except Mushilatubbe "who having already and annuity of one hundred and fifty dollars was to have only one hundred dollars additional" and these same three when in military service by "authority of the United States and under and by selection of the President shall be entitled to the pay of Majors."

In the supplement to this treaty there is given to Henry Groves, son of the chief Nittichache one section of land to"adjoin his father"s land, and the supplementary articles were signed, among other by "Nittuchee". The treaty was signed on the 27th of September, 1830, and the supplementary articles the next day.

Now from all this it it appears that this Old Chief was a very noted man.

William M. Moore, that Chief's alleged son and the ancestor of these claimants, in his statement to the Choctaw counsil, at the time he was an applicant for citizenship in 1884, when he was rejected as the original record of that council is evidence here shows, being questioned by the attorney for the Nations, as the certified record here shows, said, among other things, that he was sixty years old. That he lived in the Choctaw Nation eight years; that previous to that time he had lived in Mississippi, in Noxubbee county; that when he became a good sixed boy in Noxubbee County in that State, he moved to Yazoo county in that State; that he lived in Noxubee countil until the close of the war. He states that his mother told him that his father's name was "Cagee Moore"; that his

mother was a white woman; he had seen his father when he was quite small but did not recollect him. His mother lived when his father left her, and this must have been, according to his former statement, in Noxubee county, Mississippi, until she married a white man on Noxubee River below where Macon now stands. (Macon is a well known town at this date in Noxubee County, Mississippi)

He says the name of his step-father was Barrett. He says his mother had two children, himself W. M. Moore, and Charles Moore, before she married Barrett, but that Charles Moore died leaving no children.

Thus according to W. M. Moore, the father of W. E. Moore one of the claimants here, it is shown that his father Cagee Moore never had but two children; and W. M. Moore never once stated in his evidence in his own behalf before the Choctaw council thatbhis father had any other name than "Cagee Moore." That he had never seen any Indians who were related to his father. That his father went into the Chickasaw Nation and he does not know whether he ever came to the Indian Territory or not.

Now here is a great Chief whose name as an Indian must have been well known, leaving a white wife with two sons, as the claimants here would have us believe, leaving large tracts of land given him by the Government, going into the Chickasaw Nation and his alleged son, as these claimants now have it, not knowing when he went into the Chickasaw Nation, or whether he went to the Indian Territory. And yet W. M. Moore, when he set up a claim before the Choctaw Council, never once alluded to the fact, or even hinted, that his father "Cagee Moore" was the great Chief. This is a very significant fact in connection with other things appearing in these records. Of course if these statements made at that

time by W. M. Moore, are against the interests of the parties who claim now through him, they are competent against them.

Now upon an examination of volume 7, American State Papers, page 60, it is shown that ~~Kkkch~~Nitachuchii was Chief of the Southern District of the Choctaw Nation; that he was provided with four sections of land under the treaty of 1830; that he owned 2,560 acres of land situated on the East side of Patkachi creek, 35 acres being under cultiva tion; that he had five male children over the age of 16 years, and 6 male and female children under the age of 10 years, and that the total number of his family was nineteen.

In this connection taking the supplementary treaty of 1830, which shows that a son of this old Chief named Henry Groves was granted, in that treaty, a section of land adjoining that of the old Chief, his father, and the fact of Henry Groves being his son, and that he had in all, so far as Ward's roll shows, eleven children, what becomes of ~~xx~~ the claim of these people supported only by hearsay of William M. Moore, voiced by them, the applicants, and absolutely contradictory of, and rendering ludicrously absurd, the statements of William M. Moore before the Choctaw Council, and the claims of these people as now presented in their applications, affidavits and oral evidence.

As William M. Moore puts it his father Cagree Moore had two children only, himself and a brother named Charles Moore, when, according to his statement, this patriarch Nitachachii who is claimed to be identical with Cagee Moore and who had large tracts of land and a son named Henry Groves, who was given another section of land specially, left his wife, a white woman, in Noxubee County, Mississippi, with her two sons only as children and disappeared forever in the Chickasaw

Nation North of that, when his district, the Southern District of the Choctaw Nation, was located somewhere about Lauderdale County in South East Mississippi and which the map shows extended South West from said County. This, taken in connection with the other things just stated and the fact that Noxubbee County is many miles North of Lauderdale County in Mississippi, shows conclusively that the claims of these people to be descended from the well known Chief above mentioned, are without any substantial, or even the least basis whatever.

And furthermore in addition to what I have just stated, it appears on page 38, Volume VII of American State Papers, that this same Choctaw Chief Nitachachee, on the 4th day of September, 1831, in the presence of William Ward, Agent of the Choctaw Nation, and John Pitchlynn, as interpreter of the United States, certified to a long list, some thirty in number, of his captains entitled to an additional half section of land under the 19th article of the treaty of 1830. In this connection it is interesting to note that at this time William M. Moore, who according to his testimony was born in 1824, and on the 4th of September, 1831 about seven years of age, if his father was this old Chief, had not yet lost him in the Chickasaw Nation, and he had not yet abandoned his family, and was still acting as Chief of the Southern District of the Choctaw Nation, and is nowhere shown to have ever been in Noxubee County, Mississippi, or to have ever gone by the name of Cages Moore or of any other Moore whatsoever, and it would seem that if William M. Moore's father had been the old chief, he, W. M. Moore, ought to have had some better recollection of him than he saw fit to divulge when making his ineffectual effort to become a Choctaw citizen before the Council of that Nation.

Furthermore it appears in the record here that William R. Moore has positively sworn thatWilliam M. Moore, his father above mentiomed, was admitted as a Choctaw citizen by the council of that Nation. This statement stamps Mr. W. E. Moore either as a man gifted with too vivid an imagination, or reckless in swearing to what, he knew nothing about.

Again it is shown in the evidence before us here that there is a strong probability that the admission as a Choctaw citizen by the Choctaw Council, of Betty A. Lewis, a sister of William E. Moore, was obtained by the use of $15 00.00 judiciously distributed, no doubt by her husband a man named Lewis who was engineering the affair, aided and assisted by a man named Wallace acting as promoter or attorney. And it appears that these claimants in their application for admission as citizens were claiming this fraudulent transaction as a bona fide reason why they should be admitted as citizens as relatives by blood of the said Betty A. Lewis.

A thorough investigation of the petitions originally filed by these applicants shows that they claimed through this old Chief whose name they there had written with some effort to assimilate it, but with poor success, with the name of the old Chief above mentioned, with the addition that they named him as Moore also, without stating Cagee Moore.

There is not the least competent or reliable evidence in this whole case as presented, which even approaches in the remotest degree to the identification of Cagee Moore of Noxubee County, Mississippi, with the Chief of the Southern District of the Choctaw Nation through whom these claimants now brazenlya and falsely claim their Choctaw Indian blood.

It is apparent also that this Noxubee, Neshoba, Yazoo County, Mississippi, W. M. Moore and his descendants,

moving into Arkansas somewhere about 1874, undertook, and they are still continuing in their effort, by means of worthless ex parte affidavits, pretended appearance of Indian blood in their ancestor W. M. Moore (which last is contradicted by one of their own witnesses) and other fraudulent means, to obtain by such nefarious efforts the lands and prpperty of the Choctaw Nation.

I do not deem it necessary to advert to many other circumstances which appear in this case, which color with badges of fraud the whole affair, but leave the case as exemplified by the facts which I have stated.

It is apparent to me that these people knew in the beginning, and know now, that they have no Choctaw blood in their veins; that they commenced their effort by fraudulent means to accomplish what Betty A. Lewis had succeeded in doing; that the scheme was hatched in the State of Arkansas, and then they came over a few years ago to the Choctaw Nation for the purpose of perfecting their ill founded and pretended claim.

I am, therefore, of opinion that they have no Choctaw Indian blood and are not entitled, any of them, to be declared citizens of the Choctaw Nation, either by blood or any other way, or to be enrolled as such, or to any rights or privileges which might inure to them if their claims had been established, 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.

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.

W. W. Cope,

Plaintiff,

vs. No. 69.

Choctaw and Chickasaw Nations.

Defendants.

Opinion by Foote, Associate Judge.

This was originally an application to the Commission to the Five Civilized Tribes, on or about the 26th day of August 1896, on the part of A. W. Cope, the claimant, a white man, petitioning for recognition as an intermarried citizen of the Choctaw Nation, and enrollment as such.

This application was granted by the said Commission on or about the 6th day of February, 1897. Afterwards an appeal was taken to the United States Court for the Central District of the Indian Territory. It that trbunal, on the first day of July, 1897, judgment was rendered in favor of the applicant, and this judgment, for certain irregularities, was set aside by this court in what is called the test suit, provided for in the Act of July 1, 1902, wherefore the applicant presented an appeal to this Court.

According to the provisions of the Act of Congress for appropriations for Indian Tribes and for other purposes, of date March 3, 1903, this cause is tried in the mode described under Section 32 of the Act of 1902.

It appears from the evidence that the applicant intermarried, according to the laws of the Choctaw Nation, on or about the 12th day of April, A. D. 1882, with one Cillis Willis, whose maiden name was Cillis Anderson, her first husband being dead, and that she was a Choctaw woman by blood, and that since that time

A. W. Cope has intermarried with a white woman, his Indian wife having died before his re-marriage.

The question to be determined here is whether the claimant, once duly and regularly married under the Choctaw laws, to his Choctaw wife, and continuing to reside with her in the Choctaw Nation until her death, is to be held to have forfeited his rights to citizenship by intermarriage with a white woman, under section 38 of the treaty of 1866, and the Act of the Choctaw Legislature.

This case appears to me to involve the same questions as existed in the cases of Thomas Brinnon vs. Choctaw and Chickasaw Nations, and of Louis Rockett vs. Choctaw and ChickasawNations, in which latter case it appeared that Rockett had married a Choctaw woman and lived with her as her husband until her death on October 2nd, 1893, and then afterwards intermarried, on September 25th, 1895, with Miss Ida B. Moore, a white woman.

On the authority of the cases of Brinnon, No. 23, and of Louis Rockett, No. 36, Choctaw Docket, I am of the opinion that the claimant A. W. Cope, is entitled to be deemed a citizen of the Choctaw Nation by intermarriage, and to enrollment as such, and to all the rights which flow to him personally therefrom, and IT IS SO ORDERED.

H. S. Foote,
Associate Judge.

We concur:

Spencer B. Adams,
Chief Judge.

Walter L. Weaver,
Associate Judge.

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

GEORGE H. COOK,
Plaintiff.

vs.

THE CHOCTAW AND CHICKASAW NATIONS,
Defendants.

NO. 70.

ARNOTE & KUBANKS,
for Plaintiffs.

MANSFIELD, McMURRAY & CORNISH,
For Defendants.

By WEAVER, J.

This cause comes to this Court on appeal from the decision of the United States District Court for the Central Districtof the Indian Territory.

The plaintiff, a white man, claims to be a citizen of the Choctaw Nation, by reason of intermarriage with one Mary E. McCurtain, a Choctaw Citizen by blood.

The evidence discloses the facts to be that he was married to said Choctaw Indian Woman on the 24th day of August, 1892, in accordance with the marriage laws of said tribe and that there was no lawful impediment to said marriage. He lived with her as her husband until she obtained a divorce from him some years later; that she was a recognized and enrolled Choctaw Citizen; and that their children have likewise been recognized and enrolled as such.

There is no evidence tending to show that he ever abandoned her, but on the contrary, the proof is that she abandoned him.

I am therefore of the opinion that the said George H. Cook is entitled to all the personal rights of a Choctaw citizen by reason of said intermarriage.

Judgment will be rendered accordingly.

(Signed) Walter L. Weaver,
Associate Judge.

We concur:

(Signed) Spencer B. Adams,
Chief Judge.

Henry S. Foote,
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, April Term, 1904.

Helen V. Newton, et al.,

Appellants.

vs. No. 71.

Choctaw and Chickasaw Nations,

Appellees,

OPINION, by FOOTE? Assoiate Judge.

The appellants by petition in this cause are Helen V. Newton, in her own behalf, and as next friend of her minor children Daniel S. Newton, Clarence C. Newton, Hames L. Newton and Eva L. Newton.

These parties applied, on the 7th day of Sepetmber, A. D., 1896, to the Commission to the Five Civilized Tribes for admission as citizens of the Choctaw Nation by blood, and for enrollment as such. Their application was denied on the 7th day of December, 1896, and on the 18th day of January, 1897, an appeal was taken to the United States Court for the Central District of the Indian Territory, and on the 28th day of August, 1897, on the hearing in said Court, a judgment was rendered therein declaring said appellants aforementioned were Choctaw Indians by blood, and ordering their enrollment as such.

That judgment was set aside by this Court in the Riddle or test suit, tried by this Court under the Act of July 1st, 1902, and thereupon these appellants came before us as aforementioned by transfer and appeal.

The facts on which these appellants proceeded before the Commission to the Five Civilized Tribes were contained in the affidavits of S. P. Perry and Isaac Williams and W. M. Gore, taken ex-parte before a Notary Public in 1896, and filed with said Commission. There was also filed the sworn statement of Helen V. Newton. On appeal before the said United States Court below there was used these same affidavits and what purports to be the depositions of Helen V. Newton, Melissa Usbeck and John Lewis. They do not appear to have been certified to, but attested by one Rutherford, a special master in Chancery and W. G. Hailey, and appear to have been considered by said master in making his report to the Court, although the date of their taking is nowhere stated..

It is clear that none of this evidence is competent here. None of the persons making said documents are shown to be dead or beyond the jurisdiction of this Court. They were used before the Commission to the Five Civilized Tribes when only the Choctaw Nation was a party to the proceedings, and the so called depositions or testimony taken by the special master, were used on a trial de novo, and only when the Choctaw Nation was a party to the proceedings.

But while this is so the facts and circumstances connected with them are of such a nature as to demand notice at our hands.

S. P. Perry and Isaac Williams, two of the affidavit makers, are very old and feeble colored men, and are shown in this and other cases before us to be utterly unreliable as witnesses, and the fact that Helen V. Newton, necessarily knowing this, has offered these papers before us in support of her case, shows how utterly without merit the

case must be when such evidence is resorted to. And these two old men are shown in other ways to be utterly unreliable in their statements.

Again, Helen V. Newton, in her sworn petition to the Commission to the Five Civilized Tribes, says she is the daughter of James B. Jones; that he was the son of Willian and Vicey Jones, and that the said William Jones was, during the year 1833, and long prior thereto, an acknowledged and recognized member of the Choctaw Tribe of Indians of the half blood; and that said Vicey Jones, the grand-mother of Helen V. Newton, the petitioner here, was a member of the Choctaw Tribe of Indians of the full blood. There is nothing in the evidence before us to show this pedigree and blood as set out in the petition, except the affidavits of Williams and Parry above referred to, and they can neither of them be believed in such statements. And although it is stated that these ancestors of hers were enrolled as Choctaws, not the least showing has been made in that behalf.

The claim as it now appears before us in the oral evidence seems to abandon this theory of the case, and to attempt to show that the father of Helen V. Newton was a brother of Robert Jones, a well known and recognized Choctaw Indian, long since dead.

As showing, even if Sam Perry's affidavit could be considered in eveidence, how little faith could be placed in its statements, he says he knew the applicant's father Jim B. Jones and her mother May Anne Jones; that he first became acquainted with them in the old Choctaw country, Pontotoc County, Mississippi; that Jim B. Jones and his wife came to the Indian Territory from Mississippi with the third emigration of those Indians, and that they then had three children

Helen V., Josephine, and Frank Jones, and that he knew the father and mother of Jim B. Jones, both of whom he took to be full blood Choctaws. Now it is a well known geogr aphical and historical fact that Pontotoc County, Mississippi, was a noted part of the Chickasaw Nation and never was in the Choctaw country; and to show how he and Helen V. Newton contradict each other she says in her evidence orally delivered before us, that her father, Jim B. Jones, was not even married until after he left the State of Mississippi; that he married her mother May Anne in Jackson County, Arkansas in 1856. And then to cap the climax Sam Perry comes before us as a witness and swears, that he never knew the grand father and grand mother of this applicant Helen V. Newton, and that he never knew a man named Jim B. Jones, and that if his affidavit contains either of such statements, he never knew it. The story of Helen V. Newton seems to be that her father was a whiskey peddler, and he does not seem to have lived permanently at any time, in the Indian Territory, although he had a sort of a cabin there, occasionally came over there from Texas, where her mother and she dwelt, on his whiskey selling expeditions; that he was born in Mississippi somewhere, she does not know exactly where, about 1805, and that after leaving Mississippi he went from place to place in the States of Arkansas and Texas, for the rest of his life.

I do not think that the rest of the evidence in this case is of any value in attempting to show that Robert Jones was the uncle of Helen V. Newton, when we take the evidence of Mrs. E. Poe Harris, a venerable and respectable lady of 65 years, of whom Robert Jones was the uncle by marriage, and in whose family she lived for a large part of her early life, and who must have known best as to who was Robert Jones' brother, who says that she verily believes

from all she knws, and she was in a position to know much in that behalf, that Robert Jones never had but one brother, and he a half brother named David Mackey; that she had never even heard of Ben Jones or Jim B. Jones, and that she is sure that if Robert Jones had ever had any such brother she would have heard of it. And Captain Peter Maytubby, a man of the highest respectability and a Chickasaw Indian, states that he lived within five miles of Robert Jones for years, and was intimate in his family, and visited him ~~xxxxx~~ often, and stayed at his house for some time on one occasion when he was sick; that he never saw a man named Ben Jones or Jim B. Jones, and never heard of him or of any other brother of Robert Jones except David Mackey, the half brother of Robert Jones; and that he is certain that if Robert Jones had had such a brother as Ben or Jim B. Jones, living in Red River County, Texas that he, Peter Maytubby, would have known ~~xx~~ it.

Again, Helen V. Newton brought a witness on the stand named Mollie Skelton, apparently a full blood Choctaw Indian, who testified through an interpreter, that she knew Ben Jones, that he was a brother of Robert Jones and a full blood Choctaw, and yet completely destroys Helen V. Newton's account of her mother as a white woman whom her father married in Arkansas, by declaring that Ben Jones married her, Mollie Skelton's aunt, her mother's sister, after the late War of the Rebellion, in the Choctaw Nation and that the pair lived two miles east of Goodland in said Nation.

Then again an Indian named J. E. Nelson, a witness before us, says in his testimony that he knew Ben Jones and

and knew him to be a half brother of Robert Jones, and then goes on to swear, as counsel for the Nations suggested the names to him, that Robert Jones' wife was named Viney, two of his sons named Peter and Jackson, and a girl named Eliza, that Eliza married a man named Johns, and that Jackson married a woman named Mary Clover &c., all of which statements are not true, as shown by the evidence of reliable witnesses, Mrs. Harris and Peter Maytubby, in the case, Robert Jones not having had a wife by that name or such children.

There are many other things that appear in this case, to warrant me in disbelieving the statements of the witnesses who attempt to prove the Choctaw blood of the appellants and their pedigree from Ben Jones or Jim B. Jones as the brother of Robert Jones.

It looks more as if Ben Jones if he ever existed, was a wanderer in Arkansas and Texas, an occasional whiskey peddler in the Indian Territory, and of uncertain blood, if he ever existed at all and was the father of the applicant Helen V. Newton.

The whole case bears so many badges of fraud, is so uncertain and contradictory as to the testimony, as utterly to prevent me from being able to say that Helen V. Newton and her children are of Choctaw blood, whatever other blood they may have.

I am, therefore, of opinion that their claim to be deemed Choctaw Citizens by blood should be denied, and they should be denied enrollment as such, or in any other way, and that they are not entitled to any rights as such, AND IT IS SO ORDERED.

(Signed) Henry S. Foote,
Associate Judge.

We concur:
(Signed) Spencer B. Adams, Chief Judge.
(Signed) Walter L. Weaver, Associate Judge.

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

1 9 0 4 .

WILLIAM MITCHELL, ET AL.,

VS. NO. 72.

CHOCTAW AND CHICKASAW NATIONS.

STATEMENT OF FACTS AND OPINION

BY ADAMS, CHIEF JUDGE.

On the 9th day of September, 1897, a judgment was rendered by the United States Court for the Central District of the Indian Territory, in which it was adjudged that William Mitchell, John H. Mitchell, Sarah Mitchell Brower, W. C. Brower, W. J. Mitchell, Edward D.Mitchell, Dice E. Mitchell, Alvera G. Lamb, Joseph Lamb, Samuel H. Brower, W. C. Brower, Bessie Mitchell, Artie L. Brower, Effie P. Brower and Nancy A . Brower are Choctaw Indians by blood, but were not residents of the Indian Territory when their application for citizenship was filed, and had never lived in the Choctaw Nation prior to the filing of such application. The said judgment further declares that in consequence of their non-residence, as aforesaid, their right to citizenship in the Choctaw Nation is denied.

Under section 32 of an Act of Congress approved July 1, 1902, the aforesaid applicants filed a petition in this Court, on the 14th day of March, 1903, asking this Court

to adjudicate their rights as Choctaw Indians. The record was transferred here from the United States Court for the Central District of the Indian Territory, and the case set upon the calendar for trial, and the hearing of said case was continued many times by this Court in order to enable the plaintiffs to produce such evidence as they desired to establish their rights as Choctaw Indians, all of which they failed to do.

I have carefully examined the evidence and the record and find no competent evidence therein to establish the fact that these plaintiffs, or any of them, are Choctaw Indians.

The application of plaintiffs is, therefore, denied; and a judgment of this Court will be entered in accordance with thi s opinion.

(Signed) Spencer B. Adams
Chief Judge

We concur:

Walter L. Weaver
Associate Judge.

H. S. Foote
Associate Judge.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. November Term, 1904.

John M. Grady et al.,	:	
Plaintiffs,	:	
vs.	:	No. 73. Choctaw Docket.
Choctaw and Chickasaw Nations,	:	
Defendants.	:	

Horton & Brewer, for plaintiffs.
Mansfield, McMurray & Cornish, for defendants.

O P I N I O N.

WEAVER, J.

The plaintiffs in this case are John M. Grady, a white man, and his three children, to wit, Buena Vista, Horace M. and Leroy Grady, all of whom are likewise white, having been born to him by his wife Sarah, a white woman, who at the time of his marriage to her was the widow of one Henry Freeney an alleged Choctaw Indian by blood, who died before her marriage to Grady.

The claim made her is that said Sarah Grady by reason of her marriage to said Freeney, became herself a member of the Choctaw Nation; that when she married Grady after the death of Freeney he, Grady, became a member of said Nation by reason of his intermarriage with her, and that their children are likewise, and by reason of their descent, members of said Nation.

The respective marriages of Freeney with Sarah (now Grady, nee Freshour) and of said Sarah (then Freeney) with the plaintiff Grady, are sufficiently proven, and were each apparently entered into after full compliance with the laws of the Choctaw Nation governing the same in force at that time.

Hence, the first question that arises is, was Freeney a Choctaw Indian by blood,- the claim being made that he was. To prove that fact, if it was a fact, rests upon the plaintiffs.

A careful inspection of all the competent evidence in this case before this Court fails to show that such is the case. There is an absolute lack of testimony on the subject. Certain affidavits taken in the trial of thus cause before the United States District Court for the Central District of the Indian Territory, were offered in evidence, but this Court has heretofore held that such affidavits were not competent in the hearing of this and like causes in this Court, and no effort was made apparently, to furnish us with any other or further evidence on this point, although it appears to me it was obtainable, if such was the fact.

Being of the opinion that unless the fact is made primarily to appear that Freeney was a Choctaw Indian by blood, it will be unnecessary to look further into the merits of this case.

I am of the opinion that the plaintiffs have failed to show that they are entitled to citizenship or enrollment as members of the Choctaw Nation or tribe, and the judgment of the Court will be rendered accordingly.

Walter L. Brown
Associate Judge.

We concur:

Spencer B. Adams
Chief Judge.

Henry S. Foote
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, April Term, 1904.

Abram H. Nail, et al.,

Appellants,

vs. No. 74.

Choctaw and Chickasaw Nations,

Appellees.

OPINION, by Foote, Associate Judge.

The appellants here applied for citizenship in the Choctaw Nation, to the Commission to the Five Civilized Tribes, some as Choctaw Indians by blood and some as intermarried citizens. They were denied admission as such citizens and appealed to the United States Court for the Central District of the Indian Territory, and there judgment was given and made in favor of Abram H. Nail, John Nail, James P. Nail and Aaron Nail, as citizens of the Choctaw Nation by blood and Matilda J. Nail and Lizzie Nail as intermarried citizens of said Nation, and entitled to enrollment as such, all residing in the Indian Territory, but that William Nail and his wife Letha Nail lived in the State of Texas and were not entitled to enrollment as such citizens.

Thereafter under the decision in this Court setting aisde the judgment below by its decision in the test suit or Riddle case, the appellants have caused their case to be transferred, under the Act of July 1, 1902, on appeal to this Court.

It appears that the oldest applicant here, who is eighty-five years of age, A. H. Nail, according to his oral statement before us, was born in the year 1818; that his father's name was Reverend William Nail; that he, Abram H. Nail, was born in Bledsoe County, Tennessee; that his father preached in that country and spoke the Choctaw and Cherokee languages, that his father was born in the State of Georgia; that his father was married in 1810, in the State of Tennessee, and that he knows nothing of his father's having Choctaw blood except what his father told him. He, Abram H. Nail, lived in Tennessee. He lived invarious counties in Texas and in the Indian Territory since 1873. Mr. Nail says his mother was a Cherokee Indian woman and she spoke the Choctaw and Cherokee language. His father was a preacher and had a circuit in that section of Tennessee where Bledsoe County was and is, and extending into Georgie as he thinks, and that his father preached among the Choctaws and Cherokees in that county.

In this connection I may say that it is a well known fact that as to the Choctaw Nation, the place where they lived and dwelt for several hundred years before they came to the Indian Territory, was hundreds of miles from the County of Bledsoe in Tennessee, which county was very near , if not a part of the old Cherokee Nation.

One of the persons who made affidavit for these people among others, was S. P. Perry, an aged colored man, who has appeared before us several times. This old man has, as appears to us, been induced in many of these instances, and on the present occasion, to swear falsely as to things material to the case of these people, and as to matters about which he knew nothing.

The ex-parte affidavits taken and used in this case

before the Commission to the Five Civilized Tribes, in 1896, when none of the witnesses were shown to be then dead or beyond the jurisdiction of that tribunal, and when but one Nation, namely, the Choctaw Nation, was a party to the proceeding, are incompetent as evidence here, and so are the depositions taken and used in 1897, before the United States Court for the Central District of the Indian Territory, where still but the Choctaw Nation alone, was a party defendant, in a trial de novo.

There is no competent or satisfactory evidence before us, that any of these persons appearing here, have Choctaw blood in them at all. On the contrary the statements of Abram H. Nail as to the residence of his father in Tennessee and his birth in Georgia, and the birth of Abram H. Nail in Tennessee, at so early a day, long before the Choctaws ever came to the Indian Territory or had made the treaty of 1830, his mother being a Cherokee, and the place of his father's and his residence being elsewhere than, and never in, Mississippi, and the fact that many even of the man Abram H. Nail's descendants have never even thought, apparently, of claiming to be Choctaw Indians, and have never moved to the Indian Territory, make Abram H. Nail's evidence, so far as it is competent, rather show him to have Cherokee, if Indian blood at all, than Choctaw.

Besides want of good faith in using such evidence to establish a right such as is claimed here, viz., such evidence as that of Sam Perry, is a badge of fraud.

Hearsay evidence, on which the claim as to Choctaw Indian blood, is wholly dependent here, and that of the most unsatisfactory description, is not admissible to prove a specific fact of that kind.

I quote and cite in behalf of that view of the law of

evidence, namely:

Vigel v. Naylor, bottom of page 647, 16 Law. Ed., 24 Howard, U. S. Ct. Rep., citing,

David v. Wood, 1 Wheat., page 6.,

where Justice Catron said:

"On the trial below, the petitioner offered to prove by witnesses that they had heard old persons, now dead, declare that accertain Mary Davis, now also dead, was a white woman, born in England, and such was the general report in the neighborhood where she lived; and further offered to prove by the same kind of testimony, that Susan Davis, the mother of the petitioner, was lineally descended in the female line from the said Mary; which evidence, by hearsay and general reputation, the court refused to admit, except so far as it was applicable to the fact of the petitioner's pedigree. And the ruling below, this court affirmed.

"There is no question arising in the cause before us involving the consideration to what extent hearsay evidence to prove the status of freedom is admissible and, therefore, we refrain from discussing the first point decided in Davis v. Wood, 1 Wheat., 6. x x x x."

"This court having cut off all evidence by hearsay and general reputation - 1st, that the female ancestress of the petitioners was a white English woman, and free; and 2nd, that the record of the recovery of freedom by John's mother and sister from Swan was incompetent--of course the petitioner had to go out of Court, having proved no case."

"There the verdict was not between the same parties."

This case did not disturb the question as to xxx hearsay proof in cases of freedom, or racial status. It rightly held that as between parties privy, a judgment of freedom of one was admissible for another.

In the case of Negro John Davis vs. Wood, in 1816, 1st Wheaton, page 6, Chief Justice Marshall, said: "That, as to the first exception, the court has revised its opinion in the case of Mima Queen and Child v. Hepburn, and confirmed it."

This was, as is shown by reference to the Mima Queen case, as to hearsay evidence to prove racial status in a suit for freedom.

Chief Justice Marshall said in that case, 7th Wheaton, bottom/page 349, 3rd Lawyers, 2nd Edition, volumes 9 to 13, U. S. Supreme Court reports: "That hearsay evidence is incompetent to establish any specific fact, which fact is in its nature susceptible of being proved by witnesses who speak from their own knowledge." To this rule he gives the exceptions "of pedigree, of prescription, of custom, and in some cases of boundary", and he adhered firmly to the rule that in cases of suits for freedom, of persons held as slaves, of African descent, or blood, thathearsay evidence was not admissible to prove racial status. He said further at the bottom of page 350: "If the circumstances that the eye witnesses of any fact be dead should justify the introduction of testimony to establish that fact from hearsay, no man could feel safe in any property, a claim to which might be supported by proof so easily obtained." Judge Duval in this case said. "This court has decided that hearsay is not admissible to prove that the ancestor from whom they claim was free." "From that I dissent." "It appears to me that the reason for admitting hearsay evidence upon a question of freedom is much stronger than in cases of pedigree or in controversies relative to the boundaries of land. It will be universally admitted that the right to freedom is more important than the right of property."

"And people of color from their helpless condition

under the uncontrolled authority of a master, are entitled to all reasonable protection. A decision that hearsay evidence in such cases shall not be admitted, cuts up by the roots all claims of the kind, and puts a final end to them, unless the claim should arise from a fact of recent date, and such a case will seldom, perhaps never, occur."

It will be seen that Judge Duval felt that while the rule was clear and indisputable, where property rights were concerned, that hearsay evidence could not be allowed as to racial status, yet that when the liberty and freedom of a human being was involved, the rule should be relaxed. Yet Justice Marshall and the rest of the Court would not relax the rule, and it is the rule now, and particularly applicable in these citizenship cases, where a status from which is to flow the right to land and property claimed by others, is sought by hearsay evidence to be taken away. No question of freedom, but of property, is here involved.

The rule was a far harder one in these cases for freedom, than it ever could be in such cases as are here, and the Supreme Court of the United States is firm in its view.

The cases of Mima Queen vs. Hepburn, 7th Cranch, above cited, and Davis vs. Wood, 1st Wheaton,are cited with approval, on the question of the admissibility of hearsay evidence of particular facts, in the case of Ellicott & Meredith vs. Pearl, bottom page 486, Vol. 34-37, 9th Law. Ed., U.S. Sup. Ct. Reports.

I have found no decision of the Supreme Court of the United States that in any wise departs from this just rule.

But suppose such was the case, let us see how unjust such a rule would be.

If such evidence is proper to prove the blood of one

of the white or any other race, suppose one claiming to be a white man or an Indian and seeking to recover by such proof from one in possession of property in land, should have to meet as against him such evidence as that by hearsay and neighborhood talk, he was supposed to have negro blood in his veins. Could anything be harder to bear than that? Yet if people claiming to be Indians can use hearsay evidence to establish that claim, those against whom they urge this claim, would have the same right to introduce hearsay evidence that the claimants had negro blood instead of Indian blood. Those insisting on the right to become Indians by such evidence, do not seem to realize, how in a given case it might be disastrous.

The rule laid down by Judge Marshall and followed by us is correct, both by authority, and sound reason.

While declarations against interest of a party may be allowed, they are never to be allowed in his favor.

P. & T. R.R. Co. vs. Stimpson, 14th Peters, 448.

It is unnecessary to say more in this case than that it is unsupported by competent or sufficient evidence to induce the reasonable belief that these appellants have any Choctaw blood in their veins at all. That they may have some Cherokee blood is possible.

I am, therefore, of opinion that they and all of them, should not be declared Choctaw Indians by blood, or in any other way, and that they should not be enrolled as such, or entitled to any rights whatever flowing therefrom, AND IT IS SO ORDERED.

(Signed) Henry S. Foote
Associate Judge.

We concur:

(Signed) Spencer B. Adams
Chief Judge.

(Signed) Walter L. Weaver
Associate Judge.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory, October Term, 1904.

Joseph B. Glenn, et al., Appellants,	:	
vs.	:	No. 75. Choctaw Docket.
Choctaw and Chickasaw Nations, Defendants.	:	

OPINION, by FOOTE, Associate Judge.

This cause stands in the same attitude as that of No. 7, on the Choctaw Docket, just decided. The parties appellant claim their Choctaw Indian blood, through a common ancestress, one Abigail Rodgers, and the evidence in that case is applicable in this case, and by common consent is to be so considered, and the action of this Court in case No. 7, supra, must and does control the judgment in this case.

The number of the applicants is such as to preclude the naming of them in this opinion, but they are none of them entitled to be declared citizens of the Choctaw Nation, or to any rights or privileges flowing therefrom, AND IT IS SO ORDERED.

Henry D. Foote
Associate Judge.

We concur:

Spencer B. Adams
Chief Judge.

Walter L. Brown
Associate Judge.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. October Term, 1904.

Glenn-Tucker, et al., Appellants, vs. Choctaw and Chickasaw Nations. Defendants.	No. 76. Choctaw Docket.

OPINION, by FOOTE, Associate Judge.

This cause stands in the same attitude as that of No. 7, on the Choctaw Docket, just decided. The parties appellant claim their Choctaw Indian blood, through a common ancestress, one Abigail Rodgers, and the evidence in that case is applicable in this case, and by common consent is to be so considered, and the action of this Court in case No. 7, supra, must and does control the judgment in this case.

The number of the applicants is such as to preclude the naming of them in this opinion, but they are none of them entitled to be declared citizens of the Choctaw Nation, or to any rights or privileges flowing therefrom, AND IT IS SO ORDERED.

Henry D. Foote
Associate Judge.

We concur:

Spencer B. Adams
Chief Judge.

Walter L. Evans
Associate Judge.

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

1 9 0 4.

W. H. STALLINGS,

VS. NO. 77.

CHOCTAW AND CHICKASAW NATIONS.

STATEMENT OF FACTS AND OPINION BY ADAMS, CHIEF JUDGE.

The record in this case discloses that on the 25th day of August, 1897, plaintiff, W. H. Stallings was admitted to citizenship as a Choctaw Indian by blood by the United States Court for the central District of the Indian Territory, upon an appeal from the Commission to the Five Civilized Tribes, under the Act of June 10, 1896.

After the decision of this Court declaring said judgment of the United States Court for the Central District of the Indian Territory void, the plaintiff W. H. Stallings filed a petition in this Court, praying that his rights as a Choctaw Indian be adjudicated here. On the 13th day of November, 1903, the case came on regularly to be heard in this Court, when and where W. H. Stallings, the plaintiff, comes upon the stand and testifies in his own behalf as follows:

Witness says that he is about 64 years of age and resides at Springtown in the Choctaw Nation; that he was born in Bucktuckle county, Choctaw nation; that his mother and father are both dead; that his father died when he was about four years old and his mother died when he was about

three or four years old; that he remembers them both but does not remember much about them; that he knew his gran - father and grandmother, who are both now dead; that his mother was a half breed and her mother was a full blood Choctaw Indian, and that witness would guess that he is about one eighth; that his father was a white man and his grandfather a white man; that his mother resembled an Indian and that his grandmother resembled an Indian more than his mother did; that his father's name was Jacob Stallings and his mother's name was Betsy McLaughlin; that his grandfather's name was Robert McLaughlin, and his grandmother's name was Hettie McLaughlin; that after witness's parents died a man named William Roberts, who was a minister and used to preach to the Choctaws took witness to Sevier county, Arkansas; that Roberts lived in Arkansas about sixteen miles from the Territory line; that witness lived with Roberts three or four years. Witness then says he lived in Scott county, Arkansas, and used to go to the nation and stay with old Kincade, William Bryant and Isaac Watson. Witness says that he had no fixed place of abode, that he staid the longest with Governor Wade; that he lived with Wade one year; that he staid in that country with the Indians until 1878, and then drifted west to Stringtown, where has lived for the past fifteen years; witness says that his mother was named Hettie Kincade before she married McLaughlin; that she was a sister of George Kincade a Choctaw Indian. Witness says he also knows Amy Jusan; that Kincade and Amy Jusan are full blood Choctaw Indians and witness's second cousins. Witness says he lived in Red River County, Texas, for a short time. Witness says he voted for x old Billy Bryant, a candidate for chief of the Choctaw nation, and that Bryant promised to

put his name on the roll but failed to do it. Witness says his parents came to this country from Mississippi with Ben Jones.

On cross examination witness says that Amy Jusan is a sister of George Ki ncade; that a man named Shawnee prepared the statements of George Kincade, Jennie Kinimaya and the widow Jusan, which he filed before the Choctaw council in support of his claim for citizenship; that Shawnee is now living; that witness has not seen George Kincade for a long time. Witness says he was not present when the statements were written. Witness says that George Kincade and this Jusan woman are his second cousins; that their father and witness' grandmother were brothers and sisters; that their father's name was Andrew Kincade.

Plaintiff then offers as evidence the original application of plaintiff filed before the Commission to the Five Civilized Tribes, dated the 3rd day of August, 1896, together with the file marks thereon.

Plaintiff then files a written motion, which is sworn to by plaintiff, asking for a continuance of this cause, on account of the absence of George Kincade and Amy Jusan, who reside at or near Kulitookalo, Indian Territory, etc. The cause was then continued until the 12th day of February, 1904, when the nations introduced the following testimony.

Jennie Kanimaya, a full blood Indian woman, who testified through an interpreter, says that she resides in Red River county, Choctaw nation; that she does not know a man named Stallings; that she never saw him; that she never gave any testimony for Stallings; that she knows nothing of Stalling's mother or father, or anything about his people

whatever; that no one has ever talked to her for Stallings about his case; that George Kincade is witness's uncle.

George Kincade is then introduced as a witness for the defendants. This witness is also a full blood Indian and speaks through an interpreter. Witness says he does not know how old he is; that he lives in Red River county, Choctaw nation, and is a preacher; that he cannot write his name; that he is the only George Kincade he knows of in that county; that Jennie Kanimaya is the daughter of his sister. Witness says he does not know Stallings, the plaintiff; that he came to his house once in the year 1895; that was the first time he ever saw Stallings or ever heard of him; that he came there with a man named Tobias Edwards, who was a black man, and that Tobias said that Stallings was kin to witness, and witness didn't say anything as he did not know that Stallings was kin to him; that he never gave any testimony for Stallings, and knows nothing about Stallings; that when plaintiff and Tobias Edwards came to his house they asked him to go to Goodwater and make an affidavit for them; that they took witness to Goodwater where the County Judge and his Clerk were; witness then says he left there, and doesn't know anything and could not be a witnessxxx for them, and he went out; that after that the County Judge and Clerk came to his house the next day, and that Tobias made an affidavit that Stallings was kin to witness, and they all left. Witness says he did not make an affidavit at Goodwater, at his house or at any other time or place, for Stallings.

In the plaintiff's application, which is sworn to by him, filed with the Commission to the Five Civilized Tribes in 1896, the plaintiff stated that his father came to

Arkansas when he was but a child four years old, and that his father died when witness was about six years old; and that his mother died when witness was about eight years old, and that he was then taken by a man named Roberts to the State of Texas where he lived for years; whereas, in his evidence before this Court, as above set out, plaintiff says that his father and mother died in the Choctaw Nation when he was about four years old, and Roberts took him to the State of Arkansas where he remained until about 1870.

There is an affidavit also among the papers which purports to have been made on the 27th day of April, 1896, by George Kincade, widow Jusan, Jackson Jusan and Jennie Kanimaya, in which the purported witnesses say that Stallings is a relative of theirs. Two of the witnesses whose signature appears to this affidavit, to-wit, George Kincade and Jennie Kanimaya, came into this Court and swear that they made no such affidavit, and know nothing about witness, as is shown above.

I don't think the evidence is sufficient to satisfy the Court that W. H. Stallings is a Choctaw Indian, and the application of plaintiff, is therefore, denied.

A judgment will be entered by this Court in accordance with this opinion.

(Signed) Spencer B. Adams,
Chief Judge

We concur:

(Signed) Walter L. Weaver,
Associate Judge.

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

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

Epsie Underwood, et al.,

vs. No. 78.

Choctaw and Chickasaw Nations.

Identical with case of Jane Marrs, et al., vs. Choctaw and Chickasaw Nations, No. 109 on this Docket. See opinion in that case.

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

Frances C. Neely, et al.,
Plaintiffs.

vs.

The Choctawand Chickasaw Nations,
Defendants.

No. 79.

J. G. Ralls and Bowman,
For Plaintiffs.

Mansfield, McMurray & Cornish,
for defendants.

OPINION.

By WEAVER, J.

This cause comes into this Court on appeal from the United States District Court for the Central District of the Indian Territory.

Of the parties plaintiff herein, Jessie I. Neely, Homer E. Neely, James R. Neely, Howard A. Adams and Gladius (Gladys ?) Neely Hill, were not parties to the proceeding in said District Court and no decree was rendered either for or against them therein. This Court is therefore without jurisdiction to hear and determine the issue as to them and they are accordingly dismissed from this proceeding.

Among the plaintiffs to this suit when pending before said District Court, were Almor A. Neely, William E. Neely, John E. Adams, Joseph R. Neely and Joseph W. Neely, none of whom have joined in the appeal to this Court, and consequently this cause, as to each of them, has not been considered by us.

Of the other plaintiffs herein all are children of the plaintiff Frances C. Neely, except Gelia A. Neely, a white woman, who is intermarried with the plaintiff Henry A. Neely, and Corda V. Neely, their daughter.

Frances C. Neely claims the right to citizenship and enrollment as a member of the Choctaw Nation by blood, and it follows that if she is thus entitled all the others who are joined with her in this Court are possessed of the same right.

The testimony shows that she was born in the State of Texas in 1855, lived at various points in that State and in Louisiana, and was married to one Joseph W. Neely, in accordance with the laws of Texas and in that State, in 1870; that she continued her residence there until 1893, when she removed with her husband and children to the Indian Territory and settled near Atoka in the Choctaw Nation, where she has since resided, until four years ago, when she removed to _____ in the Chickasaw Nation. Her father's name was Allen Crydor, and her mother's maiden name was Betsey Jones.

Her grandmother on her father's side was Ailsie Cryor, whose maiden name was Franklin. Her father had two or three brothers and a sisters, none of whom ever asserted any rights as Choctaw citizens, as was likewise the case with her father and the other members of his immediate family except herself, and she asserted none until after she removed to the Choctaw Nation in 1893. In 1894 she made application on behalf of herself and family to the Choctaw Council for enrollment as members of the Tribe but no action was taken thereon.

Her father had been a resident of Mississippi, but berfore her birth had removed from that State, lived, farmed, and bought and sold lands in Louisiana and Texas until the Civil War, in which he was a soldier, and was killed at Holly Springs, Mississippi.

The said plaintiff endeavored to show by several witnesses that her ancestors in Mississippi were reputed to be Choctaw Indians, and were so recognized by the people who

knew them there; but this Court had already held, and repeatedly so, following a practically unbroken line of precedents, that proof of racial status cannot be made by hearsay or repute, I am of the opinion that such evidence was properly rejected. There was considerable evidence received and considered by us offered for the purpose of showing that certain of plaintiff's ancestors were dark-skinned, had black hair, and "looked like Indians." Also that they spoke a language which they said was Choctaw.

After careful consideration of all the competent evidence in this case, I am of the opinion that the plaintiffs have failed to prove that they are Choctaw Indians by blood, or entitled to citizenship or enrollment in the Choctaw Nation.

Judgment will be rendered accordingly .

(Signed) Walter L. Weaver,
Associate Judge.

We concur:

(Signed) Spencer B. Adams,
Chief Judge.

(Signed) H. S. Foote,
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, April Term, 1904.

Nellie J. Gideon, et al.,

Appellants,

vs. No. 80.

Choctaw and Chickasaw Nations,

Appellees.

OPINION, by FOOTE, Associate Judge.

This cause comes here by transfer or appeal from the United States Court for the Central District of the Indian Territory.

The original applicants were Nellie J. Gideon, nee Landers, and James Landers, her brother.

The applicants were denied enrollment as citizens of the Choctaw Nation, by blood, by the Commission to the Five Civilized Tribes, and appealed their cause to the United States Court below, where, on the 30th day of August, A. D., 1897, a judgment was rendered in their favor, which being set aside by this Court in the Riddle or test suit, the appellants bring their cause here under the Act of July 1, 1902.

Before the said Commission the application was supported by ex parte affidavits taken in 1896, and as to the matter of the claimants having Choctaw blood, the statements therein made, in the main, were hearsay, and altogether vague and unsatisfactory.

