No. 181.

IN THE UNITED STATES COURT OF CLAIMS

THE CHOCTAW AND CHICKASAW NATIONS, COMPLAINANTS,

VS.

THE UNITED STATES, DEFENDANT.

PETITION.

Will Ward is the defendant in the case beat by some loan Co in which Mansfield filed a brief - Get copy of his arg. Tishomingo Dist Court,

J.F. McKeel, Ada is the atty who has Mansfield's mailers + is looking after Ward case

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VS.

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PETITION.

Comes now the Choctaw and Chickasaw Nations, complainants herein, and complaining of the defendant, The United States, for their cause of action allege and state:

That the complainants are the Choctaw and Chickasaw Indian Nations or Tribes mentioned in the act of congress approved June 7, 1924 (43 Stat. 537) conferring authority upon the Choctaw and Chickashaw Nations to bring suits in the court of claims of the United States on 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, the first paragraph of which act reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that jurisdiction 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 Indian Nations or Tribes, or either of them, or arising under 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 and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States."

First Cause of Action.

(1) That prior to 1820 the Choctaw Tribe of Indians as a nation owned in fee simple certain lands embraced within the state of Mississippi, and on the 18th day of October, 1820 (7 Stat. L. (210), the said Choctaw Nation entered into a treaty with the United States by the terms of which the United States Government ceded certain lands within the Indian Territory, afterwards known as the Choctaw Nation, in exchange for lands owned by the Choctaws in the State of Mississippi; and that thereafter at Dancing Rabbit Creek on September 14, 1830 (7 Stat. L. 333-334), another treaty was entered into by the terms of

which the lands afterwards allotted to the Choctaws in the Indian Territory were conveyed to the Choctaw Nation in fee simple, Article 2 of which treaty is in the following language, to-wit:

"The United States, under a grant specially to be made by the President of the U. S., shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi river, in fee simple to them and their descendants, to inure to them while they shall exist as a nation, and live on it, beginning near Ft. Smith, where the Arkansas boundary crosses the Arkansas river, running thence to the source of the Canadian Fork; if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the territory of Arkansas; thence north along that line to the beginning. The boundary of the same to be agreeable to the treaty made and concluded at Washington City in the year 1825. The grant to be executed as soon as the present treaty shall be ratified."

(2) That Article 1 of the Treaty of 1827 (11 Stat. L. 573), with the Choctaw and Chickasaw Nations provided as follows:

"It is agreed by the Choctaws that the Chickasaws shall have the privilege of forming a district within the limits of their country, to be held on the same terms that the Choctaws now hold it, except the right of disposing of it (which is held in common with the Choctaws and Chickasaws), to be called the Chickasaw district of the Choctaw Na-

tion; to have an equal representation in their general council, and to be placed on an equal footing in every other respect with any of the other districts of said nation, except a voice in the management of the consideration which is given for these rights and privileges; and the Chickasaw people to be entitled to all the rights and privileges of Choctaws, with the exception of participating in the Choctaw annuities and the consideration to be paid for these rights and privileges, and to be subject to the same laws to which the Choctaws are; but the Chickasaws reserve to themselves the sole right and privilege of controlling and managing the residue of their funds as far as is consistent with the late treaty between the said people and the Government of the United States, and of making such regulations and electing such officers for that purpose as they may think proper."

(3) That the last paragraph of Article 1 of the treaty with the Choctaw and Chickasaw Nations in 1855 reads as follows:

"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."

(4) That on the 3rd day of March, 1893 (27 Stat. L. 645), there was created by an act of congress what is known as the Dawes Commission, which said commission was authorized to negotiate with the Five Civilized Tribes for the final allotment in severalty of the tribal domain owned by the respective Five Civilized Tribes, and, to-wit: on the 23rd day of April, 1897, the Choctaw and Chickasaw Nations entered into what is known as the original Allotment Agreement with the United States (30 Stat. L. 495), which agreement was thereafter duly ratified by a vote of the people in the Choctaw and Chickasaw Nations, and thereafter, to-wit: on July 1, 1902, there was passed by congress (32 Stat. L. 641), an act embodying what is known as the Choctaw-Chickasaw Supplemental Agreement, which was ratified by vote of the Choctaw and Chickasaw people on the 25th day of September, 1902.

