

No. 394.

TRANSCRIPT OF RECORD.

UNITED STATES COURT OF APPEALS
FOR THE INDIAN TERRITORY.

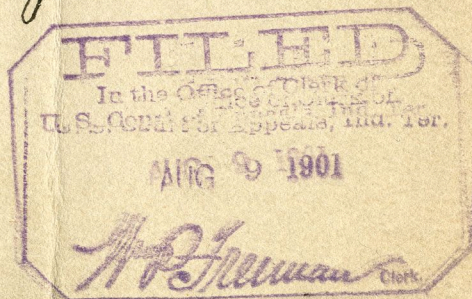
W. J. THOMPSON ET AL., Appellants,

vs.

WM. MORGAN ET AL., Appellees.

APPEAL FROM THE UNITED STATES COURT FOR THE ~~CENTRAL~~
Southern DISTRICT, SITTING AT *Pauls Valley.* SOUTH M'ALESTER, I. T.

Aug 9
FILED ~~JULY~~ 8TH, 1901.



UNITED STATES COURT OF APPEALS
FOR THE INDIAN TERRITORY.

No. 394.

W. J. THOMPSON ET AL., Appellants,

vs.

WM. MORGAN ET AL., Appellees.

APPEAL FROM THE UNITED STATES COURT FOR THE SOUTH-
ERN DISTRICT, SITTING AT PAULS VALLEY, I. T.

OCTOBER TERM, 1901.

FILED JULY 8TH, 1901.

INDEX.

	Original Page.	Printed Page.
Interplea and Answer of Choctaw and Chickasaw Nations...	1	1
Exhibit to Interplea and Answer.....	4	3
Plaintiffs' Demurrer and Motion to Strike Out Interplea and Answer	6	4
Second Amended Complaint.....	7	5
Exhibit A to Second Amended Complaint.....	15	12
Exhibit B to Second Amended Complaint.....	17	12
Exhibit C to Second Amended Complaint	18	14
Plaintiffs' Answer and Reply to Interplea and Answer of Choctaw and Chickasaw Nations.....	21	16
Exhibit A to Plaintiffs' Answer and Reply to Interplea of Choctaw and Chickasaw Nations.....	26	19
Exhibit B ditto.....	27	20
Defendants' Demurrer to Interplea and Answer of Choctaw and Chickasaw Nations	29	22
Defendants' Motion to Strike Out Interplea and Answer of Choctaw and Chickasaw Nations.....	30	23
Judgment of Court on Demurrers and Motions.....	31	23
Demurrer of Choctaw and Chickasaw Nations to Plaintiffs' Second Amended Complaint and Answer and Reply to Interplea.....	32	24
Defendants' Demurrer to Second Amended Complaint.....	33	25
Final Judgment.....	33	25
Journal Entry, Motion for New Trial Filed.....	35	26
Order Overruling Motion for New Trial.....	35	26
Journal Entry, Bill of Exceptions Filed.....	35	27
Bill of Exceptions.....	36	27
Motion for New Trial.....	40	30
Order Granting Appeal	41	31
Order Allowing Bill of Exceptions.....	42	32
Clerk's Certificate.....	43	33

1 In the United States Court at Pauls Valley, Southern
District, Indian Territory.

Pleas before the Honorable John R. Thomas, judge of
said court at the April term, 1901.

William J. Thompson, Samuel C. Wall and Ellen Wall,
Plaintiffs,

vs.

William Morgan and Robert Morgan, Defendants.
Choctaw and Chickasaw Nations, Interpleaders.

Action at Law. Unlawful Detainer.

Complaint at law filed January 4th, 1900.

Summons issued January 4th, 1900; served on 26th day
of Feb'y, 1900.

Answer filed 3 day of March, 1900. (The answer is
omitted from this transcript by direction of counsel for the
reason that nothing in the answer is deemed material to
any of the issues raised by the appeal.)

On May 22nd, 1901, appeared the Choctaw and Chicka-
saw Nations and filed their interplea and answer, which
interplea and answer reads as follows:

In the United States Court for the Southern District of the
Indian Territory Sitting at Pauls Valley.

Wm. J. Thompson, et al., Plaintiffs.

vs.

Wm. Morgan, et al., Defendants.
Choctaw and Chickasaw Nations or Tribes of Indians,
Interpleaders.

Interplea and Answer.

2 Come the Choctaw and Chickasaw nations or tribes
of Indians and for answer in the above entitled
cause, state:

That the members of said tribes are the owners in fee
simple of the following described lands, to-wit:

Beginning at a point on the Arkansas River, one hundred paces east of Old Fort Smith, where the western boundary line of the state of Arkansas crosses the said river, and running thence due south to Red River; thence up Red River to the point where the meridian of 100 degrees west longitude crosses the same; thence north along said meridian to the main Canadian River; thence down said river to its junction with the Arkansas River; thence down said river to the place of beginning.

That under the laws of the United States of America and the treaties entered into between the members of said tribes and the United States of America, the members of said tribes hold said lands so that each and every member of either tribe has an equal and undivided interest in the whole, the character of said holding being fixed by the following provision of Article 1 of the treaty entered into between the United States of America and the Choctaw and Chickasaw nations or tribes of Indians, on the 22nd day of June, A. D., 1855, viz:

And pursuant to an act of congress, approved May 28th, 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 lands shall revert to the United

States if said Indians and their heirs become extinct, or abandon the same.

That the lands in controversy in this action belong to said tribes and are embraced within the afore described lands, their common property.

That the plaintiffs, Wm. J. Thompson, et al., are not a member of either of said tribes or one of the joint owners of said lands or any part of them, nor is he entitled to the possession thereof.

The plaintiff claims to be a member of the Choctaw Nation or Tribe of Indians by virtue of an alleged decree of the United States Court for the Southern District of the Indian Territory, sitting at Ardmore, and thereby the right to occupy the lands aforesaid, and that said alleged decree is void. A certified copy of said alleged decree is filed herewith marked "Exhibit A," and made a part hereof.

Said Choctaw and Chickasaw Nations or Tribes of In-

dians, pleading further, state:

That the defendants are not members of said tribes and have no rights in said lands as against them, and said nations deny each and every allegation of the answer of defendants herein, and state that they are not entitled to hold said premises by reason of valuable improvements placed thereon, under an improvement contract with said tribes or any member thereof.

Wherefore interpleaders pray judgment for the possession of said lands and improvements and for all costs in this behalf laid out and expended.

CHOCTAW AND CHICKASAW NATIONS
OR TRIBES OF INDIANS,

By MANSFIELD, McMURRAY & CORNISH,

Attorneys.

4

Exhibit "A."

Certified Copy of Order of Court.

United States of America,

Indian Territory.

Southern District.—ss.

In the United States Court in the Indian Territory, Southern District, at a term thereof begun and held at Ardmore, and on January 19th, 1898, present and presiding the Honorable Hosea Townsend, judge of said court, the following order was made and entered on record, to-wit:

No. 125.

Dick Randolph et al.

vs.

Choctaw Nation.

Judgment.