Before the United States Court below these affidavits were supplemented on a trial de novo, in 1897, by wer-

tain depositionsmainly given by the persons who made the affidavits before the Commission just referred to. Most, if not all, of this evidence appears to be either incompetent or unworthy of serious consideration. One of the affidavits was made by a man named Bankston Johnson, who died or was killed in Louisiana before the trial before us. He made certain positive statements as to the Choctaw blood of the claimants and their relation him as a Choctaw Indian. Before us a man named McCoy, a respectable appearing white man and Johnson's alleged cousin, apparently a part Indian, stated here that Bankston Johnson, before his death, in substance at least told them that he was not related to the claimants, knew nothing in truth of their having Choctaw blood, and that the husband of one of the claimants here, Mr. Gideon, had agreed to pay him fifty dollars for his false statements.

Gideon came on the stand after their evidence had been delivered and swore that he had not made this promise before the evidence was given, but that Bankston Johnson had approached him after he had given these statements under oath, and told him that others had gotten money or been paid for their evidence in such cases and that he ought to be paid. Gideon says he did agree then that if his wife gained her claim, thus bolstered up by Johnson, that he would pay him the money he demanded.

This method of procedure Mr. Gideon did not seem to regard as at all improper, but rather to be commended. In this view of the matter I can not agree with him, and his apparent notions of the morality of such transactions, is simply shocking.

This applicant, Nellie Gideon, or Viola Landers, as she was originally named as an unmarried woman, seems to have

been born in Louisiana; her father was dark in color, her mother a white woman. The brother of her mother was on the witness stand before us. He says he was much opposed to the marriage of his sister to this Landers, and that after the marriage he charged he charged Landers with having negro blood. That Landers denied it and said he had Indian blood.

The father of this Landers appeared in Arkansas about 1848.

Mrs. Gideon, the appellant, appears to have been married to Gideon after two days acquaintance, she then living in the Cherokee Nation. He Gideon, knows nothing of her Indian blood save what she has told him. She and her mother seem for some years prior to her mother's death, to have been in and out the Choctaw, Creek, and Cherokee Nations, although originally coming from the State of Louisiana.

Mrs. Gideon in her application to the Commission to the Five Civilized Tribes, says she never made application for admission to citizenship before the Council of the Choctaw Nation, because ~~k~~ she had been informed that it would cost her and her brother $1200.00 to become enrolled.

Mrs. Gideon, nee Landers, in her so called deposition to be used before the United States Court in 1897, before J. L. Hunter, a Notary Public, swears that her grandfather was a full blood Choctaw Indian and came to the Choctaw Nation with the Choctaws from the State of Georgia in 1833. As the Choctaw Indian immigrants to which she refers did not come from Georgia in 1833, but from the State of Mississippi where they existed as a tribe from the time of Hernando De Soto's finding them in Mississippi several hundred years ago, until they emigrated to the Indian Territory in 1832 or 1833, the accuracy of her knowledge as to her pedigree and blood is

easily seen not to be at all reliable. And other evidence puts her grandfather in Arkansas in 1848.

To sum up, there is no cpmpetent or reliable evidence in this case to show that these applicants are of Choctaw Indian blood, and there is much in the facts and circumstances before us which leads me to believe it a false and fraudulent claim.

I do not ~~ex~~ care to indulge in any further condemnation of them or their efforts to obtain the property of the bona fide Choctaw Indians, by such evidence and such methods as they have employed, but I am of opinion, for the reasons stated, that they are not entitled to be declared citizens by blood or in any other way, of the Choctaw Nation, or to enrollment as such, or to any rights flowing therefrom, AND IT IS SO ORDERED.

(Signed) Henry S. Foote,
Associate Judge.

We concur:

(Signed) Spencer B. Adams,
Chief Judge.

(Signed) Walter L. Weaver,
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP
COURT, SITTING AT SOUTH McALESTER, IND-
IAN TERRITORY, MARCH TERM,
1 9 0 4.

D. B; VERNON, ET AL.,

vs. NO. 81.

CHOCTAW AND CHICKASAW NATIONS.

STATEMENT OF FACTS AND OPINION
BY ADAMS, CHIEF JUDGE.

On the 8th day of September, 1896, M. J. Vernon filed a petition with the Commission to the Five Civilized Tribes, in which she alleged that she and her eight children, to-wit: George W., T. E., L. T., R. E.L., F. M., M. A., L. H., and G. T. Vernon, were each entitled to be enrolled as Choctaw Indians; and she further avers in said petition that she is the widow of A. T. Vernon, who was a son of S. H: Vernon, a Choctaw Indian by blood.

D.B. Vernon also filed a petition with the Commission to the Five Civilized Tribes, on the 2nd day of September, 1896, in which he avers that his father, S. H. Vernon, was a Choctaw Indian by blood; and that the petitioner and each of his ten children, to-wit: J. H., C. T., J. A., A. P. S. F., J. W., Caswell B., Clyde B., I. L., and Ida Vernon are entitled to enrollment as such Choctaw Indians by blood.

J. F. Vernon also filed a petition with the Commission to the Five Civilized Tribes, in which he alleged that his father, R. H. Vernon, was a Choctaw Indian by blood, and so recognized by the proper authorities in the State of

Arkansas; and that the petitioner and his six xhildren, to-wit: M. A., W. J., W. B., Maud, Frank and Ammon, are each entitled to enrollment as such Choctaw Indians.

R. H. Vernon also, on the 4th day of September, 1896, filed a petition with the Commission to the Five Civilized Tribes, in which he alleged that his father S. H. Vernon was a Choctaw Indian by blood, and was duly recognized as such in the State of Tennessee; and avers that the petitioner and his three children, to-wit: Ella, Pearly and Mim, are each entitled to enrollment as such Choctaw Indians.

Bedford C. Vernon also filed a petition in which he averad that his father was a Choctaw Indian by blood, and duly recognized by the proper authorities in the State of Tennessee. This petitioner does not give the name of his father. He further alleges that he and his six children, to-wit: C. P., D. C., E. J., J. T., B. C., and S. H. Vernon, are each entitled to enrollment as such Choctaw Indians by blood.

S. W. Vernon also filed a petition with the Commission to the Five Civilized Tribes, in which he alleged that his father was a Choctaw Indian, and that he, the petitioner, is entitled to enrollment as such.

What the judgment of the Commission was is not disclosed by the record.

This case was heard in the United States Court for the Central District of the Indian Territory, sitting at South McAlester, on the 26th day of August, 1896, at which time and place a judgment was rendered by said Court, in which it is declared that D. B. Vernon, John H: Vernon, Charley T. Vernon, Lucy Vernon, Amy Vernon, Pearl Vernon, Sophia F. Vernon, Jim W. Vernon, Caswell B. Vernon, Clydie B.

Vernon, Ivey L. Vernon, Ida Vernon, M. J. Vernon, George W. Vernon, Theodosha E. Vernon, Louisa T. Vernon, Robert E. L. Vernon, Francis M. Vernon, Manda A. Vernon, Samuel H. Vernon and Gracie T. Vernon, are all citizens by blood of the Choctaw Nation, except M. J. Vernon, who is a citizen by inter-marriage, etc.

After the decision of this Court in the case of Choctaw and Chickasaw Nations vs. J. T. Riddle, et al., known as the "Test Suit", Emma J. Carslile, nee Vernon, Charles P. Vernon, David G. Vernon, James Frank Vernon, Mary E. Vernon, for her husband Brand C. Vernon, deceased, Annie Pearl Morgan, nee Vernon, Callie B. Morgan, Bessie B. Morgan, Charley A. Morgan and James C. Morgan, a part of those who were named in the decree of the United States Court for the Central District of the Indian Territory, appealed their case to this Court, where, on December 3, 1903, the case came on regularly to be heard, after having been continued to that date for the plaintiffs, when the following proceedings were had:

Plaintiffs first introduced as a witness John Mc Daniel, who says he is 56 years of age, and has been living in the Chickasaw nation for the past five years; went there from the Choctaw nation where he lived about eight years; that he is the husband of Sarah, whose maiden name was Vernon, who is one of the applicants in this case; that his wife's father's name was Sam Vernon, and Sam Vernon's fathers name was Ples Vernon; that they both lived in the State of Tennessee; that Sam Vernon died in the State of Arkansas. Witness says that he has heard Ples Vernon say he was an Indian, but does not know where he was born; that

he never heard Sam Vernon say anything about being an Indian.

On cross examination witness says that he first knew the Vernon family in Washington county, Arkansas, about 1870; that he did not know them prior to that time, when he married into the family, which was in the fall of 1870; that he lived in Arkansas with his family for a year, then moved into the Territory, then went back to Arkansas and remained a Winter and Spring and the next Fall came back and went to Texas, where he bought forty acres of land in Brown county; that he remained in Texas until he came back to the Territory about five years ago, to live. Witness says he did not come to the Territory until he was admitted to citizenship by Judge Clayton.

D. B. Vernon is then introduced as a witness for plaintiffs and says he is 53 years old; that his father's name was Sam Vernon and his mother's name was Elizabeth; that his wife's name is Margaret and that she is a white woman. Witness says that his father, Sam Vernon, belonged to the Choctaw tribe of Indians; that he thinks his father died in 1873; that he never saw his grandfather, Pleasant Vernon. Witness says that he was born in the State of Arkansas. Witness says that he has heard his father, Sam Vernon, talk about his Indian blood in a way, that he was of the Indian tribe; and this is all the information witness has on the subject. Witness says that he passed through the Territory in 1873, moving from Arkansas to Texas; that he rented land in Texas, voted there and his children attended school there.

On cross examination witness says he claims to derive his Indian blood from his father; that his father was either born in Mississippi or Tennessee; that his father lived in Tennessee and may have lived

he never heard Sam Vernon say anything about being an Indian.

On cross examination witness says that he first knew the Vernon family in Washington county, Arkansas, about 1870; that he did not know them prior to that time, when he married into the family, which was in the fall of 1870; that he lived in Arkansas with his family for a year, then moved into the Territory, then went back to Arkansas and remained a Winter and Spring and the next Fall came back and went to Texas, where he bought forty acres of land in Brown county; that he remained in Texas until he came back to the Territory about five years ago, to live. Witness says he did not come to the Territory until he was admitted to citizenship by Judge Clayton.

D. B. Vernon is then introduced as a witness for plaintiffs and says he is 53 years old; that his father's name was Sam Vernon and his mother's name was Elizabeth; that his wife's name is Margaret and that she is a white woman. Witness says that his father, Sam Vernon, belonged to the Choctaw tribe of Indians; that he thinks his father died in 1873; that he never saw his grandfather, Pleasant Vernon. Witness says that he was born in the State of Arkansas. Witness says that he has heard his father, Sam Vernon, talk about his Indian blood in a way, that he was of the Indian tribe; and this is all the information witness has on the subject. Witness says that he passed through the Territory in 1873, moving from Arkansas to Texas; that he rented land in Texas, voted there and his children attended school there.

On cross examination witness says he claims to derive his Indian blood from his father; that his father was either born in Mississippi or Tennessee; that his father lived in Tennessee and may have lived

in North Carolina; that he, witness, was born in 1851; thinks his father was born in 1817.

There are many discrepencies in this testimony as well as conflicting statements in the ex parte affidavits filed by these applicants; and after a careful consideration of all the evidence in this case, it will be seen that there is not competent evidence sufficient to satisfy this Court that these plaintiffs, or any of them, are Choctaw Indians.

They seem to have vacillated between the State of Arkansas and the State of Texas; and, finally, when it is apparent to everyone that a distribution of the property belonging to the Choctaw and Chickasaw tribes of Indians is about to take place; and that Choctaw or Chickasaw citizenship means something more than a right to be tried in the Indian courts, and thirty nine lashes applied to the bare back for an infringement of the Choctaw laws, they landed in the Indian Territory, some of them, as the evidence shows, failing to come here until their rights had been established by the United States Court for the Central District of the Indian Territory.

I am of the opinion that none of the applicants have shown by competent testimony that they are Choctaw Indians, or any other kind of Indians. A judgment will, therefore, be entered by this Court denying the application of plaintiffs for citizenship or enrollment as Choctaw Indians.

(Signed) Spencer B. Adams,
Chief Judge

We concur:

(Signed) Walter L. Weaver,
Associate Judge.

(Signed) Henry S. Foote,
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP
COURT, SITTING AT SOUTH McALESTER, IND-
IAN TERRITORY, MARCH TERM,
1 9 0 4.

HIRAM LANCASTER, ET AL.,

VS. NO. 82.

CHOCTAW AND CHICKASAW NATIONS.

STATEMENT OF FACTS AND OPINION,
BY ADAMS, CHIEF JUDGE.

The record in this case discloses the following facts:

On August 10, 1896, Hiram Lancaster, acting for himself and for his wife Margaret, and his five children, to-wit: Robert Ball Lancaster, Mary Willie Lancaster, Knox Reid Lancaster, Harry Lancaster and Russ Lancaster, filed a petition with the Commission to the Five Civilized Tribes, alleging that he and his children are Choctaw Indians by blood, and as such entitled to citizenship and enrollment; and that his wife Margaret is entitled to citizenship and enrollment as a Choctaw Indian by intermarriage.

On the 8th day of December, 1896, the Commission to the Five Civilized Tribes acted upon the petition of plaintiffs and denied the same. The plaintiffs then took an appeal to the United States Court for the Central District of the Indian Territory, and on the 24th day of August, 1897, the case came on to be heard in said Court, when and where said Court rendered its judgment, adjudging that Hiram Lancaster, Robert Baw Lancaster, (Robert Ball Lancaster

in petition filed before Commission to Five Civilized Tribes), Mary Willie Lancaster, Knox Reed Lancaster, (Knox Reid Lancaster in petition filed before Commission to Five Civilized Tribes), Harry Lancaster and Russ Lancaster, were Choctaw Indians by blood, and as such entitled to citizenship and enrollment; and that Margaret Lancaster, the wife of the said Hiram Lancaster, was entitled to enrollment as a member of the Choctaw Tribe of Indians by inter-marriage.

After the judgment of this Court in the case of "Choctaw and Chickasaw Nations vs., J. T. Riddle, et al., had declared the judgment in this case as well as in all similar cases void, the plaintiff, Hiram Lancaster, for himself and the other plaintiffs, filed a petition in this Court, praying an appeal hereto, which was granted in accordance with section 31 of an Act of Congress, approved July 1, 1902.

At the November term, 1903, of this Court, this case came on regularly to be heard. After the plaintiffs had offered the record in evidence the principal applicant, Hiram Lancaster, was introduced as a witness in his own behalf, and says that he is 48 years old and resides at Lehigh, Choctaw nation, Indian Territory, and has resided there about 14 years; that he has lived in the Indian Territory about 20 years or more; that he was born in Choctaw county, Mississippi; that his father's name was Hiram Lancaster; that his mother's maiden name was Sarah Lee; that his grandfather's name was Tom Lancaster and his grandmother's name was Mima Leflore; that he was always told that the father of Mima Leflore was Michael Leflore, a prominent Indian.

William C. Thompson is then introduced as a witness

for plaintiffs, and says he lives at Marlow, Chocaaw nation, Indian Territory; that he is 65 years of age; that he has resided in the Indian Territory since November, 1887; that he was born at Ft. Towson, in the Choctaw nation, and carried to Mississippi and raised there with his grandfather in Simpson County, and a portion of the time in Smith county with an uncle; that he knows the plaintiff Hiram Lancaster, and also knew his father and mother; that his father's name was Hiram Lancaster, and his mother's name was Sarah; that Sarah was a daughter of Jim Lee, and as well as witness can remember Lee was part Choctaw, but he is not certain about this; that he has heard that the mother of Hiram Lancaster, father of applicant Hiram Lancaster, was named Leflore, and was a daughter of Michael Leflore; that he has heard that Hiram Lancaster was an Indian; that he was at Hiram Lancaster's house twice, the first time in 1863 and the last time in 1871; that the first time he was there the plaintiff, Hiram Lancaster, was there and was a little boy, and that when he went back in 1871 Hiram was still there and had grown up to be a man; that he did not see Hiram any more until he came to the Territory.

James R. Rodgers, a witness for plaintiffs, is then introduced and says he is 72 years of age and resides at Marlow, Indian Territory; that he was born in Simpson county, Mississippi, and reared principally in Rankin county, Mississippi; that he was in College at Oxford, Mississippi, in '52 or '53 with a young man named Hiram Lancaster; that he thinks Lancaster was from Choctaw county; that he was spare built, had dark hair and eyes and looked very much like the plaintiff in this case; that he supposed Lancaster to be part Indian; that Lancaster left college in '52 or

'54; that Lancaster claimed to be a grand son of Michael Leflore.

Joe Freeman is then introduced as a witness for plaintiffs and says he is a colored man 80 years of age; that he was brought to the Indian Territory with his master when quite young; that before they left Mississippi they lived about four miles east of Holly Springs; that he knew Michael Leflore back in Mississippi, and that he showed Indian a good deal; that Michael Leflore had several children, but that witness was only acquainted with one; that her name was Mima; that he did know who she married but has forgotten; that they always called Michael Leflore a Choctaw Indian; that he spoke the Choctaw language, and was a Choctaw chief and lived near Holly Springs, Mississippi.

(This witness appears to have been a witness in several ~~xxxxxx~~ of these citizenship cases in this Court).

Jesse Kemp is then introduced as a witness for plaintiff and says he is 85 years of age; that he is a colored man and was born in Mississippi a slave and brought to this country with the first emigration of Indians; that he knew a man named Michael Leflore back in Mississippi; that Michael Leflore had sven or eight children; that he had one daughter named Mima; dosen't know whether she was married or not. Witness says that Michael Leflore went for a Choctaw back in Mississippi; that he lived south of old Pontotoc town.

On cross examination this witness says that Mima Leflore married Tom Lancaster.

In the record introduced by the plaintiffs is found an affidavit of Hiram Lancaster, the principal applicant in this case, dated July 14, 1897, in which the said Lancaster says:

"My great grandfather's name was Michael Leflore, who was about three-quarter Choctaw Indian; he was born and raised in Mississippi, where he died. I don't know whether his wife was an Indian or not; he was married and by that marriage one child was born, Mima Leflore, who married Thomas Lancaster, who was a three-quarter Choctaw Indian."

It will be noted, that while this witness says his great grandfather, Michael Leflore, had only one child, the witnesses Joe Freeman and Jesse Kemp, in their testimony before this Court, says he had several.

The defendants then introduced as a witness Charles E. Leflore, who resides at Limestone Gap, Choctaw nation, Indian Territory, and who says he is 62 years of age; that his father's name was Forbus Leflore, and that his grandfather's name was Louis Leflore, a Frenchman. Witness further says that there were two Frenchmen, Louis and Michael Leflore, who married into the Choctaw tribe of Indians in Mississippi, and that that was the origin of the Leflore family in Mississippi; that Louis Leflore had the following children: Greenwood Leflore, the old chief in Mississippi at the time the treaty was made; Benjamine, William, Jackson, Brazier and Forbus Leflore, witness' father; that Brazier Leflore was chief of this Choctaw nation; that Louis Leflore also had two daughters, one was the mother of old chief Harkins and the other was the mother of John W. and Hailey Wilson; that Michael Leflore had the following sons: Thompson Leflore, who was chief after they came to this Choctaw nation; Ward, Isaac and Mitchell Leflore; that Michael Leflore also had two daughters, one of them married a man named Smallwood, and Governor Smallwood of this Choctaw nation was her son; that Louis Leflore, witness's grandfather, had no descendants named Michael; that he had no daughter named Mima. Witness further says that at the time the "Net Proceeds" money was paid his father was origi-

nally attorney in the case, but died and the case was trumed over to this witness; that the Commission, (Net Proceeds Commissi on), appointed witnessx to look up the members of the Michael Leflore family; that witness thinks this was in 1888; that the claim had to be established in the Choctaw Court of Claims, and that the money was paid to the heirs of Michael Leflore; that witness secured the family tree of Michael Leflore's descendants and in that way found all the heirs of the family. Witness further says that Michael Leflore, who was a son of old Michael Leflore, lived here in the Choctaw nation. Witness further says he never knew the plaintiff, Hiram Lancaster, until a short time ago; that the plaintiff never applied for any of the Net Proceeds money, and never tried to establish his kinship in any way in that proceeding.

The plaintiff, Hiram Lancaster, claims to be a great grandson of a man named Louis Leflore. That his great grandfather's name was Louis Leflore I think the evidence established, but as to whether or not his great grandfather wasa Choctaw Indian is another question. It is a well known fact that there was a prominent family of Choctaw Indians in the State of Mississippi by the name of Leflore, many of them emigrating to this country, and are now among the most prominent Indians in the Choctaw Nation; and that there was a Michael Leflore, who was a Frenchman and married a Choctaw Indian woman, the evidence is abundant.

Charles Leflore, whose evidence is noted above, and who seems to be a manwell informed, and a man who has taken considerable pride in keeping up the history of his ancestors, and who had occasion about the year 1888to ascertain definitely all the descendants of Michael Leflore, says that

that the said Michael Leflore had no descendants named Mima.

The applicants may be Indians, but it does seem that they might have been able to procure competant evidence to establish that fact, if such is the case, for they have been given ample opportunity to do so by this Court.

The oral evidence taken in this Court consists of sixty-five closely typewritten pages, besides the record evidence, and I have carefully gone over it all and find no competent evidence upon which to base a conclusion that the applicants, or any of them, are Choctaw Indians, and am, therefore of the opinion that the application should be denied.

A judgment will be entered by this Court in accordance with this opinion.

(Signed) Spencer B. Adams,
Chief Judge.

We concur:

(Signed) Walter L. Weaver,
Associate Judge.

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

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

1 9 0 4.

JOANNA HORNE, ET AL.,

VS. No.83.

CHOCTAW AND CHICKASAW NATIONS.

STATEMENT OF FACTS AND OPINION

BY ADAMS, CHIEF JUDGE.

On the 11th day of AAugust 1896, E. J. Horne, for himself and for his wife, Joan Horne, and for his seven children, to-wit: Icy D. O. Horne, Victoria D. Horne, James O. Horne, Chas. S. Horne, Commie E. Horne, Mary E. Horne and Sarah E. Horne, filed a petition with the Commission to the Five Civilized Tribes, in which he alleged that he and his children were Choctaw Indians by blood, and as such entitled to citizenship and enrollment; and that his wife Joan Horne was entitled to citizenship and enrollment as an intermarried Choctaw Indian.

On the 9th day of September, 1896, the Commission to the Five Civilized Tribes passed upon the application of plaintiffs and denied the same. From this finding of the Commission the plaintiffs appealed their case to the United States Court for the Central District of the Indian Territory, where, on the 24th day of August, 1897, the same came on to be heard;

and on that date said Court rendered its judgment therein, finding as a fact that the plaintiffs, E. J. Horne, Joan Horne, Icy D. O. Horne, Victoria D. Horne, James O. Horne, Chas.S. Horne, Commie E. Horne, Mary E. Horne and Sarah E. Horne, are descendants of a member by blood of the Choctaw nation and are entitled to be placed upon the roll as members by blood of the Choctaw tribe of Indians. This judgment further orders the Commission to the Five Civilized Tribes to place these persons, named as above, on the roll as Choctaw Indians by blood.

After the decision of this Court in the case of Choctaw and Chickasaw nations vs. J. T. Riddle, et al., known as the "Test Suit", instituted under and provided for by section 31 of an Act of Congress approved July 1, 1902, plaintiffs Joanna Horne, Edward J. Horne, James O. Horne, Charles S. Horne, Commie E. Horne, Mary E. Horne, Sarah E. Horne, Joellen Horne, Jewel Horne, Icy D. C. Davis, (nee Horne), J. P. Davis, Victoria D. Pyle, (nee Horne), Cecil Smith Pyle, Thelma Horne Pyle, filed a petition in this Court, asking that their cause be transferred from the United States Court for the Central District of the Indian Territory to this Court for adjudication. This petition was granted by this Court; and after both nations were served with process notifying them of the institution of this proceeding, the case was set on the calendar of this Court for hearing, and to be heard on the 18th day of November, 1903. On that date the plaintiffs filed an affidavit asking for a continuance of the cause for the reason that the principal applicant had been sick and had not had an opportunity to prepare his case for trial. The case was continued until the 21st day of December, 1903; and on

this date came on for trial when the plaintiffs introduced the following witnesses:

Edward S. Horne, a white man, seventy-six years of age, born on the 5th day of April, 1827, in Giles County, State of Tennessee. Witness says that he remained at the place of his birth until the latter part of 1844, when he moved to Kemper county, Mississippi, where he married Mary A. Logan, on the 25th of October, 1849; that Mary A. Logan, his wife, was a daughter of David Logan; that David Logan lived two and a half or three miles from DeKalb, the county seat of Kemper county, Mississippi; that he does not know of his own knowledge what race of people David Logan belonged to, but heard that he was a Choctaw Indian; that David Logan lived on the edge of a village where Indians lived; that he does not now remember the name of the wife of David Logan, his wife's mother, but says that she was a white woman; that he does not know how much Indian blood David Logan possessed; that his appearance showed he had Indian blood; that he has often heard Logan boast of his Indian blood. Witness says he was married on Thursday and about Monday or Tuesday following David Logan and his family started west to the Indian Territory and stopped in the State of Arkansas; that Logan told witness that he was coming to the Territory where his people were, and tried to get witness to come also; that he told witness the land was held in common here and witness would have a home, but witness did not want to come. Witness says that he afterwards saw David Logan and his family in Drew county, Arkansas. Witness says that David Logan had five children, and that witnesses wife was the oldest; that Logan had only one boy, who was a young child two or three years old when

Logan left Mississippi in 1849. Witness says he knew the family of David Logan about ine year before he married. Witness further says that he lived twelve or fourteen miles from the Alabama line and was a wagon maker; that he remained there in Kemper county, Mississippi until 1855 and then moved to the State of Arkansas. Witness says E. J. Horne is his son by his marriage with Mary A. Logan; that E. J. Horne came to the Territory ten or twelve years ago; that his mother died the 6th day of August, 1860, in the State of Texas; that David Logan and his wife died in Drew county, Arkansas; that witness does not know the date of their death; that witness does not know what became of the other children of David Logan; that witness moved from Arkansas to Texas; that E. J. Horne was born in 1854 in Kemper county, Mississippi. Witness says that he has now living three children born by his marriage with Mary A. Logan, to-wit, James Franklin, Cynthia Antonio and Edward; that James Franklin is the oldest and lives in Oklahoma Territory. Witness says that he would guess that David Logan was about a half breed; that he could speak the Choctaw language, had very coarse and very black beard, black eyes and prominent cheek bones and kinder dark skin; that Logan could also speak English well.

On cross examination witness says that he had never seen any of Logan's family until he went to Mississippi in 1844; that he does not know how long they had lived in Mississippi prior to that time. Witness then says he is mistaken as to when he first got acquainted with the Logan family; that he went to Mississippi in 1844, and in 1847 went to the Mexican War, and in the latter part of 1848 was mustered out and went back to Kemper county, Mississippi, and in the latter

part of that year or in the early part of 1849 he became acquainted with the Logan family for the first time. Witness further says that in 1844 he stopped on the creek where the Logan family lived, which was about two and a half or three miles from the county seat, DeKalb, east; that after he left the army he came back to the same neighborhood in 1849, and married in about one year, either in 1849 or 1850; that he remained there until 1855, when he moved to Drew county, Arkansas; that he never lived nearer than twelve miles to the Logans in Mississippi. Witness further says that he had land in Mississippi and also in Arkansas; that Logan's four children were living in Arkansas the last he heard of them. Witness says that his daughter Cynthia is now living near Durant in the Choctaw nation; that she married a man named Smith; that she is not a party to this suit and has no citizenship claim pending; that his son James F., has no claim for Choctaw citizenship pending, and is a full brother of Edward; that they made some sort of claim but were not able to take an appeal to the courts.

John Lewis is the next witness introduced for the plaintiffs and says he is 88 years of age, and is a full blood Choctaw Indian, and spoke through an interpreter to this Court. Witness says he now resides in Blue county, Choctaw nation; that he came to this country from Mississippi at the time of the second emigration of Choctaws; that he knew a man in Mississippi named Logan, but did not know his first name, but supposed it was some kind of a white name; that Logan belonged to the Choctaws, some French; that he also knew Logan's wife; that she was "some little blood" Choctaw; that witness left Logan in Mississippi and never saw him any more; that Logan had black hair, was a pretty good size man

and a Choctaw; that Logan wore long hair and put silver rings on it; that Logan talked Choctaw with witness, and that lots of Choctaws lived where Logan did; that Logan was forty years old when witness left Mississippi.

On cross examination witness says that Logan's wife was a half breed Choctaw Indian and Logan nearly a full blood Choctaw Indian, and had just a little white blood.

E. J. Horne, the next witness for plaintiffs, says that he is 49 years old; that he is a son of Edward G. Horne; that his mother is now dead; thather name was Mary A. Horne; that witness was six years old when his mother died; that he was born in Kemper county, Mississippi and came to the Territory about 1892, and has resided since that time in Texas,(evidently meaning Indian Territory); that he was married the last day of July, 1879, in Hunt county, Texas, and has eight children by that marriage; that his wife's name is Joanna. Witness further says that his children which were born at that time were living with him in Blue county when application was made to the Dawes Commission in 1896, and that none of them were married at that time.

On cross examination witness says he was taken to Arkansas when quite small and then his father moved on to Texas; witness says he lived in Texas from that time on up to 1892; that he owned land in Texas, sent his children to school there, voted there and exercised all the rights and privileges of a citizen of the State of Texas while there. Witness says he cannot tell what degree of Indian blood he possesses, but would guess about one-eighth.

Upon the completion of this testimony plaintiffs filed an affidavit, asking the Court to allow plaintiffs to take testimony in this case in the State of Mississippi of certain witnesses who were too infirm to attend the sessions

of this Court. The Court granted the order, and on the 13th day of January, 1904, His Honor Judge Foote, one of the Associate Judges of this Court, went to the city of Jackson, State of Mississippi, and on that date and at said place the plaintiffs offerred the following witnesses:

Joe Jones, who says he is 94 years of age and is a Choctaw Indian, and resides in Kemper County, Mississippi, close to DeKalb; that he has resided there for 59 years; that he was born four or five miles from where he now lives; that his mother's name was Betsy Bigsby; that he knew Davis Logan; that Davis Logan lived at DeKalb, Kemper County, Mississippi; that witness lived two or three miles from there; that Davis Logan's mother was a Bigby, and was a half sister to witness' mother; that Davis Logan had five children. Witness is then asked by plaintiffs' attorney if Mary Logan was the daughter of Davis Logan, and the witness did not answer; witness says he does not know the names of the children of Davis Logan; that his oldest daughter married Horne; that Davis Logan's mother was a Choctaw; that Davis Logan lived in Kemper County for forty nine years and then went to Texas or somewhere; that Logan talked Choctaw and stayed with the Choctaws.

On cross examination witness says Davis Logan was forty years old when he first knew him; that Logan was born two or three miles from where witness was; that Davis Logan had four boys and two girls; that the girl was the oldest; that he knew Horne that Mary married and that Horne never lived in Kemper County, Mississippi; that Logan left Mississippi for Texas or somewhere else in the forties, he believes in '45; that Logan and Horne left there together; that Davis Logan was a full blood Indian, and that Logan's wife was a white woman. Witness then says that Davis Logan and his wife both

were full blood Indians, and that his daughter who married Horne was also a full blood Indian.

Simeon Lang is the next witness offerred for plaintiffs and says he is 76 years old, and resides in Kemper county, Mississippi; that he was taken there when a year old from South Carolina, where he was born. Witness says that he knew E. G. Horne; that Horne lived in Kemper county, Mississippi, near where witness lived; that Horne married Mary Logan, the daughter of Davis Logan, and left Kemper county and went west in 1848 or 1849. Witness says that he was present at the marriage of E. G. Horne to Mary Logan. Witness says that Davis Logan was older than himself; that he does not know whether Davis Logan had any Indian blood or not; that he does not know whether Logan's wife had any Indian blood or not; that he never heard Logan claim to be an Indian, or any one claim that Logan was an Indian.

This is a synopsis of all the oral testimony taken before this Court.

The plaintiffs offerred as evidence in this case the affidavit of Mary Ann Metcalf, taken on the 31st day of August, 1892. The purpose of the introduction of this affidavit I am unable to discover, as the affiant doesnot state in her affidavit that these plaintiffs or any of them are Indians, but simply states in an indefinite and general way that Davis Logan was a Choctaw Indian. The plaintiffs also offer in evidence an ex parte affidavit of Martha E. Gregory, taken on the 12th day of September, 1892. This affiant does not state that any of these applicants or their ancestors were Choctaw Indians. She does state however, in her affidavit, that she knew E. G. Horne and Mary Logan; that she was present at their marriage, and that Mary Logan was the daughter of Davis Logan; that Davis Logan and his wife moved to Kemper

county, Mississippi, from Perry county, Alabama, in 1846 or 1847.

The plaintiffs also introduce an exparte affidavit of Nancy W. Horne, who says she was present at the marriage of E. G. Horne and his wife. This affidavit is dated August 29, 1892.

But nowhere in these last two affidavits is it stated that these plaintiffs are Choctaw Indians, or that Davis Logan or his wife were Choctaw Indians.

It will be noted that E. G. Horne, the father of the principal plaintiff in this case, says he does not know of what race of people Davis Logan belonged to; that he heard he was a Choctaw Indian; that Logan had three girls and one boy, and that his wife, while he does not remember her name, was a white woman; while Joe Jones, a witness offerred by plaintiffs, says that the Davis Logan he knew had four boys and one girl. This witness Jones also says in his testimony that Davis Logan was a full blood Indian and that his wife was a white woman, and afterwards changes his testimony and says that Logan and his wife both were full blood Indians, and hence his children were full blood Indians. This same witness says that Logan was born in Kemper county, Mississippi, and resided there until he moved west, while Mrs . Gregory in her affidavit offerred to this Court as evidence by plaintiffs says that she was well acquainted with Logan and his wife, and that they moved from Perry County, Alabama, to Kemper County, Mississippi in 1846 or 1847. John Lewis, another witness offerred by plaintiffs, says in his testimony before this Court, that Logan had a white name and then says that he was Choctaw and French. Joe Jones also testified that E. G. Horne

never lived in Kemper county, Mississippi, and then says that Horne and Logan left Kemper county, Mississippi, for the west together; while E. G. Horne states in his testimony that he did live in Kemper county, Mississippi, and remained there for several years after Logan and his family departed for the west.

The plaintiffs applied to this Court to take the testimony in this case of D. D. Durant, near Durant, Indian Territory. This application was granted by the Court and his Honor Judge Weaver, one of the Associate Judges of this Court, went to Durant for the purpose of taking the testimony of the said D. D. Durant, and after arriving there the plaintiffs failed or refused to examine the said D. D. Durant in this cause; and we may assume that they have offerred all the testimony they desire to offer to establish their rights.

The plaintiff, E. G. Horne, claims that he is the son of Mary Horne, whose maiden name was Mary Logan; that she was a daughter of David or Davis Logan, a Choctaw Indian.

It will be seen that this evidence is so conflicting and so inconsistent as to render it insufficient to warrant this Court in finding as a fact that the plaintiffs, or any of them are Choctaw Indians; and I am, therefore, of the opinion that the application of the plaintiffs should be denied.

A judgment of this Court will be entered in accordance with this opinion.

(Signed) Spencer B. Adams
Chief Judge.

We concur:

(Signed) Walter L. Weaver
Associate Judge.

(Signed) H. S. Foote
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, April Term, 1904.

Polly Hill, et al.,

Appellants,

vs. No. 84.

Choctaw and Chickasaw Nations,

Appellees.

OPINION, by Foote, Associate Judge.

The petitioners on appeal here are Polly Hill, Monroe Hill, Julius Campbell, Laura Troutman and Belle Brown. They and others claim to be Choctaw Indians by blood in part and descendants of a man named Aguilla Farmer and his wife Polly Farmer, nee Nail, as their grand parents, and through their father Thomas Farmer also the husband of one of the original applicants here, Tempie Farmer.

The Commission to the Five Civilized Tribes denied the claim of all of the parties to the proceeding, on the 2nd of December, 1896, and on the 20th day of January, 1897, an appeal was taken by them to the United States Court for the Central District of the Indian Territory, where upon a trial de novo, some of the appellants there were declared citizens of the Choctaw Nation, and of those the present appellants were a part. The Judgment of the Court below having been set aside by the decision of this Court in the Riddle case or test suit as it is sometimes called, the present appellants took an appeal or trans fer to this Court of their cause under the Act of July 1, 1902.

The record before us contains a number of affidavits taken in 1896, before a Notary Public, ex parte, who was at that time also the attorney for the applicants. The great want of force which such affidavits should have from this cause alone, is readily to be perceived.

But besides this, Sam Perry, the poor old colored man who has so often been made use of, in bad faith as an affidavit maker in such cases, figures herein also in that capacity, and of course his statements can not be credited, and the applicants have necessarily to appear in a bad light as respects the truthfulness of their claim.

Again Jacob Folsom is brought before us as a witness, (he also made what purports to be an affidavit in this case to be used before the Commission to the Five Civilized Tribes, on the 22nd of August, 1896). In his statements here he repudiates the most important facts set forth in said affidavit, and says he never had knowledge of them or stated them. This, of course, is very discreditable to the appellants here, as another badge of fraud if not worse.

The ex parte affidavits, however, are incompetent as evidence, as also are what is called depositions, taken for that purpose and used before the United States Court below in this cause on appeal on a trial de novo.

There is no evidence except hearsay, and that mainly from interested witnesses, and of the most unsatisfactory description, appearing in the oral evidence before us, as to the blood of these people.

It appears that the father of Polly Hill, a man named Thomas Farmer, from her statement, lived at one time somewhere in the State of Mississippi, she kmows not exactly where; that many years ago he came to the Indian Territory and stayed

a short time and afterwards lived in Arkansas and Texas, when he died in 1875, or thereabouts. That after his death and her marriage she came to the Indian Territory and this case was gotten up, and through the affidavits above set forth, sought to be made effective, and was denied by the Commission to the Five Civilized Tribes, but admission as citizens was granted by the United States Court on said affidavits and what is called depositions, taken ex parte and from the same parties mainly as made the ex parte affidavits, without the presence of the attorneys for the Choctaw Nation and only that Nation being a party to the action.

I have commented sufficiently I think, on the character of the evidence offered, although much more could be said adversely to its merits, and the methods of its procurement. It is only necessary for me to say that, in my judgment, the case is utterly devoid of merit, and has been and is without any competent or sufficient proof to show these applicants have any Choctaw Indian blood in their veins.

They are, in my judgment, not entitled to be declared citizens of the Choctaw Nation by blood, or in any other way, or entitled to enrollment as such, or to any rights flowing therefrom, AND IT IS SO ORDERED.

(Signed) Henry S. Foote
Associate Judge.

We concur:

(Signed) Spencer B. Adams
Chief Judge.

(Signed) Walter L. Weaver
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.

Mattie E. Standley, et al.,

Appellants,

vs. No. 85.

Choctaw and Chickasaw Nations,

Appellees.

OPINION, by FOOTE, Associate Judge.

The appellants in this case are Clarence P. Standley and his brother Eugene Standley, their nephew George Washington Wheeler, and the cousins of the two first named persons, Nannie and Gertrude Standley. They claim from the same common ancestor, James Standley or Stanley.

The case was heard before the United States Court for the Central District of the Indian Territory under the style of Mattie E. Standley, et al., but only the rights of the parties above mentioned are involved here. A judgment was rendered in their favor by the Unites States Court for the Central District of the Indian Territory, on the 24th day of August, 1897, and the judgment therein rendered having been set aside, and declared null and void by this Court, in the test suit, as it is sometimes called, or the Riddle case, more properly perhaps.

The case now comes here under the provisions of the Act of July 1st, 1902.

Upon the question of the proper residence of all these parties in the Indian Territory, some of them from their

very birth, on the evidence here adduced before us, outside of the record coming here on appeal, and from witnesses both intelligent and reliable, there exists not the least doubt that they come up fully to the requirements of the treaties and the laws; that they are the descendants of a man having Choctaw Indian blood in his veins, viz., James Standley or Stanley, who died in Carroll County in the State of Mississippi many years ago, there is no doubt; and the only question left for discussion is whether or not James Standley or Stanley who appears on page 89 and 134 of Ward's Roll of Choctaw Indians, in volume 7 of the American State papers was one and the same man who took land under the 14th article of the treaty of 1830.

I have examined these pages of that book with great care and considered what is there shown in connection with the oral evidence before us, and have not the least doubt that the James Standley or Stanly there mentioned, is the ancestor of these claimants, and that he, as appears on both these pages, took as a Mississippi Choctaw under the Fourteenth Article of the treaty of 1830, 640 acres of land in the Yazoo Valley, Mississippi, in a part of what used to be old Carroll County, Mississippi, in the old North Western District of the Choctaw Nation, over which Greenwood Leflore, in 1831, at the time this enrollment of Ward's was made, was Chief. It also appears by the deposition of James Standley, on the 25th day of November, 1834, on pages 51 and 52 in the printed record of case No. 12742 in the Court of claims, Choctaw Nation vs. the United States, that he registered as a 14th article Choctaw.

I am, therefore of the opinion that all the parties named in the petition for appeal here were, at the time they filed their application to the Commission to the Five Civil-

ized Tribes, entitled to enrollment as Choctaw Indians by blood, and Eugene Standley having died since the 25th day of September, A. D. 1902, under the treaty of July 1, 1902, his name should be enrolled as such Indian, so that his heirs can take under the provisions of that treaty, to be found in section 22 thereof, and all the other parties appellant are entitled to be declared citizens by blood of the Choctaw Nation and to enrollment as such, and to all the rights and privileges that flow 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.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT, SITTING AT SOUTH McALESTER, INDIAN TERRITORY, MARCH TERM, 1 9 0 4.

Eliza A. Alexander, et al.,

vs. No. 86.

Choctaw and Chickasaw Nations.

STATEMENT OF FACTS AND OPINION BY ADAMS, CHIEF JUDGE.

On the 3rd day of September, 1898, a judgment was rendered by the United States Court for the Central District of the Indian Territory, admitting to citizenship and enrollment as Choctaw Indians the following persons: Eliza A. Alexander and her children, to-wit, Willie May, Charles, John Edgar, James Menus and Henry Alexander; Mrs. M. C. Bryant and her children, to-wit, John T., David C., Walter S., and Fannie Lee, upon an appeal from the findings of the Commission to the Five Civilized Tribes.

After the decision of this Court in the case of "Choctaw and Chickasaw Nations vs. J. T. Riddle, et al.," declaring said judgment void for certain irregularities therein pointed out, the following persons, to-wit: Eliza A. Alexander, Willie May Deck (nee Alexander) Charles Alexander, John Edgar Alexander, James Menus Alexander, Henry Alexander, George Dewey Alexander, Mable Alexander, M. C. Hardin, John T. Bryant, David C. Bryant, Walter S. Bryant, Fannie Lee Bryant, Myrtle L. Bryant, Gerald W. Bryant and Avalee Bryant, filed a petition in this Court in apt time

asking that their case be transferred from the United States Court for the Central District of the Indian Territory to this Court for adjudication.

The plaintiffs offerred no evidence whatever in this case, but tgrough their attorney, J. G. Ralls, asked that the evidence in No. 4, entitled Ola May McPherren vs. Choctaw and Chickasaw Nations, be considered in this case, which is done, as the plaintiffs here and the plaintiff there claim to derive their Indian blood from the same common ancestor.

Plaintiffs offerred in evidence several affidavits and depositions taken without notice to both nations, said affidavits and depositions beihg used in the United States Court for the Central District of the Indian Territory upon a trial of this cause de novo; and refused to submit further testimony. Among the affidavits and depositions offerred there is an ex parte affidavit of James Franks, the said Franks making his mark thereto, and is supposed to have been sworn to before E. F. Chester, a Notary Public in Fannin county, Texas, in which the said Franks says that he knew Tobithia Powers, who was a Choctaw Indian by blood, and was the daughter of Bill Dyer, a full blood Choctaw Indian who lived in Mississippi; that Tobithia Powers, nee Dyer, had eight children, to-wit: Eliza A. Alexander, M. C. Bryant, Maggie Slayton, Fannie Adams, Martha Cash, Ellen Short, Hattie Shipley, whose maiden name was Powers, and J. T. Powers; that he knows Eliza Alexander to be the daughter of Tobithia Powers. The plaintiffs also introduce, and ask that the same be considered as evidence, the deposition of the principal applicant in this case, signed by her and sworn

to before J. C. Reedep, a Notary Public, on the 10th day of July 1897, and used before the United States Court for the Central District of the Indian Territory. In this deposition plaintiff Eliza Alexander says that she is a descendant of William or Bill Dyer, who was a full blood Choctaw Indian and whose family lived in Mississippi; that Tobithia Dyer, who was a daughter of Bill Dyer, was her mother, and married a man by the name of David Powers; that Tobithia, her mother, had eight living children, and then names them. Witness further says that she married a man by the name of James Alexander in 1882; that she has lived in the Indian Territory for eleven years, and has always held land here and holds land here now as a Choctaw Indian; that she sent her children to the Choctaw schools and their tuitition was paid by the Choctaw Nation; that her citizenship in the Choctaw Nation has never been denied by the Choctaws; that she filed her claim before the Choctaw council for citizenship but that the council did not act upon it, etc.

