

In the Court of Claims of the United States

No. K-334

(Decided January 8, 1945)

THE CHICKASAW NATION v. THE UNITED STATES AND THE CHOCTAW NATION

Mr. Melven Cornish for the plaintiff.

Mr. Charles H. Small, with whom was *Mr. Assistant Attorney General Norman M. Littell*, for the defendant.

This case was originally tried, argued, and submitted on two questions: First, the date of taking by the Government of 136,204.02 acres by reason of an erroneous survey which was specifically ratified and adopted by an act of Congress of March 3, 1875, as the permanent boundary line between the state of Arkansas and the Indian Territory; and, second, the value of such lands at the date of taking.

These questions were considered and decided by the court in findings and opinion of May 5, 1941, 94 C. Cls. 215, and the amount of recovery and the amount of offsets, if any, were reserved for further proceedings under rule 39 (a).

SPECIAL FINDINGS OF FACTS

1. The 136,204.02 acres of land in question were taken by the defendant, as found by the court, 94 C. Cls. 215, on March 3, 1875.
2. The value of the lands at the time of taking on March 3, 1875, was \$68,102.

DEFENDANT'S COUNTERCLAIM

3. Article III of the Treaty of April 28, 1866 (14 Stat. 769), between the United States and the Choctaw and Chickasaw Nations provides as follows:

The Choctaws and Chickasaws, in consideration of the sum of three hundred thousand dollars, hereby cede to the United States the territory west of the 98° west longitude, known as the leased district, provided that the said sum shall be invested and held by the United States, at an interest not less than five percent, in trust for the said nations, until the legislatures of the Choctaw and Chickasaw nations respectively shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent, resident in the said nations at the date of the treaty of Fort Smith, and their descendants, heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, except in the annuities, moneys, and public domain claimed by, or belonging to, said nations respectively; and also to give to such persons who were residents as aforesaid, and their descendants, forty acres each of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land, after the Choctaws and Chickasaws and Kansas Indians have made their selections as herein provided; and immediately on the enactment of such laws, rules, and regulations, the said sum of three hundred thousand dollars shall be paid to the said Choctaw and Chickasaw Nations in the proportion of three fourths to the former and one fourth to the latter,—less such sum, at the rate of one hundred dollars per capita, as shall be sufficient to pay such persons of African descent before referred to as within ninety days after the passage of such laws, rules, and regulations shall elect to remove and actually remove from the said nations respectively. And should the said laws, rules, and regulations not be made by the legislatures of the said nations respectively, within two years from the ratification of this treaty, then the said sum of three hundred thousand dollars shall cease to be held in trust for the said Choctaw and Chickasaw nations, and be held for the use and benefit of such of said persons of African descent as the United States shall remove from the said territory in such manner as the United States shall deem proper,—the United States agreeing, within

ninety days from the expiration of the said two years, to remove from said nations all such persons of African descent as may be willing to remove; those remaining or returning after having been removed from said nations to have no benefit of said sum of three hundred thousand dollars, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations.

4. The Chickasaw Nation did not, pursuant to the foregoing article or otherwise, within two years from the date of ratification of that treaty or at any time give to persons of African descent resident in that nation at the date of that treaty and their descendants, or either thereof, theretofore held in slavery among the Chickasaw Nation, the rights, privileges, and immunities, including the right of suffrage, of citizens of the Chickasaw Nation, or any of such rights, or give to such persons of African descent forty acres each of land, or any land, of the Chickasaw Nation on the same terms as the Choctaws and the Chickasaws, or otherwise, or at all.

