

*General Accounting
Amended*

**IN THE COURT OF CLAIMS OF THE
UNITED STATES**

No. K-544.

THE CHICKASAW NATION, PLAINTIFF,
VS.
THE UNITED STATES, DEFENDANT.

AMENDED PETITION.

(Original Petition Filed December
23rd, 1929.)

(Amended Petition Filed December
12th, 1934.)

TO THE HONORABLE THE COURT OF CLAIMS:

The plaintiff, the Chickasaw Nation, respectfully represents:

I.

That by a certain Act of Congress, approved June 7th, 1924 (43 Stat. 537), as modified by Joint Resolution approved May 19, 1926 (44 Stat. 568),

giving permission to file separate petitions, and Joint Resolution of February 19, 1929 (45 Stat. 1229), extending the time for filing suits until June 30, 1930, plaintiff was authorized and empowered to bring this action.

II.

That at all times mentioned herein, and for many years prior thereto, the Chickasaw Nation was the owner of large trust funds, which represented the consideration given by the United States for the cession of certain of its lands, which said trust funds were held in trust by the defendant for the use and benefit of plaintiff; and that there existed various treaties and agreements between said plaintiff and defendant and certain acts of Congress whereby said trust funds were to be managed and invested by defendant for the benefit of plaintiff, and various other considerations were given plaintiff by defendant therein, which said treaties, agreements and statutes are hereinafter more specifically referred to.

III.

That the Chickasaw Treaty of July 15, 1794, executed at Philadelphia, between the United States and the Chickasaw Nation, provided that the United States pay to the Chickasaw Nation goods in the amount of \$3,000 annually in perpetuity.

That, from the year 1798, Congress specifically appropriated the said \$3,000 annually to fulfill said treaty obligation (G. A. O. Rep., pp. 18, 19, 22), until this permanent annuity was capitalized by Act approved March 3, 1901, 31 Stat. 1062.

That although Congress so appropriated and directed that said \$3,000 annually be paid to the Chickasaw Nation under the terms of said treaty, yet, during the period from the years 1813 to 1850, both inclusive, in violation of said treaty provision and the acts of Congress passed in fulfillment thereof, the defendant failed and neglected to make said payments to the Chickasaw Nation as so provided. Therefore, the amount of \$54,487.96 is due the Chickasaw Nation from defendant for the nonfulfillment of said treaty obligation for said period.

IV.

That Article 3 of the Treaty of September 20, 1816, 7 Stat. 150, provided in part as follows:

“Art. 3. In consideration of the relinquishment of claim, and cession of lands, made in the preceding article, the commissioners agree to allow the Chickasaw Nation twelve thousand dollars per annum for ten successive years, * * *”

That although said treaty clearly provided for the payment of \$12,000 per annum for 10

successive years, yet, in violation thereof, the defendant failed and neglected to fulfill its said treaty obligation. Therefore, the amount of \$48,000.00 is due the Chickasaw Nation from the defendant for the nonfulfillment of said treaty obligation.

V.

That the Treaty of October 19, 1818, 7 Stat. 192, between the Chickasaw Nation and the United States, provided in part as follows:

“Art. 3. In consideration of the relinquishment of claim and cession of lands in the preceding article, and to perpetuate the happiness of the Chickasaw Nation of Indians, the commissioners of the United States, before named, agree to allow the said nation the sum of twenty thousand dollars per annum, for fifteen successive years, to be paid annually; * * *”

That although said treaty provided that the defendant pay the plaintiff \$20,000.00 per annum for 15 successive years, yet, in violation thereof, the defendant failed and neglected to fulfill its said treaty obligation. Therefore, the amount of \$64,825.00 is due the Chickasaw Nation from the defendant for the nonfulfillment of said treaty obligation.

VI.

That the Supplemental Article II of the Treaty of May 24, 1834, 7 Stat. 450, provides in part as follows:

“Art. II. The Chickasaw people express a desire that the Government shall, at the expense of the United States, educate some of their children, * * * therefore, with the advice and consent of the President and Senate of the United States, it is consented that three thousand dollars for fifteen years be appropriated and applied under the direction of the Secretary of War, for the education and instruction, within the United States, of such children, male and female or either, as the seven persons named in the treaty to which this is a supplement, and their successors, with the approval of the agent, from time to time may select and recommend.”

That although said \$45,000.00 was appropriated by Congress to fulfill said treaty obligation (G. A. O. Rep., pp. 247, 249), yet \$36,000.00 only of said amount was disbursed for said treaty purpose (G. A. O. Rep., pp. 247, 249). Therefore, the amount of \$9,000.00 is due the plaintiff from defendant under said treaty obligation.

VII.

That from the fiscal years 1862 to 1866, both inclusive, the defendant illegally disbursed the amount of \$237,384.09 from the funds of the Chickasaw Nation, using same for the subsistence

of southern refugee Indians in Kansas (G. A. O. Rep., pp. 29, 30, 228, 233, 241, 245, 246). That said diversion was a violation of the treaties and laws governing the funds from which diverted, and, therefore, the defendant is liable to plaintiff in the sum of \$237,384.09.