After the introduction of this testimony and the refusal of plaintiff's attorneys to introduce further evidence, the defendants introduced as a witness James Franks, who says he now lives in Ellis county, Texas; that he is 63 years old; that he formerly lived in Tennessee, where he lived until 12 years ago; that he was born and raised in McMinn county, Tennessee; that he removed from there to Fannin county, Texas, where he remained for a year and then moved to the Territ ory where he lived for about two years and then moved back to Texas, Ellis county; that when he lived in the State of Tennessee he knew a woman by the name of Powers

who was the wife of David Powers and the mother of the principal applicant in this case, Eliza A. Alexander; that she lived in McMinn county; that he knew her from the time she was a little girl until 12 years ago; that she is now living in the State of Tennessee; that she had several children, among them besides Eliza A. Alexander, Harriet,and Caroline Bryant, that she had a son named John Powers. Witness is then shown the affidavit above referred to, purporting to have been made by this witness, and repudiates the statements made in said affidavit. Witness says that Caroline Bryant, who is a sister of Eliza A. Alexander and whose name appears in the judgment of the United States Court for the Central District of the Indian Territory, (having been admitted to citizenship and enrollment as a Choctaw Indian), came to witness' house and asked witness if he knew old Bill Dyer, and witness said "no", but he did know old James Dyer, whereupon Mrs. Bryant said to witness, "that don't make any difference", and asked witness if he did not remember that Dyer was her grandfather and witness told her he did not; that he was there all his life and never heard anything of it; that Mrs. Bryant then said to witness "you just make an affidavit that you know James Dyer, it don't make any difference about Bill". Witness then says that after that a man named Chester came to his house with an affidavit and tried to get witness to say it was Bill Dyer, but witness told him "no", it was Jim". Witness says he never heard of man by the name of Bill Dyer, but he did know a man back in Tennessee named Jim Dyer for many years; that Jim Dyer was the only Dyer who lived in

that county and witness never heard that he was a Choctaw Indian. Witness says that she cannot read or write but makes his mark, and that he did not make the affidavit offerred by plaintiffs. Witness further says that he knew Eliza A. Alexander and Mrs. Bryant back in Tennessee, and if they are related to Jim Dyer witness doesn't know it and never heard that they had any Indian blood. Witness further says that John Powers, a brother of Mrs. Eliza Alexander and of Mrs. Bryant, lived near him in Texas, and that Powers told witness that he had some people up in the Territory who were trying to get rights and that they wanted him to come also, but that he did not have any Indian blood in him.

Mrs. L. M. Franks is then introduced as a witness for the nations, and says she knew these people back in Tennessee and they did not claim to be Indians; that she also knew Jim Dyer in Tennessee and never heard of him being an Indian.

William H. Ball is then introduced as a witness for the nations and says that he resides at Wapanucka, Indian Territory; that he has lived in the Indian Territory for a little over twenty years. Witness says that he was principally raised in McMinn county, Tennessee, but when he came to this country he came from Macon county, Tennessee. Witness says while in Tennessee he was well acquainted with David Powers; that he was a merchant; that he never heard David Powers or any of his people claim to be Indians. Witness further says that he knew a man in Tennessee by the name of Jim Dyer; that he was raised in about two miles of Dyer; that if James Dyer was in any way related to these applicants or to David Powers, he does not know it.

On January 7, 1904, the case having been continued until that date, the defendants introduced Mrs. Eliza A. Alexander, who is the principal applicant in this case. The witness is examined as to her deposition which is referred to heretofore, and after being cross examined as to her statements in said deposition, witness says that she though she was correct at the time she made the deposition; that she married in the State of Tennessee at about the age of seventeen. Witnrss further says that a short time ago her brother-in-law wrote her, and that she has learned from other members of the family, that her grandfather was not named Dyer, as stated in her deposit ion, but that her grandfather was named Howsley, and that was her mother's maiden name. That the reason witness had not been to tell the Court about it was that she had been sick; and says that this is all the explanation she cares to make. Witness says that she formerly claimed her Indian blood from a man named Dyer, but she has since becnme convinced that she was mistaken about it and that Dyer was not her grandfather. Witness now says that she does not know whether she has any Indian blood or not.

Witness further says that she does not know, without an investigation, whether she desires to prosecute her case further or not, whereupon the Court suggests to witness that she had better notify her attorneys of the discrepancies in the testimony, and of the information she had recently received with reference to her ancestry, assuring her that ample time would be given her to present such facts as she desired to the Court in support of her contentions, or in

explanation of these discrepancies. The case remained open for quite a while for this purpose, and nothing has since been heard from the plaintiffs or their attorneys with reference to this matter.

There is no evidence which tends to show that these applicants or any of them are Indians, but on the other hand the evidence shows that they are white people; that their ancestors lived in the State of Tennessee, that their mother, through whom they claim to derive their Indian blood, is still living there, and repudiates the statement that she or her children have any Indian blood. The allegation of these people that they are Choctaw Indians, in the light of this testimony, is remarkable to say the least of it. Their attorneys seem to have abandoned the case entirely when these facts were developed. The application of these plaintiffs, and the subsequent testimony of some of them at least, in support of their application, shows a ruthless disregard of the rights of others, and a morbid desire on the part of some one who has fostered and engendered the application of these people, to get upon the rolls of the Choctaw and Chickasaw nations, and thereby participate in the distribution of the property belonging to these two tribes without any meritorious foundation whatever, and presents a sad spectacle.

A judgment will be entered by this Court dis missing this appeal, etc.

(Signed) Spencer B. Adams
Chief Judge.

We concur:

(Signed) Walter L. Weaver
Associate Judge.

(Signed) H. S. Foote
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

Louis Hill, et al.,

vs. No. 87.

Choctaw and Chickasaw Nations.

Transferred to the Tishomingo Docket, where it appears as No. 132.

In the Choctaw and Chickasaw Citizenship Court.

Noah W. Cooper, et al.,

Plaintiffs,

vs. No. 88.

The Choctaw and Chickasaw Nations,
Defendants.

J. G. Ralls, for Plaintiffs.

Mansfield, McMurray & Cornish, for Defendants.

O P I N I O N.

Weaver J.

This case comes into this Court on appeal from the United States District Court for the Central District of the Indian Territory.

Noah W. Cooper, is the principal claimant in this cause, the others joined with him and claiming through him, by descent or intermarriage.

The testimony in the case is to the effect that said Noah W. Cooper was born in North Carolina in the year 1836, and lived there until he was twenty-two years of age. From there he moved to Arkansas, where he lived until about the year 1891. He then went to Texas, in 1891-92-or 93, and lived there until 1895 when he says he came to the Chickasaw & Comanche country until in 1896 when he came within the limits of the Choctaw Nation. He testified that "I stop down here at Durant now, but really my home is in Arkansas." His father's name was Caswell Cooper. He claims his Indian blood through his father, or as he states it, "Through my father's parents." His grandfather's name was Kimble Cooper, and his great grandfather was Isaac Cooper who inintermarried with Rachael Stokes. His great-great grandfather

came from England about 1785, and was by birth an Englishman.

It is apparent therefore, that the claimant's alleged Choctaw Indian blood must have been derived by the intermarriage of some one of his ancestors with a woman of that race and tribe. Which ancestor was it who thus married? There is no proof that it was the one who came from England in 1735. There is no evidence offered concerning his wife. The next descendant in the direct line was Isaac Cooper, great-grandfather of plaintiff, who married Rachael Stokes, and was born somewhere about 1750 or 1760, and Rachael Stokes was born only one year later. Plaintiff says that "all this", meaning the birth and marriage of Isaac and Rachael, "occurred in the Choctaw Nation in North Carolina", where they continued to live until General Jackson moved them away from North Carolina to Perry County, Tennessee, where they both died". Witness states that the place of their residence in Tennessee was near the Alabama line.

The next descendant, who was the plaintiff's grandfather, was Kimble Cooper, and was born in North Carolina before his father and mother (Isaac and Rachael) removed from there to Tennessee. After living in Tennessee for a time he returned to North Carolina and married there. His son, Caswell Cooper, the father the of the plaintiff was born in North Carolina, and raised a family of children there, among whom was the plaintiff, Noah W. Cooper, who was born in 1836, and remained in North Carolina until 1859, when he moved to Arkansas.

This witness further stated that his great-grandmother, Rachel Stokes, was reputed to be a Choctaw Indian woman.

No oral testimony was offered except that of Noah

Wooper, an outline of which I have already given. Plaintiffs also offered the affidavits of J. M. Reap and Henry Cooper, taken in Stanley County, North Carolina, in 1894.

Waiving all questions of the competency of said affidavits as evidence in this cause at this time, it is sufficient to say that they do nothing more than to set forth the pedigree of the plaintiffs as testified to by Noah W. Cooper. Plaintiffs also offered the affidavit of Hiram E. Livingston in evidence. This affidavit was taken at Comanche, Indian Territory, in 1895.

Again, waiving all questions as to its competency, I will say that said affidavit does not even tend to show that the plaintiffs are in any degree related to the people by the name of Cooper whom said affiant testifies to as having known as Choctaw Indian in the State of Tennessee. In fact, when I compare the statements in said affidavit with the testimony of Noah W. Cooper, as orally given in this Court, I find such irreconcilable differences as to take away any force and effect that it might otherwise have.

The deposition of Sam Perry taken during the pending of this proceeding before the United States District Court for the Central District of the Indian Territory was offered in evidence. The said Sam Perry is still living, in vigorous health, and within the jurisdiction of this Court. For this, if for no other reason, the said deposition would be incompetent as evidence in this cause at this time.

The evidence of Noah W. Cooper, shows that none of the plaintiffs, save himself, live in the Choctaw or Chickasaw Nations. None of them save himself, ~~efer~~ ever did live here, (and he claims his real home is in Arkansas.), or claimed affiliations with the Choctaw Indians. There is no evidence, even of the most vague and shadowy character, to support this vague and shadowy claim to the possession

of Choctaw Indian blood. If he has any at all, it must come through the medium of his great-grandmother, Rachel Stokes. But she was born and reared in North Carolina, which is remote from the Choctaw country, and where, if history is creditable, the Choctaw Nation never existed, and certainly were not removed therefrom by General Jackson in 1812 or 1813.

I am of the opinion that the facts in this cause as developed, are not of such a character as to entitle the plaintiffs or any of them to citizenship or enrollment as members of the Choctaw Nation or Tribe of Indians .

Judgment will be rendered accordingly.

(Signed) Walter L. Weaver,
Associate Judge.

We concur:

(Signed) Spencer B. Adams,
Chief Judge.

(Signed) Henry S. Foote,
Associate Judge.

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

CALVIN WRIGHT MEEK, et al,
Plaintiffs.

vs.

THE CHOCTAW AND CHICKASAW NATIONS,
Defendants.

No. 89.

T. N. Foster,
for plaintiffs.

Mansfield, McMurray & Cornish,
for Defendants.

By WEAVER, J.

This cause comes to this Court on appeal from the decision of the United States District Court for the Central District of the Indian Territory.

After a careful review and consideration of all the evidence in this case I am of the opinion that it does not show these claimants, or any of them, to be Choctaw Indians by blood. It is clearly established by the evidence that at the time these claimants and others with them made application to the Commission to the Five Civilized Tribes for enrollment as citizens of the Choctaw Nation and as members of said tribe, they were not residents of the Indian Territory but on the contrary were residents of the State of Missouri. They did not become or attempt to become residents of the Indian Territory until after their proceeding before said Commission had been instituted. I am therefore of the opinion that the said plaintiffs and each of them are not entitled to citizenship in the Choctaw Nation.

Judgment will be rendered accordingly.

(Signed) Walter L. Weaver,
Associate Judge.

We concur:
(Signed) Spencer B. Adams,
Chief Judge.
(Signed) H. S. Foote,
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP

COURT, SITTING AT SOUTH McALESTER,

INDIAN TERRITORY, MARCH TERM,

1 9 0 4.

JOHN SKAGGS,

VS. NO. 90.

CHOCTAW AND CHICKASAW NATIONS.

STATEMENT OF FACTS AND OPINION

BY ADAMS, CHIEF JUDGE.

In the year 1896 the plaintiff, John Skaggs, was admitted as a Choctaw citizen by intermarriage by the Commission to the Five Civilized Tribes. The Choctaw nation appealed the case to the United States Court for the Central District of the Indian Territory, when on the 24th day of August, 1897, said Court entered a judgment affirming the finding of the Commission to the Five Civilized Tribes, and admitting John Skaggs as a citizen of the Choctaw nation by intermarriage.

After the judgment of this Court in the case of Choctaw and Chickasaw Nations vs., J. T. Riddle, et al., had declared said judgment of the United States Court for the Central District of the Indian Territory void, John Skaggs appealed his case to this Court, where the same came on regularly to be heard.

The evidence in this case shows that John Skaggs,

the plaintiff, on the 16th day of September, 1873, married a Choctaw and Chickasaw Indian woman in Kiamicha county, Choctaw nation, according to the Inter-marriage laws of the Choctaw nation, and lived with her as his wife until she died; that the said John Skaggs has been a resident of the Choctaw nation since said marriage.

I am of the opinion that the applicant, John Skaggs, is entitled to citizenship and enrollment in the Choctaw nation as an inter-married citizen.

A judgment will be entered by this Court in accordance with this opinion.

(Signed) Spencer B. Adams
Chief Judge.

We concur:

(Signed) Walter L. Weaver
Associate Judge.

(Signed) H. S. Foote
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

Francis E. Husbands,

vs. No. 91.

Choctaw and Chickasaw Nations.

Transferred to the Tishomingo Docket, where it appears as No. 130.

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

BETTIE STEWART,
Plaintiff.

vs.

THE CHOCTAW AND CHICKASAW NATIONS,
Defendants.

No. 92.
J. G. Ralls,
For plaintiff.
Mansfield, McMurray & Cornish,
For Defendants.

By Weaver, J.

This case comes into this Court on appeal from the United States District Court for the Central District of the Indian Territory. Plaintiff claims a right to citizenship and enrollment in the Choctaw Nation by virtue of her marriage to one Samuel Stewart whom she asserts was a Choctaw Indian by blood. That she is a white woman and intermarried with said Samuel Stewart in accordance with the marriage laws of the Choctaw Nation on the 22nd day of December, 1889 and continued to live with him in the Choctaw Nation as his wife until he died in 1896, and continuously since. The exact date of his death is not shown, but the said Bettie Stewart was appointed administrator of his estate at the November Term of the ~~Xxxxxxx~~County and Probate Court of Blue County, Choctaw Nation in 1896.

The evidence in the case shows that the plaintiff was thus married to him and lived with him as his wife until his death as above stated and continuously since. It also shows that he was a Choctaw Indian by blood, was on the tribal rollsof said Nation or Tribe, drew moneys as a member of said Tribe, and was in all respects so treated, recognized and regarded by the Tribe.

I am clearly of the opinion that the plaintiff is entitled to ditizenship and enrollment as an intermarried citizen, of the Choctaw Nation.

Judgment will be rendered accordingly.

(Signed) Walter L. Weaver,
Associate Judge.

We concur:

(Signed) Spencer B. Adams,
Chief Judge.

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

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

1 9 0 4.

MARY W. WHALEY, ET AL.,

VS. NO. 93.

CHOCTAW AND CHICKASAW NATIONS.

STATEMENT OF FACTS AND OPINION

BY ADAMS, CHIEF JUDGE.

On the 13th day of March, 1903, the plaintiffs Mary W. Whaley, Mary Ellen Whaley, Winnie Whaley, E. K. Whaley, Walter Whaley, Ruby Whaley, A. R. Whaley and Burneal Whaley, filed a petition in this Court, in which they allege that they are Choctaw Indians by blood, and as such entitled to citizenship and enrollment, and ask that their case be transferred to this Court where a trial of their cause may be had.

In 1896 the Commission to the Five Civilized Tribes denied the plaintiffs citizenship and enrollment, and in 1897 the plaintiffs, as well as several other persons who seem not to have appealed their case to this Court, were admitted to citizenship and enrollment as Choctaw Indians by the United States Court for the Central District of the Indian Territory.

When the case came on to be heard in this Court on the 25th day of November, 1903, the plaintiffs' attorney offerred no oral evidence, but did offer as evidence a lot of ex parte affidavits, with no proof whatever as to whether the persons making such affidavits were dead or beyond the limits of the Territory; and as far as this Court is able to determine from the record, the witnesses may still be living.

There is no competent evidence in this case which tends to support the allegations contained in the petition of plaintiffs, that they or either of them are Choctaw Indians or any other kind of Indians.

I am, therefore, of the opinion that the plaintiffs are not entitled to citizenship and enrollment as Choctaw Indians, and a judgment will be entered by this Court in accordance with this opinion.

(Signed) Spencer B. Adams
Chief Judge.

We concur:

(Signed) Walter L. Weaver
Associate Judge.

(Signed) Henry S. Foote
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.

H. B. Rowley,

Appellant,

vs. No. 94.

Choctaw and Chickasaw Nations,

Appellees.

OPINION, by FOOTE, Associate Judge.

The appellant H. B. Rowley applied for admission to enrollment as a citizen by intermarriage of the Choctaw Nation, to the Commission to the Five Civilized Tribes. He was denied admission and appealed to the United States Court for the Central District of the Indian Territory. There he was admitted to enrollment as an intermarried citizen, and by the decision of this Court in the Riddle or test suit the judgment therein rendered was set aside, and he comes here on appeal under the provisions of the Act of July 1, 1902.

It appears from the record that he was probably denied admission by the said Commission, because after the death of his Indian wife he re-married a white woman.

He appears to have married a Choctaw woman Miss Czarina M. Ward in the year 1884, and to have lived with her in the marital relation until about 1890 when she died. The marriage seems to have taken place in accordance with the laws of the Choctaw Nation then in force .

Under the decisions of this Court in the case of Thomas Brinnon and other similar cases heretofore decided, I am

of opinion, that the appellant H. B. Rowley is entitled to be deemed a citizen of the Choctaw Nation by intermarriage, and to enrollment as such, and personally to all the rights and privileges that flow 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.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP
COURT, SITTING AT SOUTH McALESTER, IND-
IAN TERRITORY, MARCH TERM,
1 9 0 4.

J. M. HUMAN, ET AL.,

VS. NO. 95.

CHOCTAW AND CHICKASAW NATIONS.

STATEMENT OF FACTS AND OPINION BY
ADAMS, CHIEF JUDGE.

Upon an examination of the record in this case I find the following facts:

J. M. Human and his twomchildren, to-wit, Jesse S. Human and Matabel Human, John B. Human and his wife Mary J. Human, and their three children, to-wit, Pearl Human, Floy Human and Myrtle Ola Human; Mrs. Zoe Hill, nee Human, and her three children, to-wit, Arthur G. Hill, Lonnie Hill and Bessie M. Hill, were adjudged, on appeal from the decision of the Commission to the Five Civilized Tribes, by the United States Court for the Central District of the Indian Territory, on the 24th day of August, 1897, to be Choctaw Indians by blood, and, therefore, entitled to enrollment as such.

After this decision of the United States Court for the Central District of the Indian Territory, had been declared void by this Court in the Test Suit provided for in an Act of Congress, approved July 1, 1902, the following persons filed

a petition in this Court, on the 13th day of March, 1903, asking that their rights be adjudicated: To-wit: John B. Human, Mary J. Human, Pearle Human, Floy Human, Ola Human, Winona Human, J. M. Human, Mattie E. Human, Jesse S. Human, Matabel Human, Robert W. Human, Julia May Human, George Lafayette Human, Zoe Hill, Arthur G. Human, (evidently meaning Arthur G. Hill), Lonnie B. Human, (meaning Lonnie B. Hill), Bessie M. Human, (meaning Bessie M Hill), and Vera Human, (meaning Vera Hill).

The evidence in this case shows that Betsy Buckholts, (sometimes spelled Buckles), was a Choctaw Indian and resided in Sumpter County, Alabama; that she filed her application with the United States Indian Agent on the 23rd day of August, 1831, signifying her intention to become a citizen of the States, in accordance with article 14 of the Treaty of 1830; and that thereafter a patent was issued to the said Betsy Buckholts to a tract of land in the State of Alabama, by Martin Van Buren, President of the United States, in the year 1838, in accordance with article 14 of the Treaty of 1830; that the maiden name of Betsy Buckholts was Betsy Brashears; that she had several children by her marriage with Buckholts, among them William Buckholts and Elizabeth Buckholts, who married a man named Moran, and Sarah, who married a white man named John Null; that John Null and his wife had two daughters named Pearline and Jane Null; that Pearline married Jesse S. Human, a white man, in Smith county, Texas in the year 1861; that there was born of this marriage Mrs. Zoe Hill and J. B. Human, who are applicants in this case; that Pearline, the mother of these two children died, and Jesse S. Human married the other daughter of John and Sarah Null, to-wit, Jane, in the State of Texas in the year 1865; that of this marriage

was born the applicant J. M. Human; that Mrs. Zoe Hill married a white man named D. G. Hill in 1883, and has had by this marriage the following children, who are now living with their parents in the Chickasaw Nation, Indian Territory, to-wit, Arthur G. Hill, aged 15 years, Lonnie B. Hill, aged 13 years, Bessie May Hill, aged 10 years and Vera Hill, born since the institution of this suit, and is now three years of age; that Zoe Hill and her three children then born, resided at Caddo, in the Choctaw nation, when this suit was instituted, and have continuously resided in the Choctaw or Chickasaw nations since that time; that Jesse B. Human is a full brother of Mrs. Zoe Hill, and resides at or near Durant, in the Choctaw nation, where he moved in 1897, and has continuously resided there since that time; that Jesse B. Human married a white woman named Mary J., who is now living with him; that by this marriage he has the following children: Pearl, aged 13 years, Myrtle Ola, aged 10 years and Winona, aged six years, and Eugenia, about six months old. The two last named children were born after the institution of these proceedings. That J. M. Human is a half brother of Mrs. Zoe Hill and Jesse B. Human, and a child by the second marriage of J. S. Human, who married Jane Null a sister of his first wife Pearline; that J. M. Human resides at or near Durant, Choctaw nation, and has resided there continuously since he moved there in 1897; that his present wife's name is Mattie Ellen, who is a white woman; that he has by this marriage the following named children; Georgia Forsyth, three years of age, and a boy six months old named Allen Tyrrell, both of whom have been born since the commencement of this suit; that prior to this marriage the said John Human had married Mattie Carson,

who is now dead, and had by this marriage the following children, to-wit, Jesse Human, aged 16 years, Matabel Human, aged 13 years, who are both now living with their father; that Jesse Human at one time also married Laura Whitt, a white woman who is now dead, and had by this marriage one child, Robert W,, who was born August 28, 1896; that about the year 1870 the father and grandfather of these plaintiffs moved to the Indian Territory, near Boggy, in the Choctaw nation, where he put in a farm, and remained there with his second wife and his three children, Mrs. Hill, J. B. and J. M. Human for a time, and then moved to Atoka, in the Choctaw nation, where he remained until the death of his second wife, the mother of J. M. Human; that he then moved back to the State of Texas and married again, leaving his three children with their uncle, a man named Hull, in the Choctaw Nation, where they remained for a time when he took the children, who were then very young, back to Texas, where they remained until they moved into the Indian Territory; that the three children knew they had rights here and always intended to make this their home; that Mrs. Hill is now a bona fide resident of the Chickasaw nation, Indian Territory, as well as her children, who are co-plaintiffs with her in this suit; that J. B. and Jesse Human, as well as their children, are now bona fide residents of the Choctaw Nation, Indian Territory.

From this evidence I am of the opinion that J. M. Human and his two children, to-wit, Jesse S. Human and Matabel Human; John B. Human and his three children, to-wit, Pearl Human, Floy Human and Myrtle O. Human; Mrs. Zoe Hill and her three children, to-wit, Arthur G Hill, Lonnie B. Hill and Bessie May Hill, are Choctaw Indians by blood, and such Choctaw

Indians as are entitled to citizenship and enrollment in the Choctaw nation; and that Mary J. Human, who is the wife of J. B. Human, is entitled to citizenship and enrollment as a Choctaw Indian by intermarriage.

The rights of Mattie E. Human, Julia May Human, Robert W. Human, George Forsyth Human, Winona Human and Vera Human, are not passed upon in this opinion for the reason that they were not parties to the petition filed before the Commission to the Five Civilized Tribes in 1896, and are not included in the judgment of the United States Court for the Central District of the Indian Territory.

A judgment in accordance with this opinion will be entered by this Court.

Spencer B. Adams
Chief Judge.

We concur:

(signed) Walter L. Weaver
Associate Judge.

(Signed) Henry S. Foote
Associate Judge.

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

E. J. Petty, et al.,
Plaintiffs.

No. 96

vs.

J. G. Ralls,
For plaintiffs.

Choctaw and Chickasaw Nations.
Defendants.

Mansfield, McMurray & Cornish for Defendants

OPINION.

By Weaver, J.

This cause comes into this Court on appeal from the United States District Court for the Central District of the Indian Territory.

The plaintiffs in this action are Elizabeth A. Petty and her descendants. The basis of their claim is that they are Choctaw Indians by blood: That the said Elizabeth A. Petty is a daughter of Sallie Womack who intermarried with one Carey Parr, a white man, and was a daughter of Elsie Womack or Wamik, an alleged Choctaw Indian woman who lived and died in Pontotoc county in the old Choctaw Nation in what is now the State of Mississippi.

The evidence offered on behalf of the plaintiffs consisted of the oral testimony of Cassie Franklin, Lige Colbert and Elizabeth A. Petty, one of the plaintiffs, and certain affidavits and other documents contained in the record of this case as sent up to this Court from the said District Court.

Taken as a whole, this evidence simply shows that the said Elizabeth A. Petty is the daughter of Carey Parr and Sallie (Womack) Parr. There is no credible and conclusive evidence that her mother was a daughter of Elsie Womack or that said Elsie Womack was a Choctaw Indian.

Elizabeth A. Petty herself, frankly admitted that

she had no knowledge and but little information as to her ancestry. She was born in Mississippi about 1843 and her parents died before she could remember them, and her earliest recollection is her living in Texas with an aunt,--her mother's sister,--whose name was Mary Wallace, she having married a man by that name. She continued to live in Texas, where she married her husband E. J. Petty, until about 1888, when they came to the Indian Territory and have made that their home ever since.

I can find nothing in the evidence that would authorize this Court to conclude that these plaintiffs or any of them are Choctaw Indians entitled to citizenship or enrollment in the Choctaw Nation. Judgment will be rendered accordingly.

(Signed) Walter L. Weaver,
Associate Judge.

We concur:

(Signed) Spencer B. Adams,
Chief Judge.

(Signed) Henry S. Foote,
Associate Judge.

In the Choctaw and Chickasaw Citizenship Court,

Sitting at Tishomingo, I. T., October Term, 1904.

Martha Arnold, et al.,

vs. No. 97.

The Choctaw and Chickasaw Nations.

Opinion by Weaver, Associate Judge .

The Plaintiffs in this action are Martha Arnold and her descendants, and some white persons who are intermarried with certain of her descendants . If the said Martha Arnold is entitled to citizenship and enrollment as a member of the Choctaw Nation, or tribe of Indians, then the other co-plaintiffs with her would likewise be entitled.

A vast amount of testimony has been taken in this case, and there are certain facts about which there are no dispute. It appears from the testimony in this case that on or about the year 1850, the said Martha Arnold lived in the State of Georgia, first at the residence of ~~James~~ Wash Arnold, and afterwards at the residence of James Arnold, and remained there until the year 1870 or 1871; that about the last named date she and James Arnold and their children removed from the State of Georgia to the State of Arkansas, where they lived until the death of James Arnold, which occurred a few years later, and continued to live there for a few years after his death. That she and her children, all of whom were begotten by the said James Arnold then removed to the Indian Territory and located in the Poteau Bottoms, where they lived and rented land until about

1890; she and a portion of her children then went to Oklahoma Territory which had been recently opened up for settlement and remained there for several years, after which they returned to the Indian Territory, where they have resided ever since.

The said Martha Arnold claims to be of Choctaw Indian Blood and to have derived the same from her mother, Nancy Lucas, who she asserts was a daughter of Adam Lucas, who, as she claims, was a full blood Choctaw Indian. She asserts and has so testified in this case that when she was a young girl, about the year 1849, 50 or 51, she went from her home on Pearl River, in the State of Mississippi, to Coweta County, Georgia, with a lady named Watley, that said Miss Watley was a white woman, who had spent a number of years in the neighborhood where the said Martha had lived in the State of Mississippi; she further asserts and testifies that said Miss Watley left her at the residence of Washington Arnold in Coweta County and that she never saw her again until many years afterwards and then only saw her once and at some place which she does not definitely fix, in the neighborhood of Atlanta, Georgia. She further asserts and testifies that after she had lived at the home of Washington, or as he was more generally known, Wash Arnold, she went to the residence of James Arnold, which was only a few miles away, and remained there until she came to the State of Arkansas; that her relations with James Arnold were such that he became the father of her children, all of whom, now living, are co-plaintiffs with her in this action.

In contradiction of a portion of these statements and testimony, evidence has been offered on the part of the Defendants for the purpose of showing that said Martha Arnold could not have come to Wash Arnold's place in Georgia in the manner she states for the reason that she was born in the

State of Virginia in a state of slavery and was sold by her master to a slave trader by the name of Joe Farmer and by him taken with a gang of slaves to Coweta County, Georgia, where she was sold to Wash Arnold, and by him sold or presented to James Arnold and so remained in slavery until the emancipation of the slaves.

Let us examine the testimony of Martha Arnold with reference to this matter. She has stated to this Court in the broadest possible terms that she never was a slave, but was always a free woman. I am not disposed to say, and do not say that I would not be inclined to give full credence to her statements, provided the same were corrobora ted by facts and circumstances indicating their correctness. But from the evidence herein the only corrdboration of what she has stated is found in the testimony of John M. Arnold, who is a son of said Wash Arnold, who states that said Martha, some time about 1850, was brought to her father's house by an old maid school teacher named Watley and that she remained there for some years until she took up her residence with Jim Arnold. This witness is now about sixty-two years old, and consequently was born in 184 2. All the evidence in this case tends to show that Martha Arnold, where ever she came from, came to Georgia in 1849, 50 or 51. Such being the case said John M. Arnold was less than ten years old when she came there, and it is reasonable to suppose that his memory as to how she came may have been indistinct. Martha must have been at that time about twenty years old, as she testified that she was seventy odd years when she appeared before this Court. She was not able to state from memory or otherwise what portion of Mississippi she lived in, except that it was on or near the Pearl River; she does not remember the name of any

town or postoffice in that locality, nor the names of any people Indians or otherwise, who lived near where she did. When pressed upon cross-examination as to the county in which she lived at that time, she states that to the best of her recollection that it was called Wister County, but there never was a county of that name in Mississippi. She says that when she went with Miss Watley to Coweta County, Georgia, they traveled by stage, but she could not give the name of any town through which they passed except Atlanta, neither is she able to give any accurate description of the country through which she passed, nor how long it required for them to make the journey.

She says she always asserted her Indian rights and that when she and James Arnold and their children in 1870 or 71, removed West from Coweta County, Georgia, they intended to come to the Indian Territory and gives as a reason for their not coming directly here that ~~was~~ her husband was in ill-health, and hence they stopped in Arkansas, but these statements are in contradiction of the proven fact that shortly prior to their leaving Georgia, both she and James Arnold had been indicted in sundry instances by the grand jury of Coweta County, for living in a state of fornification with each other and the further fact that land had been purcashed for them in the State of Arkansas before they left Georgia and that they took possession thereof upon their arrival there and occupied the same until her husband's death and for some time subsequent thereto, when the land was sold and the proceeds divided among the children of said James Arnold. Then the evidence further shows that when they came to the Indian Territory and located in the Poteau Bottoms, they did not take up lands as Indians, but occupied

lands held by citizens of the Choctaw Nation, for which they paid rent. That they at no time until a period, to which I shall refer later, ~~xxbx~~ made any effort to establish their rights as Choctaw Indians on the Indian Territory.

They then emigrated, as I have already stated, to the Territory of Oklahoma, where several of her children homesteaded land, or at least took lands under the homestead laws, even if they did not ultimately perfect their title thereto. That so some of her children, and presumably, under the law, all of them, who thus homesteaded land in Oklahoma, made oath in accordance with the statutes that they were native born citizens of the United States. And it was not until 1894, that they, or any of them, made application to the Choctaw Council for recognition and enrollment as citizens of that Nation or tribe. Upon September 17, 1894 F. J. Arnold, son of Martha Arnold and one of the plaintiffs herein wrote to S. W. James, who had married his sister and said I send you statement of my mother's kind folks as she best recollects them. You understand that mother was very young when she was stolen from her parents. Mother's father was a Cherokee man, George Vann".

At the same time there was enclosed with this letter a paper in the same handwriting as the letter referred to in which the following appears, "Martha Arnold was stolen from her parents in Mississippi about year A. D. 1829, or 1830, by a party of white men and carried to Georgia and there raised by a white woman named Any Wotley" Other statements were contained in said paper and letter, which it is not necessary to comment on, But the statements made in these papers by the said J. F. Arnold, evidently were obtained from the said Martha Arnold and are entirely incon-

sistent with the statements made by her to this Court in the trial of this cause.

These facts are indicitive to me that they did not themselves understand or believe during all these years from 1849, 50 or 51, to 1894, that they were entitled to rights as Choctaw Indians in the Indian Nation. They were not admitted to citizenship and enrollment by the Choctaw Council and in 1896 they made application to the Dawes Commission, where they were refused the citizenshop they were seeking, they then appealed to the United States Court for the Central District of the Indian Territory, where they were admitted; after the decision of this Court in what is known as the Riddle Case, they came into this Court, again asserting their rights to citizenship.

It is not necessary for me to form or express an opinion as to the blood of Martha Arnold. I am, however, of the opinion that there is not sufficient evidence to satisfy me that she is of Choctaw Indian blood, or as such are she and her descendants entitled to enrollment as citizens of the Choctaw Nation.

I am further of the opinion that had the testimony on the part of the plaintiffs stood alone, the opinion which I have just expressed would necessarily follow.

A good deal of the testimony taken on behalf of the Nations was incompetent, as it was an attempt to prove by hearsay and reputation what they alleged the blood of Martha Arnold to be and in coming to an opinion I have carefully weighed all the competent evidence, read and re-read the testimony on the part of the plaintiffs, and feel that I have given all of it due weight and effect. A Judgement will be rendered accordingly.

(Signed) Walter L. Weaver, Associate Judge.

We concur: (Signed) Spencer B. Adams, Chief Judge.
(Signed) Henry S. Foote, Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER, INDIAN TERRITORY,

APRIL TERM, 1 9 0 4.

SAMUEL H. CARROLL, ET AL.,

VS. NO. 98.

CHOCTAW & CHICKASAW NATIONS.

STATEMENT OF FACT AND OPINION,

BY ADAMS, CHIEF JUDGE.

On the 26th day of August, 1897, a judgment was rendered by the United States Court for the Central District of the Indian Territory, sitting at South McAlester, upon an appeal from the decision of the Commission to the Five Civilized Tribes denying their application, admitting Samuel H. Carroll, Elizabeth Carroll, Samuel W. Carroll, G. R. Carroll, T. R. Carroll, Margaret A. Carroll, Joseph A. Carroll, John E. Carroll, Walter A. Carroll, Hattie B. Carroll, Belle Carroll, Mary C. Carroll and Mary Carroll as members by blood of the Choctaw Nation, and ordering the Commission to the Five Civilized Tribes to place the above named personsupon the rolls as Choctaw citizens by blood.

After the decision of thisCourt in the case of the "Choctaw and Chickasaw Nations vs. J. T. Riddle, et al.," in which it was declared that said judgment, as well as all other judgments similarly situated, was void by reason of certain irregularities therein pointed out, to-wit: On the 11th day of March, 1903, Samuel H. Carroll, Thom. N. Carroll, John E. Carroll, Belle Carroll, Samuel W. Carroll, Margaret

A. Carroll, Walter C. Carroll, George R. Carroll, Joseph A. Carroll, Mattie E. Carroll, Elizabeth Carroll, Nancy C. Carroll, Mary C. Carroll, filed a petition in this Court, asking that this case be transferred from the United States Court for the Central District of the Indian Territory to this Court, here to be tried. In accordance with said petition the same was transferred to this Court and came on to be heard on the 30th day of November, 1903.

Plaintiffs introduced several ex parte affidavits as evidence, and also several witnesses whose testimony I deem it unimportant to set out in full here.

Plaintiff, Samuel H. Carroll was introduced in his own behalf and testified that he is 65 years of age; that he was either born in the Indian Territory or Mississippi; that when he could first remember he was living in the Indian Territory with his father; that he remained here until he was 12 or 15 years of age, when he went to the State of Texas, moving there in either 1860 or 1861; that he remained in Texas until ten or eleven years ago, when he moved back to the Indian Territory and has been here since that time; that he married a white woman in the State of Texas, and had by this marriage a blind boy; that he made application to the authorities of the State of Texas, as a citizen of that State, for the admission of this boy to the asylum at Austin. Witness further says that since returning to the Territory he has rented land from citizens of the Nation and paid rent until he was admitted to citizenship by the United States Court. Witness further says that his fathers name was William C. Carroll who, he has been taught, was a half-breed Choctaw Indian; that his father was a horse racer and went from place to place; that his grand-

father was named Richard Carroll; that his grandfather moved from the State of North Carolina to the State of Mississippi; that he does not know from whom he derives his Indian blood, whether from his grandfather or grandmother. This witness claims to be one-fourth Choctaw Indian by blood.

I find in the record as introduced by the plaintiffs the application of these plaintiffs filed with the Commission to the Five Civilized Tribes on the 3rd day of September, 1896, and sworn to by the principal applicant, Samuel H. Carroll, whose testimony is set out above. In this petition Samuel H. Carroll swears that he is a son of William C. Carroll and a grandson of Richard Carroll; that his grandfather, Richard C. Carroll, was a full blood Choctaw Indian. It will be noted that this witness now swears that he does not know from whom he derives his Indian blood; that he does not know whether his grandfather Richard Carroll was an Indian or not; and that his grandfather came from the State of North Carolina; while in his original application he swore that his grandfather, Richard Carroll, was a full blood Choctaw Indian.

There are many discrepancies in the testimony.

The Nations introduced testimony of witnesses who knew this applicant in the State of Texas, and that he never claimed to be an Indian there, but was always regarded as a white man, and a citizen of the State of Texas.

If Richard Carroll originated in the State of North Carolina I am at a loss to see how he was a Choctaw Indian, for it is a well known fact that the Choctaw tribe of Indians did not inhabit that part of the country, certainly not as a tribe.

Upon an examination of this testimony I do not think it is sufficient to warrant the Court in declaring

as a fact that the applicants, or any of them, are Choctaw Indians. A judgment will be entered by this Court denying the rightx of these applicants as Choctaw citizens, or to enrollment as such.

(Signed) Spencer B. Adams,
Chief Judge.

We concur:

(Signed) Walter L. Weaver,
Associate Judge.

(Signed) Henry S. Foote,
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.

Verna D. Potts, et al,

Appellants.

vs. No. 99

Choctaw and Chickasaw Nations,

Appellees.

OPINION by FOOTE, Associate Judge.

This cause was consolidated in the Court below, with the case of P. D. Durant, et al, but comes here on a sperate appeal.

It depends for its decision on one of the questions involved in the P. D. Durant case, that is to say if the applicants here and P. D. Durant are descendants of Jefferson Durant, a Choctaw Indian or not, and by agreement the evidence taken there is to be used here and vice versa so far as applicable in each case.

As we have determined in the case of P. D. Durant, et al vs. the Choctawsand Chickasaw Nations, No. 8, on the Choctaw Docket of this Court, that the common ancestor of the claimants here, and of the claimants there, was not an Indian named Jefferson Durant, but a man named Jesse Duren, who died in Texas, and that P. D. Durant and others had no Choctaw Indian blood, and have no reason to change that view on all the evidence in both cases, so we hold in this case, that the claimants here have none.

Furthermore the claimant, Verna D. Potts, in answer to a question of her attorney, stated that up to 1896,

she lived in the State of Texas. Upon another question by him which stated that her application for citizenship before the Commission to the Five Civilized Tribes was filed on the 7th day of September, A. D. 1896, and inquiring also where she then lived, she replied that she did not think "we come here until the last of September", meaning that of 1896. It is therefore plain that the claimant did not even live or reside in the Indian Territory, when she petitioned for citizenship, which is also fatal to her claim here. Another statement she makes is that her mother Nancy Lee Cundiff, did not come to this country, meaning the Indian Territory, until 1898. Yet Mrs. Cundiff was made a citizen by the Choctaw Council in 1895.

It is clear that none of the appellants here are entitled to be declared citizens of the Choctaw Nation or to enrollment as such, or to any rights which flow 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.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

Viney Davis, et al.,

vs. No. 1000

Choctaw and Chickasaw Nations.

No written opinion. Decided upon authority of opinion the case of E. H. Bounds, et al vs Choctaw and Chickasaw Nations, No. 9 on the Tishomingo Docket. See opinion of that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP
COURT, SITTING AT SOUTH McALESTER, IND-
IAN TERRITORY, MARCH TERM,

1 9 0 4.

JOHN MITCHELL, ET AL.,

VS. NO. 101.

CHOCTAW AND CHICKASAW NATIONS.

STATEMENT OF FACTS AND OPINION
BY ADAMS, CHIEF JUDGE.

The record in this case discloses the fact that on the 25th day of August, 1897, John Mitchell, Andrew J. Mitchell, Melton Welsh, Dosia A. Welsh, Luella Pyburn, Emma J. Welsh, Alfred H. Mitchell, John W. Mitchell, William J. Mitchell, Robert H. Mitchell, Docia A. Mitchell, Myrtle Lee Mitchell, Ollie Mitchell, M. H. Pyburn, Benj. H. Pyburn, James B. Pyburn, Mary E. Pyburn, Odella B. Welsh, John M. Welsh and Christina P. Welsh, obtained a judgment in the United States Court for the Central District of the Indian Territory, admitting them to citizenship and enrollment as Choctaw Indians.

After the said judgment had been declared void by a decision of this Court in the case of "Choctaw and Chickasaw Nations, vs. J. T. Riddle, et al., the following named persons filed a petition in this Court, asking that their case be transferred from the United States Court for the Central District of the Indian Territory to this Court for adjudication, to-wit: John Mitchell, Mary F. Mitchell,

Myrtle Lee Mitchell, Robert H. Mitchell, Mable Mitchell, Roy A. Mitchell, Andrew Mitchell, John W. Mitchell, Hettie Mitchell, William J. Mitchell, William J. Mitchell, Maud E. Mitchell, Jessie T. Mitchell, Mattie Mitchell, Alfred H. Mitchell, Cyntha M. Mitchell, Ollie Mitchell, Grace Mitchell, Docia A. Sullivan, Myrtle R. Sullivan, Emma J. Welch, Adella B. Welch, John N. Welch, Christina P. Welch, Docia A. Welch, Rosia M. Welch, Jo Ella Welch, Luella Pyburn, Milton H. Pyburn, Benjamin H. Pyburn, James G. Pyburn, Harry Lee Pyburn, Willie Ann Pyburn.

Plaintiffs claim that they are descendants of David Mitchell, a white man, who married a Choctaw woman named Rebecca Fulsom, in the Choctaw nation in the State of Mississippi.

The evidence in this case shows that John Mitchell, the principal applicant, (the other plaintiffs being his descendants), was born in the State of Mississippi, and that he emigrated from that State to the State of Arkansas about the year 1858, where he remained until about thirteen or fourteen years ago, when he moved into the Indian Territory. That Nathaniel Fulsom, who seems to be the originator of the Fulsom family, who are now Choctaw Indians, married a Choctaw woman in the State of Mississippi, and had the following children: Mollie F. Fulsom, Delhia Fulsom, David Fulsom, Rebecca Fulsom, Rhoda Fulsom and Israel Fulsom; that Mollie Fulsom married a man named Sam Mitchell, and had two children by that marriage, one of them dying in infancy, and the other, whose name was Sophia, seems to have been married three times; the first time to a man named Hancock, and then to a man named Moore and then to a man named Tiner; that Delia married a man named Cameron and had two children named Margaret and Alex; that David married

Mary Nail and had the following children: Cornelius, Henry, Loren, Simpson, Nora, David and Rhoda; and that Rhoda, another daughter of Nathaniel Fulsom, married P. P. Pitchlynn, who was at one time principal chief of the Choctaw Nation, and a delegate to Washington; that Rebecca married a man named Black; and that Israel Fulsom married Tobitha Nail.

This accounts for the descendants of the original Fulsom, who was a white man and married a Choctaw woman.

The plaintiff, John Mitchell, claims to be the son of Rebecca, when the evidence shows that she married a man named Black.

I am of the opinion that these applicants have failed to produce sufficient evidence to show that they are Choctaw Indians; or, that they are descendants of such Choctaw Indians as would entitled them, under the laws and treaties, to citizenship and enrollment as Choctaw Indians.

A judgment will be entered by this Court in accordance with this opinion.

(Signed) Spencer B. Adams,
Chief Judge.

We concur:

(Signed) Walter L. Weaver,
Associate Judge.

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

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

G. W. Johnson,

vs. No. 102.

Choctaw and Chickasaw Nations.

Transferred to the Tishomingo Docket, where it appears as No. 129.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

William Sledge, et al.,

vs. No. 103.

Choctaw and Chickasaw Nations.

Transferred to the Tishomingo Docket, where it appears as No. 127.

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

James A. Tucker, et al.,

vs. No. 104.

Choctaw and Chickasaw Nations.

Transferred to the Tishomingo Docket, where it appearsas No. 128.

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.

Sarah A. Kelton, et al.,

Appellants,

vs. No. 105.

Choctaw and Chickasaw Nations,

Appellees.

OPINION, by FOOTE, Associate Judge.

This cause comes here on appeal in the usual way under the Act of July 1, 1902.

The parties to the appeal are Sarah A. Kelton, her son Blumer Alderson or Bloomer Anderson, and Julia or Julian Anderson, her daughter by her first marriage, and Krvin or Avon Kelton, her alleged husband.

