

*Eastern Boundary 4*

# United States Court of Claims.

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DECEMBER TERM—A. D. 1883.

No. 12,742.

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## THE CHOCTAW NATION

*vs.*

## THE UNITED STATES.

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PETITION AS AMENDED.

FILED, AS A SUBSTITUTE FOR ALL FORMER  
PETITIONS. FEBRUARY 26, 1884.—J. R.

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# United States Court of Claims.

December Term, A. D. 1883.

No. 12,742.

THE CHOCTAW NATION }  
vs. }  
THE UNITED STATES. }

*Petition as Amended.*

*To the Honorable the Chief Justice and Judges of the United  
States Court of Claims :*

Your petitioner, the Choctaw Nation, in its own behalf and in behalf and for the benefit of certain individuals who are members and citizens of the said Nation and interested in the subject-matter of this petition, respectfully represents—

## FIRST.

That this petition is filed, and the jurisdiction of this court is invoked, under and by virtue of the provisions of the following act of Congress, viz. :

AN ACT for the ascertainment of the amount due the Choctaw Nation.

Whereas, the Choctaw Nation, for itself and in behalf of individual members thereof, makes claim against the United States on account of various treaty provisions which it is alleged have not been complied with: Therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the*



Court of Claims is hereby authorized to take jurisdiction of and try all questions of difference arising out of treaty stipulations with the Choctaw Nation, and to render judgment thereon; power is hereby granted the said court to review the entire question of differences *de novo*, and it shall not be estopped by any action had or award made by the Senate of the United States in pursuance of the treaty of eighteen hundred and fifty-five; and the Attorney-General is hereby directed to appear in behalf of the Government; and if said court shall decide against the United States the Attorney-General shall, within thirty days from the rendition of judgment, appeal the cause to the Supreme Court of the United States; and from any judgment that may be rendered, the said Choctaw Nation may also appeal to said Supreme Court: *Provided*, The appeal of said Choctaw Nation shall be taken within sixty days after the rendition of said judgment, and the said courts shall give such cause precedence.

SEC. 2. Said action shall be commenced by a petition stating the facts on which said Nation claims to recover, and the amount of its claim; and said petition may be verified by either of the authorized delegates of said Nation as to the existence of such facts, and no other statements need be contained in said petition or verification.

Approved March 3, 1881.

#### SECOND.

The "*questions of difference*" between the United States and your petitioner result from the non-performance and non-fulfillment by the United States of the obligations assumed by it under the treaties concluded between your petitioner and the United States on the 18th day of October, 1820; the 20th day of January, 1825; the 27th day of September, 1830; the 22d day of June, 1855, and the 28th day of April, 1866, as will more fully hereinafter appear.

Statutes at Large, Indian Treaties, vol. 7, pp. 210, 211, 212, 213, 234, 235, 333 to 341.

11 Statutes at Large, p. 611.

14 Statutes at Large, p. 769.

#### THIRD.

That under and by virtue of the terms of the treaty concluded between the United States and your petitioner on the 18th day of October, 1820, it was provided, amongst other things, that your petitioner should cede, and did thereby cede and convey to the United States all that part of its lands situated in the State of Mississippi described in the *first* article of the said treaty; and the United States, in consideration thereof, stipulated with your petitioner as follows:

"ARTICLE II. For and in consideration of the foregoing cession on the part of the Choctaw Nation, *and in part satisfaction for the same*, the commissioners of the United States, in behalf of the said States, *do hereby cede to said nation* a tract of country west of the Mississippi River, situate between the Arkansas and Red River, and bounded as follows: Beginning on the Arkansas River where the lower boundary line of the Cherokees strikes the same; thence up the Arkansas to the Canadian Fork, and up the same to its source; thence due south to the Red River; thence down Red River three miles below the mouth of Little River, which empties itself into Red River on the north side; thence a direct line to the beginning."

"ARTICLE IV. The boundaries hereby established between the Choctaw Indians and the United States, on this side of the Mississippi river, shall remain without alteration until the period at which said nation shall become so civilized and enlightened as to be made citizens of the United States, and Congress shall lay off a limited parcel of land for the benefit of each family or individual in the nation."

"ARTICLE IX. All those who have separate settlements, and fall within the limits of the land ceded by the Choctaw Nation to the United States, and who desire to remain where they now reside, shall be secured in a tract or parcel of land one mile square, to include their improvements. Any one who prefers removing, if he does so within one year from the date of this treaty, *shall be paid their full value*, to be ascertained by *two* persons to be appointed by the President of the United States."



"ARTICLE X. As there are some who have valuable buildings on the roads and elsewhere upon the lands hereby ceded, should they remove, it is hereby further agreed by the aforesaid Commissioners, in behalf of the United States, that the inconvenience of doing so shall be considered, and such allowance made as will amount to an equivalent."

#### FOURTH.

Your petitioner further states that under and by virtue of the terms of the treaty concluded between your petitioner and the United States, on the 20th day of January, 1825, it was agreed and provided in Article I of the said treaty as follows:

"The Choctaw Nation do hereby cede to the United States all that portion of the land ceded to them by the second article of the treaty of Doak Stand, as aforesaid, lying east of a line beginning on the Arkansas, one hundred paces east of Fort Smith, and running thence due south to Red river, it being understood that this line shall constitute and remain the permanent boundary between the United States and the Choctaws."

7 Stats. at Large, pp. 234, 235.

The boundary line thus established was again declared by the United States to be the line by which the possessions of your petitioner should be marked in Article II of the treaty of September 27th, 1830, which provides as follows:

"The United States, under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi river, *in fee simple to them and their descendants*, to inure to them while they shall exist as a Nation and live on it, beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas river, running thence to the source of the Canadian Fork, if in the limits of the United States, or to those limits; thence due south to Red river, and down Red river to the west boundary of the Territory of Arkansas; thence north along that line to the

beginning. *The boundary of the same to be agreeably to the treaty made and concluded at Washington city in the year 1825.*"

7 Stats. at Large, p. 333.

By the first article of the treaty between your petitioner and the United States, concluded June 22d, 1855, it was agreed that—

"The following shall constitute and remain the boundaries of the Choctaw and Chickasaw country, viz.: Beginning at a point on the Arkansas river one hundred paces east of old Fort Smith, where the western boundary line of the State of Arkansas crosses the said river, and running thence due south to Red river."

But your petitioner charges, and so states the fact to be, that the United States in fixing and causing to be surveyed the said boundary line between the lands of the United States and those of your petitioner, did not survey, fix, and establish the same in accordance with the agreements and stipulations of the said provisions of the several treaties above specified; and that the United States, in surveying and permanently establishing the said boundary line, did encroach upon and take from your petitioner a large quantity of land, to wit: 136,204.02 acres; and the said land has, by the said acts of the United States, as well as by the provisions of the act of Congress for establishing the western boundary line of the State of Arkansas, approved March 3, 1875, become a part of the public domain of the United States without the consent of your petitioner, and in violation of those provisions of the said several treaties hereinbefore quoted; and your petitioner claims from the United States, by reason thereof, the sum of \$167,896.57.

#### FIFTH.

Your petitioner further states that on and previous to the 27th day of September, 1830, the United States induced



your petitioner to make and conclude with the United States the treaty of September 27th, 1830. And your petitioner further states that in making the said treaty the Choctaw people and their chiefs and head men were told and led to believe that it was not the lands of the Choctaws but jurisdiction over their country that the United States desired to acquire and obtain.

#### SIXTH.

Your petitioner further states that in the said treaty concluded on the said 27th day of September, 1830, it was provided, among other things, as follows:

"ARTICLE III. In consideration of the provisions contained in the several articles of this treaty, the Choctaw Nation of Indians consent and hereby cede to the United States the entire country they own and possess east of the Mississippi river; and they agree to remove beyond the Mississippi river as early as practicable, and will so arrange their removal that as many as possible of their people, not exceeding one-half of their whole number, shall depart during the falls of 1831 and 1832, the residue to follow during the succeeding fall of 1833."

7 Stats. at Large, p. 333.

And your petitioner further states that under and in pursuance of the said agreement, your petitioner, as a nation, surrendered to the United States its dominion, ownership and possession of all the remaining lands your petitioner at that time owned in the State of Mississippi, amounting to *ten million four hundred and twenty-three thousand one hundred and thirty-nine acres*; and thereupon your petitioner, in compliance with the stipulations of the said treaty on its part, commenced to remove from the said lands to the lands purchased and acquired by your petitioner under the terms of the treaty concluded between the United States and your petitioner on the 17th day of October, 1820. And your

petitioner further states that it complied with the requirements of said article of said treaty, and did remove from said lands within the time stipulated therein, or within a reasonable time thereafter.

