

"In re: Maturitas"

No. 42077

In the Court of Claims of the United States

EASTERN OR EMIGRANT CHEROKEES

v.

THE UNITED STATES

THE DEFENDANT'S OBJECTIONS TO FINDINGS OF FACT
REQUESTED BY PLAINTIFFS, REQUEST FOR FINDINGS
OF FACT, BRIEF, AND APPENDIX

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NOTE.—The appendix to this brief contains the reports of the Secretary of the Interior upon the petition in case No. L-174 now pending, wherein The Cherokee Nation, under the alleged authority of the jurisdictional act of March 19, 1924 (45 Stat. 27), as amended, seeks to recover on the same claim as that presented in the petition in the instant case.

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In the Court of Claims of the United States

No. 42077

EASTERN OR EMIGRANT CHEROKEES, PLAINTIFFS
v.
 THE UNITED STATES OF AMERICA, DEFENDANT

OBJECTIONS TO PLAINTIFFS' REQUESTED FINDINGS OF
 FACT

FINDINGS I AND II

No objection.

FINDING III

Defendant objects to this finding because it states a conclusion of law. There would be no objection if the finding stated that the claim asserted by plaintiffs is *alleged* to arise or grow out of Articles Four and Eleven of the treaty of 1846 (9 Stat. 871) and the resolution of the Senate of the United States adopted pursuant thereto September 5, 1850 (Senate Journal, 31st Congress, 1st Session, p. 1760), and the act under which this suit is brought (Chapter 136, 47 Stat. 137). To say that a claim has arisen is tantamount to an assertion that there is a claim. If the court should hold that plaintiffs have a claim then plaintiffs would be entitled to

judgment. Furthermore, a statement that the claim arises or grows out of "the act under which this suit is brought" is equivalent to the statement that the jurisdictional act creates a liability. Clearly a statement of a conclusion of law. Whether the jurisdictional act admits, assumes, or creates a liability is one of the questions of law arising in the case and hereinafter discussed. The requested finding is, for the reasons stated, clearly a statement of a conclusion of law.

FINDINGS IV, V, AND VI

No objection.

FINDING VII

Defendant objects to the inclusion in the statement of the amount of deductions from the sum of \$6,647,067, the amount of \$60,000 for debts, etc. The deduction on said accounts should be \$101,348.31, as found and determined in the case of *Cherokee Nation v. United States*, 40 Ct. Cls. 252, 295, and by the Supreme Court in the same case, 202 U. S. 101, 115.

It will be observed that plaintiffs resorted to the account as stated in *United States v. Old Settlers*, 148 U. S. 427, 478, for the figure, \$60,000, and that in fixing the amount which should be deducted for debts, etc., in the case of the Old Settlers, the court drew a distinction between the amount deductible for debts in that case and in the case of the Eastern and Emigrant Cherokees.

Therefore, the amount as fixed in the case of *Cherokee Nation v. United States*, 40 Court of Claims 262, 295, affirmed by the Supreme Court, 202 U. S. 101, 115, is the correct amount.

For the same reasons objection is made to the statement in paragraph 2 of this finding that "the correctness of the foregoing items listed in the foregoing account and their proper deduction, from the said \$6,647,067, has been adjudicated" in the case of *United States v. Old Settlers*, 148 U. S. 427.

There is no objection to the first two sentences of paragraph 3.

Objection is made to the last sentence of the third paragraph because, as shown, the total of the deductions was found in the case of *Cherokee Nation v. United States* (40 C. Cls. 252, 295) to be \$4,621,756.17, and the difference between said sum and \$6,647,067 is \$2,025,310.83, but this amount was not a balance due plaintiffs because of said amount \$914,026.13 had been paid, with interest. The balance found by the Court to be due was \$1,111,284.70 (40 C. Cls. 295).

FINDING VIII

The first sentence of this finding is objected to because it is a statement of a conclusion of law. There is no objection to a finding that the plaintiffs sue to recover on account of an alleged interest-bearing fund, except that such a statement is immaterial. The jurisdictional act withholds power

to present, as well as authority to adjudicate, a claim which has been adjudicated on its merits and paid in full. The amount of the interest-bearing fund and the amount of interest due thereon has been adjudicated by this court and the Supreme Court, as hereinbefore shown, and the judgment rendered in favor of these plaintiffs has been paid in full.

FINDING IX

No objection.

FINDING X

This finding is objected to because it contradicts the statement of the account as made by the Court of Claims and the Supreme Court in the case of the *Cherokee Nation v. United States*, 40 C. Cls. 252, 295; 202 U. S. 101, 115.

Furthermore, this finding is objectionable because it is predicated upon the erroneous theory that the jurisdictional act creates a liability, in that it revives a claim for an interest-bearing fund theretofore adjudicated on its merits and paid in full, and requires the Court to restate the account upon the principle that payments thereon should be applied first to the satisfaction of accrued interest. As hereinafter more fully shown, no treaty, agreement, or law of Congress has created an obligation on the part of defendant to pay interest on such a fund at a time prior to the payment of the fund itself. The jurisdictional act has not enlarged the obligations of defendant with respect to the fund involved.

REQUEST FOR FINDINGS OF FACT

The defendant, considering the facts herein set forth to be proven and deeming them material to the due presentation of this case in the special findings of fact, requests the Court to find the same as follows:

FINDING I

By act of Congress approved April 25, 1932 (Ch. 136, 47 Stat. 137), it was provided:

That all claims against the United States of the Eastern or Emigrant Cherokees, and the Western Cherokee or Old Settler Indians, so-called, who are duly enrolled members of the Cherokee Tribe of Indians of Oklahoma, as classes, respectively, may be submitted to the Court of Claims, and jurisdiction is hereby conferred upon the Court of Claims, notwithstanding the lapse of time or statutes of limitations, to hear, examine, adjudicate, and render judgment in any and all legal and equitable claims arising or growing out of any treaty or agreement between the United States and the Cherokee Indians, or arising or growing out of any Act of Congress in relation to Indian affairs, which the said Eastern or Emigrant and Western or Old Settler Cherokees 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 and paid in full: *Provided*, That said Eastern or Emigrant and Western or Old Settler

Cherokee Indians may act together or as two bodies hereunder as they may be advised: *Provided further*, That the said Eastern or Emigrant and Western or Old Settler Cherokees may intervene in any suit or suits now pending in the Court of Claims under authority of the Act of Congress approved March 19, 1924 (43 Stat. L. 27, 28), in which the Cherokee Nation is party plaintiff and the United States party defendant.

SEC. 2. Any and all claims against the United States within the purview of this Act shall be forever barred unless suit or suits or intervening petition shall be filed, subject to amendment, however, as herein provided in the Court of Claims within six months from the date of approval of this Act, and such suit or suits shall make the Eastern or Emigrant and/or Western or Old Settler Cherokees party or parties plaintiff and the United States party defendant. The petition or petitions shall be verified by the attorney or attorneys employed to prosecute such claim or claims under contract or contracts with the said Indians approved in accordance with existing laws, and said contract or contracts shall be executed in their behalf by a committee or committees selected by said Indians or provided by existing law. Official letters, papers, documents, and records, maps, or certified copies thereof may be used in evidence; and the departments of the Government shall give access to the attorney or attorneys of said Indians to such treaties, papers, maps, correspondence, or

reports as they may require in the preparation and prosecution of any suit or suits instituted under this Act.

SEC. 3. In said suit or suits the court shall also hear, examine, consider, and adjudicate any claims which the United States may have against the said Indians or any of them, but any payment or payments which have been made by the United States upon any such claim or claims shall not operate as an estoppel but may be placed (sic) as an offset in such suit or suits, and the United States shall be allowed to plead and shall be given credit for all sums, including gratuities, paid to or expended for any of said classes of Indians: *Provided, however*, That in any claim sued on by said Cherokees for any part of an interest-bearing fund upon which account any payment or payments shall have been made, such payment or payments shall first be applied to reduction or payment of interest earned to the date of such respective payments, and the balance, if any, shall then be applied to reduce the interest-bearing principal and not otherwise.

SEC. 4. Any other tribes or bands of Indians the court may deem necessary to a final determination¹ of any suit or suits brought hereunder may be joined therein as the court may order: *Provided*, That upon final determination of such suit or suits the Court of Claims shall have jurisdiction to fix and determine a reasonable fee, not to exceed 10 per centum of recovery or recoveries, to-

¹ So in original.

gether with all necessary and proper expenses incurred in the preparation and prosecution of such suit or suits, to be paid to the attorney or attorneys employed as herein provided by the said Indians, and the same shall be included in the decree and shall be paid out of any sum or sums adjudged to be due said Indians, or any of them, and the balance of such sum or sums shall be placed in the Treasury of the United States, where it shall draw interest at the rate of 4 per centum per annum and be disposed of as provided by existing law.

Pursuant to the authority of the foregoing act, plaintiffs, the Eastern or Emigrant Cherokees, filed their petition in this cause on October 22, 1932.

FINDING II

Under the provisions of the treaties between plaintiffs and defendant of December 29, 1835 (7 Stat. 478), and of August 6, 1846 (9 Stat. 871), and the appropriation acts of July 2, 1836 (5 Stat. 73), and June 12, 1838 (5 Stat. 242), there became due the plaintiffs the sum of \$6,647,067, less certain credits for disbursements made by defendant on behalf of plaintiffs for various purposes in accordance with provisions of said treaties.

FINDING III

Pursuant to the 9th article of the treaty of 1846 (9 Stat. 871), the accounting officers of defendant in 1849 made and prepared for settlement the account therein provided for, upon the assumption,

however, that the cost of removal of plaintiffs from east of the Mississippi to their lands west of the Mississippi should in part be a charge against the treaty fund of \$5,000,000. Said account was stated as follows:

Statement of the claims of the Cherokee Nation of Indians, according to the principles established by the treaty of August 1846, between the United States and said Indians, prepared by the accounting officers in obedience to a resolution of Congress approved August 7, 1848.

Amount granted to the Cherokees by the first article of the treaty of 1835, for their lands east of the Mississippi	\$5,000,000.00
Amount granted by the third article of the supplement	600,000.00
Amount appropriated by Congress for objects specified in the third article of the supplement, per act of June 12, 1838	1,047,067.00
	6,647,067.00

From which deduct amount paid for—

Improvements	\$1,540,572.27
Ferries	159,572.12
Spoliations	264,894.09
Removal and subsistence, and commutation therefor, including \$2,765.84 expended for goods for the poorer classes of Cherokees, as mentioned in the fifteenth article of the treaty of 1835-36; and including, also, necessary incidental expenses of enrolling agents, conductors, commissaries, medical attendance and supplies, &c, viz:	
Removal and subsistence, and commutation therefor	\$2,823,192.93
Physicians, matrons, medicines, hospital stores, &c---	32,003.91
	32,003.91

From which deduct amount paid for—		
Superintendent of removal---	\$7,188.70	
Clerk to superintendent of removal-----	3,985.50	
Interpreter to superintendent of removal-----	2,706.54	
Disbursing agents-----	2,725.00	
Conductors-----	12,097.40	
Interpreters to various agents-----	16,102.00	
Issuing agents---	9,792.40	
Enrolling agents-----	16,418.50	
Contingent expenses of superintendent and disbursing agent----	25,983.38	
	<u>96,999.42</u>	
		\$2,952,196.26
Debts and claims upon the Cherokee Nation, viz:		
National debts (10th article) -	18,062.06	
Claims of United States citizens, &c (10th article)-----	61,073.49	
Cherokee committee (12th article)-----	22,212.76	
		<u>101,348.31</u>
Amount allowed the United States for the additional quantity of land ceded to said nation-----		500,000.00
Amount invested as the general fund of the nation-----		500,880.00
		<u>\$6,019,463.05</u>
Balance due Cherokee Indians-----		627,603.95

(Rept. G. A. O. in case No. L-174, pp. 36-37.)