The case was tried before the Commission to the Five Civilized Tribes in 1896, based on the petitions of the parties and certain affidavits.

The claimants were denied citizenship in the Choctaw Nation, Avon Kelton as an intermarried citizen, and the other parties as claimants of Choctaw blood.

The case was then carried on appeal to the United States Court for the Central District of the Indian Territory, and there tried de novo, on the ex-parte affidavits filed before the Commission to the Five Civilized Tribes, and upon depositions taken of two of the parties hereto, and one Mr. Martin. A judgment was rendered on the report of a master in favor of all the parties, Avon Kelton as an intermarried

citizen and the rest of the claimants as Choctaws by blood.

When the cause came on for trial before this Court, the case was submitted by an attorney, acting for the attorney of record, on the record only, the parties claimant not being in attendance, and neither they nor any one else for them, offering any testimony whatever except the record. The record evidence consists of ex-parte affidavits taken in 1896, and offered before the Commission to the Five Civilized Tribes, and none of the parties making them are shown to be dead. They are, therefore, incompetent here. As to the depositions taken and used before the United States District Court for the Central District of the Indian Territory, it is to be said that they were used on a trial de novo, and are incompetent here as evidence.

But I have examined all the affidavits and depositions and petitions, with care, to see if any proper case ever existed by reason of their contents.

I find that all the statements made as to the origin of the claimants by blood, and their racial status, are entirely of a hearsay character, and also of so vague a nature as to disclose nothing satisfactory on the subject. There is one matter contained in the affidavit of Sarah A. Kelton which, perhaps, deserves mention. She swears that her grand-mother, Polly Bishop, from whom she claims her Choctaw blood, moved from Mississippi to Texas in 1834, as her mother Julia told her, and died in 1866, and in the same instrument or paper she also swears she had been told by her mother that she, Julia Montgomery, the daughter of Polly Bishop, was born in Mississippi in 1844; thus swearing to the remarkable fact that she had been told by her mother, that she, Julia, was born in Mississippi, while at that identical time the mother

of the said Julia was living and being in the State of Texas . This exemplifies the worthlessness of such affidavirs.

According to the statement of this applicant she was born in Texas in 1858, her mother Julia being fourteen years old, and she says that she herself lived in Texas un til the year 1888. It is plain that there is no merit whatever in this case; that there is no evidence of even the smallest nature that is at all competent or persuasive, brought before us; that even the applicants themselves have not cared to appear and exercise the privilege of giving oral evidence, or of producing any witnesses to advance their cause, even to prove that any of the affidavit makers are dead.

Therefore I am of opinion that the appellants are not entitled to be declared citizens of the Choctaw Nation, either by blood or intermarriage, or entitled 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.

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, 1896. The claim was granted by said Commission declaring N. B. Zumwalt an intemarried 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 Natham B. Zumwalt had served as a member of Captain Mule's Company of Chickasaw 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.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

G. P. Phillips, et al.,

vs. No. 107.

Choctaw and Chickasaw Nations.

Identical wih the case of Gray W. Phillips, et al., vs. Choctaw and Chickasaw Nations, No. 49 on this Docket. See opinion in that case.

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.

S. B. Riddle, et al.,

Appellants,

vs. No. 108.

Choctaw and Chickasaw Nations,

Appellees.

OPINION, by FOOTE, Associate Judge.

This appeal is from the United States Court of the Central District of the Indian Territory. It comes here under the provisions of the Act of July 1, 1902.

The appellants were denied admission by the Commission to the Five Civilized Tribes and took an appeal to the United States Court for the Central District of the Indian Territory, where they were granted enrollment as citizens of the Choctaw Nation, the report of the Master in Chancery, whoever he was, on which that judgment was based, not having even been signed, as appears, from the typewritten paper filed in the record. The judgment therein being set aside by this Court, in what is called the Riddle or test suit, they are now here on appeal as above set forth.

The record evidence consists of ex-parte affidavits taken as depositions on a trial de novo in the Court below in 1897, and are therefore incompetent evidence here; but there are some features connected with one of them, and statements in others, which require some notice.

S. P. Perry was one of the persons who deposed for these parties, and he has been shown before this Court to have been an affidavit maker, for many other parties in other cases of the same nature as this, and to be utterly unworthy of belief. The bad faith of the claimants is thus shown in presenting this man's sworn statement, to bolster up their claim.

I have examined the whole oral evidence given before us in open Court, and looking at that and the record, I can perceive plainly, that at the inception of this claim, the parties claim and do now claim, that their Grand father's name was Jack Riddle, as they say a half breed Choctaw Indian from somewhere in the State of Mississippi about the Tombigbee River, who removed to the Indian Territory about 1833, and that their father Hampton Riddle, his son, left his father, and went off to North Carolina, where he married a white woman, and then moved to North Eastern Alabama, where he was a blacksmith on Look Out Mountain until 1861 when he was killed, and that his wife and some of his children moved to Texas, lived and married there; had children born to them, and about or after 1896, removed to the Indian Territory with a view to making claim, which they did, to Choctaw citizenship.

In the affidavits or depositions filed here, they have attempted, by hearsay evidence, and neighborhood talk, to prove that their father was a quarter breed Choctaw Indian, living for many years after his supposed emigration from Mississippi and North Carolina, in North Eastern Alabama, in what was once the old Creek Nation, but from which they have long emigrated.

There is but little doubt that Hampton Riddle was not a full blooded white man, but of what his blood consisted is not established, by proper or reliable testimony. He may have had

Cherokee blood, as he was, when any witnesses first knew him, located in North Eastern Alabama where the Cherokees first lived, and near a part of the old Cherokee Nation, or he may have been part Creek Indian.

The attempt is made in the original claim, to show that the father of these claimants was the son of a Jack Riddle, a half breed Choctaw Indian who moved to the Indian Territory in 1833, from Mississippi, or from Sumpter County, Alabama, and died here, and who is proved by Mrs. Edmonds, his daughter, to be her father. This effort proved a failure for Mrs. Edmonds, one of the most respectable ladies of mixed Choctaw and white blood of the Choctaw Nation, a daughter of the Jack Riddle who was a Choctaw Indian, intermixed with white blood through his father Jack Riddle a white man, shows from the family bible of her father Jack Riddle and from her indisputable evidence, that the alleged father of Hampton Riddle had no such child, and that her grandfather could not have been the Jack Riddle these people claim under, for he was a white man, and these people claim that their ancestor Jack Riddle was a half breed Choctaw Indian. Mrs. Edmonds was born in the Choctaw Nation, her father and grandfather having come to the Indian Territory about 1832 or 1833, and her evidence is clear that these people are no relations of hers, and never even approached her to claim such relationship or to seek the assistance of her or her brother, who testified before us, as to establishing any claim to relationship or citizenship.

The whole case, taking into consideration all the facts, indicates to me that these people, relying on the fact that their father may have had some Indian blood, came into the Indian Territory, most of them probably from their own evidence, after 1896; that some of them knew a mannamed Riddle down about

Caddo, and had rented land from him, he being a Choctaw Citizen, and they talked with him to see if he would aid them in claiming relationship to him, who was a descendant of the Jack Riddle they nowclaim through. They do not seem to have enlisted his efforts in their behalf. Then Sam Perry was resorted to, to fix up the missing link by positive statements, which from his known character must be presumed to be false, as to the descent of these people from a Jack Riddle he claims to have known in Mississippi, the father of Mrs. Edmonds, a well known Choctaw. And Sam Perry among other things, swore that Jack Riddle left a wife in Mississippi with one child, when he came to the Indian Territory in 1833, whose name he did not know, and that he knew that some of these claimants were the grandchildren of that wife left behind in Mississippi in 1833.

Yet in the face of that statement these parties come here and appear to shift their ground and claim that they are the grand children of a white man, the father of the man who Sam Perry says was their grand-father, and which man Mrs. Edmonds shows to have been her father, and that in no way are these people descended from either of the Jack Riddles they claim as their ancestor.

To conclude I will say that there is not a particle of any kind of even pursuasive evidence in this record, to show the rightfulness of the claim of these people.

I forbear to comment on the complexion of the whole case from any moral standpoint, or in the way of severe condemnation as to the methods employed by them in their efforts to obtain the land and property of others. The facts in the record speak emphatically for themselves.

I am, therefore, of opinion that the appellants are not entitled to be declared citizens of the Choctaw Nation, or any of them, 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.

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.

Jane Marrs, et al.,
Appellants,

vs. No.109.

Choctaw and Chickasaw Nations,
Appellees.

Epsie Underwood, et al.,
Appellants,

vs. No. 78.

Choctaw and Chickasaw Nations,
Appellants.

George Lee White, et al.,
Appellants,

vs. No. 120.

Choctaw and Chickasaw Nations,
Appellees.

George Lee White, et al.,
Appellants,

vs. No. 125.

Choctaw and Chickasaw Nations,
Appellees.

OPINION, by FOOTE, Associate Judge.

All of these cases come here on appeal under the Act of July 1, 1902, from the United States Court for the Central District of the Indian Territory. All of the appellants claim Choctaw Indian blood or intermarriage with persons claiming it, through the same common ancestress, Peggy or Margaret Marlowe, alleged to be the daughter of one Moontubbee or John Patterson.

The opinion in this case is to determine the rights of all of the appellants before this Court, in each and every

of the above styled cases. It was agreed by both parties appellant and appellee that the evidence in all these cases, so far as applicable, should be considered in each and every of the causes, and hence this opinion applies to them all. Separate judgments, however, are to be rendered in each case.

Susan Eliza Pierce, a white woman of respectable appearance and bearing, was introduced as a witness for the Choctaw and Chickasaw Nations, who testified in substance, as follows:

She stated that she was fifty-seven years of age and lived in Fannin County, in the State of Texas, and had lived in that State about fifty years. She was acquainted with Reuben Marlow's wife, Margaret or Peggy, who is the common ancestress through whom these applicants, and those involved in the case of Epsie Underwood, and of Jane Marrs, and others mentioned herein, claim their Indian blood. She got acquainted with this woman, the wife of Reuben Marlow, called Margaret or Peggy, about fifty years ago, and knew her up to about twelve or thirteen years ago; that woman is now dead, and she went before that time, about eight or nine years ago the witness thinks, to Cooke County, Texas, and then she, Peggy or Margaret Marlow, as she was called, came to the Indian Territory. The witness knew that woman about as well as she could; lived within three or four hundred yards of her, and was very intimate with the family for a great many years. She first heard talk in that family about a Choctaw claim and Choctaw blood, she cannot tell the exact time, but it was about the time that a man named Beal, a member of that family, came back from the Indian Territory, and through all the years that she had thus been intimate with this family she never heard any talk among

them about their having Choctaw blood, until this Martha Beal came to the Indian Territory, then she heard the old lady Peggy or Margaret Mawlow talk about it, and she heard her say she had no Indian blood in her a dozen times, and that the old lady did not like for her descendants to make the claim of Choctaw blood which they did, and so far as she knows the old lady did not join in the claim; and in fact the records in all these cases show that she did not join in any of them.

On cross examination the witness reiterated that the old lady above referred to told her that she had no Indian blood in her and that she looked with disfavor on the claim her children were making because she had no Indian blood, and that she told her so a dozen times after the Beals moved to the Indian Territory from Texas. That she, the old lady, always repudiated that she had Indian blood, and that she thought the old lady said so because she, the old lady, thought she had no India blood.

There was then introduced a record in print of a case, No.12742, wherein the Choctaw Nation and the United States were parties, and particular reference made to pages 255 and 908 thereof, wherein is given the family and children of Moontubbee a Choctaw Indian whom the applicants in this Court allege to be identical with John Patterson whom these claimants now for the first time in the case, according to the original petitions, claim to have been the father of the old lady Peggy or Margaret Marlow.

Attention was also called to the fact that the applicants had relied heretofore in the case below, on the affidavit of a man named Sam Perry, who stands before this Court in other cases as an unreliable witness.

The appellants in rebuttal then called S. H. Pierce, the husband of Mrs. Pierce whose testimony I have stated above. He corroborated the statements of his wife as to the residence of himself and wife in Fannin County, Texas, within three or four hundred yards of the family of Mrs. Marlow (Peggy or Margaret) as heretofore stated. He stated that he had never known that Peggy or Margaret Marlow ever claimed Indian blood; he did not know that she was the daughter of John Patterson, but she claimed to have a brother of that name who lived in the State of Missouri, who she was looking to come and see her, but he did not believe he came to see her. There was then read to him by the counsel of the plaintiffs what purported to be an affidavit, which he said he had not signed and did not make, and could not recall it. He did not remember the statement in the alleged affidavit that these people had Choctaw blood in them; does not recall that he said all that was thus read to him, and he recalls making some affidavit before a Justice of the Peace, and the things stated therein, some of them, are not true as he said.

Reuben Marlow was then called for plaintiffs and testified that the "old Lady", Peggy or Margaret Marlow, was the wife of his grand-father. He stated that his grand-father at one time told him that his wife had Indian blood in her, when he was small, but if the tribe she belonged to was mentioned he does not remember it; that he was brought here today as a witness for the Nations; his grand mother has been dead two or three years, and he further states that she told him, after she came to the Territory, after some of these people had been admitted as citizens of the Choctaw Nation, about the time of the winding up of the Dawes Commission, that she had a right in the Choctaw Nation as an Indian, and would claim it and give it to him. Of course all the statements this witness made

as to what his grand mother told him are incompetent, being hearsay and self serving, and the declaration of one in his own behalf to another is competent when against the interest of the declarant but not in his or her favor. See P. & T. R.R. Co. v. Stimpson, 14 Peters, U. S. Sup. Ct. Reports, 448.

George Lee White one of the claimants was introduced for the appellants. He stated that he first moved from Texas to the Indian Territory about 1892. He lived in the Choctaw Nation about three years, then went back to Texas to wind up his father's estate, and was in Texas three years, but his intention was to come back to the Territory. His mother was Cynthia Marlow, the daughter of the old lady Peggy or Margaret Marlow. His evidence as to his alleged ancestor, the alleged Moontubbee or John Patterson, was mere hearsay statements as to claims of his grand mother Peggy or Margaret Marlow, and is incompetent. The witness is an interested witness and in his original application makes no mention of Moontubbee alias John Patterson. He never knew this man except by tradition, and his understanding is that Moontubbee is on Ward's Roll as a Mississippi Choctaw claiming under the treaty of 1830. He heard this from Henry Byington, his attorney, at Caddo. Then he says he believes he first heard it from Dixon Durant, a witness for him. He says Peggy or Margaret, his grandmother, was never a party to any claim as a Choctaw by blood. His grand mother came from Missouri to Texas many years ago. He first looked over Ward's Roll at the instance of Henry Byington. He sold his last land he owned in Texas four years ago after his admission to be a citizen by Judge Clayton of the United States Court for the Central District of the Indian Territory. His Mother's sister was the first one that told him about Moontubbee and Ward's Roll; before that he had only heard

that Peggy was the daughter of John Patterson, and he never heard his mother say anything about being related to Moontubbee.

There was then offered as witness for the plaintiffs Duke Marlow, a step-son of Peggy Marlow, his father being her husband after the death of his mother. He is a white man and quite venerable in appearance. He was somewhere about four or six years old when his father married Peggy or Margaret Mawlow and he was born about the year 1826. On cross examination he states he was born in the State of Alabama and afterwards lived in the State of Missouri; his father lived in Wright County in that State and then moved to the County of Madison in the same State, and he himself lived there until he went to the State of Texas about the year 1850. When he first came to his father's home from Alabama, when after his mother's death, as a small child he had been living with his grandfather in Alabama, he found his father and his step-mother Peggy or Margaret Marlow, living in the State of Tennessee in the Cumberland mountains. The Cumberland mountains as is well known are in East Tennessee, far removed from the Choctaw Nation in Mississippi. They lived there six months and then went to Alabama after the mother of Peggy aforesaid, who lived in Jackson County, Alabama. He knew his step-mother Peggy from that time until her death about two and a half or three years ago. He knows not what her blood was or who her father was save by hearsay. He thinks it was about 1832 that his father married Peggy. Again he says the first time he ever saw her was in the Cumber land mountains in Tennessee.

It appears in evidence in the Epsie Underwood case, a companion case to this, that the said Epsie Underwood, a witness for herself, made an affidavit in 1896 to be used befor e the Commission to the Five Civilized Tribes, ex-parte before her

attorney also acting as Notary Public. All this witness Epsie Underwood, knew about her being a Choctaw by blood, is hearsay and inadmissible. She first remembers herself in Missouri and then in Texas. She has no knowledge of the residence of her ancestors either in Mississippi or Alabama.

Crawford Marlow, the brother of Epsie Underwood, as a witness, testified, he claims to have been admitted and his sister Mrs. Beal in the same case, which has not been appealed. His grand-mother Peggy Marlow was never an applicant for admission to citizenship as a Choctaw by blood; he knows nothing except by hearsay as to her Indian blood; he never heard his mother say to what blood "Peggy" belonged; he was born in Missouri. Mrs. Beal, his aunt, was a witness in 1892, for him before the Choctaw council and for Epsie Underwood also; his mother was living in 1896 and he doesnot remember whether she still lived in Texas or had removed to the Indian Territory. His father owned land in Missouri when he left there and went to Texas; he started from Missouri to Texas going through Little Rock, Arkansas and Clarksville, Texas; he has quite a number of brothers and sisters whose descendants now live in Texas; he claims, by hearsay, about one sixteenth Choctaw blood.

Others of the interested witnesses testify that Peggy or Margaret Marlow did not apply for citizenship in the Choctaw Nation and did not want it.

William A. Underwood a witness for claimants says, on cross examination, that he never heard his wife had any Choctaw blood until after his marriage; the older members of the family started the claims and he joined in. His wife's mother Peggy or Margaret Marlow was the oldest of the family and knew more than anyone else about whether they had Indian

blood or not, and she seems to have denied to disinterested witnesses time and again that she had any Indian blood.

I have not been able to find, after diligent search and examination, of all the oral evidence adduced here, in all the cases herein intended to be decided, and mentioned in the caption of this opinion, any evidence from any of the parties hereto, of a competent nature which shows that the "Peggy" or "Margaret" Marlow, under whom all these appellants claim, had any Indian blood inher veins.

Although these parties originally do not seem to have claimed through Moontubbee or John Patterson, as they claim him to have been, yet now they do claim through him.

It is interesting and instructive inthis connection to advert to pages 50, 255 and 908 of a record before the Court of claims of the United States, entitled the Choctaw Nation against the United States. It will there be found that according to that record Moontubbee in 1838, had as his oldest child a man named James Patterson; that he was 22 years old in 1838, or 15 years old in 1831, or 16 in 1832, and living in the State of Mississippi, and yet this Peggy or Margaret Marlow (nee Patterson) was then married up in the Cumberland mountains in Tennessee, and the record of that case shows from the lips of her alleged father Moontubbee, under oath, that he had no such child as she was, and that his son and oldest child, was only 15 years of age in 1831 and 16 years old in 1832. This alone utterly disposes of any descent on the part of this "Peggy" or "Margaret" Marlow from Moontubbee, and many other facts appearing on the above mentioned pages of that record show the same thing.

Then again D. D. Durant, an affidavit maker for these

people, is shown in the case of John Mitchell, et al., No.101, on our Choctaw Docket, in his oral testimony before this Court, to have made affidavits in various citizenship cases like this and stated facts to be true therein, which he either knew to be untrue, or knew nothing about, except what some of these applicants told him. The use of such evidence as his and Sam Perry's, show these applicants utterly devoid of good faith in their applications, and taken in connection with all the other facts and circumstances developed in these cases, stamp their efforts to obtain by such means, the property of others, with the ineffaceable brand of fraud.

It is plain to me that these peoples' ancestors were not Choctaw Indians atall, nor do I believe they were of any other Indian blood.

They or their ancestors are never shown to have been in the State of Mississippi where the Choctaws lived, or at all. As early as 1831 or 1832 Peggy or Margaret Marlow, through whom they claim, lived and was a married woman, wife of a white man named Marlow, in the Cumberland mountains in Tennessee. They moved from there to North Alabama, and then to Missouri and then to Texas, where she lived for more than forty years. One of her daughters who married a man named Beal, came to the Indian Territory, and then it was that against the wishes of their alleged Indian ancestress, they hatched up the scheme to claim Choctaw Indian blood, and obtain rights as citizens. In dealing with the Choctaw council they either must have deceived it, or used other questionable means to get on the roll, for if the true facts in their case had been developed then, as they are now, they could never have justly obtained what they sought, and others of the same blood have apparently done the same.

I am of the opinion that none of the parties to this

appeal, who are properly before this Court, (and none are except those included in the judgments below, and in the petition for appeal here), are entitled to be declared citizens of the Choctaw Nation, either by blood or intermarriage as their claim may be, or entitled to enrollment as such, or to any rights which flow 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.

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

Rebecca C. Harris, et al.,
Plaintiffs.

No. 110.

J. G. Ralls, for plaintiff.

vs.

Choctaw and Chickasaw Nations,
Defendants.

Mansfield, McMurray & Cornish for defendants.

OPINION.

By Weaver, J.

This cause comes into this Court on appeal from the United States District Court for the Central District of the Indian Territory.

The plaintiffs are Rebecca C. Harris and descendants from her, and certain others who are intermarried with some of her children.

There is no dispute that said Rebecca C. Harris and her said descendants are Choctaw Indians by blood, she being a daughter of Greenwood Leflore, who was a prominent member and Chief of the old Nation East of the Mississippi River, and who was especially provided for by a grant of certain lands by the terms of the treaty of 1830.

Neither Greenwood nor any of his family came with the tribe when, under the terms and provisions of said treaty, they emigrated from the old location to the newly acquiredlands west of the Mississippi River and made their homes within the limits of the Indian Territory. There is some evidence tending to show that he came to this country and remained a little while, during which time he began to make some improvements, but speedily abandoned the same and returned to Mississippi, where he remained until his death, which occurred in 1865.

None of his descendants who are claimants in this cause came to this Territory until about January or February, 1885, when W. L. Harris, a son of Rebecca C. Harris, came here and remained until the latter part of 1886, when he returned to Mississippi. During the period he was here he diligently employed himself in ascertaining what steps it would be necessary for him to take in order that he might become a recognized member of his tribe, and his evident intention was to take up a permanent residence here only in the event his right to citizenship was established. He went back and forth to Mississippi several times . He brought his mother out here in 1887 and they made application to the Choctaw Council for citizenship, but no action was taken on it.

In 1896, after the Commission to the Five Civilized Tribes was established, Rebecca C. Harris, still a resident of Mississippi, made application on behalf of herself and her descendants for enrollment as a Choctaw, in which she states that in 1890 she made application to the Choctaw Council for recognition for herself, her children and her grandchildren, but that no final action was ever had thereon. And,

> "That for the reason that said Council failed to act upon said application your petition and all for whom she prays had not taken up their residence in said Choctaw Nation: That at the time said application was made as aforesaid to the Choctaw Council, as well as now, both your petitioner and those for whom she prays for enrollment, were residents of the State of Mississippi: That as their citizenship was not recognized by said Choctaw Council it would have been unwise to have sacrificed their interests in Mississippi and removed to the Choctaw Nation and as aforesaid that is the reason that all are now non-residents of the said Choctaw Nation."

This application was sworn to by the said Rebecca C. Harris on the 31st day of August, A. D. 1896.

On the same day W. L. Harris, son of Rebecca C. Harris made an affidavit in which he said:

> "The facts stated in the foregoing petition of Rebecca C. Harris, et al., are true as stated: That of his own knowledge all the facts are true."

The said Rebecca C. Harris also testified in the trial of this case before this Court, that she is still a resident of Mississippi, and that her intention has been to make her home here only in the event that she is adjudged a citizen of the Choctaw Nation. I am of the opinion from the record and testimony in this cause that none of the plaintiffs have been bona fide residents of the country ceded to the Choctaw Nation west of the Mississippi River, but came here to make an attempt to be recognized as citizens of the Nation, and if they failed in their enterprise would still have their homes and citizenship where they came from.

Finding, as I do, that these plaintiffs are Choctaw Indians by blood, or claim rights as Choctaw Indians by reason of intermarriage with persons who had such blood and that they are not bona fide residents of the country heretofore ceded to the Choctaw Nation, the next question is whether or not such residence is essential to the full enjoyment of their rights. Among these rights is the privilege of participating in the distribution of the tribal lands and moneys. The government of the United States and the Choctaw and Chickasaw Nations have agreed that the time for the allotment of lands in severalty among the members of the tribes or nations, and division of the funds of said nations, long looked for-

ward to and considered has at last arrived, and that the tribal governments shall soon be a thing of the past. Who, then, shall be participants in this final decision? We must bear in mind that this is no temporary or hasty matter, but has been intended by all parties interested to be a finality and has engrossed their active thoughts for three quarters of a century and the present state of affairs has not been brought about in one leap but has come step by step.

In the treaty of 1820 it is stated in the preamble that:

> "It is an important object with the President of the United States to promote the civilization of the Choctaw Indians."

and in article four it is provided that:

> "The boundaries hereby established between the Choctaw Nation and the United States, on this side of the Mississippi River shal remain without alteration until the period at which the nation shall become so civilized and enlightened as to be made citizens of the United States, and Congress shall lay off a limited parcel of and for the benefit of each family in the nation."

In the treaty of 1825 it is stipulated that said article of the treaty of 1820 shall be so modified that Congress shall not have the power of allotting the lands, or of bringing the members of the tribe under the laws of the United States except with the consent of the Choctaw Nation.

Then came the Treaty of 1830, which provides in article 1:

> "All other treaties heretofore existing and inconsistent with the provisions of this are hereby declared null and void."

In Article 2 is this language:

> "The United States under a grant especially to be made by the President of the United States shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it."

To obtain and retain the title to their land they must do two things, viz: "Continue to exist as a Nation", and "Live on it", That is live on the land.

By article 3 of the Treaty the Choctaw Nation cede their lands East of the Mississippi River to the United States and agree to remove beyond the Mississippi which they agree to do, "in consideration of the provisions contained in the several articles of this treaty."

In pursuance of the terms of this treaty a patent for the lands "west of the Mississippi River" was issued by the President of the United States containing the identical language above quoted as contained in the second article of said treaty. As stated by counsel for plaintiffs in his brief filed herein it was the evident intent and meaning of all parties to this treaty that the Choctaws should remove to the new country, and although it provided that they might remain there and take up land without losing their pivileges as members of the tribe, yet they would forever x lose their annuities.

And so, from that time to this, as shown by the various treaties and laws, a presistent effort was made to get the Choctaws to come here and <u>live on the land.</u> And by Act of Congress (June 28, 1898), it was provided that:

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

Thus enacting in the form of a statute what had evidently been the intention of the parties when the various treaties were made.

There are various other interesting and important question which might be considered here but in view of the conclusion already expressed by me herein, I deem it unnecessary to enter into them. Therefore, for the reasons above stated, I am of the opinion that none of the applicants herein are entitled to be enrolled as members of the Choctaw Nation in this proceeding.

(Signed) Walter L. Weaver,
Associate Judge.

We concur:

(Signed) Spencer B. Adams,
Chief Judge.

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

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

George Wooldridge, et al.,

vs. No. 111.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT.

Nancy Henderson, et al.,
Plaintiffs.

vs. No. 112.

Choctaw and Chickasaw Nations,
Defendants.

Linebaugh Brothers, for plaintiffs.

Mansfield, McMurray & Cornish, for Defendants.

O P I N I O N.

Weaver, J.

This cause came into this Court on appeal from the United States District Court for the Central District of the Indian Territory.

The plaintiffs are Nancy Henderson and her children who claim to be Choctaw Indians by blood. It appears that Nancy Henderson's maiden name was Vinson, and that her mother's maiden name was Nancy Moore. The claim is, that said Nancy Moore was a half breed Choctaw.

There was not a great deal of testimony and it can be summarized as follows:

Nancy Henderson testified that she is sixty-five years of age, and has lived in the Choctaw Nation for about twenty years. Prior to that she lived in Texas eight years. She was born and reared in Kentucky and lived there until she moved to Texas. She says that her mother (Nancy Moore Vinson) was "said to be" half white and half Indian, and "said to be" a Choctaw". Witness cannot recollect where her mother was said to have been born, but states "it seems like Mississippi". Her mother died when the witness was eighteen and consequently was amply old enough to remember whatever her mother may have said, if anything, upon the subject

of her place of birth. Witness also statesthat her mother had black hair and was "tolerably dark", could not speak plain English, but when asked if she could speak the Choctaw Indian language, replied, "if she could, I do not know it."

Witness claims to be a cousin (or second cousin) to one Gilbert Moore, and to his sister Louisa Impson, who were residents of the Indian Territory and lived at or near Tushkahoma.

None of the plaintiff's immediate relatives except her children have lived in the Indian Territory, or claimed any rights as Choctaw Indians. Witness states that she does not know that Gilbert Moore and Louisa Impson are related to her, except as they told her so.

There was no other testimony on behalf of the plaintiff, except, George Henderson, son of Nancy, and likewise one of the plaintiffs, who testified that he personally knew nothing of the merits of their claim. It was developed in his cross-examination that he was a citizen by intermarriage and as such intermarried citizen he had been exefcising rights as a Choctaw; that he was married in accordance with the laws governing the marriages of white men with Choctaw women, as was likewise one of his brothers.

The Defendants produced Louisa Impson as a witness and she testified (through an interpreter), that she had no knowledge of Nancy Henderson or her ancestry. That she first saw and got acquainted with her at Tushkahoma about eight or ten years ago, and knew nothing of her ancestry except what she told her, and had no knowledge of any relationship existing between them.

Regardless of any weight which might attach to her testimony on account of her having testified differently on

a previous occasion, I am of the opinion that the plaintiffs have entirely failed to show that they are Choctaw Indians by blood or are Indians at all. The account they give of themselves would negative rather than affirm the proposition. Judgment will be rendered accordingly.

(Signed) Walter L. Weaver,
Associate Judge.

We concur:

(Signed) Spencer B. Adams,
Chief Judge.

(Signed) Henry S. Foote,
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.

J. L. C. Pate,

Appellant,

vs. No. 113.

Choctae and Chickasaw Nations,

Appellees.

OPINION, by FOOTE, Associate Judge.

The appellant, a white man claims to be entitled to enrollment as a Choctaw intermarried citizen, by virtue of having married in 1859, in the State of Mississippi, a woman who claims to have Choctaw blood, who died there about twenty-five years after said marriage, or about 1885, and never came to the Choctaw Nation.

There are two reasons why he is not entitled to be declared a citizen by intermarriage. The first is that his marriage although valid perhaps as a marriage in the State of Mississippi, or as a common law marriage, did not take place in the Indian Territory according to the laws of the Choctaw Nation, and was not in accordance with the laws of the Choctaw Nation. (See Act of 1840, pages 76 and 77, Laws of Choctaw Nation of 1869.) The next reason is that he never lived with his alleged Choctaw Indian wife in the Indian Territory at all; and while there is some evidence here, circumstantial in its nature, as to his children by this wife being enrolled as Choctaw Indians by blood, there is none that his wife was ever enrolled as such an Indian.

I am therefore of opinion that the claimant has no claimw whatever to be declared a Choctaw citizen by intermarriage or to enrollment as such or to any rights or privileges 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.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. September Term, 1904.

Ella Bennett, et al.,

vs. No. 114.

Choctaw and Chickasaw Nations.

OPINION, by ADAMS, Chief Judge.

On the 24th day of August, 1897, a judgment was rnedered in the United States Court for the Central District of the Indian Territory, admitting to citizenship in the Choctaw Nation, Ella Bennett, Ida Martin, Maud Martin and Lena N. Bennett, upon an appeal from the decision of the Commission to the Five Civilized Tribes. This case was transferred from the South McAlester docket to the Tishomingo docket for the reason that the applicants claimed to derive their Indian blood from one Aaron Askew, who was the ancestor of the applicants in case No. 1, entitled Newt Askew, et al., vs. Choctaw and Chickasaw Nations", on the Tishomingo docket, as the applicants desired that the evidence in case No. 1 be considered in determining the questions involved in this case.

The evidence is not sufficient to warrant the Court in finding as a fact that Aaron Askew, the ancestor of these applicants, was a Choctaw Indian, or that these applicants possess any Indian blood whatever. Reference is here made to the opinion of the Court in case No. 1, above referred to.

The application of these applicants is, there, denied.

Spencer B. Adams,
Chief Judge.

We concur:
Walter L. Weaver, Associate Judge.
H. S. Foote, Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT.

FRANK P. MORGAN,
Plaintiff,

vs. No. 115.

The Choctaw and Chickasaw Nations,
Defendants.

Arnote & Eubanks, for Plaintiff.

Mansfield, McMurray & Cornish, for Defendants.

O P I N I O N.

Weaver, J.

This cause comes into this Court on appeal from the United States Court for the Central District of the Indian Territory.

The plaintiff claims a right to citizenship and enrollment in the Choctaw Nation by reason of his intermarriage with one Emily Harlan, who he alleges was a citizen of said Nation by blood.

The evidence offered in this case is a certificate from a member of the Dawes Commission which reads as follows, viz:

"Department of the Interior,
Commission to the Five Civilized Tribes.

I, T. B. Needles, a member of the Commission to the Five Civilized Tribes, does hereby certify that it appears from our records that Frank P. Morgan was admitted as an intermarriage citizen of the Choctaw Nation under the provision of the Act of Congress of June 10th, 1896.
In Testimony Whereof, I have hereunto set my hand this December 12th, 1903, at Muskogee, Indian Territory.

(Signed) T. B. Needles,
Commissioner."

There was likewise offered in evidence a certificate

as follows, viz:

"Choctaw Nation, Indian Territory.

I, Green McCurtain, Principal Chief of the Choctaw Nation, do hereby certify that I am the custodian of the rolls of the Citizens of the Choctaw Nation compiled in persuance with the act of the Choctaw Council entitled, 'An Act creating three commissions to make a complete roll of the Citizens of the Choctaw Nation." Approved on the 30th day of October , 1896, and that the name of Frank P. Morgan appears on said rolls as a citizen by intermarriage on page 394 of the book of said rolls containing the names of citizens by intermarriage.
Witness my hand and seal at Sans Bois, in the Choctaw Nation on this the 19th day of June, A. D. 1897.
Wallace Bond, Private Secretary. Green McCurtain, Principal Chief of the Choctaw Nation."

(SEAL)

The plaintiff did not appear in person to give any testimony in this cause. This Court has not been informed whether or not he is now living.

As we have repeatedly held, the right to citizenship in the Choctaw Nation by intermarriage of a white man with a Choctaw woman, can only exist when that marriage was performed under the sanction and authority of the laws and customs of the Choctaw Nation. There is no evidence before me that the marriage referred to in this cause was such a one. On the contrary, an inspection of the record sent to us from the United States District Court for the Central District of the Indian Territory shows that such is not the case, but that said marriage was contracted in the Creek Nation. These facts were made to appear, (as said record shows) by the affidavit of the plaintiff in his application to the Commission to the Five Civilized Tribes for enrollment as a Citizen of the Choctaw Nation.

I am of the opinion therefore, that the said Frank P. Morgan is not entitled to Citizenship and enrollment

as a member of the Choctaw Nation or Tribe of Indians as an intermarried citizen thereof. Judgment will be rendered accordingly.

(Signed) Walter L. Weaver,
Associate Judge.

We concur:

(Signed) Spencer B. Adams,
Chief Judge.

(Signed) Henry S. Foote,
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.

Charles D. Sullenger, et al.,

Appellants,

vs. No .116.

Choctaw and Chickasaw Nations.

Appellees.

OPINION by FOOTE, Associate Judge.

This cause comes here by appeal from the United States Court for the Central District of the Indian Territory, under the Act of July 1, 1902.

The parties were denied admission in their application to the Commission to the Five Civilized Tribes, and appealed to the United States Court above mentioned, and were there given judgment as entitled to enrollment as Choctaw Indians by blood.

On the trial before us the record evidence used before the Commission to the Five Civilized Tribes was offered in evidence. It consisted of ex parte affidavits taken in 1896 to be used before said Commission. No proof was made before us that any of the parties making these ex parte affidavits were then dead or beyond the jurisdiction of this Court, so that they are incompetent as evidence. None of those making said ex parte affidavits were produced to testify before us. There was then offered a deposition of one P. Stamphill, taken in 1897, and used before the United States Court aforesaid on a trial denovo there on appeal from the adverse decision in this case of the Commission to the

Five Civilized Tribes, proof being made that the deponent was dead. The deposition was objected to and it is incompetent as evidence here as it was used and taken for that purpose in 1897, in a proceeding where both the Choctaw and Chickasaw Nations were not parties and in a trial de novo, unauthorized by law.

One of the parties to this suit, James P . Stamphill, was present before us, and testified merely that his father who made the aforementioned deposition was dead, and the witness did not testify or seek to testify further in the case. No other witnesses or evidencewas offered.

The attorneys for the appellees then stated that they were then and "always have been ready to introduce positive and conclusive evidence upon any issue that could arise in the case, but that no issues have been alleged or proven, and hence they did not offer any evidence".

It is plain that there is no competent evidence whatever before us, none such having been offered by the appellants to prove their claim, hence I am of the opinion that the appellants, none of them, are entitled to be declared citizens by blood of the Choctaw Nation, or to enrollment as such, or to any rights or privileges 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.

In the Choctaw and Chickasaw Citizenship Court,

Sitting at Tishomingo, I. T. November Term, 1904.

--o--

Mary Goddard, et al,	)	
	)	
vs	)	No. 117.
	)	
Choctaw and Chickasaw Nations.	)	Choctaw Docket.

O p i n i on.

Weaver, J.

The plaintiffs in this case are John Goddard, husband of Mary Goddard, and Arizona Goddard, Annie Goddard, James Goddard and Ophilia Goddard, who are the children of the said John and Mary Goddard.

The testimony shows that the said Mary Goddard is a white woman and that she was married to one Gabriel Grubb, a Choctaw Indian by blood, and a resident of the said nation, on the 10th day of December, 1874, and that such marriage relation continued until the death of said Grubb on the 2d day of August, 1877.

That on the 18th day of February, 1879, she was again married to John Goddard, one of the plaintiffs herein. That said John Goddard is a white man and said marriage was solemnized in Fannin County, Texas, and in accordance with the laws of said State. That continuously from the date of her marriage to Gabriel Grubb, with the exception of a few months, and for temporary purposes only, said Mary Goddard has resided in the Choctaw Nation and that the plaintiffs are likewise residents of the Choctaw Nation.

In 1896, The plaintiffs and Mary Goddard made application to the Com ission to the Five Civilized Tribes for enrollment as members of the Choctaw Nation and by the decision of said Comission Mary Goddard was duly enrolled as a member thereof. The remaining parties, who were denied admission and enrollment,

appealed to the United District Court, for the Central District of the Indian Territory and their cause afterwards came into this court on appeal from said court in the usual way.

I am of the opinion, that the plaintiff, John Goddard, is not entitled to enrollment as a member of the Tribe, even if he otherwise might be, for the reason that his marriage to his wife, the the widow of Gabriel Grubb, and consequently an intermarried citizen of said Tribe, was not solemnized in accordance with the laws of said Nation, which as this court has frequently held, is a necessary prerequisite to the conferring of any right as to citizenship on a white man intermarrying with a Choctaw Indian.

As the majority of this court has held, and thus established this law to be, that no right of membership is said nation accrues to a white person, who has intermarried with another white person who had previously been married to a member by blood of the said Nation, or accrues to the descendants of such white person, I must likewise find that none of the plaintiffs are entitled to or can be enrolled as members of said nation, or Tribe, and the judgment and decree of this Court will be rendered accordingly.

Signed Walter L. Weaver.
Associate Judge.

Spencer B. Adams
Chief Judge.

H. S. Foote
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER,
INDIAN TERRITORY.

W. T. Stevens, et al.,
Plaintiffs.
vs.

No. 118.

J. S. Arnots,
for plaintiffs.

The Choctaw and Chickasaw Nations,
Defendants.

Mansfield, ~~MC~~Murray & Cornish,
for Defendants.

opinion/

By Weaver, J.

This cause comes into this Court on appeal from the United States District Court for the Central District of the Indian Territory. In accordance with the terms of a stipulation made by the then attorneys for the Choctaw Nation, (the Chickasaw Nation not being a party to the suit), and the said W. T. Stevens, the said Court admitted the said W. T. Stevens to citizenship in the Choctaw Nation and denied the right of the other parties plaintiff, who are his children.

After the decision by this Court ~~is~~ in what is commonly known as the Riddle or test case, setting aside all the judgments of this character theretofore rendered in the District Court for the Central and Southern Districts of the Indian Territory, the plaintiffs herein appealed to this Court.

The evidence taken by this Court in this cause shows that the said W. T. Stevens was a ~~xxxxxxxxxxxxxxxx~~ whiteman, who in 1858 was married to one Catherine Wall, a part-blood Choctaw woman, then living in the Choctaw Nation. That he lived with her until 1869 when, he having abandoned her, she

obtained a divorce. Shortly afterwards he married one Frances Smart, a white woman, by whom he had a number of children who are now-co-plaintiffs in this action. It is not contended that the children of W. T. Stevens and Frances (Smart) Stevens possess Choctaw Indian blood in any degree.

At the time of the marriage of said W. T. Stevens with Catherine Wall, the Choctaw Statute (approved, October 1840) with regard to the intermarriage of white men with Choctaw women was as follows, to-wit:

> "BE IT ENACTED BY THE GENERAL COUNCIL OF THE CHOCTAW NATION ASSEMBLED:
> That no whiteman shall be allowed to marry in this Nation unless he has been a citizen of the same for two years.
> AND BE IT FURTHER ENACTED:
> That he shall be required to procure a license from some Judge or the District Clerk, and be lawfully married by a minister of the Gospel, or some other authorized person before he shall be entitled and admitted to the privilege of citizenship."

There is no evidence before us that the said W. T. Stevens had been a citizen of the Choctaw Nation for two years or for any other period prior to his marriage to Catherine Wall, or that their marriage was in accordance with the laws of the Choctaw Nation. On the contrary, what little evidence there is on the subject is to the effect that the marriage occurred in Arkansas, and at the conclusions of the taking of testimony at the hearing of this cause, Mr. Arnote, counsel for plaintiffs, in open Court, and in the presence of some, at least, of the plaintiffs, stated to the Court, "I will find out whether that marriage occurred here or in Arkansas."

The case was therefore left open for the taking of further testimony by the plaintiffs on that question, but

none was produced.

I am, consequently, of the opinion, upon full consideration of the evidence before the Court, that the plaintiffs have failed to prove that the marriage of the said W. T. Stevens and Catherine Wall was in accordance with the Choctaw tribal laws, and that no xxx right of citizenship in said Nation was conferred on him by reason thereof, and if he had no such right then his children by his subsequent marriage likewise had no right to citizenship, even if he could have transmitted such right to them, upon which proposition it is unnecessary to pass in this case.

Judgment will be rendered accordingly.

(Signed) Walter L. Weaver,
Associate Judge.

We concur:

(Signed) Spencer B. Adams,
Chief Judge.

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

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory, October Term, 1904.

Glenn-Tucker, et al.,	:	
	:	
Appellants,	:	
	:	No. 119.
vs.	:	Choctaw Docket.
	:	
Choctaw and Chickasaw Nations,	:	
	:	
Defendants.	:	

OPINION, by FOOTE, Associate Judge.

This cause stands in the same attitude as that of No. 7, on the Choctaw Docket, just decided. The parties appellant claim their Choctaw Indian blood, through a common ancestress, one Abigail Rodgers, and the evidence in that case is applicable in this case, and by common consent is to be so considered, and the action of this Court in case No. 7, supra, must and does control the judgment in this case.

The number of the applicants is such as to preclude the naming of them in this opinion, but they are none of them entitled to be declared citizens of the Choctaw Nation, or to any rights or privileges flowing therefrom, AND IT IS SO ORDERED.

Henry S. Foote
Associate Judge.

We concur:

Spencer B. Adams
Chief Judge.

Walter L. Weaver
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

George Lee White, et al.,

vs. No. 120.

Choctaw and Chickasaw Nations.

Identical with the case of Jane Marrs, et al., vs. Choctaw and Chickasaw Nations, No. 109 on this Docket. See opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP
COURT, SITTING AT SOUTH McALESTER,
INDIAN TERRITORY, MARCH TERM,
1 9 0 4.

MOLSIE BUTLER,

VS. NO. 121.

CHOCTAW AND CHICKASAW NATIONS.

STATEMENT OF FACTS AND OPIN ION
BY ADAMS, CHIEF JUDGE.

The evidence in this case shown that the applicant was denied citizenship by the Commission to the Five Civilized Tribes, but was admitted to citizenship and enrollment by the United States Court for the Central District of the Indian Territory; that she in apt time appealed her case to this Court, after the judgment obtained in the United States Court for the Central District of the Indian Territory had been declared void by this Court; that the applicant is what is known as a Choctaw freedman, and is on the rolls as such; that her mother Salina Mahardy, a colored woman and was a slave, and married a Choctaw Indian named Aleck Foster, after the War; that the plaintiff was born of this marriage; that plaintiff has married a colored man named Butler; that plaintiff claims her right to citizenship and enrollment by reason of the fact that her father was a Choctaw Indian.

While the marriage of Foster to plaintiff's mother a colored woman and a slave, under the common law, may have been a valid marriage, in the absence of a law at that time forbidding such a marriage, but whether such marriage conferred upon his offspring rights of citizenship and enrollment as Choctaw Indians, is another and more serious question.

