
—IN THE—

UNITED STATES COURT OF APPEALS

— FOR THE —

INDIAN TERRITORY.

GLEN TUCKER, ET AL.,
Petitioners.

VS.

WM. H. H. CLAYTON, as Judge
of the United States Court for
the Central District of the In-
dian Territory, sitting at South
McAlester, *Respondent.*

No. 405.

AND

MOLLIE T. RATTERREE, ET AL.,
Petitioners.

VS.

WM. H. H. CLAYTON, as Judge
of the United States Court for
the Central District of the In-
dian Territory.

Respondent.

No. 408.

BRIEF OF RESPONDENT.

MANSFIELD, McMURRAY & CORNISH,
Attorneys for Respondent.

—IN THE—
UNITED STATES COURT OF APPEALS
—FOR THE—
INDIAN TERRITORY.

JUNE TERM, 1902.

GLEN TUCKER, ET AL., VS. WM. H. H. CLAYTON, as Judge of the United States Court for the Central District of the In- dian Territory.	}	No. 405.
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	}	No. 408.

BRIEF AND ARGUMENT ON DEMURRER FOR RESPONDENT

This is an original proceeding brought to the October, 1901, term of this court, in the nature of a petition for a writ of mandamus to compel the Honorable William H. H. Clayton, as Judge

of the United States Court for the Central District of the Indian Territory, to try the citizenship case of petitioners. The petition after setting out the names of all the petitioners, who are very numerous, alleges that they filed their application with the Commission to the Five Civilized Tribes to be enrolled as citizens of the Choctaw Nation; that said commission denied said application, from which decision the petitioners appealed to the United States Court for the Central District of the Indian Territory, the Honorable Yancey Lewis then being judge of said court. A copy of the petition for appeal is attached to their petition, and made "Exhibit A." The petition for the writ of mandamus then states:

"That the Honorable William H. H. Clayton was, and now is, judge of said court, but, having formerly been of counsel in a proceeding formerly had in the Department of the Interior, at Washington, D. C., relative to the rights of certain of the claimants as descendants of Abigail Rogers, aforesaid, then claiming to be citizens of the Choctaw Nation, held himself disqualified in said cases, and declined to try the same."

The petition, with the exhibits thereto attached, further shows that the case was sent by Judge Clayton to the Honorable William M. Springer, Judge of the United States Court for the Northern District of the Indian Territory, for trial; that the petitioners appeared before the United States Court for the Northern District in support of their appeal from the judgment of the Dawes Commission on their application for citizenship in the Choctaw Nation, and filed a demurrer to the defense of the Choctaw Nation. A copy of said defense marked "Exhibit B" and of said demurrer, marked "Exhibit C," are attached to and made a part of this petition for mandamus.

The petition further states that the demurrer was, by the court overruled; that thereupon the applicants filed their replication to the defense, aforesaid, of the Choctaw Nation, which replication was supported by affidavits. A copy of said replication and

affidavits is attached to the petition for mandamus, and marked "Exhibit D." The petition further states that the United States Court for the Northern District of the Indian Territory, rendered judgment in favor of the Choctaw Nation, and against the applicants for citizenship, who are the petitioners herein. A copy of the opinion of the court is attached to the petition for mandamus, marked "Exhibit E." The petition further states that the applicants appealed from the decision of Judge Springer to the Supreme Court of the United States, and that their appeal was dismissed there for a failure upon their part to comply with a rule of the court requiring the printing of the record.

The petition for mandamus, after alleging that the term of office of the said Wm. M. Springer has expired, and that he is no longer Judge of the United States Court for the Northern District of the Indian Territory, proceeds as follows:

"Your petitioners further show that the action of Judge Springer in the premises, in refusing to hear and determine said cause upon its merits, was directly contrary to law, and was an erroneous construction of the law as to the preliminary matter in said cause, and a gross wrong to your petitioners. And that petitioners are without remedy except by this proceeding. Petitioners further pray that your honors order that a writ of mandamus in due form, be at once issued by this court, commanding and requiring the Honorable Wm. H. H. Clayton, Judge of the United States Court of the Central District of the Indian Territory, to cause the demurrer or judgment so as aforesaid rendered by said court, on the 13th day of January, 1899, to be at once set aside as to your petitioners, and to proceed to hear and determine said cause upon its merits, as required by law.

