

TRANSCRIPT OF RECORD.

United States Circuit Court of Appeals

EIGHTH CIRCUIT.

No. 2313.

HUGH WALLACE, ET AL., PLAINTIFFS IN ERROR,

vs.

MRS. ELLA ADAMS, FOR HERSELF AND AS NATURAL
GUARDIAN AND NEXT FRIEND OF HENRY
McSWAIN AND ROMA McSWAIN,
HER MINOR CHILDREN,
DEFENDANTS IN
ERROR.

IN ERROR TO THE UNITED STATES COURT OF APPEALS IN THE
INDIAN TERRITORY.

FILED AUGUST 31, 1905.

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United States of America—ss.

a The President of the United States: To the Honorable, the Judges of the United States Court of Appeals in the Indian Territory—Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said United States Court of Appeals before you, at the June Term, 1905, thereof, between Hugh Wallace, Will Wallace, Virge Goodwin, Chas. Shannon, John Hunt, John Perkins and B. C. Hill, Appellants, against Mrs. Ella Adams for herself and as natural guardian and next friend of Henry McSwain and Roma McSwain, her minor children, Appellees, a manifest error hath happened, to the great damage of the said Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins and B. C. Hill, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid, at the city of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, on or before the seventh day of October, 1905, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, The Honorable Melville W. Fuller,
Chief Justice of the Supreme Court
of the United States, this seventh
day of August, in the year of our
Lord one thousand nine hundred
and five (1905).

Seal
United States
Court of Appeals
Indian Territory.

Issued at office in the City of
South McAlester, Indian Territory,
with the seal of the United States
Court of Appeals in the Indian Ter-
ritory, with the seal of the United
States Court of Appeals in the
Indian Territory, hereto affixed the
date last above written.

WM. P. FREEMAN,
Clerk United States Court of Appeals
in the Indian Territory.

Allowed by WM. H. H. CLAYTON,
Associate Justice United States Court of Appeals in the
Indian Territory.

Return to Writ.

United States of America,
Indian Territory—ss.

In the Court of Appeals.

In obedience to the command of the within writ, I herewith
transmit to the United States Circuit Court of Appeals for the
Eighth Circuit, a duly certified transcript of the record and
proceeding in the within entitled case, with all the things
concerning the same.

In Witness Whereof, I hereunto subscribe
my name, and affix the seal of said
Court at office in the City of South
McAlester, this 10th day of August,
A. D. 1905.

Seal
United States
Court of Appeals
Indian Territory.

WM. P. FREEMAN,

Clerk of the United States Court of Appeals in the
Indian Territory.

United States Circuit Court of Appeals,
Eighth Circuit.

Hugh Wallace, et al., Plaintiffs in Error,
vs.

Mrs. Ella Adams, et al., Defendants in Error.

Writ of Error, to the United States Court of Appeals in the
Indian Territory.

The United States of America.

To Mrs. Ella Adams, for herself and as natural guar-
dian and next friend of Henry McSwain and Roma McSwain,
her minor children—Greeting:

You are hereby cited and admonished to be and appear in
the United States Circuit Court of Appeals for the Eighth
Circuit, at the City of St. Louis, Missouri, sixty days from and
after the day this Citation bears date, pursuant to a Writ of
Error, filed in the Clerk's office of the United States Court of
Appeals in the Indian Territory, wherein Hugh Wallace, Will
Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John
Perkins and B. C. Hill, are Plaintiffs in Error, and you are
Defendants in Error, to show cause, if any there be, why the
judgment rendered against the said Plaintiffs in Error, as in
said Writ of Error mentioned, should not be corrected, and
why speedy justice should not be done the parties in that
behalf.

Witness, The Honorable William H. H. Clayton, Associate
Justice of the United States Circuit Court of Appeals
in the Indian Territory, this 9th day of August, in the
year of our Lord one thousand nine hundred and five
(1905).

WM. H. H. CLAYTON,
Associate Justice of the United States Court of Appeals
In the Indian Territory.

I, H. H. Brown, Attorney of Record for the defendants in
error, Mrs. Ella Adams, et al, hereby accept full and complete
service and notice of the foregoing citation in error. This the
11th day of August, 1905.

H. H. BROWN,
Attorney for defendants in error.

United States Circuit Court of Appeals.
Eighth Circuit.

Hugh Wallace, et al., Plaintiffs in Error,
vs.
Mrs. Ella Adams, et al., Defendants in Error.

Citation on Writ of Error.

United States of America,
Indian Territory,
In the Court of Appeals:—Sct.

Pleas and Proceedings in the United States Court of Appeals
in the Indian Territory, at a term begun and held at the Court

House in the City of South McAlester, Indian Territory, on the 13th day of June, A. D. 1905, Present and presiding:

Hon. Charles W. Raymond, Chief Justice,
 Hon. Wm. H. Clayton, Associate Justice,
 Hon. Hosea Townsend, Associate Justice,
 Hon. Joseph A. Gill, Associate Justice,
 George K. Pritchard, U. S. Marshall, and
 Wm. P. Freeman, Clerk.

Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins and B. C. Hill, Appellants,

vs.

Mrs. Ella Adams, for Herself and as Natural Guardian and Next Friend of Henry McSwain and Roma McSwain,
 Her Minor Children, Appellees.

Be It Remembered, That heretofore, to-wit, on the 28th day of April, A. D. 1905, there was filed in the office of the Clerk of the United States Court of Appeals in the Indian Territory, at South McAlester, a transcript of the record and proceedings of the United States Court for the Southern District of the Indian Territory, sitting at Ardmore, in the above entitled cause, which is in the words and figures following, to-wit:

1 In the United States Court For the Southern District of the Indian Territory at Ardmore.

Mrs. Ella Adams, for herself and as natural guardian and next friend of Henry McSwain and Roma McSwain, her minor children, Plaintiffs,

vs.

Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins and B. C. Hill, Defendants.

Complaint at Law.

The plaintiffs respectfully state that they are all residents of the Southern Judicial District of the Indian Territory, and members of the Chickasaw Tribe of Indians, and the defendants all reside within the jurisdiction of the United States Court at Ardmore; and the defendants are United States Citizens and not members of any tribe or nation. For cause of action, the plaintiffs allege:

That on the 12th day of September, 1904, the plaintiffs appeared at the Chickasaw Land Office, and filed upon the following and hereinafter described land. The plaintiffs are the owners of and entitled to the immediate possession of said land; together with the improvements thereon, and no other Indian citizen has any right, claim or interest in or to said land or the improvements or crops now situated upon the same. The land herein above referred to being described as follows: The same being the land filed by Henry McSwain.

The south half of the southeast quarter, and the southeast quarter of the northeast quarter of the southeast quarter; and the southeast quarter of the northwest quarter and the north half of the southwest quarter of section twenty-eight, township two south, range two west.