FINDING IV

With respect to the subject of interest on the amount owing plaintiffs, the XIth article of the treaty of 1846 (9 Stat. 871, 875), provides as follows:

Whereas the Cherokee delegations contend that the amount expended for the one year's subsistence, after their arrival in the west, of the Eastern Cherokees, is not properly chargeable to the treaty fund: It is hereby agreed that that question shall be submitted to the Senate of the United States for its decision, which shall decide whether the subsistence shall be borne by the United States or the Cherokee funds, and if by the Cherokees, then to say, whether the subsistence shall be charged at a greater rate than thirty-three $\frac{33}{100}$ dollars per head; and also the question, whether the Cherokee nation shall be allowed interest on whatever sum may be found to be due the nation, and from what date and at what rate per annum.

Pursuant to the foregoing treaty provision, the Senate of the United States, on September 5, 1850, adopted the following resolution:

Resolved, That it is the sense of the Senate that interest at the rate of five per cent. per annum should be allowed upon the sums found due the Eastern and Western Cherokees, respectively, from the 12th day of June, 1838, until paid.
(Sen. Jour., 31st Cong., 1st Sess., p. 601.)

FINDING V

Thereafter, on September 30, 1850, in conformity with a report of the Senate Committee on Indian Affairs (Sen. Jour., 31st Cong., 1st Sess., p. 601), Congress appropriated the sum of \$189,151.24, with interest thereon in accordance with the Senate award, for the purpose of restoring to said treaty fund of \$5,000,000 an amount equal to the amount charged against said fund to cover certain expenses incident to removal (9 Stat. 556). Said appropriation act is as follows:

For the additional amount for expenses paid for subsistence and improperly charged to the treaty fund, according to the award of the Senate of fifth day of September, eighteen hundred and fifty, under the provisions of the eleventh article of the treaty of sixth day of August, eighteen hundred and forty-six, one hundred and eighty-nine thousand four hundred and twenty-two dollars and seventy-six cents, and that interest be paid on the same at the rate of five per cent. per annum, according to a resolution of the Senate of fifth September, eighteen hundred and fifty: *Provided*, That said money shall be paid by the United States and received by the Indians on condition that the same shall be in full discharge of the amount thus improperly charged to said treaty fund: *Provided, further*, That in no case shall any money hereby appropriated be paid to any agent of said Indians, or to any other person

or persons than the Indian or Indians to whom it is due *per capita*.

FINDING VI

On February 27, 1851, Congress appropriated (9 Stat. 572) the further sum of \$724,603.37, with interest thereon at the rate of 5% per annum from June 12, 1838, until paid, said sum being composed of the balance of \$627,603.95, as shown in the foregoing account stated by the accounting officers of defendant, and \$96,999.42 found by the Senate Committee on Indian Affairs (Sen. Journal, 31st Cong., 1st Sess., p. 601) to have been an amount wrongfully charged against said treaty fund of \$5,000,000, incident to the expenses of employees of defendant in connection with plaintiffs' removal from east to west of the Mississippi. Said appropriation act is as follows:

For payment to the Cherokee nation, the sum of seven hundred and twenty-four thousand six hundred and three dollars and thirty-seven cents, and interest on the above sum, at the rate of five per centum per annum, from twelfth day of June, eighteen hundred and thirty-eight, until paid, shall be paid to them out of any money in the treasury not otherwise appropriated; but no interest shall be paid after the first of April, eighteen hundred and fifty-one, if any portion of the money is then left undrawn by the said Cherokees: *Provided, however*, That the sum now appropriated shall be in

full satisfaction and a final settlement of all claims and demands whatsoever of the Cherokee nation against the United States, under any treaty heretofore made with the Cherokees. And the said Cherokee nation shall, on the payment of said sum of money, execute and deliver to the United States a full and final discharge for all claims and demands whatsoever on the United States, except for such annuities in money or specific articles of property as the United States may be bound by any treaty to pay to said Cherokee nation, and except, also, such moneys and lands, if any, as the United States may hold in trust for said Cherokees: *And provided further*, That the money appropriated in this item shall be paid in strict conformity with the treaty with said Indians of sixth August, eighteen hundred and forty-six.

FINDING VII

Pursuant to the appropriation act of September 30, 1850 (9 Stat. 556), there was set up on the books of the Treasury, under the heading "Additional Amount for Expenses paid for Subsistence, etc., according to the award of the Senate of 5th September 1850, etc.", the total sum of \$317,989.26, being principal and interest (Rept. G. A. O., Vol. 1, p. 519, filed in Case No. L-268); and pursuant to the appropriation act of February 27, 1851 (9 Stat. 577), there was also set up on the books of the Treasury under the heading "Payment to

Cherokee Nation of \$724,603.37 and interest at 5% from June, 1838, until paid", a total sum of \$1,188,349.52, being principal and interest. (Rept. G. A. O. in Case No. L-174, p. 53; Rept. G. A. O. in Case No. L-268, Vol. 1, p. 523.) Thereafter, as of April 5, 1852, there was disbursed from said accounts to plaintiffs the sum of \$1,506,338.78. (Rept., G. A. O. in Case No. L-268, p. 526, 527, 549.)

FINDING VIII

A controversy arose between the parties with respect to the correctness of charging certain disbursements made by defendant against said sum of \$6,647,067, and especially with respect to a charge of \$1,111,284.70 against said sum to cover in part the cost of the removal of plaintiffs from east of the Mississippi to their lands west of said river.

FINDING IX

By the act of March 3, 1893 (27 Stat. 640, 641), Congress ratified an agreement theretofore entered into between commissioners representing the United States and commissioners representing the Cherokee Nation, known as the Cherokee Outlet Purchase Agreement, which, among other things, provides as follows:

Fourth. That—

The United States shall, without delay, render to the Cherokee Nation, through any agent appointed by authority of the national

council, a complete account of moneys due the Cherokee Nation under any of the treaties ratified in the years 1817, 1819, 1825, 1828, 1835-36, 1846, 1866, and 1868, and any laws passed by the Congress of the United States for the purpose of carrying said treaties, or any of them, into effect; and upon such accounting, should the Cherokee Nation, by its national council, conclude and determine that such accounting is incorrect or unjust, then the Cherokee Nation shall have the right, within twelve months, to enter suit against the United States in the Court of Claims, with the right of appeal to the Supreme Court of the United States by either party, for any alleged or declared amount of money promised but withheld by the United States from the Cherokee Nation, under any of said treaties or laws, which may be claimed to be omitted from, or improperly or unjustly or illegally adjusted in, said accountings; and the Congress of the United States shall at its next session, after such case shall be finally decided and certified to Congress according to law, appropriate a sufficient sum of money to pay such judgment to the Cherokee Nation, should judgment be rendered in her favor; or if it shall be found upon such accounting that any sum of money has been so withheld, the amount shall be duly appropriated by Congress, payable to the Cherokee Nation, upon the order of its national council, such appropriation to be made by Congress, if

then in session, and if not, then at the session immediately following such accounting. (40 Ct. Cls. 253, 289-290; Ex. Doc. 56, 52nd Cong., 1st Sess.)

FINDING X

In accordance with the provision of Paragraph 4, Article 2, of the agreement aforesaid, James A. Slade and Joseph T. Bender, having been chosen by defendant for the purpose, made and rendered the account as therein required to be made upon the principle that the aforesaid sum of \$1,111,284.70 was improperly charged against said fund. Said account was stated as follows:

Figuring upon the basis stated in the ninth article of the treaty of 1846, and following the Auditor's and Comptroller's figures in the accounting of December 3, 1849, and eliminating from the charges made against the total fund of \$6,647,067, the excess of payments over the amounts appropriated by the United States for that purpose, the true statement of the account is as follows:

For improvements.....	\$1, 540, 572. 27
For ferries.....	159, 572. 12
For spoliations.....	264, 894. 09
For removal and subsistence, being the amount actually provided and expended for these purposes, and consisting of the following items.....	\$335, 105. 91
	1, 047, 067. 00
	<hr/> 1, 382, 172. 91
For debts and claims upon the Cherokee Nation.....	101, 348. 31
For the additional quantity of land ceded to the nation.....	500, 000. 00
For amount invested as the general fund of the nation.....	500, 880. 00
For subsistence furnished after expiration of one year, under agreement that it should be charged to treaty fund.....	172, 316. 47
	<hr/> 4, 621, 756. 17
	<hr/> <hr/>

For lands and possessions	\$5,000,000.00
For spoiliations	264,894.09
Balance of \$600,000 applicable to removal	335,105.91
Appropriation of June 12, 1838	1,047,067.00
	<hr/>
	6,647,067.00
From which deduct charges as above	4,621,756.17
	<hr/>
Balance to be distributed <i>per capita</i>	2,025,310.83
Deduct amount actually distributed, as already explained	914,026.13
	<hr/>
Balance due	1,111,284.70

The foregoing statement covers, it is believed, every point at issue which can be raised under the treaties described in the articles of agreement; (a number of demands made by the Cherokee Nation were disallowed), and the result of the finding is submitted in the following schedule:

Under the treaty of 1819:

Value of three tracts of land containing 1,700 acres, at \$1.25 per acre, to be added to the principal of the "School" fund----- \$2,125.00
(With interest from February 27, 1819, to date of payment.)

Under treaty of 1835:

Amount paid for removal of Eastern Cherokees to the Indian Territory, improperly charged to treaty fund----- 1,111,284.70
(With interest from June 12, 1838, to date of payment.)

Under treaty of 1866:

Amount received by receiver of public moneys at Independence, Kansas, never credited to Cherokee Nation----- 432.28
(With interest from January 1, 1874, to date of payment.)

Under act of Congress, March 3, 1893:

Interest on \$15,000 of Choctaw Funds applied in 1863 to relief of indigent Cherokees, said interest being improperly charged to Cherokee national fund----- 20,406.25
(With interest from July 1, 1893, to date of restoration of the principal of the Cherokee funds, held in trust in lieu of investments.)

WASHINGTON, D. C., April 28, 1894.

(Signed) JAS. A. SLADE.
JOS. T. BENDER.

(40 C. Cls. 252, 295.)

FINDING XI

The account as stated by Slade and Bender "was by the Secretary of the Interior referred to the Commissioner of Indian Affairs for examination and report, and the same having been examined and approved by said Commissioner, was by the latter returned to the Secretary of the Interior, who transmitted the same to the Cherokee Nation by delivering a copy thereof to R. F. Wyley, its properly constituted agent for receiving the same, and said account so made, rendered, and transmitted was accepted by the Cherokee Nation by an act of its national council approved December 1, 1894, and no suit under the authority of the Act of Congress ratifying said agreement was thereafter brought by the Cherokee Nation against the United States charging that said account was in anywise incorrect or unjust, but on the contrary, the principal chief of the Cherokee Nation, as required by the act of its national council above referred to, did notify the Secretary of the Interior of the acceptance by said Nation of said account as so stated by Messrs. Slade and Bender, and did request said Secretary of the Interior to notify the Congress of the United States of such acceptance, * * *." (40 C. Cl. 252, 294-295.)

FINDING XII

On July 1, 1902, an act of Congress (32 Stat. 726) was approved, which, among other things, provided:

Jurisdiction is hereby conferred upon the Court of Claims to examine, consider, and adjudicate, with a right of appeal to the Supreme Court of the United States by any party in interest feeling aggrieved at the decision of the Court of Claims, any claim which the Cherokee tribe, or any band thereof, arising under treaty stipulations, may have against the United States, upon which suit shall be instituted within two years after the approval of this Act; and also to examine, consider, and adjudicate any claim which the United States may have against said tribe, or any band thereof. The institution, prosecution, or defense, as the case may be, on the part of the tribe or any band, of any such suit, shall be through attorneys employed and to be compensated in the manner prescribed in sections twenty-one hundred and three to twenty-one hundred and six, both inclusive, of the Revised Statutes of the United States, the tribe acting through its principal chief in the employment of such attorneys, and the band acting through a committee recognized by the Secretary of the Interior. The Court of Claims shall have full authority, by proper orders and process, to make parties to any such suit all persons whose presence in the litigation it may deem necessary or proper to the final determination of the matter in controversy, and any such suit shall, on motion of either party, be advanced on the docket of either of said courts and be determined at the earliest practicable time.