#### SEVENTH.

Your petitioner further states that the lands so as aforesaid ceded and surrendered by your petitioner to the United States, under the provisions of the said treaty, were worth at the time of the cession thereof as aforesaid the sum of *fourteen million seven hundred and eighty-one thousand six hundred and sixty-one dollars* (\$14,781,661); and your petitioner states that it ought, in equity and justice, to have received that amount for the said lands at that time, but your petitioner states that the United States did not pay to your petitioner the said sum of money for the said lands, although it did undertake and agree to and with your petitioner, in consideration of the said cession, to faithfully keep and observe on its part certain stipulations hereinafter stated.

#### EIGHTH.

Your petitioner further states that in Article XIV of the said treaty of September 27th, 1830, it was agreed and provided as follows:

"ARTICLE XIV. Each Choctaw head of a family being desirous to remain and become a citizen of the States, shall be permitted to do so by signifying his intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner, shall be entitled to one-half that quantity for each unmarried child which is living with him over ten years of age, and a quarter section to such child as may be under ten years of age, to adjoin the location of the parent. If they reside upon said lands, intending to become citizens of the States,



for five years after the ratification of this treaty, in that case a grant in fee-simple shall issue. Said reservation shall include the present improvement of the head of the family, or a portion of it. Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but, if they ever remove, are not to be entitled to any portion of the Choctaw annuity."

7 Stats. at Large, p. 335.

And your petitioner further states that ONE THOUSAND FIVE HUNDRED AND EIGHTY-FIVE heads of Choctaw families signified their intention to remain on their lands in Mississippi and become citizens of the United States, as required by the terms and conditions of the above quoted article of said treaty; and your petitioner further states that although the above specified number of "*heads of Choctaw families*" substantially complied with all the terms, requirements, and conditions of the said article of the said treaty, and thereby became entitled to a grant of land in fee simple, as specified in the said article, yet but one hundred and forty-three of such families ever received from the United States their title to the lands guaranteed to them by the said article of the said treaty, leaving one thousand four hundred and forty-two of the said "*Choctaw heads of families*" entitled to a grant of their lands in fee simple under the provisions of said Article XIV.

#### NINTH.

And your petitioner further states that the said ONE THOUSAND FOUR HUNDRED AND FORTY-TWO "*Choctaw heads of families*" became and were entitled to have and receive from the United States grants in fee simple according to the stipulations of said Article XIV, lands amounting to 1,672,760 acres; but your petitioner states that the last specified number of "*Choctaw heads of families*," who became and were entitled to grants in fee simple for the above specified quantity of land, were unlawfully driven

from their homes and from the lands which they had claimed, and became entitled to have granted to them in fee simple under the said Article XIV; and the United States failed and neglected to protect them, or secure to them the lands to which they became and were entitled to have granted to them in fee simple under the provisions of said article of said treaty. And your petitioner further states that, in violation of the rights of the said last specified number of "*Choctaw heads of families*," the United States caused to be sold the lands which they became entitled to have granted to them in fee simple under the said article, and permitted them to be ejected from the said lands, although they were entitled to remain thereon and retain their homes and improvements; and your petitioner further states that the said 1,672,760 acres of land, of which the said one thousand four hundred and forty-two "*Choctaw heads of families*" became and were entitled to have granted to them in fee simple, were reasonably worth at the time the same were sold and appropriated by the United States, in violation of the rights of the said last specified "*Choctaw heads of families*" under the said Article XIV, five dollars and a half per acre; and the value of the said lands to the said "*Choctaw heads of families*," at the time they became and were entitled to have the same granted to them in fee simple, was the sum of \$9,200,180.

#### TENTH.

Your petitioner further states that the United States, having failed to secure to "each Choctaw head of a family" the reservation to which he or she became entitled under the said article XIV, subsequently, by an act of Congress approved August 23, 1842, attempted to provide compensation for the same by the issue and delivery of certificates or scrip, which authorized those entitled to such



reservations, or their assignees, to enter any of the public lands subject to entry at private sale in the States of Mississippi, Alabama, Louisiana, or Arkansas, which certificates or scrip they were required by said act to receive and accept in full satisfaction of all their claims or demands against the United States under said article XIV; and in order to compel the relinquishment and surrender of reservations under said article XIV the agents of the United States adopted other measures of an unjustifiable and illegal character. And your petitioner avers that the various wrongs suffered in violation of said article XIV were substantially as follows:

I. "Each Choctaw head of a family" was allowed, under said article XIV, six months from the ratification of the treaty to "signify his intention to the agent" to remain in Mississippi and thus secure the reservation therein provided. The treaty was proclaimed 24 February, 1831. Notice of the ratification was not sent from Washington till the 21st May, 1831, and was not given to the Choctaws till some time in June, the time allowed for signification to the agent being practically reduced from six months to less than three.

2. The efforts of heads of families to signify their "intention to the agent" were in various ways obstructed and often prevented by the agent, who frequently endeavored by threats of violence to force them to emigrate; and similar threats were made by others in the employment of the Government as emigrating agents.

3. White settlers were permitted to intrude upon the lands intended to be secured by said article XIV, in violation of the 18th article of the same treaty, which provided

for their exclusion for a specified period; and said intruders were permitted to evict forcibly the Choctaw claimants from the lands to which they were entitled under said article XIV.

4. The lands embraced in the claims of said heads of families, after having been reserved from sale or entry, by order of Congress (5 Stat., 252) were afterwards opened to pre-emption claimants (*ib.*, 382) and subsequently to other purchasers (*ib.*, 456.)

5. 1,150 heads of families whose claims to land under said article XIV were afterwards ascertained and recognized by the United States, were unlawfully deprived of the same by reason of their having been sold by the United States in violation of the provisions of said article XIV.

6. Instead of giving the said 1,150 heads of families the "grants in fee-simple" to which they were entitled under said article XIV, certificates known as "scrip" were delivered to them authorizing the entry of an equal number of acres of any public land subject to sale at private entry in Mississippi, Louisiana, Alabama, and Arkansas, which scrip they were not permitted to receive until after they had consented to go, and did actually go, to the Indian territory west of Arkansas, where it could not be used.

7. In consequence of the withholding of said scrip from the claimants for whose benefit it was issued, until after their arrival in the Indian Territory, they could make no use of it, except by selling it at points where it was not wanted, and at prices far below its true value.

8. The price actually realized by a large number of the claimants for the scrip thus paid them in place of the lands to which they were entitled was officially estimated by the Commissioner of Indian Affairs at *eleven cents* an acre.



9. The price charged to the said claimants for the said scrip in an account prepared under the direction of the Secretary of the Interior for Congress was \$1.25 per acre.

10. The sixth section of the act under which said scrip was issued for the quantity of land to which the claimant was entitled required it to be delivered "in full satisfaction and discharge of such claim." 5 Stat., 515.

11. The third section of the same act provided as requisites to a reservation under said article XIV:

"And that said Indian did at the date of making said treaty, to wit, on the 27th September, 1830, have and own an improvement in the then Choctaw country; and that having and owning an improvement at the place and time aforesaid, did reside upon that identical improvement or a part of it for the term of five years continuously next after the ratification of said treaty, to wit, from the 24th February, 1831, to the 24th February, 1836, unless it shall be made to appear that such improvement was before the 24th of February, 1836, disposed of by the United States, and that the reservee was dispossessed by means of such disposition." 5th Stat. 514.

Which requirements were in violation of the treaty, inasmuch as said article XIV did not require the head of a family "desirous to remain and become a citizen" to have and own an improvement, nor did any part of said article require a "continuous" residence of five years upon any "improvement."

12. More than a hundred families justly entitled to land under said article XIV were excluded from any allowance for the same under the above-recited provision of said act of 1842, because they had not occupied their improvements during the full term of five years from the ratification of the treaty, although it was shown that they had been driven from them by white settlers.