On this the 19th day of January, 1898, this cause coming on to be heard upon the master's report, filed herein, in the clerk's office of this court on the 31st day of July, 1897, recommending the enrollment of the persons named in the application herein as members and citizens of the Choctaw nation of Indians, and it appearing to the court that no exceptions had been filed to said master's report, and that the same is fully supported by the evidence on file in this cause, the court is of the opinion that said master's report should in all things be confirmed.

It is therefore ordered, adjudged and decreed by the court that Dick Randolph and Myrtle Randolph, and Samuel C. Wall and his wife, Ellen Wall, and her son by a

former husband, William J. Thompson, each and all be enrolled as citizens and members of the Choctaw nations of Indians.

It is further adjudged by the court that said named persons have and recover from the Choctaw nation their costs in this action expended.

It is further ordered by the court that the clerk forthwith transmit a certified copy of this decree to the commission to the five civilized tribes.

HOSEA TOWNSEND,

Judge.

5 The above is a true copy of an order of said court made on the 19th day of January, 1898.

Witness my hand and official seal this the 1st day of May, 1901.

(SEAL)

C. M. CAMPBELL,

Clerk.

Endorsed as follows:

No. 708.

Wm. J. Thompson, et al., Plaintiffs,

vs.

Wm. Morgan, et al., Defendant.

Answer.

Filed in Open Court May 22, 1901.

CHAS. M. CAMPBELL, Clerk.

By J. T. FLEMING, Deputy.

MANSFIELD, McMURRAY & CORNISH,

Attorneys for Interpleaders.

6 That on the 5th day of June, 1901, plaintiffs filed their general demurrer and motion to strike out the interplea and answer of the Choctaw and Chickasaw Nations, which demurrer and motion reads as follows:

In the United States Court at Pauls Valley, Southern District, Indian Territory.

W. J. Thompson, et al., Plaintiffs,

vs.

Wm. Morgan, et al., Defts.

Choctaw and Chickasaw Nations, Interpleaders.

Demurrer to Interplea and Answer of Choctaw Nation and Motion to Strike Out.

Now comes the plaintiffs and demur to the interplea and answer filed by the Choctaw and Chickasaw Nations, because the same does not state facts sufficient to consti-

tute a cause of action against the parties to this action in favor of said interpleader.

2. Plaintiffs further demur to said interplea and answer, because the same does not state facts sufficient to constitute any defense to the cause of action set out in the complaint.

3. Plaintiffs further demur to said interplea and answer and move to strike out the same, because the Choctaw and Chickasaw Nations are neither necessary or proper parties to this action.

Wherefore plaintiffs pray for judgment of the court upon said demurrers and motion.

PATCHELL and PYEATT,

Attorneys for Plaintiffs.

Endorsed:

Filed June 5th, 1901.

C. M. CAMPBELL, Clerk,

By J. T. FLEMING, Deputy.

7 That on June 5th, 1901, plaintiffs filed their second amended complaint which reads as follows:

In the United States Court at Pauls Valley, Southern District, Indian Territory.

W. J. Thompson, Samuel C. Wall and Ellen Wall, Plaintiffs,

vs.

Wm. Morgan and Robert Morgan, Defendants,
Choctaw and Chickasaw Nations, Interpleaders,

Second Amended Complaint.

By leave of the court, first had and obtained, and by consent of all parties hereto, the plaintiffs file this, their second amended complaint herein, and allege:

That on the 11th day of January, 1899, Wm. J. Thompson was the owner of and in actual possession of a certain farm and pasture, which pasture was adjoining said farm, and all situate about one and one-half miles north-west of the town of Paoli, in the Chickasaw Nation, in the Indian Territory, and nearer the town of Pauls Valley than any other place where a term of the United States Court is held in the Southern District. That said premises were enclosed by a wire fence and had valuable improvements of various kinds thereon, and there was in cultivation three hundred and fifty acres.

That on the said 11th day of January, 1899, the said Wm. J. Thompson rented to one Robert Jones the said

farming lands with all improvements thereon. That said rental contract was verbal and for the period commencing on the date thereof, and ending on the 31st day of December, 1899, in consideration of which the said Robert Jones agreed to pay as rents for said lands and improvements, the sum of \$500, which was evidenced by a certain negotiable promissory note, dated on the date of said lease, and due on the 15th day of July, 1899.

8 Second. That on the 11th day of January, 1899, the said William J. Thompson was, as before states, the owner and in actual possession of said pasture adjoining said farming land, consisting of five hundred acres enclosed with wire fence and improved with tanks, wells and windmills, and on said date the said William J. Thompson rented said pasture and the improvements thereon to one John Garvin. Said rental contract to commence on the said date above mentioned, and to end on the 31st day of December, 1899, and was a verbal contract.

That upon the date of said rental contract to said John Garvin, the said John Garvin went into possession of said pasture and all improvements thereon, under and by virtue of said rental contract, and as the tenant of said William J. Thompson.

Plaintiffs further state that afterwards, to-wit: on the 15th day of January, 1899, the said Robert Jones, while still in possession of said farm and improvements, as the tenants of said William J. Thompson, died, leaving a widow and minor children, and that one George D. Thompson was duly appointed and qualified administrator of the estate of said Robert Jones, deceased. And the said George D. Thompson, as such administrator, in conjunction with the widow of said Robert Jones, and in conformance with the orders of the court having jurisdiction of the administration of the estate of said Robert Jones, did, on the 15th day of February, 1899, assign and convey for a valuable consideration the remainder of the term of said Robert Jones on the said farm unto the defendants, William Morgan and Robert Morgan, and said defendants thereupon and under the assignment of said rental contract, entered into possession of said farm and improvements thereon, and thereby became the tenants of the said plaintiff, William J. Thompson, and have ever since, until the expiration of said rental contract, held and occupied, used and enjoyed the possession of said farm without molestation.

Plaintiffs further state that on the 15th day of May, 1899, the said John Garvin assigned and sub-let unto the said defendants, William Morgan and Robert Morgan, his said rental contract with the said William J. Thompson, and the said defendants thereupon and under said assignment, and sub-letting, entered into possession of said pasture and improvements thereon, and thereby became the tenants of said William J. Thompson as to said pasture and improvements thereon, and continued to hold same as such tenants until the 31st day of December, 1899.

Plaintiffs further state, that on the 13th day of February, 1899, the plaintiff, William J. Thompson, for a valuable consideration, conveyed and transferred to his co-plaintiffs herein, Samuel Wall and Ellen Wall, an undivided three-fourths interest in said farm and pasture, and the improvements thereon. A copy of which transfer is hereto attached and marked "Exhibit A" and made a part hereof.

Plaintiffs further state, that the rental contracts upon said premises, and the terms given upon said farm and pasture expired on the 31st day of December, 1899, and that the defendants have failed and refused to quit and deliver up possession of the same or any part thereof, though notified in writing so to do.

Plaintiffs say that on the 7th day of September, 1899, they caused to be served upon the defendants herein, written notices requiring said defendants to deliver up possession of said farm and the pasture to the plaintiffs, on the 1st day of January, 1900. And the plaintiffs state, that thereafter, to-wit, on the 2nd day of January, 1900, without waiving or intending to waive the notices served on defendants, on the 7th day of September, 1899, they caused to be served upon the defendants written notices, that defendants should quit and deliver up to the plaintiffs

10 the possession of said farm and pasture. The plaintiffs say that defendants, although lawfully notified in writing, refused and failed to quit and deliver up the possession or any part of said premises, and still continue to so unlawfully, forcibly and wrongfully withhold from plaintiffs, the possession of said lands and premises, although plaintiffs are lawfully entitled to the immediate possession of said farm and pasture and the improvements thereon.