FINDING XIII

Thereafter by act approved March 3, 1903, entitled "An Act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June Thirty, Nineteen Hundred and Four, and for other purposes" (32 Stat. 996), it was provided:

Section sixty-eight of the Act of Congress entitled "An act to provide for the allotment of the lands of the Cherokee Nation, for the disposition of town sites therein and for other purposes," approved July first, nineteen hundred and two, shall be so construed as to give the Eastern Cherokee, so called, including those in the Cherokee Nation and those who remained east of the Mississippi River, acting together or as two bodies, as they may be advised, the status of a band or bands, as the case may be, for all the purposes of said section: *Provided*, That the prosecution of such suit on the part of the Eastern Cherokees shall be through attorneys employed by their proper authorities, their compensation for expenses and services rendered in relation to such claim to be fixed by the Court of Claims upon the termination of such suit; and said section shall be further so construed as to require that both the Cherokee Nation and said Eastern Cherokees, so called, shall be made parties to any suit which may be instituted against the United States under said

section upon the claim mentioned in House of Representative Executive Document Numbered Three hundred and nine of the second session of the Fifty-seventh Congress; and if said claim shall be sustained in whole or in part the Court of Claims, subject to the right of appeal named in said section, shall be authorized to render a judgment in favor of the rightful claimant, and also to determine, as between the different claimants to whom the judgment so rendered, equitably belongs either wholly or in part, and shall be required to determine whether, for the purpose of participating in said claim, the Cherokee Indians who remained east of the Mississippi River constitute a part of the Cherokee Nation, or of the Eastern Cherokees, so called, as the case may be.

FINDING XIV

Pursuant to the authority of the foregoing acts, petitions were filed in the Court of Claims on behalf of the Cherokee Nation, No. 23199; on behalf of the Eastern Cherokees, No. 23214; and on behalf of the Eastern and Emigrant Cherokees, No. 23212; all of which petitions sought a recovery against the United States for the several amounts shown to be owing by the Slade and Bender report, with interest as therein specified. Said causes were consolidated for both hearing and judgment and upon the hearing a judgment was entered in favor of plaintiffs for the amount shown by said report of

Messrs. Slade and Bender to be owing plaintiffs, with interest thereon (40 C. Cl. 252, 363).

FINDING XV

On appeal the Supreme Court (202 U. S. 101) affirmed the judgment of the Court of Claims, insofar as the same related to the grounds of and amounts of liability. In the opinion at pages 123 and 124 the Supreme Court, among other things, said:

Weldon, J., concurred with the Chief Justice in a separate opinion. Peelle, J., concurred in the judgment, but rested his conclusion on the ground that the United States were liable "to pay the expense of removal" of the Eastern Cherokees from their eastern home to the Indian Territory, under the treaties of 1835-36 and 1846, 7 Stat. 478; 9 Stat. 871, and therefore to pay this conceded balance. The various treaties from 1817 down, the legislation, accountings, and proceedings were duly considered in arriving at the result reached. Wright, J., dissented.

We agree that the United States were liable, and think the liability might well be rested on both grounds, that is, that failing one it could be sustained on the other, but we do not deem it necessary to set forth in our own language what has already been so well stated by Chief Justice Nott and Judges Weldon and Peelle.

Recovery of the item of \$1,111,284.70 was adjudged "with interest thereon at the rate of five percent from June 12, 1838, to date of payment," and it is contended that the Court of Claims erred in this allowance of interest.

Under the eleventh article of the treaty of 1846 the Cherokees agreed to submit to the Senate of the United States, as umpire, the question whether interest should be allowed on the sums found due them. The Senate of the United States, as umpire, on September 5, 1850, found that interest should be allowed in the following resolution: "Resolved, That it is the sense of the Senate that interest at the rate of five per cent. per annum should be allowed upon the sums found due the Eastern and Western Cherokees, respectively, from the 12th day of June, 1838, until paid."

FINDING XVI

By an act approved June 30, 1906 (34 Stat. 664), Congress made an appropriation for the payment of the judgment in the foregoing causes. Said act is in part as follows:

To pay the judgment rendered by the Court of Claims on May eighteenth, nineteen hundred and five, in consolidated causes numbered twenty-three thousand one hundred and ninety-nine, *The Cherokee Nation* versus *The United States*; numbered twenty-three thousand two hundred and fourteen, *The Eastern Cherokees* versus *The United*

States, and numbered twenty-three thousand two hundred and twelve, *The Eastern and Emigrant Cherokees* versus *The United States*, aggregating a principal sum of one million one hundred and thirty-four thousand two hundred and forty-eight dollars and twenty-three cents, as therein set forth, with interest upon the several items of judgment at five per centum, one million one hundred and thirty-four thousand two hundred and forty-eight dollars and twenty-three cents, together with such additional sum as may be necessary to pay interest, as authorized by law.

FINDING XVII

By act approved March 4, 1909 (35 Stat. 938), Congress made an appropriation to cover interest on Item 2 of the aforesaid judgment until the roll of the individual beneficiaries had been approved by the court. Said act is in part as follows:

That the general deficiency appropriation Act of June thirtieth, nineteen hundred and six, so far as the same provides for the payment of item two of the judgment of the Court of Claims of May eighteenth, nineteen hundred and five, in favor of the Eastern Cherokees, shall be so construed as to carry interest on said item two up to such time as the roll of the individual beneficiaries entitled to share in said judgment shall be finally approved by the Court of Claims, and for the payment of said interest a sufficient sum is hereby appropriated.

FINDING XVIII

Pursuant to the foregoing appropriation acts there was set up and carried on the books of the Treasury of the United States under the heading "Judgment, Court of Claims, Cherokee Nation", the total sum of \$5,158,005.54, and of said amount so set up there was disbursed to plaintiffs on account of item 2 of the aforesaid judgment the sum of \$5,098,361.08 (Rept. G. A. O., in case No. L-268, Vol. 2, pp. 992, 1056-1058; *The Cherokee Nation v. United States*, 59 C. Cls. 862, 874-5, Finding VIII; 270 U. S. 476, 495.)

FINDING XIX

By act approved March 3, 1919 (40 Stats. 1316), jurisdiction was conferred upon the Court of Claims with right of appeal to the Supreme Court to hear and determine a claim of the Cherokee Nation for interest, in addition to all interest theretofore allowed and paid, on the funds arising from the judgment of the Court of Claims of May 18, 1905 (40 C. Cls. 252). The said act reads in part as follows:

That jurisdiction is hereby conferred upon the Court of Claims to hear, consider, and determine the claim of the Cherokee Nation against the United States for interest, in addition to all other interest heretofore allowed and paid, alleged to be owing from the United States to the Cherokee Na-

tion on the funds arising from the judgment of the Court of Claims of May eighteenth, nineteen hundred and five (Fortieth Court of Claims Report, page two hundred and fifty-two), in favor of the Cherokee Nation. The said court is authorized, empowered, and directed to carefully examine all laws, treaties, or agreements, and especially the agreement between the United States and the Cherokee Nation of December nineteenth, eighteen hundred and ninety-one, ratified by the United States March third, eighteen hundred and ninety-three (Twenty-seventh Statutes at Large, page six hundred and forty, section ten), in any manner affecting or relating to the question of interest on said funds, as the same shall be brought to the attention of the court by the Cherokee Nation under this Act. And if it shall be found that under any of the said treaties, laws, or agreements interest on one or more of the said funds, either in whole or in part, has not been paid and is rightfully owing from the United States to the Cherokee Nation, the court shall render final judgment therefor against the United States and in favor of the Cherokee Nation, either party to have the right to appeal to the Supreme Court of the United States as in other cases.

FINDING XX

Under the authority of the foregoing act, the Cherokee Nation filed its petition wherein plaintiffs claimed interest on the items of the judgment of the

Court of Claims entered in said cause in addition to interest theretofore paid. Upon the hearing the court entered an order dismissing the petition (59 C. Cls. 862).

FINDING XXI

On appeal by plaintiff from the judgment aforesaid, the Supreme Court affirmed the judgment of the Court of Claims, although failing to sustain the conclusions of the Court of Claims with respect to the scope and effect of the jurisdictional act (270 U. S. 476). In its opinion (page 492), the Supreme Court in part said:

It is urged that the largest item, of \$1,111,284.70, was taken out of a \$5,000,000 trust fund held by the United States for the benefit of the Cherokees, and therefore that it should be treated as if it were always in the Treasury of the United States, held in trust for the Indians, and as if the United States had collected the interest thereon out of the invested stocks and had refused to pay it over as annuities to the Indians. This claim proves too much. It would require compound interest brought about by annual or semiannual rests for near a century, an amount that the Solicitor General suggests would be equal to the National debt. The argument is shown to be wholly without support in the circumstance that the Cherokees and the United States, by the resolution of the Senate in 1850, agreed upon the interest for such debts as that of five per cent. until

paid. *Moreover, the ratification by the Cherokees of the Slade and Bender Report foreclosed any such claim.* (Italics ours.)

(Pages 495, 496). It is quite clear that the mistake made by the Treasury, and by Congress, too, in attempting to carry out the judgment of this Court was in assuming, first, that 4 per cent. should be allowed on the total of all items and interest between the date of filing the transcript of the judgment in the Treasury Department and the date of the mandate of affirmance by the Supreme Court, as already pointed out. A further mistake was made in calculating interest at 5 per cent. after the date of affirmance by this Court on the total of the judgment and the interest until final payment. It should have been confined to interest on the principal sums. The eighth finding of the Court of Claims shows in more or less detail how the interest was calculated. The methods adopted we have already criticized. The Solicitor General in his brief makes it evident that in the case of no one of the four items is the amount which has been actually paid less than that which should have been paid down to the day of payment, in accordance with the judgment, including the principal and 5 per cent. simple interest to the date of payment. There is no attempt on the part of the appellant to question the demonstration of this fact. The truth is that the errors in the calculation increased by a substantial sum the amounts which un-

der the judgment should have been paid. As this was more favorable than it should have been to the Cherokees, they can not complain. On this appeal, under the Act of 1919, and in compliance with its requirement, we hold that there is no more interest due to the Cherokees beyond that which they have already received.

FINDING XXII

From the year 1812 to the end of the year 1846, during which period of time the plaintiffs composed approximately two-thirds of the Cherokee Indians (Rpt. Int. Dept. in No. L-174, post., p. 124), the United States expended gratuitously for the Cherokee Indians the sum of \$259,017.46 for the purposes and in the amounts respectively as follows:

Agency buildings and repairs (Report G. A. O. in Case No. L-174, pp. 64-76, 153, 154, 107-110, 92, 116, 113, 114, 136) -----	\$7, 519. 32
Agricultural aid (Id., p. 152) -----	21. 50
Agricultural implements and equipment (Id., pp. 108, 152-154) -----	8, 082. 14
Burial of Indians (Id., p. 114) -----	60. 00
Clothing (Id., pp. 151, 152) -----	1, 030. 57
Education (Id., pp. 103, 152) -----	17, 247. 42
Expenses of delegations (Id., pp. 107, 113, 114, 152-154, 190, 191, 192, 230) -----	38, 231. 60
Expenses of making per capita payments (Id., pp. 112, 113, 116) -----	2, 027. 00
Expenses of transporting and distributing annuities (Id., pp. 107-111, 152, 153, 229, 330) -----	2, 544. 68
Feed and care of livestock (Id., p. 152) -----	252. 63
Fuel, light, and water (Id., pp. 113, 114, 136) -----	337. 50
Hardware, glass, oils, and paints (Id., pp. 107, 119, 151, 152) -----	152. 44
Household equipment (Id., 151-153, 157-159) -----	4, 675. 70
Indian houses (Id., pp. 151, 152) -----	1, 058. 58

Medical attention (Id., pp. 151, 152, 154, 107, 232) -----	\$542. 25
Mills and shops (Id., p. 189) -----	350. 00
Miscellaneous agency expenses (Id., pp. 107-114, 151-154) -	24, 944. 20
Miscellaneous building material (Id., p. 114) -----	54. 00
Pay of Indian agents (Id., pp. 107, 137, 151-154, 194, 198, 201) -----	86, 154. 58
Pay of interpreters (Id., pp. 107-111, 136, 151-154, 199) --	19, 300. 84
Pay of miscellaneous employees (Id., pp. 107-111, 152-154) -----	4, 391. 52
Pay of skilled employees (Id., pp. 107-110, 151-154, 193) --	13, 434. 56
Presents (Id., pp. 152-154, 108, 113) -----	5, 816. 76
Provisions and other rations (Id., pp. 107-114, 151-154, 203, 204) -----	20, 014. 17
Transportation of supplies (Id., pp. 108, 109, 112-114) ---	258. 50
Work and stock animals (Id., pp. 152-154) -----	515. 00
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	259, 017. 46

Two-thirds thereof \$172,678.30.