## ELEVENTH.

Your petitioner further states that 292 of the 1442 Choctaw heads of families entitled to grants in fee-simple under Article XIV of the Treaty of 1830, as set forth in Article *ninth* of this petition, have never received any such grants in fee-simple, or any allowance or compensation whatever for the same; and that the claims of 1150 of said 1442 heads of families were adjudicated and allowed under the act aforesaid of 23d August, 1842, and certificates or scrip awarded to them under the provisions of said act authorizing the entry of 1,399,920 acres of land, of which there were paid and delivered to the persons entitled to receive the same 3833 certificates, or pieces of scrip, authorizing the entry of 700,080 acres of land. The certificates for the residue of said 1,399,920 acres, to wit, for 699,840 acres, were not issued, but were withheld under an act approved March 3, 1845, which provided that they should carry an interest of five per cent., payable to the claimants or their representatives, to be estimated upon one dollar and twenty-five cents for each acre of land to which they were entitled, (5 Stat., 777.) The aggregate amount or principal sum thus funded, amounting to \$872,000, was afterwards, under an act approved July 21, 1852, paid in money to the claimants, which sum of \$872,000 was included in the sum of \$1,749,900 subsequently charged to the claimants in an account hereinafter set forth in this petition, being for 1,399,920 acres of scrip, in lieu of reservations, at \$1.25 per acre, of which sum of \$1,749,900, \$872,000 was paid, as aforesaid, in money, the residue of \$877,900 being charged in said account for the certificates or scrip authorizing the



entry of 700,080 acres of land, delivered as aforesaid to the said claimants, for which 700,080 acres in scrip the said claimants were charged at the rate of \$1.25 per acre, although, by reason of the acts of the United States and its agents, as hereinbefore set forth, in delivering said scrip at places where it could not be used, the whole amount realized by the claimants for said scrip was \$118,400, and no more; which, together with the sum of \$872,000, paid as aforesaid under said act of July 21, 1852, making together the sum of \$990,400, was all that should have been charged to said claimants on account of said scrip, and is all that should be deducted from the sum of \$9,200,180, the value of the lands of which they were unjustly deprived, as hereinbefore set forth in Article Ninth, and which they ought to recover in this proceeding, unless they are estopped by the stipulations hereinafter set forth.

#### TWELFTH.

Your petitioner further states that Article XV of the said treaty provides, amongst other things, as follows:

"If the nation shall think proper to elect an additional principal chief of the whole to superintend and govern upon republican principles, he shall receive annually for his services five hundred dollars, which allowance to the chiefs shall continue for twenty years."

And your petitioner states that although the Choctaw nation has established a republican form of government, and elected one principal chief, as required by the said Article XV of the said treaty, yet the United States did not pay to your petitioner the said sum of five hundred dollars per annum for the period of twenty years, as provided in the said article of said treaty, and your petitioner claims

from the United States, by reason thereof, the sum of ten thousand dollars (\$10,000).

#### THIRTEENTH.

Your petitioner further states that, by the terms of the *sixteenth* article of the said treaty, the United States agreed, at its own expense, to remove the Choctaw people to their new homes, and to furnish them with ample corn, beef, and pork for themselves and families for the period of twelve months after reaching their new homes; and also that the United States would take all the cattle of the Choctaw people at the valuation of some discreet person, to be appointed by the President, and that the same should be paid for in money after their arrival at their new homes, but your petitioner states that between the years 1834 and 1846 nine hundred and sixty individual members of the Choctaw nation emigrated at their own expense, and subsisted themselves at their new homes for one year, without assistance from the United States; and your petitioner states that the Choctaw nation is entitled to demand and recover from the United States the sum of \$54.16½ for each one of the said individual members of the Choctaw nation who so removed and subsisted themselves at their own expense; and your petitioner claims, by reason thereof, the sum of \$51,998.40.

#### FOURTEENTH.

Your petitioner further states that Article XIX of the said treaty of September 27th, 1830, contained among others the following provisions:

"ARTICLE XIX. The following reservations of land are hereby admitted: To Col. David Folsom, four sections, of which two shall include his present improvement, and two may be located elsewhere, on unoccupied, unimproved land.

"To I. Garland, Col. Robert Cole, Tuppanahomer, John



Pitchiynu, Charles Juzan, Johoke-betubbe, Eaychahobia, Ofahoma, two sections each, to include their improvements, and to be bounded by sectional lines, and the same may be disposed of and sold with the consent of the President. And that others not provided for, may be provided for, there shall be reserved as follows:

"First. One section to each head of a family, not exceeding forty in number, who during the present year may have had in actual cultivation, with a dwelling-house thereon, fifty acres or more.

"Second. Three quarter sections, after the manner aforesaid, to each head of a family, not exceeding four hundred and sixty, as shall have cultivated thirty acres, and less than fifty, to be bounded by quarter-section lines of survey, and to be contiguous and adjoining.

"Third. One half-section, as aforesaid, to those who shall have cultivated from twenty to thirty acres, the number not to exceed four hundred.

"Fourth. A quarter-section, as aforesaid, to such as shall have cultivated from twelve to twenty acres, the number not to exceed three hundred and fifty; and one-half that quantity to such as shall have cultivated from two to twelve acres, the number also not to exceed three hundred and fifty persons. Each of said class of cases shall be subject to the limitations contained in the first class, and shall be so located as to include that part of the improvement which contains the dwelling-house. If a greater number shall be found to be entitled to reservations under the several classes of this article than is stipulated for under the limitation prescribed, then, and in that case, the chiefs, separately or together, shall determine the persons who shall be excluded in the respective districts.

\* \* \* \* \*

"The several reservations secured under this article may be sold with the consent of the President of the United States, but should any prefer it, or omit to take a reservation for the quantity he may be entitled to, the United States will, on his removing, pay fifty cents an acre, after reaching their new homes, provided that before the first of January next they shall adduce to the agent or some other authorized person to be appointed, proof of his claim, and the quantity of it."

7 Stats. at Large, pp. 336, 337.

Your petitioner further states that all the individuals named in said Article XIX, as above set forth, secured the reservations provided for them, with the exception of Johoke-be-tubbee, whose reservation of two sections of land in the second paragraph of said article was never located or in any way secured or paid for.

Your petitioner further states that the spirit of said article and its intention to provide reservations for the cultivators of the soil were violated in this: That whereas the said Article XIX intended to provide 458,400 acres for 1,600 cultivators, but in carrying out the treaty land was assigned to only 731 of the number embraced in the 1,600, and the whole amount of land assigned to those 731 cultivators was 123,680 acres, a falling off of 334,720 acres in the quantity set apart by the said Article XIX for that purpose, as will more fully appear in the following statement:

Said Article XIX provided in the—

1st class,	25,600 acres for	40 cultivators;
2d class,	220,800 acres for	460 cultivators;
3d class,	128,000 acres for	400 cultivators;
4th class,	56,000 acres for	350 cultivators;

In all four, 430,400 acres for 1,250 cultivators.

In carrying out Article XIX the Government agents assigned—

10,880 acres to	17 cultivators in the 1st class;
22,080 acres to	46 cultivators in the 2d class;
23,680 acres to	74 cultivators in the 3d class;
39,040 acres to	294 cultivators in the 4th class;
95,680 acres to	381 cultivators in all four classes.



For the 350 cultivators of the 5th class the full amount of 28,000 acres, to which they were entitled under said article XIX, was assigned. But your petitioner avers that the actual number of cultivators having from two to twelve acres in cultivation at the date of the treaty, as contemplated in said article, was 1,763, instead of 350, and that 1,413 of those who had in cultivation from two to twelve acres failed in consequence of the limitations of said Article XIX to get any land at all, and that while the treaty evidently intended to provide reservations for 1,600 cultivators, such reservations were assigned to only 731, although the number of actual cultivators was 2,144.

And your petitioner further states that the 1,413 cultivators, who, owing to the wording of the treaty, were thus excluded from its benefits, did at the time contend, and have since contended, that they were justly entitled to the same measure of compensation for their improvements as was allowed to other cultivators of the same grade, to wit, eighty acres of land for each cultivator, equal in all to 113,040 acres, reasonably worth to them at that time the sum of \$339,120.

And your petitioner further states that of the 731 cultivators, to whom were assigned lands as aforesaid under said article XIX, 143 have never received any land or other benefits intended to be secured by said article, of which number 45 cultivators, entitled to 6,400 acres, relinquished the same to the United States under said article, but never received any compensation for the same; and 98 of said 143 cultivators, to whom 15,520 acres of land were assigned, never had any land located or set apart for them, the whole amount to which said 143 cultivators were entitled being

21,920 acres, worth at the time the sum of \$65,760; for which sum, and for \$3,840, the value of the two sections reserved for Johoke-be-tubbee as aforesaid, and for the sum of \$339,120 hereinabove set forth, making in all \$408,720, your petitioner prays judgment, unless the claim for the same is concluded and estopped by the proceedings hereinafter set forth.

#### FIFTEENTH.

Your petitioner further states that it was provided in article XX of the said treaty, amongst other things, as follows:

"TO EACH WARRIOR WHO EMIGRATES, A RIFLE, MOULDS, AND AMMUNITION."