Plaintiffs further state that on the 21st day of September, 1904, they appeared at the Chickasaw Land Office, and the plaintiff, Mrs.

Adams, selected for Roma McSwain, her minor child, the following and hereinafter described premises, all of which belongs to the plaintiff, Roma McSwain, and no other citizen or Indians have any rights, title or interest in or to said premises, and no other person has any right to collect the rents due for the use of said premises for this year (1904); which land is claimed by Roma McSwain and is described as follows:

The northwest quarter of the southeast quarter; and the southwest quarter of the southwest quarter of section twenty-eight, township number two south, range one west; and the west half of the northwest quarter of the northeast quarter and the northeast quarter of the northwest quarter; and the northeast quarter of the northwest quarter of the northwest quarter of section thirty-three township two, south, range one west.

All of which land is situated within two miles of the town of Woodford, Indian Territory. The plaintiffs state that they are entitled to the immediate possession of all of said land, and they are the owners of the same; and the defendants now occupying, managing and controlling said premises, are doing so without the consent or permission of the plaintiffs, and the plaintiffs are entitled to the rents for the use of the premises aforesaid, for the year 1904.

That about 270 acres of said land is in a state of cultivation, and the average and reasonable rental value for said premises is one-third of all grain, and one-fourth of all cotton to be produced on said premises for said year (1904). That said grain and cotton will average the sum of \$3.00 per acre per annum.

That the defendants are insolvent and in the event the plaintiffs should obtain a judgment in this court for possession of said premises and for the rents due for the use of the same for this year, and the crops are now being gathered, and disposed of, and will all be gathered and marketed before this case can be tried, and unless the court appoints a receiver to collect said rents and take charge of said premises, the plaintiffs rights will be lost:

Wherefore, the plaintiffs pray that each and all of said defendants be summoned to appear and answer this complaint and on final trial they have judgment for possession of said premises; together with the reasonable rental value of the same for the year 1904, and for such other time as the defendants may wrongfully occupy the same, but the reasonable value as rent is to be ascertained by a judgment of this court, and pending said suit, they pray that

a receiver be appointed to take charge of said premises, and collect the rents for the year 1904, and hold said rents for the further order of the court, and if said suit is not determined by the 1st of the year 1905, that said receiver be empowered to rent the premises for the year 1906, and hold the same subject to the further order of the court. And on final hearing plaintiffs pray judgment for possession of said land.

H. H. BROWN,
Attorney for Plaintiffs.

Now comes Mrs. Ella Adams, one of the plaintiffs in the above and foregoing action, and upon oath states that she is one of the plaintiffs in said action; and she is acquainted with the facts therein and the same are true and correct.

Subscribed and sworn to before me this the day of September, 1904.

Notary Public

In the United States Court for the Southern District of the Indian Territory at Ardmore.

Mrs. Ella Adams, for herself and as natural guardian and next friend of Henry McSwain and Roma McSwain, her minor children, Plaintiffs,

vs.

Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins, and B. C. Hill, Defendants.
Second Amended Answer.

Comes now the defendant, B. C. Hill, leave of the court being first had, and amends his original and amended answer herein, so as to make the same read as follows:

This defendant denies that he is not a member of any Indian Tribe, but states that he is a member of the Choctaw Tribe of Indians by blood. He denies that the plaintiffs are the owners of, or entitled to the immediate possession, of the land described in plaintiff's complaint, or any of the improvements situated thereon. He denies that the plaintiffs, or either of them are entitled to the immediate possession of all, or any portion, of said land; or that they are entitled to the rents for the year 1904, or any other time. This defendant denies that there is as much as two hundred and seventy acres of said land in cultivation, or that the rental value of said land is of the reasonable price of three dollars per acre.

2d. This defendant states that he is a member of the Choctaw Tribe of Indian by blood, and as such entitled to all the rights, privileges and immunities of other members of said Tribe. He states that on the 8th day of July, 1896, the Commission to the Five Civilized Tribes of Indians, acting under the authority conferred upon such Commission by the Act of Congress, June 10, 1896, adopted and promulgated the following rule to govern said Commission in hearing and determining the applications for citizenship in any one of the Five Civilized Tribes, as provided for by the said Act of Congress:

5 "Any person desiring that said Commission pass upon his claim for citizenship, in any of said tribes, under the provisions of this act, must make application in writing, signed and sworn to, containing a particular statement of the grounds upon which his claim is based, and accompanied by such evidence, in the form of affidavits, depositions, or record evidence, as he may desire to have considered in support of his claim,—all to be forwarded under seal to the Commission at Vinita, I. T., before the 10th day of September, 1896.

The application should state facts sufficient if true, to show that the applicant is entitled to citizenship. The applicant must, at the same time, furnish the chief or governor of the nation in which citizenship is sought, a copy of such application, and evidence, and shall furnish to the Commission evidence of this fact. Such chief, or governor must, within thirty days thereafter, furnish the Commission his answer thereto, signed and sworn to be some duly authorized officer of his government, and accompanied by such evidence in the form of affidavits, depositions or record evidence as he may desire the Commission to consider in support of his answer.

All argument shall be in writing.

HENRY L. DAWES, Chairman,
FRANK C. ARMSTRONG,
A. S. McKENNON,
T. B. CABANISS,
A. B. MONTGOMERY.
Commissioners.

3d. Defendant states that his right to membership in said Tribe of Indians, having been questioned by the Choctaw authorities be on the 10th day of August, 1896, presented to the said Commission to the Five Civilized Tribes, his application to be enrolled

annulled, vacated and held for naught.

(Signed)

SPENCER B. ADAMS,
Chief Judge.
WALTER L. WEAVER,
Associate Judge.
HENRY S. FOOTE,
Associate Judge."

Defendant states that he was not a party to said proceedings; that no notice was ever served on him in the execution of said "pretended suit"; that no testimony was introduced in the trial of said cause to show that this defendant was situated similiary to either one of the defendants in said suit; and that said "pretended decree" did not, in any manner, set aside or affect the judgments of this court, declaring this defendant to be a member of the Choctaw Tribe of Indians. Defendant states that the so-called "Coctaw and Chickasaw Citizenship Court" had no jurisdiction of the person of this defendant; that it was without authority to pass upon or determine his right; that the so-called court was not a judicial tribunal, but was a political agency, or Commission, and as such had not power to set aside, modify or, in any manner, affect the decree of the said United States Court for the Southern District of the Indian Territory establishing the rights of this defendant, as a member of the said Choctaw Tribe of Indians.