FINDING XXIII

From the year 1847 to the end of the year 1865, during which period of time the plaintiffs, Eastern or Emigrant Cherokees, composed approximately two-thirds of the Cherokee Indians (Rept., Int. Dept., post, p. 124), the United States expended gratuitously for the Cherokee Indians the sum of \$49,889.82 for the purposes and in the amounts respectively as follows:

Agency buildings and repairs. (Report G. A. O. in Case No. L-174, pp. 92, 116, 78) -----	\$5, 405. 13
Education (Id., pp. 103, 104) -----	5, 058. 93
Expense of delegations (Id., pp. 39, 115, 116) -----	3, 230. 33
Expense of making per capita payments (Id., pp. 116, 117) -	7, 471. 99
Fuel, lights, and water (Id., pp. 115-118) -----	433. 00
Hardware, glass, oils, and paint (Id., p. 119) -----	20. 00
Miscellaneous agency expenses (Id., pp. 114-119, 136, 78) --	5, 067. 08
Pay of Indian agents (Id., pp. 137, 194) -----	8, 459. 49
Pay of interpreters (Id., pp. 137, 194) -----	6, 250. 40
Pay of miscellaneous employees (Id., pp. 114, 115, 119, 136) -	1, 066. 75
Provisions and other rations (Id., p. 203) -----	2, 349. 60
Transportation of supplies (Id., pp. 114, 152, 228) -----	4, 627. 12
Work and stock animals (Id., p. 119) -----	450. 00
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Two-thirds thereof \$33,259.88.	

FINDING XXIV

During the period beginning with the year 1866 and ending with the fiscal year 1932, the United States expended gratuitously for the Cherokee Tribe of Indians, being composed of plaintiffs, the Eastern or Emigrant Cherokees, the Western or Old Settler Cherokees, certain Delaware Indians, Shawnee Indians, and white persons adopted into said tribe, and certain freedman and free colored persons affiliated with the Cherokees, the sum of \$2,041,387.27 for the purposes and in the amounts respectively as follows:

Agency buildings and repairs (Report G. A. O. in Case No. L-174, pp. 79, 80, 121, 122)-----	\$2,126.78
Agricultural aid (Id., p. 220)-----	253.04
Education (Id., pp. 161-175, 178-180, 205, 212, 214, 220, 226, 227)-----	1,971,100.47
Expenses of delegations (Id., pp. 124, 203, 120)-----	6,294.50
Feed and care of live stock (Id., p. 122)-----	187.50
Fuel, light, and water (Id., pp. 78, 79, 120-122)-----	250.65
Household equipment (Id., p. 120)-----	53.00
Medical attention (Id., pp. 105, 106, 122, 213-216, 220-223, 232)-----	17,386.98
Miscellaneous agency expenses (Id., pp. 120-132, 224, 226, 231, 78, 79)-----	5,770.75
Pay and expenses of field matrons (Id., p. 184)-----	1,169.51
Pay of Indian agents (Id., pp. 121, 122, 201, 217)-----	11,155.92
Pay of interpreters (Id., pp. 199, 204)-----	3,231.71
Pay of miscellaneous employees (Id., p. 221)-----	3,452.04
Presents (Id., p. 202)-----	63.29
Provisions and other rations (Id., p. 203)-----	568.00
Relief of destitute Indians (Id., pp. 138, 214-216, 220-221)-----	15,468.40
Removals (Id., p. 122)-----	302.00
Surveying, allotting, sale, etc., of lands (Id., pp. 220-221, 142)-----	1,184.13
Transportation of supplies (Id., pp. 121, 129)-----	42.60
Work and stock animals (Id., p. 224)-----	1,326.00
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	2,041,387.27

FINDING XXV

During the period beginning with the year 1866 and ending with the fiscal year 1932, the plaintiffs, the Eastern or Emigrant Cherokees and the Western or Old Settler Cherokees, constituted at least four-fifths of all the persons receiving the benefits of the gratuity expenditures shown to have been made in the finding next preceding (Rpt. Int. Dept., post, pp. 129, 134, 137, 138, 151, 152, 154). Upon that basis and the fact that plaintiffs constituted two-thirds of all Cherokees, the plaintiffs should be charged with eight-fifteenths of the sum shown in said finding to have been expended, which is \$1,088,739.87.

FINDING XXVI

During the period from January 1876 to the end of the fiscal year 1932 the United States expended gratuitously for the Cherokee, Choctaw, Chickasaw, Creek, and Seminole Indians the sum of \$4,209,018.40 for the purposes and in amounts, respectively, as follows:

Agency buildings and repairs (Report G. A. O. in Case No. L-174, pp. 80-90, 123, 124, 141, 147-149, 156, 157)---	\$125,775.63
Agricultural aid (Id., pp. 123-126, 220, 221)-----	15,706.66
Agricultural implements and equipment (Id., pp. 123, 124-126)-----	152.20
Construction and maintenance of Claremore Hospital (Id., pp. 105, 148, 155, 211, 212)-----	77,127.98
Education (Id., pp. 93-102, 105, 144-146, 150, 156-181, 205-216, 231)-----	1,698,470.55
Expenses of delegations (Id., p. 120)-----	5.96
Feed and care of livestock (Id., pp. 123-126)-----	1,396.28
Fuel, light, and water (Id., pp. 123-135, 141)-----	899.70
Hardware, glass, oils, and paints (Id., pp. 123, 125)---	11.24
Household equipment (Id., pp. 220, 221)-----	2,195.24

Medical attention (Id., pp. 123-125, 213-216, 105, 223, 232, 203) -----	\$4, 227. 09
Miscellaneous agency expenses (Id., pp. 123-135, 141, 142, 218, 219, 114, 121, 220, 221, 224, 225, 227) -----	190, 011. 53
Pay and expenses of farmers (Id., pp. 77, 125, 144-146, 182-188) -----	308, 495. 18
Pay and expenses of field matrons (Id., pp. 144, 183, 184) -----	6, 217. 32
Pay and expenses of Indian police (Id., pp. 125, 129, 141, 144, 145) -----	155, 843. 73
Pay of Indian agents (Id., pp. 195, 201) -----	67, 639. 53
Pay of interpreters (Id., pp. 144-146, 218-221) -----	104, 150. 81
Pay of miscellaneous employees (Id., pp. 123-135, 141-146, 219, 220, 221) -----	1, 243, 610. 49
Pay of probate attorneys (Id., pp. 142, 144-146) -----	16, 678. 32
Pay of skilled employees (Id., pp. 123-126) -----	415. 80
Surveying, allotting, sale, etc., of lands (Id., pp. 141, 218-221) -----	80, 809. 05
Transportation of supplies (Id., pp. 123, 127, 128, 130, 131, 141, 205-212, 220, 226, 227, 228, 231) -----	8, 330. 61
Work and stock animals (Id., pp. 123-125) -----	547. 50
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	\$4, 209, 018. 40

FINDING XXVII

During the period from 1866 to the end of the fiscal year 1932 the Cherokee Nation composed approximately one-sixth of the total number of Indians and others for whom the expenditures set forth in the finding next preceding were made (Rpt. Int. Dept., Post, pp. 130, 131, 151, 152, 154). Upon that basis plaintiffs should be charged on account of the expenditures so made with the sum of \$467,668.70, that being two-thirds of one-sixth of said expenditures.

FINDING XXVIII

During the year 1834 the United States expended gratuitously for plaintiffs the sum of \$5,600 to cover the expenses of delegates from the Eastern

Cherokees (4 Stat. 707; Rpt. G. A. O. filed in case No. 174, p. 140).

FINDING XXIX

In attempting to carry out the decree entered in *Cherokee Nation, et al v. United States* (40 C. Cl. 252, 463-465), the Treasury Department, as well as Congress, made the error of assuming that 4 per cent interest should be allowed on the total of all items of said decree and interest thereon for the period of time between the date of filing the transcript of the judgment in the Treasury Department, that date being December 29, 1905, and May 14, 1906, the date when the mandate of the Supreme Court issued (*The Cherokee Nation v. United States*, 59 C. Cl. 862, 874) and the further error in calculating interest at 5 per cent, after the affirmance by the Supreme Court on the total of the several items of the judgment and the interest thereon until final distribution. By reason of said errors the United States has paid to the Eastern Cherokees an amount in excess of the obligations of said decree in the sum of \$142,675.36, made up as follows:

Interest on \$4,899,962.25 (total of all items of the judgment principal and interest) from December 29, 1905, date of filing transcript, to May 14, 1906, date of mandate of Supreme Court, at 4% per annum -----	\$73, 057. 68
Amount of interest which was properly chargeable for said period, i. e., 5% per annum on \$1,134,248.23 -----	20, 820. 38
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Overpayment -----	\$52, 237. 30
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Interest at 5% per annum on \$4,899,962.25 (total of items of judgment and interest) from May 14, 1906, date of mandate, to date of Appropriation Act, June 30, 1906....	25, 238. 15
Amount of interest properly chargeable, i. e., 5% on \$1,134,248.23 during said period.....	7, 301. 65
Overpayment.....	<u>\$17, 936. 50</u>

Interest on item 2 of the judgment with interest added from June 30, 1906 (date of appropriation), to date of approval of rolls as authorized under Act of March 4, 1909 (35 Stat. 938), all of which was an overpayment... \$72, 501. 56

(Finding VIII in *Cherokee Nation v. United States*, 59 C. Cl. 862, 874; same case 270 U. S. 476, 495-496).

FINDING XXX

Defendant is entitled to off-sets for gratuities and over payment of interest on the judgment as hereinbefore recited in the total sum of \$1,910,-631.11, as shown below:

1. Disbursements made from 1812 to end of 1846, Plaintiff's share (Finding XXII).....	\$172, 687. 30
2. Disbursements made from 1847 to end of 1865, Plaintiff's share (Finding XXIII).....	33, 259. 88
3. Disbursements made from 1866 to end of fiscal year 1932, Plaintiff's share (Findings XXIV, XXV)....	1, 088, 739. 87
4. Disbursements made from 1876 to 1932, for joint benefit of Cherokees and other tribes, Plaintiff's share (Findings XXVI, XXVII).....	467, 668. 70
5. Expenditure in 1834 for delegates (Finding XXVIII) -	5, 600. 00
6. Overpayment of interest on judgment in the Cherokee Nation v. United States 40 C. Cl. 252 (Finding XXIX).....	142, 675. 36

BRIEF

STATEMENT OF THE CASE

This is one of the actions brought under the authority of the jurisdictional act approved April 25, 1932 (Chap. 136, 47 Stat. 137), Section 1 of which confers jurisdiction on the Court of Claims

to hear and determine "all legal and equitable claims arising or growing out of any treaty or agreement between the United States and the Cherokee Indians, or arising or growing out of any Act of Congress in relation to Indian affairs, which the said Eastern or Emigrant and Western or Old Settler Cherokees 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 and paid in full.*" (Italics ours.)