5. Article XLVI of the same treaty provides:

Of the moneys stipulated to be paid to the Choctaws and Chickasaws under this treaty for the cession of the leased district, and the admission of the Kansas Indians among them, the sum of one hundred and fifty thousand dollars shall be advanced and paid to the Choctaws, and fifty thousand dollars to the Chickasaws, through their respective treasurers, as soon as practicable after the ratification of this treaty, to be repaid out of said moneys or any other moneys of said nations in the hands of the United States; the residue, not affected by any provision of this treaty, to remain in the Treasury of the United States at an annual interest of not less than five percent, no part of which shall be paid out as annuity, but shall be annually paid to the treasurer of said nations, respectively, to be regularly and judiciously applied, under the direction of their respective legislative councils, to the support of their government, the purposes of education, and such other objects as may be best calculated to promote and advance the welfare and happiness of said nations and their people respectively.

6. The United States advanced to the Chickasaw Nation pursuant to the terms of Article XLVI set out above the

aggregate sum of \$57,500 which was made up of the following items:

(a) An amount of \$50,000 which is referred to in the above article. It was appropriated by the Act of July 26, 1866 (14 Stat. 259), and it was paid to the treasurer of the Chickasaw Nation during the fiscal year 1867.

(b) The remaining amount, \$7,500, represents two payments of \$3,750 as interest accumulated on the principal sum on the assumption that the Chickasaw Nation would adopt the Freedmen. The first payment was appropriated by the Act of July 26, 1866 (14 Stat. 259), and it was paid to the treasurer of the Chickasaw Nation during the fiscal year 1868. The second payment was appropriated by the Act of April 10, 1869 (16 Stat. 39), and it was paid to the treasurer of the Chickasaw Nation during the fiscal year 1869. No other portion of the \$300,000 was ever paid or credited to the Chickasaw Nation.

Neither the total amount of \$57,500 nor any part thereof has been repaid to the United States.

7. One provision of an agreement entered into involving the Choctaw and Chickasaw Nations and commonly referred to as the "Atoka Agreement," ratified as Section 29 of the Act of Congress of June 28, 1898 (30 Stat. 495, 513), reads as follows:

It is further agreed that all of the funds invested, in lieu of investment, treaty funds, or otherwise, now held by the United States in trust for the Choctaw and Chickasaw tribes, shall be capitalized within one year after the tribal governments shall cease, so far as the same may legally be done, and be appropriated and paid, by some officer of the United States appointed for the purpose, to the Choctaws and Chickasaws (freedmen excepted) per capita, to aid and assist them in improving their homes and lands.

OFFSETS FOR GRATUITOUS EXPENDITURES AND DISBURSEMENTS

8. During the period from the beginning of the fiscal year 1877 to the end of the fiscal year 1934 the United States expended from public funds gratuitously, and without obligation under any treaty or agreement, and for the benefit of the Chickasaw Nation, the sum of \$1,489.35 for the following purposes:

Purpose	Appropriations from which paid	Gratuity Rept., G. A. O. (pages)	Amount
Agricultural aid.....	Agriculture and stock raising among Indians.	8	\$182.09
Automobiles and re-pairs.....	do.....	8	148.34
Household equipment.....	Support of Indians and administration of Indian property.	63	80.85
Indian dwellings.....	do.....	62	73.77
Medical attention.....	Conservation of health among Indians. Relieving distress and prevention, etc., of disease among Indians.	11.60	194.49
Presents.....	Support of Indians and administration of Indian property.	63	30.00
Provisions.....	do.....	62.63	779.81
			\$1,489.35

9. During the period from the beginning of the fiscal year 1877 to the end of the fiscal year 1896 the United States expended from public funds gratuitously, and without obligation under any treaty or agreement, and for the benefit of the Choctaw and Chickasaw Nations, the sum of \$10,358.53 for the following purposes:

Purpose	Appropriations from which paid	Gratuity Rept., G. A. O. (pages)	Amount
Education.....	Civilization fund..... Support of schools not otherwise provided for.	194, 243	\$10, 358. 53

10. During the period from the beginning of the fiscal year 1877 to the end of the fiscal year 1934 the United States disbursed from public funds gratuitously, and without obligation under any treaty or agreement, and for the benefit of the Chickasaw Nation the sum of \$28,898.47 for the following purposes incident to "Education":