7th. The defendant states that on the.....day of..... 1898, he exhibited a duly certified copy of the decree of the United States Court for the Southern District of the Indian Territory, admitting him to citizenship, to the said Commission to the Five Civilized Tribes, and asked to be enrolled as a member of the said Choctaw Tribe of Indians. That on the.....day.....1904, the said Commission to the Five Civilized Tribes, refused, and has ever since, refused, and still refuses, to enroll this defendant as a member of said tribe of Indians, claiming that the "pretended decree" of the so-called "Choctaw and Chicasaw Citizenship Court" vacated and annulled the decree of the United States Court for the Southern District of the Indian Territory, declaring this defendant to be a member of the Choctaw Tribe of Indians.

10 8th. This defendant states that on the 15 day of September, 1904, he appeared before the said Commission to the Five Civilized Tribes, and demanded the right to select the land sued for in this suit, as his allotment, and demanded that the same be

allotted to him as a member of the Choctaw Tribe of Indians. This request was, by the said Commission, without authority of law, refused. This defendant, then asked permission of the said Commission to file a contest, contesting the right of the plaintiffs to allot such land, and requesting that he be permitted to show that he was the owner of said property and entitled to allot the same, and that the plaintiffs have no right or title in or to the same. This request was by the said Commission, without authority of law, and without investigation, refused.

The defendant states that the Commission refused to investigate the question as to whether or not this defendant is a member of the Choctaw Tribe of Indians, and refuses to hear any testimony to determine whether or not the defendant is the owner of the property sued for. Said Commission would enroll this defendant as a member of the said Tribe of Indians, and would allot said land to this defendant, except for the fact that the said Commission, and the members thereof, hold that the so-called "Judgments" of the "Choctaw and Chickasaw Citizenship Court" vacated the judgment of this court admitting this defendant to citizenship, and said Commission now claims to be without jurisdiction to pass upon or determine the right of this defendant. This defendant states that ever since the 28th day of June, 1898, he has been, and now is, the owner of the land sued for; together with all the improvements hereon: that the plaintiffs are trying to deprive him of the use and benefit of said property, as well as the ownership thereof, without process of law.

This defendant states that said land has been appraised by the said Commission to the Five Civilized Tribes; that the same does not amount to more in value than three hundred and twenty acres of the average land of the said Choctaw and Chickasaw Tribes of Indians, and is not more in value than or in acres than this defendant is entitled to allot in his own proper person, as a member of the said Choctaw Tribe of Indians.

This defendant states that at the time said land was filed upon by the plaintiffs they knew all the foregoing facts—that he had been adjudged by the United States Court for the Southern District of the Indian Territory to be a member of the Choctaw Tribe of Indians; that they knew the defendant had been in the possession of said property since the 15th day of March, 1898: that they knew the defendant had erected improvements upon said property, as before mentioned; and they are seeking to deprive this defendant of

as a member of the said Choctaw Tribe of Indians. He states that said application was signed and sworn to. That a copy of same, together with a copy of all evidence used in the trial of said application, was, within thirty days after the filing of said application, furnished to the governor of the said Choctaw Nation, and that this defendant, in all things, complied literally with the requirements of the rules established by the said Commission governing the application of parties to membership in any one of the said Five Civilized Tribes

Defendant states that thereafter, on the day of November, 1896, his said application was acted upon by said Commission, and that membership in said Tribe was denied him, and thereafter on the day of November, 1896, this defendant appealed from the finding of said Commission to this court, to-wit: The United States Court for the Southern District of the Indian Territory sitting at Ardmore.

Defendant states that on the 8th day of March 1898 said cause came on to be heard before the said court, and after the introduction of testimony and the argument of counsel, the said court having jurisdiction of said cause, rendered the following decree:

No. 149

"J. M. Hill, et. al

vs.

The Choctaw Nation.

This day this cause coming on to be heard, upon the pleadings, exhibits, proofs and master's report filed herein, and it appearing that said report has been filed since the 21st day of February, 1898, and no exceptions filed thereto, it is therefore,

Ordered, Adjudged and Decreed by the court that said report be, and the same is hereby, confirmed in all respects. It is further adjudged that the applicants, J. M. Hill, Willie Hill, Sewell Hill, Fannie Simpson, John Simpson, Grady Simpson, Ada Bickham, Cullie Bickham, Laura Miles, Mabel Miles, Myrtle Hill, Philip Hill, Swaney Hill, Connie Hill, Jewell Hill, Grover Hill, Albert Hill, Leona Hill, Ray Hill, Bertha Hill and Mada Hill each and all be admitted as members of the Choctaw Tribe of Indians by blood, and that the applicants, Amanda Hill, wife of J. M. Hill, and Adelia Hill, wife of B. C. Hill, each and both be admitted as members of the Choctaw Tribe of Indians by intermarriage.

It is further adjudged that each and all the above named parties

are entitled, and are hereby given all the rights, privileges and immunities of members of the Choctaw Tribe of Indians, and the Clerk of this court is hereby ordered to transmit a certified copy of this judgment to the proper authorities, who are instructed to enroll them as such."

This defendant states that by virtue of said decree, he was admitted and decreed to be a member of the Choctaw Tribe of Indians by blood, as such entitled to all the privileges, rights and immunities of other members of said Tribe; that said judgment or decree has never been reversed, modified or set aside; but is now in full force and effect, and by reason thereof, it immediately became the duty of the said Commission to the Five Civilized Tribes to enroll this defendant as a member of the said Choctaw Tribe of Indians.

Defendant states that the said Choctaw Tribe of Indians, under the Act of July 1, 1898, appealed said cause to the Supreme Court of the United States, and on the day of May, 1899, said cause came on for hearing before the said Supreme Court, and was, in all things, affirmed and said Supreme Court issued to the said United States Court for the Southern District of the Indian Territory its mandate, directing the said court that such further execution and process should be had as according to right and justice, should be, the said appeal notwithstanding.

7 4th. Defendant states that on the . . . day of March, 1898, acting upon the faith of said judgment, he reduced to his possession, the property described in plaintiff's complaint, and has ever since held possession of the same, claiming the same as owner thereof, by virtue of his membership in said Tribe. He states that ever since he reduced said property to his possession, it has been his purpose, and is now his purpose, to take the same as his allotted share of the tribal lands of the Choctaw and Chickasaw Tribes of Indians. He states that after he reduced said property to his possession, he placed thereon fencing, houses and other lasting and permanent improvements of the reasonable value of One Thousand Dollars; and that on the 28th day of June, 1898, he was in possession of said land and improvements, claiming the same as his own.

5th. Defendant states that on the 1st day of September, 1898, and at divers times thereafter, he has placed upon said land, other lasting and valuable improvements of the reasonable value of One Thousand Dollars, all of which improvements are now upon said property, and all of which land and improvements are, as this defendant claims, his individual property.