Section 3 of said Act provides:

SEC. 3. In said suit or suits the court shall also hear, examine, consider, and adjudicate any claims which the United States may have against the said Indians *or any of them*, but *any payment or payments* which have been made by the United States upon any *such* claim or claims *shall not operate as an estoppel* but may be placed (*sic*) as an offset in such suit or suits, and the United States shall be allowed to plead and shall be given credit for all sums, including gratuities, paid to or expended for any of said classes of Indians: *Provided, however*, That in any claim sued on by said Cherokees *for any part of an interest-bearing fund* upon which account any payment or payments shall have been made, such payment or payments shall first be applied to reduction or payment of interest earned to the date of such respective payments, and the balance, if any, shall then be

applied to reduce the interest-bearing principal and not otherwise. (*Italics ours.*)

The petition seeks the recovery of an interest-bearing fund alleged to be due plaintiffs from defendant arising out of the obligations of the treaty of 1846 (9 Stat. 871) and the resolution of the Senate of September 5, 1850 (Sen. Journal, 1st Ses., 31st Cong., p. 1760), being the same interest-bearing fund which was at issue in the cases of the *Cherokee Nation v. United States*, the *Eastern Cherokees v. United States*, and the *Eastern and Emigrant Cherokees v. United States*, consolidated for hearing and judgment (40 C. Cls. 252, and 202 U. S. 101) wherein the account of said fund as stated by this Court, upon the decision that removal expenses should be paid by defendant, was held by the Supreme Court to be correctly stated. Said account was there stated as follows:

For improvements-----	\$1,540,572.27
For ferries-----	159,572.12
For spoliations-----	264,894.09
For removal and subsistence, being the amount actually provided and expended for these purposes, and consisting of the following items-----	\$335,105.91
	1,047,067.00
	1,382,172.91
For debts and claims upon the Cherokee Nation-----	101,348.31
For the additional quantity of land ceded to the nation-----	500,000.00
For amount invested as the general fund of the nation-----	500,880.00
For subsistence furnished after expiration of one year, under agreement that it should be charged to treaty fund-----	172,316.47
	4,621,756.17

For lands and possessions-----	\$5,000,000.00
For spoliations-----	264,894.09
Balance of \$600,000 applicable to removal-----	335,105.91
Appropriation of June 12, 1838-----	1,047,067.00
	6,647,067.00
From which deduct charges as above-----	4,621,756.17
	2,025,310.83
Balance to be distributed per capita-----	2,025,310.83
Deduct amount actually distributed as already explained-----	914,026.13
	1,111,284.70

Pursuant to the ninth article of the treaty of 1846 (9 Stat. 871), between the parties, the accounting officers of the United States made a statement of the same account upon the theory, however, that plaintiffs should be charged with the cost of their removal and subsistence in excess of the amounts appropriated therefor by defendant, and upon that basis it was found that the balance due plaintiffs was \$627,603.95, with interest thereon from the 12th day of June 1828, which sum, together with an appropriation of \$189,422.76, with interest thereon from the above date, and a further appropriation of \$96,999.42, with like interest to replace funds found to have been wrongfully charged against the treaty fund, being in all, principal and interest, \$1,506,338.78, was disbursed to plaintiffs as of April 5, 1852.

The petition of plaintiffs is drawn upon the theory that the jurisdictional act requires the court to restate this account in such a manner as that the payment of \$1,506,338.78 made as of April 5, 1852, should first be applied to the payment of interest on the principal sum of \$2,025,310.83 from June 12,

1838, and likewise, when the distribution was made pursuant to the judgment of the Court of Claims in the case of the *Cherokee Nation et. al v. United States*, 40 C. Cls. 252, the payment so made should first be applied to the payment of accrued interest and the remainder, if any, to the reduction of the principal.

CONTENTIONS OF PLAINTIFFS

1. That the proviso contained in Section 3 of the jurisdictional act requires the court to readjudicate the claim of plaintiffs for money alleged to be due on an interest-bearing fund, notwithstanding the provision of the act which limits the right of plaintiffs to *present* and the authority of the court to *adjudicate* a claim which has been formerly adjudicated on its merits and paid in full.

2. That upon a restatement of the account of the interest-bearing fund plaintiffs are entitled to a judgment.

CONTENTIONS OF DEFENDANT

1. That the claim asserted by plaintiffs, having heretofore been determined and adjudicated on its merits and paid in full, is without the jurisdiction of the court.

2. That no obligation has been created, by treaty, agreement, law of Congress, or resolution of the Senate, to pay interest on the interest-bearing fund here involved at any time before the payment of the fund itself.

3. That the proviso contained in Section 3 of the jurisdictional act does not enlarge the authority of the court as conferred by the enabling clause of the act, nor does it abrogate or modify the provision therein contained limiting the right of plaintiffs to present, and the authority of the court to adjudicate, to those claims which have not heretofore been adjudicated on their merits and paid in full.

4. That the proviso contained in Section 3 of the jurisdictional act was not intended to revive or re-establish an interest-bearing fund which has passed out of existence by reason of an adjudication on its merits and the satisfaction of the judgment of the court in full.

5. That the jurisdictional act does not admit, assume, or create a liability.

ARGUMENT

RES JUDICATA

The jurisdictional act expressly withholds the right to present a claim, and the authority for the Court to hear and adjudicate a claim, which has heretofore been adjudicated on its merits by the Court of Claims or the Supreme Court and paid in full.

It is a fact beyond dispute that the interest-bearing fund alleged in the petition to be owing was one of the items which plaintiffs sought to recover in the cases of the *Cherokee Nation v. United States*, the *Eastern Cherokees v. United States*, and the

Eastern and Emigrant Cherokees v. United States, consolidated for hearing and judgment, decided by this court March 20, 1905 (40 C. Cls. 252), and affirmed by the Supreme Court on April 30, 1906 (202 U. S. 101).

It is also a fact that the plaintiffs in this case are the same Eastern and Emigrant Cherokees who were parties plaintiff in one of the above styled causes, and that upon a trial of said causes on their merits a judgment was entered in favor of these plaintiffs, which judgment has been paid in full. In reality the payments on account of said judgment have been held by the Supreme Court to exceed the liability of the judgment (*Cherokee Nation v. United States*, 270 U. S. 476, 495).

The judgment of the Court of Claims was on the merits. In *Black on Judgments* (Vol. 2, Sec. 694), a judgment is held to be on the merits "when it amounts to a declaration of the law as to the respective rights and duties of the parties, based upon the ultimate fact or set of facts disclosed by the pleadings and evidence, and upon which the right of recovery depends, irrespective of formal, technical, or dilatory objections or contentions."

In *Corpus Juris*, Volume 34, page 776, it is said:

If a case is brought to an issue, heard upon evidence submitted pro and con, and decided by the verdict of a jury or the findings of a court, the judgment rendered is on the merits.

As evidence of the fact that in the former case the court made its determination of the amount of the interest-bearing fund and amount of interest due thereon upon a consideration of all treaties and agreements between the parties, resolution of the Senate, and all laws applicable thereto, we quote from the opinion of the Supreme Court (202 U. S. 101), as follows (p. 120):

The correctness of the account is conceded, and the question is whether the United States were properly held liable therefor. The Court of Claims ruled that the account rendered by Slade and Bender under the agreement between the United States and the Cherokee Nation, ratified by Congress, was neither an award nor an account stated, but that the United States were nevertheless liable in the circumstances for the balance found.

(Page 123) Weldon J., concurred with the Chief Justice in a separate opinion. Peelle, J., concurred in the judgment, but rested his conclusion on the ground that the United States were liable "to pay the expense of removal" of the Eastern Cherokees from their eastern home to the Indian Territory, under the treaties of 1835-36 and 1846, 7 Stat. 478; 9 Stat. 871, and therefore to pay this conceded balance. The various treaties from 1817 down, the legislation, accountings, and proceedings were duly considered in arriving at the result reached. Wright, J., dissented.

As before stated, the difference between the account as stated in the petition filed in this cause and as it is stated by the court in the former actions is found in the application of the payment of \$1,506,338.78 made as of April 5, 1852, of which \$914,026.13 was appropriated by Congress for the payment of the principal and the remainder as interest thereon. In the petition the account is stated upon the theory that the payment of \$1,506,338.78 should be applied first to the payment of interest on the sum of the items of \$914,026.13 and \$1,111,284.70 and then to the reduction of principal. In the account as stated by the court this payment was applied in the manner as directed by the appropriation act, viz: \$914,026.13 on principal, remainder as interest thereon, and in complete satisfaction of the obligations and requirements of treaties and agreements between the parties and in compliance with all resolutions and laws applicable to the subject.

It is not surprising therefore that the parties plaintiff in the former action made no claim, either in their petitions or in their briefs, for a statement of the account in the manner as set up in their petition herein, or that the Supreme Court, in referring to the account, should say: "The correctness of the account is conceded."

The failure of plaintiffs in those cases to assert the claim that the payment of \$1,506,338.75 made pursuant to the appropriations act of September 30, 1850 (9 Stat. 556), which authorized payment

to the plaintiffs of the principal sum of \$914,026.13, and interest thereon in accordance with the resolution of the Senate, as well as the failure of the courts in stating the account to apply the entire sum of \$1,506,338.75 first to the payment of interest accrued and the balance to the reduction of the principal, was not due to an oversight but rather to the law of the case.

The only obligation to pay interest arose from the resolution of the Senate, sitting as an umpire, which says:

Resolved, That it is the sense of the Senate that interest at the rate of five per cent. per annum should be allowed *upon the sums found due* the Eastern and Western Cherokees, respectively, from the 12th day of June, 1838, until paid. (Italics ours.)

When Congress made the appropriation of September 30, 1850, that appropriation covered in full all "sums found due" up to that time, with interest thereon from June 12, 1838. The resolution of the Senate with respect to interest was carried out to the letter. That the accounting officers of the Treasury had made an error in charging certain expenditures incident to the removal to plaintiffs does not change the situation. The resolution provided for the payment of interest "upon the sums found due", and the obligations of the resolution were performed. The situation would have been the same had the accounting officers correctly stated the account and Congress had made an ap-

appropriation to pay \$914,026.13 of the principal found due, with interest thereon, as required by the Senate Resolution. Furthermore, if Congress had made an appropriation to pay interest before the payment of the principal sum, such an appropriation would have been a gratuity. An obligation to pay interest before payment of principal did not exist.

It thus appears that not only is this claim without the jurisdiction of the court under the terms of the enabling act, the claim having heretofore been adjudicated on its merits, but that the appropriation of the \$1,506,338.78 was correctly applied in the payment of the Government's obligation as it was then established.

CONSTRUCTION OF PROVISIO CONTAINED IN SECTION 3 OF
JURISDICTIONAL ACT

It will be observed from the brief of plaintiffs that the liability of defendant is claimed to be founded upon the proviso contained in Section 3 of the jurisdictional act, which is as follows:

In said suit or suits the court shall also hear, examine, consider, and adjudicate any claims which the United States may have against the said Indians or any of them, but any payment or payments which have been made by the United States upon any such claim or claims shall not operate as an estoppel but may be placed (sic) as an offset in such suit or suits, and the United States shall be allowed to plead and shall be given

credit for all sums, including gratuities, paid to or expended for any of said classes of Indians: *Provided, however*, That in any claim sued on by said Cherokees for any part of an interest-bearing fund upon which account any payment or payments shall have been made, such payment or payments shall first be applied to reduction or payment of interest earned to the date of such respective payments, and the balance, if any, shall then be applied to reduce the interest-bearing principal, and not otherwise.

As heretofore stated, there was no obligation on the part of the United States to pay interest on the fund in question until the fund itself was paid. This fact undoubtedly accounts for the failure of the plaintiffs in the consolidated Cherokee cases (40 C. Cls. 252) to present the claim now made, and also for the failure of this court and the Supreme Court to state the account as the same is now stated by plaintiffs.

The court will observe that in the petition at page 6 plaintiffs allege that the claim sued on "arises under or grows out of Article 9 of the treaty of 1846 (9 Stat. 871), article II of the same treaty, and a resolution of the Senate passed pursuant thereto September 5, 1850" (Senate Journal, 1st Session 31st Congress, page 601). However, plaintiffs request the court to find as a fact that plaintiffs' claim arises out of the treaty of 1846, the resolution of the Senate, and, in addition, out

of the jurisdictional act (Plaintiffs' Requested Finding 3, R., p. 17).

It appears, therefore, that plaintiffs concede that without the proviso contained in Section 3 of the jurisdictional act there is no basis for the claim, and proceed upon the theory that the proviso creates the claim. Defendant agrees with plaintiff only to this extent—that if by any chance a claim covering the subject matter of the petition exists, such a claim has been created by the proviso in Section 3 of the jurisdictional act.