Purpose	Appropriations from which paid	Gratuity Rept., G. A. O. (pages)	Amount
Board and tuition	Indian Schools, Five Civilized Tribes	48-50	\$3,148.75
Books, stationery, etc.	Indian Schools, Five Civilized Tribes	39, 40, 46-50	901.18
Clothing	do	40, 47, 48	3,199.05
Erection and repairs of school buildings	Indian Schools, Five Civilized Tribes	50	3,802.81
Fuel, light and water for Indian buildings	do	50	112.00
Furniture and equipment	do	39, 40, 48	2,120.60
Hardware, glass, oil and paints for schools	do	40, 48	195.31
Hospital equipment at schools	do	40, 48	91.64
Medical attention	do	50	1.35
Pay of miscellaneous school employees	do	49, 50	14.67
Pay of school superintendents and teachers	Indian Schools, Five Civilized Tribes Support of schools not otherwise provided for	39, 40, 47, 48, 64	3,402.34
Provisions	Indian Schools, Five Civilized Tribes	50, 51	17.50
School farm	do	48, 50	153.78
Traveling expenses	Indian Schools, Five Civilized Tribes	41, 46, 48	43.76
Transportation, etc., of supplies, other than treaty supplies	Purchase and transportation of Indian supplies Telegraphing, transportation, etc., Indian supplies	58, 65	11,693.73
			28,898.47

11. During the period from the beginning of the fiscal year 1897 to the end of the fiscal year 1934 the United States expended from public funds gratuitously, and without obligation under any treaty or agreement, and for the benefit

of the Choctaw and Chickasaw Nations the sum of \$25,790.49 for the following purposes:

Purpose	Appropriations from which paid	Gratuity Rept., G. A. O. (pages)	Amount
Clothing	Conservation of health among Indians	207	\$129.83
Education	Purchase and transportation of Indian supplies	230	501.74
Fuel, light and water for Indian buildings	Conservation of health among Indians	208	151.63
Hardware, glass, oils and paints for Indian buildings	do	207	9.49
Expenses of locating coal and asphalt land	Commission, Five Civilized Tribes	202	1,662.89
Per capita payment, expenses	Administration of affairs of Five Civilized Tribes	185	208.71
Expenses of protecting property interests	Protecting property interest of minor allottees, Five Civilized Tribes	227	356.50
Provisions and other rations	Conservation of health among Indians	207	54.75
Expense of timber estimating	Administration of affairs of Five Civilized Tribes	185, 201, 204	7,035.45
Transportation, etc., of supplies	Conservation of health among Indians Purchase and transportation of Indian supplies	207-8, 230	15,679.51
			25,790.50

12. During the period from 1877 to the end of the fiscal year 1934 the members of the Chickasaw Nation composed approximately 21.06 percent of the total population of the Choctaw and Chickasaw Nations. Upon that basis the defendant expended gratuitously for the benefit of the Chickasaw Nation, and without obligation under any treaty or agreement, 21.06 percent of the sum of \$36,149.02 shown to have been expended by the defendant in findings 9 and 11, such amount being \$7,612.98. The expenditures shown in findings 10 and 11 were made for the Choctaw and the Chickasaw Nations jointly, and it cannot be shown, except by allocation on the basis of population, what portion of the expenditures was made for the benefit of each tribe.

13. During the period from the fiscal year 1897 to the end of the fiscal year 1934 the United States expended from public funds gratuitously for the benefit of the Choctaw, Chickasaw, Creek, Cherokee, and Seminole Nations or Tribes of Indians, and without obligation under any treaty or agreement, the sum of \$429,026.75, which was charged to these tribes jointly for the following purposes:

Purpose	Appropriations from which paid	Gratuity Rept., G. A. O. (pages)	Amount
Agricultural Aid-----	Agriculture and stock raising among Indians.	279, 412-4	\$24, 331.81
Construction and main- tenance, Claremore Hospital.	Support of Indians and Administra- tion of Indian property.	305, 335, 343, 397.	77, 127.98
Pay and expenses of farmers.	Conservation of health among Indians.	279-80, 332-4, 365.	327, 566.96
	Agriculture and stock raising among Indians.		429, 026.75

14. During the period from 1877 to the end of the fiscal year 1934 the Chickasaw tribe of Indians composed 7.44% of the total population of the Cherokee, Choctaw, Chickasaw, Seminole, and Creek tribes of Indians. Defendant expended for the benefit of plaintiff gratuitously and without obligation 7.44% of the sum of \$429,026.75, said amount being \$31,919.59.