(5) That the said agreements constituted the sole and exclusive terms and conditions under which lands were to be allotted to members of the Choctaw and Chickasaw Tribes of Indians and to those persons designated as freedmen within said Nations and a distinction was expressly made in said treaty between members and freedmen, and in Section 3 of said Treaty of 1902 (32 Stat. L.

641), members and freedmen were defined as follows:

> "The words 'member' or 'members' and 'citizens' or 'citizen' shall be held to mean members or citizens of the Choctaw or Chickasaw Tribe of Indians in the Indian Territory, not including freedmen."

(6) That the lands of the Choctaw and Chickasaw Tribes of Indians were thereafter allotted to the individual members and Freedmen of said tribes, and the terms and conditions of said treaty were accepted and fulfilled by members of the Choctaw and Chickasaw Tribes of Indians.

(7) That by the terms of an act of congress approved April 26, 1906 (34 Stat. L. 137), authority was given to the Secretary of the Interior to enroll children of members of the Choctaw and Chickasaw Tribes of Indians living on March 4, 1906. Section 2 of which act of Congress reads as follows:

> "That for ninety days after approval hereof applications shall be received for enrollment of children who were minors living March fourth, nineteen hundred and six, whose parents have been enrolled as members of the Choctaw, Chickasaw, Cherokee or Creek Tribes, or have applications for enrollment pending at the approval hereof, and for the purpose of enrolling under this section illegitimate children shall take the status of the mother, and allotment shall be made to children so enrolled."

(8) That subsequent to the passage of said act of Congress of April 26, 1906 (34 Stat. L. 137), and the Act of June 21, 1906 (34 Stat. 342) the Secretary of the Interior received applications for enrollment of four hundred sixty-six minor children of Choctaw Freedmen residing within the Choctaw Nation and designated said persons on the approved rolls of the Choctaw Tribe of Indians as minor Choctaw Freedmen and allotments were thereafter made and patents to land issued to said minor Choctaw Freedmen from the common domain of the Choctaw and Chickasaw Tribes or Nations of Indians, but the complainants herein would respectfully show to the court that the enrollment of said minor Choctaw Freedmen and the issuance of patents to land within the Choctaw and Chickasaw Nations to said minor Freemen was unauthorized, illegal and in violation of the terms of the act of Congress of July 1st, 1902, and in violation of the treaty ratified September 25, 1902; that the Secretary of the Interior was not authorized under the Act of April 26, 1906, or the Act of June 21, 1906, or under any other act of Congress or treaty between the Choctaw and Chickasaw Tribes of Indians and the United States Government to enroll the four hundred sixty-six persons known and designated as minor Choctaw Freedmen, but that said act of Congress authorized the Secretary of the Interior to receive applications for enrollment of children

living March 4, 1906, whose parents had been enrolled as members of the Choctaw and Chickasaw Tribes of Indians and no others; and that under the terms of the treaty ratified September 25, 1902, Choctaw Freedmen were not "members" or "citizens" of the Choctaw Tribe, nor the Chickasaw Tribe of Indians, and the minor children of said Freedmen were not entitled to the lands allotted to them by the Secretary of the Interior pursuant to the act of Congress of April 26, 1906, and June 21, 1906.

(9) Complainants further respectfully show to the court that there was actually allotted and patented to said Choctaw Minor Freedmen by the Secretary of the Interior and his subordinate officers subsequent to the Act of April 26, 1906, and June 21, 1906, from the common domain belonging to the Choctaw and Chickasaw Indian Nations or Tribes as above alleged, "forty acres of land equal in value to forty acres of the average allottable land of the two nations."

(10) That under Section 29 of the Act of June 28, 1898, known as "The Atoka Agreement" (30 Stat. L. 495), it was provided:

> "That in order to such equal division, the lands of the Choctaws and Chickasaws shall be graded and appraised so as to give to each member, as far as possible, an equal value of the land."