Plaintiffs state that they were and are holding said premises for the purpose of and desire to have the same allotted to them as a part of their proportionate share of the

lands of the Choctaw and Chickasaw Nations.

Plaintiffs state that a reasonable annual rental value of said farm and pasture is \$750.00 per year, and the value of said farm and pasture is \$4,000.00. And plaintiffs state that the defendants held possession of said lands for more than thirty days after the service of notice on them to vacate the same, and were so unlawfully holding at the commencement of this action, and are at this time so unlawfully withholding the possession of said premises.

Plaintiffs further state that they are all members by blood of the Choctaw Tribe of Indians, and as such are entitled to hold and occupy to the exclusion of all other persons, lands in the Choctaw and Chickasaw Nations. And plaintiffs say the defendant, Wm. Morgan, is not a member of any Indian Tribe or Nation, and that both defendants reside in the Chickasaw Nation, and nearer to the town of Pauls Valley than any other place where a term of the United States Court for the Southern District of the Indian Territory is held.

That the plaintiffs have been residents of the
11 Choctaw and Chickasaw Nations for a great many years, and were all born in the Choctaw Nation and have been bona fide residents of the said Choctaw and Chickasaw Nations during their whole lives, the said William J. Thompson being twenty-one years old, Samuel C. Wall, fifty-eight years old and Ellen Wall forty-six years old.

Plaintiffs say, that long prior to the leasing of the premises described in the plaintiffs' complaint to the parties mentioned, the plaintiffs were residents of the Chickasaw Nation, and plaintiffs say that they have always enjoyed the rights and privileges of members by blood of the Choctaw Nation, and that under and by virtue of the laws of the Choctaw and Chickasaw Nations, and the treaties between said nations and the United States, these plaintiffs had the right to reside in the Chickasaw Nation and hold lands and improvements therein to the exclusion of all other persons, and had the right to lease said lands and to receive the rents arising from the same, and that they have the right to remain in the possession of the premises sued for and have the same allotted to them.

Plaintiffs say that they do not hold more lands than will be their proportionate share of the lands of the Choctaw and Chickasaw Nations, including the lands sued for, and that they desire to take the lands sued for as a part of

their allotments, and the same were and are held by them in good faith for the purposes of allotment.

Plaintiffs say, that in the year 1896, after the commission to the five civilized tribes was authorized to hear and determine the application for citizenship in the said Choctaw and Chickasaw Nations, these plaintiffs as a matter of precaution, and because there had not at that time been any complete rolls of the Choctaw Nation, made and approved as contemplated by the

act of Congress conferring jurisdiction upon said
12 commission, filed with the said commission their joint application with others to be admitted and enrolled as members by blood of the Choctaw nation, and that said application was filed on the 24th day of August, 1896, and the plaintiffs in all things complied with the laws and rules and regulations and customs, and caused to be served upon the Choctaw nation true copies of all pleadings, evidences and papers filed by the plaintiffs in support of their claim to membership in said nation, and the said Choctaw nation appeared before said commission and made oral argument and afterwards, to-wit, on the 26th day of September, appeared before said commission and filed its answer, a copy of which is hereto attached and marked "Exhibit B," and then and there filed its evidence against the claim of these plaintiffs, and afterwards, to-wit, November 20th, 1896, the commission rendered a decision or judgment or order rejecting the plaintiffs' claim to membership in the said Choctaw nation, and thereafter and within the time prescribed by law, the plaintiffs appealed from said action and judgment to the United States court, sitting at Ardmore for the Southern District of the Indian Territory, and in taking said appeal all the laws, rules and regulations were strictly complied with, and the Choctaw nation legally notified, and appeared and answered the appeal, and afterwards, by agreement of the plaintiffs herein and the other applicants and the Choctaw nation said cause was referred to a special master in chancery for said court, and the applicants and the Choctaw nation introduced their evidence and argued the propositions of law and facts therein, and afterwards, to-wit, on the 23rd day of June, 1897, the said master filed his report with all evidence, papers and pleadings of whatever kind or nature, and in said report found that the plaintiffs herein and the other applicants were Choctaw Indians by blood and as such were entitled to be enrolled and recognized as such, and to

13 enjoy all the rights, privileges and immunities as such citizens.

Plaintiffs say that the Choctaw nation filed no exceptions to the said master's report, and that thereafter, to-wit, on the 19th day of January, 1898, came on to be heard in open court at Ardmore in the Southern District of the Indian Territory the said cause and then and there the said Choctaw nation appeared, and the court having heard all the arguments and the evidence and master's report entered a certain order, decree and judgment, confirming said master's report and admitting the plaintiffs herein, and others, to membership in the said Choctaw nation, a true copy of which is hereto attached and marked "Exhibit B" and made a part hereof.

Plaintiffs say, that thereafter and in pursuance to an act of congress authorizing appeals from the judgments of the United States court in citizenship cases, to the Supreme Court of the United States, the said Choctaw nation appealed from said judgment and that said appeal was taken in due form of law and thereafter, to-wit, May 15th, 1899, the Supreme Court of the United States affirmed said judgment, and the said judgment is now in full force and effect.

Plaintiffs further state, that the lands sued for and described in the plaintiffs' complaint were the property of the plaintiffs in so far as the title to the improvements were concerned, and that said lands and improvements were in the possession and under the control of the plaintiffs at the time the same were rented to the said Jones and Garvin.

Plaintiffs say that the holding of the defendants in this action is that of tenants of these plaintiffs, and that the legal possession of said premises as held by the said defendants inured to the plaintiffs and is in the possession of the plaintiffs herein, and that the said Choctaw and Chickasaw nations have no right to the possession of the same or any part thereof or any part of the rents arising therefrom.

Plaintiffs further state that the Choctaw and Chickasaw Nations on the one part, and the United States on the other part did on the 27th day of April, 1897, enter an agreement or treaty, wherein it was agreed that the plaintiffs herein should hold their proportion of the public domain until allotment and that they should have allotted to them their proportion of the said lands, and should be entitled to select as

a part of their allotments the lands upon which they owned the improvements.

Plaintiffs state that afterwards congress of the United States passed a certain act commonly called the "Curtis Bill" in which it was provided that the plaintiffs herein should be entitled to hold their proportion of the public domains, and further provided, that upon the ratification by the Choctaw and Chickasaw Nations of a certain treaty, as amended and rewritten by congress, the same should become the law, and thereafter, to-wit: August 24th, 1898, said treaty was ratified by a joint vote of the Choctaw and Chickasaw Nations as provided by law, and the ratification was proclaimed, as provided by law, on the 31st day of August, 1898.

Plaintiffs say, that at the date of the passage of the said act and the ratification and publication thereof of said treaty, this judgment was in full force and effect and was not being contested in original or appellate proceedings, and that the appeal to the Supreme Court of the United States was not taken until the 1st day of October, 1898, and plaintiffs say, that the said Nations are estopped from now saying or asserting that the plaintiffs herein have no right to hold the lands sued for in this action.