But your petitioner states that there were a large number of warriors who removed from the State of Mississippi, between the years 1834 and 1855, who never received from the United States any of the benefits of the said article of said treaty; and that the number of such persons who became and were entitled to the benefits of the provision of the said article XX was one thousand four hundred and fifty-eight, and they demanded from the United States the articles agreed to be furnished under the said article XX; and that the articles to be supplied to such warriors were reasonably worth, at that time, thirteen dollars and fifty cents to each warrior; and that the whole amount claimed by the said warriors and their descendants from the United States by reason thereof was, and is, the sum of nineteen thousand two hundred and seventy-eight dollars.

#### SIXTEENTH.

Your petitioner further states that under and by virtue of the *first section* of the act of Congress making appropriations for the expenses of the Indian department, and for



fulfilling treaty stipulations with the various Indian tribes for the year ending June 30th, 1846, approved March 3d, 1845, it was provided as follows:

"That of the scrip which has been awarded or shall be awarded to Choctaw Indians, under the provisions of the law of 23d, August, 1842, that portion thereof not deliverable East, by the *third* section of said law, in these words, 'not more than one-half of which shall be delivered to said Indian until his removal to the Choctaw territory west of the Mississippi,' shall not be issued or delivered in the West, but the amounts awarded for land on which they resided, *but which it is impossible for the United States now to give them*, shall carry an interest of five per cent., which the United States will pay annually to the reservees, under the treaty of 1830, respectively, or to their heirs and legal representatives *forever*, estimating the land to which they may be entitled at one dollar and twenty-five cents per acre."

And your petitioner further states that the whole number of acres of land for which the "Choctaw heads of families," and their children, became and were entitled to receive scrip, under the provisions of the act of Congress approved August 23d, 1842, and which was directed to be *funded* under the provisions of the above-recited act of Congress, was *six hundred and ninety-seven thousand six hundred acres*, and the value thereof, under the said act of Congress, was *eight hundred and seventy-two thousand dollars, (\$872,000 ;)* and your petitioner further states that the said Choctaw heads of families, their heirs and legal representatives, for whose use and benefit the said scrip was funded, became and were entitled to be paid, and to receive interest thereon, from the date of the passage of the said act of Congress. to wit, from the said 3d day of March, A. D. 1845: but your petitioner states that the United States refused to allow or pay any interest on the said funded scrip from the said 3d day of March, 1845, unless those persons who were entitled to receive the same, or his or

her heirs and legal representatives, was at the date of the passage of the said act settled in the Choctaw territory, west of the Mississippi river; and the United States also refused to allow or pay any interest on the said funded scrip, if the said scrip was issued subsequent to the date of the said act of March 3d, 1845, until the person or persons for whose benefit the same was issued and funded, or his or her heirs and legal representatives, had in fact removed from the State of Mississippi to the Choctaw territory; and your petitioner further states that those persons for whose use and benefit the said scrip was funded, or their heirs and legal representatives, were entitled to be paid the interest on the said funded scrip from the said 3d day of March, 1845, when the same was authorized to be funded, until the 21st day of July, A. D. 1852, the date of the passage of the act of Congress, under and by virtue of which the same was redeemed by the United States by the payment of the principal thereof to those persons for whose use and benefit the same was issued, or to their heirs or legal representatives; and your petitioner avers that the United States did not pay the interest on the said funded scrip between the said dates, but only paid the same in the manner, upon the conditions, and at the times hereinbefore stated; and your petitioner further states that the amount of interest that became due and payable from the United States, for and on account of the said funded scrip, between the dates aforesaid, was the sum of *three hundred and five thousand five hundred and fifty-one dollars, (\$305,551 ;)* and your petitioner avers that between the above specified dates the United States paid as interest, for and on account of the said funded scrip, to the persons entitled to the same, or to their heirs or legal representatives, the sum of *one hundred and seventy-one thousand four hundred dollars and thirty-four cents, (\$171,400.34,)* and no more; and that on the 21st day of July, 1852, there remained due and payable to those individual members of the Choctaw Nation, for whose use and bene-



fit the said scrip was funded, or to their heirs and legal representatives, the sum of *one hundred and thirty-four thousand one hundred and fifty dollars and sixty-six cents* (\$134,150.66) for interest due and payable upon the said scrip, so as aforesaid funded under the provisions of the said act of Congress, approved March 3d. 1845. And your petitioner claims the said sum if the court, upon the hearing of this cause, shall assume and determine that, under the provisions of the act by which it acquires jurisdiction of this cause, it may rightfully examine "*questions of difference*" existing between your petitioner and the United States "*de novo*," and shall not consider the award made by the Senate of the United States in favor of your petitioner, in manner and form as herein set forth as final and conclusive against both your petitioner and the United States.

## SEVENTEENTH.

Your petitioner further avers that in and by Article IV, of the treaty of October 18th, 1820, your petitioner was secured in the right to have, use, occupy, and enjoy forever the lands which your petitioner retained east of the Mississippi river, after the cession of those lands embraced within the boundaries specified in Article I of the said treaty. And your petitioner further avers that by the said Article IV the said lands were, by the United States, to be partitioned and set apart to each family or individual member of the Choctaw Nation, "*when said nation shall become so civilized and enlightened as to be made citizens of the United States.*" And your petitioner further avers that by Article VII, of the treaty of January 20th, 1825, it was provided as follows:

"ARTICLE VII. It is further agreed that the fourth Article, of the treaty aforesaid, shall be so modified as that the Congress of the United States shall not exercise the power of apportioning the lands for the benefit of each

family or individual of the Choctaw Nation, and of bringing them under the laws of the United States, but with the consent of the Choctaw Nation."

7 Stats. at Large, p. 236.

And your petitioner further avers that the legal effect of the provisions of the said Article IV, of the treaty of October 18th, 1820, and Article VII, of the treaty of January 20th, 1825, was to secure to the said Choctaw families and individual members of the Choctaw Nation *a title in fee simple* of all the lands belonging to the Choctaw Nation not included in the cession made by the treaty of October 18th, 1820; and that the United States was bound by its treaty stipulations, with your petitioner, to protect them, the said families and individual members of the Choctaw Nation, in their right to perpetually have, use, occupy, and enjoy the said lands under the said title.

And your petitioner further avers that the United States having, by means of the treaty of September 27th, 1830, disregarded the obligations of the said Article IV, of the treaty of October 18th, 1820, and the said Article VII, of the treaty of January 20th, 1825; and having paid for the lands ceded by your petitioner under the treaty of September 27th, 1830, in the manner hereinbefore stated and set forth, an inadequate consideration, your petitioner claimed both before and subsequent to the making of the treaty of June 22d, 1855, that the Choctaw Nation was, in law, equity, and justice, entitled to be paid by, and to receive from, the United States the whole amount of the net proceeds resulting from the sale of the lands ceded by your petitioner to the United States under the said treaty of September 27th, 1830; and said claim, so made and asserted by your petitioner against the United States, was one of the differences and controversies existing between your petitioner and the United States when the treaty of June 22d, 1855, was



"Whereas the political connection heretofore existing between the Choctaw and the Chickasaw tribes of Indians has given rise to unhappy and injurious dissensions and controversies among them, which render necessary a re-adjustment of their relations to each other and to the United States;

"And whereas the United States desire that the Choctaw Indians shall relinquish all claim to any territory west of the one-hundredth degree of west longitude, and also to make provision for the permanent settlement within the Choctaw country of the Wichita, and certain other bands of Indians—for which purpose, the Choctaws and Chickasaws are willing to lease, on reasonable terms, to the United States that portion of their common territory which is west of the 98th degree of west longitude; and whereas the Choctaws contend that by a just and fair construction of the treaty of September 27th, 1830, they are of right entitled to the net proceeds of the lands ceded by them to the United States under said treaty, and have proposed that the question of their right to the same, *together with the whole subject-matter of their unsettled claims, whether national or individual, against the United States, arising under the various provisions of the said treaty, shall be referred to the Senate of the United States for final adjudication and adjustment.*"

And your petitioner further states that in order to settle, adjudicate, and adjust all of the matters of difference, claims, or demands of the Choctaw Nation, or of individual citizens of the said Nation; and in order to carry out the agreement recited in the *preamble* of the said treaty, it was provided in Article XI thereof as follows:

"ARTICLE XI. The Government of the United States not being prepared to assent to the claim set up under the treaty of September 27, 1830, and so earnestly contended for by the Choctaws as a rule of settlement, but justly appreciating the sacrifices, faithful services, and general good conduct of the Choctaw people, and being desirous that their rights and claims against the United States shall receive a just, fair, and liberal consideration, it is therefore stipulated that the following questions be submitted for adjudication to the Senate of the United States—

"First. Whether the Choctaws are entitled to, or shall be allowed, the proceeds of the sale of the lands ceded by them to the United States by the treaty of September 27, 1830, deducting therefrom the cost of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and if so, what price per acre shall be allowed to the Choctaws for the land remaining unsold, in order that a final settlement with them may be promptly effected; or

"Secondly. Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and if so, how much."