That in pursuance of said agreement the lands of the two nations were, by the United States Government, graded and appraised with the result that the appraisement ranged from twenty-five cents an acre to six dollars and fifty cents per acre. This was not intended as the commercial value of said land, but was the relative ratio of the different grades of the land for allotment purposes.

After this grading and appraisement had been made and the citizenship roll completed, and in order to facilitate the distribution of these lands, the Dawes Commission, approved by the Secretary of the Interior, ascertained that each citizen of the two nations should be entitled to allot three hundred twenty acres of the average allottable land of the two nations, which under the grading and appraisement aforesaid, would be of the value of $1041, thus giving to each citizen $1041, of land which he could select in the twenty-five cent grade or any other grade up to and including the six dollars and one-half grade.

(11) That Section 29 of said Act of June 28, 1898, also provided for the platting and sale of townsites in said nations. This act, together with other acts of Congress, to which the two nations gave their consent, passed about this time in order to effectuate the avowed purpose of the United States Government and that of the two nations to do away with the tribal governments, and the

holding by the Indians of their lands in common, and to open up for development their country, caused an immense influx of people and capital and the laying out and building up of cities and towns throughout said nations and the building of railroads, etc., all of which resulted in a great increase of land values throughout the two nations.

(12) Subsequent to the passage of the Act of 1898 and the grading and appraisement of said lands, large numbers of persons claiming citizenship rights in said nation were stricken from the rolls largely increasing the acreage of the unallotted lands which were to be subsequently sold under the direction of the Secretary of the Interior for the common benefit of the "citizens" or "members" of the two nations who had received allotments.

(13) That when the Secretary of the Interior, so unlawfully and without any authority of law as aforesaid, arbitrarily allotted these four hundred sixty-six minor Choctaw Freedmen land equal in value to forty acres of the average allottable land of the two nations—equal to eighteen thousand six hundred forty acres of the average allotable land—it decreased not only to that extent the unallotted lands of said nations thereafter to be sold, but to a much greater extent decreased the actual value of these unallotted lands, because the said illegal allottees, having the

choice of all of said unallotted lands, could and did select the most valuable portions thereof.

Under rules governing the selection of such allotments they each had the right to select land equal in value to forty acres of the average allottable lands of the two nations, which, under the rules and regulations of the Interior Department, was of the value of $130.00.

(14) That the unallotted lands were sold under rules and regulations of the Interior Department, the first sales occurring in November and December of 1911, by which time, by reason of the rapidly increasing population and development of said country, the value of all of said unallotted lands had become greatly enhanced in value, and especially was this true of those tracts which were in close proximity to cities and towns, and those which were suitable for agricultural purposes, and that it was such tracts that were largely selected by and for these minor Choctaw Freedmen.

Complainants further allege and state that if this unlawful allotment of the lands of these two nations had not been so made as aforesaid by the Secretary of the Interior that the amount so unlawfully allotted would have been sold at the unallotted sales in 1911 and subsequent sales and that the market value of and the amount that said tribes would have received for said lands by January 1, 1912, would have averaged for

each of the said four hundred sixty-six allotments the sum of $520.00, or a total of $242,320.00, and which was at that time the actual value of said allotments on January 1, 1912, the date at which said two nations would have realized in cash for said lands which had been so allotted to said Minor Choctaw Freedmen and taken without authority from the Choctaw and Chickasaw Nations and in violation of the treaty ratified September 25, 1902, and without compensation to said nations, by reason of which the said nations are entitled to recover as complainants herein, from the United States Government, the said sum of $242,320.00, with interest thereon at the rate of five per cent per annum from the first day of January, 1912.

Second Cause of Action.

For their second cause of action herein the complainants respectfully show to the court:

(1) That the Act of Congress of April 26, 1906 (34 Stat. L. 137), provided that Choctaw and Chickasaw Freedmen might purchase from the common domain of the Choctaw and Chickasaw Nations, at the appraised value, land equal to that already allotted to Choctaw and Chickasaw Freedmen, the language of which act reads as follows, to-wit:

> "In the disposition of the unallotted lands of the Choctaw and Chickasaw Nations

> each Choctaw and Chickasaw Freedman shall be entitled to a preference right, under such rules and regulations as the Secretary of the Interior may prescribe, to purchase at the appraised value enough land to equal with that already allotted to him forty acres in area."