Wherefore, the plaintiffs pray judgment against the defendants herein and the sureties of the defendants upon their retainers bond for the premises sued for, and for the damages that have accrued herein, and for the costs of this action, and all other and proper relief.

PATCHELL & PYEATT,
J. G. RALLS,
Attorneys for Plaintiffs.

Verification.

I, Wm. J. Thompson, do solemnly swear that I am the Wm. J. Thompson named as one of the plaintiffs in the foregoing complaint, and that I have carefully read said complaint and the exhibits thereto attached and all the allegations of fact made therein are true as I verily believe.
W. J. THOMPSON.

Subscribed and sworn to before me on this the 8th day of June, 1901.

(SEAL) JAMES RENNIE,
Notary Public, Southern District, Ind. Ter.

Exhibit "A."

(50 ct revenue stamp.)

Pauls Valley, Ind. Ter., Feb. 15th, 1899.

Know all men by these presents: That I, W. J. Thompson, for and in consideration of the transfer to me of one place near Wallville, I. T., known as the Wall farm, and upland pasture bounded as follows: On the west by John Hazel pasture, on the north by W. C. Moore pasture, on the east by Sam Williams pasture, on the south by Erin Springs road.

Do grant, bargain and sell to S. C. and Ellen Wall, 16 three-fourths undivided interest in and to my place near Paoli; place known as the John Garvin place, lying one mile northwest of the town of Paoli, I. T., consisting of about eight hundred acres in pasture and three hundred acres in cultivation, house and orchard.

S. C. and Ellen Wall agree to let W. J. Thompson have the rents on said place for the year 1899, as said rents go to one John Garvin as part payment for said place from him to W. J. Thompson. The cultivatable land of said place being now rented to one Robert Jones; and the pasture land to John Garvin.

I, W. J. Thompson, am the rightful owner of the above property, and have a good right to dispose of the same, and will defend the title to same.

In witness whereof I hereunto set my hand and seal this the 15th day of February, 1899.

W. J. THOMPSON.

Acknowledgement.

Indian Territory,
Southern District.

On this 15th day of February, 1899, before me the undersigned notary public, personally appeared W. J. Thompson, well known to me to be the person who subscribed and executed the foregoing conveyance, and he acknowledged to me that he executed the same for the uses, purposes and consideration therein mentioned and set forth, to all of which I do hereby certify.

In witness whereof I hereby set my hand and seal.
(Notarial seal)

O. W. PATCHELL,
Notary Public, S. D. I. T.

Exhibit B.

In the matter of the claim of Samuel Wall et al.

for citizenship in the Choctaw nation.

Now comes the Choctaw nation, by its lawful attorney and says:

First. That this honorable commission has no power and jurisdiction to hear and determine the issues herein involved because the law creating such commission is unconstitutional and void.

Second. The Choctaw nation enters its protest against the hearing of this cause because the methods of procedure adopted by this commission are unjust, unfair, and productive of great fraud and wrong, and the form and method of trial prescribed by said commission are contrary to the constitution and laws of the United States.

Third. The Choctaw nation protests against the hearing and determination of this cause for the reason that the time prescribed by said commission within which the nation must answer and adduce its proof is so limited as to amount to a denial of justice.

Fourth. The Choctaw nation further says that this commission ought not to entertain this cause for the reason that it does not appear that the applicant herein has applied for citizenship through the legally constituted tribunal designated by the Choctaw nation for the trial of questions of disputed citizenship.

Fifth. Defendant says that the evidence adduced by the claimant in this case, is not sufficient to establish his citizenship in the Choctaw nation.

Sixth. Defendant says that this commission has no power to enroll the applicant herein, because it appears that said applicant claims to be a citizen of the Choctaw nation by intermarriage and it does not appear that his right as such intermarried citizen has been disputed by the Choctaw nation.

Seventh. Defendant says that the applicant herein should not be enrolled because he has not shown by his evidence that he has not forfeited his right as such citizen by abandonment or remarriage.

Eighth. And not waiving the defenses heretofore set out, the defendant for further answer herein says:

There is no evidence in this case that the applicants are one-eighth blood Choctaw Indians, save the petitions of claimants, and the defendant says that such evidence is not sufficient to establish the right of said claimants.

THE CHOCTAW NATION,

By STEWART, GORDON & HAILEY,
Its Attorneys.

Samuel Wall, et al.

Endorsed on back as follows:

No. 125.

No. 540.

Claim of Samuel Wall et al. for Choctaw Citizenship.

Filed Sept. 26, 1896.

A. S. McKennon, Com'r.

Answer.

Filed Feb. 22, 1897.

JOSEPH W. PHILLIPS,

Clerk.

STEWART, GORDON & HAILEY,

Attorneys.

Exhibit "C."

Copy of Order of Court.

United States of America,

Indian Territory,

Southern District.—ss.

In the United States Court in the Indian Territory,
Southern District, at a term thereof begun and held at
Ardmore, and on January 19th, 1898, present and presiding
the Honorable Hosea Townsend, judge of said court,
19 the following order was made and entered on record,
to-wit:

No. 125.

Dick Randolph et al.

vs.

Choctaw Nation.

Judgment.

On this the 19th day of January, 1898, this cause coming on to be heard upon the master's report, filed herein, in the clerk's office of this court on the 31st day of July, 1897, recommending the enrollment of the persons named in the application herein as members and citizens of the Choctaw nation of Indians, and it appearing to the court that no exceptions has been filed to said master's report, by the defendant, and that the same is fully supported by the evidence on file in this cause, the court is of the opinion that said master's report should in all things be confirmed.

It is therefore ordered, adjudged and decreed by the

court that Dick Randolph and Myrtle Randolph, and Samuel C. Wall and his wife, Ellen Wall, and her son by a former husband, William J. Thompson, each and all be enrolled as citizens and members of the Choctaw nation of Indians.

It is further ordered by the court that said named persons do have and recover from the Choctaw nation their costs in this action expended.

It is further ordered by the court that the clerk forthwith transmit a certified copy of this decree to the commissioners of the five civilized tribes.

HOSEA TOWNSEND,

Judge.

The above is a true copy from the records of an order made by said court on the 19th day of January, 1898.

Witness my hand and official seal this 1st day of May,
A. D. 1901.

(SEAL)

C. M. CAMPBELL,

Clerk.

20 Endorsed:

No. 708.

W. J. Thompson, et al., Plaintiffs,

vs.

Wm. Morgan, et al., Defendants.

Choctaw and Chickasaw Nations, Interpleaders.

Second Amended Complaint.

Filed in Open Court June 5th, 1901.

C. M. CAMPBELL, Clerk,

By J. T. FLEMING, Deputy.

PATCHELL and PYEATT,

and J. G. RALLS,

Attorneys for Plaintiffs.

21 That on the 5th day of June, 1901, plaintiffs filed their answer and reply to the interplea of the Choctaw and Chickasaw Nations, which answer and reply reads as follows:

In the United States Court at Pauls Valley, Southern District, Indian Territory.

W. J. Thompson, et al., Plaintiffs,

vs.