And your petitioner further states that, in order to provide for a settlement of the claims of the individual members or citizens of the Choctaw nation, upon the adjudication and adjustment of the claims by either of the two methods proposed in the said Article XI, as well as to leave no doubt as to the conclusiveness and finality of the adjudication and decision of the United States Senate upon the said questions submitted to it in and by the said Article XI, it was and is provided in Article XII, as follows:

"ARTICLE XII. In case the Senate shall award to the Choctaws the net proceeds of the lands ceded as aforesaid, the same shall be received by them in full satisfaction of all their claims against the United States, whether national or individual, arising under any former treaty; and the Choctaws shall thereupon become liable and bound to pay all such individual claims as may be adjudged by the proper authorities of the tribe to be equitable and just, the settlement and payment to be made with the advice and under the direction of the United States agent for the tribe; and so much of the fund awarded by the Senate to the Choctaws as the proper authorities thereof shall ascertain and determine to be necessary for the payment of the just liabilities of the tribe shall, on their requisition, be paid over to them by the United States; but should the Senate allow a gross sum in further and full satisfaction of all their



September, A. D. 1830, to wit: that "whenever well-founded doubts shall arise, the said treaty shall be construed most favorably towards the Choctaws."

# TWENTY-THIRD.

Your petitioner prays that the said award of the Senate shall be adjudged to be final and conclusive, both upon the United States and the said Choctaws, and that the account stated by the Secretary of the Interior, as required by the resolution of the Senate of March 3th, 1859, may be re-stated by this court, or under its direction, in order that the balance due under said account may be determined in conformity with the principles prescribed by said award, and that the following errors may be corrected:

1st. The error in stating that the proceeds of the lands sold up to January 1st, 1859, and the residue of said lands at 12½ cents an acre, amounted in the aggregate to \$8,078,614.80. (Petition, p. 49; Brief, p. 372; Record, p. 1411.)

Whereas, the true amount of said aggregate was and should have been stated in said account to be \$8,413,418.61, (Brief, p. 368; Record, p. 1720.)

2d. The error in stating that the cost of survey and sale of said lands, 10,423,139.69 acres, was ten cents an acre, or \$1,042,313.96. (Petition, 49; Brief, 369; Rec., 1411.)

Whereas, the actual cost of said survey and sale was \$256,387.74. (Brief, p. 368; Record, p. 1721.)

3d. The error in deducting from said aggregate of proceeds of lands sold the sum of \$120,826.76 for amount to orphans for reservations. (Petition, p. 50; Record, p. 1412.)

Whereas the said sum of \$120,826.76 was not deducted or taken or drawn from or in anywise included in or con-

nected with the aggregate fund against which it is charged in the said account. (Brief, p. 372; Record, p. 1734, 1736.)

4th. The error in deducting from said aggregate the following items:

Payments made to meet contingent expenses of commissioners appointed to adjust claims under the fourteenth article of Choctaw treaty of September 27, 1830 ..... \$51,320 79

For various expenses growing out of the location and sale of Choctaw reservations and perfecting titles to the same, including contingent expenses, such as pay of witnesses, interpreters, etc., incurred in executing the act of March 3, 1837, and subsequent acts relative to adjusting claims under the fourteenth article of the treaty of 1830..... 21,408 36

\$72,729 15

(Petition, p. 50; Brief, 373; Record, 1412)

—neither of which items were legitimate charges as "proper expenditures and payments under said treaty," according to the true meaning of the award of the Senate.

All of which errors being corrected would show that the balance payable to your petitioner under the award of the Senate was \$4,295,533.24, instead of \$2,981,247.30, as erroneously stated by the Secretary of the Interior, as will more fully appear from the following statement:

Proceeds of lands sold and amount of unsold residue, at 12½ cents per acre.....\$8,413,418 61

Deductions made by the Secretary of the Interior, (Petition, \*50; Record, 1412.).....\$5,097,367 50

\*NOTE.—The references to the *petition* in the foregoing statements of amounts all relate to Exhibit A, being the official statement reprinted at the end of the petition originally filed, and at the close of this amended petition.



From which deduct for error—	
1st. Overcharge for survey and sale, being difference between.....	\$1,042,313 96
and.....	256,387 74
	<hr/>
	\$785,926 22
2d. Payments to orphans improperly charged.....	120,826 76
3d. Charges for correcting errors of Government agents..	72,729 15
	<hr/>
Total deductions for erroneous charges.....	979,482 13
Whole amount of proper charges.....	<hr/> \$4,117,885 37
Amount of proceeds as before stated.....	\$8,413,418 61
Deduct amount of proper charges.....	<hr/> 4,117,885 37

Leaving a balance of.....\$4,295,533 24

—which was actually due your petitioner under the award of the Senate when the account of the Secretary of the Interior was stated, and for which your petitioner prays judgment, after deducting the \$250,000 paid on account of said award, under the act of March 2d, 1861, and the further sum of \$250,000 in bonds appropriated by the same act, for which separate claim is made in the TWENTY-FIFTH paragraph or article on page 38 of the petition first filed in this case, and is hereby again made with the prayer that interest may be allowed on said \$250,000, originally payable in bonds, at the rate of six per cent. per annum from the 2d of March, 1861, until paid.

Which said sums of \$250,000 in money already paid, and of \$250,000 in bonds still due and separately claimed under a different head, making together \$500,000, being deducted from \$4,295,533.24, the actual net proceeds, less all proper charges prior to 1861, leaves the sum of \$3,795,-

533.24, for which, with five per cent. interest from March 9, 1859, until paid; and for the \$250,000 still due in bonds as aforesaid, with interest thereon at six per cent. per annum until paid; and the other sums specified in the petition and in the schedules hereinafter submitted, your petitioner prays judgment.

#### TWENTY-FOURTH.

And your petitioner further states that the Congress of the United States, in recognition of the binding force and obligation of the said decision, and award of the Senate of the United States, in the act entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and to fulfill treaty stipulations with the various Indian Tribes," for the year ending June 30, 1862, approved March 2, 1861, provided as follows:

"For payment to the Choctaw nation or tribe of Indians on account of their claim under the eleventh and twelfth articles of the treaty with said nation or tribe, made the twenty-second of June, eighteen hundred and fifty-five, the sum of five hundred thousand dollars; two hundred and fifty thousand dollars of which sum shall be paid in money, and for the residue the Secretary of the Treasury shall cause to be issued to the proper authorities of the nation or tribe, on their requisition, bonds of the United States, authorized by law at the present session of Congress: *Provided*, that in the future adjustment of the claim of the Choctaws under the treaty aforesaid, the said sum shall be charged against the said Indians."

12 Statutes at Large, 238.

And your petitioner states that under the provisions of the said statute, it received from the United States, the sum of \$250,000, being the money payment directed to be made by the said statute; but the bonds which were required to be issued by the said statute, were never issued or delivered to your petitioner.



TWENTY-FIFTH.

Your petitioner further states that under and by virtue of the provisions of the said Act of Congress, approved March 2, 1861, it became, and was entitled to demand and receive from the United States the bonds of the United States, bearing interest at the rate of six per centum per annum, for the sum of \$250,000, as a payment by the United States for and on account of the said award, so as aforesaid made by the Senate of the United States.

And your petitioner further states that the issue and delivery of the said bonds to your petitioner was demanded of and from the United States by the authorized delegates and agents of your petitioner, in the month of April, A. D. 1861; but the said bonds were not at that time issued and delivered to your petitioner, nor have the said bonds ever since that time been issued or delivered to your petitioner; nor has your petitioner ever received from the United States any payment of money in lieu of the said bonds. And your petitioner claims from the United States by virtue of the said Act of Congress, for and on account of the said award of the Senate, the said sum of \$250,000 with interest thereon at the rate of six per centum per annum from the date when demand was made for said bonds until paid.

TWENTY-SIXTH.