6th. This defendant states that on the day of 1902, the so-called "Choctaw and Chickasaw Citizenship Court," in a case pending before said court, styled "The Choctaw and Chickasaw Nation or Tribe of Indians vs. J. T. Riddle et al" rendered a pretended decree, purporting to set aside and annul certain judgments of the United States Court for the Southern District of the Indian Territory, and of the United States Court for the Central District of the Indian Territory. Said pretended decree is in the following language, to-wit:

8 "The Choctaw and Chickasaw Nations or Tribes of Indians,
Plaintiffs,

vs.

J. T. Riddle, D. S. Riddle, L. A. Riddle, Elizabeth Casey, Joshua Casey, Andrew B. Hill, L. T. Hill, James. W. Balthrop, T. D.

Arnold, J. H. Bratcher, for themselves and as representa-

tives of all persons similarly situated, claiming to be

members of the Choctaw and Chickasaw Na-

tions, by virtue of alleged decrees of the

United States Court for the Central and

Southern Districts of the Indian Ter-

ritory sitting respectively at

South McAlester and Ard-

more, and commonly

known as Court

Claimants De-

fendants.

This cause coming on further to be considered, and it appearing to the court, that the paper writing purporting to be the judgment of this court herein, heretofore filed with the clerk, does not conform to the written opinion announced and rendered by the court, which has been filed and entered as a part of the record herein it is therefore ordered, adjudged and decreed by the court, that said paper writing purporting to be the judgment of this court herein, of date the 17th day of December, 1902, be and the same is hereby amended, and the following is the true judgment, intended to be entered by this court herein of that date, and the same is hereby entered of record as the judgment of this court in this case, in accordance with the said opinion and that the same be so filed, nunc pro tunc as of date, the 17th day of December, 1902, as follows, to-wit:

This day this cause came on to be heard, and having been fully

argued by counsel, was submitted to this court on the pleadings, exhibits and testimony, upon consideration whereof, the court finds:

That due and legal notice of the pendency and prayer of this suit has been given to the defendants herein, in conformity of law;

That said defendants appeared at the hearing hereof, in person and by counsel, and that each and all of said defendants, who desired to be heard, were heard;

That notice to each of said Choctaw and Chickasaw Nations or tribes of Indians of the proceedings in the United States Court in the Indian Territory, acting under the Act of Congress, approved June, 10, 1896, admitting persons to citizenship, or to enrollment as such citizens, in the Choctaw and Chickasaw Nations respectively, was indispensable;

And the court further finds that in said proceedings, in the United States Court in the Indian Territory, and said courts proceeded to hear and determine said causes de novo, and did not confine the same to a review of the proceedings had before the Commission to the Five Civilized Tribes, upon the papers and evidence submitted to such Commission;

That by reason of each of said facts, to-wit: That the proceedings in said United States Courts, were had without notice to each of said tribes or nations when notice to each of said nations was indispensable, and that said United States Courts tried said causes de novo when their action should have been confined to a review of the action of the Commission to the Five Civilized Tribes, upon the papers and evidence submitted to such Commission, all of said proceedings, decrees and decisions, of said United States Courts in the Indian Territory, admitting any and all persons to citizenship or enrollment, as such citizens in said nations or tribes of Indians or either of them, ought to be set aside, annulled and vacated.

It is therefore, ORDERED, ADJUDGED and DECREED, that all of said judgments, decrees and decisions, rendered by the United States Courts in the Indian Territory, acting under the Act of Congress, approved June 10, 1896, admitting persons to citizenship or to enrollment as such citizens, in the Choctaw and Chickasaw Nations respectively, upon appeal from the Commission to the Five Civilized Tribes, in favor of the ten defendants, named in the bill in this proceeding, as well as to those who have come in and made themselves parties thereto, and the judgments rendered as aforesaid, in favor of all persons similarly situated, are set aside,

his ownership to said property, without compensation and without due process of law. Defendant states that said property is reasonably worth the sum of Fifty Two Hundred Dollars.

Defendant states that prior to the 28th day of June, 1898, all the lands in the Chickasaw and Choctaw Nations were, by the said Commission to the Five Civilized Tribes, surveyed into sections and legal subdivisions thereof, preparatory to allotment.

Wherefore, this defendant asks that this cause be transferred to the Equity docket; that the filing of the plaintiffs upon said land may be canceled; that he be declared to be the owner of said land; and that he be quieted in his title to possession of the same; for his costs and all other proper relief.

CRUCE, CRUCE & BLEAKMORE,
Attorneys for Defendant, B. C. Hill.

Endorsed on back.

No. 5982.

Mrs. Ella Adams, et. al.,

vs.

Hugh Wallace, et. al.

Second Amended Answer.

Filed in open Court April 8, 1905.

C. M. CAMPBELL, Clerk.

12 In the United States Court For the Southern District of the Indian Territory at Ardmore.

Mrs. Ella Adams, for herself and as natural guardian and next friend of Henry McSwain and Roma McSwain, her minor children, Plaintiffs.

vs.

Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins, and B. C. Hill, Defendants.

Second Amended Answer.

Come now the defendants, Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, and John Perkins, and for amendment to their first amended answer herein, they adopt as their separate answer, the second amended answer of the defendant, B. C. Hill, filed herein, and they state that for reasons therein set forth, said plaintiff is not entitled to recover the property sued for, and they therefore ask to be discharged for their costs.

CRUCE, CRUCE & BLEAKMORE,

Endorsed on back.
Mrs. Ella Adams, et. al.,
vs.

Hugh Wallace, et. al

Second Amended Answer

Filed in open Court April 8, 1905.

C. M.CAMPBELL, Clerk.

13 In the United States Court for the Southern District of the Indian Territory at Ardmore.

Mrs. Ella Adams, for herself and as natural guardian and next friend of Henry McSwain and Roma McSwain, her minor children, Plaintiffs.

vs.

Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins, and B. C. Hill, Defendants.

Comes now the plaintiff, and demurs to the second amended answer of the defendants, Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, and states that the same does not set up facts sufficient to constitute a defense to plaintiff's complaint.

H. H. BROWN,
Attorney for Plaintiff.

Endorsed on back.
Mrs. Ella Adams, et. al.,
vs.

Hugh Wallace, et. al.

Demurrer.

Filed in open Court April 8, 1905.

C. M.CAMPBELL, Clerk.

14 In the United States Court for the Southern District of the Indian Territory at Ardmore.

Mrs. Ella Adams, et. al.,

vs.

Hugh Wallace, et. al.

Demurrer.

Comes now the plaintiff, and demurs to the second amended answer of the defendant, B. C. Hill; and says that the same does not contain any defense to the plaintiff's cause of action.

H. H. BROWN,
Attorney for Plaintiff.

Endorsed on back.
Mrs. Ella Adams, et. al.,
vs.

Hugh Wallace, et. al.

Demurrer.

