

In the Court of Claims of the United States

No. K-334

THE CHICKASAW NATION, COMPLAINANT

vs.

THE UNITED STATES OF AMERICA, DEFENDANT

AMENDED ANSWER

DEC 1 01938

Now comes the Attorney General, on behalf of the United States, and answering the amended petition of the plaintiff herein, denies each and every allegation therein contained, save and except as hereinafter specifically admitted, and for a further answer and defense alleges:

1. That in a suit then pending in this Court in which the Choctaw Nation was plaintiff and the United States was defendant, hereinafter for convenience called the "*Net Proceeds*" case, a judgment was duly made, given, and entered in favor of the Choctaw Nation and against the United States, for the full value of the lands which are the subject matter of this suit; that the United States paid the full amount of the judgment recovered in that suit, with interest, to the Choctaw Nation.

2. That after the United States had paid the full amount of the judgment to the Choctaw Nation, the Chickasaw Nation elected to assert its

claim for its interest in the judgment against the Choctaw Nation and not against the United States; that the Chickasaw Nation based its claim so made upon the value of the lands as found and fixed by the Court in the "*Net Proceeds*" case and as affirmed by the Supreme Court in the same case on appeal (119 U. S. 1, 41); that in carrying out its said election the Choctaw Nation and the Chickasaw Nation by acts of their respective legislative councils, duly approved by the President of the United States, mutually agreed that the Choctaw Nation should pay to and the Chickasaw Nation should accept from the Choctaw Nation one-fourth of the amount of the judgment of \$68,102.00, that is \$17,025.50, less \$1,021.53 which it was agreed to have been the Chickasaw Nation's pro rata share of the expenses incurred by the Choctaw Nation in prosecuting its claim to judgment against the United States; that subsequent to the legislative acts, the Choctaw National Council appropriated the sum of \$16,003.97, the net amount due under the agreement and authorized the Choctaw National Auditor to issue his warrant for that sum payable to the Chickasaw Nation and authorized the Choctaw National Treasurer to pay the warrant, which act of appropriation and direction was approved by the principal chief of the Choctaw Nation and by the President of the United States; that the United States has not been able to ascertain whether the warrant was issued and paid; that

by reason of its election the Chickasaw Nation is not now entitled to assert any claim for any interest in the same lands which were involved in the "*Net Proceeds*" case against the United States in this suit.

3. That Section II of the Act of April 26, 1906 (34 Stat. 137), provides that all claims against the Choctaw Nation shall be filed with the Secretary of the Interior within six months from and after the date of the act; that if the United States were now obliged to pay the Chickasaw Nation the one-fourth part of the judgment, which judgment it has already paid to the Choctaw Nation, then the United States would be subrogated to the rights of the Chickasaw Nation under its agreement with the Choctaw Nation; that by reason of the failure of the Chickasaw Nation to file its claim with the Secretary of the Interior within six months the rights of the Chickasaw Nation against the Choctaw Nation under the agreement described in paragraph 2 hereof were barred and could no longer be asserted and that therefore by its laches the Chickasaw Nation ought now be and it is barred from asserting its claim against the United States in this suit.

And as a further answer and defense, alleges:

That the United States never delivered possession of the lands here involved or any part of them to the Choctaw Nation and that neither the Choctaw Nation nor the Chickasaw Nation were ever put into or took or had possession of the lands or

any part of them; that the failure to deliver possession of the lands took place long prior to the time that the Chickasaw Nation acquired an interest of any kind in the lands ceded to the Choctaw Nation in common with the Choctaw Nation, other than in and to an area not here involved, known as the "Chickasaw District," prior to the treaty of June 22, 1855 (11 Stat. 611); that prior to the treaty of October 18, 1820 (7 Stat. 210), a large number of white settlers, citizens of the United States, had settled upon the lands now included within the disputed strip; that prior to the treaty of January 20, 1825 (7 Stat. 234), the number of such white settlers had greatly increased, of all of which facts the delegates of the Choctaw Nation who negotiated both those treaties for and on behalf of the Choctaw Nation had full knowledge at the time the respective treaties were negotiated for and executed and because of this knowledge the Choctaw Nation refused to remove to the lands ceded to them until after the year 1830; that between the years 1827 and 1846, both inclusive, all the lands included in the disputed strip were officially surveyed by the United States as a part of the public domain and that prior to the year 1847 all such surveys were approved and the lands included therein were offered for sale and disposal by the Land Department of the United States, save and except the lands in Townships 1 and 2 North, Range 33 West, the official surveys of which were approved in 1853 and

offered for sale in 1860; that the United States never at any time surrendered its possession of and dominion over the lands involved either to the Choctaw Nation or Chickasaw Nation.

And now, having fully answered, the United States prays (1) that the amended petition be dismissed; (2) that judgment herein, if any, be made, given, and entered against the Choctaw Nation; (3) that if judgment be against the United States that the United States have judgment for a like amount over against the Choctaw Nation.

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