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No. J-619.

Dis. Mined

IN THE
UNITED STATES COURT OF CLAIMS

THE CHOCTAW AND CHICKASAW NATIONS,
COMPLAINANTS,

VS.

THE UNITED STATES, DEFENDANT.

PETITION.

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THE UNITED STATES, DEFENDANT.

PETITION.

Come now the complainants herein and for their cause of action against the defendant, United States, alleges and states:

1. That the complainants are the Choctaw and Chickasaw Nations mentioned in the Act of Congress approved June 7th, 1924 (43 Stat. L. 537), conferring jurisdiction upon the Court of Claims in certain suits to be brought for the Choctaw and Chickasaw Nations against the United States; paragraph one of which Act of Congress is as follows:

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that juris-

diction be, and is hereby, conferred upon the Court of Claims, notwithstanding the lapse of time or statutes of limitation, to hear, examine and adjudicate and render judgment in any and all legal and equitable claims arising under or growing out of any treaty or agreement between the United States and the Choctaw and Chickasaw Nations or Tribes, or either of them, or arising or growing out of any Act of Congress in relation to Indian affairs which the Choctaw and Chickasaw Nations or Tribes may have against the United States, which claims have not heretofore been determined or adjudicated on their merits by the Court of Claims or the Supreme Court of the United States."

2. That on the 28th day of April, 1866 (14 Stat. L. 769) a treaty was entered into between the United States and the Choctaw and Chickasaw Nations, complainants herein, whereby and under the terms of which the Choctaw and Chickasaw Nations leased certain lands owned by them and referred to as the territory west of the 98th degree longitude and commonly known as the "leased district." That the said nations were then the legal and equitable owners of said lands and had acquired title thereto by a treaty theretofore entered into with the United States; that the Choctaw and Chickasaw Nations, complainants herein, interpreted the Treaty of April 28th, 1866 then and now to mean that the lands referred to therein were

"leased" and not sold to the United States but regardless of the fact that the Choctaw and Chickasaw Nations have regarded the Treaty as providing for a lease and not a sale, the Supreme Court of the United States has held that the lands in fact were ceded to the United States for the consideration of \$300,000.00 mentioned in said Treaty. Complainants herein would respectfully show to the court that while they have been deprived of the possession of the lands referred to herein and while the defendant has taken possession of said lands and asserted title thereto by purchase, the consideration of \$300,000.00 set forth in said Treaty has in fact been withheld and only a part thereof has been paid to these complainants.

3. Complainants would therefore respectfully show to this court that Section Three of said Treaty has not been complied with by the defendant in that the sum of \$300,000.00 has not been paid. Section Three of the Treaty reads as follows, to-wit:

"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 degree west longitude, known as the leased district, provided that said sum shall be invested and held by the United States, at an interest not less than five per cent, 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 said nation 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 able 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 lands, 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 said nations respectively. And should the said laws, rules, and regulations not be made by the legislature 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 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 said nations.”

4. Complainants state that while the United States government took possession of said lands under said treaty and asserted the rights of ownership thereto, the complainants have received a total of \$215,000.00 of the consideration mentioned in said Treaty, leaving a balance of \$85,000.00 with interest thereon from June 28, 1868, and although repeated requests have been made for the payment of the balance due the complainants, the sum of \$85,000.00 is still unpaid and the defendant fails and refuses to pay the same or any part thereof.

Wherefore, the complainants pray that they have judgment against the defendant for the sum of \$85,000.00 with interest thereon at 6 per cent from the 28th day of April, 1868.

W. F. SEMPLE,
JOHNSON & MCGILL,

Special Attorneys for Choctaw Nation.

W. H. FULLER,
MELVIN CORNISH,

Special Attorneys for Chickasaw Nation.

85,000
06,000

79,000
30,000

49,000
391

State of Oklahoma, Bryan County, ss.

W. F. Semple, being duly sworn, on oath states that he is one of the special attorneys employed by the Principal Chief of the Choctaw Nation as co-counsel with Johnson & McGill of Ardmore, Oklahoma, under contract executed pursuant to the provisions of the act of Congress approved June 7, 1924 (Public Document No. 222, 68th Congress), and which contract was thereafter duly approved by the Commissioner of Indian Affairs on September 25, 1925, and by the Assistant Secretary of the Interior on September 29, 1925, and is authorized to and does make this verification in behalf of said special attorneys. That he has read the foregoing petition and knows the contents thereof, and that the statements therein contained are made upon information obtained from the records in the office of the Secretary of the Interior and his subordinate officers and are true and correct as affiant verily believes.

W. F. SEMPLE.

Subscribed and sworn to before me this 30th day of July, 1928.

LOUDIA REED,
Notary Public.

(Seal)

My commission expires July 8, 1929.