

*Print dictated
Sept 6th, 1901*

No. 389.

TRANSCRIPT OF RECORD.

UNITED STATES COURT OF APPEALS FOR THE INDIAN TERRITORY.

HENRY L. DAWES ET AL., Appellants,

vs.

EUGENE R. BENSON ET AL., Appellees.

APPEAL FROM THE UNITED STATES COURT FOR THE CENTRAL
DISTRICT, SITTING AT SOUTH M'ALESTER, I. T.

FILED JUNE 19TH, 1901.

UNITED STATES COURT OF APPEALS FOR THE INDIAN TERRITORY.

No. 389.

HENRY L. DAWES ET AL., Appellants,

vs.

EUGENE R. BENSON ET AL., Appellees.

APPEAL FROM THE UNITED STATES COURT FOR THE CENTRAL
DISTRICT, SITTING AT SOUTH M'ALESTER, I. T.

OCTOBER TERM, 1901.

FILED JUNE 19TH, 1901.

INDEX.

	Original Page.	Printed Page.
Complaint at Law.....	1	1
Affidavit of Eugene R. Benson	6	5
Notice of Motion for Writ of Mandamus	9	7
Motion for Writ of Mandamus	12	9
Demurrer to Complaint.....	13	10
Motion to Make Parties Defendant.....	15	11
Record Entries	16	12
Order Granting Writ.....	17	12
Clerk's Certificate.....	20	14

1 United States of America,
 Indian Territory,
 Central District.

Pleas in the United States Court for the Central District of the Indian Territory, at South McAlester, in a cause therein pending, before the Hon. William H. H. Clayton, judge of said court, wherein Eugene R. Benson, Mrs. Ella A. Benson, and Bessie Benson and Geo. R. Benson, minors, by their father, Eugene R. Benson, as next friend, are plaintiffs, and Henry L. Dawes, Tams Bixby, Archibald S. McKennon, and Thomas B. Needles, as commission to the five civilized tribes, are defendants, and numbered 2600 on the law docket of said court.

On June 6th, 1900, there was filed in the office of the clerk of said court, the complaint of the plaintiffs herein, in words and figures following, to-wit:
(Caption Omitted.)

Complaint at Law.

To the Honorable William H. H. Clayton, Judge United States Court for the Central District of the Indian Territory.

Your petitioners, Eugene R. Benson, aged 48, and his wife, Ella A. Benson, aged —, and their minor children, Bessie Benson, aged 3 years, and Geo. R. Benson, aged 2 months, by their father as their next friend, most respectfully represent that they are all entitled to be enrolled as members of the Choctaw tribe of Indians.

Your petitioners show that heretofore, to-wit, on the 20th day of May, 1885, your petitioner, Eugene R. Benson, procured from the proper authorities of the Choctaw Nation, a marriage license to
2 marry one Eliza Powell, who was then and there a single woman and a Choctaw Indian by blood, and

duly enrolled and recognized as such, and that thereafterwards, to-wit, on the — day of May, 1885, he was duly and legally married to said Eliza Powell, and that in procuring the said marriage license and in the marriage ceremony, the laws of the Choctaw nation were fully complied with in all respects, and that by reason of such marriage the petitioner, Eugene R. Benson, became a member, by intermarriage of the Choctaw tribe of Indians, and is now entitled to be enrolled as such.

Your petitioners further show that on the 25th day of May, 1896, the said Eliza Benson, nee Powell, died, and that thereafter, to-wit, on the 12th day of July, 1896, your petitioner, Eugene R. Benson, was duly and legally married to Ella Ann Fields, one of the petitioners herein, and that the said Ella Ann Fields was then and there a resident of the Choctaw nation, and a white woman, and your petitioners show that there were born to said Ella Ann Benson, nee Fields, by her marriage to the said Eugene R. Benson, two children, to-wit, Bessie Benson, born June 12th, 1897, and George R. Benson, born April 12th, 1900.