Filed in open Court April 8, 1905.

C. M.CAMPBELL, Clerk.

15 In the United States Court for the Southern District of the Indian Territory at Ardmore.

Mrs. Ella Adams, for herself and as natural guardian and next friend of Henry McSwain and Roma McSwain, her minor children, Plaintiffs.

vs.

Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins, and B. C. Hill, Defendants.

Judgment.

This day came on to be heard plaintiff's demurrer to the second amended answer of the defendants, Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, and John Perkins, and the Court, being sufficiently advised, said demurrer is hereby sustained; and came on for further hearing the plaintiff's demurrer to the second amended answer of the defendant, B. C. Hill, and the court, being fully advised, the same is sustained, and the said defendants, declining to plead further, it is therefore ordered, adjudged and decreed by the Court that the plaintiff, Mrs. Ella Adams, for herself, and as natural guardian and next friend of Henry McSwain and Roma McSwain, do have and recover of, and from, the Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, and John Perkins, defendants, B. C. Hill, the premises described in plaintiff's complaint. That is to say, the south half of the southeast quarter, and the southeast quarter of the northeast quarter; of the southeast quarter; and the southeast quarter of the southwest quarter; and the north half of the southwest quarter; and the northwest quarter of the southeast quarter; and the southwest quarter of the southwest quarter of section 28, township 2 south, range one west; also the west half of the northwest quarter of the northeast quarter; and the northeast quarter of the northwest quarter; and the northeast quarter of the northwest quarter of section 33, township 2 range one west, all in the Chickasaw Nation, Indian Territory; together with all costs of plaintiff's

herein expended, for which let execution issue.

16 It is further ordered that the money in the hands of the receiver in this case be paid to plaintiff. To which action of the court, in sustaining said demurrer, and in rendering judgment for the plaintiff, the defendants, in open court, except.

17 In the United States Court for the Southern District of the Indian Territory at Ardmore.

Mrs. Ella Adams, for herself and as natural guardian and next friend of Henry McSwain and Roma McSwain, her minor children, Plaintiffs.

vs.

Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins, and B. C. Hill, Defendants

Motion for New Trial.

Come now the defendants herein, and move the court to set aside the judgment herein rendered, and grant them a new trial, for the following reasons:

The court erred in sustaining the demurrer to the second amended answer of Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt and John Perkins.

2d. The court erred in sustaining the demurrer to the second amended answer of the defendant, B. C. Hill.

3d. The Court erred in rendering judgment against the defendants herein

CRUCE, CRUCE & BLEAKMORE,
Attorneys for Defendant.

Endorsed on back.

Mrs. Ella Adams, et. al.,

vs.

Hugh Wallace, et. al.

Motion for new trial.

Filed in open Court April 8, 1905.

C. M. CAMPBELL, Clerk.

18 In the United States Court for the Southern District of the Indian Territory at Ardmore.

Mrs. Ella Adams, et. al.,

vs.

Hugh Wallace, et. al.

Bill of Exceptions.

BE IT REMEMBERED, that at a regular term of the United

States Court for the Southern District of the Indian Territory, at Ardmore, on this the 8th day of April 1905, came on to be heard the demurrer to the second amended answer of the defendant, B. C. Hill, which demurrer was, by the court sustained; to which the defendants excepted. And on the same day, and at the same time, came on to be heard the demurrer to the second amended answer of Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, and John Perkins; which demurrer was, by the court sustained; to which action of the court, the defendants excepted.

And on the same day, the Court rendered judgment for the plaintiffs, to which the defendants excepted. And on the same day, came on to be heard defendant's motion for a new trial, which motion was overruled; to which the defendant excepted. Said motion is in the following words, to wit:

"In the United States Court for the Southern District of the Indian Territory at Ardmore.

Mrs. Ella Adams, et. al.

vs.

Hugh Wallace, et. al.

Motion for a New Trial.

Come now the defendants herein, and move the court to set aside the judgment herein rendered, and grant them a new trial for the following reasons:

The court erred in sustaining the demurrer to the second amended answer of Hugh Wallace, Will Wallace, Verge McGoodwin, Chas Shannon, John Hunt and John Perkins.

2d. The court erred in sustaining the demurrer to the second amended answer of the defendant, B. C. Hill.

3d. The court erred in rendering judgment against the defendants herein.

CRUCE, CRUCE & BLEAKMORE,

Attorneys for Defendants

19 On the same day, the defendants prayed an appeal to the United States Court of Appeals for the Indian Territory, which was granted, and they were given sixty days time in which to file a bill of exceptions.

And now, on this the 17th day of April, 1905, the foregoing is declared to be a correct bill of exceptions in this case, and is ordered to be filed by the Clerk, as a part of the record.

HOSEA TOWNSEND,

Judge.

Endorsed on back.

No. 5982.

Mrs. Ella Adams, et. al.

vs.

Hugh Wallace, et. al.

Bill of Exceptions.

Filed April 17, 1905..

C. M. CAMPBELL, Clerk

20 In the United States Court for the Southern District of Indian Territory at Ardmore.

Mrs. Ella Adams, for herself and as natural guardian and next friend of Henry McSwain and Roma McSwain, her minor children, Plaintiffs.

vs.

Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins, and B. C. Hill Defendants.

Petition for Writ of Error.

And now come Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins and B. C. Hill, defendants herein, and say that on or about the 8th day of April, 1905, this court entered judgment herein, in favor of the plaintiff, and against these defendants, in which judgment and the proceedings had prior thereto in this cause, certain errors were committed, to the prejudice of these defendants, all of which will more in detail appear, from the assignment of errors, which is filed with this petition.

Wherefore these defendants pray that a writ of error may issue in this behalf, out of the United States Court of Appeals for the Indian Territory, for the correction of errors, so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Court of Appeals.

CRUCE, CRUCE & BLEAKMORE,

Attorneys for Defendants

The writ of error as herein prayed for is allowed, and, upon the defendants' giving bond, according to law, in the sum of 500 Dollars the same shall operate as a supersedeas bond.

HOSEA TOWNSEND

Judge of the United States Court for the Southern District of the

Indian Territory.

Endorsed on back.

No. 5982.

Mrs. Ella Adams, et. al.

vs.

Hugh Wallace, et. al.

Petition for Writ of Error and order allowing the same.

21 In the United States Court for the Southern District of the Indian Territory at Ardmore.

Mrs. Ella Adams, et al.

vs.

Hugh Wallace, et. al.

Assignment of Error.

The defendants, in connection with their petition for a writ of error, make the following assignment of error, which they aver occurred upon the trial of the cause, to wit:

The Court erred in sustaining the demurrer to the second amended answer of Hugh Wallace, Will Wallace, Verge McGoodwin, Chas Shannon, John Hunt and John Perkins.