The lands embraced in what is known as the Choctaw and Chickasaw nation in the Indian Territory, were ceded to the members of these two tribes and their descendants by the United States Government, upon certain conditions named in the Treaty of 1830, and also stipulated in the patents issued for these lands. No persons except those mentioned in the Treaty were to t ake any part of these lands; but there is a provision in the 38th Article of the Treaty of 1866 conferring rights upon white people who have married Choctaw or Chickasaw Indians, but there is no provision in any treaty with these tribes, that I have been able to find, conferring any rights upon colored persons, or their descendants who may have married an Indian.

I am, therefore, of the opinion that the plaintiff is not entitled to citizenship and enrollment as a Choctaw Indian, but that she is a Choctaw Freedman, under the laws and treaties.

A judgment will be entered by this Court in accordance with this opinion.

(Signed) Spencer B. Adams,
Chief Judge.

We concur:

(Signed) Walter L. Weaver,
Associate Judge.

(Signed) Henry S. Foote,
Associate Judge.

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

EMMA BOTTEROFF, et al, plaintiffs.	)	No. 122.
vs.	)	J. P. & J. S. Mullen, For Plaintiffs.
THE CHOCTAW AND CHICKASAW NATIONS Defendants.	)	Mansfield, McMurray & Cornish, For Defendants.

By WEAVER, J.

This cause comes to this court on appeal from the decision of the United States District Court for the Central Districtof the Indian Territory.

The plaintiffs in this cause are Emma Botteroff, A. F. Van Horn, her son, Susan McClure, her daughter, Rosa Perkins, now Rosa Davis, also her daughter, and May Van Horn and Ethel Van Horn, children of said A. F. Van Horn. This Court has no jurisdiction to adjudicate the rights of the two last named persons, for the reason that neither of them were parties to this suit in the said United States District Court for the Central District of the Indian Territory, and no judgment was rendered by said Court as to them. (see opinion and judgment of this Court in Louis Rockett, et al, vs. The Choctaw and Chickasaw Nations). All the other plaintiffs in this action claim to be Choctaw Indians by blood .

Emma Botteroff, (whose name is now Emma Blake by reason of her intermarriage with a man of that name since the institution of proceedings by her to establish her citizenship rights before the Commission to the Five Civilized Tribes), alleges that she is a daughter of Susan Lowe, deceased, who was the daughter of Jane Rodman, whose maiden name was J ane

Fazier, and whom she alleges was a ChctawIndian woman .

The oral test imony of Emma Botteroff, or Blake, delivered to this Court, is that she was born in the State of Illinois about 1849 or 1850. That she was the daughter of Joanthan and Susan Lowe. That she came to the Indian Territory and has been living there since 1873, with the exception of a very brief interval or two, and was married to Van Horn before she came to the Territory. That she was nine years of age when she left Illinois and went from there to Missouri. That she lived in Missouri until she was about eighteen years of age, was married there and when she left Missouri she went to Blue County, in the Choctaw Nation, Indian Territory. She states, however, that she did not get to Blue County until 1873, and where she spent the time after she left Missouri, in or about 1868 until she reached Blue County in 1873, she does not explain. She does not know where her mother was born but thinks it must have been in Illinois. She says at one time in her testimony, that her mother died in the Osage country near the line of the State of Kansas, and a few minutes later says she died either in Iowa or Illinois. She never knew her grandmother, Jane Frazier Rodman, and declared that she died when witness was two weeks old. Witness testified that she had no knowledge of her having Indian blood, except what she learned from her mother, and that she never claimed any other blood except Choctaw and white.

The record of the proceedings and evidence in this cause, before the Commission to the Five Civilized Tribes and in the United States District Court for the Central District of the Indian Territory, is before this Court, having been sent to us under the provisions and requirements of the

statute. The attention of the witness was directed to certain portions of this record in her oral examination, , and an inspection of said record shows that when the witness made application to the said Commission she stated that her grandmother died in Mississippi about 1870, which I note was twenty years instead of two weeks after witness was born. That her mother, Susan Rodman Lowe, was an admixture of white, Cherokee and Choctaw blood. This application was sworn to by said witness on the 5th day of September, 1896. On the same day she made an affidavit in support of her application, in which she said;.....

> "That she derives her Choctaw Indian blood from her mother, Susan A. Lowe..... (who) was born about the year 1828, that she intermarried with Joantha n Lowe in 1846, and by such marriage affiant was born in 1849. That affiant moved to the Choc aw Nation when she was about three years of age and about the year 1852, whereshe has resided continuously ever since, except at short intervals."

In the same affidavit she says that her grandmother, was born in Mississippi about the year 1855, and died about the year 1880, and that her mother, Susan A. Lowe, was born about the year 1828. This statement, although sworn to by her, is an absurdity, as it makes out that her mother was born thirty-two years before her grandmother was.

On the 14th, 15th and 16th days of July, 1897, as appears in said record, depositions were taken before one M. M. Winningham, a notary public, at South McAlester, Indian Territory, and, according to the caption of said depositions and the certificate of said notary, the deposition of the said Emma Botteroff was taken at that time. These depositions were taken in the cause of Emma Botteroff, et al, vs the Choctaw Nation, then pending in the United

States District Court for the Central District of the Indian Territory and to be read and considered in said cause. The alleged deposition of said Emma Botteroff was not signed by her, although depositions of all the others taken at the time were subscribed by them. It begins in the usual form, viz: "Emma Botteroff, being duly sworn, states."

> "They"--referring to her parents-- "moved to this country soon after the war of '61--'65, and settled in Blue County, Choctaw Nation. I do not remember when we came here but have been told that I was only about three years of age. The first I remember we lived near the Rock Ford on the Canadian River, near where Whitefield now is, and in the Choctaw Nation."

If she was born in 1849 as she has repeatedly stated, she must have been at least sixteen years of age at that time.

She then testifies as to the age of her children and says that her oldest is then (this was in 1897) about twenty-seven years of age. In order to make these statements harmonize, if she came to this country in 1865 at the age of three years her son must have been born when she was eight years of age. Another absurdity, to call it by no harsher name. She further says in said deposition;

> "I was never away from the Choctaw Nation at any one time for more than a year, and at that time was away at Oswego Springs, Kansas, where I went for my health. When my son-in-law William McClure, stated that I was married to Van Horn, in Illinois, he was mistaken. I never was in that State."

Yet this same witness gave oral testimony in this Court that she was born in Illinois and lived there until she was nine years of age.

There is no other evidence in this case, either oral or documentary, sufficient to show that the plaintiffs herein are of Choctaw Indian blood in any degree, and in view of the incongruities, contradictions and absurdities in the state-

ments of this witness in her oral testimony before this Court, and disclosed by the record sent up to us which contains her testimony heretofore given concerning this matter, I am of the opinion it would be a wrong so gross as to be almost criminal, to grant to her and those claiming under her the rights they have prayed for, and to find her and them entitled to citizenship and enrollment in the Choctaw Nation, as Choctaw Indians by blood. There is absolutely no competent or convincing evidence in this cause to sustain their contention.

Judgment will be rendered accordingly.

(Signed) Walter L. Weaver,
Associate Judge.

We concur:
(Signed) Spencer B. Adams,
Chief Judge

(Signed) Henry S. Foote,
Associate Judge.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. November Term, 1904.

Geo. W. Paul, et al.,

Appellants,

vs. No. 123.

Choctaw and Chickasaw Nations.

Defendants.

OPINION, by FOOTE, Associate Judge.

The appellants applied to the Commission to the Five Civilized Tribes for admission to citizenship as Choctaw Indians. They were denied admission and appealed to the United States Court for the Central District of the Indian Territory where they had judgment in their favor. This judgment was set aside in the test suit determined by this Court, and they have come to this Court on appeal in the usual way.

There are a number of affidavits filed here in the record, some of them made in 1894 and sworn to in South Carolina. While competent to be considered here, they show that what knowledge the affiants had was either derived from ancestors of Geo. W. Paul, the main applicant here, or from the appearance of the family to which Paul belonged in South Carolina, and they show that this family, according to their story, came to South Carolina from Georgia and never were in Mississippi at all, except that Geo. W. Paul went from South Carolina to Mississippi somewhere in the sixties, married there

and then came to the Indian Territory, and that none of the rest of his family ever came here, although some applied for admission in South Carolina where they lived and were denied admission to citizenship in the Choctaw Nation.

The oral evidence taken in South Carolina, before Judge Adams of this Court, shows that the Paul family to which these appellants belong, had the appearance, to some extent, of Indians, but there is no reliable or competent evidence contained therein to show that they were Choctaw Indians. There is no evidence that the ancestors of the applicants ever came to the Indian Territory. There is no evidence of a reliable character that they ever were in Mississippi at all.

It seems that Geo. W. Paul, born in South Carolina, long after the treaty of 1830, his parents living in South Carolina and remaining there, came, about 1864 or thereabouts, to the Indian Territory and settled here, and that was all the compliance with the treaty of 1830 that was ever attempted by any of the family.

There never was any organized Choctaw tribe in Georgia or South Carolina, but other Indians lived there, and if these people had any Indian blood it was not and is not proved to be Choctaw blood.

And while I do not think that any compliance with the conditions of the treaty of 1830 is shown, I do not deem it necessary to decide this case on that ground, as in my judgment they have not shown by a preponderance of evidence that they are Choctaw Indians, or what kind of Indians or race they belong to.

It is sought to make certain children parties here, who were never included in any of the adjudications of the Commission to the Five Civilized Tribes or the United States Court. We have no jurisdiction as to them, and make no decision

concerning them.

But from all the evidence, I can see no reason for admitting any of the appellants to citizenship in the Choctaw Nation, or to any rights or privileges flowing therefrom, AND IT IS SO ORDERED.

H. S. Foote
Associate Judge.

We concur:

Spencer B. Adams
Chief Judge.

Walter L. Brown
Associate Judge.

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

::

A. J. Crowson, et al.,
vs.
Choctaw and Chickasaw Nations.

NO. 124.

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STATEMENT OF CASE AND OPINION
BY ADAMS, CHIEF JUDGE.

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The record in this case discloses the fact that A. J. Crowson filed a petition before the Commission to the Five Civilized Tribes, on the 25th day of August, 1896, alleging that he was a Choctaw Indian by blood, and asking that he be declared and enrolled as such. This application was denied by the Commission, and the applicant then appealed his case to the United States Court for the Central District of the Indian Territory, where the same came on to be heard on the 27th day of August, 1897, when the plaintiff, A. J. Crowson, was declared by said Court to be a Choctaw Indian by blood.

After this judgment was declared to be void by this Court, as were all similar judgments, the plaintiff A. J. Crowson, filed a petition in this Court for himself and eleven other persons, who, as he alleges, are his children, except one, who he alleges is his wife.

In this petition plaintiffs allege that they are all Choctaw Indians and entitled to enrollment as such. Plaintiffs further allege in this petition, which is sworn to by plaintiff A. J. Crowson, that he and these other eleven plaintiffs filed a petition with the Dawes Commission, asking for enrollment. Plaintiffs further ask in this petition that their case be transferred to this Court for trial, which is done.

The record shows that none of these applicants applied to the Dawes Commission in 1896, or any other time, for enrollment, except the applicant, A. J. Crowson; and none of the other plaintiffs are mentioned in the judgment of the United States Court for the Central District of the Indian Territory. So there is no one properly before this Court except A. J. Crowson.

When the case came on for trial, plaintiffs' attorney, T. N. Foster, introduced as evidence the record in the case, the same consisting of several ex parte affidavits, and there is no evidence that the witnesses who made these affidavits, are dead or beyond the limits of the Territory.

There is no competent evidence which tends to show that the plaintiff A. J. Crowson is a Choctaw Indian.

I am, therefore, of the opinion that his application should be denied.

(Signed) Spencer B. Adams,
Chief Judge.

We concur:

(Signed) Walter L. Weaver,
Associate Judge.

Henry S. Foote,

Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

George Lee White, et al.,

vs. No. 125.

Choctaw and Chickasaw Nations.

Identical with the case of Jane Marrs, et al., vs. Choctaw and Chickasaw Nations, No. 109 on this Docket. See opinion in that case.

In the Choctaw and Chickasaw Citizenship Court.

ANNIE J. HAMILTON, ET AL,

Plaintiffs,

vs. No. 126.

THE CHOCTAW AND CHICKASAW NATIONS,

Defendants.

Eugene Easton for Plaintiffs.

Mansfield, McMurray & Cornish, for Defendants.

OPINION.

Weaver J.

This case comes into this Court on appealfrom the United States District Court for the Southern District of the Indian Territory.

The Plaintiffs are Mrs. Annie J. Hamilton and her children. They claim to be citizens of the Chickasaw Nation by blood. The testimony is very brief and on the part of the plaintiff consists only of the oral evidence taken before one of the Judges of this Court, at Antlers, I. T., and parts of the record used in the hearing of this case before the Commission to the Five Civilized Tribes, and in the hearing before said Court.

Annie J. Hamilton testified that she has been a resident of the Choctaw and Chickasaw Nations since 1882, and prior to that, lived in Arkansas and Mississippi; that she was born in Yalobusha County, Mississippi, about the year 1858. She claims to be a Chickasaw Indian with a considerable infusion of white blood. She says her father's name was Robert Mitchell who was the son of Sophia (Martin) Mitchell. She understands that her father was a land-owner

in the state of Mississippi, and that he was born in that state, but in what part of it she does not know, ~~anything~~ neither does she know anything about his ancestors beyond the name of her grand-mother as above stated. In the Fall of 1880 she removed with her mother to Crawford County, Arkansas, where her mother bought land, and she, the plaintiff, married her first husband. After three years or about 1883, her mother sold that land and they moved into the Indian Territory, locating in Red River County, and living on the place of John G. Farr who was cousin of the said plaintiff, and was an intermarried Indian citizen. She subsequently married her second husband by whom she gave birth to the children named with her as plaintiffs in this proceeding. While thus living with her said husband, who was a white man, and a Deputy United States Marshall, she made application to the Commission to the Five Civilized Tribes for Citizenship and enrollment as a Chickasaw Indian by blood. Her application was supported by the affidavits of Wallace Jefferson, an alleged Choctaw Indian now deceased, and Mary Cyfax, an aged negro woman. These affidavits or rather what purports to be substantial copies thereof, are in the record and sent to us from the said District Court, and were offered as evidence in this case when heard by this Court.

Waiving all questions as to their competency in the hearing of this cause before this Court, I am of the opinion that they do not sufficiently substantiate the claim of the plaintiffs.

The defendants introduced as a witness on their behalf, John G. Farr, a cousin of the said Annie J. Hamilton, being a son of her mother's sister, and who has known the said Annie J. Hamilton ever since she was a small child. He

states that until the time of the application of Mrs. Hamilton for Chickasaw Citizenship, he never knew or heard of her making any claim to have any Indian blood in her veins. It appears also from the testimony of the said Annie J. Hamilton that her husband C. R. B. Hamilton, had full charge of her application for citizenship both before said commission and said court.

The defendants also produced as a witness P. C. Harris, who is a citizen by blood of the Choctaw Nation. This witness testified that he became acquainted with Annie J. Hamilton in 1885, or a little earlier, and from that time until this, has known her and her family intimately; that they did not claim to be Indians until in 1896, when Mrs. Hamilton's husband set about making an application for citizenship for his wife and children to the Dawes Commission. When this witness heard that such application was made and by whom it was sought to be substantiated, viz; Wallace Jefferson and Mary Cyfax, he interogated them as to what they knew about the matter, and that he had a conversation with the said Mary Cyfax in which she stated that she had only known these people after they removed to Antlers; that she had been promised $25.00 to make the affidavit she did in the case, but that it had not been paid to her. She also told him that she did not know whether they were Choctaws or Chickasaws. The witness further states that he had a conversation with Wallace Jefferson, in which Jefferson said to him that Mr. Hamilton owed him money and asked him to make an affidavit in the case and he had gotten $10.00 from Hamilton but never got the balance; and further that when witness asked said Jefferson whether or not they were Indians he replied, "I don't know. I never knowed them before they came here."

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT SOUTH McALESTER.

S. J. Garvin,

vs. No. 127.

Choctaw and Chickasaw Nations.

No written opinion.

In the Choctaw and Chickasaw Citizenship Court, sitting at South McAlester, Indian Territory.

Wilson H. James, et al., Plaintiffs, vs. The Choctaw and Chickasaw Nations. Defendants.	No. 128. Horton & Brewer, for plaintiffs, Mansfield, McMurray & Cornish, for defendants.

By Weaver, J.

This cause was originally filed and placed on the Tishomingo Docket of this Court, being No. 5 on said docket, but upon motion of plaintiffs was transferred to this docket, and numbered as above stated. It comes into this Court on appeal from the judgment of the United States District Court for the Southern District of the Indian Territory.

The evidence shows beyond all question that the plaintiff, Wilson H. James, was a full blood Chickasaw Indian duly recognized and enrolled as such by his Nation or Tribe. That in 1880 he was married in accordance with the tribal laws to a white woman, Mary J. James, who is still living in the marital relation with him, and that she is the mother of his children, to wit, Jacob James, Gilbert James, Moses James, Joseph James, Cephus James, Ruthielane James and Miriam James. That all of said parties were parties to the proceedings in said United States District Court for the Southern District of the Indian Territory, except Miriam James who, according to the allegations of the petition herein, was not born until after the proceedings in said Court were terminated, and for that reason this Court has no jurisdiction to pass upon the question of her right to enrollment.

Judgment will be rendered accordingly.

Walter L. Weaver,
Associate Judge.

We concur:

Spencer B. Adams,
Chief Judge.

H. S. Foote,
Associate Judge.

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

Anna Smith, et al.,

vs. No. 129.

Choctaw and Chickasaw Nations.

STATEMENT OF FACTS AND OPINION

BY ADAMS, CHIEF JUDGE.

The record in this case shows that on the 9th day of March, 1903, Anna Smith, nee Anna Agee, Florence Agee, Ober Agee, Zora Agee, Hester Lee Agee, Pearl Agee, N. B. Smith, Nellie Smith, nee Nellie Buckholts, and Virginia Smith filed a petition in this Court asking this Court to adjudicate their rights, the judgment in their favor obtained in the United States Court for the Southern District of the Indian Territory, having been declared void by this Court in the Test Suit provided for in an Act of Congress, approved July 1, 1902.

This case was originally upon the docket at Tishomingo in the Chickasaw Nation, and was transferred here for the reason the applicants claim to derive their Indian blood from the same original ancestry as do the applicants in case No. 95, entitled J. M. Human, et al., vs. Choctaw and Chickasaw Nations, pending in this Court and upon this docket; and the attorney for plaintiffs in this case requests that in passing upon this case the evidence in the said Human case be considered, which I do.

The evidence offered and taken in this case shows that Anna Smith, the principal applicant , before she married her present husband_____Smith, married a man named Agee, who died about 1899, and that her name was Agee when her case was tried in the United States Court in 1897; that she had born to her by her first marriage the following children, to-wit, Florence Agee, Ober Agee, Zora Agee, Hester Lee Agee, Pearl Agee and Homer Agee; that the last named child, Homer, is now dead; that she had born to her by her second marriage Napoleon Bonapart Smith and Irene Smith, who are both infants; that Anna Smith's maiden name was Anna Buckholts, she being the daughter of George W. Buckholts, her father being the son of William Buckholts, a Choctaw Indian, who died a year or so ago at Wapanucka in the Choctaw Nation, Indian Territory; that Nellie Smith, one of the other applicants, is a full sister to Anna Smith, the principal applicant, Nellie's maiden name being Buckholts before her marriage to C. B. Smith; that she has by that marriage one child, Virginia, less than two years of age; that the father of Anna and Nellie Smith came to the Choctaw Nation with his father when quite a boy; that William Buckholts, the grandfather of Anna and Nellie Smith, and the greatgrandfather of the other plaintiffs, was a son of Betsy Buckholts, a Choctaw Indian woman who filed her application with the United States Agent in 1831, thereby signifying her intention to remain in the old Choctaw Nation east of the Mississippi River and become a citizen of the States, and took land under the 14th article of the Treaty of 1830, as is shown by the record in the Human case, above referred to; that these applicants and each one of them were born either in the Choctaw or Chickasaw nation, Indian Territory, and

have resided in either one of these nations all their lives.

After a full consideration of this case, and in view of the opinion of this Court in the Human case above referred to, I am of the opinion that the plaintiff Anna Smith and her children by her first marriage, to-wit, Florence Agee, Ober Agee, Zora Agee, Hester Lee Agee and Pearl Agee; and that the plaintiff Nellie Smith are Choctaw Indians by blood, and are each entitled to citizenship and enrollment as such in the Choctaw nation, Indian Territory.

The Court does not pass upon the rights of the children of Anna Smith by her present husband, or the rights of Virginia Smith, childof Nellie Smith, as none of them were born when this suit was instituted or the Judgment of the United States Court was rendered.

A judgment will be entered by this Court in accordance with this opinion.

(Signed) Spencer B. Adams,
Chief Judge.

We concur:

(Signed) Walter L. Weaver,
Associate Judge.

(Signed) Henry S. Foote,
Associate Judge.

T I S H O M I N G O D O C K E T.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. September Term, 1904.

Newt Askew, et al.,	:	
vs.	:	No. 1.
Choctaw and Chickasaw Nations.	:	

OPINION by Adams, Chief Judge.

The record in this case shows that on the 21st day of December, 1897, a judgment was entered by the United States Court for the Southern District of the Indian Territory, admitting the following persons to citizenship in the Choctaw Nation, and ordering them to be enrolled as such, to wit: Murrill Askew, Mrs. Mary Catherine Brewer, Mrs. Martha Etta Turner, John Askew, Newt Askew, William Howard Askew, Mary Ellen Jackson, Taylor Franklin Jackson, Alma Jackson, Charley Jackson, Roscoe Jackson, Henry Edward Askew, Elizabeth Viola Askew, Dalla Alexander Askew, Roxie Cordelia Askew, Emma Brewer, Elmer Brewer, Mrs. Rebecca Askew and Mrs. Nancy Malinda Askew, they having appealed their case to said Court from a judgment of the Commission to the Five Civilized Tribes denying them citizenship.

Under the Act of July 1, 1902, the applicants filed a petition in this Court, praying an appeal thereto, and asking that their rights be adjudicated by this Court. Said appeal was granted and the case came on regularly here to be tried.

All of the applicants claim to derive their right to be declared citizens of the Choctaw Nation solely by

reason of being descendants of Aaron Askew, or by reason of having married a descendant of said Askew, as the case may be. It is therefore necessary to determine in the outset whether or not Aaron Askew was a Choctaw Indian, and if so are the applicants his descendants.

The evidence shows that Aaron Askew resided in Lauderdale County, Alabama; that he was a Primitive Baptist preacher, and was elected as tax collector of said county and held said position for a number of years; that he was elected to this position by a vote of the people, and that he exercised all the rights of a citizen of the State of Alabama. Where he was born the evidence does not disclose. Who his ancestors were the witnesses say they do not know. The evidence shows that he was residing in Lauderdale County, Alabama, in 1802 and was there in 1862, where he died about that time. The evidence does not disclose that he ever lived in any other place except Lauderdale County, Alabama.

The applicants introduced a deed bearing date the 25th day of April, 1825, and signed by J. Q. Adams, President of the United States, conveying to the said Aaron Askew a tract of land in Lauderdale County, Alabama, for a consideration.

Some of the witnesses say that Aaron Askew was reputed to be an Indian, but of what tribe they know not.

One thing is established beyond all doubt, and that is that he was a primitive Baptist preacher; that he was elected by a vote of the people to the office of tax Collector in Lauderdale County, Alabama; that he held that office for four terms to twenty years; that he acted as guardian for at least one minor white child; that the members of the church to whom he preached were white people exclusively; and

that there were very few if any Indians in that county at that time, and that he and his family exercised all the rights and privileges of citizens of the State of Alabama. It is true that some of the applicants assert that he was a Choctaw Indian, but their testimony is so vague, uncertain, and in many instances unreasonable, I do not think it would be safe to declare that Aaron Askew was a Choctaw Indian by reason of these bare statements of theirs.

The evidence in this case is very voluminous, covering, I should say, some three to four hundred closely typewritten pages. I deem it unnecessary to set the evidence out in full, but will, however, set out a part of the testimony of Newt Askew, the principal applicant in this case.

This witness says:

That he is fifty-nine years of age; that he is a grandson of Aaron Askew and a son of Tom Askew; that he left Lauderdale County, Alabama, in 1875; that his reason for leaving there was that he belonged to a despised race of people, and he came to this country for the purpose of rejoining his tribe, where he would be among his own people; that he came to Fulton County, Arkansas from the State of Alabama, and remained there some fourteen or seventeen years; that Fulton County is in the extreme northern part of the State of Arkansas next to the Missouri line; that his reason for stopping in Fulton County, Arkansas, was that he was water-bound; that he finally reached the Indian Territory in the year 1890, and has resided here since that time; that his grandfather Aaron Askew died in Lauderdale County, Alabama, about 1862; that he has seen his grandfather often; that his grandfather looked like an Indian and he had an Indian brogue; that he

could not speak plain English. This testimony is about in keeping with the testimony of the other applicants. I must say, however, that if this witness was water-bound for a period of fourteen to twenty years, it was a remarkable flood to say the least of it.

If Aaron Askew did belong to a despised race of people, as detailed by his grandson Newt, who is the principal applicant in this case, it is rather peculiar that he was elected by the votes of the white people to a lucrative and responsible office, and that the care and training of a white child should be committed to his keeping by the Courts. It is also rather peculiar that he should have been chosen to preach to white people when he could not speak plainly but used Indian brogue; and that he should be purchasing part of the public domain from the United States Government when at that time his tribe owned absolutely the fertile lands in the State of Mississippi. If he was a Choctaw Indian why was he in Lauderdale County, Alabama, separated from his tribe. It cannot be said that he left his tribe and went up in Alabama as a missionary to the white people, because he was a Primitive Baptist.

There is no competent evidence which tends to show that Aaron Askew was a Choctaw Indian. These applicants may honestly believe that they are Choctaw Indians but they have failed to show that their ancestor, through whom they claim, was such an Indian. The evidence does not support the contentions of the applicants.

The application is, therefore, denied.

Spencer B. Adams, Chief Judge.

We concur:

Walter L. Weaver, Associate Judge.

H. S. Foote, Associate Judge.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. September Term, 1904.

William Quint Askew, et al.,

vs. No. 2.

Choctaw and Chickasaw Nations.

OPINION, by Adams, Chief Judge.

The record in this case discloses that the following persons were admitted to citizenship in the Choctaw Nation by a judgment of the United States Court for the Southern District of the Indian Territory, on the 21st day of December, 1897, to-wit: William Quint Askew, William Thomas Askew, George Washington Askew, Sam Askew, Mattie Askew, Ellen Askew, Tom Askew, Thane Askew, Perry Askew, Tommy Askew, Lilly Askew, Gilbert Askew, Lizzie Askew and Sophia Askew, upon an appeal from the decision of the Commission to the Five Civilized Tribes denying them citizenship.

This case is in this Court by appeal under the Act of July 1, 1902. The applicants claim their right to citizenship by reason of being descendants of one Aaron Askew. The evidence is the same as the evidence in case No. 1, entitled "Newt Askew, et al., vs. Choctaw and Chickasaw Nations." As said in the opinion of the Court in that case, there is no evidence which tends to show that Aaron Askew was a Choctaw Indian by blood, or that these applicants have any Indian blood in their veins.

The application of applicants is, therefore, denied.

Spencer B. Adams, Chief Judge.

We concur:

Walter L. Weaver, Associate Judge.

H. S. Foote, Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

John C. Bradshaw,

vs. No. 3.

Choctaw and Chickasaw Nations.

No written opinion.

In the Choctaw and Chickasaw Citizenship Court, Sitting at Tishomingo, Indian Territory, May Term, 1904.

Kate Gamel, et al.,

vs. No. 4.

Choctaw and Chickasaw Nations.

OPINION, BY ADAMS, C. J.

On the 21st day of December, 1897, the following parties to wit: Mrs. Kate Gamel, George Gamel, Minnie Gamel, Daisy Gamel, Mrs. Carrie Witt, (nee Gamel), Mrs. Sallie Boseman, (nee Gamel) Kate Boseman, Frank Boseman, Kinnie Boseman, Ed Boseman, May Boseman and Alice Gamel, obtained a judgment in the United States Court for the Southern Dis rict of the Indian Territory, declaring them to be Choctaw Indians by blood, and as such entitled to enrollment, upon an appeal from the Commission to the Five Civilized Tribes denying them citizenship.

This case comes here on appeal from said Court, and came on to be heard in this Court on the 3rd day of May, 1904, at Tishomingo, Indian Territory.

Mrs. Kate Gamel, Minnie Williams, nee Gamel, in their own behalf, and also Henry Gamel and George Gamel and his wife Alice Gamel, and Daise Reynolds, neeGamel, and Sallie Boseman, nee Cruce, for herself and on behalf of her minor children Kate Boseman and May Boseman and Carrie Fisher, nee Witt, nee Gamel, having heretofore filed a petition in this Court asking that their rights as Choctaw Indians be adjudicated.

J. H. Mathers, attorney for applicants, stated in open Court that applicants would not offer any testimony. The plaintiffs claim to be Choctaw Indians by blood and as such

entitled to citizenship and enrollment. I have carefully examined the record in this case and find no competent evidence to support the contention of plaintiffs that they are Choctaw Indians.

The application of plaintffs is, therefore, denied; and a judgment will be entered by this Court in accordance with this opinion.

Spencer B. Adams,
Chief Judge,

Walter L. Weaver,
Associate Judge.

H. S. Foote,
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Wilson H. James, et al.,

vs. No. 5.

Choctaw and Chickasaw Nations.

Transferred to the South McAlester Docket, where it appears as No. 128.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

J. B. Sparks, et al.,

vs. No. 6.

Choctaw and Chickasaw Nations.

No written opinion. Decided on authority of opinion in case of E. H. Bounds, et al., vs. Choctaw and Chickasaw Nations, No. 9 on this Docket. See opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

C. C. Passmore,

vs. No. 7.

Choctaw and Chickasaw Nations.

No written opinion.

In the Choctaw and Chickasaw Citizenship Court sitting at Tishomingo, in the Indian Territory.

E. H. Bounds, et al.,	:	
Plaintiffs,	:	
vs.	:	No. 9.
	:	Chickasaw Docket.
Choctaw and Chickasaw Nations,	:	
Defendants.	:	

OPINION, by FOOTE, Associate Judge.

This cause comes here in the usual way under the statute, on appeal from the United States Court for the Southern District of the Indian Territory.

One of the parties plaintiff herein, namely, E. H. Bounds, has been declared by the judgment of this Court heretofore given and made, to be entitled to the rights and privileges of a citizen of the Chickasaw Nation, personal to him alone.

The matter now comes up for determination as to what rights, if any, are conferred by this marriage with a Chickasaw Indian by a white man in the first instance, upon a white woman a second wife and a citizen of the United States, and her white children, by him begotten in that second marriage of E. H. Bounds, his first and Indian wife, having died before his second marriage, with a white woman as aforesaid.

of the United States.)

Can any legal mind be it ever so sagacious or ingenious, torture any of that language into a right of the Indians to give any vested right in that land of any kind, to any one, white, black or yellow, at the time, save as expressed in the grant, "to the United States, or with their," the United States' "consent." I think not, and the intermarried white person got no rights then. And considering all the surroundings no fair minded man can say, as I think, that the Nation would have granted any at that period. They were getting out of the way of the white man, who had virtually forced them from the land of their birth.

Then came the treaty of 1837, by which the Chickasaw Nation was given certain rights in this tract of land, co-extensive with that of the Choctaws, the original grantees of the patent under the treaty of 1830.

There was not one word in that instrument, giving any rights to white persons, by intermarriage or in any other way.

Then came the treaty of 1855, which reads in Article 1.: "And pursuant to an act of Congress, approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common; so that each and every member of either tribe shall have an equal, undivided interest in the whole: Provided, however, no part thereof shall ever be sold without the consent of both tribes; and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same."

Did any right accrue in this article, either directly or indirectly, to any but these tribes, as Indians and their heirs as Indians, or was any power given to these tribes to grant any vested right, of the joint property, by the act of either tribe acting alone? I think not.

And in that treaty there is not one word about the rights of intermarried white people.

So up to 1866 there was no authority given even to the tribes themselves to give any one a status making him to have any vested right in their joint or common ownership of this land.

Thus stood the solemn treaties with these tribes and the Government until 1866.

Then came Section 38 which reads thus:

"Every white person who having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw nation, or who has been adopted by the legislative authorities, is to be deemed a member of said nation" &c.

Now then where is there any right conferred on any one except the individual white person, intermarrying with a Choctaw or Chickasaw, or when he is adopted by the legislative authorities? The grant of the Government is to the Indians and their descendants and heirs, in apt and pointed language, in the patent and treaties before that. If this treaty designed to give intermarried, not only white persons, and adopted white persons, but also their purely white descendants, any rights, why did it not declare to them in 1866, in that treaty that such further rights as claimed now, were conferred, by adding the words "and their heirs and descendants"? This would have made it clear to the Indians that these white persons and xx

the heirs and descendants as well, were included in the privilege given and interest vested in Section 38.

Now then can it be said that the Government, dealing with its wards so to speak, as a guardian, would intend that this vested interest, should go to descendants and heirs of these people, intermarried and adopted, without using the words "and their heirs and descendants" in the treaty so that it would be plain to them and the Indians?

Again section 43 of the same treaty shows plainly that no white person was a specially desirable citizen from the Indian standpoint, and could not be naturalized under this very treaty itself, except by joint action of both tribes.

How any one, considering the relative position of the Government and these Indians, could draw from the language of Section 38 of the treaty of 1866, that the Government or the Indians, thought it would confer vested rights on all the heirs and descendants of these white persons, intermarried and adopted members of the tribes, I can not see.

It seems to me that in the interpretation of a treaty with Indians, it should be construed in the light of what the Indians "thought it meant" at the time it was made.

Now did or did not the Indians, considering all the surroundings, and their dread of white domination shown in a thousand ways, think that they were donating in this treaty their lands and their property not only to the persons intermarrying them, but also to their heirs and descendants forever, by other white women or men? One reason, in addition to what I have already said, why I do not believe that they did, is that this treaty had in view, as is shown by an examination of it,

1837 and in 1855, by saying so; by saying that the right was to be vested in "heirs and descendants" as well as the individual, personally given the vested right. We must presume the Government intended only what a construction most favorable to the Indians and their rights and their understanding was, of the meaning of the words, used in section 38 above mentioned.

It is a fair and reasonable and just interpretation that we are to give to the language of a treaty by the United States with its wards. One that will comport with what it has already said in other treaties about their lands, in making agreements with Indians; one that must suppose the Indians understood it in that way. This is no construction of an agreement between two men of legal age, and sound mind, making an agreement for the first time. It is an agreement made by a guardian with his wards, or a father with his least favored children, for the benefit in that section of the treaty of a superior race, in intellect and power. It was a taking away of the rights given formerly to one child, so to speak, by the father, and giving it to another more favored child, and the Indian child we are asked to declare is supposed to know all this, and yet is further supposed to confer on the distrusted white man's heirs and descendants, all the rights his Indian heirs and descendants had; and yet he could not know it at all clearly from the language of the treaty, by which it is now sought to tear from him, by <u>implication</u>, a large part of his patrimony.

Constructions of language in treaties with Indians are not to be made by implication; are not favored even to the extent

the United States with Indians, I will quote from a printed volume entitled the "Choctaw Nation of Indians vs. the United States", and which contains the record of a case, No. 12742 of the Court of Claims. This volume contains fac similes in printed form of some of the most instructive and important documents from the Government archives at Washington City. From a report therein contained of J. H. F.Claiborne, one of the Choctaw Commissioners to settle the claims of those Indians who claimed that the misconduct of Col. Ward, the Indian Agent in 1830-1831, and thereafter, had prevented their registration, which report is made to the Secretary of War in January, 1843, at Hopahka, Mississippi, when he was then engaged in the duties of his office, and is to be found at pages 354 to 359 of that printed record. He writes:

"The great object in construing contracts, whether public or private, is to get at the intention of the parties. This treaty (that of 1830) is a contract between the United States and the Choctaws. The main point is to ascertain the understanding or intention with which they made the contract. It should be remembered that the instrument was drawn by the whites, and in their language. It is to be presumed that it read most favorably to them. The superiority of the whites in knowledge, sagacity and the use of their own language must necessarily lead us to conclude that the rights of the United States are better secured and more strongly protected in this instrument than the rights of the Indians. The rules of legal construction, then, as well as the dictates of justice and equity, would prompt, in all cases of doubt, a construction favorable to the weaker and more ignorant party. Indeed, so conscious were the framers of the treaty of the propriety of equalizing, in some degree, the two parties, that they incorporated, as a rule of construction, in the 18th article of the treaty itself, the very principle alluded to. The language used is as follows: 'And further, it is agreed that in the construction of this treaty, wherever well founded doubt xxxxxxxxxxxx shall arise, it shall be construed most favorably towards the Choctaws'. This is not a mere idle provision, but a rule of construction to be resorted to in construing the treaty, in all cases where reasonable doubt arises. It is recognized as such by the high Court of errors and appeals of this State (meaning the State of Mississippi) in the case of Newman vs. Harris, 4 Howard, 559."

This Mr. Claiborne was at one time a distinguished member of Congress from that State, and a man of great repute as an able lawyer.

And on page 299 of that volume Mr. Wilkins, the then Secretary of War,(and that Department then had control of Indian affairs, in December 1844,)makes a report to the then President Tyler,and among other things says, referring to the treaty of 1830 and its application to the Choctaws and their claims;

"The obligations of the treaty entitle them to a patient hearing, to a liberal construction of all its stipulations and a full and prompt redress of every error and wrong of which t they justly complain."

In the light of the views which the high officers of the United States Government entertained at a time, only a few years after the treaty of 1830 was made, when its objects were fully understood, I think that the true method of construction of the treaty of 1866, and of all treaties thereafter made with the Choctaws and other Indian Nations, the "wards" of the government, as distinguished judges of our highest Courts have termed them, warrant me in entertaining the views I have above expressed.

When it comes to construing doubtful passages in treaties of this sort, when the rights of whites and Indians are treated of, and especially when a class of white people claim as against the Indians, the doubt, if any, must always be resolved in favor of the Indians. And in this case I think the languageof the treaty itself solves the whole matter at issue in favor of the preservation of the original granting words of the treaty of 1830 and the patent from President Tyler, as against any implication of repeal by the treaty of 1866, above

referred,to.

On the same line of reasoning as to the proper construction of treatieswith the Indians, I find the late distinguished Attorney General of the United States, Mr. Knox, agrees with the views I have here presented, in an opinion rendered by him on the 19th day of June, 1903, where he writes:

"The Choctaw Indians, by entering into an agreement giving certain rights to their full blood brethren, cannot be conculsively presumed to have extended thereby the same rights to part blood children of such brethren, when the terms of the agreement do not clearly include the children; and especially would it be improper, by construction or presumption, to bring about such a result, when the language of the agreement itself shows the contrary intention was in the minds of the contracting parties. x x x x. The special privileges granted xx x x x by the agreement in question were at least, in the nature of gifts by the Choctaws; and because of favors extended and expressly limited to a father, a purpose to bestow the same privileges on his child can not properly be presumed."

The pole star by which we are to be guided, as I think I have heretofore shown, in determining the meaning of the language of Indian treaties, is that we must put ourselves in the place of the Indians, and interpret according to the conditions that surrounded them at the time of making a treaty and the natural results of their mental impressions and conclusions.

In the first place there is no recognition by law of any rights of an intermarried citizen until 1840. There was no right then given except to him personally. He was given that right under certain conditions. His children by his Indian wife were protected by the treaty of 1830, as her Indian children, not by that act of 1840. This shows that the Choctaw

mind had not contemplated any further rights for the white men or their descendants by white women. The right conferred was to them personally as white men, and went no further.

So that up to the treaty of 1866, no rights such as those here contended for by the appellants were thought of. When that treaty was made such was the evident condition of the Indian understanding of the treaties before that.

We are now asked, to suppose that a complete revolution on that subject in 1866, pervaded the Indian mind; and that as it was stated in the treaty that every white person who having married a Choctaw or Chickasaw Indian, resides in the said Choctaw and Chickasaw Nation, x x x is to be deemed a member of said Nation, that from that time every white person that married or had married a Choctaw or Chickasaw, is to be deemed a citizen &c. Now I can not see anything else given, except that both sexes were included in this treaty as having the right personally to obtain the rights of citizenship under certain conditions. There is no mention whatever of the white persons' descendants' rights. It was, of course, still supposed that the blood of the Indian spouse, man or woman, would protect the rights of the children and descendants of that marriage, and that being so, the fact that no rights whatever were explicitly given to their descendants, shows conclusively, that none except those who had Indian blood, were thought of or alluded to.

There is nothing in the word "deemed" that gives anything to any one but the white person personally. It is not said that his or her "descendants" were to be "deemed" citizens.

That word was ex industria left out and excluded from the treaty of 1866.

As I have shown by the decision of the Supreme Court of Mississippi and by the opinion of Attorney General Knox, nothing, as against Indian rights, is to be presumed, or determined by implication. It must be plainly expressed to have any force, and must be so plain as that the untutored Indian mind must, as that of a ward so to speak, be bound to have understood it fully. It being supposed that the language of the treaty being that of the white man, is most strongly expressed in his favor, and nothing is to be implied from that language, beyond its plain meaning on the face of the treaty.

The trouble with the argument in favor of this deadly expansion theory as affecting Indian rights is, that it is the white man's reasoning from self interest. He refuses to take the Indian standpoint or the Indian habitude of thought. But this Court must construe an Indian treaty from the standpoint of an Indian and most favorably to his interests, he being, so to speak, a minor and under the tutelage, care and protection of the United States Government.

It will not do to take the white man's standpoint, and construct a theory on the basis of his argument alone. It is stated somewhere that an Indian and a white man went hunting together-- they killed a turkey and a hawk. The white man said to the Indian,"you take the hawk and I will take the turkey, or I will take the turkey and you take the hawk". The Indian perceived that in this division of the game, the white man always got the advantage, but he could not understand how it was fair.

So now, it is sought to take from the Indian much of his land, by the artful reasoning of the white man, based on the

construction of the English language, and an implied but not expressed construing thereof.

I can never get my mind to agree to such an unfair and forced construction of the treaty of 1866, from the Indian standpoint, and evident thought and belief in the matter.

By the 38th section of the treaty of 1866, the rights of intermarried persons was definitely fixed and determined, and this section applies to all intermarried white persons who had up to that time intermarried with the Choctaws and Chickasaws or who married thereafter. Whatever the rights of any intermarried white person may have been before that time they were fixed then and have never been changed since. And it was in the power of the United States Government and the Choctaws and Chickasaws to do that thing, even if it conflicted with and swept away any right which had existed before that time either by treaty, or law, usage or custom, it was, nevertheless, valid.

And as the right then given was purely <u>given</u> to the particular person thus "having intermarried" &c., it can not reasonably be held under any rule of construction applicable to Indian treaties, that the Indians or the United States Government understood or intended that any but this restricted right in favor of an individual of a particular class, was ever given. The word"descendants" is not used; the words "wife or husband" is not used,even by implication, as referring to any but parties to the original marriage between white persons and Choctaw and Chickasaw Indians, either male or female.

And under the 45th section of the treaty of 1866, while all "rights and privileges and immunities" theretofore existing under former treaties and legislation were preserved, so far as consistent with the treaty of 1866, those not consistent

were not preserved, and the 38th article shows, as I have before written, that no right was given to the children of intermarried white persons, or to the white wife or white husband of an intermarried white person after the death of the Indian spouse of such intermarried white person; and such right would be clearly inconsistent with the limited and personal right conferred by the 38th article supra.

And it can hardly reasonably be presumed, in the light of all the dealings by treaty and otherwise, of the treaty making and political and legislative branches of the United States Government, with these tribes of Indians, that it would have taken away what it believed was a vested right under a patent, for no good and sufficient reason. And this shows what I believe, that no such right as claimed was supposed to exist in 1866, and if it was so supposed, then it must be presumed that both the contracting parties deemed it best either that the right existing under the treaty of 1830, was an unfair and unjust provision never intended or understood to exist at the making of that treaty and should be abrogated, or it was not supposed or believed to exist, and the latter I believe to have b been the true state of the matter; that the supplement to the treaty of 1830 was a mere gift or gratuity, and invested the donees with nothing except what it in plain terms stated.

And furthermore if the 38th section of the treaty of 1866, gives the right to a white man to confer citizenship on a w white woman and her children ad infinitum as long as white wives die and new ones are taken, then the same right would exist in favor of a white woman, after her Indian husband has died, to confer citizenship on white men, as many as she may marry, after the death of the one preceding the one she may in succession

marry, and the white children of these white spouses. Does it not seem unreasonable to suppose this? Was it the understanding of the Choctaws and Chickasaws? And yet such must be the result if the contention of the appellants is correct, for that section of the treaty of 1866 using the words "white persons" includes both male and female. And I know of no rule that has heretofore existed, even in civilized countries, which bestows on the wife, as it is claimed this treaty does, by implication but not in express language, the right to confer status as a citizen on the husband. This is to me a most astounding proposition, that the United States Government and the Indians intended so startling a thing as has never been done before by any Nation. It is true the rights of the wife formerly under coverture, by the common law merged mainly with that of the husband, have been enlarged so far as property and other rights have been given her by statutes of states, that she had not before possessed, but never so far as I know, has the Husband's rights to citizenship been conferred by the wife.

The whole contention in favor of the Intermarried citizen having any rights by the language of Section 38 of the treaty of 1866, to convert his or her white progeny by white wives or white husbands, into Indians, is without the least force in my judgment. I see nothing in the language of the treaty of 1866, construing it with reference to the foregoing treaties, and in the light of the surrounding facts and circumstances, when the treaty was made, which warrants any doubt whatever of its reasonable construction in favor of the views I have stated herein.