Your petitioners further show that on the 7th day of September, 1896, and within the time prescribed by law, your petitioner, Eugene R. Benson, filed with the commission to the five civilized tribes, his application to be enrolled as a member by intermarriage of the Choctaw tribe of Indians, and that he duly notified the Choctaw nation of said application, and that the Choctaw nation thereafterwards, to-wit, on the — day of October, 1896, appeared and filed its answer before said commission and that thereafterwards, to-wit, on the 2nd day of December, 1896,

3 your petitioner's application, with the testimony in support thereof, and the defendant's answer, the defendants having filed no testimony, came on for hearing before said commission, and that said commission, after due consideration, rendered a judgment in favor of said petitioner, admitting him as a member, by intermarriage of the Choctaw Tribe of Indians, and that said judgment is in full force and effect, and no appeal has been taken from said judgment, and that the said judgment is in due form as kept by said commission, and is entered upon a book kept by said commission for the said purpose, which judgment book, showing the judgment in favor of your petitioner, is now in the hands and under the control of the above named defendants, as the commissioners to the five civilized tribes.

Your petitioners represent that the above named defendants, or a majority of them, are now to be found within the central district of the Indian Territory, and within the jurisdiction of this court, and that the said defendants are the present and only members of the commission to the five civilized tribes, and that said commission is authorized and directed by the laws of the United States to enroll all persons entitled to membership in the Choctaw Tribe of Indians, and that the duty of the said commission in making the roll and taking a description of members is purely ministerial, and the facts herein set forth and mentioned are admitted and are not in dispute.

Your petitioners allege that the defendants refuse to enroll your petitioners, or either of them, and deny the right of your petitioners to be enrolled, basing their action, as your petitioners are informed and believe, upon a question of law, to-wit: Said commissioners claim that the petitioner, Eugene R. Benson, forfeited
4 his right to citizenship by his marriage to the petitioner, Ella Ann Benson, nee Fields, and the said commissioners claim that by said marriage the said petitioner, Ella Ann Benson, did not become entitled to citizenship, and said commissioners claim that the children of the petitioners, Eugene R. Benson and Ella A. Benson, are not entitled to be enrolled as members of the Choctaw Tribe of Indians, for the reason that they have no Choctaw blood.

Your petitioners show that they are informed and believe that the admission of the petitioner, Eugene R. Benson, as a member by intermarriage of the Choctaw Tribe of Indians, and the failure of the Choctaw Nation to appeal from said judgment, is an adjudication of the then existing facts, and that said defendants have no right in law to refuse to enroll the said Eugene R. Benson by reason of his said marriage to the petitioner, Ella Ann Fields, the said marriage having occurred prior to the filing of the petition of the said Eugene R. Benson for admission and enrollment before the commission to the five civilized tribes on the 7th day of September, 1896.

Your petitioners show that they are informed and believe that by reason of the fact that the said Eugene R. Benson was a member of the Choctaw Tribe of Indians by virtue of his marriage to the said Eliza Powell, his marriage to the petitioner, Ella Ann Benson, nee Fields, conferred citizenship upon the said Ella Ann Benson, and that the petitioners, Bessie Benson and Geo. R. Benson, having been

born after the admission of the said Eugene R. Benson to citizenship, are entitled in law, to be placed upon the roll as members of the Choctaw tribe of Indians.

Your petitioners further show that they have no other remedy in law or equity and that the only remedy they have is by the writ of mandamus, and that in order to be protected in the allotment of
5 lands and the distribution of moneys belonging to the Choctaws and Chickasaws it is necessary that they be enrolled as members of the Choctaw tribe of Indians, and that if said commission does not enroll them as such they will be deprived of their proportionate share of lands and moneys, which would greatly damage your petitioners, which shares, your petitioners, to be worth to each of your petitioners the sum of ten thousand dollars or more.