2d. The Court erred in sustaining the demurrer to the second amended answer of the defendant, B. C. Hill.

3d. The Court erred in rendering judgment for the plaintiff and against the defendants herein.

4th. The Court erred in overruling defendants motion for a new trial.

Wherefore the defendants pray that the judgment of the United States Court for the Southern District of the Indian Territory may be reversed.

CRUCE, CRUCE & BLEAKMORE,
Attorneys for Defendants

Endorsed on back.

No. 5982.

Mrs Ella Adams, et. al.

vs.

Hugh Wallace, et. al.

Assignment of Error.

22 In the United States Court for the Southern District of the Indian Territory at Ardmore.

United States of America,
Southern District,

Indian Territory—ss.

The President of the United States,

To the Honorable Judge of the United States Court for the Southern District of the Indian Territory, Greeting:—

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said District Court before you between Mrs Ella Adams, for herself and as natural guardian and next friend of Henry McSwain and Roma McSwain, her minor children, plaintiffs, and Hugh Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins and B. C. Hill, defendants, a manifest error has happened, to the great damage of the said defendants, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done, to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning same, to the United States Court of Appeals for the Indian Territory, together with this writ, so that you have the same at South McAlester, in the said Indian Territory, on or before sixty days from the date hereof, in the said United States Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said United States Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Mellville W. Fuller, Chief Justice of the United States, this the 24th day of April, 1905.

Witness my hand and seal, as Clerk of said Court.

C. M. CAMPBELL,
Clerk of the U. S. Court for the Southern District of I. T.

Allowed by

HOSEA TOWNSEND,

Judge of said Court.

Endorsed on back.

No. 5982.

Mrs. Ella Adams, et. al.

vs.

Hugh Wallace, et. al.

Writ of Error.

23 In the United States Court for the Southern District of the

Indian Territory at Ardmore.

United States of America,

Southern District,

Indian Territory.

Citation in Error.

To Mrs. Ella Adams, for yourself, and as next friend and natural guardian of Henry McSwain and Roma McSwain, Greeting:—

You are hereby cited and admonished to be and appear at a session of the United States Court of Appeals for the Indian Territory, to be holden in the City of South McAlester, in said Territory, on or before sixty days from date hereof, pursuant to a writ of error filed in the Clerk's office of the United States Court for the Southern District of the Indian Territory, wherein Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins and B. C. Hill, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Hosea Townsend, Judge of the United States Court for the Southern District of the Indian Territory, this 24th day of April, 1905.

HOSEA TOWNSEND,

Judge of the United States Court for the Southern District of Indian Territory.

I, H. H. Brown, attorney of record for the within named Ella Adams, Henry McSwain, and Roma McSwain, plaintiffs in the original suit, and defendants in error, hereby accept service of the within citation, and waive all further notice in the premises.

H. H. BROWN,

Attorney for Defendant in Error.

Endorsed on back.

No. 5982.

Mrs. Ella Adams, et. al.

vs.

Hugh Wallace.

Citation in Error.

24. The United States of America,
Southern Judicial District
of the

Indian Territory.

In pursuance of the command of the writ of error within, I, C. M. Campbell, Clerk of the United States Court, Southern District, Indian Territory, do herewith transmit a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in the case of Ella Adams et al vs. Hugh Wallace, lately pending in the United States Court for the Southern District of the Indian Territory at Ardmore, under my hand and seal of said Court.

Witness my official signature, and the seal of said Court at the city of Ardmore, in said District, this 26th day of April, in the year of our Lord, One Thousand, Nine Hundred and Five and of the Independence of the United States of America, the One Hundred and Twenty-Eighth.

(Seal)

C. M. CAMPBELL,

Clerk United States Court, Southern District, Indian Territory.
No. 626.

HUGH WALLACE, ET. AL., Appellants.

vs.

MRS. ELLA ADAMS, ET. AL., Appellees.

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

Apr. 28, 1905.

W. P. FREEMAN, Clerk.

21 And afterwards, to-wit: on the 15th day of June, A. D. 1905, the Appellants filed their motion to have this cause decided at the June Term, 1905, of the Court of Appeals in the Indian Territory, which said motion is in words and figures following, to-wit:

In the United States Court of Appeals for the
Indian Territory,
June Term, 1905.

Hugh Wallace, et al, Appellants,
No. 626. vs. Motion.
Mrs. Ella Adams, et al, Appellees.

The appellants state that living in the Choctaw and Chickasaw Nations are nearly three thousand people claiming rights similar to those insisted upon by the appellants in this case, and whose contentions will be determined by the judgment herein. It is desirable to get the judgment of the Supreme Court upon the questions involved in this case, and the appellants therefore respectfully request this Court to decide this case at its present sitting.

CRUCE, CRUCE and BLEAKMORE,
Attorneys for Appellants.

Endorsed: No. 626. Hugh Wallace, et al, Appellants, vs. Mrs. Ella Adams, et al, Appellees. United States Court of Appeals, June Term, 1905. Motion. Filed in the office of Clerk of U. S. Court of Appeals, Ind. Ter., June 15, 1905. Wm P. Freeman, Clerk.

And afterwards, to-wit: on the 16th day of June, A. D. 1905, said United States Court of Appeals in the Indian Territory handed down in its opinion in said cause, which is in the words and figures following, to-wit:

22 In the United States Court of Appeals in the
Indian Territory.

Hugh Wallace, et al, Appellants,
No. 626. vs.
Ella Adams, et al, Appellees.

Appeal from the United States Court for the Southern District of the Indian Territory, Hon. Hosea Townsend, Judge presiding.

Cruce, Cruce & Bleakmore, for Appellants.

H. H. Brown, for Appellees.

Per Curiam:

The main question presented by this appeal is one involving the constitutionality of sections 31, 32 and 33, of the Act of Congress of July 1, 1902. These sections are as follows:

It being claimed and insisted by the Choctaw and Chickasaw nations that the United States courts in the Indian Territory, actig under the Act of Congress approved June 10, 1896, have admitted persons to citizenship or enrollment as such citizens in the Choctaw and Chickasaw nations respectively, without notice of the proceedings in such courts being given to each of said nations; and it being insisted by said nations that, in such proceedings, notice to each of said nations was indispensable, and it being claimed and insisted by said nations that the proceedings in the United States courts in the Indian Territory, under the said Act of June 10, 1896, should have been confined to a review of the action of the Commission to the Five Civilized Tribes, upon the papers and evidence submitted to such commission, and should not have extended to a trial de novo of the question of citizenship; and it being desirable to finally determine these questions, the two nations,

