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—IN THE—  
United States Court of Appeals  
FOR THE INDIAN TERRITORY.

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NO. 388.

HENRY L. DAWES, ET AL, APPELLANTS,

VS.

MRS. REBECCA HARRIS, ET AL, APPELLEES.

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Appeal from the United States Court at South McAlester for  
the Central District of the Indian Territory.

HON. W. H. H. CLAYTON,

Presiding Judge.

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BRIEF ON BEHALF OF APPELLEES.

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J. G. RALLS.

Attorney for the Appellees.

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STATEMENT OF THE CASE.

The appellants having failed to correctly state the case, it becomes my duty to make a brief statement, in order that the Court may understand the situation of this case.

The Appellee, Rebecca Harris, is an own daughter of old Ex-Chief Greenwood LeFlore, who signed the treaty between the United States and the Choctaw Nation, made in 1830, and known as the Treaty of "Dancing Rabbit Creek". The other Appellees are sons and daughters-in-law and grandchildren of Rebecca Harris.

On the — day of August, 1896, the appellees, except



some of the infants and filed their petition with the Commission to the Five Civilized Tribes, asking to be admitted and enrolled as members of the Choctaw tribe of Indians. The Choctaw Nation filed its answer, and on the 2nd day of December, 1896, the Commission rendered a judgment, denying the appellees, from which judgment they appealed to the United States Court at South McAlester, in the Central District of the Indian Territory.

The Choctaw Nation was duly notified of such appeal, and appeared and answered in the United States Court, and on the 24th day of August, 1897, the cause came on for trial, and the plaintiffs appeared in person, and the Choctaw Nation appeared by its attorneys. The Court, after hearing the evidence and argument of counsel, rendered a decree in favor of the appellees herein, except those that have been born since said judgment. (T. R. p. 3. ); from this judgment no appeal was ever taken, and the judgment remains in full force and effect.

In the month of August, 1899, while the Commission to the Five Civilized Tribes was in session in the town of Caddo, in the Choctaw Nation, the appellees appeared and demanded to be enrolled, and the Commission refused to enroll the appellees; and refused to obey the decree of the United States Court, and this suit is brought to compel the Commission to enroll the appellees, in obedience to said decree. (T. R. pp. 3 & 4.)

A copy of the decree admitting the appellees to citizenship is to be found on pp 6 and 7 of the transcript.

All of the appellees herein were admitted by said decree, except Robert A. Harris, born April 27th, 1897, and Le-Flore A. Harris, born January 21st, 1900, and both the children of W. L. Harris and wife, Lucile Harris, and Valeria

Harris, born 1898 and the daughter of J. C. Harris and wife, Alma Harris. The defendants filed their joint demurrer to the appellees' petition; and the Choctaw and Chickasaw Nations, filed a joint motion, asking to be made, parties to the action, (T. R. pp 13, 14, 15 and 16. ) both of which were, by the Court, overruled. (T. R. p. 17. ) The defendants refused to plead further, after the overruling of their demurrer, and the Court rendered a judgment in favor of the appellees, directing the defendants to enroll them, from which judgment this appeal is prosecuted. (T. R. pp. 19 and 20. )

Attorneys for appellants have seen fit, in their brief to charge the appellees with having perpetrated a grievous wrong upon the Nations; and they have seen fit to further charge that these wrongs were perpetrated by judicial machinery. These assertions are altogether out of place,—have no foundation in fact. If the attorneys for the appellants had been present at the commencement of the citizenship litigation, they would have realized that these Nations were represented by attorneys of unquestioned ability and integrity. The Choctaw Nation was represented by Hon. C. B. Stewart, ex-United States Judge for the Indian Territory, J. H. Gordon and W. E. Hailey; they were assisted by Josiah Gardner, a Choctaw lawyer, and they had to assist them in the work, a committee, composed of Hon. Simon E. Lewis and Judge Alex Durant. They with Josiah Gardner, are noted for their acquaintance with the Choctaw people, and are recognized as being the best qualified men in the Choctaw Nation, when it comes to the question of citizenship.

When the Commission to the Five Civilized Tribes opened its offices at Vinita, for the filing of applications, it prescribed rules and regulations requiring among other things,



that the applicants should deliver to the Governor or Principal Chief of the Nation in which citizenship was sought, true copies of all papers filed, and that the receipt for such papers from the Governor or Principal Chief, should be attached to the papers filed for such applicant. The Governor and Principal Chief, thinking to defeat the just rights of many claimants, refused to receive or receipt for any papers, and the Commission was, therefore, compelled to establish another rule, and it then provided that the papers might be registered to such Chief or Governor, and the affidavit, with the registered receipt attached, should be attached to the applicant's papers; or that the papers might be delivered to the attorneys of record and the receipt of such attorneys attached to the papers. This was done in all instances. The Commission set days for argument and in October 1896, the Choctaw and Chickasaw Nations were ably represented in the oral argument, and the strongest argument I have ever heard made on behalf of the Choctaw Nation was made before the Commission at Vinita, by the Hon. C. B. Stewart, Gen. Paine and W. B. Johnson, present U. S. Attorney for the Southern District, represented the Chickasaw Nation, and their argument was one that covered all the propositions that have ever been raised in this Nation.

The Commission decided that the Act of Congress providing for it to hear and determine questions of citizenship was valid; that its manner of procedure was valid; and the United States Courts all sustained the Commission, and the Supreme Court of the United States affirmed these findings.

The attorneys for the appellants failed to distinguish the difference between the judgments admitting the various persons to citizenship, and judgments for property or money.

The judgments in these actions do not purport to judge any property rights in favor of the appellants or against the defendants—the question being strictly citizenship or not citizenship.

The Act of Congress conferring jurisdiction upon the Commission and giving the right of appeal from the judgment of the Commission, did not provide for service of notice upon either Governor or Principal Chief. In fact, it has never been the custom or practice of the Department of the Interior to notify the Indian Authorities of applications for citizenship, but the Department has, in cases of allotting land and paying out money, universally prepared the rolls *ex parte* and without notice to the Tribes.

At the time Congress gave the Commission jurisdiction to hear and determine matters of citizenship, there was no law or treaty providing for the allotment of lands. Since the Commission rendered its judgments and since, the United States affirmed its judgments, and admitted other persons on appeal, the Choctaw and Chickasaw Nations have entered into an agreement with the United States, and by that agreement they have ratified the action of the Commission and the United States Courts in admitting persons to citizenship, and are now estopped from denying the validity of their acts; and by virtue of that agreement all members of the tribe are entitled to have lands allotted to them; the Indians and intermarried citizens taking an equal share, and the freedmen taking 40 acres.

The question of receiving lands or monies is a mere incident to the question of citizenship. The Government has always treated the Choctaw and Chickasaw Nations as distinct nations, and the questions of citizenship has been controlled



by these Nations independent of each other. It has always been the custom for these Nations prior to the act of June 10th, 1896, to proceed ex parte upon applications for citizenship.

In conclusion; we submit the that we are unable to see how injustice could be done by admitting a Choctaw Indian by blood to rights in the Choctaw Nation.

Very respectfully submitted,

J. G. RALLS,

Counsel for Appellees.