Your petitioner further states that the claims and demands of your petitioner against the United States, but for the adjudication thereof by the Senate of the United States as hereinbefore stated would in justice and equity amount to the sum of \$8,432,349.78, and but for the adjudication and decision of the Senate of the United States, under the authority conferred by Article XI, of the said treaty of June 22, 1855, your petitioner would be entitled to recover a judgment for the said sum against the United States, in

this proceeding, together with interest thereon at the rate of five per centum per annum, from September 27th, 1836; and your petitioner further states that the specified claims and demands from which the said sums results, as hereinbefore stated, were and are as follows, viz:

1. Claims under Article XIV, Treaty of September 27, 1830.....	\$7,808,668 80
2. Claims under Article XV, Treaty of September 27, 1830.....	10,000 00
3. Claims under Article XVI, Treaty of September 27, 1830.....	51,998 40
4. Claims under Article XIX, Treaty of September 27, 1830.....	408,720 00
5. Claims under Article XX, Treaty of September 27, 1830.....	18,811 92
6. Claims for Interest on Funded Scrip.....	134,150 66
Total.....	\$8,432,349 78

TWENTY-SEVENTH.

Your petitioner further states that there remained due and payable to your petitioner from the United States, for and on account of the said award, so as aforesaid made by the Senate of the United States, in favor of your petitioner, after deducting therefrom the sum of five hundred thousand dollars, directed to be paid by the said Act of Congress approved March 2, 1861, the sum of \$3,795,533.24. And your petitioner demands and claims from the United States, *interest* at the rate of five per cent. per annum on the unpaid balance of the said award, after deducting therefrom the said sum of five hundred thousand dollars, which was paid, and to be paid, to your petitioner in the manner and form described in said act of March 2, 1861. And your petitioner states that it has a right to demand from the United



States interest on said unpaid balance, because and for the following reason, viz :

I. Because the said adjudication and award of the Senate of the United States, in favor of your petitioner, upon the questions submitted to it by Article XI of the treaty of June 22d, 1855, was an adjudication, decision, and award in its favor, having and growing out of it all of the legal rights and incidents of a final award, judgment, or decree in favor of your petitioner *against* the United States, rendered by a legal tribunal having *exclusive* jurisdiction of the questions submitted to it for decision.

II. Because the obligations of the United States to your petitioner grow out of and result from the non-fulfilment of the treaty stipulations heretofore made and entered into between the United States and your petitioner, and *such obligations*, and the liabilities resulting from their non-performance, are always to be ascertained and determined by the public international law. And your petitioner states that, by the terms and requirements of the public international law, the obligation to pay interest is a legal right, resulting from the neglect or failure to pay money due and payable under treaty stipulations.

III. Because it was stipulated and agreed between your petitioner and the United States in Article XIII of the said treaty of June 22d, 1855, as follows :

"And the funds now held in trust by the United States, for the benefit of the Choctaws under former treaties, or otherwise, shall continue to be so held, together with the sum of five hundred thousand dollars, out of the amount payable to them under articles eighth and tenth of this agreement, and also *whatever balance shall remain, if any of the amount that shall be allowed the Choctaws by the Senate, under the twelfth article hereof, after satisfying the just liabilities of the tribe.* The sums so to be held in trust shall constitute a general Choctaw fund, yielding an annual interest of not less than five per centum."

# TWENTY-EIGHTH.

Your petitioner further states that, by Article XIV of the said treaty of June 22nd, 1855, it was provided that—

"The United States shall protect the Choctaws and Chickasaws from domestic strife, from hostile invasion, and from aggression by other Indians, and white persons not subject to their jurisdiction and laws."

But your petitioner further states that the United States did not, in the year 1861, protect the Choctaw Nation from domestic strife and hostile invasion; and that by reason thereof many of the Choctaw people became, and were, engaged in the late rebellion, and that by reason of the situation of the Choctaw country, surrounded by the State of Arkansas on the east, and by the State of Texas on the west and south, it became and was impossible to counteract or resist the influences brought to bear upon the Choctaw people, to induce them to give to the cause of the so-called Southern Confederacy their assistance and support. And your petitioner further states, that at that time they were without any protection from the United States, and their own sense of danger, as well as the hope of having some protection to their persons and homes, induced the Choctaw people, to enter into treaty stipulations with the so-called Southern Confederacy. But your petitioner further states that on the 15th day of September, 1865, your petitioner by its authorized commissioners and delegates, entered into agreement with the United States, which provided as follows :

"Whereas the aforesaid nations and tribes or bands of Indians, or portions thereof, were induced by the machinations of the emissaries of the so-called Confederate States to throw off allegiance to the Government of the United States, and to enter into treaty stipulations with the said so-called Confederate States, whereby they have made themselves liable to a forfeiture of all rights, of every kind,



character, and description, which had been promised and guaranteed to them by the United States. And whereas the Government of the United States has maintained its supremacy and authority within its limits; and whereas it is the desire of the Government to act with magnanimity with all parties deserving its clemency, and to re-establish order and legitimate authority among the Indian tribes;  
 \* \* \* \* \* and for that purpose the undersigned do hereby acknowledge themselves to be under the protection of the United States of America, and covenant and agree, that hereafter they will in all things recognize the Government of the United States as exercising exclusive jurisdiction over them, and will not enter into any allegiance or conventional arrangement with any State, Nation, Power, or Sovereign whatsoever; that any treaty of alliance for cession of land, or any act heretofore done by them, or any of their people, by which they renounce their allegiance to the United States, is revoked, cancelled, and repudiated. In consideration of the foregoing stipulations, made by the members of the respective nations and tribes of Indians present, the United States, through its commissioners, promises that it will re-establish peace and friendship with all the nations and tribes of Indians within the limits of the so-called Indian Country; that it will afford ample protection for the security of the persons and property of the respective nations or tribes, and declares its willingness to enter into treaties to arrange and settle all questions relating to and growing out of former treaties with said nations."

Stats. at Large, p.

And your petitioner further states, that in pursuance of the said agreement, so made between the United States and your petitioner, there was concluded between the United States and your petitioner the treaty dated April 28th, 1866, in which said treaty it was provided in Article X as follows:

"ARTICLE X. The United States reaffirms all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw Nations, entered into prior to the late rebellion and in force at that time,

not inconsistent herewith, and further agrees to renew the payment of all annuities and other moneys accruing under such treaty stipulations and acts of legislation, from and after the close of the fiscal year ending on the 30th of June, in the year (1866) eighteen hundred and sixty-six. (Statutes at Large, vol. 14, p. 779.)

#### TWENTY-NINTH.

Your petitioner further states, that between July 1st, 1861, and July 1st, 1866, there became and was due and payable to your petitioner from the United States, under and by virtue of various treaty stipulations made between your petitioner and the United States previous to the said 1st day of July, 1861, the sum of \$406,284.93, of which amount it is admitted that the United States may legally retain the sum of \$346,835.61, leaving a balance due to the Choctaw nation from the United States of \$59,449.32, which sum your petitioner is entitled to recover in this proceeding in addition to the various other amounts claimed in this petition.

#### THIRTIETH.

Your petitioner further states, that by the award of the Senate of the United States, made as hereinbefore stated, your petitioner became and was entitled to receive the "*net proceeds*" of the lands ceded to the United States by your petitioner under the treaty of September 27, 1830, which had been sold on the 1st day of January, 1859, and also an allowance of 12½ cents per acre for unsold land. And your petitioner avers that the gross receipts for said lands amounted to \$7,926,917.78, and that the unsold land at 12½ cents per acre amounted to \$486,500.83, making a



total of \$8,413,418.61; and that the amount payable to your petitioner, after deducting all proper charges from said total sum, was \$4,295,533.24, which amount your petitioner became entitled to demand and receive from the United States on the 9th day of March,, 1859.

### THIRTY-FIRST.

Your petitioner further states that the "*questions of difference*" which exist between your petitioner and the United States each grow out of, and result from, the non-fulfillment of various treaty stipulations, under treaties heretofore made and concluded between your petitioner and the United States; and that such "*questions of difference*" relate exclusively to claims and demands which can now only be satisfied and settled by the payment to your petitioner of such sums of money as the United States ought, under and by virtue of its treaty obligations, as well as upon principles of equity and justice, to pay to your petitioner; and that the money demands and claims of your petitioner against the United States, for and on account of, and to recover which this petition is filed by the Choctaw Nation, in its own behalf, and in behalf of individual members of the said nation, are now specifically stated as follows:

### A.

CLAIMS OF YOUR PETITIONER AGAINST THE UNITED STATES UPON THE BASIS OF THE SENATE AWARD AND THE CORRECTNESS OF THE ACCOUNT STATED BY THE SECRETARY OF THE INTERIOR, MAY 8TH, 1860, IN OBEDIENCE TO THE RESOLUTION OF THE SENATE:

I. Amount found due by the Secretary of the Interior.....	\$2,981,247 30
From which deduct amount appropriated by Congress, March 2, 1861.....	500,000 00
Balance remaining.....	\$2,481,247 30
II. Interest on said balance from March 9th, 1859, at five per cent. per annum, until paid.	
III. Amount of bonds authorized to be issued on account of said award, March 2, 1861 .....	250,000 00
IV. Interest on said bonds from March 2, 1861, until paid, at six per cent. per annum.	
V. For suspended annuities revived by treaty, 28th April, 1866.....	59,449 32
VI. For lands taken from Choctaws in surveying and marking western boundary of Arkansas.....	167,896 57
	<hr/>
	\$2,958,593 19

To which add interest on balance due on award of the Senate at five per cent., and on bonds authorized by Congress at six per cent., until paid.