23 jointly, or either of said nations acting separately and making the other a party defendant, may, within 90 days after this agreement becomes effective, by a bill in equity filed in the Choctaw and Chickasaw citizenship court hereinafter named, seek the annulment and vacation of all such decisions by said courts. Ten persons so admitted to citizenship or enrollment by said courts, with notice to one but not to both of said nations, shall be made defendants to said suit as representatives of the entire class of persons similarly situated, the number of such persons being too numerous to require all of them to be made individual parties to the suit; but any person so situated may, upon his application, be made a party defendant to the suit. Notice of the institution of said suit shall be personally served upon the chief executive of the defendant nation, if either nation be made a party defendant as aforesaid, and upon each of said ten representative defendants, and shall also be published for a period of four weeks in at least two weekly newspapers having general circulation in the Choctaw and Chickasaw nations. Such notice shall set forth the nature and prayer of the bill, with the time for answering the same, which shall not be less than thirty days after the last publication. Said suit shall be determined at the earliest practicable time, shall be confined to a final determination of the questions of law here named, and shall be without prejudice to the determination of any charge or claim that the admission of such persons to citizenship or enrollment by

said United States courts in the Indian Territory was wrongfully obtained as provided in the next section. In the event said citizenship judgments or decisions are annulled or vacated in the test suit herebefore authorized, because of either or both of the irregularities claimed and insisted upon by said nations as aforesaid, then the files, papers and proceedings in any citizenship case in which the judgment or decision is so annulled or vacated, shall, upon written application therefore, made within ninety days thereafter by any party thereto, who is thus deprived of a favorable judgment upon his claimed citizenship, be transferred and certified to said citizenship court by the court having custody and control of such files, papers and proceedings, and, upon the filing in such citizenship court of the files, papers and proceedings in any such citizenship case, accompanied by due proof that notice in writing of the transfer and certification thereof has been given to the chief executive officer of each of said nations, said citizenship case shall be docketed in said citizenship court, and such further proceedings shall be had therein in that court as ought to have been had in the court to which the same was taken on appeal from the Commission to the Five Civilized Tribes, and as if no judgment or decision has been rendered therein.

Said citizenship court shall also have appellate jurisdiction over all judgments of the courts in Indian Territory rendered under said Act of Congress of June tenth, eighteen hundred and ninety-six, admitting persons to citizenship or to enrollment as citizens in either of said nations. The right of appeal may be exercised by the said nations jointly or by either of them acting seperately at any time within six months after this agreemnt is finally ratified. In the exercise of such appellate jurisdiction said citizenship court shall be authorized to consider, review and revise all such judgments, both as to findings of fact and conclusions of law, and may, wherever in its judgment substantial justice will thereby be subserved, permit either party to any appeal to take and present such further evidence as may be necessary to enable said court to determine the very right of the controversy. And said court shall have power to make all needful rules and regulations prescribing the manner of taking and conducting said appeals and of taking additional evidence therein. Such citizenship court shall also have like appellate jurisdiction and authority over judgments rendered by such courts under the said act denying claims to citizenship, or to enrollment as citizens, in either of said nations. Such appeals shall be taken within the time herebefore specified and shall be taken, conducted

and disposed of in the same manner as appeals by the
 25 said nations, save that notice of appeals by citizenship claimants shall be served upon the chief executive officer of both nations. Provided, that paragraphs thirty-one, thirty-two and thirty-three hereof shall go into effect immediately after the passage of this Act by Congress.

A court is hereby created, to be known as the Choctaw and Chickashaw Citizenship Court, the existence of which shall terminate upon the final determination of the suits and proceedings named in the last two preceding sections, but in no event later than the thirty-first day of December, nineteen hundred and three. Said court shall have all authority and power necessary to the hearing and determination of the suits and proceedings so committed to its jurisdiction, including the authority to issue and enforce all requisite writs, process and orders, and to prescribe rules and regulations for the transaction of its business. It shall also have all the powers of a Circuit Court of the United States in compelling the production of books, papers and documents, the attendance of witnesses and in punishing contempt. Except where herein otherwise expressly provided, the pleadings, practice and proceedings in said court shall conform, as near as may be, to the pleadings, practice and proceedings in equity cases in the Circuit Courts of the United States. The testimony shall be taken in court or before one of the judges so far as practicable. Each judge shall be authorized to grant, in vacation or recess, interlocutory orders and to hear and dispose of interlocutory motions not affecting the substantial merits of the case. Said court shall have a chief judge and two associate judges, a clerk, and a bailiff. The judges shall be appointed by the President, by and with the advice and consent of the Senate, and shall each receive a compensation of five thousand dollars per annum, and his necessary and actual traveling and personal expenses while engaged in the performance of his duties. The clerk, stenographer and bailiff shall be appointed by the judges, or a majority
 26 of them, and shall receive the following yearly compensation; Clerk, two thousand four hundred dollars; stenographer, twelve hundred dollars; bailiff, nine hundred dollars. The compensation of all these officers shall be paid by the United States in monthly installments. The moneys to pay said compensations are hereby appropriated, and there is also hereby appropriated the sum of five thousand dollars, or so much thereof as may be necessary, to be expended under the direction of the Secretary of

the Interior, to pay such contingent expenses of said court and its officers as to such Secretary may seem proper. Said court shall have a seal, shall sit at such place or places in the Choctaw and Chickasaw nations as the judges may designate, and shall hold public sessions, beginning the first Monday in each month, so far as may be practicable or necessary. Each judge and the clerk and deputy clerk shall be authorized to administer oaths. All writs and process issued by said court shall be served by the United States marshal for the district in which the service is to be had. The fees for serving process and the fees of witnesses shall be paid by the party at whose instance such process is issued or such witnesses are subpoenaed, and the rate or amount of such fees shall be the same as is allowed in civil causes in the Circuit Court of the United States for the Western District of Arkansas. No fees shall be charged by the clerk or other officers of said court. The clerk of the United States Court in Indian Territory having custody and control of the files, papers and proceedings in the original citizenship cases, shall receive a fee of two dollars and fifty cents for transferring and certifying to the Citizenship Court the files, papers and proceedings in each case, without regard to the number of persons whose citizenship is involved therein, and said fee shall be paid by the person applying for such transfer and certification. The judgment of the Citizenship Court in any or all of the suits or proceedings so committed to its jurisdiction shall be final. All expenses necessary to the proper conduct, on behalf of the nations, of the suits and proceedings provided for in this and the two preceding sections shall be
 27 incurred under the directions of the executives of the two nations, and the Secretary of the Interior is hereby authorized, upon certificate of said executives, to pay such expenses as in his judgment are reasonable and necessary out of any of the joint funds of said nations in the Treasury of the United States.

This court, after examination of the record, is of opinion Congress had the power to enact the provisions above set out and they are not in conflict with the Constitution of the United States, and the opinion of the Court below is, therefore, affirmed.

Townsend, J., did not sit in the cause.