Your petitioners further pray that, if it should be determined by the court that the Honorable Wm. H. H. Clayton is in fact and in law disqualified to hear said cause, that, in furtherance of justice, your honors assign some other of the Judges of the United

States Court in the Indian Territory, to hear and determine said cause.”

To this petition the respondent filed his demurrer:

“First, Because this court has no jurisdiction to grant said writ; and

Second, Because said petition does not contain facts sufficient to authorize the granting thereof against him.

WM. H. H. CLAYTON,

By Mansfield, McMurray & Cornish.”

We have taken the liberty to brief the case of Mollie T. Ratterree, et al., vs. Wm. H. H. Clayton, as Judge of the United States Court for the Central District of the Indian Territory, No. 408, with No. 405, as the petition for the writ of mandamus and all the facts, as well as the demurrer, is the same in each case, and the questions of law presented are identical. It appears from an examination of the petition herein, and the exhibits thereto, that petitioners, before their application to the Dawes Commission, under the statute in force at that time, applied to the Choctaw Council to be recognized as Choctaw citizens, and prosecuted an appeal from the action of the Choctaw Council in refusing to so recognize them, to the United States Indian Agent, who also decided adversely to their claim of citizenship; whereupon, they appealed from the decision of the Indian Agent to the Secretary of the Interior, who affirmed the holding of the Choctaw Council and the Indian Agent, and denied the petitioners herein, citizenship. It further appears from the exhibits to the petition for mandamus, that all of the petitioners base their right to citizenship in the Choctaw Nation upon the ground that they are descendents of Abigail Rogers, and that the Honorable Wm. H. H. Clayton represented certain of petitioners who claimed to be descendents of Abigail Rogers, before the Interior Department, in an effort to establish the Choctaw citizenship of Abigail Rogers, upon whom these applicants rely for Choctaw citizenship.

We do not deem any argument necessary in this case. We do not know upon what attorneys for petitioners rely in asking for this writ of mandamus. We have made this statement of the case because it seems to us that, from this alone, it will appear to the court that a writ of mandamus should not issue, as prayed for.

It appears from the body of the petition itself, that Judge Clayton was disqualified under the statute by having been of counsel for some of the petitioners herein, in an effort to adjudicate the very questions sought to be adjudicated here. This would be sufficient to show that no writ of mandamus should issue; but, the petition goes further, and shows that when Judge Clayton decided that he was disqualified by having been of counsel, and entered an order transferring this case to the Honorable Wm. M. Springer, Judge of the United States Court for the Northern District of the Indian Territory, for trial, that petitioners appeared before the Court of the Northern District, demurred to the answer of the Choctaw Nation; upon their demurrer being overruled, filed a replication supported by affidavits, to the answer of the Choctaw Nation; that the United States Court for the Northern District rendered judgment against the petitioners in due course, from which judgment petitioners took an appeal to the Supreme Court of the United States, which was dismissed for a failure upon their part to comply with a rule of the court requiring the record to be printed.

It occurs to us that all of these are most excellent reasons why the cause should not be re-tried, and most excellent reasons why a writ of mandamus should not issue; but, the petition states further, that they are intitled to this writ of mandamus because the Honorable Wm. M. Springer erred in his decision upon a question of law, and for that reason they ask that a writ of mandamus be issued to compel Honorable Wm. H. H. Clayton to re-try said cause. But petitioners pray that, if the court should find that Judge Clayton is, in fact, disqualified, as he held himself to be, that the court

designate some other Judge of the United States Court for the Indian Territory to re-try said cause.

We know of no power vested in the court to grant any relief to the petitioners in this case.

It is not necessary to discuss the question as to whether this court would have the power in a proceeding of this sort, or could properly inquire into facts upon which a judge held himself to be disqualified, because petition sets forth such facts as show the judge to have acted properly in declining to try the cause, and certifying the same to the Judge of the Northern District for trial.

Respectfully Submitted,

MANSFIELD, McMURRAY & CORNISH,

Attorneys for Respondent.