The enabling clause of the jurisdictional act sets forth the basis of any and all claims which plaintiffs are permitted to present to the court, and specifically withholds the right to present a claim theretofore adjudicated on its merits and paid in full.

At the outset the question arises, did Congress intend that the proviso in Section 3 of the act should give new life to an interest-bearing fund which has, by reason of former adjudication and satisfaction of judgment in full, passed out of existence? Defendant thinks not. The proviso relates only to an interest-bearing fund which was in existence at the time the act was passed.

Furthermore, the use of the words "Provided, *however*" (Italics ours), in introducing the proviso establishes a positive and definite relationship between the office of the proviso and the subjects covered by that part of Section 3 of the act preceding the proviso.

Therefore, defendant contends that the proviso was intended to have this, and no other, office, viz: In the event a claim is presented on an interest-bearing fund, upon which claim a payment or payments have been made, but which payment or payments are not permitted under the act to be pleaded as an estoppel, then such payment or payments shall be applied first to the accrued interest and the remainder to the principal. In other words, the proviso was not intended to affect in any manner a controversy which had been settled by agreement, or, as the act specifically prescribes, a controversy which has been adjudicated and the judgment thereon fully satisfied. If plaintiffs' contention is sound, then plaintiffs are permitted to present a claim for any interest-bearing fund, regardless of former settlement or former adjudication.

But plaintiffs' contention that former adjudication is not a bar to the claim asserted, by reason of the proviso in Section 3 of the act, is again overthrown by the plain language of the act. Section 1 permits plaintiffs to submit to the court "claims * * *, which claims have not heretofore been determined on their merits by the Court of Claims or the Supreme Court of the United States and paid in full." The act, therefore, specifically denies to plaintiffs the right to present to the court a claim which has been adjudicated on its merits and paid in full. The proviso in Section 3 of the act says, "That *in any claim sued on by said Chero-*

kees for any part of an interest-bearing fund” (Italics ours), payments thereon shall first be applied to the payment of interest. In the use of the words “any claim sued on”, Congress did not intend that the limitation with respect to the right of plaintiffs, as granted in the enacting clause, to present claims, as well as the authority of the court to hear and determine them, should be enlarged. Therefore, when in the proviso Congress used the expression “any claim sued on”, it did not mean any claim which plaintiffs may choose to sue on, but claims which plaintiffs have the right under the act to make the basis of an action.

In the Duwamish case, No. F-275, decided June 4, 1934, this question was involved and there this Court said (Opinion, p. 31):

Obviously this section is procedural; it is not the enabling clause of the act. It waives the limitation statute of six years and prescribes a rule of adjudication for the subject matter referred to in section one of the act. It was not intended as an enlargement of the jurisdiction of the court so as to include claims aside from those specifically mentioned.

Let it be said again that plaintiffs are without the right to present a claim for an interest-bearing fund if a claim for the same interest-bearing fund has been adjudicated by the Court of Claims or the Supreme court and the judgment of the court satisfied in full.

It would do violence to the plain meaning of the act to conclude that the proviso was intended to nullify the language defining the class of claims permitted by Section 1 of the act to be presented to the court.

THE JURISDICTIONAL ACT DOES NOT ADMIT, ASSUME, OR
CREATE A LIABILITY

Although the jurisdictional act withholds from plaintiffs the right to present a claim heretofore adjudicated on its merits and paid in full, as well as the authority for the court to adjudicate such a claim, it is also clear that had the act waived the estoppel of former adjudication, plaintiffs' claim would still fail unless the act creates a liability. The treaties and agreements between the parties, the resolution of the Senate with respect to interest, and the laws of Congress in relation to Indian affairs, which were in effect when the jurisdictional act was approved, fail to supply a basis for the claim plaintiffs assert. In other words, there is no obligation on the part of the defendant to make an interest payment on account of the interest-bearing fund prior to the payment of such fund.

It was the intention of Congress that the claims permitted to be asserted should arise out of treaties, agreements, and laws of Congress which were in effect at the time of the approval of the jurisdictional act.

If there was an obligation to pay interest on the interest-bearing fund at any time prior to the pay-

ment of the fund itself, this Court and the Supreme Court would have recognized the same, and that obligation would have been reflected in the judgments heretofore entered. The law of the case stands now as it stood when the former cases were decided.

Furthermore, plaintiffs' construction of the jurisdictional act leads to an absurd situation. It is plain that plaintiffs base their right to recovery on the proviso in section 3 of the jurisdictional act. In other words that the act creates a liability. If that be true, it follows that the jurisdictional act creates a gratuity because the obligation to pay interest on the interest-bearing fund before the payment of the fund itself is an assumed obligation. But the act authorizes the Court to allow defendant to plead as set-offs payments made for the benefit of plaintiffs, including gratuities. The unsoundness of plaintiffs' contention is apparent. Congress would not in a jurisdictional act grant to defendant the right to plead gratuities as set-offs and in the same act create a gratuity which was intended to be the basis of plaintiffs' claim.

SET-OFFS

Under Section 3 of the jurisdictional act it is provided:

In said suit or suits the court shall also hear, examine, consider, and adjudicate any claims which the United States may have against the said Indians or any of them, but any payment or payments which have been

made by the United States upon any such claim or claims shall not operate as an estoppel but may be placed (sic) as an offset in such suit or suits, and the United States shall be allowed to plead and shall be given credit for all sums, including gratuities, paid to or expended for any of said classes of Indians.

It appears from the report of the General Accounting Office, filed in case number L-174 (pp. 64-76) that a large sum of money has been expended gratuitously by the United States for the sole benefit of the Cherokee Indians, and it appears also that a large sum of money has been expended gratuitously by the United States for the joint benefit of the Cherokees, the Choctaws, the Chickasaws, the Creeks, and Seminole Indians.

It is the contention of the defendant that the jurisdictional act requires that defendant be allowed offsets for said gratuities in the same proportion as the membership of plaintiff class of Cherokees bears to the entire number for whose benefit such expenditures were made.

The act says, "and the United States shall be allowed to plead and shall be given credit for all sums, including gratuities paid to or expended for any of said classes of Indians." The words "said classes" are used for the sake of brevity and mean the Eastern or Immigrant Cherokees and the Western or Old Settler Cherokees. If, therefore, the intent of the act should be expressed without brev-

ity, it would be stated thus—"and the United States shall be allowed to plead and shall be given credit for all sums, including gratuities, paid to or expended for said Eastern or Immigrant Cherokees and Western or Old Settler Cherokees."

It is plain that Congress intended to give to the United States a right of set-off for gratuities expended for the benefit of plaintiffs. The test is found in the answer to this question, Did the particular class share in the benefits of the gratuity?

A gratuity expended for the benefit of all Cherokees is a gratuity *pro tanto* for the benefit of the plaintiffs, one of the classes of Cherokees. A gratuity expended for the joint benefit of the Cherokees, the Choctaws, the Chickasaws, the Creeks, and Seminole Indians is also a gratuity *pro tanto* for the benefit of plaintiffs.

This Court has had occasion to decide this question in a number of cases, among them being the Klamath case No. E-346, decided November 5, 1934. In that case the jurisdictional act authorized set-offs for gratuities expended for the benefit of said Indians or any band thereof. It appeared that certain sums were expended for the maintenance of nonreservation schools. The Court allowed as set-offs an amount which bore the same ratio to the entire expenditure as the Klamath students bore to the entire school attendance.

Defendant also claims as a set-off an overpayment of interest on the judgment of the Court in the

case of *The Cherokee Nation v. United States* (40 C. Cl. 252). In the opinion of the Supreme Court in the case of *The Cherokee Nation v. United States* (270 U. S. 476, 495) it was held that the United States erroneously calculated the interest due on account of the judgment and paid interest in excess of the proper amount. The overpayment thus made was without legal obligation and is a proper offset.

CONCLUSION

The defendant submits that on the record in this case the Court should hold as follows:

1. That the claim asserted by plaintiffs, having been adjudicated by the Court of Claims and the Supreme Court and paid in full, is, by reason of a provision of the jurisdictional act, without the jurisdiction of the Court.
2. That Section 3 of the jurisdictional act does not create an exception to, modify, or nullify the provision of the enacting clause of the act which limits the right of plaintiffs to present claims, and the authority of the Court to hear and determine claims, which have been adjudicated by the Court of Claims or the Supreme Court and paid in full.
3. That Section 3 of the jurisdictional act does not admit, assume, or create a liability.
4. That defendant is entitled to an off-set for gratuities and for overpayment of interest on the judgment, as hereinbefore set out, in the sum of \$1,910,631.11 against any recovery to which plain-

tiffs may be entitled. (See Defendant's Requested Findings XXII-XXX.)

Respectfully submitted.

HARRY W. BLAIR,
Assistant Attorney General.

GEORGE T. STORMONT,
Attorney.

WILFRED HEARN,
Attorney.

APPENDIX

REPORTS OF THE SECRETARY OF THE INTERIOR FILED IN CASE NO. L-174

UNITED STATES DEPARTMENT
OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, Sept. 20, 1933.

The Honorable, The ATTORNEY GENERAL.

MY DEAR MR. ATTORNEY GENERAL: Reference is again made to certain suits pending in the United States Court of Claims, namely,

No. L-174, *The Cherokee Nation v. The United States.*

No. 42077, *Eastern or Emigrant Cherokees v. The United States.*

No. 42078, *Western or Old Settler Cherokees v. The United States.*

Reference is especially made to the petitions filed by the plaintiffs in said cases, the petition filed by the Western or Old Settler Cherokees as intervening plaintiff in case L-174, and your Department request for information as to all facts, circumstances and evidence in possession of this Department concerning the claims and matters involved in the above-mentioned suits.

The petition in case No. L-174 indicates that the suit in that case was instituted in the Court of Claims under the jurisdictional Act of March 19, 1924 (43 Stat. L. 27), as amended or modified by

Joint Resolutions of May 19, 1926 (44 Stat. L. 568) and February 19, 1929 (45 Stat. L. 1229).

The petitions in Cases Nos. 42077 and 42078 appear to have been filed in the Court of Claims under the jurisdictional Act of April 25, 1932 (47 Stat. L. 137).

It is alleged by the Cherokee Nation, in its amended petition in Case L-174, that by the treaty of December 29, 1835, by and between the United States and the Cherokee Indian Nation (7 Stat. L. 478), as clarified, modified, and construed by the treaty of August 6, 1846, between the same parties (9 Stat. L. 871), it was agreed that the United States would pay to the Cherokee Nation for the benefit of that portion of said Nation known as the "Eastern Cherokees", the sum of \$5,000,000, less certain deductions, as consideration for the transfer by the Cherokee Nation to the United States of all the lands the Cherokee Nation owned, claimed, or possessed east of the Mississippi River; that the expenditures made and charged to and deducted from the aforesaid \$5,000,000, were as follows:

For 800,000 acres of land west of the Mississippi-----	\$500,000.00
Investment in General fund-----	500,000.00
Improvements-----	1,540,572.27
Ferries-----	159,572.12
Debts, etc-----	60,000.00
Total-----	\$2,760,144.39

The Cherokee Nation further alleges that the correctness of the listed items and their proper deduction from said \$5,000,000, has been adjudicated by the Supreme Court of the United States in the case of the *United States v. The Old Settlers or Western Cherokees* (148 U. S. 427-478) and that by the decision in said case the above-mentioned de-

ductions were adjudicated and determined to be correct.

The Cherokee Nation further alleges that in addition to said deductions, it was agreed that the cost of the subsistence furnished by the United States to certain members of the Cherokee Nation after they had been living west of the Mississippi River for more than one year should be deducted from the aforesaid sum due under said treaties; that the correctness of said subsistence amount was adjudicated by the Supreme Court of the United States in the case of the *United States v. Cherokee Nation* (202 U. S. 101-116), and that by the decision in that case it was held that the sum of \$127,316.47 was the correct deduction for this purpose.