Endorsed: No. 626. Filed in the office of Clerk of U. S. Court of Appeals, Ind. Ter., June 16, 1905. Wm. P. Freeman, Clerk.

Upon which opinion the said Court rendered and caused to be entered the following judgment in said cause, to-wit:

Hugh Wallace, et al, Appellants,
vs.

Mrs. Ella Adams, et al, Appellees.

Appeal from United States Court Southern District, Indian Territory.

This cause came on to be heard upon the transcript of the record of the United States Court for the Southern District of the Indian Territory and was argued by counsel, on consideration whereof it is the opinion of the court that there is no error in the proceedings and judgment of said court for the Southern District in this cause.

28 It is therefore considered by the court that the judgment of said Court for the Southern District, in this cause rendered, be and the same is hereby in all things affirmed with costs.

It is further considered that said appellees recover of said appellants all their costs in this court in this cause expended, and have execution thereof.

And afterwards, to-wit: on the 7th day of August, said appellants filed in the office of the Clerk of the said Court their petition for a writ of error, which, with endorsements thereon, is in the words and figures following, to-wit:

In the United States Court of Appeals for the Indian Territory.

Petition for Writ of Error.

Mrs. Ella Adams for herself, and as Natural Guardian and next Friend of Henry McSwain and Roma McSwain her minor children, Plaintiffs,

vs.

Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins and C. B. Hill, Defendants.

And now comes Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins and B. C. Hill, defendants below and appellants herein, and say that on or about the 16th day of June, 1905, this court entered judgment herein, in favor of the plaintiffs, appellees, and against the defendants, appellants, affirming the judgment of the trial court, in which judgments and the proceedings had prior thereto in this cause, certain errors were committed, to the prejudice of these defendants, appellants, all of which will in more detail appear, from the assignment of errors filed with this petition.

Wherefore these defendants pray that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Eighth Circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said United States Circuit Court of Appeals.

CRUCE, CRUCE and BLEAKMORE,
Attorneys for Appellants.

Writ of Error allowed this 7th day of August, A.D. 1905, and cost bond fixed at Five Hundred Dollars.

WM. H. H. CLAYTON,
Associate Justice United States Court of Appeals
in the Indian Territory.

Endorsed: Mrs. Ella Adams, et al vs. Hugh Wallace, et al. Petition for writ of error. Filed in the office of Clerk of U. S. Court of Appeals Ind. Ter., Aug. 7, 1905. Wm. P. Freeman, Clerk.

And afterwards, to-wit: on said 7th day of August said appellants filed in the office of the Clerk of said court their assignments of error in said cause, which is in the words and figures following, to-wit:

In the United States Court of Appeals for the Indian Territory.

Assignment of Errors.

Mrs. Ella Adams, et al,
vs.
Hugh Wallace, et al.

The appellants, in connection with their petition for a writ of error, make the following assignments of error, which they aver occurred in the hearing of this cause, to-wit:

1st. The trial court erred in sustaining the demurrer to the second amended answer of Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt and John Perkins.

2nd. The trial court erred in sustaining the demurrer to the second amended answer of the defendant B. C. Hill.

3rd. The trial court erred in rendering judgment for the plaintiffs and against the defendants.

4th. The trial court erred in overruling the defendant's motion for a new trial.

5th. The United States Court of Appeals for the Indian Territory erred in affirming the judgment of the trial court.

Wherefore appellants pray that the judgment of the United States Court of Appeals for the Indian Territory, as well as the judgment of the United States Court for the Southern District of the Indian Territory may be reversed.

CRUCE, CRUCE and BLEAKMORE,
Attorneys for Appellants.

Endorsed: Mrs. Ella Adams, et al, vs. Hugh Wallace, et al. Assignment of errors. Filed in the office of Clerk of U. S. Court of Appeals, Ind. Ter., Aug. 7, 1905. Wm. P. Freeman, Clerk.

31 And afterwards, to-wit: on the 9th day of August, said appellants filed in the office of the Clerk of said court their cost bond in said cause, which is in the words and figures following, to-wit:

In the United States Court of Appeals for the Indian Territory.
Hugh Wallace, et al,
Noo. 626. vs.
Mrs. Ella Adams, et al.

Know all men by these presents: That we, Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins, B. C. Hill and Lee Cruce are held and firmly bound unto Mrs. Ella Adams, for herself and as natural guardian and next friend of Henry McSwain and Roma McSwain, in the full and just sum of Five Hundred Dollars (\$500), to be paid to the said Mrs. Ella Adams, her heirs, executors, administrators and assigns, to which payment well and truly to be made, we bind ourselves, heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 8th day of August, 1905.

Whereas, lately at the June 1905 term of the United States Court of Appeals for the Indian Territory in a suit depending in said court between Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins, B. C. Hill, appellants and Mrs. Ella Adams, for herself and as natural guardian and next friend of Henry McSwain and Roma McSwain, her minor children, appellees, judgment was rendered against the appellants, and the said appellants have obtained a writ of error in the said court to reverse the
32 judgment in the aforesaid suit, and a citation, directed to the said Mrs. Ella Adams, citing her to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the date of said citation.

Now, the condition of the above obligation is such that if the said Hugh Wallace, Will Wallace, Verge McGoodwin, Chas. Shannon, John Hunt, John Perkins, and B. C. Hill shall prosecute said writ of error to effect and answer all damages and costs if they fail to make good their plea then the above obligation to be void, else to remain in full force and effect.

Signed and sealed in the presence of

HUGH WALLACE,
WILL WALLACE,
VERGE McGOODWIN,
CHAS. SHANNON,
JOHN HUNT,
JOHN PERKINS,
B. C. HILL,
By W. I. CRUCE, Atty.
LEE CRUCE.

Approved by:

WM. H. H. CLAYTON,
Associate Justice U. S. Court of Appeals, I. T.

Endorsed: No. 626. Hugh Wallace, et al, Appellants, vs. Mrs. Ella Adams et al, Appellees. Cost Bond. Filed in the office of Clerk of U. S. Court of Appeals, Ind. Ter., Aug. 9, 1905. Wm. P. Freeman, Clerk.

33 United States of America,
Indian Territory,
In the Court of Appeals—ss.

I, William P. Freeman, Clerk of the United States Court of Appeals in the Indian Territory, do hereby certify that the foregoing is a full, true and complete transcript of the record and proceedings, together with all things concerning the same, of the said Court, in the cause therein named, as fully as the same remains of record and on file in my office.

Seal
United States
Court of Appeals,
in the
Indian Territory.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court, at office in the city of South McAlester, Indian Territory, this 10th day of August, A. D. 1905.

WM. P. FREEMAN,
Clerk United States Court of Appeals
in the Indian Territory.

Filed Aug. 21, 1905.

JOHN D. JORDAN, Clerk.