I am, therefore, clearly of the opinion, that none of t the parties plaintiff to this appeal, save and except, E. H. Bounds

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, in the Indian Territory.

John M. Fitzhugh, et al.,	:	
	:	No. 10.
vs.	:	Chickasaw Docket.
	:	
Choctaw and Chickasaw Nations.	:	
	:	

OPINION, by FOOTE, Associate Judge.

This cause comes here regularly on appeal from the United States Court for the Southern District of the Indian Territory.

The proof in the case shows that John M. Fitzhugh was first married, according to the laws of the Chickasaw Nation, to an Indian woman, a Miss Love; that he had by her, during such marriage, a child named Lovie Lee Fitzhugh,(now Doak by intermarriage), and that after the death of his said Indian wife, he married in the State of Texas and according to the laws thereof, a white woman named Nannie Jones, and that since that time there has been born to them the following children; John Gabe Fitzhugh, Wood Clide Fitzhugh, Katie Fitzhugh, Bettie Fitzhugh, Mamie Fitzhugh and Collin Fitzhugh, as the issue of said marriage, and having no Indian blood in their veins.

John M. Fitzhugh, the husband of the former Indian wife, Miss Love, and their child, Lovie Lee Fitzhugh,(now Lovie Lee Doak), have benn, by a decree of this Court heretofore rendered, declared entitled to enrollment as citizens of

the Chickasaw Nation; the first as an intermarried citizen, and the second named as a citizen by blood. It now becomes ~~xxxx~~ necessary to determine the status of the white wife, Nannie Fitzhugh, and her white children by said John M. Fitzhugh.

Under the rules laid down by us in the case of E. H. Bounds, et al., vs. Choctaw and Chickasaw Nations, No. 9 on the Chickasaw Docket, it is clear that neither Mrs. Nannie Fitzhugh, the wife aforesaid, or any of her children mentioned aforesaid, or in fact any of the applicants here, save and except said John M. Fitzhugh, and Lovie Lee Doak, his daughter by his Indian wife, are entitled to be enrolled or declared citizens of the Chickasaw Nation, or entitled to any of the rights and privileges flowing therefrom; and a decree is ordered in accordance with this opinion.

H. S. Hook
Associate Judge.

We concur:

Spencer B. Adams
Chief Judge.

Walter L. Brown
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Charles L. Jones, et al.,

vs. No. 11.

Choctaw and Chickasaw Nations.

No written opinion. Decided on authority of opinion in case of E. H. Bounds, et al., vs. Choctaw and Chickasaw Nations, No. 9 on this Docket. See opinion in that case.

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

Wm. P. Thompson, et al.,

vs. No. 12.

Choctaw and Chickasaw Nation.

No written opinion. Decided on authority of opinion in case of E. H. Bounds, et al., vs. Choctaw and Chickasaw Nations, No. 9 on this Docket. See opinion in that case.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory, November Term, 1904.

Joseph C. Moore, et al.,

vs. No. 14.

Choctaw and Chickasaw Nations.

J. S. Layman, et al.,

vs. No. 124.

Choctaw and Chickasaw Nations.

Walter L. Beavers, et al.,

vs. No. 114.

Choctaw and Chickasaw Nations.

J. M. Crabtree, et al.,

vs. No. 118.

Choctaw and Chickasaw Nations.

OPINION, by FOOTE, Associate Judge.

These causes all come here on appeal in the usual way from the United States Court for the Southern District of the Indian Territory.

The persons proper parties to this appeal, that is those who were before the United States Court aforesaid, and then in being, and who have appealed by written request to this Court, from the Court below, are the only parties over whom we have jurisdiction, and as to those not thus proper parties, this Court does not in any wise by its present decision, affect their

rights, if they have any.

This opinion will cover all of the above entitled causes, but separate judgments must be entered in each case.

The proper parties appellant claim either by blood as the descendants of a Chickasaw Indian named Frances E. Moore, who married a white man named Colbert Moore in the State of Mississippi, in the old Chickasaw Nation, many years ago, before the treaty of 1834 between the United States and the Chickasaw Indians in the State of Mississippi, or by intermarriage with some of their descendants.

Frances E. Moore and Colbert Moore, the ancestress and ancestor of these applicants, moved from the State of Mississippi, to Tennessee and Arkansas, in which latter State they died many years ago, never having come to the Indian Territory.

About the year 1884, their descendants, and perhaps some who had intermarried with them, made application to the District Court of the Chickasaw Nation to be admitted as citizens, although they had not, at that time, removed to the Chickasaw Nation or the Indian Territory, and still lived in the State of Arkansas, as some of their witnesses testify.

The Chickasaw Nation claimed that the judgment they there obtained in their favor was void because it had been obtained in fraud, and without proper notice to the tribe, and the last contention seems to be true.

These people applied to the Commission to the Five Civilized Tribes, and some of them, at least, received recognition, and so they did before the United States Court for the

Southern District of the Indian Territory.

It seems by the proof here that the ancestress of these people, that is Fannie Moore or Frances Moore, took land under the Chickasaw treaty of 183[illegible] but she and her husband, Colbert Moore, never lived in the Indian Territory, and none of their descendants ever came here that are parties to this appeal, so far as I can discover from the record, until about the year 1884, and after they had applied to the Chickasaw Court for citizenship.

They lived in Tennessee after they left the State of Mississippi, a short while at least, some years after the treaty of 1834, about 1851 to 1853, I think, and lived in Arkansas after they went there, until after the death of Colbert Moore and his wife Frances. None of their descendants seem to have shown any disposition to come to the Indian Territory and claim Chickasaw Citizenship until about 1884.

The counsel for the Nations in these causes contend in their brief, in the main, that,

"The issues involved in this case are, FIRST, are the applicants Chickasaw Indians, and secondly, are they such Indians as would warrant this Court in conferring upon them the right to share in this particular land, acquired in a particular way".

The fact that Frances Moore drew land under the treaty of 1834, would seem to establish that she was a Chickasaw Indian born in the State of Mississippi. It may be conceded that the testimony is sufficient on that point.

The next inquiry is, did she or her descendants comply with the requirements of the treaties under which the land in

the Chickasaw and Choctaw Nations were acquired and held?"

Manifestly the lands referred to are the lands in the Indian Territory, now being allotted to the members of these tribes of Indians.

The argument advanced in behalf of the contention of the defendants "that these plaintiffs, although Chickasaws by blood and the descendants of said Frances Moore, are not entitled to be declared citizens of that Nation or tribe of Indians", is, as I construe it, briefly this: "Either the 3rd and 14th articles of the treaty of Dancing Rabbit Creek, in 1830, mean what is there written, or they mean nothing at all."

In view of all the facts surrounding the making of that treaty, it is plain that the Indians and the Government had two things in view; to get all the Choctaws possible out of the State of Mississippi and into the Indian Territory, and the emigrant Choctaws to come as soon as possible to the Territory; the other class were to be permitted to remain in Mississippi, if registered there, or having reasonably endeavored to do so, and those Choctaws who would comply with neither clause of that treaty, were not to be further considered as having rights to the lands in the Indian Territory. That is what the Indians and the Government must clearly have understood.

After that the Chickasaws made the treaty with the Choctaws and the United States Government, by which for $530,000., they acquired the right to form a district in the Choctaw lands in the Indian Territory, long after the treaty of 1830 was made, but nevertheless are bound by its provisions, although they were not parties to the last mentioned treaty and had nothing to do with it.

It is not shown in any treaty or by any other fact that it was intended to extend to the Chickasaws who were then as a nation living in the Indian Territory along with the Choctaws, the benefits of the 3rd and 14th sections of the treaty of 1830; and they claim it is an absurdity to suppose that the Choctaws and Chickasaws and the United States Government supposed any such thing.

"The treaty of 1837 wiped out all other treaties incompatible with the one by which the Chickasaws got the right to form a district in the Indian Territory and affected some of the rights of the Choctaws as a nation living 'on the land' in the Indian Territory.

"The treaty was made in the Indian Territory in which the tribal government of the Chickasaws and Choctaws then were on the land as tribes of Nations, and the amount of money to be paid by the Chickasaws to the Choctaws, shows that both parties knew to what number of Chickasaws it would apply, and it is not conceivable without anything written in the treaty, that any except Chickasaws and their descendants then members of the tribe of Chickasaws living as such in the Indian Territory were even thought of, as being protected by that treaty."

"Those like the appellants here had chosen to stay out of the Territory, to live among white people, after their tribe had as such, ceased to exist anywhere but in the Indian Territory."

"To say otherwise is to give greater rights to those who would not comply with a solemn treaty, and would not stay with their tribe, than to those who did."

"All treaties with Indians must be construed in the

light of what they supposed was the nature of the instrument they were executing. To suppose that the Choctaws and the United States Government intended, without anything being written on that head in the treaty, that Chickasaws not then in the Indian Territory, not then bearing their share of the burdens of their tribe, were to be put on an equal footing with the tribe that had moved to the Indian Territory as such, had complied with all their obligations, is, they declare, ~~xxx xxxx~~ an absurd proposition. They say they do not believe the Choctaws thought any such thing, or that the Government intended any such imposition on them, or that the Chickasaw Nation making the treaty, and acquiring a district to live in, even dreamed of such a thing. It is reserved for those who have ignored the Government, deserted their tribe to live among white people, abjuring their tribe and their obligations to it, who now seek to acquire land in a country civilized and enlightened, to which they would not come as the rest of the tribe did to at that time a wilderness and build homes and civilization there."

And these contentions are largely based on the language of Article one of the treaty of 1837 negotiated between the United States, the Choctaws and the Chickasaws which, so much thereof as is necessary to the present discussion, reads thus:

"It is agreed by the Choctaws that the Chickasaws shall have the privilege of forming a district within the limits of their country, to be held on the same terms that the Choctaws hold it" except &c.

Upon the other hand those who make contention for the appellants, claim in brief:

"that it is true that the Chickasaw Indians under the treaty of 1837, acquired an interest in the lands of the Choctaw Indians, and that such interest was to be the same as that of the Choctaws, and that was as long as they lived on the same, and existed as a Nation. But between the treaty of 1830 of the Choctaws with the United States, and that of 1837 of the Chickasaws with the Choctaws and the United States, there is this important difference: the Choctaws were required to remove to the Indian country within a specified period, viz., 1833 or 1834, and that provision reasonably construed means within a reasonable time after that date, taking into consideration all the facts and circumstances surrounding their condition. But the Chickasaws were not parties to the treaty of 1830, and it is not perceived how they have anything to do with it, except that when they arrived in the Indian country purchased by them from the Choctaws in 1837, in order to hold their interest thus acquired, they must, as a tribe, continue to live on the land and exist as a nation or tribe.

They claim that it would be a forced construction to say that the Chickasaws, who in 1837, had not before that time established themselves as a nation, in the Indian Territory, should be negitiating a treaty in the Indian Territory for <u>only a small part</u> of their tribe that had come out to the Indian Territory before that time, when the bulk of that tribe did not come until after that treaty had been ratified.

And they claim from the treaties and evidence before us, that no restriction was placed on a Chickasaw Indian, as to the time of his or her coming to the Indian Territory, until the year 1898.

"it is true," they say, "in the treaty of 1837, the Chickasaws, after they purchased their land in the Indian Territory from the Choctaws, were to hold it on 'the same terms and conditions that the Choctaws did'; but the Chickasaws had nothing to do with the 3rd or 14th article of the treaty of 1830, made by the United States and the Choctaws at Dancing Rabbit Creek at that time. Are we to suppose that by the language in the treaty of 1830, just quoted, that the Chickasaws must, to hold their land thus purchaded, be compelled to comply with conditions of a treaty not applicable to them, or to the conditions in which they found themselves, when they made the treaty of 1837?"

They do not see how it would have been possible for them to have complied with the 3rd and 14th sections of the treaty of 1830, or that any of the contracting parties expected them to do so, except that after they did come to their purchase, they must reside there and live on the land, and exist as a nation, else it should revert to the United States Government. And that they do not find, until the year 1898, that there was any restriction placed on the time when the Chickasaws might come to the Nation and become citizens thereof.

And they say that the appellants here who are descended from the Chickasaw woman, Frances Moore, who took land in Mississippi, under the treaty of 1834, of the Chickasaws with the United States, and whose descendants came to the Territory in 1884, and have resided there ever since, are entitled to be enrolled as citizens of the Chickasaw Nation and to all the rights flowing therefrom."

It would appear that it is conceded that some of these appellants are the descendants of Frances Moore, a Chickasaw Indian, and that they have all"lived on the land" since before 1898.

The question at issue, whether or not the Chickasaws acquired by this treaty of 1837, all the rights of the Choctaws then living in the Indian Territory as well as those that had been given by the 3rd and 14th sections of the treaty of Dancing Rabbit Creek in 1830, and were also bound by the conditions of that treaty applicable to Choctaws at that time alone, is one of the most difficult matters I have ever had to determine.

And this difficulty is rendered the greater that I am compelled to rely mainly on the various treaties made with the Choctaws and Chickasaws separately, by the Government of the United States, for the proof as to what the understanding of all the parties must have been, without it absolutely being shown; 1st. Whether the Chickasaw Nation had removed to the Indian Territory and were there as a Nation when the treaty was made,or 2nd, whether they had or not removed as a tribe and were then negotiating by their agents for this land, intending it to be for all the Chickasaws, both in the Territory and in Mississippi, or wherever else their tribal relations had not been dissolved.

I gather from reading the treaty of 1837 and those prior thereto, that the Chickasaws at the time of the making of this treaty, had not purchased a country for their whole tribe prior to 1837; that they had sold or contracted to dispose of their lands East of the Mississippi, with certain reservations, to the United States Government; and that they desired speedily to get another home for their whole tribe, West of the Mississippi,

and remove as a body thereto, and that in pursuance of this desire, and of their treaties before 1837, with the United States Government, they had made this purchase of the Choctaws with the approval of the United States Government, whereon they w were to live thereafter and hold it as the Choctaws did &c.

Now I can not perceive how the Chickasaws, dealing as Indians would naturally do, could have supposed that in acquiring this land, they were taking only for the part of the tribe then in Indian Territory, for there is nothing in the treaty of 1837 that would direct attention to the provisions of a Choctaw treaty of 1830, wherein the Choctaws were placed, some of them, under the conditions of sections 3 and 14 of the treaty of Dancing Rabbit Creek.

It seems to me that the treaty made in the Indian Territory, and not in Mississippi, both tribes would have supposed it related only to lands in the Territory, and that as the Chickasaws had not then as a whole tribe, emigrated to that Territory, and that they came many of them long after that, without obstruction or objection, that all the Chickasaws that desired to come to the Indian Territory could, so far as the Choctaws were concerned, do so, (unless some treaty restriction as to time was placed on them) whenever reasonably as to time they chose to do so, after 1837.

It can be argued with force, that the language of the treaty of 1837, puts the Chickasaws under the same restrictions, in the various articles of the Dancing Rabbit Creek treaty, that they do the Choctaws, as far as circumstances and surroundings may permit.

But the difficulty I encounter in entertaining this view in its entirety, is that the Chickasaws could not comply

with the terms of a treaty thaty required some of them as emigrants to leave Mississippi in 1833 and 1834, and required them to register with the Indian Agent and do other things, in a limited time after 1830, when the Chickasaws were not thought of when that treaty was made.

The Chickasaws seem to have desired a new home when the treaty of 1837 was made, and to get it as soon as possible, and seemed to want all Chicksaws to be with them, and seem to have sent their negotiators ahead of their emigration to make that treaty with the Choctaws. They made no mention of any particular class of Chickasaws, either in that treaty.

I can not wholly agree with either the contentions of the appellants or the defendants, as to the effect of the treaty of 1837.

My view of the matter is this, that the Government of the United States, by its officials before and in 1830, was especially anxious, on account of threatened hostile legislation against the Indians, in the State of Mississippi and because they wanted the Indian lands for the white settlers, to induce the Choctaws speedily to move West, and they succeeded after much difficulty in negotiating the treaty of 1830, but in order to do this and make it effectual, they had to make it incumbent on the immigrant Choctaws to leave Mississippi within a specified time, or at all events a reasonable time after 1833 and 1834. And it seems as if to enforce this, the Indians must not only remove in a reasonable time to the territory West of the Mississippi River, but live on the land, and exist as a Nation, as conditions precedent to the investiture of title in them to the land.

Now when the treaty of 1837 was made with the

Chickasaws and the Choctaws, with the approval of the Government of the United States, it is manifest that it was for the benefit of all the Chickasaws who should, within a reasonable time, form a district in the Choctaw Nation and live on the land after 1837. The provisions were those which they could comply with and were doubtless thoroughly understood by them. Since, also, the purchase money for this land was out of the whole tribal fund, it looks as if the whole tribe, who would comply with the treaty of 1837, were to be included.

Thus far I agree with the contention of the appellants; but their claim that Chickasaws who never showed any intention to come and live on the land, or to "form a district", but lived in the States for more than forty years after 1837, are as much entitled to rights as Chickasaws who came here, or their descendants, within a reasonable time after 1837, is not, to my mind, well taken.

And the argument for the appellants goes to the length of calling on this Court to declare that the Choctaw Indians, by the treaty of 1837, understood that they were selling for $530,000., a large district of their country and investing with title common to themselves, not only the Chickasaws who were then in their Nation, and those that were then in existence as members of the tribe elsewhere, and those that might be born within a reasonable time, for the non resident of such to reach the proposed district, which the Chickasaws were to or had formed, and having the privilege, all of them, to live anywhere else they pleased in the Choctaw Nation, provided they lived on the land; but that further they understood that they were including in this privilege, those and such Chickasaw descendants who lived all over the Union for forty or fifty years, taking no interest in

their tribe and caring nothing except for their own convenience or whim as to when they would come to the Indian Territory. This is not a reasonable or a just view to take of the matter, and I can not subscribe to it or believe it was the intention of any of the parties to that agreement, or that the United States Government would have approved of it, on any such theory.

It looks to me that the only purpose of the treaty of 1837 would be defeated if such a construction could be given to it.

The Chickasaws were negotiating for a place to live in, to resume tribal government essential to their welfare and happiness, with the expectation that such an end could be accomplished speedily; here was the United States Government intent on this object; here were the Chickasaws willing to it, and expecting it, and yet, according to the argument of appellants, if every Chickasaw in Mississippi or elsewhere had either refused to leave Mississippi, or come to the Indian Territory, or those that were here in 1837, at the making of the treaty of 1837, should have picked up and left the Territory, have "formed no district" and not lived on the land, but lived in Tennessee, Arkansas, Mississippi, Texas and every other State; they could still, under that treaty, come here up to 1898, and claim citizenship, in a Nation that never had any existence under the treaty of 1837, and take the land away, to some extent, either of those who had lived here since 1837, or if no Chickasaws had then come, take the Choctaw lands.

This is not the proper way to construe that treaty. The treaty meant in its terms and under the light of surrounding facts and circumstances, that the Chickasaws would and should

form a district in the Indian Territory speedily; that they would and should remove there and live on the land and exist as a Nation; and some of them did so, and are here now. And further, it is plain to me that they were obliged to do these things in good faith and in a reasonable time after 1837.

It is not conceivable to me, that the treaty of 1837, was meant to favor a class of Chickasaws, who preferred to live among whitepeople in the States, to living with their brethren in tribal relationship, and bearing the burdens and trials incident to frontier life; who should intermarry and re-intermarry with white people, until the descendants of one Chickasaw Indian woman and a white man, and those descendants possessing but little Indian blood, and having been born and living in various States of the Union, and who might after the lapse of forty or fifty years number perhaps a hundred people, and yet all of them have citizenship rights equal to the Chickasaws who had come here in a reasonable time after 1837. It did not, in my judgment, mean any such result. It meant that within a reasonable time after 1837, all Chickasaws who desired to be citizens of the Nation, should move there and live on the land, become amenable to tribal laws, tribal tribulations, and tribal hardships, and marry and intermarry like other Chickasaws in the Nation had to do, under existing laws.

And if anything should be lacking to confirm the notion that the United States Government, the Chickasaws and the Choctaws, all held this view of the matter, it is to be fould in the 2nd clause of Article 2 of the treaty of 1855:

"And pursuant to an Act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be

held in common, so that each and every member of said tribe shall have an equal individual interest in the whole".

That is real and bona fide members of the tribes as such, not those who refused to be members theretofore or thereafter within a reasonable time, by not coming there and living on the land.

The Choctaws were and are as much interested as the Chickasaws in this matter of citizenship, which carries with it and interest in this land. Can it be believed in consonance with the principles of fair dealing, that either the Choctaws or the Chickasaws, at the time the treaty of 1837 was made, supposed that any but those who had rights under the 3rd and 14th sections of the treaty of 1830, or would come here within a reasonable time after 1837, and those then in the Territory, or who should come there in a reasonable time thereafter, had any right to the land there? Or can it be thought that these Indians, in whom this title was thus vested, supposed they were putting on an equality with themselves, those of either tribe who had never even come to the Territory, or complied with the treaty of 1830, or any other treaty?

Equity and justice, and the application of the principle that treaties with Indians are to be interpreted in the light of what the Indians would reasonably think they meant to declare, impel me to the belief, that these cardinal rules would be clearly violated, by the declaration that any of the parties appellant here are entitled to be declared citizens of the Chickasaw Nation or to any rights or privileges as such.

H. S. Hook
Associate Judge.

We concur:

Spencer B. Adams
Chief Judge.

Walter L. Weaver
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Elizabeth Hignight,

vs. No. 16.

Choctaw and Chickasaw Nations.

No written opinion.

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

Ella McSwain, et al.,

vs. No. 17.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Triphena Pearcy, et al.,

vs. No. 18.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Dora Phillips, et al.,

vs. No. 19.

Choctaw and Chickasaw Nations.

No written opinion. Decided on authority of opinion in the case of E. H. Bounds, et al., vs. Choctaw and Chickasaw Nations, No. 9 on this Docket. See opinion in that case.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. October Term, 1904.

Collin J. McKinney, et al., Plaintiffs,

vs. No. 20.

Choctaw and Chickasaw Nations, Defendants.

OPINION, by ADAMS, Chief Judge.

The applicants in this cause are white persons, and claim to derive their right to citizenship in the Chickasaw Nation, by virtue of an act of adoption passed by the legislature of said Nation. Said Act was thereafter repealed by the Chickasaw legislature.

Yhe Supreme Court of the United States, in the case of A. B. Roff, plaintiff in error, vs. Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, 168 U. S. bottom of page 442, in construing the act of adoption under which the applicants claim their right to citizenship in this case, and the act repealing said act of adoption, says:

"Now according to this complaint, plaintiff was a citizen of the United States. Matilda Bourland was not a chickasaw by blood, but one upon whom the right of Chickasaw citizenship had been conferred by an act of the Chickasaw legislature. The citizenship which the Chickasaw legislature co could confer it could withdraw. x x x x. The Chickasaw legislature by the second act,(meaning the act

repealing the act of adoption), not only repealed the prior act, but canceled the rights of citizenship granted thereby"; thus holding that whatever rights the applicants may have acquired under the act of adoption, were destroyed, the subsequent act.

This Court is bound by the above quoted decision.

There are other questions in this case which are not necessary to be discussed.

The application of applicants is, therefore, denied.

Spencer B. Adams
Chief Judge.

We concur:

Walter L. Weaver
Associate Judge.

Henry S. Foote
Associate Judge.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, in the Indian Territory.

J. C. Washington, et al., Plaintiffs,	:	
vs.	:	No. 21.
Choctaw and Chickasaw Nations, Defendants.	:	

OPINION, by FOOTE, Associate Judge.

This case comes here on appeal in the usual manner from the United States Court for the Southern District of the Indian Territory.

The applicant, J. C. Washington, intermarried, according to the laws of the Chickasaw Nation, a Chickasaw Indian woman and had, by her, two children, J. C. Washington Jr., and R. L. Washington, the last two now living, and he a white man with no Indian blood.

After the death of his Indian wife of the Chickasaw tribe, he married a second time, a white woman, who has resided with him ever since, in the Chickasaw Nation, and has borne him white children, namely, Rosella and George Washington.

We have heretofore determined that the plaintiff J. C. Washington, and his two children by his Indian wife, Viz., J. C. Washington and R. L. Washington, are entitled to

enrollment as citizens of the Chickasaw Nation, and the question now presented is, what rights, if any, have his white wife and his two white children above mentioned, to be enrolled as citizens of the Chickasaw Nation, and to enjoy the rights which flow therefrom.

It is clear from what has been declared by us in case No. 9, Chickasaw Docket, entitled E. H. Bounds, et al., vs. Choctaw and Chickasaw Nations, that the white wife of said Washington, and her children by said J. C. Washington, a white man above mentioned, are none of them, entitled to be enrolled as citizens and members of the Chickasaw Nation, or to any rights flowing therefrom, AND IT IS SO ORDERED.

Henry S. Hooe
Associate Judge.

We concur:

Spencer B. Adams
Chief Judge.

Walter L. Weaver
Associate Judge.

IN THE CHOCTAW AND CHICKSAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Robt King, et al

vs No. 22

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

James Doak, et al.,

vs. No. 23.

Choctaw and Chickasaw Nations.

No written opinion.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. October Term, 1904.

W. H. Burch, et al.,	:	
G. W. Howard, et al.,	:	
J. W. Howard, et al.,	:	
Plaintiffs,	:	No. 24. Tishomingo Docket.
vs.	:	
Choctaw and Chickasaw Nations,	:	
Defendants.	:	

OPINION, by FOOTE, Associate Judge.

It appears from the record that there was originally but twelve persons in this case, who brought their case before the Commission to the Five Civilized Tribes, viz: Martha E. Lowery, James W. Howard, William G. Howard, Samuel H. Howard, Eliza J. Gunn, Jeff D. Howard, David E. Howard, Kate Howard, Marian J. Lowery, Mrs. Louisa J. Howard, William H. Burch and Martha Burch; that they were denied citizenship in the Chickasaw Nation, and appealed their case to the United States Court for the Southern District of the Indian Territory. There, that Court admitted about seventy persons, the descendants and others connected by intermarriage with them or otherwise, and afterwards upon that tribunal's attention being called to the state of the case, these people, except ten of the original applicants, were stricken from the judgment. But on the appeal to this Court some of these persons, thus stricken out, have appealed also. As to them it is clear this Court has no jurisdiction whatever, they never having been

proper parties, or their cases passed on either by the Commission to the Five Civilized Tribes, or in the United States Court for the Southern District of the Indian Territory, and they are not before this Court by any proper proceeding.

While this opinion will apply as to case No. 111 on the Chickasaw Docket, (as some of the same parties in case No. 24, appealed in case No. 111), the parties claiming through the same alleged Indian ancestress, and ancestors, her sons, a separate judgment will be entered in case No. 111.

The evidence taken in both cases applies by agreement on all sides to these controversies, to both these cases, and is all considered and examined by me herein.

Owing to the loss of papers, prior to this appeal, and the somewhat incomplete state of the record, it is a difficult matter intelligently to treat of the exact status of the parties here, as to their rights of appeal, and which are parties to each of the cases, but there is no difficulty in determining the facts, and the law applicable to them all, on final judgment here.

The evidence originally submitted to the Commission to the Five Civilized Tribes, as I gather from the record, was taken in 1896, in the form of ex-parte affidavits, when none of the affidavit makers who appear to have then given sworn statements, were dead; hence such affidavits are not competent here, but even if they were, they are of no force whatever. They are all of the same pattern, and some of them, at least, given by such persons as Hummidy Williams, an aged colored man, who has been utterly discredited in other cased tried before us, and shown to be a person easily influenced to testify or swear to anything he was requested to do. This is a strong badge of

fraud, and stamps the appellants as persons willing to stoop to fraudulent methods to obtain the lands of other people.

Much of the oral testimony taken before us embodies, in some respects, the most unique and brazen specimens of fraud and perjury, that were, perhaps, ever presented to any tribunal, in a civilized and enlightened country.

One of the witnesses, Lige Colbert, an aged colored man apparently, who glibly swears to the Chickasaw blood of these applicants, when cross-examined, stated, that he knew an old would be Governor of the Chickasaw Nation in Mississippi named Henry S. Foote, who ran for Governor of that Nation in the State of Mississippi and was defeated; that a man named Bevitt married the daughter of this half breed Indian and Chickasaw would be governor, Henry S. Foote. It is a fact, however, that there never were but two Henry S. Footes in the State of Mississippi; one was the ex-governor of the state of that name, a native of Virginia, and a full blood white man; the other is the present writer of this opinion, his eldest son, and an Associate Judge of this Court, who has no Indian blood in his veins. There is a gentleman named Bevitt who is the deputy Clerk of this Court, and a native of the State of Ohio, quite a young man, and the only Bevitt known to the writer; and Lige Colbert says that a man named Bevitt married old Henry S. Foote's daughter. This is absolutely false as is the other part of his story. Further comment on this feature of the case is unnecessary.

The oral evidence of Nelson Chiglie, a Chickasaw Indian, of character and intelligence, shows that he knew intomately and well as a Chickasaw Indian in this Territory, a man named

Lapomba, and that he did not have a daughter who married Green Howard and as these appellants claim their grand mother was named Lapamba and married Green Howard in Mississippi, and no other Lapamba is shown to have existed.

Judge Love, another witness for the defendants, in his evidence, makes it perfectly plain that a man named Burch, one of the parties to this appeal, stated to him in the inception of this matter, that his wife's mother's maiden name was Johnson and not Lapamba as the appellants now claim, and there are other things stated by Judge Love, which tend, in my judgment, to show, that the case was saturated with fraud from the beginning.

There are many other things testified to in this case which tend to show the utter worthlessness of this claim to Chickasaw blood made by these applicants, but it is unnecessary to advert to them. The whole case reeks with perjury and smacks of fraud on the part of these appellants, and many of those who have attempted to bolster up the case with false statements, are but the pall bearers of a putrid and ghastly corpse.

It is my opinion, from this record, that none of the applicants here are entitled to be declared citizens of the Chickasaw Nation, or to any rights or privileges flowing therefrom, AND IT IS SO ORDERED.

A. S. Root
Associate Judge.

We concur:

Spencer B. Adams
~~Associate~~ Chief Judge

Walter L. Wraver
Associate Judge.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, in the Indian Territory, November Term, 1904.

Mary E. Stinnett, et al.,

vs. No. 25. Chickasaw Docket.

Choctaw and Chickasaw Nations.

and

Lewis C. Stinnett, et al.,

vs. No. 34. Chickasaw Docket.

Choctaw and Chickasaw Nations.

O P I N I O N.

Weaver, J.

These two cases were consolidated on application of the plaintiffs and by order of this Court and consequently the judgment of the Court will cover both of them.

The plaintiffs all claim to be Chickasaw citizens by blood. There is grave doubt in my mind from the evidence before us that such is the case, but be that as it may the evidence discloses and conclusively shows that none of said applicants removed to the Indian Territory before 1887. That some of them and others having the same ancestry made application in 1887 to the "Commission on Citizenship on the Cherokee Nation", for enrollment as citizens of said Nation. Before that time they had been residents of Alabama and of Texas, where the older ones among them had bought and sold land, paid taxes and in other ways had exercised the right and performed the duties of citizens of those States.

This Court has repeatedly held that the Choctaw and

Chickasaw Indians who claimed the right to be enrolled as members of said Nations and then be entitled to share in the tribal lands and property, must have come here and live upon the land within at least a reasonable time after the same was ceded to them by the treaties made with the United States and the laws in pursuance thereof. As these plaintiffs did not do so, their application for citizenship and enrollment must be denied.

Judgment will be rendered accordingly.

Walter L. Weaver, Associate Judge.

We concur:

Spencer B. Adams,
Chief Judge.

H. S. Foote,
Associate Judge.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. November Term, 1904.

Samuel C. Wall, et al.,

vs. No. 26.

Choctaw and Chickasaw Nations.

OPINION, by Adams, Chief Judge.

All the applicants in this case are white people and do not claim to possess any Indian blood, but claim to derive their right to Indian citizenship by reason of their ancestor, Noah Wall, who was a white man, having married an Indian woman about the year 1800, his Indian wife dying about the year 1839. In 1841 the said Noah Wall married a white woman, and about the year 1842 the said Noah Wall died. Of this last marriage the applicant Samuel C. Wall was born, about one week prior to the death of his father; and in about two weeks thereafter his mother died. The applicant Ellen Wall is a white woman and the wife of Samuel C. Wall. The other applicants are the children and grand children of the said Samuel C. Wall and his wife Ellen Wall.

There is no controversy about the facts in this case, and the right of the applicants to citizenship in the Choctaw Nation is purely a question of law. Without going into a discussion of the law involved in this case, it not being necessary to do so, as the Court has decided in the case of E. H. Bounds, et al., vs. Choctaw and Chickasaw Nations, No. 9, that an intermarried citizen can not transmit to his descendants by his

white wife the rights of citizenship, the application of the applicants is denied.

Spencer B. Adams,
Chief Judge.

We concur:

Walter L. Weaver,
Associate Judge.

H. S. Foote,
Associate Judge.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. November Term, 1904.

Dick Randolph, et al.,

vs. No. 27.

Choctaw and Chickasaw Nations.

OPINION, by ADAMS, Chief Judge.

All the applicants in this case claim to derive their right to citizenship by reason of the intermarriage of Giles Thompson, their ancestor, a white man, with the daughter of Noah Wall, this daughter being a half breed Choctaw Indian. After her death the said Giles Thompson married a white woman and the applicants are his descendants by his white wife, except those who claim by intermarriage.

This case is on all-fours with No. 26, entitled Samuel C. Wall, et al., vs. Choctaw and Chickasaw Nations.

The application of the applicants is denied.

Spencer B. Adams,
Chief Judge.

We concur:

Walter L. Weaver,
Associate Judge.

H. S. Foote,
Associate Judge.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory.

November Term, 1904.

Thomas M. Graham,

vs. No. 28.

Choctaw and Chickasaw Nations.

OPINION, by ADAMS, Chief Judge.

This case is here on appeal from the United States Court for the Southern District of the Indian Territory. The record in the case disclosed the following facts:

On the 26th day of June 1886, Thomas M. Graham married Sophia Lee, a Chickasaw Indian by blood, according to the tribal laws in existence at that time; that they lived together as man and wife for some time thereafter when the said Sophia Lee, wife of Thomas M. Graham, abandoned the applicant in this case without cause. The applicant Thomas M. Graham, has resided in the Indian Territory continuously since his marriage with this Indian woman. The evidence clearly shows that he is entitled to citizenship in the Chickasaw Nation.

A judgment will be entered by this Court in accordance with this opinion.

Spencer B. Adams,
Chief Judge.

We concur:

Walter L. Weaver,
Associate Judge.

H. S. Foote,
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Lee Heighle, et al.,

vs. No. 29.

Choctaw and Chickasaw Nations.

No written opinion.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. October Term, 1904.

A. B. Roff, et al.,

Plaintiffs,

vs. No. 30

Choctaw and Chickasaw Nations,

Defendants.

OPINION, by ADAMS, Chief Judge.

The applicants in this case are white persons, and claim to derive their right to citizenship in the Chickasaw Nation, by virtue of an act of adoption passed by the legislature of said Nation. Said act was thereafter repealed by the Chickasaw legislature.

The Supreme Court of the United States, in the case of A. B. Roff, plaintiff in error, vs. Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, 168 U.S., bottom of page 442, in construing the act of adoption under which the applicants claim their right to citizenship in this case, and the act repealing said act of adoption, says:

"Now according to this complaint, plaintiff was a citizen of the United States. Matilda Bourland was not a Chickasaw by blood, but one upon whom the right of Chickasaw citizenship had been conferred by an act of the Chickasaw legislature. The citizenship which the Chickasaw legislature could confer it could withdraw. x x x x. The Chickasaw legislature by the second act",(meaning the act

repealing the act of adoption), "not only repealed the prior act, but cancelled the rights of citizenship granted thereby"; thus holding that whatever rights the applicants may have acquired under the act of adoption, were destroyed, by the subsequent act.

This Court is bound by the above quoted decision.

There are other questions in this case which are not necessary to be discussed.

The application of applicants is, therefore, denied.

Spencer B. Adams
Chief Judge.

We concur:

Walter L. Weaver
Associate Judge.

Henry S. Foote
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Robt. Goings, et al.,

vs. No. 31.

Choctaw and Chickasaw Nations.

No written opinion.

As stated by counsel for plaintiffs, if said Wilson Cobb is not a son of Captain Sam Cobb, then these plaintiffs are not entitled to citizenship or enrollment in the Choctaw Nation. The said Wilson Cobb was born, as the evidence shows, probably in South Carolina in 1784, this date being shown by the inscription on his tombstone which does not give the date of his birth but which he died in 1842, aged 58 years. His history as drawn from the evidence before us shows that he lived in Greenville District, South Carolina, until about 1836. He was a soldier in the war of 1812; was probably a member of the legislature of South Carolina; was a prominent and distinguished man in that community, and a very considerable property owner. He removed with his family and slaves, about 1836, to Fayette County, Alabama, where he likewise became prominent; was elected a member of the legislature of that State once or twice, and was killed by a limb that fell from a tree as he was riding along a road while engaged in making another canvass for re-election to the same office. He left surviving him a large number of children from certain of whome these plaintiffs are descended, or with whom and their descendants some of them are intermarried.

As I have said before, it is claimed that he was a son of Capt. Sam Cobb a half-breed Choctaw Indian. There is no evidence before us as to the name of his mother, or when or where his parents were married, or when or where his mother lived or died.

A considerable number of witnesses have testified that he was a son of Sam Cobb, and state that their source of information is family history and tradition, while on the other

hand a considerable number have testified that he was a son of Henry Cobb, and that the Sam Cobb of that day was a brother of said Wilson Cobb, and they obtain their information on this subject in the same manner.

One thing is certain from the evidence before us which is, that he never lived among the Choctaws, and that his life and habits were entirely those of a white man. On the other hand, the Capt. Sam Cobb who it was claimed was his father was living among the Choctaws in the State of Mississippi long prior to the making of the treaty of 1830, and had all the appearance and characteristics of an Indian; that he spoke their language, closely associated with their practiced polygamy, as was at least permissable if not a general custom among them, assisted in the emigration of the tribe to this country, himself removed here and remained with the tribe until his death, which occurred many years after the emigration was completed.

I can not find from any preponderance of the testimony that said Wilson Cobb was a son of this Sam Cobb, and I very much doubt, from the evidence, if he was a son of <u>any</u> Sam Cobb, as in my opinion the evidence tends to show that he was a son of Henry Cobb.

The evidence shows that Wilson Cobb, neither before or after the treaty of 1830, resided within the confines of the old or the new Choctaw Nation, and after his death his descendants did not cast their lot with them, but made their homes, some in Mississippi and others in Arkansas and Texas, where they continued to make their homes until they made application for citizenship and enrollment as members of the Choctaw Nation

in 1896.

Some claim is likewise made herein that the plaintiffs have Choctaw Indian blood by reason of the intermarriage of an ancestor with a member of the Brashiers or Brazier family in South Carolina. There is no sufficient proof before us to sustain this contention.

I am, therefore, of the opinion that the claim of the plaintiffs should be denied. Judgment will be rendered accordingly.

Walter L. Evans
Associate Judge.

We concur:

Spencer B. Adams
Chief Judge.

Henry S. Foote
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Lewis Clay Stinnett, et al.,

vs. No. 34.

Choctaw and Chickasaw Nations.

Identical with case of Mary E. Stinnett, et al., vs. Choctaw and Chickasaw Nations, No. 25 on this Docket. See opinion in that case.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory, September Term, 1904.

H. J. Sorrells,

vs. No. 35.

Choctaw and Chickasaw Nations.

OPINION, by ADAMS, Chief Judge.

The record in this case shows that the applicants were denied citizenship by the Commission to the Five Civilized Tribes, on December 4, 1896, and thereafter appealed their case to the United States Court for the Southern District of the Indian Territory, where, on the 15th day of November, 1897, he was admitted to Citizenship in the Choctaw Nation as an intermarried citizen.

The applicant, H. J. Sorrells, claims and insists that he is entitled to citizenship in the Choctaw Nation by reason of his marriage to one Mary Norris or Mary Countee, whom, he alleges, was a Choctaw Indian by blood.

The evidence in this case offered by applicant developes the fact that the applicant, H. J. Sorrells, is a white man and married to one Mary Norris or Mary Countee, on the 21st day of June, 1861, in Lamar County, State of Texas, said Marriage being in accordance with the laws of said State; that the applicant and his wife lived together as man and wife for about ten years, when the wife died. There is no contention that the applicant ever attempted to comply with the tribal marriage laws.

In the first place the evidence is not sufficient

to warrant the Court in finding as a fact that the wife of the applicant possessed Choctaw blood or any other kind of Indian blood; and, if she did, the marriage having failed to be in accordance with the tribal laws the applicant would not be entitled to citizenship.

A full discussion of this principle is had by Asso. Judge Foote, in an opinion of this Court in a case entitled, "James L. Laird, vs. Choctaw and Chickasaw Nations.

The application of the applicant is, therefore, denied.

Spencer B. Adams, Chief Judge.

We concur:

Walter L. Weaver, Associate Judge.

Henry S. Foote, Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

John T. Boyd, et al.,

vs. No. 36.

Choctaw and Chickasaw Nations.

No written opinion.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. November Term, 1904.

Mary Huffman, et al.,

vs. No. 37.

Choctaw and Chickasaw Nations.

OPINION, by Adams, Chief Judge.

This case is here on appeal from the United States Court for the Southern District of the Indian Territory. All the applicants claim to be Choctaw Indians by blood, except such as claim their rights to citizenship by reason of intermarriage.

The evidence shows that Mary Huffman and her brother, Frank Puscachummy, who are the principal applicants in this case, were living in the State of Texas when they could first remember, where they remained until they were grown, moving to Oklahoma about 1890 or 1891, and then moved to the Indian Territory where they have resided since that time, reaching here about 1891.

The evidence consists of a lot of hearsay testimony which I deem unnecessary to set out in this opinion. Suffice it to say that the evidence is totally insufficient to establish the fact that the applicants, or any ofhtme, are Indians. The application of the applicants is, therefore, denied.

Spencer B. Adams, Chief Judge.

We concur:

Walter L. Weaver, Associate Judge.

H. S. Foote, Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Geo. M. Poe, et al.,

vs. No. 38.

Choctaw and Chickasaw Nations.

No written opinion. Decided upon the authority of the opinion in the case of E. H. Bounds, et al., vs. Choctaw and Chickasaw Nations, No. 9 on this Docket. See opinion in that case.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. November Term, 1904.

Sarah Palmer, et al.,

Appellants,

vs. No. 39.

Choctaw and Chickasaw Nations.

Defendants.

OPINION, by FOOTE, Associate Judge.

This cause comes here on appeal from the United States Court for the Southern District of the Indian Territory.

The parties, except Joseph Trentham,(who claims as an intermarried citizen), claim that they are of Chickasaw Indian blood, and that they are descended from one Mary Moseby, nee Gamble, who was born in the State of Mississippi; who resided before coming to Fort Smith in the State of Arkansas, at different points in the State of Mississippi ranging from Pontotoc County in the North to near Natchez in the South part of the State.

The principal witness to establish this case is Sarah Palmer, who claims to have been the daughter of this Mary Moseby, nee Gamble.

The effort is made by several witnesses to establish the Chickasaw blood of these people by proving that they had some of the features and appearance of persons having Indian blood, but no satisfactory evidence has been produced which shows that

I have lived many years in the State of Mississippi; have mingled with the average men and women of white blood in that State, in Arkansas and the frontier generally, and Mrs. Sarah Palmer, in her testimony, in her appearance, and the manner in which she and her mother lived, her mother having kept a boarding house most of the time while living West in Fort Smith, Arkansas, does not to my mind show in any respect that she has Chickasaw blood. She may believe that she has, but she has made no satisfactory proof thereof.

I have read and re-read all the evidence offered, and leaving out of view all of the evidence adduced by the defendants against her claim, I can not see where any sort of preponderating evidence is produced in this case in favor of the claim she makes, or in favor of her co-claimants.

I do not deem it necessary to set out the evidence in full, but I took her testimony, the most important in the case, and have weighed it and all the other evidence carefully and have stated my conclusions.

She was a very small girl she says when she left Mississippi, and evidently in her present age and infirmities, testifies with difficulty and but a faint recollection as to events there and in Fort Smith and elsewhere.

According to her statement it is doubtful even when she was born and where she lived in Mississippi.

Joe Trentham, her son-in-law, who testified orally in this case for plaintiffs, and who made an affidavit for them in 1896, says before us: "That he did not intend to swear in that affidavit, as he appears to have done, as the affidavit shows, "that Mary Moseby" the mother of Sarah Palmer," spoke the Chickasaw

language well". He further swears before us that "he knows nothing about the family history of Mary Moseby and her descendants", that shch was not the question asked him, and yet from the affidavit, he is made to appear to have sworn that he did.

To sum up, while I do not mean to say that this witness intentionally swore falsely at any time, it is plain that there was a recklessness in getting up the testimony by appellants in this case, that is not favorable to its good faith.

Sarah Palmer is an old and feeble woman, apparently in ill health and of weakened intellect and recollection; she has doubtless wished to do all she could from her standpoint to cause a favorable decision in this case. I am not prepared to say she was dishonest in intent, but her evidence, and all that of the plaintiffs, not considering that of the defendants, falls far short of having satisfactorily proved her possession of Chickasaw Indian blood.

Joe Trentham, one of the appellants, is undoubtedly an intermarriedcitizen of the Chickasaw Nation by a former marriage with a Chickasaw woman, and entitled to all the personal rights and privileges flowing therefrom. But none of the other plaintiffs and appellants are entitled to citizenship in the Chickasaw Nation, AND IT IS SO ORDERED/.

H. S. Foote
Associate Judge.

We concur:

Spencer B. Adams
Chief Judge.