Wm. Morgan, et al., Defendants,

Choctaw and Chickasaw Nations, Interpleaders.

Answer and Reply to the Interplea and Answer of the Choctaw and Chickasaw Nations.

Comes now the plaintiffs in this action and saving and excepting their rights heretofore claimed by the demurrer and motion to strike said interplea from the files, for their reply to said answer and for answer to the interpleaders interplea, state:

1st. That the plaintiffs have been residents of the Choctaw and Chickasaw Nations for a great many years, and were all born in the Choctaw Nation, and have been bona fide residents of the said Choctaw and Chickasaw Nations during their whole lives, the said William J. Thompson being 24 years old, Samuel C. Wall 58 years old and Ellen Wall 46 years old.

Plaintiffs say that long prior to the leasing of the premises described in plaintiffs' complaint to the parties mentioned, the plaintiffs were residents of the Chickasaw Nation, and plaintiffs say that they have always enjoyed the rights and privileges of members by blood of the Choctaw Nation, and that under and by virtue of the laws of the Choctaw and Chickasaw Nations, and the treaties between said nations, and between said nations and the United States, these plaintiffs had the right to
22 reside in the Chickasaw nation, and hold lands and improvements therein to the exclusion of all other persons, and had the right to lease said lands and to receive the rents arising from the same, and that they have the right to remain in the possession of the premises sued for and have the same allotted to them.

Plaintiffs say that they do not hold more lands than will be their proportionate share of the lands of the Choctaw and Chickasaw nations including the lands sued for, and that they desire to take the lands sued for as a part of their allotments, and the same were and are held by them in good faith for the purposes of allotment.

Plaintiffs say that in the year 1896 after the commission to the five civilized tribes was authorized to hear and determine the application for citizenship in the said Choctaw and Chickasaw nations, these plaintiffs as a matter of precaution, and because there had not at that time been any complete rolls of the Choctaw nation made and approved as contemplated by the acts of congress conferring jurisdiction upon said commission, filed with the said commission their joint application with others to be admitted and

enrolled as members by blood of the Choctaw nation, and that said application was filed before said commission on the 24th day of August, 1896, and the plaintiffs in all things complied with the laws and rules and regulations and customs, and caused to be served upon the Choctaw nation true copies of all pleadings, evidence and papers filed by the plaintiffs in support of their claim to membership in said nation, and the said Choctaw nation appeared before said commission and made oral argument, and afterwards, to-wit, on the 26th day of September, 1896, appeared before said commission and filed its answer, a copy of which is hereto attached and marked Ex. "B 2," and then and there
filed its evidence against the claim of these plaintiffs,

23 and afterwards, to-wit, November 20th, 1896, the said commission rendered a decision or judgment or order rejecting the plaintiffs' claim to membership in the said Choctaw nation, and thereafterwards and within the time prescribed by law, the plaintiffs appealed from said action and judgment to the United States Court, sitting at Ardmore, for the Southern District of the Indian Territory, and in taking said appeal all the laws, rules and regulations were strictly complied with, and the Choctaw nation legally notified and it appeared and filed its answer to the appeal, and afterwards by agreement of the plaintiffs herein and the other applicants and the Choctaw nation said appeal was referred to a special master in chancery for said court, and the applicants and the Choctaw nation introduced their evidence and argued the propositions of law and facts therein, and afterwards, to-wit, on the 23rd day of June, 1897, the said master filed his report with all evidence, papers and pleadings of whatever kind or nature, and in said report found that the plaintiffs herein and the other applicants were Choctaw Indians by blood and as such were entitled to be enrolled and recognized, and to enjoy all the rights, privileges and immunities of such citizens.

Plaintiffs say that the Choctaw nation filed no exceptions to the said master's report, and that thereafterwards, to-wit, came on to be heard in open court at Ardmore in the Southern District of the Indian Territory, the said cause, and then and there the said Choctaw nation appeared, and the court having heard all the arguments and the evidence and master's report, entered a certain order, decree and judgment admitting the plaintiffs herein and others to membership of the said Choctaw nation, a true copy of which is hereto attached and marked "Exhibit A," and

made a part of this complaint.

24 Plaintiffs say that thereafter and in pursuance to an act of congress authorizing appeals from the judgments of the United States Courts in citizenship cases to the Supreme Court of the United States, the said Choctaw nation appealed from said judgment, and that said appeal was taken in due form of law, and thereafterwards, to-wit, May 15th, 1899, the Supreme Court of the United States affirmed said judgment, and the said judgment is now in full force and effect.

Plaintiffs further state, that the lands sued for and described in the plaintiffs' complaint were the property of the plaintiffs in so far as the title to the improvements was concerned, and that said lands and improvements were in the possession and under the control of the plaintiffs at the time the same were rented to the said Jones and Garvin, and for a more particular description of said lands and terms or lease and assignment of said leases and subleases the plaintiffs refer to their second amended complaint herein and make the same a part of this answer and reply to the answer and interplea of the said nations.

Plaintiffs say that the holding of the defendants in this action is that of tenants of these plaintiffs, and that the legal possession of said premises as held by the said defendants inures to the plaintiffs and is in the possession of the plaintiffs herein, and that the said Choctaw and Chickasaw nations have no right to the possession of the same or any part thereof or to any part of the rents arising therefrom.

Plaintiffs further state that the Choctaw and Chickasaw Nations on the one part, and the United States on the other part did on the 27th day of April, 1897, enter into an agreement or treaty, wherein it was agreed that the plaintiffs herein should hold their proportion of the public domain until allotment and that they should have allotted to
25 them their proportion of the said lands, and should be entitled to select as a part of their allotments the lands upon which they owned the improvements.

Plaintiffs state that afterwards Congress of the United States passed a certain act commonly called the "Curtis Bill," in which it was provided that the plaintiffs herein should be entitled to hold their proportion of the public domain, and further provided that upon the ratification, by the Choctaw and Chickasaw Nations, of a certain treaty as amended and re-written by Congress, the same should be-

come the law, and thereafter, to-wit, August 24th, 1898, said treaty was ratified by a joint vote of the Choctaw and Chickasaw Nations as provided by law, and the ratification was proclaimed as provided by law on the 31st day of August, 1898.

Plaintiffs say that at the date of the passage of the said act and the ratification and publication thereof of said treaty this judgment was in full force and effect, and was not being contested in original or appellate proceedings, and that the appeal to the Supreme court of the United States was not taken until the 1st day of October, 1898, and plaintiffs say, that the said Nations are estopped from now saying or asserting that the plaintiffs herein have no right to hold the lands sued for in this action.

Wherefore, the plaintiffs pray judgment against the said nation.

PATCHELL & PYEATT,
J. G. RALLS,

Attorneys for the Plaintiffs.

I, Wm. J. Thompson, do solemnly swear that I am one of the plaintiffs in above styled action and that all the facts alleged in the foregoing answer are true as I verily believe.

W. J. THOMPSON.

Subscribed and sworn to before me on this the 8th day of June, 1901.

(SEAL)

JAMES RENNIE,
Notary Public.

26

Exhibit A.

Certified Copy of Order of Court.

United States of America,
Indian Territory.

Southern District.—ss.

