

[Filed January 26, 1903.]

IN THE
Court of Claims of the United States.

No. 23,115.

THE UNITED STATES, COMPLAINANT,

vs.

THE CHOCTAW NATION AND THE CHICKASAW
 NATION AND THE CHICKASAW FREEDMEN,
 DEFENDANTS.

Answer of the Choctaw and Chickasaw Nations.

To the Honorable the Judges of the Court of Claims :

Come now The Choctaw Nation and The Chickasaw Nation, and, answering the bill of interpleader herein, respectfully show :

I.

That the members of the Choctaw Nation or Tribe of Indians and the members of the Chickasaw Nation or Tribe of Indians are the owners of the lands embraced within the limits of the Choctaw Nation and the Chickasaw Nation, more particularly described in the treaty between the Choc-

taw and Chickasaw Nations or Tribes of Indians and the United States of America, entered into on the twenty-second day of June, eighteen hundred and fifty-five, as follows, to wit:

ARTICLE I.

"The following shall constitute and remain the boundaries of the Choctaw and Chickasaw country, viz: Beginning at a point on the Arkansas river, one hundred paces east of old Fort Smith, where the western boundary line of the State of Arkansas crosses the said river, and running thence due south to Red river; thence up Red river to the point where the meridian of one hundred degrees west longitude crosses the same; thence north along said meridian to the main Canadian river; thence down said river to its junction with the Arkansas river; thence down said river to the place of beginning.

"And pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common; so that each and every member of either tribe shall have an equal, undivided interest in the whole: *Provided, however*, no part thereof shall ever be sold without the consent of both tribes; and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same."

II.

The defendants, The Choctaw and Chickasaw Nations or Tribes of Indians, admit that for a number of years, prior to the year eighteen hundred and sixty-six, there resided within the territory of the Chickasaw Nation a number of persons of African descent who were held in slavery in said nation.

III.

Said nations admit that the treaty between the United States and the Choctaw and Chickasaw Nations, concluded

April twenty-eighth, eighteen hundred and sixty-six, and proclaimed July tenth, eighteen hundred and sixty-six, provided, *inter alia*, as follows:

"ARTICLE II.

"The Choctaws and Chickasaws hereby covenant and agree that henceforth neither slavery, nor involuntary servitude, otherwise than in punishment of crime, whereof the parties shall have been duly convicted in accordance with the laws applicable to all members of the particular nation, shall ever exist in said nations.

"ARTICLE III.

"The Choctaws and Chickasaws, in consideration of the sum of \$300,000.00, hereby cede to the United States the territory west of the 98th degree, 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 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 the 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 \$300,000 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.

“ARTICLE IV.

“The said nations further agree that all negroes, not otherwise disqualified or disabled, shall be competent witnesses in all civil or criminal suits and proceedings in the Choctaw and Chickasaw courts, any law to the contrary notwithstanding; and they fully recognize the right of the freedmen to a fair remuneration on reasonable and equitable contracts for their labor, which the law should aid them to enforce. And they agree, on the part of their respective nations, that all laws shall be equal in their operation upon Choctaws, Chickasaws and negroes, and that no distinction affecting the latter shall at any time be made, and that they shall be treated with kindness and be protected against injury; and they further agree, that while the said freedmen, now in the Choctaw and Chickasaw Nations, remain in said nations respectively, they shall be entitled to as much land as they may cultivate for the support of themselves and families, in cases where they do not support themselves and families by hiring, not interfering with existing improvements without the consent of the occupants, it being understood that in the event of the laws, rules, and regulations aforesaid, the forty acres aforesaid shall stand in place of the land cultivated as last aforesaid.”

IV.

The defendants, The Choctaw and Chickasaw Nations or Tribes of Indians, state that the Chickasaw legislature had no power to take any action which would bind these defendants in regard to said Chickasaw freedmen after July tenth, eighteen hundred and sixty-eight, under the provisions of the said article three of the treaty of eighteen hundred and sixty-six, and that the only legislative action taken by the legislature of the Chickasaw Nation before the expiration of the two years from July tenth, eighteen hundred and sixty-six, the date of the treaty, was as follows:

On November ninth, eighteen hundred and sixty-six, the Chickasaw legislature passed an act which contained the following:

“SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation,* That whereas, a treaty was concluded at Washington city on the 28th of April, 1866, by commissioners duly appointed on the part of the Chickasaws, Choctaws and the United States Government, which said treaty was ratified with amendments by the United States Senate and confirmed by the President, the Chickasaw legislature does hereby consent, and confirm the said treaty and amendments made by the Senate of the United States.