Your petitioners further show that the petitioner, Eugene R. Benson, appeared before the above named defendants while at the town of Durant, in the Choctaw Nation, of the Indian Territory, and while said defendants were sitting for the purpose of enrolling members of the Choctaw tribe of Indians, and to take a description of them, and that said commission then and there identified him as the identical Eugene R. Benson admitted by the commission to the five civilized tribes, and then and there placed the petitioner, Eugene R. Benson, upon the temporary roll being prepared by said commissioners, and at the same time the said Eugene R. Benson made application and request of the said commission to enroll his child, Bessie Benson, which request was refused and denied, and that afterwards, to-wit, on the — day of June, 1900, while the said defendants were in the town of Atoka, in the Choctaw Nation of the Indian Territory, for the purpose of hearing applications for enrollment, the petitioner, Ella Ann Benson, appeared before said commissioners, and asked to be enrolled, which was denied, and the petitioner, Eugene R. Benson, appeared before said commissioners at the same date and at the same place, and asked to have enrolled his child, Geo. R. Benson, which request was refused and denied, and your petitioners also show that the said commissioners have notified the petitioner, Eugene R. Benson, that his name has been stricken from the roll, and will
6 not appear upon the final roll and that the said commissioners are now refusing to enroll either of the petitioners herein.

Petitioners attach hereto a copy of the judgment of the commission, admitting your petitioner, Eugene R. Benson, and also a copy of the marriage license and certificate, showing the marriage of the petitioner, Eugene R. Benson, and the petitioner, Ella Ann Benson, nee Fields.

Wherefore, your petitioners pray a writ of mandamus to be directed to the said defendants as commissioners to the five civilized tribes, directing them, and each of them, to enroll your petitioners as herein set out, and your petitioners will ever pray, as they are in duty bound.

Endorsed: 2600.

Eugene R. Benson, et al.,

vs.

Henry L. Dawes et al., Commissioners.

Petition for Writ of Mandamus.

Filed June 6, 1900.

E. J. FANNIN,
Clerk, Cent. Dist. I. T.

J. G. RALLS,
Atty. for Pltff.

Affidavit of Eugene R. Benson.

(Caption Omitted.)

Be It Remembered, That on this day personally appeared before me, the undersigned authority, Eugene R. Benson, who having been by me first duly sworn, according to law, states on oath that he is 48 years of age, and is one of the above named petitioners; that Mrs. Ella A. Benson is his lawful wife, to whom he was lawfully married on the 12th day of July 1896; that at the time of their marriage the said

7 Ella A. Benson was a white woman, and a citizen of the United States, and a resident of the Choctaw nation, and had been such resident for more than two years prior to their said marriage; that at the time of said marriage, affiant was a member of the Choctaw tribe of Indians by virtue of having, on the 20th day of May, 1885, been duly and lawfully married, under the laws of the Choctaw nation, to a Choctaw Indian woman by blood.

Affiant further states that the petitioners, Bessie Benson and George R. Benson are his children by his wife, Ella A. Benson, that the said Bessie Benson was born on the 12th day of June, 1897, and the said George R. Benson was born on the 12th day of April, 1900.

Affiant further states that he has appeared before the

defendants herein, while said defendants were acting as commissioners to the five civilized tribes, and demanded and requested the enrollment of himself, his wife and his two minor children, and that said commission refused and still refuse to enroll the plaintiffs.

Affiant further states that the Choctaw woman to whom he was married on the 20th day of May, 1885, died on the 25th day of May, in the year 1896, and that his marriage to his present wife was after the death of said Choctaw wife.

Affiant further states that on the 7th day of September, 1896, he filed his application with the commission to the five civilized tribes to be enrolled as a member by intermarriage of the Choctaw tribe of Indians, and that the Choctaw Nation appeared and filed its answer; and that after due consideration, the said commission did, on the 2nd day of December, 1896, render a judgment in favor of affiant, admitting him as a member by intermarriage of the Choctaw tribe of Indians.