In the United States Court in the Indian Territory, Southern District, at a term thereof begun and held at Ardmore, and on January 19th, 1898, present and presiding the Honorable Hosea Townsend, judge of said court, the following order was made and entered on record, to-wit:

No. 125.

Dick Randolph et al.

vs.

Choctaw Nation.

Judgment.

On this the 19th day of January, 1898, this cause com-

ing on to be heard upon the master's report, filed herein, in the clerk's office of this court on the 31st day of July, 1897, recommending the enrollment of the persons named in the application herein as members and citizens of the Choctaw nation of Indians, and it appearing to the court that no exceptions had been filed to said master's report, and that the same is fully supported by the evidence on file in this cause, the court is of the opinion that said master's report should in all things be confirmed.

It is therefore ordered, adjudged and decreed by the court that Dick Randolph and Myrtle Randolph, and Samuel C. Wall and his wife, Ellen Wall, and her son by a former husband, William J. Thompson, each and all be enrolled as citizens and members of the Choctaw nation of Indians.

It is further adjudged by the court that said named persons do have and recover from the Choctaw nation their costs in this action expended.

It is further ordered by the court that the clerk forthwith transmit a certified copy of this decree to the commission to the five civilized tribes.

HOSEA TOWNSEND,
Judge.

27 The above is a true copy of an order of said court made on the 19th day of January, 1898.

Witness my hand and official seal this 1st day of May, 1901.

(SEAL) C. M. CAMPBELL,
Clerk.

Exhibit "B."

In the matter of the claim of Samuel Wall et al. for citizenship in the Choctaw nation.

Now comes the Choctaw nation, by its lawful attorneys and says:

First. That this honorable commission has no power and jurisdiction to hear and determine the issues herein involved because the law creating such commission is unconstitutional and void.

Second. The Choctaw nation enters its protest against the hearing of this cause because the methods or procedure adopted by this commission are unjust, unfair, and productive of great fraud and wrong, and the form and method of trial prescribed by said commission are contrary to the constitution and laws of the United States.

Third. The Choctaw nation protests against the hearing and determination of this cause for the reason that the time prescribed by said commission within which this nation must answer and adduce its proof is so limited as to amount to a denial of justice.

Fourth. The Choctaw nation further says that this commission ought not to entertain this cause for the reason that it does not appear that the applicant herein has applied for citizenship through the legally constituted tribunal designated by the Choctaw nation for the trial of questions of disputed citizenship.

28 Fifth. Defendant says that the evidence adduced by the claimant in this case, is not sufficient to establish his citizenship in the Choctaw nation.

Sixth. Defendant says that this commission has no power to enroll the applicant herein, because it appears that said applicant claims to be a citizen of the Choctaw nation by intermarriage and it does not appear that his right as such intermarried citizen has been disputed by the Choctaw nation.

Seventh. Defendant says that the applicant herein should not be enrolled because he has not shown by his evidence that he has not forfeited his right as such citizen by abandonment or remarriage.

Eighth. And not waiving the defenses heretofore set out, the defendant for further answer herein says:

There is no evidence in this case that the applicants are one-eighth blood Choctaw Indians, save the petition of the claimants, and the defendant says that such evidence is not sufficient to establish the rights of said claimants.

THE CHOCTAW NATION,
By STEWART, GORDON & HAILEY,
Its Attorneys.

Samuel Wall, et al.

Endorsed on back as follows:

No. 125.

No. 540.

Claim of Samuel Wall et al. for Choctaw Citizenship.

Filed Sept. 26, 1896.

A. S. McKennon, Com'r.

Answer.

Filed Feb. 22, 1897.

JOSEPH W. PHILLIPS,
Clerk.

STEWART, GORDON & HAILEY,
Attorneys.

29 And thereupon, on the 5th day of June, 1901, defendants filed their demurrer to the interplea of the Choctaw and Chickasaw Nations, in words and figures as follows, to-wit:

In the United States Court in and for the Southern District of the Indian Territory, at Pauls Valley.

W. J. Thompson, Plaintiff,

vs.

Wm. Morgan, et al., Defendants,

Demurrer.

Now come the defendant in the above cause and demurs to the interplea of the Chickasaw and Choctaw Nations, for the reason that said interplea constitutes no cause of action as against these defendants.

II.

Said interplea does not show a present right of possession in the Chickasaw and Choctaw Nations superior to the right of the defendants herein.

III.

These defendants further demur to that part of said interplea in which it denies the citizenship of these defendants herein, for the reason that this court has not now original jurisdiction to hear and determine who are citizens of the Chickasaw and Choctaw Nations.

Upon all of which these defendants pray judgment of the court, that their demurrer to the interplea herein be sustained, that they do have and recover of and from the interpleaders herein their costs in this behalf expended.

LEDBETTER, BLEDSOE & THOMPSON,
Attorneys for Defendants.

30 Endorsed as follows:

No. 708.

William J. Thompson et al.

vs.

Wm. Morgan et al.

Demurrer to Interplea.

Filed in Open Court June 6th, 1901.

CHAS. M. CAMPBELL, Clerk,
By J. T. FLEMING, Deputy.

And thereupon on the 6th day of June, 1901, the defendants filed their motion to strike out the interplea of the Choctaw and Chickasaw nations, in words and figures as follows, to-wit:

In the United States Court in and for the Southern District of the Indian Territory, Pauls Valley.

William J. Thompson, Plaintiff,

vs.

William Morgan, et al., Defendants.

Motion to Strike Out.

Now come the defendants in the above cause and move the court to strike from the file of this court the interplea of the Chickasaw and Choctaw nations.

LEDBETTER, BLEDSOE & THOMPSON,
Attorneys for Defendants.

Endorsed as follows:

No. 708.

William J. Thompson, et al.

vs.

William Morgan, et al.

Motion to Strike Out Interplea.

Filed in Open Court June 6th, 1901.

CHAS. M. CAMPBELL, Clerk.

By J. T. FLEMING, Deputy.

31 Be it further remembered that on the 6th day of June, 1901, the following proceedings were had in this cause, to-wit:

Wm. J. Thompson et al.

vs.

William Morgan et al.

Judgment on Demurrers and Motions.

On this the 6th day of June, 1901, this cause came on to be heard in open court upon the demurrer of the plaintiffs to the interplea and answer of the Choctaw and Chickasaw nations and upon the demurrer of the defendants to said interplea and answer and upon the motions of the plaintiffs and defendants to strike the said interplea and answer of said nations from the files and dismiss the same; and all parties being present and consenting that all of said demurrers and motions be argued together, and the court having seen and heard the same, and the argument of

counsel and being well and sufficiently advised in the premises doth overrule said demurrers and said motions. To which action of the court in overruling said demurrers and motions the plaintiffs and defendants Morgans then and there in open court duly excepted.

JOHN R. THOMAS,
Judge.

And thereupon on the 8th day of June, 1901, the Choctaw and Chickasaw nations filed their demurrer to the plaintiffs' second amended complaint, in words and figures as follows, to-wit:

In the United States Court at Pauls Valley, for the Southern District of the Indian Territory.

32 Wm. J. Thompson, et al.

vs.

Wm. Morgan, et al.,

Demurrer to Second Amended Complaint and Answer and Reply of Plaintiffs.