15. The expenditures shown in finding 13 were made for the benefit of all the Five Civilized Tribes jointly, and it cannot be shown, except by allocation on the basis of population, what portion of the expenditures was made for the benefit of each tribe.

16. The gratuitous expenditures for the benefit of the Chickasaw Tribe, for the purposes and in the amounts above set forth in findings 8 to 14, inclusive, were included in the total gratuitous expenditures of \$1,326,651.37 found to be allowable as a proper offset by this court in the case of *The Choctaw and Chickasaw Nations v. United States*, Congressional No. 17641, 88 C. Cls. 271, but no part of the claim made in that case and referred to this court for findings under sec. 151, Judicial Code, has been allowed by Congress and no part of the gratuitous expenditures found and set

forth in the present case has been used in any other case as offsets against any amount found to be legally due plaintiff tribe.

17. The total of the gratuitous expenditures, among others, made by defendant for plaintiff's benefit, as listed in the findings herein, is \$69,920.39.

CONCLUSION OF LAW

Upon the foregoing findings of fact and the findings of fact by the court of May 5, 1941, which are made a part of the judgment herein, the court concludes, as a matter of law, that plaintiff is entitled to recover just compensation of \$17,025.50 and interest of \$33,102.77, at 5 percent per annum on \$17,025.50 from February 19, 1906, to date of judgment, totaling \$50,128.27.

It is further concluded as a matter of law that defendant is entitled to recover on its counterclaim of \$57,500, and \$50,128.27 thereof is allowed as an offset against the amount due plaintiff.

It is further concluded as a matter of law that the United States is entitled to recover \$16,003.97 over against the Choctaw Nation in its cross action.

It is therefore adjudged and ordered that plaintiff is not entitled to recover and its petition is dismissed; and that the United States recover over against the Choctaw Nation the sum of sixteen thousand three dollars and ninety-seven cents (\$16,003.97).

OPINION

LITTLETON, Judge, delivered the opinion of the court:

This case is now before the court on defendant's counterclaim in the amount of \$57,500 and its claim for offsets under the act of August 12, 1935, 49 Stat. 571, for certain amounts expended gratuitously for the benefit of the Chickasaw Nation, and on plaintiff's reargument of the question of value on March 3, 1875 of the 136,204.02 acres of land owned jointly by the Chickasaw and Choctaw nations and taken by the defendant on that date.

The case was originally tried, argued, and submitted on the questions of the date of taking of the land and the value thereof at the date of taking.

In the findings and opinion of the court May 5, 1941, 94 C. Cls. 215, we determined that the land had been taken by the Government on March 3, 1875, and that the value of the 136,204.02 acres on that date was \$68,102. We have considered plaintiff's reargument as to the value of the land on the hearing under rule 39 (a) and adhere to the value of \$68,102 for the land on March 3, 1875, as previously determined.