VIII.

That from and after the passage of a certain act of Congress, approved June 28th, 1898, 30 Stat. 495, known as the Curtis Act, defendant impounded all the funds of plaintiff, and assumed full administrative control over the disbursement of same. That during the period from the date of the passage of said Curtis Act to the end of the fiscal year 1912 (June 30, 1912), defendant made disbursements from the trust funds of plaintiff in violation of the laws governing the disbursement of same, in the amount and for the items that the proof will hereinafter definitely show; and that there is due plaintiff from defendant the total amount of said illegal disbursements.

IX.

That the Atoka Agreement, approved June 28, 1898, 30 Stat. 505, provided in part as follows:

“That no charge or claim shall be made against the Choctaw and Chickasaw tribes by the United States for the expenses of surveying and platting the lands and town sites, or for grading, appraising, and allotting the

lands, or for appraising and disposing of the town lots as herein provided.”

That notwithstanding this plain provision of law, the defendant, in violation thereof, illegally charged against and paid out of the funds of plaintiff the amount of \$11,495.39. Therefore, the amount of \$11,495.39 is due plaintiff from defendant for the violation of said provision of law.

X.

That Section 10 of the Act of April 26, 1906, 34 Stat. 137, provided in part that the Secretary of the Interior shall have control and direction of the schools of the Five Civilized Tribes, and authorized him to use

“only such portion of said funds of each tribe as may be requisite for the schools of that tribe, not exceeding in any one year, for the respective tribes, the amount expended for the scholastic year ending June 30, 1905.”

That notwithstanding said yearly limitation on school expenditures, the defendant, in violation thereof, illegally made disbursements from Chickasaw trust funds in the amounts and for the years as the proof herein will show was so illegally disbursed.

XI.

That Section 18 of the Act of August 24, 1912, 37 Stat. 518, provides in part as follows:

“Provided, That during the fiscal year ending June thirtieth, nineteen hundred and thirteen, no moneys shall be expended from the tribal funds belonging to the Five Civilized Tribes without specific appropriation by Congress * * *”

That similar provisions to the one above quoted were carried in all subsequent Indian appropriation acts, and said provision was made a permanent provision of law by the Act of May 24, 1922, 42 Stat. 575.

That under the provisions of the above-quoted law, no tribal money of the Chickasaw Nation could be disbursed legally without a specific appropriation by Congress. That notwithstanding this plain provision of law, the defendant, in violation thereof, from the fiscal year 1913 to date, illegally disbursed the amount of \$374,835.41 from plaintiff's trust funds. Therefore, the amount of \$374,835.41 is due the plaintiff from defendant for the violation of said Section 18 of the Act of August 24, 1912.

XII.

Plaintiff further shows unto the court that the audit of the books of defendant, as contained in the report of the General Accounting Office, filed herein, admits errors of bookkeeping in defendant's handling of the trust funds of plaintiff, resulting in a net loss to plaintiff of a total sum of, to-wit, \$128,140.33, the details of which will

be set forth hereafter in plaintiff's request for findings of fact, as to this item, as well as to all other claims made in all preceding paragraphs of this petition.

XIII.

Wherefore, plaintiff prays that judgment be entered against defendant for the total amounts of said unfulfilled treaty obligations, illegal disbursements and said erroneous bookkeeping entries, together with interest on same at five per centum per annum on all illegal disbursements and erroneous bookkeeping entries from Chickasaw trust funds which by law draw said rate of interest, and interest at the rate of four per centum per annum on all other of said unfulfilled treaty obligations, illegal disbursements and erroneous bookkeeping entries, in accordance with the provisions of the Act of February 12, 1929, 45 Stat. 1164.

The Chickasaw Nation,
By WILLIAM H. FULLER,
Its Attorney of Record.

Of Counsel:

MELVIN CORNISH,
E. J. VAN COURT,
P. M. NIEBELL.

VERIFICATION.

State of Oklahoma, County of Pittsburg.

William H. Fuller, being duly sworn, on oath states that he is the William H. Fuller employed

by Douglas H. Johnston, Governor of the Chickasaw Nation, as attorney, under contract executed pursuant to the provisions of the Act of Congress approved June 7, 1924 (43 Stat. 537), and which said contract was duly approved by the Commissioner of Indian Affairs on January 5, 1926, and by the Assistant Secretary of the Interior on January 12, 1926, and is authorized to and does make this verification.

That he has read the foregoing petition and knows the contents thereof, and that the statements therein contained are based upon the treaties and statutes referred to in said petition and upon information obtained from the records in the office of the Secretary of the Interior and his subordinate officers, and the report of the General Accounting Office filed herein, and are true and correct to the best of his knowledge, information and belief.

William H. Fuller.

Subscribed and sworn to before me this 24th day of Nov., 1934.

R. R. Burnham,

(Seal)

Notary Public.

My commission expires December 28, 1937.