Walter L. Weaver
Associate Judge.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory.

J. W. Sparks, et al.,

Plaintiffs.

vs.

The Choctaw and Chickasaw Nations.

No. 40
On the Chickasaw Docket.

OPINION.

WEAVER, J.

The plaintiffs in this case are J. W. Sparks and Cynthia Sparks, his daughter. Sparks is a white man and claims his right to citizenship by reason of his marriage with one Sarah Colbert, who was the widow of one Jackson Colbert, who was a recognized citizen of the Choctaw Nation. Said plaintiff afterwards obtained a divorce from his wife and she subsequently married a man by the name of Hughes, from whom she separated, although there was no divorce, and has since died.

There is some attempt made to prove that she was a Chickasaw Indian by blood, but it was meager and unsatisfactory and what there is of it shows that her father was a white man and her mother a Cherokee Indian. Neither is there any evidence before us tending to show that she or any of her people had ever lived in the Choctaw or Chickasaw Nations permanently, until her marriage to Jackson Colbert.

So as she was neither a Chickasaw by blood nor a "white person" she had no rights as a member of the tribe by blood or by intermarriage with Colbert. As she was not entitled to citizenship by blood, her daughter, Cynthia Sparks, was not so entitled, -- Sparks being a white man,-- and as she was not a

"white person", she took nothing by reason of her marriage with a Chickasaw, and therefore she could not confer nothing by reason of her second marriage, even if she otherwise could,-- a question which it is not necessary to pass upon in this case.

I am therefore of the opinion that the plaintiffs are not entitled to citizenship or enrollment in the Chickasaw Nation, and Judgment will be rendered accordingly.

Walter L. Weaver,
Associate Judge.

We concur:

Spencer B. Adams,
Chief Judge.

H. S. Foote,
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Nannie Watkins, et al.,

vs. No. 41.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Annie May Paul,

vs. No. 43.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Althea Paul, et al.,

vs. No. 44.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

S. J. Garvin,

vs. No. 45.

Choctaw and Chickasaw Nations.

Transferred to the South McAlester Docket, where it appears as number 127.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Mary E. & Eli Nail, et al.,

vs. No. 46.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Geo. W. Brooks, et al.,

vs. No. 47.

Choctaw and Chickasaw Nations.

No written opinion. Decided on authority of opinion in the case of E. H. Bounds, et al., vs. Choctaw and Chickasaw Nations, No. 9 on this Docket. See opinion in that case.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. November Term, 1904.

J. W. Hyden, et al.,

Appellants,

vs. No. 48.

Choctaw and Chickasaw Nations.

Appellees.

OPINION, by FOOTE, Associate Judge.

This cause comes here on appeal in the usual way from the United States Court for the Southern District of the Indian Territory.

The claim of the appellants is, in brief, that one Turner Brashears, a white man, intermarried with Nancy Vaugh a woman of Choctaw blood, probably a full blood or apparently so, in the State of Mississippi, probably in Pontotoc County back in the old Choctaw Nation. That there was born of this marriage one Elizabeth Brashears; that Elizabeth Brashears intermarried with one John Hyden, a white man, and that as a result of that marriage there was born a son named Sam Hyden; that Sam Hyden married a white woman named Nancy Lockhart (her maiden name) as before her marriage to Sam Hyden she had been married to a man named Jones, and that there was born of this marriage with Sam Hyden, D. M. Hyden, J. W. Hyden, Mrs. Sallie Jackson and Mrs. M. J. Hood. The other applicants in the case are the children of these four last mentioned persons, the issue of the marriage of Sam Hyden and Nancy Lockhart.

There has been a vast amount of evidence taken orally before this Court or one of the Judges thereof, and a great deal of it before the writer of this opinion, who thus had an opportunity to see and hear the witnesses.

Nancy Lockhart or Jones, calling herself Nancy Hyden, the alleged mother of J. W. Hyden and others, in an affidavit filed at the time this application was made, declared on oath that she intermarried with Sam Hyden. It is in evidence here by numerous witnesses, the sons of Sam Hyden in Virginia by his lawful wife there, Mr. Ferguson and other blood relations of his in Virginia, that this sworn statement is absolutely untrue; that Sam Hyden about 1848, in the County of Lee and State of Virginia, ran off from and abandoned his lawful wife, with this Nancy Jones, nee Lockhart, who then had children one of whom ~~was named~~ now called Whit Hyden, and ~~who~~ she was ~~then~~ at that time married to a man named Jones, who had separated from her, and no divorce as to them is shown; that he, Sam Hyden, left behind and abandoned his lawful wife and ~~four~~ helpless children, all of whom were below the age of majority by some years, and never came back to or communicated with them.

It is further in proof that Sam Hyden was a man with red ~~and~~ sandy hair and blue eyes; that his mother was one Elizabeth Brashears; that she was the wife of John Hyden of Lee County, Virginia, and that she was born in the County of Lee and State of Virginia and died there; and there is not the slightest scintilla of reliable evidence in this case which, in my judgment, shows that she was either the daughter of Turner Brashears by Nancy Vaugh or any other person, but to the contrary the

proof is overwhelming that she was the daughter of an old woman named Grannie Brashears, who lived to a very old age and died in the State of Virginia, and never was, according to her statement to Mr. Ferguson a near descendant of hers, married to anyone at all; and the father of Sam Hyden, John Hyden and Elizabeth Brashears, Sam Hyden's mother, through whom these appellants claim, ~~was~~ were never known to any of the witnesses,(who have lived to be old men and women in the one county of Lee in Virginia, where Elizabeth Brashears lived and died, and hundreds of miles from the old Choctaw Nation in Mississippi), to have ever been in the State of Mississippi.

Further than this the family of Brashears that this Sam Hyden's mother was of, came to Lee County long before the treaty of 1830, from the eastern part of Virginia. Sam Hyden was never divorced, according to the evidence, from his Virginia wife. He abandoned her and his and her little children and ran off as I have stated from Lee County, Virginia, with this Jones woman nee Nancy Lockhart and her three children by Jones supposedly, and was never heard of again until some one in behalf of the appellants here, a short time prior to the taking of the evidence in Virginia which is in this record, interviewed some of the witnesses there, who afterwards testified in this case.

The proof by a descendant of Turner Brashears, a most intelligent Indian woman named Harriet Oakes, shows conclusively to my mind, that a man named Judge Everidge, her brother, and his son Joe Everidge, were the aidors and abettors in this claim, and that through them this case, as to one Whit Hyden, the brother of J. W. Hyden by the Jones woman at least was, in some manner, passed through the Choctaw council.

The proof is plain and abundant that this man called Whit Hyden, an alleged brother of J. M. Hyden, was born in Lee County, Virginia, of this woman Nancy Lockhart, while she was the undivorced wife of a man named Jones. That he, the said Whit Hyden, was the putative son, at least, of that man named Jones, and was not Sam Hyden's son at all, and yet I understand that he, the said Whit Hyden, is on the roll of Choctaw citizens. It is utterly impossible, from a perusal of the record here, to come to any other conclusion, than that the claim of these applicants before us, to Choctaw citizenship, is without the least reliable evidence to sustain it.

The appellants, by their counsel, objected to the taking of the evidence of some of the witnesses in Lee County, Virginia, because due notice of the taking of their evidence was not given. This is a mere technical objection, and in the discretion of the Court to allow or not, and in view of the fact that the counsel then present and before the judge taking the evidence, was advised that ample time and opportunity at that period, would be given to takeany evidence he might wish to take in behalf of appellants, and that he did not attempt to take any, it is very apparent that the evidence then taken, was properly taken, and in the interest of justice, equity and law.

The appellants, none of them, are entitled to be declared citizens of the Choctaw Nation, or entitled to any

rights or privileges flowing therefrom, AND IT IS SO ORDERED.

H. S. Foote
Associate Judge.

We concur:

Spencer B. Adams
Chief Judge.

Walter L. Weaver
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

John T. Hunter, et al.,

vs. No. 49.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

David Davis, et al.,

vs. No. 50.

Choctaw and Chickasaw Nations.

No written opinion.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. September Term, 1904.

Charles Goodall, et al.,

vs. No. 52.

Choctaw and Chickasaw Nations.

OPINION, by Adams, Chief Judge.

It seems from the record introduced in this case that under the Act of June 10, 1896, Charles Goodall, William Goodall, Richard Goodall, John Goodall, Amanda Hill, Harriett Hill and Jane Ozbirn, nee Arms, filed a petition with the Commission to the Five Civilized Tribes asking said Commission to declare them citizens of the Choctaw Nations that said Commission passed upon the application and denied the same; that thereafter an appeal was taken by said applicants to the United States Court for the Southern District of the Indian Territory; that on May 10, 1898, not only the above named applicants, but also Mary Goodall, Betty Goodall, Thomas Goodall, Andy Goodall, Munroe Goodall, Charles Goodall, Mollie Goodall, Elizabeth Goodall, Charles E. Goodall, Mary J. Goodall, Dixie Goodall, Rosa L. Goodall, Maud S. Goodall, Annie Goodall, Willie May Goodall, James Arms, Owen Arms, Amos Arms, Charles Arms, Nicholas Arms, Lora Arms, Eunice Arms, Laura Arms, John H. Goodall, Charles B. Goodall, Saphronia Goodall, Alphus Goodall, Mary E. Goddall, John W. Hill, Ollie Hill, Laura Hill, Sam Hill, Mollie Hill, Ada Hill, Bradly Hill, George Hill, George Hill, James Hill, Rosa Hill, Silas Hill, Amos Hill, John R. Hill and Ora Hill, were declared by said Court to be citizens of the Choctaw Nation, the forty

three persons last named having never applied to the Commission to the Five Civilized Tribes, and of course, had no standing in the United States Court. Thereafter this fact was brought to the attention of the Court, and on the 3rd day of March, 1899, said Court entered a nunc pro tunc judgment striking outof the original judgment the names of the forty three persons admitted and who had not applied to the Commission. On the 9th day of March, 1903, under the Act of July 1, 1902, the following named persons filed a petition in this Court asking that their case be transferred here for trial, to wit: Charles Goodall, his wife Mary Goodall, William Goodall and his wife Mary Goodall and their children Charles Goodall, Mary J. Goodall, Dixie Goodall, Rosa L. Goodall, Maud S. Goodall, Annie Goodall, Willie May Goodall, William Goodall, Alphus Goodall, Mary E. Goodall, Richard Goodall, Betty Goodall, Charles Goodall, Andy Goodall, Munroe Goodall, George Goodall, Mollie Goodall, Amanda Hill, John Hill, Sam Hill, Ollie Hill, James Arms, Owen Arms, Amos Arms, Charles Arms, Nicholas Arms Laura Hill, Mollie Hill, Nancy Ozbirn, nee Arms, Lora Arms, Eunice Arms, Laura Arms, Harriett Hill, George Hill, Charles J. Hill, Rosa Rebecca Hill, Sam Hill, J. Silas Hill, Amos Hill, John R. Hill, Cora Hill, John Goodall, and Charles B. Goodall.

These applicants claim their right to citizenship in the Choctaw Nation by reason of their alleged relationship to one Betsy Phelps, whom they claim was a Choctaw Indian woman, and was the mother of Charles Goodall, the principal applicant in this case. So the first questions to determine in passing upon the rights of these applicants is, was Betsy Phelps a Choctaw Indian? and if so was she such an Indian as would entitle her descendants to be declared citizens of the Choctaw Nation and thereby participate in the distribution

of the property belonging to the tribe of Choctaw Indians?

While the evidence is very long and I have carefully considered it all, I deem it unnecessary to set out any part of it except that part which bears directly upon the first issue in this case, as indicated above.

Charles Goodall, the principal applicant, is introduced as a witness for plaintiffs, and says: that he is the son of Betsy Phelps and Bill Goodall; that his mother Betsy Phelps died in the State of Illinois about the 4th day of April 1837 or 1838; that his mother had not been living there very long. Witness says in one place of his testimony that he, soon after the death of his mother, went to the State of Tennessee, and later on says he went to the State of Missouri. He says that his mother was a half breed Indian, that he has lived among the Indians and is sufficiently acquainted with Indians to tell one when he sees him.

Dr. Turner, a witness for the plaintiffs, says that he knew Charles Goodall in the State of Ill. in 1862, and that Charles Goodall looked like he was part Indian.

This is all the oral testimony offered to the Court as to the Indian blood of Betsy Phelps or of any of the applicants. We find in the record offered by applicants several copies of alleged ex-parte affidavits. It seems that the records of the United States Court for the Southern District of the Indian Territory, after this case was originally tried there, were destroyed by fire, and the applicants petitioned the Court to allow them to substitute the original affidavits. This petition seems to have been granted though there is no evidence to show that fact. Among these affidavits is the alleged affidavit of Rhoda Howell, taken on the 31st day of

August, 1898, in which she says that she knows Charles Goodall and also knew his mother Betsy Phelps, who in 1830 lived in Mississippi, and that she knew Looy Lucas the grandfather of Betsy Phelps and Steyphony his wife, and that they were full blood members of the Choctaw Indian Tribe, and that Betsy Phelps was a member of the Choctaw tribe of Indians. There is also a supposed copy of an affidavit of one Thomas Jefferson, which bears date the 28th day of June 1886, in which the said Jefferson states that he knew Betsy Phelps in 1830 in the State of Mississippi and knew her to be of blood descent from the Choctaws and was recognized as such. There is also an alleged copy of an affidavit of one Isam Flint which bears date the 22nd day of October 1888. This witness says that he moved from Mississippi; that before leaving there he knew Miss Betsy Phelps; that he believed her to be a Choctaw by blood, and that she was always recognized as such.

Mrs. Rhoda Howell, the person who is alleged to have made the foregoing affidavit, was produced as a witness before this Court by the defendants, and states that she is a citizen by blood of the Choctaw Nation; that she was born and raised in the State of Mississippi and moved to the Indian Territory somewhere about 1840; that she is a sister of Peter P. Pytchlyn who was at one time Governor of the Chickasaw Nation and a delegate to Washington; that she knew Looy Lucas, he was her mother's uncle; also knew his wife Steyphony, and that Looy Lucas had a daughter named Keziah who married a man named Phelps; that she never knew a person by the name of Betsy Phelps; that the only woman she knew by the name of Phelps was Keziah; that she never knew of the Goodalls until

they came to her house some 16, 17, or 20 years ago; that she has no knowledge of the ancestry of the Goodalls at all; that Charles Goodall came and talked to her and brought a Notary Public, but that she never intended to testify that she knew a Choctaw woman named Betsy Phelps; that Goodall told her that his mother was named Betsy Phelps and that was the only time she ever heard the name. Isam Flint who it is claimed by plaintiffs made the foregoing affidavit, is introduced as a witness in this Court by the defendants, and without setting out his testimony, suffice it to say he utterly repudiates the statements contained in the alleged affidavit.

This is all the testimony introduced by the plaintiffs upon the point of the blood of Betsy Phelps, and at a glance will be seen is not of that clear and convincing force that should be presented in order to warrant the Court in finding in favor of the contentions of the applicants, to say nothing of the discrepancies and contradictions. In the sworn application of Charles Goodall to the Commission to the Five Civilized Tribes in 1896, he states that his mother Betsy Phelps, was a full blood Choctaw woman, while in his testimony before this Court he states that she was a half breed Choctaw woman.

I deem it due to the attorneys, Mr. West and his associates, who represented the applicants before this Court, to state while the record shows that some one has been guilty of reprehensible conduct to say the least of it in their ruthless desire to get these applicants on the rolls, there is no evidence to show that he or his associates, Mr. Apple, were in any way connected with these evil practices.

Of course the forty three persons mentioned in this opinion who did not apply to the Commission in 1896, as to them this Court would have no jurisdiction.

The application of the applicants is denied.

Spencer B. Adams, Chief Judge.

We concur:

Walter L. Weaver, Associate Judge.

H. S. Foote,

Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

J. C. Hill, et al.,

vs. No. 53.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

J. W. Thompson,

vs. No. 54.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

J. M. Dorchester, et al.,

vs. No. 55.

Choctaw and Chickasaw Nations.

No written opinion. Decided upon authority of opinion in the case of E. H. Bounds, et al., vs. Choctaw and Chickasaw Nations, No. 9 on this Docket. See opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

John A. Tidwell, et al.,

vs. No. 56.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

James L. Ivey, et al.,

vs. No. 57.

Choctaw and Chickasaw Nations .

Identical with case of Z. T. Bottoms, et al., vs. Choctaw and Chickasaw Nations, No. 75 on this Docket. See opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Winter P. Bradley, et al.,

vs. No. 58.

Choctaw and Chickasaw Nations.

No written opinion.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. November Term, 1904.

Mattie Lee Armstrong, et al., Plaintiffs,	:	
vs.	:	No. 59.
Choctaw and Chickasaw Nations. Defendants.	:	

O P I N I O N.

WEAVER, J.

The plaintiffs in this case are Mattie Lee Armstrong, W. G. Armstrong, her husband, and their children. The basis of their claim herein seems to be that by Act of the General Council of the Choctaw Nation, bearing date of November 8th, 1895, the said MattieLee Armstrong and her said children, were admitted to all the rights and privileges of citizenship in the Choctaw Nation, and that W. G. Armstrong is likewise so entitled by reason of his marriage to his said wife.

Notwithstanding this Act of the Choctaw Council all of the plaintiffs to this suit, except W. G. Armstrong, applied to the Commission to the Five Civilized Tribes in 1896, for admission and enrollment as members of the Choctaw Nation,"By virtue of their Choctaw blood", which application was denied. An appeal was then taken from the decision of said Commission, to the United States Court for the Southern District of the Indian Territory, where they were all, including said W. G. Armstrong, admitted as citizens of said Nation. Mattie Lee

Armstrong and her children by blood, and W. G. Armstrong by intermarriage.

This cause comes into this Court, as provided by law, on appeal from said United States Court.

The only evidence before this Court and offered for its consideration, was a certified copy of the said Act of the Choctaw Council, and some oral testimony by the plaintiff W. G. Armstrong, which related entirely to the identification of the parties plaintiff, and that they were related to one P. D. Durant or Duren, who also has had a suit pending in this Court to establish his alleged citizenship in the Choctaw Nation by blood.

An inspection of the Act of the Choctaw Council shows that W. G. Armstrong was not named as one of those who were entitled to any rights by reason of it. An inspection of the record in this cause sent to us from the said United States Court fails to show that said W. G. Armstrong had made application for admission and enrollment to the said Commission in connection with the other plaintiffs herein, nor does it show that he ever made such application separately, except that it is so stated in the petition for appeal filed in said Court by said Mattie Lee Armstrong. Neither does said record show that he ever filed a petition for an appeal from the judgment and decision of said Commission, to said Court, or that if he did, his said appeal was consolidated with this cause. Neither does the report of W. H. L. Campbell, the Master in Chancery in this cause in said Court, mention the name of said W. G. Armstrong, or in any way indicate that he was a party to said suit. Neither has there been any suggestion of a diminution of the record, made

It has been earnestly contended on behalf of the Nations, that neither the Choctaw or Chickasaw Nations alone had power by legislative enactment or otherwise, to confer citizenship or membership in their respective tribes upon any person or persons for the reason that such citizenship or membership carried with it a vested interest in the tribal lands and property which belonged jointly to the two Nations, and hence, in order to confer said rights, affirmative action was necessary on the part of both of said Nations. Whatever may be the merit of this contention it is unnecessary to pass upon it here.

This cause comes into this Court, as I have before stated, on appeal from the United States Court for the Southern District of the Indian Territory, and it found a lodgment in that Court by reason of an appeal taken from the Commission to the Five Civilized Tribes. In no other way, under existing law, could this Court acquire jurisdiction to hear and determine this controversy. By the statute creating this Court it is charged with the duty of hearing all cases which thus come before it, de novo, and to so try them as to, if possible, get at the "very right" of the controversy. Consequently, beyond paying all due and proper respect to the laws, usages, and customs of the Nations, and recognizing as pregnant circumstances the actions of tribunals and proper officials, we do not feel that we are bound or can be bound, or that it was intended we should be bound, by the acts or decisions of any of the bodies which have heretofore passed upon any of the questions which come before us, saving, of course, tribunals of higher jurisdiction than has been conferred upon us.

The record sent to us discloses that the persons beneficiary under the act of the Choctaw Council in this case, for some reason, which to them seemed good and sufficient, saw fit not to rely alone on the provisions in their behalf contained in said Act, but made application to the said Commission for enrollment as members of said tribe. In said application they said they were members of said Choctaw Nation "by blood" as "per Act of the Council, Nov. 8th, 1895". They assert the same claim "by blood" in their petition on appeal in the said United States Court. I assume they must have made the same claim to the Council when they secured the passage of the Act above set forth, which declares that they are members of the Pitchlynn and Durant families of Choctaws.

So, the question arises, have they produced sufficient evidence to this Court to warrant us in finding that they are Choctaw Indians by blood? But one answer can be made to this, as they furnished <u>none</u> except the act above set forth. They may have produced an abundance, for aught I know, to have satisfied the Choctaw Council and the said United States Court, although none appears in the record sent by said Court to us. To this Court they offered <u>absolutely none</u> except as above stated. True, there is a statement of W. G. Armstrong when on the witness stand that his co-plaintiffs were related to one P. D. Durand, but this Court has held in the case of P. D. Durant, et al., vs. Choctaw and Chickasaw Nations, that not only did the plaintiff fail to show that his claim and the claim of all connected with him, were substantiated by the facts, but that the evidence in the case taken as a whole, showed fraud and perjury

to an alarming extent.

I am of the opinion that none of the plaintiffs herein are entitled to membership and enrollment in the Choctaw Nation or tribe, and the judgment of the Court will be rendered accordingly.

Walter L. Weaver
Associate Judge.

We concur:

Spencer B. Adams
Chief Judge.

Henry S. Foote
Associate Judge.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. November Term, 1904.

Mrs. A. O. Mallory, et al.,

vs. No. 60.

Choctaw and Chickasaw Nations.

OPINION, By Adams, Chief Judge.

This case comes to this Court by appeal. The applicants claim to derive their Indian blood from Samuel and Agnes Foster. Agnes Foster was a daughter of Jesse Turnbull, who was a Choctaw Indian and resided in the State of Mississippi.

The principal applicant, A. O. Mallory, was born in Tallahachie county, Mississippi, sixty one years ago, and resided in the State of Mississippi until the year 1894, when she removed to the Indian Territory, where she has since resided. None of the applicants were ever in the Territory prior to 1894, and their ancestors, from whom they claim their Indian blood, were never in the Indian Territory.

The evidence being sufficient to establish the fact that the applicants are Indians, the next question to determine is, are they such Indians as under the laws and treaties entitle them to share in the distribution of the property belonging to the Choctaw and Chickasaw Nations; and to determine this question it is necessary to construe certain provisions of the treaty of 1830, or what is known as the "Dancing Rabbit Creek Treaty."

In the year 1830 a treaty was entered into by and between John H. Eaton and John Coffee, for and in behalf of the

Government of the United States and the Mingoes, Chiefs, Captains and Warriors of the Choctaw Nation. Under this treaty the representatives of the Government agreed that the United States under a grant specially to be made by the President of the United States, should cause to be conveyed to the Choctaw Nation a tract of land or country west of the Mississippi River in fee-simple to them and their descendants, to inure to them while they should exist as a nation and live on theland. By virtue of this agreement, on the 23rd day of March, A. D. 1842, a grant was issued on the patt of the United States to the said Choctaw tribe of Indians to the land now embraced in the Choctaw and Chickasaw Nations in the Indian Territory. This grant was issued in lieu of the lands owned by the Choctaw tribe of Indians east of the Mississippi River. In addition to the grant on the part of the United States of the territory west of the Mississippi River, described in the grant, the Government agreed to do many things which are not here necessary to enumerate and in turn the Choctaw tribe of Indians, through its representatives, agreed to do certain things. Among them we find, in article three of said treaty this provision:

"In consideration of the provisions contained in the several articles of this treaty, the Choctaw Nation of Indians consent and hereby cede to the United States, the entire country they own and possess, east of the Mississippi River; and they agree to remove beyond the Mississippi River, early as practicable, and will so arrange their removal, that as many as possible of their people not exceeding one half of the whole number, shall depart during the falls of 1831 and 1832; the residue to follow during the succeeding fall of 1833."

Article fourteen of this treaty provided:

"Each Choctaw head of a family being desirous to remain and become a citizen of the United States, shall be permitted to do so, by signifying his intention to the Agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines

of survey," etc.

This provision further provides that if they shall reside upon said land, having signified their entention to become citizens of the States, for five years after the ratification of this treaty, in that case a grant in fee simple shall issue. Said reservation shall include the present improvements of the head of the family, or a portion of it, and persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity.

So there was one of two things that a Choctaw Indian could do in order to be entitled to the rights and privileges of a Choctaw Indian. He or she could remove to the Indian Territory west of the Mississippi River, or he or she could signify his or her intention to remain in the State of Mississippi and become citizens of the States, and after residing upon the lands for five years receive a grant for same, and could at any time thereafter remove to the Indian Territory, and the only rights forfeited by failure to ~~xxxxxxxxxxxxxx~~ come within the specified time, under article three of the treaty, was that they could not share in the annuities.

There is no evidence which tends to show that the ancestor of these applicants attempted to comply with article fourteen of the treaty. So if they are entitled to rights in the Choctaw Nation at this time, those rights were derived from the provisions of article three of the treaty; and it becomes necessary to construe this article.

From an examination of the "American State Papers"

Volume seven, it will be found that many of the Indians availed themselves of article fourteen of the treaty, and a great many of them remained in the State of Mississippi and attempted, after the expiration of the time in which they were to signify their intention to remain in the State under article fourteen of the treaty, to avail themselves of that provision. The records of the Government show that those who did not signify their intention to become citizens of the States, or failed to live upon their land as specified in the treaty, were denied any rights under that provision, clearly showing how the treaty was construed at that time.

The evidence shows that the ancestors of these plaintiffs were living in the State of Mississippi when the treaty was adopted; that they remained there as long as they lived, Agnes Foster dying in 1859, and the plaintiffs failed to remove to the Territory until 1894. It is not necessary to determine whether they were required to come here within the time specified in article three of the treaty, but they should at least have come here within a reasonable time. It was the object of the Government to remove the Indians to this country from the State of Mississippi, and the land west of the Mississippi was granted to them upon condition that they should live upon it.

It can hardly be contended that the applicants could remain separated from their tribe for a period of more than sixty years, and then remove to the territory and be entitled to the same rights as those who complied with the provisions contained in article three of the treaty, unless their ancestors had availed themselves of the fourteenth article. In my opinion the applicants or their ancestors should have removed to

the Indian Territory within a reasonable time, and, having failed in this they are not entitled to citizenship in the Choctaw Nation.

The application of the applicants is, therefore, denied.

Spencer B. Adams,
Chief Judge.

We concur:

Walter L. Weaver,
Associate Judge.

H. S. Foote,
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Geo. M. D. Holford, et al.,

vs. No. 61.

Choctaw and Chickasaw Nations.

No written opinion. Decided on authority of opinion in the case of E. H. Bounds, et al., vs. Choctaw and Chickasaw Nations, No. 9 on this Docket. See opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Wm. J. Forsythe, et al.,

vs. No. 62.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Frank Standifer,

vs. No. 63.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Martha Jones, et al.,

vs. No. 64.

Choctaw and Chickasaw Nations.

Identical with the case of A. A. Spring, et al., vs. Choctaw and Chickasaw Nations, No. 20 on the South McAlester Docket. See opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

O. W. Seay, et al.,

vs. No. 65.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Evans Hill, et al.,

vs. No. 66.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Wm. W. Arnold, et al.,

vs. No. 67.

Choctaw and Chickasaw Nations.

No written opinion.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. September Term, 1904.

J. H. Hill, et al.,

vs. No. 68.

Choctaw and Chickasaw Nations.

OPINION, by Adams, Chief Judge.

The record in this case shows that on the 15th day of November, 1897, a judgment was rendered in the United States Court for the Central District of the Indian Territory, admitting the following persons to citizenship by blood in the Choctaw Nation, to wit: J. W. Hill, J. T. Hill, Emma Hill, Anna B. Stover, Luther Stover, Lula Stover, Herbert Stover, Alice Stover, Olion Stover, Maggie Stover, Herbert Stover, Lilly Stover and Theadore Stover; and P. C. Stover and Caroline Hill as citizens by intermarriage of the Choctaw Nation, upon an appeal from the decision of the Commission to the Five Civilized Tribes denying said application for citizenship in said Nation.

The applicants in this case claim their right to citizenship as Choctaw Indians by reason of being descendants of one Aaron Askew. The evidence in case No. 1 in this Court, entitled "Newt Askew, et al., vs. Choctaw and Chickasaw Nations" was asked to be considered in this case, the applicants in this case and the applicants in case No. 1 claiming to derive their right from the same ancestor. Without going into a discussion of this case reference is here made to the opinion of the Court in case No. 1, above referred to.

The application of the applicants is denied.

(Signed) Spencer B. Adams,
Chief Judge.

We concur:
(Signed) Walter L. Weaver, Associate Judge.
(Signed) H. S. Foote, Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

J. N. Forbes, et al.,

vs. No. 69.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

A. B. Hill, et al.,

vs. No. 70.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

D. C. Lee, et al.,

vs. No. 71.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO,

Annie James,

vs. No. 72.

Choctaw and Chickasaw Nations.

No written opinion.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. November Term, 1904.

William Neighton Brown, et al.,

Appellants,

vs. No. 73.

Choctaw and Chickasaw Nations,

Defendants.

OPINION, by FOOTE, Associate Judge.

This case comes here on appeal in the usual way from the United States Court for the Southern District of the Indian Territory.

It appears that some of the appellants here claim to be descended from a certain Captain John Cooper, who was on Ward's Roll as a Mississippi Choctaw Indian, and others, by intermarriage with his descendants.

Originally in the affidavits and evidence of witnesses and applicants, they did not claim that the John Cooper they claimed under was born or lived in the State of Mississippi, but then claimed, and the testimony was that he was married in the State of North Carolina, in 1785 to one Nancy Piles, many hundreds of miles from the Choctaw Nation in Mississippi, and that said John Cooper died in Perry County, Tennessee, in 1839, after having married in North Carolina as aforesaid.

There was no effort made until the oral testimony given before us, to show that the John Cooper who married in North Carolina in 1785, a long distance from Mississippi, and

who died in Perry County, Tennessee in 1839, ever lived in Mississippi, but now when the documentary evidence is introduced to show that a certain Captain John Cooper, was on Ward's Roll, and was located on a creek called Kanapa there in Mississippi, the claimants come in and swear that they have been told by some of their ancestors, that the John Cooper they claimed under lived in Mississippi on a creek called Kanapa.

It seems to me that this new testimony about the man who was married in North Carolina in 1785 and who died in Perry County, Tennessee in 1839, and who does not seem then to have been known to have ever been in Mississippi, is certainly not sufficient to identify him as the Captain John Cooper who was on Armstrong's Roll in Mississippi; and it looks much as if this new Mississippi incident in the life of the claimants' John Cooper, is suggested by the fact that the copies of said Roll, now introduced, shows that a certain John Cooper was a Choctaw Indian and on Armstrong's Roll and lived on a creek called Kanapa, something they said nothing about on former trials. Some of the witnesses do not even call the creek Kanapa, as set out in the extract from Armstrong's Roll, but call it "Naper" creek.

It seems that the descendants of John Cooper of North Carolina and Tennessee antecedents, lived in Arkansas for years after they left Perry County, Tennessee, and passed through and perhaps tarried on the way a year or so in Mississippi, but they all lived until recent years, so far as I can discern from the evidence, in Arkansas more than a hundred miled from the Indian Territory.

The counsel for the appellants claim that these extracts from the records are from Ward's Roll. The certificate

itself shows it was Armstrong's Roll, and so the claim about any Captain John Cooper being their ancestor and a Choctaw Indian, much ~~xxx~~ less the North Carolina Cooper, rests on no solid or any true foundation.

Some of the evidence here tends to show that these claimants have some kind of Indian blood, but it is far from showing that they have Choctaw blood.

It would be a strange thing considering what we know of the Indians of the Choctaw tribe, that a noted Captain among them, was married in North Carolina in 1785 and died in Tennessee in 1839, and is never shown by any testimony worth consideration to have ever affiliated with his tribe in 1830 or afterwards, or lived in Mississippi at all.

The evidence of Melvin Storey, a witness in Pope County, Arkansas, was to the effect that he never intended to say in an affidavit for the plaintiffs,"I was well acquainted with Delitha Cooper and further know that William Cooper was the lawful son of John Cooper", for he says when he testified before the writer of this opinion, in Pope County, Arkansas, on the 1st day of October, 1904, "I didn't know John Cooper". And in answer to the question whether he had before that in 1895, in his affidavit used before this trial by these people, sworn that he knew John Cooper, before T. B. Mourning, County Clerk of Pope County, Arkansas, he swore before the writer hereof that he had not done so.

Now then, it is apparent that affidavits were gotten up by these people in 1895, in a reckless manner, to say the least, and by that means to attempt to win their case, is a badge of fraud.

Again before me, William Thompson, who is claimed by these people to have made affidavit in August, 1896 for them, in which he is made to swear certain things favorable to them, when presented with the affidavit or a true copy thereof and questioned about it, he swore before me.

"I did not make this affidavit. I never made this affidavit or any such affidavit before any one. It is a false affidavit so far as I am concerned. I just heard of its existence in August, 1903, and then stated and I now state that it is forged and false so far as it concerns myself in any way."

This witness is a most respectable man, formerly County Judge of Pope County, Arkansas.

Such is the state of the evidence in this matter that it is certain that none of the immediate ancestors of these people ever complied with the treaty of 1830 relating to emigrant Choctaws. Certain it is that they can not, under the evidence, support any claim as Mississippi Choctaws who by registering or making an effort to do so on Ward's Roll, and living on the land there five years would have a right to get land in the Choctaw and Chickasaw Nations; and equally certain, to my mind, they have proved by no competent evidence that they have Choctaw blood in their veins. It is more likely from the evidence, if they have any Indian blood, that it was Cherokee, as John Cooper, their ancestor, was married in North Carolina in 1785, where some of the Cherokees lived as a tribe, but from their appearance their blood seems to be white.

I am of the opinion that none of the appellants here, are entitled to enrollment as Choctaw Indians by blood or in any

other way, or to any of the rights and privileges that flow therefrom, AND IT IS SO ORDERED.

H. I. Forte
Associate Judge.

We concur:

Spencer B. Adams
Chief Judge.

Walter L. Weaver
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Sarah Jones, et al.,

vs. No. 74.

Choctaw and Chickasaw Nations.

No written opinion.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. November Term, 1904.

Z. T. Bottoms, et al.,	:	
vs.	:	No. 75.
Choctaw and Chickasaw Nations.	:	
James L. Ivey, et al.,	:	
vs.	:	No. 57.
Choctaw and Chickasaw Nations.	:	
Louis Hill, et al.,	:	
vs.	:	No. 132.
Choctaw and Chickasaw Nations.	:	

OPINION, by FOOTE, Associate Judge.

The above styled causes were consolidated in this Court, and one opinion herein will apply to them all, yet there will be separate judgments in each case.

The first two cases in the above caption come here on appeal from the United States Court for the Southern District of the Indian Territory, and the last mentioned case is here on appeal from the United States Court for the Central District of said Territory. The claim made originally was denied by the Commission to the Five Civilized Tribes, and on appeal to the said United States Courts judgment in each case was rendered in favor of the claim made.

I have taken occasion with laborious patience, to read over and consider all the evidence in this case, both competent and incompetent, with a view to inform myself fully as to the

whole case in all its aspects.

Most of the affidavits in the record, used before the Commission to the Five Civilized Tribes, are incompetent as evidence here, not being "old affidavits", and so also are the depositions taken on a trial de novo before the United States Court; but in some respects they disprove the very claim of the appellants.

It seems from the statements of the appellants, that they now claim that they are descended from one "Billy Bottoms" or William Bottoms known as uncle Billy Bottoms, and that he was a half blood or three quarters blood Choctaw Indian; that he had an Indian name, viz., Nocatubbee, and that he was married to a woman named Masholatubbee, a full blood Choctaw Indian, at the former home of the Choctaw Nation in Mississippi.

From the evidence on the part of the plaintiffs themselves it appears that Billy Bottoms, if he ever was in the Indian Territory at all, was here but a short time, and occupied his time in dissipation and horse racing; that he was a lame man, and that after his short sojourn here he finally made his residence in Cherokee County, Texas, where he died.

His immediate descendants, Piety and Prudence, married and had children born to them East of the Mississippi River, and then removed to Texas, never having removed to the Indian Territory, and most if not all of their descendants, and those who intermarried with them, lived in Texas up to the time when they sought a residence here, most if not all of them coming to the Indian Territory forty years or thereabouts, after the Treaty of Dancing Rabbit Creek. But I do not deem it necessary to determine whether Bottoms or his alleged descendants ever complied with the treaty of 1830, by coming to the Indian Territory within a reasonable time after 1833 and 1834, as the

treaty properly construed, as I think, declared, because I am of opinion that the more important question, and one which lies at the very threshold of this case, is whether or not they have shown, or there is shown in the record, that they are possessed of Choctaw Indian blood as they claim.

And first let me note that these appellants have made use of the statements of one Sam Perry, an aged colored man, and that Sam Perry is a discredited witness before us, having been repeatedly shown to have been a professional witness, and one not to be believed. This is a badge of fraud at the very beginning of the case.

While the depositions taken de novo are not evidence here, yet it is a matter of fact, that those who gave them stated facts therein, or omitted facts, which conflict with their statements before us. They are to be weighed as going to the credit or discredit of the persons giving them, as witnesses.

Daniel Underwood, an aged ~~colored~~ Indian man, testified in 1897, and he did not then state that this man William Bottoms lived in the Indian Territory to his knowledge. But in his oral testimony taken before a member of this Court he swears that he knew Billy Bottoms both in Mississippi and in this Territory, and he says that Billy Bottoms lived on "Blue", a stream in the Indian Territory, whereas other witnesses for the plaintiffs have testified that he lived or sojourned at or near Doaksville, which according to the map, is at least forty miles or so from the Blue at its nearest point from Doaksville. The absurdity and worthlessness of this old man's testimony may be exemplified in many ways; for instance he says he is about 100 years old and has lived in the ~~Choctaw~~ Chickasaw Nation 98 years, ~~This would make him to have come here to this Territory when he was two years old, and about the year 1806, which was long before any~~ last of the Mississippi Pettimen

~~Choctaws ever thought of coming here as a Nation, and twenty four years before the treaty of 1830.~~ He says he knew one daughter of Masholatubbee named Barnett and knew no other, but when the name of the said Anne is mentioned to him says he remembers her, but he states that he does not know if she was ever married or not. He does not know if Billy Bottoms was married when he saw him in this country as he never saw him but once, and he also states that Anne Masholatubbee came to the Indian Territory and married here, and strange to say states after these statements that Billy Bottoms lived in this Territory with Anne Masholatubbee as man and wife, and in the Choctaw Nation. This is completely contradictory to the claim of the plaintiffs and the other evidence in the case, as whoever was Bottom's wife, was dead before he, Bottoms, ever came here.

Some other things stated by this witness are equally convincing as to his unreliability as a witness, but they need not be specified. His use as a witness, the character of his testimony offered by the plaintiffs in their behalf, but confirms the impression that they have not acted in good faith, and have b been willing to resort to any means, however reprehensible, to win their case.

The evidence of Catherine Franklin, an aged colored woman who made an affidavit for these plaintiffs in 1896, and who testified orally before us, is of the same character. The writer of this opinion saw her and heard her oral evidence, and in charity will only say that he places not the least reliance on her evidence, after hearing her statements to the effect that Billy Dottoms died at Fort Coffee of the small pox, while the claimants and others agree that he died in Cherokee County, Texas; and after saying in the direct examination that Billy Bottoms left

his daughters Piety and Prudence back in the Nation East of the Mississippi, and then states on cross examination that he lived with these two woman on the Kiamichia River in the Indian Territory. What use, except to discredit the claim of the appellants, this witness has accomplished, I must confess I can not perceive.

Joe Freeman, another colored man in the decline of life, has vouchsafed as a witness, some remarkable statements about his knowledge of Billy Bottoms. He says he knew Billy about Doaksville about ten or fifteen years before the war,(meaning the Civil War), which would be about 1846 or 1851, and that Billy Bottoms was then about 40 years of age. It seems to be undisputed, in fact claimed by plaintiffs, that Billy Bottoms died in Cherokee County, Texas, in about 1863 or 1864, and was about eighty years of age. But, according to Joe Freeman, his Billy Bottoms, would not have been, in 1863 or 1864, more than 63 or 64 years of age; and yet, according to the claim of appellants, he must have been at the time Joe makes him 40 years of age, really about 65 or 70 years of age. So with these comments I pass over Joe Freeman.

Minerva Anderson, a sister of Joe Freeman, testified that she knew Billy Bottoms and his son Zack around Doaksville, for two or three years about the year 1840, and that he was a middle aged man at that time. But Billy was, according to the appellants, about sixty years of age at that time; and Zack, as he states somewhere in the record, left Indian Territory in 1835 and joined the Texans in their war with Mexico, as a soldier, which must have been if he took part in it, about 1836 or 1837, and he was married in Cherokee County, Texas, about 1840. So that this last witness does not agree with the

parties for whom she testifies, and they made a mistakein using her evidence.

Levina King, a mixed blood Indian woman who testifi ed f for the plaintiffs, also does their cause harm by swearing that Piety and Prudence their ancestresses, came to Indian Territory and lived on Clear Creek, when the evidence appears to be that they wer never nearer Indian Territory than the State of Texas. Further, this witness conflicts with other evidence of plaintiffs and puts Billy Bottoms here with her somewhere about 1831.

Thus we see that so far as the witnesses for plaintiffs just mentioned are concerned, they are not only utterly unreliable, but the persistent and frequent use of such evidence by the plaintiffs, gives their cause an unfavorable look, as to honesty and truth.

Zack Bottoms, the son of Billy, as he claims, in an "old affidavit" made in 1884, disproves much of the evidence heretofore adverted to. He says he moved from Mississippi with the Choctaws in 1832, or near that time, with Dave Folsom's detachment of immigrants; that he remained there until 1835, when he enlisted in the Texas Volunteers. He further makes the remarkable statement that his grand mother was a Tecumseh on one side and his mother was a daughter of Masholatubbee. He says "I was left an orphan when quite young and do not remember much about my parents". He does not mention that he was the son of Billy Bottoms, but seems to claim through the Tecumseh family of Pottawatamie Indians living way up in the North West, far from Mississippi and Masholatubbee's daughter of whom he knows little. Nor does he speak in anywise of the Indian name of Billy, viz, Nockatubbee. Now if Zack's story was true about his being

left an orphan when young, how could he be the son of Billy Bottoms who died in Cherokee County, Texas in about 1863 or 1864, as he, Zack, married in 1840 in Texas, and went to the war there against the Mexicans in about 1836 or 1837.

It is perfectly plain to me from some parts of this record, appearing in that portion used before the Commission to t the Five Civilized Tribes and elsewhere, that Zack Bottoms, living in Texas at the time, conceived the plan of claiming for himself and others Choctaw Indian Blood,(although the whole connection and their spouses and children, commencing with old Billy Bottoms, had been living in Texas for years, and as some of the affidavit makers in 1896 say were well to do people there, and not expecting to claim citizenship), and proceeded to work up this case. And the method of their working has been such that they have so mixed up matters, that I cannot perceive, that any of them have, in anywise, explained satisfactorily that they ever had any Choctaw Indian blood, or that their immediate ancestors ever had any idea of making such a claim until the Indian Territory was becoming a nice place for white people, or any other kind of people except real Choctaws, to live in.

I do not care to advert further to the evidence adduced on the part of the appellants, for it is impossible for me to place any reliance upon it.

But it seems that according to the evidence of Seth Bottoms, a son of Billy Bottoms, whose evidence was taken before the Chief Judge of this Court, that his understanding was that his father, Billy Bottoms, was not born in the Choctaw Nation either in Mississippi or Alabama, but in the State of Virginia. And Billy's grand son Riley Bottoms, says his

Grandfather married in Tennessee, and was born in the State of Virginia.

The effort to prove that the wife of Billy Bottoms was one Anne Masholatubbee, is disproved in many ways and proved satisfactorily in no way. Some of the witnesses have sworn she died in Mississippi; some that she died in the Indian Territory, and they even disagree as to the amount of Choctaw blood she had. The fact is I believe none of them ever knew such a person at all. Her alleged father, Masholatubbee, was one of the old Chiefs of the Choctaw Nation in Mississippi in 1830 and before that. According to the testimony of Seth Bottoms, the son of William or Billy Bottoms, given before our Chief Judge Adams, his mother's name was Annie Witt, the wife of William Bottoms. She lived in Tennessee. He testifies that his father and mother married in Jefferson County, Tennessee; that he was the youngest child of that marriage; that his father never had any other wife, and that his father and mother moved from Jefferson County, Tennessee, to Giles County, Tennessee, and thence to Monroe County, Mississippi. On cross-examination he says he knew a brother of his mother named Daniel Witt.

Riley Bottoms, also a witness before Judge Adams, says: "My father's father was William Bottoms. His wife's name was Annie, maiden name Witt; think they married in Jefferson County, Tennessee. My grand mother was never called by any other name than Annie Witt before, and Annie Bottoms after she was married."

Mrs. Nancy Randolph testified that,her "father's father's name was William Bottoms, is what I have been taught. His wife's maiden name was Annie Witt".

Now these witnesses are disinterested; they have no claim here, and they repudiate the claim of the appellants, that Anna Masholatubbee was the wife of William Bottoms, and further show that William Bottoms was born in Virginia and married in Tennessee and never affiliated with the Choctaw Tribe of Indians east of the Mississippi River.