## B.

AMOUNT DUE UNDER AWARD, AFTER CORRECTING ERRORS IN ACCOUNT STATED BY SECRETARY OF THE INTERIOR, IN OBEDIENCE TO THE RESOLUTION OF THE SENATE:

I. Balance due upon award of the Senate under article XI, treaty June 22, 1855..	\$3,795,533 24
II. Interest on said balance at five per cent. per annum from March 9, 1859, until paid.	
III. For bonds authorized to be issued on account of said award by act of March 2, 1861.....	250,000 00
IV. Interest on said bonds from March 2, 1861, at six per cent. per annum, until paid.	
V. For suspended annuities revived by treaty of April 28, 1866.....	59,449 32
VI. For lands taken from Choctaws in surveying and marking western boundary of Arkansas.....	167,896 57
Aggregate.....	\$4,272,879 13

To which add interest on balance due under award of Senate from March 9, 1859, at five per cent. per annum, and on bonds authorized by Congress from March 2, 1861, at six per cent. per annum, until paid.

## C.

AMOUNT THAT YOUR PETITIONER IS ENTITLED TO RECOVER AND SHOULD BE ALLOWED BY THIS COURT IN CASE IT SHOULD DECIDE THAT THE AWARD OF THE SENATE, UNDER ARTICLE XI OF THE TREATY OF JUNE 22, 1855, SHOULD BE SET ASIDE, AND OUGHT NOT TO BE HELD AS BINDING OR CONCLUSIVE AGAINST EITHER THE UNITED STATES OR YOUR PETITIONER.

I. Claims under 14th article, treaty of 1830:	
1,404,640 acres for which scrip was allowed.	
268,120 acres for rejected claims.	
1,672,760 acres at \$5.50 per acre.....	\$9,200,180 00
From which deduct—	
Funded scrip paid in money..	\$872,000 00
311,920 acres, scrip, at 11 cts.	34,311 20
388,160 “ “ at \$1.25.	485,200 00
	<u>1,391,511 20</u>
(See Brief, p. 235, &c., &c.)	\$7,808,668 80

Interest on 14th article claims as above stated, from 24th August, 1836, at five per cent., until paid.

II. 15th article claims.....	10,000 00
III. 16th article claims.....	51,998 40
IV. 19th article claims.....	408,720 00
V. 20th article claims.....	18,811 92
VI. Suspended annuities.....	59,449 32
VII. Land taken from Choctaw eastern boundary .....	167,896 57
VIII. Interest of funded scrip.....	134,150 66
Total.....	<u>\$8,659,695 67</u>

With interest on 14th article claims, as above stated, for \$7,808,668.80, from 24th August, 1836, until paid.



And your petitioner prays that in considering the questions of difference existing between your petitioner and the United States, it will please the court to allow your petitioner the sums of money herein claimed, in accordance with such one of the three schedules hereinbefore set forth as most strictly conforms to the just rights and claims of your petitioner in the premises.

## D.

CLAIMS OF THE CHOCTAW NATION AGAINST THE UNITED STATES, STATED UPON THE PRINCIPLE THAT THE UNITED STATES HAS, AND RETAINS, THE LANDS ACQUIRED BY THE TREATY OF SEPTEMBER 27TH, 1830, *in trust* FOR THE BENEFIT OF THE CHOCTAW NATION, AND, AS *trustee*, IS BOUND TO ACCOUNT FOR THE VALUE OF SAID LANDS AFTER DEDUCTING THEREFROM THE AMOUNTS PAID TO THE CHOCTAW NATION ON ACCOUNT OF SAID LANDS.

And your petitioner further prays that if neither of the above methods of stating the claims and demands of your petitioner against the United States, on account of the "*questions of difference*," existing between your petitioner and the United States, seem to be such as the court can approve and sanction by its judgment; and if the court shall consider that it may rightfully ignore the said award of the Senate of the United States in favor of your petitioner, as final and conclusive against the United States, and shall assume the right to examine the said "*questions of difference*" *de novo*, then your petitioner prays that it will please the court to consider the United States as having required your petitioner, in violation of the covenants contained in the treaty of October 18th, 1820, and January 20th, 1825, to cede and convey to the United States the lands described in the said treaty of September 27th, 1830; and that the court shall declare that the United States, from

and after the date of said treaty of September 27th, 1830, held the said lands as trustee for the benefit of your petitioner, and was bound to account to your petitioner for the proceeds resulting from the sale thereof; that the court shall ascertain, by such evidence as may be available for that purpose, the amount realized from the sale of said lands by the United States; and that the court, having ascertained the amount received by the United States from the sale thereof, shall cause an account to be stated between your petitioner and the United States in respect to the said lands; and shall ascertain and charge against the same the fair and reasonable value of all property, money, scrip, or other thing of value paid to and received by your petitioner for or on account of said lands from the United States; and that upon such accounting, a judgment may be rendered herein for such balance as may be thus found to be due and owing to your petitioner by the United States, for and on account of the land ceded by your petitioner to the United States, under the said Treaty of September 27th, 1830; and that interest be awarded upon the said balance so found to be due and owing to your petitioner, as upon and for moneys belonging to your petitioner, held in trust by the United States; and that besides the said sum thus ascertained, your petitioner also have judgment against the United States for the amount of the annuities due and payable to your petitioner from July 1st, 1861, to July 1st, 1866, amounting to the sum of \$59,449.32, and also for the further sum of \$167,896.57, being the amount due, as the reasonable value of the lands taken from the Choctaw nation appropriated by the United States, in surveying and marking the western boundary line of the State of Arkansas; your petitioner thus prays, in order that "*all the questions of difference*" heretofore and now existing between your petitioner and the United States, may be judicially determined, and the claims and demands of your petitioner against the United States,



may be finally adjusted and settled upon those principles of settlement, which are everywhere and always recognized to be equitable and just.

JOHN B. LUCE,  
*Attorney for Petitioner.*

SHELLABARGER & WILSON,  
J. W. DENVER,  
JOHN J. WEED,  
F. P. CUPPY,  
*Of Counsel.*

*Exhibit A.*

(Hereinbefore referred to in the *Twenty-first*, and in other articles of the petition.) *P 29 + 30.*

*Statement of account with the Choctaw Indians, in conformity with the resolutions and decision of the Senate of the United States of March 29, 1859.*

	Acre.
Total area of lands ceded by the Choctaws by the treaty of September 27th, 1830 .....	10,423,139.69
Area of reservations "allowed and secured," which are to be deducted and excluded from computation in the account .....	334,101.02
Leaving .....	10,089,038.67
Quantity sold up to January 1, 1859 .....	5,912,664.63
Residue of said lands .....	4,176,374.04
Of this residue, 2,292,266 acres have been disposed of under the swamp-land act, and grants for railroads and school purposes, up to January 1, 1859.	
The proceeds of the sales of the lands up to January 1, 1859, viz., 5,912,764.63 acres, amounted to .....	\$7,556,578 05
The residue of said lands, viz., 4,176,374.04 acres, at 12½ cents per acre, amounted to .....	522,046 75
	<hr/> \$8,078,614 80

From which sum the following deductions are to be made :

- 1st. The cost of the survey and sale of the lands, viz., 10,423,139.96 acres, at 10 cents per acre..... \$1,042,313 96
- 2d. Payments and expenditures under the treaty, which are as follows :

FIFTEENTH ARTICLE.

Salaries of chiefs for twenty years.....	\$12,921 25
Pay to speaker of three districts for four years.....	354 66
Pay for secretary for same period.....	550 00
Outfit and swords to captains, ninety-nine in number .....	4,930 56
Pay to the same, at \$50 per year, for four years.....	19,604 65
	<hr/> \$38,361 12
Carried forward.....	
7	<hr/> \$8,078,614 80



\$8,078,614 80

Brought forward .....		
SIXTEENTH ARTICLE.		
Removal and subsistence, per statement of Second Auditor .....	\$813,927 07	
On same account, per addi- tional statement made in this Office for expenditures from 1838 to date .....	401,556 17	
Amount paid for cattle .....	<u>14,283 28</u>	\$1,229,766 52

## SEVENTEENTH ARTICLE.

Annuity of \$20,000 for twen- ty years .....		\$400,000 00
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## NINETEENTH ARTICLE.