Affiant further states that no appeal has been taken from said judgment of said commission, and the same is in full force and effect, and has been in no wise modified.

Affiant further states that he is informed and believes that the said defendants, acting as the commission to the five civilized tribes, are not permitted in law to go behind or ignore said judgment, but that it is the plain ministerial duty of said commissioners to place the name of affiant and his present wife and their two minor children upon the rolls as members of the Choctaw Tribe of Indians.

Affiant further states that is informed and believes that unless his name and that of his wife and children be placed upon the rolls being prepared by the commissioners to the five civilized tribes, they will each be deprived of their proportionate share of the lands belonging to the Choctaw and Chickasaw Indians, and the money due and to become due the Choctaw and Chickasaw Indians, and by being deprived of such lands and money they will be damaged in the sum of ten thousand dollars, or more, each.

Affiant further states that said commission has duly identified him as the identical Eugene R. Benson, admitted by the commission to the five civilized tribes, as before mentioned, and that they have identified his wife, Ella A. Benson, as being the identical Ella A. Benson who was married to affiant on the 12th day of July, 1896, and have also identified affiant's two minor children as having been

born since the filing of the original application and the admission of affiant by the commissioners to the five civilized tribes, and that said defendants admitted that all of the statements herein made by affiant are true, but said defendants, acting as such commissioners, deny the right of affiant, his wife and children, to be enrolled. Further affiant sayeth not.

(Signed)

E. R. BENSON.

9 Subscribed and sworn to before me, this 11th day of June, 1900.

(SEAL)

(Endorsed)

B. C. WIGAND,
Notary Public, Soth. D., I. T.

No. 2600.

E. R. Benson et al.

vs.

Henry L. Dawes, et al., as Commissioners.

Affidavit of E. R. Benson.

Filed in Open Court Jun. 16, 1900.

E. J. FANNIN,
Clerk.

Notice of Motion for Writ of Mandamus.

(Caption Omitted.)

To Henry L. Dawes, Tams Bixby, Archibald S. McKennon, Thomas B. Needles, and Clifton R. Breckenridge, as commissioners to the five civilized tribes:

You and each of you are hereby notified that the above named plaintiffs have filed a petition asking for a writ of mandamus against you and each of you, acting as such commissioners, to compel you to place the names of each of the above named plaintiffs upon the rolls as members of the Choctaw tribe of Indians, and to do all things necessary to be done in the preparation of such rolls in order that the above named plaintiffs, and each of them, shall be fully protected in all their rights, title and interest, both political and in property.

You are further notified that on the 16th day of June, 1900, at the hour of 9 o'clock in the forenoon, or as soon thereafter as the same can be heard, the plaintiffs above named will move the above entitled court for a writ of mandamus against you as such
10 commissioners, to compel you, as such commissioners, to enroll each of the above named plaintiffs, the plaintiffs, Eugene R. Benson and Mrs. Ella A. Benson, as citi-

zens of the Choctaw nation by intermarriage, and the plaintiffs, Bessie and Geo. R. Benson, by virtue of being descendants of the said plaintiffs, Eugene R. and Ella A. Benson.

You are further notified that the plaintiffs herein will rely upon the right of Eugene R. Benson to be enrolled by virtue of his marriage to a Choctaw Indian woman, and his admission as an intermarried citizen, by the commission to the five civilized tribes, on the 2nd day of December, 1896, from which judgment and admission no appeal has been taken.

The plaintiff, Mrs. Ella A. Benson, will rely upon her right to be enrolled by virtue of having been, on the — day of July, 1896, duly and legally married to the plaintiff, Eugene R. Benson, and the petitioners, Bessie Benson and George R. Benson, will rely upon their right to be enrolled by virtue of being descendants of Eugene R. Benson, and his wife, Ella A. Benson, born after the filing of the application of the said Eugene R. Benson, on the 7th day of September, 1896, before the commission to the five civilized tribes.