But further, an examination of the 7th Volume of the American State papers, page 102, shows that the old Chief Masholatubbee had at or about 1831, threechildren under ten years of age. Now it is hardly possible that the youngest of these was over five or six years old at that time. Annie Bottoms was, as Seth Bottoms testifies, the mother of eight children when she died in 1824. Now how could she have been the daughter of Masholatubbee, whose oldest child of three in 1831 was under ten years old, leaving out of the matter the statement of Seth that her name was originally before marriage Annie Witt, a Tennessee woman. But further than that, Mrs. Lucy Bohannan, of Segal Indian Territory, a most respectable lady, a witness before us, testified before us in the case of Susan S. Benight, et al., vs. Choctaw and Chickasaw Nations. She stated that she was the duaghter of Charles King, and the grand daughter of the old Chief Masholatubby. She gives the names of the only two daughters that Masholatubbee ever had; one was named Susan and married a man named Cooper,(and the witness lived with them for years), and Masholatubbee's only other daughter was burned to death at the early age of seven years. She never mentioned a daughter named Anne, and having lived with Susan Cooper, her aunt, and the daughter and the only living daughter of the old Chief who lived to be grown or marriageble, it is

passing strange that she never knew or heard of a daughter of the old Chief, ~~and her aunt~~, named Anne Masholatubbee, if any such existed, and I do not believe she did.

There are many other contradictions, misstatements and contrary claims made in different parts of this record by these claimants, that I might mention. But I will content myself with using the language of Judge Temple, a distinguished Judge of the California Supreme Court, when I say that in my opinion, the evidence offered in their behalf by appellants, is not only unreliable, but it contains within itself "intestinal conflicts", and, with the evidence offered by the defendants, renders the case of the appellants, to say the least, hopelessly without merit.

I might comment with severity on the methods employed, and the witnesses used to bolster up this cause, but I will not comment further than I have done.

In my judgment none of the appellants here are entitled to be declared citizens by blood, or in any other way, of the Choctaw Nation, or to any of the privileges that flow therefrom, AND IT IS SO ORDERED.

H. A. Hoote
.....
Associate Judge.

We concur:

Spencer B. Adams
.....
Chief Judge.

Walter L. Wraer
.....
Associate Judge.

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

Mary Underwood,

vs. No. 76.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Daniel McDuffie, et al.,

vs. No. 77.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Sallie Duncan,

vs. No. 78.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

W. R. Pittman,

vs. No. 79.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

W. V. Alexander, et al.,

vs. No. 80.

Choctaw and Chickasaw Nations.

No written opinion. Decided upon authority of opinion in the case of E. H. Bounds, et al., vs. Choctaw and Chickasaw Nations, No. 9, on this Docket. See opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

A. H. Law, et al.,

vs. No. 81

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Margaret E. Law, et al.,

vs. No. 82.

Choctaw and Chickasaw Nations.

No opinion written. Decided on authority of oinion in the case of E. H. Bounds, et al., vs. Choctaw and Chickasaw Nations, No. 9 on this Docket. See opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Nancy A. Laflin, et al.,

vs. No. 83.

Choctaw and Chickasaw Nations.

No opinion written. Decided on authority of opinion in the case of E. H. Bounds, et al., vs. Choctaw and Chickasaw Nations, No. 9 on this Docket. See opinion in that case.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory.

U. S. Joins, et al., Plaintiffs, vs. Choctaw and Chickasaw Nations, Defendants.	No. 84. On the Chickasaw Docket.

O P I N I O N.

WEAVER, J.

The plaintiffs in this case are U. S. Joins, and Virgie Joins, his daughter.

The said U. S. Joins claims to be a Chickasaw Indian by blood, and it follows, if such is the case, the like fact will prevail as to his daughter.

To sustain his contention he offers evidence to show that he is a son of one John Wesley Joins; that said John Wesley Joins took up his residence in the Chickasaw Nation, Indian Territory, about 1874 or '75, and remained there until his death about two years later; that prior to that time he had lived at numerous places in various States of the Union, but never long at any one place, the said plaintiff, U. S. Joins, having been born in the State of Kentucky about 1866. There was also offered in evidence by the plaintiffs certain testimony of persons, now deceased, which testimony was taken, in 1895, before what was generally called the Court of claims of the Chickasaw Nation, in support of a claim for citizenship in the Chickasaw Nation, made by said U. S. Joins, to the tribal authorities.

This testimony was as follows, to wit:

"In the Court of Claims, Chickasaw Nation, Indian Territory.

U. S. Joins, et al., Plaintiffs, vs. Chickasaw Nation, Defendant. Testimony of W. M. Simpson.

U. S. Joins' father was name was John Wesley Joins, and was old Jack McLish's nephew, and belonged to the house of Dry Prairie. the first time I saw him he was at Tuscumbia, Ala., at Gabe Long's and Gabe Long's wife was first cousin to John Wesley Joins. Then I saw him in this country at old Post Oak Grove, at the old annuity time, and I know he died in the Chickasaw District, but do not know exactly where.

Q. About how much Chickasaw was he?

A. Shows it considerable.

Q. Do you remember about what year you saw him in Tuscumbia Ala?

A. About 1839 or 1840.

Q. About how old was he when you saw him at Tuscumbia Ala?

A. About twenty or twenty five years old.

Q. Was he married at that time?

A. No, sir.

Q. Do you know whether this U. S. Joins is a son of John Wesley Joins?

A. I don't know; he only told me he was.

Q. About how long was it from the time you saw him at Tuscumbia and the time you saw him at Post Oak Grove C. N.?

A. I don't know just exactly how long.

Q. Do you know whether Mr. John Wesley Joins was ever married or not?

A. I do not. (Signed) W. S. his (X) mark. Casey "

"Testimony of William Iokombe".

Mr. U. S. Joins' father was named John Wesley Joins; the old man's house name was Im-ok-tok-clea-lash-sha; he was related to Jack McLish. This is about all I know.

Q. Do you know whether U. S. Joins is a son of J. W. Joins?

A. Yes.

Q. Is this man Joins an Indian?

A. He was a mixed breed Indian.

Q. Where did you know this man Joins?

A. Wolf Creek in Mississippi.

Q. About what year did you first see him?

A. I was a small boy.

Q. Was you acquainted with him after he moved to the Chickasaw country?

A. I saw him at Doaksville, I. T.

Q. Was that the last timeyou saw him?

A. It was.

Q. About how long has it been since you saw him at Doaksville?

A. It has been a long time. I do not remember how long. It was before the war and I do not remember.

Q. How many children did he have?

A. I do not know. The first time I saw John Wesley Joins, he came to his father's house and he told me he was a Chickasaw.

Q. Do you know whether he had any children or not?

A. I do not know.

Judge Burris asked the following question.
Since you saw the old man, and since you saw this young man, U. S. Joins, how did you know this young man was John Wesley Joins' son?

A. I did not know, only that this young man told me he was his father.

(signed) William X Iakombe.
mark

"Affidavit of John Turner in case of U. S. Joins.

Southern District :
Indian Territory. :

Personally appeared before me a Notary Public for the Southern District of the Indian Territory, John Tirner, who is fifty years old, and testified that he lived in the County of Pickens, Ind. Ter., on Mud Creek and was personally acquainted with John Wesley Joins and knew him to be a Chickasaw Indian. I also met him in Mississippi before he came west, and there he w was known as an Indian of the Chickasaw Tribe; and on Mud Creek, where he died; had several children. The oldest boy was named Tom Joins, who died in Spanish Fort, Texas; and is Mrs. M. J. Chapman and Sherman Joins, who lives near Petersburg, Pickens County, I. T., and when he died, Sherman was only a boy.

(Signed) John Turner.

In testimony whereof I hereunto set my hand and seal this 29th day of July 1895.

(Signed) Frank Bradburn. "

"Deposition of Lucy Bird, case of U. S. Joins."

Indian Territory
Central Division.

Before me, A. J. Walker, a Notary Public for the Central District of the Indian Territory, this day appeared before me Lucy Bird, known, who being sworn, says; My name is Lucy Bird; I am 75 years old; I was born and raised in Mississippi; I came to the Indian Territory with the Chickasaw Indians; I knew John Wesley Joins was a Chickasaw Indian by blood.

her
Signed. Lucy X Bird.
Mark. " "

Subscribed and sworn to before me this 26th day of June 1895.
Signed. A. J. Walker.
Notary Public. "

"Deposition of Benjamin Colbert.

Indian Territory
Central Division.

Before me, A. J. Walker, a Notary Public for the Indian Territory, this day appeared before me, Mr. Benjamin Colbert, who being sworn says: My name is Benjamin Colbert; I am forty years old. I am a Chickasaw Indian by blood, and reside near Goodland, I. T. I knew John Wesley Joins, a Chickasaw Indian by blood. I also know Sherman Joins is a son of John Wesley Joins, and therefore a Chickasaw Indian by blood.

his
(Signed)Benjamin X Colbert
mark.

Subscribed and sworn to before me this 26th day of June 1895.

Signed. A. J. Walker.
Notary Public."

"Copy of certificate of U. S. Joins.

This is to certify that U. S. Joins has filed his application for citizenship in compliance with the laws of the Chickasaw Nation, and has been accepted subject to the approval of the legislature of the Chickasaw Nation.

Given under our hands this the 26th day of August, 1895.

Signed. C. A. Burris, Chairman.

W. H. Bourland :
: Committee."
J. Brown. :

It does not appear from the testimony of three of these witnesses, to wit, W. M. Simpson, William Ickombe and Lucy Bird, that either of them knew U. S. Joins to be a son of the said John Wesley Joins, concerning whom they testified.

None of these witnesses state the source of their information as to the said John Wesley Joins being a Chickasaw Indian.

One of them claims to have seen a John Wesley Joins at Tuscumbia, Alabama, about 1839 or 1840, and that he was then about twenty or twenty five years of age. Another testified that he knew one John Wesley Joins at Wolf Creek, Mississippi when he was a small boy, but it does not appear from the testimony that the John Wesley Joins that these people saw at these different places was the same individual.

W. C. Thompson, testified orally in this case and stated that he knew a man named John Wesley Joins in Simpson County, Mississippi, "a good while before the war" or, witness fixing the date as nearly as he could, about 1849 or 1851, and that said John Wesley Joins was then "a grown man, ~~xxxxxx~~ probably twenty five or thirty years old." "He looked like an Indian, passed for an Indian, and said he was a Chickasaw." The testimony of this witness does not connect this John Wesley Joins with the one at Tuscumbia, Alabama, the one at Wolf Cree, Mississippi, and whether or not he was the father of U. S. Joins is not shown. Neither does the testimony show that the John Wesley Joins who was seen at Tuscumbia, Alabama, or the John Wesley Joins who was seen at Wolf Creek, Mississippi, even if ~~he~~ was the same individual, was the father of U. S. Joins.

If the said John Wesley Joins who was the father of U. S. Joins, and was the man whom one of the witnesses testified as haveing seen near Doaksville, Indian Territory, before the war, he evidently was not then a permanent resident of the Indian Territory, because we find from the evidence that he was living in the State of Kentucky immediately after the war; that said U. S. Joins was born in Kentucky in 1866; and that ~~xxxx~~ John Wesley Joins, who was the father of U. S. Joins, did not take up his residence permanently in the Indian Territory until 1874,

when he located on Mud Creek renting lands as a white person would, and so far as the record in this case shows, he did not claim to be a member of the Chickasaw Nation. He died about three years after he finally removed to the Territory.

Even if I should be of the opinion that said John Wesley Joins was a Chickasaw Indian by blood, there is another fact apparent which must be decisive of this case.

This Court has held that Chickasaw Indians should, in order to obtain rights as members of the tribe residing in the Indian Territory, have removed and located within the boundaries of the Choctaw or Chickasaw Nations within a reasonable time after the treaty of 1837. It was nearly forty years after said treaty had been made before John Wesley Joins, the father of the plaintiff U. S. Joins, finally located here, and if he was the same person testified about by the witnesses above referred to he had, during that period, been living in the States of Alabama, Mississippi and Kentucky. Surely forty years does not come within the meaning of a reasonable time in which to take up his residence here.

I am, therefore, of the opinion that said ~~John~~ U. S. Joins and his daughter Virgie Joins are not entitled to be enrolled as members of the Chickasaw Nation or tribe. The Judgment of the Court will be rendered accordingly.

Walter L. Brawn
Associate Judge.

We concur:

Spencer B. Adams
Chief Judge.

H. S. Foote
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Joe N. Love,

vs. No. 85.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

J. E. C. Albright, et al.,

vs. No. 86.

Choctaw and Chickasaw Nations.

No opinion written. Decided on authority of opinion in case of E. H. Bounds, et al., vs. Choctaw and Chickasaw Nations, No 9 on this Docket. See opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO/

Burton S. Burkes, et al.,

vs. No. 87

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TUSHOMINGO.

John Cornish,

vs. No. 88.

Choctaw and Chickasaw Nations.

No written opinion.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory? September Term, 1904.

L. F. Rhodes, et al.

vs. No. 89:

Choctaw and Chickasaw Nations.

OPINION BY ADAMS, Chief Judge.

On the 15th day of November, 1897, a judgment was rendered by the United States Court for the Southern District of the Indian Territory admitting to citizenship in the Choctaw Nation, Andrew O. Rhodes, Samuel F. Rhodes, Emmet L. Rhodes, Ella N. Rhodes, Mrs. Robertha Oliver and Jesse Lee Oliver, upon an appeal from the decision of the Commission to the Five Civilized Tribes denying them citizenship.

The applicants in this case claim their right to be declared citizens of the Choctaw Nation by reason of being descendants of one Aaron Askew. No evidence was offered in this case by the applicants, but a request was made and granted that the evidence in case No. 1, entitled "Newt Askew, et al., vs. Choctaw and Chickasaw Nations" pending in this Court, be considered in this case, which is done, these applicants claiming their Indian blood through the same ancestor as the applicants in case No. 1, and the evidence in case No. 1 being insufficient to warrant the Court in finding as a fact that Aaron Askew was a Choctaw Indian, the application of these applicants is denied.

(Signed) Spencer B. Adams,
Chief Judge.

We concur:

(Signed) Walter L. Weaver,
Associate Judge.
(Signed) Henry S. Foote,
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Sarah Sheilds, et al.,

vs. No. 90.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO, INDIAN TERRITORY,

SEPTEMBER TERM, 1904.

Elizabeth A. Evans,

vs. No. 91.

Choctaw and Chickasaw Nations.

OPINION BY ADAMS, Chief Judge.

The record in this case shows that Elizabeth Ann Evans was admitted to citizenship in the Chickasaw Nation by the Commission to the Five Civilized Tribes, umder the Act of June 10, 1896, and thereafter the Chickasaw Nation appealed the case to the United States Court for the Southern District of the Indian Territory, and on the 9th day of March, 1899, a judgment was render by said court reversing the decision of the Commission and denying said Elizabeth A. Evans citizenship in the Chickasaw Nation.

Under section 32 of the Act of July 1, 1902, the said Elizabeth A. Evans filed a petition in this Court praying an appeal hereto, which was granted.

The uncontradicted evidence shows that the applicant Elizabeth A. Evans is a white woman who married a full blood Chickasaw Indian whose name was Sam McGuire, in the year 1872, in the Chickasaw Nation; that they lived together as man and wife for a number of years, when her said husband died; that the applicant has continusously resided in the Indian Territory since her marriage to her full blood husband.

Applicant alleged in her petition to this Court that she did not know that her case was appealed to the United States Court from the decision of the Commission to the Five Civilized Tribes, and, therefore, she was not

present when the trial took place. The judgment of the United States Court sets out the fact that neither she nor her attorney made an appearance in that Court. This, I presume, is the reason the United States Court denied the applicant citizenship.

Under this evidence the applicant, Elizabeth A. ~~Evans~~ Evans, is clearly entitled to citizenship in the Chickasaw Nation, and a judgment will be entered in accordance with this opinion.

(Signed) Spencer B. Adams,
Chief Judge.

We concur:

(Signed) Walter L. Weaver,
Associate Judge.

(Signed) He S. Foote,
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

W. W. Poyner, et al.,

vs. No. 92.

Choctaw and Chickasaw Nations.

No written opinion. Decided on authority of the opinion in the case of E. H. Bounds, et al., vs. Choctaw and Chickasaw Nations, No. 9 on this Docket. See opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

A. E. Scoby,

vs. No. 93.

Choctaw and Chickasaw Nations.

No written opinion. Same party as in case of Arthur E. Scoby, vs. Choctaw and Chickasaw Nations, No. 99 on this docket.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, I. T., November Term, 1904.

William L. Thomas, et al.,

Plaintiffs,

vs.

No. 94.
Chickasaw Docket.

The Choctaw and Chickasaw Nations,

Defendants.

O P I N I O N.

Weaver, J.

The plaintiffs in this case are William L. Thomas, Susan C. Malone, Susan Melissa Cartwright, James Drew Cartwright, Alanzo Avant Cartwright and Jesse Tresvan Thomas, each of whom claim to be Choctaw Indians by blood.

Whatever the evidence shows, or fails to show, in support of this allegation, is immaterial for the reason that none of them were bona fide residents of the Choctaw Nation until at, or about the time they made application to the Commission to the Five Civilized Tribes for enrollment as members of said Nation, and some of them were not residents here even at that time.

This Court has repeatedly held that Choctaw Indians, in order to obtain an interest in the tribal property west of the Mississippi River, must comply with the provisions of the Treaty of 1830, and the laws made in pursuance thereof and "must live on the land". This these applicants have not done. Their application therefore should be denied and the judgment of the Court will be rendered accordingly.

Walter L. Weaver, Associate Judge.

Spencer B. Adams, Chief Judge. H. S. Foote, Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO,

Anna Smith (nee Agee),

vs. No. 95.

Choctaw and Chickasaw Nations.

Transferred to the Southmx McAlester Docket, where it appears as No. 129. See opinion in that case.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. October Term, 1904.

Joseph H. Brown, et al.,

Plaintiffs,

vs. No. 96.

Choctaw and Chickasaw Nations,

Defendants.

OPINION, by ADAMS, Chief Judge.

The applicants in this case are white persons, and claim to derive their right to citizenship in the Chickasaw Nation, by virtue of an act of adoption passed by the legislature of said Nation. Said act was thereafter repealed by the Chickasaw legislature.

The Supreme Court of the United States in the case of A. B. Roff, plaintiff in error, vs. Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, 168 U. S., bottom of page 442, in construing the act of adoption under which the applicants claim their right to citizenship in this case, and the act repealing said act of adoption, says:

"Now according to this complaint, plaintiff was a citizen of the United States. Matilda Bourland was not a Chickasaw by blood, but one upon whom the right of Chickasaw citizenship had been conferred by an act of the Chickasaw legislature. The citizenship which the Chickasaw legislature could confer it could withdraw. x x x x. The Chickasaw legislature by the second act",(meaning the act

repealing the act of adoption),"not only repealed the prior act, but canceled the rights of citizenship granted thereby"; thus holding that whatever rights the applicants may have acquired under the act of adoption, were destroyed by the subsequent act.

This Court is bound by the above quoted decision.

There are other questions in this case which are not necessary to be discussed.

The application of applicants is, therefore, denied.

Spencer B. Adams
Chief Judge.

We concur:

Walter L. Nealon
Associate Judge.

Henry S. Foote
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Henry Dutton, et al.,

vs. No. 97.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

L. L. Blake, et al.,

vs. No. 98.

Choctaw and Chickasaw Nations.

No written opinion. Decided on authority of opinion in the case of E. H. Bounds, et al., vs. Choctaw and Chickasaw Nations, No. 9 on this Docket. See opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Arthur E. Scoby,

vs. No. 99.

Choctaw and Chickasaw Nations.

No written opinion.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory, October Term, 1904.

I. E. Parks, et al.,	:	
Appellants,	:	Nos. 100 & 115.
vs.	:	
Choctaw and Chickasaw Nations,	:	
Appellees.	:	

OPINION, by FOOTE, Associate Judge.

These two cases, on this docket, No. 100 and 115, have been by order of this Court consolidated, and the evidence is to be considered in both, and one opinion covers both cases, but the judgments must be separate.

These causes come here by appeal from the United States Court for the Southern District of the Indian Territory. The parties were denied admission as citizens of the Choctaw Nation, by the Commission to the Five Civilized Tribes, and took an appeal to the said United States Court, and were there admitted as citizens of said Nation. By the decision of this Court in the Riddle case, known as the test suit, the judgment of the United States Court was annulled.

The only proof before that Court, so far as the record discloses, seems to have been exparte affidavits, filed in 1896 before the DawesCommission. They are not such "old affidavits" as are competent evidence in this ~~xxxx~~ cause, so that the only proof given here and admissible in evidence in

behalf of the appellants, is the oral evidence of William Donahue, K. C. Parks, an applicant and appellant here, and Blackston Donahue.

The evidence of K. C. Parks and William Donahue, as to the Choctaw blood of the ancestor William Donahue, is merely hearsay, not admissible in evidence, and if admissible entitled to but little weight in the determination of so important a question involving rights of property, as here; and the rest of their evidence is of little force.

The evidence of Blackston Donahue, however, although he was not cross-examined as to how he obtained his knowledge, is to the effect, that William Donahue, the ancestor of the parties appellant, who died in Texas, in 1867, as a resident of that State, was a Choctaw Indian by blood.

There is no competent evidence here that said William Donahue, who lived and died in Texas, ever complied with any of the conditions of the treaty of 1830, under which title was vested in the Choctaw Indians to land in the Indian Territory. He never enrolled, so far as this record shows, as a Mississippi Choctaw, under the fourteenth article of said treaty, or even made any effort to do so. He never, at any time, removed to the Indian Territory or "lived on the land" thereof, and died in the State of Texas in 1867, many years after the date when the emigrant Choctaws should reasonably have had time to and did, remove to the Indian Territory, and "live on the lands" thereof.

Taking all these facts into consideration, it does not seem to me that the witness last named could have had any real knowledge of the character of the Indian blood of the appellants' ancestor, William Donahue, and must have made the statement he did

without sufficient foundation. At any rate, taking the whole evidence in the case, I am of the opinion that it does not reach that degree of certainty which, I think is necessary, in a case of this sort, to establish Choctaw Indian blood, and I am, therefore, constrained to believe that the appellants are none of them entitled to be declared citizens of the Choctaw Nation, or to any rights flowing therefrom, AND IT IS SO ORDERED.

Henry S. Foote
Associate Judge.

We concur:

Spencer B. Adams
Chief Judge.

Walter L. Weaver
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Nettie Howell,

vs. No. 101.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO/

XX

Wm. Duncan,

vs. No. 102.

Choctaw and Chickasaw Nations.

No written opinion. Decided on authority of opinion in the case of E. H. Bounds, et al., vs. Choctaw and Chickasaw Nations, No. 9 on this Docket. See opinion in that case.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. November Term, 1904.

E. W. Cotton, et al,
Plaintiffs,
vs.
Choctaw and Chickasaw Nations,
Defendants.

No. 103.

O P I N I O N.

WEAVER, J.:

The rights of all the applicants in the above entitled cause except Minnie Cotton, wife of E. W. Cotton, and Cora Cotton, wife of D. O. Cotton, were passed upon by this Court on the 30th day of June, 1904, but the question involved as to the rights of said Minnie and Cora was reserved for the further consideration of the Court, and it is them alone that this opinion touches.

The testimony before us shows conclusively that the said E. W. Cotton and D. O. Cotton are Choctaw Indian by blood and such Choctaw Indians as are by the treaties and laws entitled to citizenship and enrollment as members of said tribe or Nation; that each of them were married in accordance with law to their respective wives as set out in the petition herein, and that the marriage relation between them still continues; that the said wives were white persons, and that said marriage occurred at the time and place set forth in said petition, and in accordance with the laws of the United States governing the same and

then in force.

This Court has heretofore held (Trahern vs. Choctaw and Chickasaw Nations) that a Choctaw Indian man can lawfully marry a woman under any laws in force at the place where the marriage occurs, and that such marriage, under the provisions of article 38 of the treaty of 1866, confers membership in said Nation on his said wife.

I am, therefore, of the opinion that the said Minnie Cotton is entitled to membership and enrollment in the Choctaw Nation or tribe as the wife of E. W. Cotton, and that the said Cora Cotton is likewise entitled as the wife of D. O. Cotton.

The judgment and decree of this Court will be entered accordingly.

Walter L. Weaver
Associate Judge.

We concur:

Spencer B. Adams
Chief Judge.

Henry D. Hoot
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Lydia M. Johnson, et al.,

vs. No. 104.

Choctaw and Chickasaw Nations /

No written opinion. Decided on authority of opinion in the case of E. H. Bounds, et al., vs. Choctaw and Chickasaw Nations, No. 9 on this Docket. See opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Sarah Jane Reynolds, et al.,

vs. No. 105.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Harriet Gordon, et al.,

vs. No. 106.

Choctaw and Chickasaw Nations.

OPINION BY ADAMS, CHIEF JUDGE.

On the 7th day of September, 1896, Harriet Gordon, George McPhetridge, James McPhetridge, Florence Lawrence, William McPhetridge, Jane Davenport and George Gordon filed a petition with the Commission to the Five Civilized Tribes in which they allege that they are Choctaw Indians by blood, and ask that they be and each of them admitted to citizenship in the Choctaw Nation.

The Commission denied said petition and thereafter said parties appealed their case to the United States Court for the Southern District of the Indian Territory. On the 20th day of June, 1898 said court entered a judgment admitting said parties and each of them to citizenship in the Choctaw Nation, as Choctaw Indians by blood. Thereafter on the 5th day of December, 1898 said court entered a nunc protunc order in said cause, striking from said judgment the name of George McPhetridge. Upon what ground this was done, the record does not disclose, but the same seems to have been done upon the motion of McPhetridge's attorney.

Under the Act of Congress approved July 1, 1902, James McPhetridge, Harriet Gordon, Florence Lawrence, William McPhetridge, Jane Davenport and George Gordon filed a petition in this Court on the 14th day of March, 1903, in which the parties allege they are Choctaw Indians by blood and praying this

Court to try and pass upon their rights to citizenship as such Indians.

The applicant Harriet Gordon claims to derive her Indian blood from her mother, Jane Frazier, whom she alleges was a half blood Choctaw Indian. The other applicants are the children of Harriet Gordon, and claim to derive their Indian blood from their grandmother, Jane Frazier. So the first issue that confronts the Court to be determined us was Jane Frazier a Choctaw Indian. If this issue is decided in favor of the applicants, then the next issue would be was she such an Indian as under the treaties and laws would entitle her descendants to be adjudged citizens of the Choctaw Nation. If the first issue is decided adverse to the contention of the applicants, then the whole contention of the applicants would fall to the ground and such a decision would be decisive of this case, so I will first take up the question as to whether the evidence is sufficient to warrant the Court in finding as a fact that Jane Frazier was a Choctaw Indian.

None of the applicants were introduced as witnesses except James McPhetridge, and he was not asked as to his Indian blood or the blood of his ancestors, hence did not enlighten the Court upon the material question at issue. Mrs. Maggie F. Richardson was introduced as a witness for the applicants, and she testified as follows:

> "I am a member of the Choctaw Nation by blood. Am a full sister of Harriet Gordon. I claim my Indian blood from my mother, Jane Frazier. I had a cousin named Thomas Frazier who lived at Tushkahoma, and his rights as an Indian were never disputed. Myself and my children are on the Choctaw rolls, and I have selected our allotments."

Upon cross-examination, this witness says:

> "I am forty-five years of age. Was born in Mississippi, I have been told. Don't know what county. I went from Mississippi to Jefferson County, Illinois when a baby, and went from there to Texas and from Texas I came to the Territory. I applied to the Dawes Commiss-

ion in 1896 and was admitted. Don't know when I left Illinois. Don't know my grandmother's name, she lived in Mississippi somewhere, don't know what part. My grandfather's name was Thomas Frazier, and he lived somewhere in Mississippi, don't know the place. We all claim our Indian blood through our mother, Jane Frazier. Mother first married Carroll Tucker and after his death married a man named Sledge. I did not know Thomas Frazier who lived at Tushkahoma who I claimed as my cousin. Never saw him but one time, that was about twelve years ago at Sans Bois. If his rights were ever questioned, I never heard it."

The applicants also introduced a certificate from the Commission to the Five Civilized Tribes showing that this witness and her eight children are on the tribal rolls as Choctaw Indians. A motion was made by the applicants that the Court in considering this case consider the evidence in numbers one hundred and eight and one hundred and twenty-seven on the Docket of this Court, as the applicants in those cases and in this case claim their rights from the same source, to-wit, Jane Frazier. This motion was granted and the evidence considered in accordance with said motion.

The above evidence as above set out is the only competent evidence in any of the cases bearing upon the blood of Jane Frazier. Mrs. Richardson made an affidavit in this case when the same was before the United States Court for the Southern District. A comparison of her statements made in such affidavit with her evidence before this Court shows conflictions that I cannot reconcile. She further states in her evidence before this Court that her mother had several other children besides the applicants, whose descendants are now living in the States of Illinois, Arkansas and Texas.

The records of the government show that there was a Choctaw Indian who resided in the State of Mississippi named Jane Frazier, who was the daughter of Charles Frazier and who married a half blood Chickasaw Indian, while the evidence in this case shows the father of the Jane Frazier who was the

mother of Mrs. Gordon and Mrs. Richardson was Thomas Frazier, and that Jane Fraxier married a white man named Tucker and after his death married a man named Sledge, so the mother of Mrs. Gordon could not have been the same Jane Frazier as is mentioned in the government records.

From the record in this case it seems under the Act of June 10, 1896, Maggie F. Richardson and her children, Harriet Gordon and her children and their children then born, William Sledge, a half brother, his wife and child applied to the Commission to the Five Civilized Tribes for citizenship in the Choctaw Nation, all claiming to derive their Indian blood from the same source, to-wit, Jane Frazier; that Mrs. Richardson and her children were admitted by the Commission, and no appeal in that case was taken, hence they are now upon the rolls as Choctaw Indians; that William Sledge and his wife and child were also admitted by the Commission, but an appeal was taken in their case; that Mrs. Gordon and her children were rejected and an appeal was taken in their case; that James McPhetridge, the son of Harriet Gordon filed an application together with his mother and brothers and sisters to the Commission for himself and was rejected along with the other applicants in that case; that the said James McPhetridge also filed an application for himself, wife and two children, Maude and Albert, and were all admitted by the Commission on the second day of December, 1896, he and his two children by blood and his wife by intermarriage; that Rosa Tapp, who is the daughter of Harriet Gordonx also applied to the Commission for herself and children, and they were all rejected; that all of the applicants whose cases were appealed to the United States Court for the Southern and Central Districts were admitted by the court.

The laboring oar rests with the applicants in this

case. They should at least furnish the Court with a sufficient quantum of competent evidence as would satisfy an unprejudiced mind that their contentions are true or present such an array of facts from which it might reasonably be inferred that Jane Frazier was a Choctaw Indian, to say nothing of the more strict rule requiring clear and convincing proof, the rule ordinarily adhered to in the trial of such issues as arise in this case, to enable the Court to get at the right of the matter.

The evidence in this case can create nothing more than a mere suspicion in the mind of a reasonable man that the facts contended for by applicants are true. Is this sufficient to warrant this Court in rendering a judgment in favor of these applicants, when such a judgment would mean that the applicants and each of them would be as much entitled to share in the distribution of the property belonging to the Choctaw and Chickasaw tribes of Indians as a full blood Indian, who had kept up his relations with the tribe and was born and reared in the Indian Territory. Realizing as I do the judgment of this Court is final as to the rights of the applicants and how important it is that this Court should arrive at a correct conclusion in order that justice may be done to all the parties concerned and realizing that a great wrong had been done the Choctaw and Chickasaw tribes of Indians in admitting Mrs. Richardson and her children to citizenship, and thereby allowing them to participate in the property that justly belongs to the Choctaw and Chickasaw Tribes of Indians; or that this Court is about to permit a great wrong in depriving Mrs. Gordon and her children of those substantial and important rights enjoyed by her sister and her children, I have diligently searched the record in this case , and re-read the evidence carefully to see if I could not find some evidence that would at least satisfy me that Jane Frazier possessed Choctaw Indian blood. My labors

in this direction have been in vain, and every time I read the record and the evidence I am more thoroughly convinced that the evidence is insufficient.

If Mrs. Richardson and her children are entitled to citizenship Mrs. Gordon and her children are also. If Mrs. Gordon and her children are not entitled to citizenship, Mrs. Richardson and her childrens names should not appear upon the rolls of Choctaw Indians. Here are two sisters and their children, claiming to derive their Indian blood from their mother, Jane Frazier, one sister and her children are admitted and the other sister and her children are rejected. This is a remarkable state of affairs to say the least of it.

When a person claims a right and to accord them the right claimed means that they share in the distribution of property rightfully heald by others, the person who claims the right should and must produce more substantial evidence than the applicants have furnished the Court in this case. For this Court to hold otherwise would in effect allow any person who might simply choose to claim that he or she was an Indian, to be fastened upon the rolls of these tribes of Indians without any substantial evidence to support that claim.

The application of the applicants is therefore denied and judgment will be entered in accordance with this opinion.

Spencer B. Adams
Chief Judge.

We concur:

Walter L. Evans
Associate Judge.

S. S. Foote
Associate Judge.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. November Term, 1904.

Walter W. Jones, et al.,

vs. No. 107.

Choctaw and Chickasaw Nations.

OPINION, by ADAMS, Chief Judge.

This case comes to this Court upon appeal from the United States Court for the Southern District of the Indian Territory.

All of the applicants claim to be Choctaw Indians by blood, except such as claim their rights to citizenship in the Choctaw Nation by reason of their intermarriage. In other words, all the applicants claim to derive their right to citizenship in the Choctaw Nation by reason of their descendance, or having married a descendant of one James Lewis Jones, whom they allege was at least a one quarter Choctaw Indian by blood. So t the first question to determine is, was James L. Jones a Choctaw Indian by blood, and if so was he such a Choctaw Indian as would entitle his descendants to citizenship in the Choctaw Nation. I find from the evidence that James L. Jones was born in Franklin County, State of Georgia, in the year 1801; that he moved from the State of Georgia, with his family, to Tishomingo county, Mississippi, about the years 1869 or 1870, where he remained just long enough to make a crop, when he moved to Polk County, Arkansas, reaching there about the year 1870 or 1871, where he lived until the year of 1880, when and where he died. That none of the applicants came to the Indian Territory prior

to 1890 or 1893.

The applicants introduced certain records of the Government, on file in the Indian Department at Washington City for the purpose of showing that there was a James Jones on the muster roll of Choctaw Indians and that there was a James Jones w who took land under the 19th article of the treaty of 1830. These records disclose the fact that upon the muster rolls of the Choctaw Indians belonging to the Red River District the name of James Jones appears; that James Jones took land in the State of Mississippi under the 19th article of the treaty of 1830, but there is not a scintilla of evidence offered this Court that even tends to show that James L. Jones, who was the ancestor of these applicants was one and the same person whose name appears upon these records above referred to.

The evidence is not sufficient to show that the James L. Jones, who was the ancestor of these applicants was a Choctaw Indian. If the evidence did show this fact there is no evidence which tends to show that the applicants or their ancestors complied with, or attempted to comply with, the provisions of the treaty of 1830. There is no evidence that the applicants or their ancestors were ever in any way connected with the tribe of Indians known as the Choctaw tribe, until after the principal applicant came to the Territory.

The application of the applicants is, therefore, denied. A judgment will be entered in accordance with this opinion.

Spencer B. Adams, Chief Judge.

We concur:
Walter L. Weaver, Associate Judge.
Henry S. Foote, Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Rosa Tapp, et al.,

vs. No. 108.

Choctaw and Chickasaw Nations.

OPINION BY ADAMS, CHIEF JUDGE.

This case is here upon appeal. In the year 1896 Rosa Tapp, Albert Tapp and Aney Tapp applied to the Commission to the Five Civilized Tribes for citizenship in the Choctaw Nation, alleging that they are Choctaw Indians by blood. Their application was rejected by said Commission, and thereafter they appealed their case to the United States Court for the Southern District of the Indian Territory. On the 20th day of January, 1898 said United States Court rendered a judgment admitting said applicants to citizenship as Choctaw Indians by blood.

The applicant, Rosa Tapp is the daughter of Harriet Gordon, the principal applicant in case number one hundred and six, and the other applicants are the children of Rosa Tapp. All of the applicants claim to derive their Indian blood from Jane Frazier.

The evidence in this case is the same as the evidence in case number one hundred and six. The Court having decided in that case that the evidence is insufficient to establish the fact that Jane Frazier was a Choctaw Indian, the application of the applicants is therefore denied. A judgment will be entered in accordance with this opinion. see opinion in No. 106.

Spencer B. Adams
Chief Judge.

We concur:

Walter L. Brown
Associate Judge.

H. D. Wood
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Ida Marler, et al.,

vs. No. 109.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

John Sartin,

vs. No. 110.

Choctaw and Chickasaw Nations.

No writtn opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

W. G. Howard, et al.,

vs. No. 111.

Choctaw and Chickasaw Nations.

Identical with case of Wm. H. Burch, et al., G. W. Howard, et al., J. W. Howard, et al., vs. Choctaw and Chickasaw Nations, No. 24 on this Docket. See opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

N. B. Woolsey, et al.,

vs. No. 112.

Choctaw and Chickasaw Nations.

No written opinion. Decided on authority of opinion in the case of E. H. Bounds, et al., vs. Choctaw and Chickasaw Nations, No. 9 on this Docket. See opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

M. D. Carson, et al.,

vs. No. 113.

Choctaw and Chickasaw Natio s.

No written opinion. Decided on authority of opinion in the case of E. H. Boundz, et al., vs. Choctaw and Chickasaw Nations, No. 9 on this Docket. See opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Walter L. Beavers, et al.,

vs. No. 114.

Choctaw and Chickasaw Nations.

Identical with the case of Joseph C. Moore, et al., vs. Choctaw and Chickasaw Nations, No. 14 on this Docket. See opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

I. E. Parks, et al.,

vs. No. 115.

Choctaw and Chickasaw Nations.

Identical with the case of I. E. Parks, et al., vs. Choctaw and Chickasaw Nations, No. 100 on this Docket. See opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Bertie Cotton, et al.,

vs. No. 116.

Choctaw and Chickasaw Nations.

No written opinion. Decided on authority of opinion in the case of E. H. Bounds, et al., vs. Choctaw and Chickasaw Nations, No. 9 on this Docket. See opinion in that case.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. November Term, 1904.

T. J. Minor, Jr., by his next friend T. J. Minor, Sr., Plaintiff,	:	
vs.	:	No. 117.
Choctaw and Chickasaw Nations, Defendants.	:	

O P I N I O N.

WEAVER, J.

The testimony in this case shows that the plaintiff, now about 12 years old, is the son of T. J. Minor and Sarah minor (nee Seely). That sarah was a daughter of Bob and Lucy Seely. That said Bob Seely was a full blood Chickasaw Indian, and that Lucy was of mixedblood. Lucy had other children besides Sarah, who intermarried with Minor, one of whom was Amelia Findley, now Amelia Clark, and another was Thomas Seely. Each of them are upon the Rolls as Chickasaw Freedmen. There is also the testimony herein of Nancy Underwood who says she is a full blood Chickasaw and an Aunt of Sarah (Seely) Minor, witness being a sister of Bob Seely, Sarah's father. Witness further states that she never knew that Lucy, Sarah's mother, was a slave, or that Amelia Clark was a negro.

Sophia Wright testified that she is a full blood Chickasaw and knew Bob and Lucy Seely since during the Civil War, and they were then living as husband and wife in the Choctaw

Nation and had four children. Witness never knew of Lucy Seely being owned as a slave. She (Lucy) looked like part negro and part Chickasaw.

To sum it all up, the evidence shows, that Lucy Seely, the plaintiff's grand-mother, was part Chickasaw and part negro. That her grand-father was a full blood Chickasaw. Consequently, Sarah Seely, their daughter, and mother of the plaintiff was more than half Chickasaw. That Sarah's husband, and plaintiff's father, T. J. Minor Sr., is a white man. Therefore, the plaintiff is one half white and more than one quarter Chickasaw. There is no proof that his mother was ever held as a slave, and the evidence is not conclusive that her grand-mother was ever so held. The evidence to sustain that contention is that Sarah's full brother and her half sister are now on the Rolls as Chickasaw Freedmen, but the evidence also shows that another brother, James Seely, was not on said Roll, nor are his children, he being now dead.

While it is a circumstance competent to be offered in evidence and considered by us, as to what the Commission has done in reference to the enrollment of individuals connected with parties before this Court, yet it is not conclusive, and although persuasive is not binding on us. This because we know what facts were developed before us, and have no means of knowing what testimony was before the Commission.

There is no proof in this case that Bob Seely and Lucy were ever married, but the testimony shows they lived together as husband and wife. It is contended by the Nations that the marriage, at best, was but a common law marriage and no common law marriage was recognized in the Indian Territory until 1889, which was long after the relation of these people was terminated

by the death of Bob Seely. Taking this to be true, then if there was no marriage, the children of Lucy were illegitimate, begotten by a full blood Chickasaw Indian. This Court has held in a case (Althea Paul, et al., vs. Choctaw and Chickasaw Nations) that when there was a natural child begotten by a Chickasaw Indian on a white woman, the child was entitled to enrollment as a member of the tribe by reason of the Chickasaw blood of his father.

This Court is asked to follow in this case, the decision heretofore rendered in the case of Molsie Butler vs. the Choctaw and Chickasaw Nations, in which we held that an applicant for citizenship whose father was a Choctaw Indian, and whose mother was a negro and until emancipation was a slave, was not entitled to citizenship or enrollment. That case and this are not parallel. There there was no claim or proof of Indian blood on the part of the mother. She was beyond question and entirely a negro and unquestionably had been a slave. Here there is testimony that the mother was possessed of some Chickasaw blood and it is not proven she was a slave. The legal presumption, she having some Indian blood, is in favor of her freedom, and the burden would rest on the defendants to show that the contrary was true, which they have not conclusively done.

My opinion, therefore, is that the plaintiff herein is entitled to membership and enrollment in the Chickasaw Nation or tribe of Indians as a citizen by blood.

Walter L. Weaver
Associate Judge.

We concur:

Spencer B. Adams
Chief Judge.

H. S. Foote
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

J. M. Crabtree, et al.,

vs. No. 118.

Choctaw and Chickasaw Nations.

Identical with the case of Joseph C. Moore, et al., vs. Choctaw and Chickasaw Nations, No. 14 on this Docket, see opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Anna Smith (nee Agee), et al.,

vs. No. 119.

Choctaw and Chickasaw Nations.

Dismissed. Same parties as in case of Anna Smith (nee Agee) No. 129 on the South McAlester Docket. See opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Annie J. Hamilton, et al.,

vs. No. 120.

Choctaw and Chickasaw Nations.

Transferred to the South McAlester Docket, where it appears as No. 126. See opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Nettie Howell,

vs. No. 121.

Choctaw and Chickasaw Nations.

This party identical with party in case of Nettie Howell, No. 101 on this Docket. No written opinion in either case.

In the Choctaw and Chickasaw Citizenship Court, sitting at Tishomingo, Indian Territory. November Term, 1904.

Nelson H. Norman, et al.,

vs. No. 122.-T.

Choctaw and Chickasaw Nations.

OPINION, by ADAMS, Chief Judge.

The record in this case discloses the following facts. Under the Act of June 10, 1896, Nelson H. Norman and his wife Alice E. Norman, Bonnie R. Norman, Stanley Norman, E. G. Norman, Ben H. Norman and William Norman, filed an application to the Commission to the Five Civilized tribes, asking that they and each of them be admitted to citizenship as Chickasaw Indians. The Commission to the Five Civilized Tribes rejected the application of all of the applicants, and thereafter they appealed their case to the United States Court for the Southern District of the Indian Territory. The applicant Nelson H. Norman was admitted by said Court and the other applicants rejected.

Nelson H. Norman is a white man, and in the year 1875 married a Chickasaw woman named Susan James, according to the laws and customs of the Chickasaw nation at that time. They lived together as man and wife for a time and then separated. Thereafter the said Nelson H. Norman married Alice Harrison, a white woman, and she and the other applicants who are the children by this marriage, constitute the applicants in this

case, together with Nelson H. Norman.

I am of the opinion that the applicant Nelson H. Norman is entitled to citizenship as a Chickasaw Indian by reason of his intermarriage with Susan James, a Chickasaw woman; but under the decision of this Court in the case of E. H. Bounds, et al., vs. Choctaw and Chickasaw Nations, his white wife and children and her white children are not entitled to citizenship.

A judgment will be entered in accordance with this opinion.

Spencer B. Adams,
Chief Judge.

We concur:

Walter L. Weaver,
Associate Judge.

H. S. Foote,
Associate Judge.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

W. R. Story, et al.,

vs. No. 123.

Choctaw and Chickasaw Nations.

No written opinion. Decided on authority of opinion in the case of E. H. Bounds, et al., vs. Choctaw and Chickasaw Nations, No. 9 on this Docket. See opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

J. S. Layman, et al.,

vs. No. 124.

Choctaw and Chickasaw Nations.

Identical with the case of Joseph C. Moore, et al., vs. Choctaw and Chickasaw Nations, No. 14 on this Docket. See opinion in that case.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Sarah E. Kizer, et al.,

vs. No. 125.

Choctaw and Chickasaw Nations.

No written opinion.

IN THE CHOCTAW AND CHICKASAW CITIZENSHIP COURT,

SITTING AT TISHOMINGO.

Mary L. Jennings, et al.,

vs. No. 126.

Choctaw and Chickasaw Nations.

No written opinion.