“SECTION 2. * * *

“SECTION 3. *Be it further enacted,* That the provisions contained in article 3d, of the said treaty, giving the Chickasaw legislature the choice of receiving and appropriating the three hundred thousand dollars named for the use and benefit of the Chickasaws, or passing such laws, rules, and regulations, as will give all persons of African descent certain rights and privileges, be, and is hereby declared to be the unanimous consent of the Chickasaw legislature; that the United States shall keep and hold said sum of three hundred thousand dollars for the benefit of the said negroes. And the governor of the Chickasaw Nation is hereby requested to notify the Government of the United States that it is the wish of the legislature of the Chickasaw Nation, that the Government of the United States remove the said negroes

beyond the limits of the Chickasaw Nation, according to the requirements of the 3d article of the treaty of April 28th, 1866."

On the twenty-third day of July, eighteen hundred and sixty-eight, the Secretary of the Interior addressed to the President *pro tempore* of the United States Senate an official communication, which contained the following paragraph :

"Two years from the ratification of the treaty having expired, and the legislatures of the Choctaw and Chickasaw Nations having failed to make such laws, rules, and regulations in regard to said persons of African descent resident in said nations at the date of the treaty of April 28, 1866, it becomes the duty of the United States, 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."

The defendants, The Choctaw and Chickasaw Nations or Tribes of Indians, admit the enactment by the legislature of the Chickasaw Nation of the act of January tenth, eighteen hundred and seventy-three, as set forth in the bill of interpleader of the complainant, and that the same was submitted by the governor of the Chickasaw Nation, by letter of the same date, to the President of the United States, and that the same was submitted by the Secretary of the Interior to the speaker of the House of Representatives on February tenth, eighteen hundred and seventy-three, with a recommendation for appropriate legislation, as stated in said bill; but said defendants say that the Chickasaw legislature had no power to affect the status of said freedmen by said act, and that no action was had thereon by the United States of America at that time, and the defendants state that no action was ever had thereon by the United States of America until August fifteenth, eighteen hundred and ninety-four, when Congress gave its approval to said act of the Chickasaw legislature of January tenth, eighteen hundred and seventy-three, and that

before the passage of said act of Congress said act of January tenth, eighteen hundred and seventy-three, had been repealed by the Chickasaw legislature, as will appear from the following acts and proceedings had from time to time:

On the ninth day of November, eighteen hundred and seventy, the governor of the Chickasaw Nation, in pursuance of the action of the legislature of the Chickasaw Nation, issued the following proclamation:

"Whereas, It having become necessary, under the treaty of April 28th, 1866, that the freedmen were put upon the same footing with the other citizens of the United States, I, William P. Brown, governor of the Chickasaw Nation, do this day issue this, my proclamation, requiring all freedmen who are living within the limits of the Chickasaw Nation to obtain 'permits,' as is required by the laws of the Chickasaw Nation (of the citizens of the United States) by the 1st day of January, A. D. 1871.

"Given under my hand and seal of office this the 9th day of November, A. D. 1870.

"WM. P. BROWN,
"Governor Chickasaw Nation."

On October eighteenth, eighteen hundred and seventy-six, the legislature of the Chickasaw Nation passed a resolution as follows:

"Whereas, The governor of the Chickasaw Nation has recommended to this legislature that commissioners be sent, on the part of the Chickasaw Nation to confer with commissioners on the part of the Choctaw Nation, in relation to the freedmen in said nations, and agree with the Choctaws upon some plan for the final settlement of all questions relating to all freedmen;

"And whereas, It is understood that the governor is in favor of the removal of all freedmen, former slaves of the Choctaws and Chickasaws, from the limits of the Choctaw and Chickasaw country, is of the opinion that the same may be accomplished; therefore,

"SECTION 1. *Be it resolved by the legislature of the Chickasaw Nation, That four commissioners, one from each county*

of the Chickasaw Nation, shall be elected by joint vote of the senate and house of representatives of the present session of the legislature, to visit the capital of the Choctaw Nation during the next regular session of the general council of said nation, with instructions to confer with the commissioners on the part of the Choctaw Nation, and agree upon some plan, whereby the freedmen, former slaves of the Choctaws and Chickasaws, and their descendants, shall be removed from and kept out of the limits of the Choctaw and Chickasaw country.

"SEC. 2. * * *"

On October seventeenth, eighteen hundred and seventy-seven, the legislature of the Chickasaw Nation passed an act, which was duly approved, as follows:

"SEC. 1. * * *

"SEC. 2. * * *

"SEC. 3. *Be it further enacted*, That the provisions contained in said article 3, of the treaty, giving the Chickasaw legislature the choice of receiving and appropriating the three hundred thousand dollars therein named, for the use and benefit, of passing such laws, rules, and regulations as will give all persons of African descent certain rights and privileges, be, and it is hereby, declared to be the unanimous consent of the Chickasaw legislature, that the United States shall keep and hold said sum of three hundred thousand dollars for the benefit of the said negroes, and the governor of the Chickasaw Nation is hereby requested to notify the Government of the United States that it is the wish of the legislature of the Chickasaw Nation that the Government of the United States remove the said negroes beyond the limits of the Chickasaw Nation, according to the requirements of the third article of the treaty of April 28, 1866."