The Cherokee Nation alleges that the total of said deductions, including said amount for subsistence, aggregate \$2,932,460.86, leaving a balance of \$2,067,539.14, due said Cherokees; that pursuant to the terms of Article 11 of the treaty of 1846, the United States Senate on September 5, 1850, (Senate Journal, 1st Session, 31st Congress, page 601), passed a resolution to the effect

That it is the sense of the Senate that interest at the rate of 5% per annum should be allowed upon the sums found due the "Eastern" and "Western" Cherokees, respectively, from the 12th day of June 1838, until paid.

The Cherokee Nation, in its petition, states that no part of the \$2,067,539.14, or of any interest thereon was paid by the United States until April 5, 1852, at which time there was due and owing on said account for both principal and interest the sum of \$3,495,557.27; that the payments made on April

5, 1852, amounted to \$1,506,338.78 leaving a balance due and unpaid of \$1,989,218.49; that said balance bore interest at the rate of 5 percent per annum from said date until paid; that no further payment was made by the United States until March 15, 1910, as of which date the United States paid on said account the sum of \$5,098,361.08.

The Cherokee Nation claims that on March 15, 1910, there was due the principal sum of \$1,989,218.49, together with interest thereon amounting to \$5,762,738.71, a total sum of \$7,751,957.20; that the payment of \$5,098,361.08, on said date only liquidated in part the interest due on said date and left a balance thereof amounting to \$664,377.63, still due and unpaid in addition to the principal sum of \$1,989,218.49, or a total amount (principal and interest) due and unpaid amounting to \$2,653,596.12; and that no further payment has been made by the United States on said account.

The Cherokee Nation, also, alleges that by Article 4 of the treaty of 1846, the United States agreed to pay to the Cherokee Nation for the benefit of that portion of said Nation known as the Old Settler or Western Cherokees, for and in consideration of the release to the United States by the Old Settler or Western Cherokees of any claim or interest and Indians had or may have had in the lands east of the Mississippi River, a sum equal to one-third of the net sum or residuum found due and payable to the Cherokee Nation for the benefit of that portion of said Indian Nation known as the Eastern Cherokees under the treaties of 1835 and 1846, without deducting therefrom the above-mentioned subsistence sum of \$172,316.47; that one-third of said net sum or residuum amount of \$746,618.53 (*United States v.*

The Old Settlers or Western Cherokee Indians, 148 U. S. 427).

The Cherokee Nation claims that no part of said sum of \$746,618.53 or any interest thereon, was paid by the United States until September 22, 1851, at which time, it is alleged, there was due and owing on said account for both principal and interest the sum of \$1,242,352.77; that the payment made on September 22, 1851, amounted to \$887,480.15, leaving a balance of the principal, amounting to \$354,872.62, unpaid and bearing interest at the rate of 5 percent per annum; that on August 24, 1894, there was due and owing on said account, for both principal and interest, the sum of \$1,116,341.75; that the payment made on said date amounted to \$796,207.05, leaving a balance of 5 percent interest-bearing principal of \$320,134.70; that on March 3, 1899, there was due and owing on said account for both principal and interest, the sum of \$392,537.75; that the payment made on March 3, 1899, amounted to \$29,850.74, leaving a balance due as of that date amounting to \$320,134.70 on account of said principal sum, and the sum of \$42,552.31 on account of interest; and that the United States has made no further payments on this account.

The Cherokee Nation therefore asserts, in its petition, that the United States owes to the Cherokee Nation for the benefit of those portions of the Cherokee Nation known respectively as "Eastern" and "Western" Cherokees:

1. The balance of the principal sum agreed to be paid by the terms of the treaties of 1835 and 1846, for the benefit of that portion of the Cherokee Nation known as "Eastern" Cherokees, amounting to \$1,989,-

218.49 together with interest thereon at the rate of 5% per annum from March 15, 1910, until paid.

2. The balance of the interest due on said sum from April 5, 1852, to March 15, 1910, amounting to \$664,377.63.

3. The balance of the principal sum agreed to be paid by the terms of the treaty of 1846, for the benefit of that portion of the Cherokee Nation known as the "Western" Cherokees, amounting to \$320,134.70, together with interest thereon at the rate of % per annum from March 3, 1899, until paid.

4. The balance of the interest due on said sum from August 24, 1894, to March 3, 1899, amounting to \$42,552.31.

The Cherokee Nation, in its petition, therefore prays for judgment against the United States "in the sum of \$3,016,283.13; together with interest at the rate of five per cent per annum from March 3, 1899, until paid, on \$320,134.70, thereof; and with interest at the rate of five per cent per annum from March 15, 1910, until paid, on \$1,989,218.49 thereof."

In connection with the above-mentioned claim of the Cherokee Nation (Case L-174), so far as it relates to the matter of the Western or Old Settler Cherokees, reference is herein made to the intervening petition of "The Western Cherokee or Old Settler Indians" in said case, and to the separate suit (Case No. 42078) of "The Western or Old Settler Cherokees" concerning the same matter.

In these cases, the Western or Old Settler Cherokees assert that there is due them from the United States:

1. The balance of the principal sum agreed to be paid by defendant to plaintiffs, the Western or Old Settler Cherokee, amounting to \$320,134.70, together with interest thereon at the rate of 5% per annum from March 3, 1899, until paid.

2. The balance of interest due on said sum from August 24, 1894, to March 3, 1899, amounting to \$42,552.31.

Wherefore, plaintiffs pray for judgment against defendant for the sum of \$362,687.01, together with interest at the rate of 5% per annum on \$320,134.70 from March 3, 1899, until paid.

In connection with the above-mentioned claim of the Cherokee Nation (Case No. L-174) so far as it relates to the matter of the "Eastern or Emigrant Cherokees", reference is herein made to the separate suit of said "Eastern or Emigrant Cherokees" (Case No. 42077), concerning the same matter.

In said Case No. 42077, the "Eastern or Emigrant Cherokees" claim that there is due them from the United States:

1. The balance of the principal sum agreed to be paid by the terms of the treaties of 1835 and 1846, by defendant to Plaintiffs, amounting to \$1,989,218.49, together with interest thereon at the rate of 5% per annum from March 15, 1910, until paid.

2. The balance due for interest on said sum at 5% per annum from April 5, 1852, to March 15, 1910, amounting to \$664,377.63.

Wherefore, plaintiffs pray for judgment against defendant in the sum of \$2,653,596.12, together with interest at the rate of 5% per annum on \$1,989,218.49, thereof from March 15, 1910, until paid.

These three suits (Cases Nos. L-174, 42077, and 42078) relate to the same subject matter and it is believed should be considered together.

In connection with the matter of the suits by the "Eastern or Emigrant Cherokees" and the "Western or Old Settler Cherokees," under the Act of April 25, 1932 (47 Stat. L. 137), reference is especially made to Section 3, of said Act, wherein it is provided that in said suit or suits the Court shall also hear, examine, consider and adjudicate any claims which the United States may have against the said Indians or any of them, but any payment or payments which have been made by the United States upon any such claim or claims shall not operate as an estoppel but may be placed as an offset in such suit or suits, and that the United States shall be allowed to plead and shall be given credit for all sums, including gratuities, paid to or expended for any of said classes of Indians:

Provided, however, that in any claim sued on by said Cherokees for any part of an interest-bearing fund upon which account any payment or payments shall have been made, such payment or payments shall first be applied to reduction or payment of interest earned to the date of such respective payments, and the balance, if any, shall then be applied to reduce the interest-bearing principal and not otherwise.

The claims set forth by the plaintiffs in the above-mentioned suits (Cases Nos. L-174, 32077, and 32078), have arisen or grown out of certain provisions of the treaty of December 29, 1835, of the United States with the Cherokee tribe (7 Stat. L. 478), supplementary articles thereto of March 1, 1836 (7 Stat. L. 488), and the provisions of articles

4, 9, and 11, of the treaty of August 6, 1846, of the United States with the Cherokee tribe (9 Stat. L. 871), and a certain resolution passed by the United States Senate on September 5, 1850 (Senate Journal, 1st Session, 31st Congress, Page 601).

In connection with the claim of the Western or Old Settler Cherokees, reference is herein made to the suit of *The Western Cherokee Indians v. The United States* (27 Ct. Cls. 1, and 28 Ct. Cls. 557 and 567), and to the decision of April 3, 1893, of the Supreme Court of the United States in said case (*United States v. Old Settlers*, and *Old Settlers v. United States*, 148 U. S. 427).

In connection with the claim of the Eastern or Emigrant Cherokees, reference is herein made to the suits of *The Cherokee Nation v. The United States*, *The Eastern Cherokees v. The United States*, and *The Eastern and Emigrant Cherokees v. The United States* (40 Ct. Cls. 252; 41 Ct. Cls. 507; 45 Ct. Cls. 104 and 229; and 46 Ct. Cls. 658), and especially to the decisions of the Supreme Court of the United States, dated April 30, 1906 (202 U. S. 101), and dated March 20, 1911 (220 U. S. 83).

In the matter of certain additional interest claimed to be due the Eastern Cherokees, reference is herein made to the suit of *The Cherokee Nation v. The United States* (59 Ct. Cls. 862) and especially to the decision of April 12, 1926, of the Supreme Court of the United States therein (270 U. S. 476).

In Article 4 of the above-mentioned treaty of 1846, reference was made to the right, title, and interest of the Western or Old Settler Cherokees in the common property of the Cherokee Nation and

provided compensation to the Western or Old Settler Cherokees for their cession to the United States of all right, title, interest, or claim they had in the Cherokee lands east of the Mississippi River, and for their agreeing that the lands west of said river ceded to the Cherokees by the treaty of 1835, should be and remain the common property of the whole Cherokee people, themselves included.

By said Article 4, of the treaty of 1846 it was agreed, in order to ascertain the value of the Western or Old Settler Cherokee interest,

that the following principle shall be adopted, viz: all the investments and expenditures which are properly chargeable upon the sums granted in the treaty of 1835, amounting in the whole to five millions six hundred thousand dollars (which investments and expenditures are particularly enumerated in the 15th Article of the treaty of 1835), to be first deducted from said aggregate sum, thus ascertaining the residuum or amount which would, under the marshalling of accounts, be left for per capita distribution among the Cherokees emigrating under the treaty of 1835, excluding all extravagant and improper expenditures, and then allow to the Old Settlers (or Western Cherokees) a sum equal to one-third part of said residuum, to be distributed per capita to each individual of said party of "Old Settlers" or "Western Cherokees."

It is further agreed that, so far as the Western Cherokees are concerned, in estimating the expenses of removal and subsist-

ence of an Eastern Cherokee, to be charged to the aggregate fund of five millions six hundred thousand dollars above mentioned, the sums for removal and subsistence stipulated in the 8th article of the treaty of 1835, as commutation money in those cases in which the parties entitled to it removed themselves, shall be adopted. And as it affects the settlement with the Western Cherokees, there shall be no deduction from the fund before mentioned in consideration of any payments which may hereafter be made out of said fund; and it is hereby further understood and agreed, that the principle above defined shall embrace all those Cherokees west of the Mississippi who emigrated prior to the treaty of 1835.

The Supreme Court of the United States, in its decision of April 3, 1893, in the case of the *United States v. Old Settlers*, and *Old Settlers v. United States* (148 U. S. 427) discussed the matter at considerable length, and stated (page 477),

In view of these considerations we find and state the account as follows:

The treaty fund.....	\$5,600,000.00
Less—	
For 800,000 acres of land.....	\$500,000.00
For general fund.....	500,000.00
For improvements.....	1,540,572.27
For ferries.....	159,572.12
For spoiliations.....	264,894.09
For debts, etc.....	60,000.00
For removal of 16,957 Cherokees at \$20.00 each.....	339,140.00
	<u>3,364,178.48</u>
Giving as the residuum to be divided.....	<u>2,235,821.52</u>
One-third due to the Western Cherokees.....	745,273.84
Less payment September 22, 1851.....	532,896.90
	<u>212,376.94</u>
Leaving a balance of.....	

And the recovery should also include the sum of \$4,179.26 for the Arkansas Agency.