Upon the record we are of opinion that defendant's counterclaim for \$57,500 as an offset under sec. 3 of the jurisdictional act is allowable. As shown in findings 3 to 6, incl., the Government advanced to and paid plaintiff a total of \$57,500 in three payments, the first in the amount of \$50,000 during the fiscal year 1867 and the second and third in the amount of \$7,500 each in the fiscal years 1868 and 1869, respectively, under arts. 3 and 46 of the treaty of April 28, 1866 with the Choctaw Nation and the Chickasaw and Choctaw nations, as set forth in findings 3 and 5. These sums were advanced and paid to plaintiff against plaintiff's portion of the \$300,000 which the Government agreed to pay to the Choctaws and Chickasaws for the cession of certain land, provided the Choctaws and Chickasaws adopted the Freedmen (former slaves) and granted to such persons of African descent "all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, except in the annuities, moneys, and public domain claimed by, or belonging to, said nations respectively; and also to give to such persons who were residents as aforesaid, and their descendants, forty acres each of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land, after the Choctaws and Chickasaws and Kansas Indians have made their selections as herein provided; * * *." In anticipation that the Choctaws and Chickasaws would give to all persons of African descent resident in said nations the rights and allotments mentioned, art. 46 of the treaty provided that of the moneys stipulated to be paid to the Choctaws and Chick-

asaws under the treaty on the conditions specified the sum of \$150,000 would be advanced and paid to the Choctaws and \$50,000 to the Chickasaws as soon as practicable after ratification of the treaty, to be repaid out of said moneys, or any other moneys of said nations in the hands of the United States. The Choctaw Nation adopted their Freedmen and granted to them the rights mentioned in the treaty and that nation received its portion of the \$300,000 mentioned, but the Chickasaw Nation refused to grant its Freedmen, or persons of African descent, the rights mentioned in art. 3 of the treaty and, thereby, did not become entitled to receive any portion of the \$300,000, and no portion thereof was ever paid or credited to the Chickasaw Nation other than the advances which were to be repaid, totaling \$57,500.

Plaintiff makes the argument in answer to defendant's counterclaim that the United States waived, relinquished, and surrendered any right which it may have had to have the advances, totaling \$57,500, repaid in that part of sec. 29 of the "Atoka Agreement" of 1898 (30 Stat. 495) quoted in finding 7. We think this contention cannot be sustained. No mention was made in any treaty or agreement subsequent to the treaty of 1866 that the Government's right to insist upon repayment of the advances mentioned was satisfied and discharged, and we do not find any provision in the Atoka Agreement which necessarily implies such an arrangement. The fact that in the Atoka Agreement the Government did not, at that time, insist that the sums advanced be then repaid does not prove, in the absence of evidence sufficient to show the clear intention of the parties, that the Government was relinquishing and surrendering its legal right to insist upon repayment by offsets or a charge against tribal funds at a later date. Defendant's counterclaim is therefore allowable and the sum of \$50,128.27 thereof is allowed as an offset against an equal sum heretofore and herein determined to be due plaintiff as just compensation for its interest in the 136,204.02 acres of land taken by defendant in 1875. This offset is authorized by sec. 3 of the jurisdictional act, which provides that "In said suit the court shall also hear, examine, consider, and

adjudicate any claims which the United States may have against said Indian Nations."

This decision on defendant's counterclaim makes it unnecessary to use as offsets against the amount due plaintiff the sums totaling \$69,920.39 expended gratuitously for the benefit of plaintiff, as set forth in findings 8 to 14, incl.

Plaintiff is not entitled to recover and its petition is therefore dismissed.

The United States filed a cross-action for judgment over against the Choctaw Nation under section six of the jurisdictional act. As set forth in the findings and opinion of May 5, 1941 (94 C. Cls. 215), the Choctaw Nation, under the judgment of this court in *Choctaw Nation v. United States*, 21 C. Cls. 59, was paid the entire amount of \$68,102 for the value of the land here in question, and no portion thereof was paid to the Chickasaw Nation (see finding 15, 94 C. Cls. 215). Inasmuch as the United States is paying the amount of plaintiff's one-fourth interest of \$17,025.50 in the value of the land taken in 1875 by an offset of a legal claim against plaintiff, the Government is entitled, for the reasons set forth in our former opinion in this case, to recover \$16,003.97 from the Choctaw Nation. Judgment will accordingly be entered. It is so ordered.

MADDEN, Judge; WHITAKER, Judge; and WHALEY, Chief Justice, concur.

JONES, Judge, took no part in the decision of this case.

A true copy.

Test:

Clerk, Court of Claims
of the United States.