Your petitioners will, on the hearing of said motion, require you to produce your books showing the admission of the said Eugene R. Benson as an intermarried citizen, and will produce affidavits, etc., in support of the plaintiff's petition.

You are further notified that the plaintiffs claim that you have refused, and still refuse, to enroll them or either of them.

J. G. RALLS,
Attorney for Plaintiffs.

United States of America,
Indian Territory,
Northern District.

11 I, Leo E. Bennett, U. S. marshal for the Northern District of the Indian Territory, do hereby certify that I received the above and foregoing notice at the hour of 9:45 p. m., on the 6th of June, 1900, and that I served the same on Thos. B. Needles, at Muscogee, on the said 6th day of June, 1900.

LEO E. BENNETT, U. S. Marshal.
By DAVID ADAMS, Deputy.

United States of America,
Indian Territory,
Central District.

I, Jasper P. Grady, United States marshal for the Central District of the Indian Territory, do hereby certify that I received the above and foregoing and attached notice at the hour of 4.45 p. m., on the 6th day of June, 1900, and that I served the same at the hour of 5 o'clock p. m., on the 6th day of June, 1900, at 2 miles west of Atoka, in the Central District of the Indian Territory, by delivering to the defendant, Tams Bixby, acting chairman of the commission to the five civilized tribes, a true copy hereof.

I further certify that the defendants, Henry L. Dawes, Archibald S. McKennon, Thomas B. Needles and Clifton R. Breckenridge, are not to be found within the Central District of the Indian Territory.

Witness my hand on this 7th day of June, 1900.

JASPER P. GRADY,
U. S. Marshal, Cent. Dist., I. T.
By W. C. YORK, Deputy.

Endorsed:

No. 2600.

Eugene R. Benson, et al.

vs.

Henry L. Dawes et al., as Commissioners.

Notice of Motion for Writ of Mandamus.

12

Filed in Open Court, Jun. 16, 1900.

E. J. FANNIN,
U. S. Clerk.

Motion for Writ of Mandamus.

(Caption Omitted.)

Come now the plaintiffs in this action and show to the court that heretofore, to-wit, on the 6th day of June, 1900, they filed in the office of the clerk of this court, at South McAlester, their petition for a writ of mandamus against the defendants herein, acting as commissioners to the five civilized tribes, asking that said commissioners be required to place their names on the rolls being prepared by the defendants, as members of the Choctaw Tribe of Indians, and do any and all other things that may be necessary to be done in the premises, in order to fully protect the plaintiffs herein in their right to participate in the allotment of land and distribution of money, and in all other things to

which members of the Choctaw Tribe of Indians may be entitled.

And plaintiffs further show that on said 6th day of June, 1900, they caused to be served upon defendants, Tams Bixby, as acting chairman of the commission to the five civilized tribes, and Thomas B. Needles, notice of this motion.

Plaintiffs further show that since the filing of the petition herein, the defendant, A. S. McKennon, has resigned, and his successor, Clifton R. Breckenridge, has been duly appointed and qualified, and plaintiffs further show that the said Tams Bixby and Thomas B. Needles are in charge of the enrollment of the Choctaw and Chickasaw Tribes of Indians, and the said Henry L. Dawes, while in fact a member of said commission, does not participate in the work of said commission.

Wherefore plaintiffs move the court to grant unto them a peremptory writ of mandamus, to be directed to the defendants and their successors in office as commissioners to the five civilized tribes, compelling them as said commission to fully, legally and properly enroll the plaintiffs herein, and do all other acts necessary to be done in the premises, in order to fully protect the plaintiffs herein in their rights to participate in the allotment of lands and distribution of money and in all other things to which members of the Choctaw Tribe of Indians may be entitled.

J. G. RALLS,
Attorney for Plaintiff.

Endorsed: No. 2600.

Eugene R. Benson, et al.,
vs.