Comes now the Choctaw and Chickasaw Nations and demur to the plaintiffs' second amended complaint and the answer and reply of the plaintiffs to the answer and interplea of the Choctaw and Chickasaw Nations, for the reason that neither state facts sufficient in law to entitle the plaintiffs to recover, or to constitute a defense to the said interplea and answer.

MANSFIELD, McMURRAY & CORNISH,
Attys for Choctaw & Chickasaw Nations.

Endorsed as follows:

No. 708.

Wm. J. Thompson et al.

vs.

Wm. Morgan et al.

Demurrer.

Filed in Open Court June 8, 1901.

CHAS. M. CAMPBELL, Clerk.

By J. T. FLEMING, Deputy.

And thereupon, on the 8th day of June, 1901, the defendants file their demurrer to plaintiffs' second amended complaint, in words and figures, as follows, to-wit:

33 In the United States Court, Southern District, Indian Territory, at Pauls Valley.

William J. Thompson et al., Plaintiffs,
vs.

William Morgan et al., Defendants.

Demurrer to Second Amended Complaint.

Now comes the defendants in the above cause and demur to the complaint filed by the plaintiffs herein and for their grounds of said demurrer say:

That the said complaint does not state facts sufficient to constitute a cause of action.

And of this they pray the judgment of the court.

LEDBETTER, BLEDSOE & THOMPSON,
Attorneys for Defendants.

Endorsed as follows:

No. 708.

Wm. J. Thompson et al.

vs.

Wm. Morgan et al.

Demurrer.

Filed in Open Court, June 8th, 1901.

CHAS. M. CAMPBELL, Clerk,

By J. T. FLEMING, Deputy.

Be it further remembered that on the 8th day of June, 1901, the following proceedings were had, to-wit:

William J. Thompson et al.

vs.

William Morgan et al.

Final Judgment.

34 On this the 8th day of June, 1901, came on to be heard in open court the demurrer of the defendants to the plaintiffs' second amended complaint heretofore filed, and the demurrer of the Choctaw and Chickasaw nations to the plaintiffs' answer and reply to the answer and interplea of the Choctaw and Chickasaw nations, heretofore filed, and all parties being present and consenting that both demurrers be argued together and considered together, and the court having seen and heard said demurrers and argument of counsel and being well and sufficiently advised in the premises doth sustain each of said demurrers, to which action of the court in so sustaining each of said demurrers the plaintiffs then and there in open court duly excepted.

And thereupon the plaintiffs announced in open court that they would not further plead and thereupon the court

rendered the following judgment:

It is ordered and adjudged by the court that the plaintiffs take nothing by their action and that they pay the costs hereof.

To which judgment the plaintiffs then and there excepted.

Thereupon the Choctaw and Chickasaw nations admit that the defendant, Robert Morgan, is a recognized member by intermarriage of the Choctaw nation. It is therefore further adjudged by the court that the Choctaw and Chickasaw nations take nothing by this action; and it is therefore further adjudged that the defendants have the right to retain the possession of the lands sued for it appearing that they gave bond and remained in possession of said lands from the commencement of this action, and to which judgment as to the right of possession of said lands plaintiffs then and there duly excepted.

JOHN R. THOMAS,

Judge.

35 That on the 8th day of June, 1901, the plaintiffs filed their motion to set aside judgment and grant them a new trial and for copy of which motion see pages 40 and 41 in the bill of exceptions.

Be it further remembered that on the 8th day of June, 1901, in this action the following proceedings were had, to-wit:

No. 708.

William J. Thompson et al.

vs.

Wm. Morgan et al, Defendants.

Choctaw and Chickasaw Nations, Interpleaders.

Order Overruling Motion for New Trial.

On this, the 8th day of June, 1901, came on to be heard in open court the plaintiff's motion to set aside the judgment herein and for a new trial, and the parties being present, and the court having seen and heard said motion and being well and sufficiently advised in the premises, doth overrule said motion, to which action and ruling of the court the plaintiffs then and there duly excepted and tendered their bill of exceptions, which bill of exceptions having been seen and examined by the court and found to be correct in all things, is allowed and ordered to be filed and made a part of the record in this cause, which is accordingly done.

And thereupon the plaintiffs prayed an appeal from said judgment to the United States Court of Appeals for the Indian Territory, which appeal is by the court granted as against defendant and the interpleaders.

JOHN R. THOMAS,

Judge.

That on the 8th day of June, 1901, the plaintiffs filed in open court their bill of exceptions, which is in words and figures as follows:

36 In the United States Court at Pauls Valley for the Southern District of the Indian Territory.

No. 708.

William J. Thompson et al., Plaintiffs.

vs.

William Morgan et al, Defendants.

Bill of Exceptions.

Be it remembered that the above entitled action came on to be heard in open court at Pauls Valley, in the Southern District of the Indian Territory, on the 7th day of June, A. D., 1901, the said day being one of the regular judicial days of a regular term of court, and all parties being present and announcing ready to proceed, the motion of the plaintiffs to dismiss the interpleaders herein, said motion being joined with a demurrer, and the demurrer of plaintiffs to the answer and interplea of the Choctaw and Chickasaw nations, which joint motion and demurrer are in words and figures as follows, to-wit:

In the United States Court at Pauls Valley, Southern District, Indian Territory.

William J. Thompson et al., Plaintiffs.

vs.

Wm. Morgan et al., Defendants.

Choctaw and Chickasaw Nations, Interpleaders.

Demurrer to Interplea and Answer of Choctaw Nation, and Motion to Strike Out.

Now come the plaintiffs and demur to the interplea and answer filed by the Choctaw and Chickasaw Nations because the same does not state facts sufficient to constitute a cause of action against the plaintiffs to this action in favor of said interpleaders.

2. Plaintiffs further demur to said interplea and answer because the same does not state facts sufficient to

constitute any defense to the cause of action set out in the complaint.

37 3. Plaintiffs further demur to said interplea and answer and move to strike out the same because the Choctaw and Chickasaw Nations are neither necessary or proper parties to this action.

Wherefore plaintiffs pray for judgment of the court upon said demurrers and motions.

PATCHELL and PYEATT,
Attorneys for Plaintiffs."

And at the same time and in conjunction with said motion and demurrer and by agreement of all parties came on to be heard the demurrer of the defendants Morgans to the interplea of the Choctaw and Chickasaw Nations heretofore filed, and in words and figures as follows, to-wit:

"In the United States Court in and for the Southern District of the Indian Territory, at Pauls Valley.

William J. Thompson, Plaintiff,

vs.

William Morgan et al, Defendants.

Demurrer.

Now come the defendants in the above cause and demurs to the interplea of the Chickasaw and Choctaw Nations, for the reason that said interplea constitutes no cause of action against these defendants,

II.

Said interplea does not show a present right of possession in the Chickasaw and Choctaw Nations superior to the rights of the defendants herein.

III.

These defendants further demur to that part of said interplea in which it denies the citizenship of these defendants herein, for the reason that this court has not now original jurisdiction to hear and determine who are citizens of the Chickasaw and Choctaw Nations.

38 Upon all of which these defendants pray judgment of the court that their demurrer to the interplea herein be sustained, that they do have and recover of and from the interpleaders herein their cost in this behalf expended.