(2) Subsequent to the passage of the said Act of Congress of April 26, 1906, the Secretary of the Interior and his subordinate officers, acting under and by virtue of the provisions of the said Act of Congress to which reference has been made, sold from the common domain of the Choctaw and Chickasaw Nations to Choctaw and Chickasaw Freedmen, at the appraised value, as the result of the preferential claims for said lands made by said Freedmen, a total number of 21,134.95 acres of land, and the said Secretary of the Interior and his subordinate officers, as complainants are advised and believe, received therefor the total sum of $94,396.27.

(3) That the said Choctaw and Chickasaw Freedmen were not members of said tribes and had no right, title or interest in the common domain or the lands of said nations, and had no right to purchase the same under preferential filing at the appraised value, and that the sale of said lands by the Secretary of the Interior and his subordinate officers to said Freedmen, for the appraised value, was illegal and in violation of the treaties entered into by the Choctaw and

Chickasaw Nations and the United States Government.

(4) That complainants hereby adopt and reaffirm the allegations contained in their first cause of action as to the title and the value of said lands, and complainants further show to the court that when said lands were appraised, pursuant to the treaties to which reference has been made, the appraisement was made for allotment purposes only and the valuation placed thereon for said allotment purposes was not the actual value of said lands, but that in truth and in fact said Freedmen selected the most valuable lands available under preferential rights, and these complainants aver and state the fact to be that the lands taken under preferential filings by said Choctaw and Chickasaw Freedmen were worth four times the appraisement placed thereon for allotment purposes, and by reason of the wrongful and unlawful sale of the same to said Freedmen for the valuation placed thereon for allotment purposes complainants have sustained a loss of three times the value of said lands. That if said lands had been offered for sale when other lands belonging to said nations and remaining unsold were offered for sale in 1911, they would have sold for the total sum of $377,585.08, and that there is now justly and legally due said Choctaw and Chickasaw Nations, above all credits and offsets, by reason of the sale of said 21,134.95 acres of land

to said Freedmen, the sum of $283,188.81, with interest thereon from the 1st day of January, 1912, at the rate of five per cent per annum.

Wherefore, complainants pray that they have judgment against the United States for the sum of $242,320.00, with interest thereon at the rate of five per cent per annum from the first day of January, 1912, as set forth in count number one, and that they have judgment for the sum of $283,-188.81, with interest thereon at the rate of five per cent per annum from the first day of January, 1912, as set forth in count number two, the said funds to be apportioned and divided between the complainants in accordance with their respective interest, and for all other and further relief to which complainants are entitled.

JOHNSON & MCGILL,
By W. B. JOHNSON,
HATCHETT & SEMPLE,
By W. F. SEMPLE,
Special Attorneys for the Choctaw Nation.
HAMPTON TUCKER,
National Attorney for the Choctaw Nation.
WM. H. FULLER,
Special Attorney for the Chickasaw Nation.
G. G. MCVAY,
National Attorney for the Chickasaw Nation.

State of Oklahoma, Bryan County, ss.

W. F. Semple, being duly sworn, on oath states that he is a member of the firm of Hatchett & Semple of Durant, Oklahoma, 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 said 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 firm and in behalf of the firm of Johnson & McGill. That he has read the foregoing petition and knows the contents thereof, and that the statements and allegations 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 27th day of May, 1926.

Londia Reed,
(Seal) Notary Public.

My commission expires July 8, 1929.

State of Oklahoma, Pittsburg County, ss.

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 7th, 1924, (Public Document No. 222, 68th Congress) and which said contract was thereafter duly approved by the Commissioner of Indian Affairs on January 5th, 1926, and by the Assistant Secretary of the Interior on January 12th, 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 are true and correct as affiant verily believes.

William H. Fuller.

Subscribed and sworn to before me this 28th day of May, A. D. 1926.

(Seal) John L. Fuller.

My commission expires 10th day of Nov. 1928.