Fifty cents per acre for reser- vations relinquished .....	\$24,840 00	
Amounts to orphans for res- ervations .....	<u>120,826 76</u>	\$145,666 76

## TWENTIETH ARTICLE.

Education of forty youths for 20 years .....	\$217,260 73	
Council-house, house for each chief, and church for each district .....	9,446 75	
\$2,500 annually for support of three teachers for 20 years .....	50,000 00	
Three blacksmiths, sixteen years .....	38,988 86	
Millwright for five years .....	3,050 00	
2,100 blankets .....	7,496 70	
Rifles, molds, &c., to each emigrating warrior .....	43,969 31	
1,000 axes, plows, hoes, wheels, and cards .....	11,490 20	
400 looms .....	7,193 53	
One ton iron and two hun- dred weight of steel, annu- ity to each district for six- teen years .....	<u>8,051 15</u>	\$396,947 26

## TWENTY-FIRST ARTICLE.

Annuity to Wayne warriors .....	\$1,818 76	
3d. Scrip allowed in lieu of reservations, viz., 1,399,920 acres, at \$1.25 per acre, Payments made to meet the contingent expenses of the commissioners appoint- ed to adjust claims under the 14th arti-		1,749,900 00

\$8,078,614 80

Brought forward .....		
cle of the Choctaw treaty of 27th Sep- tember, 1830 .....	51,320 79	
For various expenses growing out of the location and sale of Choctaw reserva- tions, and perfecting titles to the same, including contingent expenses, such as pay of witnesses, interpreters, &c., in- curred in executing the act of 3d March, 1837, and subsequent acts rela- tive to adjusting claims under the fourth article of the treaty of 1830 .....	21,408 36	
For payments made for Choctaw account, being for expenses incurred in locating reservations under the treaty with said tribe of 27th September, 1830 .....	<u>19,864 00</u>	
Total amount of charges .....	5,097,367 50	
When deducted from the proceeds of the land sold, and the "residue of said lands," at 12½ cents per acre...		5,097,367 50
Leaves a balance due to Choctaws of .....		\$2,981,247 30
OFFICE OF INDIAN AFFAIRS, March 22, 1860.		

STATE OF ARKANSAS, }  
County of Sebastian, } ss:

Peter Folsom, being duly sworn, on his oath states that he is the only legally appointed delegate of the Choctaw nation authorized and empowered to represent and present to the Government of the United States the claims and demands of the Choctaw Nation against the United States: that the authority of affiant as such delegate was derived from the public acts of the Legislative Assembly or National Council of the Choctaw Nation, and that the delegation of which affiant is the only surviving member was authorized and appointed under and by virtue of a resolution of the National Council entitled "Resolutions creating a delegation to settle all unsettled business with the Government at Washington," approved November 9, 1863, which provided as follows:



"Whereas, information has reached the Council that the demands of a portion of certain claimants have become prejudiced by the unauthorized interference of white men at Washington, who, without the knowledge or consent of the claimants, pretend to be their attorneys; and whereas the claimants have repeatedly, from time to time, called on the Council to assist them in procuring what is justly due them from the United States; and whereas, in the opinion of the Council, a speedy and final settlement should be made with the United States of the foregoing specifications: therefore,

*Resolved*, That P. P. Pitchlynn, Israel Folsom, Dixon W. Lewis, and Samuel Garland be, and are hereby, appointed delegates, and fully empowered to represent and to institute in behalf of the Choctaw people a claim upon the United States for the pay and remuneration for the country which they ceded to the United States Government east of the Mississippi river, and to protect and defend all and every right and interest of the Choctaws arising under treaty stipulation or otherwise.

"Be it further resolved, That the said delegates are hereby clothed with full power to settle and dispose of, by treaty or otherwise, all and every claim and interest of the Choctaw people against the Government of the United States, and to adjust and bring to a final close all unsettled business of the Choctaw people with the Government of the United States.

"Be it further resolved, That in case of resignation or death of any of the said delegation above mentioned, the chiefs have power to appoint any person to fill such vacancy in his district."

Laws of Choctaw Nation, 1869, pp. 123, 124, 125.

Affiant further states that by an act of the General Council of the said Choctaw Nation, approved November 10, 1854, it was provided that the said delegates—

"Be, and they are hereby, instructed to remain at Washington City, and continue to press to final settlement all claims and unsettled business of the Choctaws with said Government, with full power to take all measures and to enter into all contracts which, in their judgment, may become necessary and proper, in the name of the Choctaw

people, and to bring to a final and satisfactory adjustment and settlement all claims or demands whatsoever which the Choctaw tribe, or any member thereof, have against the Government of the United States, by treaty or otherwise."

Laws of Choctaw Nation, p. 134.

That by the resolution of the General Council of the Choctaw Nation, approved November 4, 1857, the said delegates were further authorized and empowered as follows:

"That the delegates of the Choctaw Nation, who have in charge the business and interests of the Nation, arising under the treaty of Washington, of June 22, 1855, now pending, unsettled, before the United States Government, be instructed to proceed to Washington as soon as practicable: and full power is given them, or any of them, to urge a speedy conclusion of all matters of unsettled business arising under the treaty aforesaid, and make due report of any progress or final conclusion thereof to the General Council."

Laws of Choctaw Nation, p. 162.

Affiant further states that Dixon W. Lewis, one of the delegates named in the said resolution approved November 9, 1853, having deceased, affiant was, by legal and competent authority, appointed a member of the said delegation, to fill the vacancy therein caused by the death of the said Dixon W. Lewis.

Affiant further states that in an act of the General Council of the Choctaw Nation, approved November 18, 1867, it was provided as follows:

"SEC. 1. That the delegates, composed of P. P. Pitchlynn, Israel Folsom, Samuel Garland, and PETER FOLSOM, are hereby notified that inasmuch as they have nearly consummated the 'net proceeds question,' they shall proceed, without delay, to Washington City for the express purpose of bringing the subject-matter of these resolutions to the notice of Congress, and to respectfully ask an early appropri-



ation to be made to carry into effect the amount due this Nation, as stated in the foregoing preamble of these resolutions.

"SEC. 3. *Be it further resolved*, That it is hereby declared to be the intention of the Choctaw Nation that the terms of service of the delegates herein mentioned shall expire whenever the whole amount of the '*net proceeds question*' is adjusted and settled by Congress, and said delegates are required to render a full and just report of their proceedings and progress they are making with the claim, from time to time, to the principal chief of this Nation."

Laws of Choctaw Nation, pp. 473, 474.

Affiant further states that since the passage of the said act, three of the delegates named therein, viz., P. P. Pitchlynn, Israel Folsom, and Samuel Garland, have deceased; and no successors to them having been appointed, affiant is the only surviving member of the said delegation authorized to represent the Choctaw Nation, in respect to the matters and things to which the said several acts of the General Council of the Choctaw Nation referred.

Affiant further states that as a part of the official duty imposed upon him by the said several acts of the General Council of the Choctaw Nation, he makes oath to the foregoing petition for and on behalf of the Choctaw Nation; that he has read the foregoing petition, and knows the contents thereof; and that he believes the matters and things therein stated and set forth are substantially true and in accordance with facts which he understands to be a part of the history of the Choctaw Nation in its treaty relations with the United States. Affiant further states that no assignment of the claim stated in the said petition, nor of any part thereof, or interest therein, has been made; and that the Choctaw Nation of Indians is entitled to recover the amount claimed in the foregoing petition from the United States, after allowing all just credits, set-offs, or counter claims.

PETER FOLSOM,  
*Delegate of Choctaw Nation.*

Subscribed and sworn to before me this 20th day of February, A. D. 1884.

J. L. HENDRICK,  
*U. S. Commissioner for the  
Western District of Arkansas.*

UNITED STATES OF AMERICA, }  
*Western District of Arkansas.* }

I hereby certify that J. L. Hendrick is, and was at the date of signing the foregoing jurat, a duly appointed and acting U. S. Commissioner for the Western District of Arkansas.

Witness my hand and seal of said Court this 22d day of February, A. D. 1884.

[SEAL]

STEPHEN WHEELER,  
*Clerk U. S. District Court  
Western District of Arkansas,*

By S. A. WILLIAMS,  
*D. C.*

Post-Office Address of Choctaw Delegate: *Oak Lodge,  
Choctaw Nation, Indian Territory.*

Post-Office Address of Attorney: *1213 F street, Wash-  
ington, D. C.*

Post-Office Address of Counsel: *Washington, D. C.*

Filed, as a substitute for all former petitions, February 26, 1884.

J. R.