LEDBETTER, BLEDSOE & THOMPSON,
Attorneys for Defendants."

And the motion of the defendants, Morgans, to strike

out the interplea and answer of said nations and dismiss said nations, which motion is in words and figures, to-wit:

"In the United States Court in and for the Southern District of the Indian Territory, Pauls Valley.

William J. Thompson, Plaintiff,

vs.

William Morgan et al, Defendants.

Motion to Strike Out.

Now comes the defendants in the above cause and move the court to strike from the files of this court the interplea of the Chickasaw and Choctaw Nations.

LEDBETTER, BLEDSOE & THOMPSON,
Attorneys for Defendants."

And the court having seen and heard each of said demurrers and motions and the argument of counsel for all parties, and being well and sufficiently advised in the premises, doth overrule each of said demurrers and each of said motions, to which action the plaintiffs and defendants,

Morgan, then and there in open court duly excepted.

39 And thereafterwards, to-wit: June 8th, 1901, the same being one of the juridical days of a regular term of court as above stated, come on to be heard in open court the demurrer of the defendants' Morgan, to the plaintiffs' second amended complaint, which demurrer is in words and figures as follows, to-wit:

"In the United States Court, Southern District, Indian Territory, at Pauls Valley.

William J. Thompson et al., Plaintiffs.

vs.

William Morgan et al., Defendants.

Demurrer to Second Amended Complaint.

Now come the defendants in the above cause and demur to the complaint filed by the plaintiffs herein, and for their grounds of said demurrer say that:

The said complaint does not state facts sufficient to constitute a cause of action; and of this they pray the judgment of the court.

LEDBETTER, BLEDSOE & THOMPSON,
Attorneys for Defendants."

And the demurrer of the Choctaw and Chickasaw nations to the plaintiffs' second amended complaint, and to

plaintiffs' answer and reply to the interplea and answer of said nations, which demurrer is in words and figures as follows, to-wit:

In the United States Court at Pauls Valley, for the Southern District of the Indian Territory.

Wm. J. Thompson et al.

vs.

Wm. Morgan et al.

Demurrer.

Come now the Choctaw and Chickasaw Nations and demur to the plaintiffs' second amended complaint and the answer and reply of the plaintiffs to the answer and interplea of the Choctaw and Chickasaw Nations, for the reason that neither state facts sufficient in law to entitle the plaintiffs to recover, or to constitute a defense to the said interplea and answer.

MANSFIELD, McMURRAY & CORNISH,

Attys for Chickasaw & Choctaw Nations."

And all parties being present and consenting that said demurrers be read and considered together; and the court having seen and heard said demurrers and the argument of counsel, and being well and sufficiently advised in the premises, doth sustain each of said demurrers, to which action of the court the plaintiffs in open court then and there duly excepted.

And thereupon at the same time the plaintiffs announced in open court that they would not plead further, and thereupon on the same day the court entered the following judgment:

"It is ordered and adjudged by the court that the plaintiffs take nothing by their action, to which judgment of the court the plaintiffs then and there in open court duly excepted," and thereupon on the same day filed in open court their motion for a new trial, which motion is in words and figures, to-wit:

"In the United States Court, at Pauls Valley, for the Southern District of the Indian Territory.

W. J. Thompson et al., Plaintiffs,

vs.

William Morgan et al, Defendants.

Motion to Set Aside Judgment & Grant New Trial.

The plaintiffs move the court here to set aside the

judgment herein, and grant a new trial for the following reasons, to-wit:

41 1. The judgment is contrary to the law and the evidence.

2. The court erred in sustaining the demurrer of the defendants to the plaintiffs' second amended complaint, to which plaintiffs excepted.

3. The court erred in sustaining the demurrer of the Choctaw and Chickasaw nations to the answer and reply of the plaintiffs to the interplea and answer of said nations, to which plaintiffs excepted.

4. The court erred in overruling the demurrer of plaintiffs to the interplea and answer of the Choctaw and Chickasaw nations, to which plaintiffs excepted.

5. The court erred in overruling the plaintiffs' demurrer to the answer and interplea of said nations, to which plaintiffs excepted.

6. The court erred in rendering judgment against the plaintiffs, to which plaintiffs excepted.

PATCHELL & PYEAT, and J. G RALLS,

Attorneys for Plaintiffs."

Endorsed:

No. 708.

Filed in Open Court Jun. 8th, 1901.

C. M. CAMPBELL, Clerk.

By J. T. FLEMING, Deputy.

And thereupon on the same day came on to be heard in open court the motion of the plaintiffs for a new trial and to set aside the judgment herein, and the court having seen and heard said motion and being well and sufficiently advised in the premises doth overrule the same, to which action of the court in so overruling said motion the plaintiffs then and there duly excepted, and thereupon the Choctaw and Chickasaw nations admitted that the defendant, Robert Morgan is a recognized member by marriage. It is therefore adjudged by the court that the Choctaw and Chickasaw nations take nothing by this action, and the possession of the lands sued for was adjudged to defendants to which judgment of the court plaintiffs then and there duly excepted.

42 And thereupon on the same day, in open court, the plaintiffs prayed an appeal from said judgment to the United States Court of Appeals for the Indian Territory, which appeal is allowed as against the defendants Morgans and the Choctaw and Chickasaw Nations.

And now on this, the 8th day of June, A. D. 1901, the plaintiffs present in open court this, their bill of exceptions, and pray that the same may be allowed, signed, and ordered to be filed in open court and made a part of the record in this action.

And the court having seen and examined said bill of exceptions, and finding it correct in all things, doth order that the same be allowed, signed, sealed and filed in open court and made a part of the record in this action, which is this day accordingly done.

JOHN R. THOMAS,
Judge.

Endorsed as follows:

No. 708.

William J. Thompson et al, Plaintiffs,
vs.

William Morgan et al, Defendants.
Choctaw and Chickasaw Nations, Interpleaders.
Bill of Exceptions.

Filed in Open Court June 8th, 1901.

CHAS. M. CAMPBELL, Clerk,
By J. T. FLEMING, Deputy.

43 Indian Territory,
Southern District.

I, Chas. M. Campbell, clerk of the United States court in the Indian Territory, Southern District, do hereby certify that the above and foregoing is a true and perfect transcript of the record in the above styled cause of William J. Thompson et al., plaintiffs, vs. William Morgan et al., defendants, Choctaw and Chickasaw nations, interpleaders, No. 708, as the same appears from the records of said court at Pauls Valley. That my costs for this transcript is eight and 68-100 dollars.

Witness my hand and the seal of said court this 2nd day of July, A. D., 1901.

(SEAL) CHAS. M. CAMPBELL,
Clerk, United States Court in the Indian
Territory, Southern District thereof.
By J. T. FLEMING, Deputy.

Endorsed:

No. 394.

W. J. Thompson et al., Appellants,
vs.
Wm. Morgan et al., Appellees.

Transcript of Record from U. S. Court at Pauls Valley,
Ind. Terv.

Filed in the Office of Clerk of U. S. Court of Appeals,
Ind. Ter., Jul. 8, 1901.

WM. P. FREEMAN,
Clerk.