Henry L. Dawes, et al., as Commissioners, Etc.

Motion for a Writ of Mandamus.

Filed in Open Court Jun. 16, 1900.

E. J. FANNIN,
Clerk.

Demurrer.

(Caption Omitted.)

Come the defendants, Henry L. Dawes, Tams Bixby, Archibald S. McKennon and Thomas B. Needles, and present this their demurrer to the complaint of the plaintiffs:

First. Because the complaint states no action sufficient

to authorize the court to grant the relief prayed for.

Second. Because the court has no jurisdiction over the subject matter involved in this action.

Third. Because the court has no jurisdiction to compel a co-ordinate branch of the government to do that which it alone has authority to do, or to revive or correct its judgment, so long as it acts within the scope of its authority.

MANSFIELD, McMURRAY & CORNISH,
Attorneys for Defendants.

Endorsed:

No. 2600.

Eugene R. Benson, et al.,
vs.

Henry L. Dawes, et al.

Filed in Open Court Jun. 16, 1900.

E. J. FANNIN,
U. S. Clerk.

15

Motion to Make Parties Defendant.

(Caption Omitted.)

Now comes the Choctaw nation or tribe of Indians, by Green McCurtain, principal chief, and the Chickasaw nation or tribe of Indians, by Douglas H. Johnston, governor, and represent to the court:

That the lands of the Choctaw and Chickasaw nations are held in common by the Choctaw and Chickasaw tribes of Indians, so that each and every Choctaw and Chickasaw is entitled to an equal, undivided interest in the whole; that they are also jointly interested in the revenues arising from coal and asphalt, which, by the terms of the Atoka agreement, have been reserved from allotment; that the property of the said Choctaws and Chickasaws will be diminished if the plaintiff in the above entitled cause shall be successful, and that their property is in this way affected by the issues being heard.

Wherefore, they ask that said Choctaw and Chickasaw nations or tribes of Indians, be made parties to said suits, and they hereby, for their respective nations or tribes, waive notice of this proceeding, acknowledge service, and enter the appearance of the said Choctaw and Chickasaw nations or tribes of Indians, respectively.

CHOCTAW AND CHICKASAW NATIONS,
By MANSFIELD, McMURRAY & CORNISH,

Their Attorneys.

Endorsed.

Motion to Make Parties Defendant.
Filed in Open Court, June 26th, 1900.

E. J. FANNIN,
U. S. Clerk.

16

Orders of Court.

On Saturday, June 16, 1900, being a day of the regular May, 1900, term of said court, the following order was entered of record in said cause, to-wit:

(Caption Omitted.)

On this day come plaintiffs herein, and file affidavit in support of petition for writ of mandamus heretofore filed.

Also file notice of motion for writ, and at same time file motion for writ.

Whereupon come defendants herein, by their attorney, George Mansfield, Esq., and file demurrer to petition.

And on Tuesday, June 26, 1900, being a day of said May term, the following order was entered of record in said cause, to-wit:

(Caption Omitted.)

Come the plaintiffs herein, by J. G. Ralls, Esq., Atty., and file motion to make Clifton R. Breckenridge party defendant herein, in place of Archibald McKennon, resigned, which motion is by the court sustained, and thereupon comes Clifton R. Breckenridge, by attorney, George Mansfield, Esq., and enters his appearance herein, and joins in the demurrer heretofore filed.

Now come defendants herein, by attorney, and file their motion to make the Choctaw and Chickasaw nations parties defendant herein, which motion is by the court overruled, to which ruling of the court the defendants at the time excepted.

17. And on Thursday, Sept. 6, 1900, being a day of said May term, the following order was entered of record in said cause, to-wit:

(Caption omitted.)

On this day this cause coming on to be heard upon the demurrer of the defendants to plaintiffs' petition, both plaintiffs and defendants being present by their attorneys, and the court doth overrule said demurrer, to which action of the court in overruling said demurrer defendants at the

time excepted, and defendants are given until the 1st day of November, 1900, in which to plead further.