On May sixth, eighteen hundred and eighty-two, the legislature of the Chickasaw Nation passed an act, which was duly approved, as follows:

"SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation*, That Wm. L. Byrd and B. F. Overton, delegates of the Chickasaw Nation, are hereby fully authorized and di-

rected to enter their protest in behalf of the Chickasaw Nation against the ratifying by Congress of the United States of an act passed by the general council of the Choctaw Nation adopting and granting to the freedmen of the Choctaw Nation full rights of citizenship without conferring with the Chickasaws, or obtaining their consent to said adoption; and said delegates are hereby fully authorized and directed to represent the Chickasaw people in any and all measures that might be presented before the Department and Congress of the United States affecting the interests of our people and country.

"SEC. 2. *Be it further enacted by the legislature of the Chickasaw Nation*, That Wm. L. Byrd and B. F. Overton, Chickasaw delegates to Washington city, D. C., be allowed the sum of fifteen hundred dollars each as full compensation for their services, and this amount shall apply to the money already borrowed by the governor from the treasurer to defray the expenses of the delegates.

"SEC. 3. *Be it further resolved*, That this act take effect and be in force from and after its passage."

On October twenty-second, eighteen hundred and eighty-five, the legislature of the Chickasaw Nation passed an act, which was duly approved, as follows:

"*Whereas*, The 3d article of the treaty of 1866, between the United States and the Choctaw and Chickasaw Nations, stipulates that the territory lying west of the 98th degree of west longitude, known as the Leased District, be ceded to the United States Government for three hundred thousand dollars (\$300,000.00), the consideration of three hundred thousand dollars, which sum shall be held in trust by the United States for said nations, at a certain rate of interest, until each respective nation elects within two years after the ratification of said treaty, to make certain laws, rules and regulations, giving the freedmen once held as slaves by said nation, the rights, privileges and immunities of citizens of said nations, except in their annuities and public domain, etc.;

"*And whereas it provides, further*, That if said laws, rules, and regulations are not made within two years by said nations from the ratification of aforesaid treaty, then the United

States Government promises to remove within 90 days from the expiration of the two years such of said freedmen as are willing to remove from said nations, using the aforesaid three hundred thousand dollars for the use and benefit of said freedmen in their removal, etc., and those choosing to remain or might return after removing to receive no part or benefit from the said three hundred thousand dollars, and shall be upon the same footing as other citizens of the United States;

"And whereas, The United States has failed to remove said freedmen agreeable to the stipulations of said treaty and left them here among us for a long time, recognized by us as occupying the same status as other citizens;

"And whereas, The Chickasaw people in justice to their posterity have not made said laws, rules and regulations as provided for in the aforesaid article of said treaty for the following reasons, to wit:

"1st. That the Chickasaw people cannot see any reason or just cause why they should be required to do more for their freed slaves than the white people have done in the slave-holding States for theirs.

"2nd. That it was by the example and teachings of the white man that we purchased, at enormous prices, their slaves and used their labor, and were forced by the result of their war to liberate our slaves at a great loss and sacrifice on our part, and we do not hold or consider our nations responsible in nowise for their present situation, therefore,

"SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation*, That the Chickasaw people hereby refuse to accept or adopt the freedmen as citizens of the Chickasaw Nation upon any terms or conditions whatever and respectfully request the governor of our nation to notify the Department at Washington of the action of the legislature in the premises.

"SEC. 2. * * *

"SEC. 3. * * *

"SEC. 4. * * *

"SEC. 5. * * * "

V.

The defendants, The Choctaw and Chickasaw Nations or Tribes of Indians, further answering the bill of interpleader herein, state that the said Chickasaw freedmen have no rights whatever in the lands of the Choctaw and Chickasaw Nations under the third article of the treaty of eighteen hundred and sixty-six, between the United States and the Choctaw and Chickasaw Nations, or under any and all laws subsequently enacted by the Chickasaw legislature or by Congress, and that the complainant, The United States of America, is indebted to the defendants, The Choctaw and Chickasaw Nations, for the full value of all lands which may be allotted to said freedmen under the provisions of the agreement between the United States and the Choctaw and Chickasaw Nations, entered into on the twenty-first day of March, nineteen hundred and two, and ratified and confirmed by act of Congress approved July first, nineteen hundred and two, and set forth in said bill of interpleader.

Wherefore these defendants, The Choctaw and Chickasaw Nations, pray that a decree shall be rendered in their favor and against the United States of America for the value of the lands allotted to the Chickasaw freedmen, as ascertained by the appraisal thereof made by the commission to the Five Civilized Tribes for the purpose of allotment, as provided in said agreement.

MANSFIELD, McMURRAY AND
CORNISH,

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Chickasaw Nation, Defendants.*

A. A. HOEHLING, JR.,
Of Counsel.