

CONGRESSIONAL No. 17641

IN THE COURT *of* CLAIMS *of the* UNITED STATES.

THE CHOCTAW AND CHICKASAW NATIONS
OF INDIANS, PLAINTIFFS,

vs.

THE UNITED STATES OF AMERICA, DEFENDANT.

REPLY OF PLAINTIFF, CHOCTAW NATION, TO
DEFENDANT'S STATEMENT SETTING
FORTH GRATUITIES.

Agreeable to the order of the Court of June 1, 1936, defendant has submitted a statement of moneys expended gratuitously by the Government for Choctaw and Chickasaw benefit. The statement is taken from the report of the General Accounting Office filed in this Court, October 15, 1936, in the cases of Choctaw Nation No. K-260; and Chickasaw Nation, No. K-544.

While the order of the Court directing the filing of such statement does not in express language direct the

defendant to submit such statement in the nature of an offset to the claim of the plaintiffs, and while the statement so submitted does not expressly request findings of the Court holding that the moneys so spent, as shown by the statement, should be charged as offsets against the plaintiffs, we assume it was the purpose of defendant to urge the amounts therein evidenced as proper offsets against the claim advanced by plaintiffs.

The permissive statute that authorizes the Government to submit such figures as offsets is the Act of August 12, 1935 (49 Stat. 571). This item of legislation is commonly referred to and known as the "Second Deficiency Appropriation Bill of 1935." The Choctaw Nation denies that such sums are gratuities and objects to their being charged against it as follows:

I.

The second group of figures (Rec. 474) submitted by defendant is for moneys expended for the benefit of the Choctaw Nation during the fiscal years from 1867 to 1934, inclusive. The sums therein set up are the same sums and for the identical items urged as gratuities by defendant in its request for findings of fact Numbers XLIII and XLIV (pp. 136-137) in K-260. These requested findings of the defendant have been replied to and fully answered by this plaintiff in K-260 (pp. 289-91). We adopt in full the reply to said items and respectfully request the Court to consider such reply as being the reply of the plaintiff, Choctaw Nation, herein.

II.

The first group of figures (Rec. 474) submitted constitutes expenditures made on behalf of the Chickasaw Nation during the fiscal years 1867 to 1934, inclusive, and fall within the identical classification as the expenditures made for the Choctaw Nation during the same period of years. We, therefore, adopt the reply and answer, above adopted, as applicable to these items in that the classification of expenditures is identical.

III.

The third group of figures submitted (Rec. 475) is for moneys expended for the joint benefit of the Choctaw and Chickasaw Nations during the fiscal years from 1867 to 1934, inclusive, and are identical with the figures and cover the same items of expenditure as defendant's requested findings XLVII and XLVIII, as set up on pages 138 and 139 of K-260. These items of expenditure have likewise been replied to and answered fully by plaintiff in said K-260 at pages 292-297. We adopt the reply and answer of plaintiff as being a complete defense to said items herein.

IV.

The fourth group of figures submitted (Rec. 476-477) is for sums expended for the joint benefit of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Nations during the fiscal years from 1867 to 1934, inclusive, and are the identical figures covering the same items and urged by defendant in Case K-260 under findings L and LI (pp. 140-142). They are replied to

and answered fully by plaintiff in said case (pp. 297-311). We adopt in full such reply and answer on behalf of the Choctaw Nation and respectfully request the Court to consider same in connection herewith as though the matter were reset out at length herein.

V.

As to the remaining \$46,961.66 not denied by plaintiff in K-260 (p. 311), the Choctaw Nation is not prepared now to question those items as being anything but gratuitous and proper offsets against its claim. The principal item is for medical attention expended under finding XLIV (p. 311) in the sum of \$31,176.22. It appears that this sum was expended by the Government in an attempt to stamp out a smallpox epidemic which occurred during the year 1901. We are willing to concede the benefit of the doubt as to this being a gratuitous expenditure and concede that it is a proper item of offset.

The other principal items, being for education in the sums of \$11,614.03 and \$5998.82 (K-260, p. 311), while not expended strictly as tribal benefits are conceded as proper offsets mainly in light of the fact that the report of the G. A. O. shows that \$12,009.79 of such sums was expended out of the so-called "Civilization Fund" created by Article 1 of the Treaty with the Osage Nation consummated in 1865 (Kappler, Laws and Treaties, II, 878; 14 Stat. 687); and while the outlay may not have been chargeable against the Choctaw Nation as expended by the Government, it clearly was not an obligation on the part of the Osages to make such advancements other than as gratuities.

VI.

The further question of the propriety of charging this claim with offsets is raised in this: By the Bill referred and the resolution transmitting, it is apparent that it was the manifest desire of the Congress, speaking through the Senate, to place the plaintiffs in the same position as the other members of the Five Civilized Tribes have heretofore been placed by the Government relative to their western lands similarly taken. By the report of the Senate Committee (p. 11, Exhibit A, Plaintiff's Petition), it will be seen that, by provisions of 25 Stat. 757, the Creek Nation was awarded a total compensation of \$1.25 per acre without offsets for gratuities; and by 25 Stat. 1004-1005, the Seminoles were accorded the same settlement; and by 27 Stat. 649, the Cherokees were paid an amount equivalent to \$1.42 per acre for their western lands with no offsets for gratuities.

If gratuities be charged to the Choctaws and Chickasaws for their lands similarly and synchronously taken, the manifest intent of the Senate in submitting the claim here will be defeated and the claimants will not have been accorded the same consideration and settlement afforded the other Tribes so situated; and the cause for such reference will not have been satisfied.

CONCLUSION.

The Choctaw Nation renews its plea for the judgment of the Court agreeable to its original petition.

Respectfully submitted,

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Attorney for the Choctaw Nation.