And on Friday, March 22, 1901, being a day of the regular December, 1900, term of said court, the following order was entered of record in said cause, to-wit:

(Caption Omitted.)

On this 22nd day of March, A. D. 1901, this cause came on to be heard in open court, upon the motion of plaintiffs herein, for a peremptory writ of mandamus, and plaintiffs appeared by their attorneys, and defendants appeared by their attorneys; whereupon the defendants refused to plead further, and the court, being well and sufficiently advised in the premises, finds that on the second day of December, 1896, the commission to the five civilized tribes, duly and legally entered an order admitting the plaintiff, Eugene R. Benson, to citizenship in the Choctaw Nation or Tribe of Indians, as a member by blood, and that said judgment has not been appealed from and is still in force and effect.

18. And the court further finds that on the 12th day of July, 1896, the plaintiff, Ella A. Benson, a white woman, was duly and legally married to the plaintiff, Eugene R. Benson, and that by said marriage there was born to the said Ella A. Benson, Bessie Benson, born June 12, 1897, and George R. Benson, born April 12th, 1900.

The court further finds that the plaintiffs have appeared before the defendants, as commissioners to the five civilized tribes, and demanded to be enrolled as members of the Choctaw nation or tribe of Indians, and that said defendants refused, and are still refusing to enroll the plaintiffs, and the court finds that the defendants have due notice of this proceeding, and that it is the plain, ministerial and legal duty of the defendants, as such commissioners, to enroll the plaintiffs as members of the Choctaw nation or tribe of Indians.

It is, therefore, considered and adjudged by the court that the defendants, as commissioners to the five civilized tribes, enroll the plaintiff, Eugene R. Benson, and the plaintiff, Ella A. Benson, as members by marriage of the Choctaw nation or tribe of Indians, and enroll the plaintiffs, Bessie Benson and George R. Benson, as the descendants of the plaintiff, Eugene R. Benson, and as members of the Choctaw tribe or nation of Indians, and that in so enrolling the plaintiffs herein they do any and all things necessary to

be done to protect them in their rights and privileges as fully as any other members of the Choctaw tribe or nation of Indians.

It is further ordered and adjudged by the court that a peremptory writ of mandamus issue herein as prayed for in plaintiffs' petition, commanding said defendants, as such commissioners to the five civilized tribes, to enroll said plaintiffs as members of the Choctaw nation or tribe, and as residents of Blue county, Choctaw nation, and do any and all things necessary to be done in order to protect the plaintiffs in their rights and privileges as members of the said Choctaw nation or tribe of Indians, said writ of mandamus to be returnable on the 2nd day of April, A. D., 1901.

And it is further adjudged that the plaintiffs have and recover of and from the defendants their costs herein.

Thereupon defendants, by their attorneys, in open court, duly excepted, and prayed an appeal from said judgment to the United States Court of Appeals for the Indian Territory, which appeal is by the court granted.

20 United States of America,
Indian Territory,
Central District.

I, E. J. Fannin, Clerk of the United States Court for the Central District of the Indian Territory, do hereby certify that the above and foregoing is a true and correct copy of the pleadings and record entries in a cause pending in said court, wherein Eugene R. Benson, et al., are plaintiffs, and Henry L. Dawes, et al., as commission to the five civilized tribes, are defendants, as the same appear from the files and records of my office, at South McAlester, in said district.

Witness my hand and the seal of said court, this June 18th, 1901.

(SEAL)

E. J. FANNIN,
Clerk, U. S. Court, Central District.

Endorsed:

No. 389.

Henry L. Dawes, et al., Appellants,
vs.

Eugene R. Benson, et al., Appellees.
Transcript of Record.

Filed in the office of Clerk of U. S. Court of Appeals, Ind.
Ter., June 19, 1901.

WM. P. FREEMAN,
Clerk.