The Supreme Court further stated (page 481):

The result is that we concur substantially in the conclusions reached by the Court of Claims, whose laborious and painstaking examination of the case has been of great assistance in the investigation we have bestowed upon it; and in respect of the difference in the amount found, we direct the decree to be modified so as to provide for the recovery of the defendants of the sum of two hundred and twelve thousand three hundred and seventy-six dollars and ninety-four cents (\$212,376.94) instead of the sum of two hundred and twenty-four thousand nine hundred and seventy-two dollars and sixty-eight cents (\$224,972.68), in full of the per capita fund provided by the fourth article of the treaty between the United States and the Western Cherokees, dated August 6, 1846, together with interest thereon at the rate of five per centum per annum from the 12th day of June 1838 up to and until the modification of the decree, in addition to the sum of four thousand one hundred and seventy-nine dollars and twenty-six cents (\$4,179.26); and as so modified to be affirmed.

The payment of \$532,896.90 referred to by the Supreme Court as having been made on September 22, 1851, was made to the Old Settlers or Western Cherokees under the provisions of the Act of September 30, 1850 (9 Stat. L. 544-556).

By said Act of September 30, 1850, the appropriation of said \$532,896.90, and interest thereon, was made to the Old Settlers or Western Cherokees, in full of all demands, under the provisions

of the treaty of August 6, 1846, according to the principles established in the fourth article thereof.

The Indian Office records (Indian Appropriations, Vol. 7, page 178), show that said principal sum, \$532,896.90, and the interest thereon, \$354,583.25, a total of \$887,480.15, as carried in 1850 and 1851 on said records, were paid in said years, through John Drennen, Acting Superintendent and Disbursing Agent, to the Old Settlers or Western Cherokees.

For payment of the judgment of June 6, 1893, of the Court of Claims in favor of the Old Settlers or Western Cherokees (28 Ct. Cls. 567), an appropriation of \$800,386.31 was made in the Act of August 23, 1894 (28 Stat. L. 424-451) and by said Act the Commissioner of Indian Affairs was directed to withhold from distribution among said Indians only so much of that part of said judgment set apart by said Indians for the prosecution of their claim as was necessary for him to pay the expenses, and for legal services justly or equitably payable on account of said prosecution. In connection herewith, reference is also made to certain provisions of the Acts of August 15, 1894 (28 Stat. L. 286-308), and March 2, 1895 (28 Stat. L. 876-901), providing for deduction of certain expenses.

The Indian Office records (Indian Appropriations, Vol. 44, pages 24 and 23; Vol. 48, page 16; Vol. 52, page 132; Vol. 56, page 47; Vol. 61, page 62; and Ledger Vol. 2, page 81), show that the amount appropriated (\$800,386.31), was entered on the Indian Office books on October 3, 1894 (Appropriation Warrant No. 9, dated August 23, 1894); that of said amount, the sum of \$513,607.21 was distributed and paid to the Old Settler or Western Chero-

kees, of which \$490,775.66 were paid through Dew M. Wisdom, Agent, in 1896, and the balance through Treasury settlements made from 1896 to 1908.

The sum of \$227,032.45 was paid for the services and expenses of attorneys and others as provided in the appropriation act, and the balance \$59,746.65 was paid out for various miscellaneous purposes in accordance with law.

The Act of March 3, 1885, (23 Stat. L. 362-367), provided that the Secretary of the Treasury of the United States should pay to the Treasurer of that part of the Cherokees known and denominated "Old Settlers or Western Cherokees" the sum of \$660.80 together with five percent interest from September 30, 1851 (described as the amount due and unpaid), and including the balance in the Treasury of the appropriation of \$887,480.15, made by the Act of September 30, 1850.

The books of the Indian Office (Indian Appropriations, Vol. 31, page 66) show the entry on May 4, 1885, of the sum of \$1,315.86 (Appropriation Warrant No. 1044, dated March 9, 1885) under said Act of March 3, 1885, which with the then balance (\$449.30) of the above-mentioned appropriation of September 30, 1850, made a total sum of \$1,765.16, which the books show was paid over on March 13, 1885, to J. M. Bryan, Treasurer, etc., of the Old Settlers or Western Cherokees.

The Act of March 3, 1899 (30 Stat. L. 1214-1235) made an appropriation, to be paid to the authorized agent of the council of the Western Cherokee Indians, of the sum of \$29,850.74, described in said Act as being the interest at 5 percent per annum from June 6, 1896, due the Western Chero-

kees, under the award of September 5, 1850, of the United States Senate, on the principal sum of \$212,376.94, found to be due said Indians under the above-mentioned decision of June 6, 1893, of the Supreme Court of the United States.

The records of the Indian Office (Indian Appropriations, Vol. 48, page 26), show that the sum appropriated (\$29,850.74), was placed on said books on March 18, 1899 (Appropriation Warrant No. 39, dated March 3, 1899), and was paid over on March 21, 1899, to Robert L. Owen, Agent.

In connection with the claim of the "Eastern or Emigrant Cherokees as presented in the plaintiff's petitions in the above-mentioned cases Nos. L-174 and 42077, pending in the Court of Claims, reference is herein again made to the cases of *The Cherokee Nation v. The United States* and of *The Eastern Cherokees and Eastern and Emigrant Cherokees v. The United States*. (40 Ct. Cls. 252; 41 Ct. Cls. 507; 202 U. S. 101; 45 Ct. Cls. 104 and 229; 46 Ct. Cls. 658; and 220 U. S. 83; also to 59 Ct. Cls. 862, and 270 U. S. 476; also to the Slade and Bender accounting report of April 28, 1894—H. R. Ex. Doc. No. 182—53rd Congress, 3rd Session).

The Act of September 30, 1850 (9 Stat. L. 544-556), provided for the additional amount for expenses paid for subsistence and improperly charged to the treaty fund, according to the award of the Senate of fifth day of September, eighteen hundred and fifty, under the provisions of the eleventh article of the treaty of sixth day of August, eighteen hundred and forty-six an appropriation of \$189,422.76, and that interest be paid on same at the rate of five percent per annum according to the Senate resolution of September 5, 1850:

Provided, That said money shall be paid by the United States and received by the Indians on condition that the same shall be in full discharge of the amount thus improperly charged to said treaty fund: Provided, further, That in no case shall any money hereby appropriated be paid to any agent of said Indians, or to any other person or persons than the Indian or Indians to whom it is due per capita.

The Indian Office records (Indian Appropriations, Vol. 7, page 177), that the principal sum (\$189,422.76) was entered on the Indian Office books on September 30, 1850 (per warrant No. 46), and that on June 30, 1852, an additional sum of \$128,566.50 was entered on said books, making an aggregate sum of \$317,989.26; that of said amount the sum of \$317,788.15 was paid to said Eastern Cherokees, the payments being made in 1851 and 1852, through John Drennen, Superintendent, Alfred Chapman, Agent, and other Disbursing Agents. The books show that on June 30, 1865, a small balance (\$201.11) of said money was carried to "surplus fund as per surplus fund warrant No. 172" of said date.

The Act of February 27, 1851 (9 Stat. L. 570-572), made an appropriation for payment to the Cherokee Nation of the sum of \$724,603.37, and interest thereon at the rate of 5 percent per annum from June 12, 1838, until paid, provided, however, that no interest should be paid after April 1, 1851, if any portion of the money was then left undrawn by said Cherokees. The Act further provided that the sum appropriated should be in full satisfaction and final settlement of all claims and demands whatsoever of the Cherokee Nation against the

United States under any treaty theretofore made with the Cherokees. The Act further provided that "the said Cherokee Nation shall, on the payment of said sum of money, execute and deliver to the United States a full and final discharge for all claims and demands whatsoever on the United States, except for such annuities in money or specific articles of property as the United States may be bound by any treaty to pay to said Cherokee Nation, and except, also, such moneys and lands, if any, as the United States may hold in trust for said Cherokees: And provided, further, That the money appropriated in this item shall be paid in strict conformity with the treaty with said Indians of sixth August, eighteen hundred and forty-six."

The Indian Office records (Indian Appropriations, Vol. 7, page 199), show that said principal sum, \$724,603.37, was entered on said books on February 27, 1851 (per warrant No. 59), and there was entered on said books on June 30, 1852, the additional sum of \$463,746.15 (interest) making a total sum of \$1,188,349.52; that of said aggregate amount, the sum of \$1,187,983.42, was paid to the Eastern Cherokees, payment being made principally in 1851, through John Drennen, Superintendent, and Alfred Chapman, Agent, a few payments being subsequently made by other Disbursing Agents.

The books show that on June 30, 1865, a small balance (\$366.10) of said money was carried to "surplus fund as per surplus fund warrant No. 172," of said date.

In the decision of the Court of Claims and the Supreme Court of the United States in the case of *The Cherokee Nation et al. v. The United States*

(40 Ct. Cls. 252-296; 202 U. S. 101-115), reference is made to the Slade and Bender accounting report of April 28, 1894, in which said accountants found there was due the Eastern Cherokees a balance of \$1,111,284.70.

In arriving at said item of \$1,111,284.70, the accountants stated that—

Figuring upon the basis stated in the ninth article of the treaty of 1846, and following the Auditor's and Comptroller's figures in the accounting of December 3, 1849, and eliminating from the charges made against the total fund of \$6,647,067, the excess of payments over the amounts appropriated by the United States for that purpose, the true statement of the account is as follows:

For improvements.....	\$1,540,572.27
For ferries.....	159,572.12
For spoliations.....	264,894.09
For removal and subsistence, being the amount actually provided and expended for these purposes, and consisting of the following items.....	\$335,105.91 1,047,067.00
For debts and claims upon the Cherokee Nation.....	1,382,172.91 101,348.31
For the additional quantity of land ceded to the Nation.....	500,000.00
For amount invested as the general fund of the Nation.....	500,880.00
For subsistence furnished after the expiration of one year, under agreement that it should be charged to treaty fund.....	172,316.47 4,621,756.47
For lands and possessions.....	5,000,000.00
For spoliations.....	264,894.00
Balance of \$600,000 applicable to removal.....	335,105.91
Appropriation of June 12, 1838.....	1,047,067.00
	6,647,067.00
From which deduct charges as above.....	4,621,756.17
Balance to be distributed per capita.....	2,025,310.83
Deduct amount actually distributed as al- ready explained.....	914,026.13
Balance due.....	1,111,284.70

The sum of \$914,026.13, actually distributed to the Eastern Cherokees in 1852 out of the above balance of \$2,025,310.83, was appropriated as follows:

Amount found due by Treasury officials under article 9, 1846, in report of the Auditor and Comptroller of December 3, 1849.....	\$627,603.95
Erroneous charge corrected by Act of Febru- ary 27, 1851.....	96,999.42
Erroneous charge account subsistence, cor- rected by Congress, September 30, 1850....	189,151.24
	<hr/> 914,026.13

The Court of Claims decreed that after deducting counsel fees, costs, and expenses, the sum of \$1,111,284.70, with interest at the rate of 5 percent from June 12, 1838, to date of payment, should be paid to the Secretary of the Interior, to be by him received and held for the uses and purposes of paying costs and expenses as stated, and then distributing the remainder "directly to the Eastern and Western Cherokees, who were parties either to the treaty of New Echota, as proclaimed May 23, 1836, or the treaty of Washington of August 6, 1846, as individuals, whether east or west of the Mississippi River, or to the legal representatives of such individuals" (40 Ct. Cls. 252-364; 202 U. S. 101-129).

This was modified by the Supreme Court of the United States so as to direct the distribution to be made "the Eastern Cherokees as individuals, whether east or west of the Mississippi River, parties to the treaties of 1835-36 and 1846, and exclusive of the Old Settlers" (202 U. S. 101-130, 132).

The Court, also, found in favor of the Cherokee Nation in the sum of \$22,963.53, and interest thereon, covering three matters not involved in the present cases.

To provide for the payment of the Judgment rendered by the Court of Claims on May 18, 1905, in

consolidated causes No. 23199, *The Cherokee Nation v. United States*; No. 23214, *The Eastern Cherokees v. United States*; and No. 23212, *The Eastern and Emigrant Cherokees v. United States*; the Act of June 30, 1906 (34 Stat. L. 634-664), provided an appropriation aggregating a principal sum of \$1,134,248.23, together with such additional sum as might be necessary to pay interest, as authorized by law. The Act of March 4, 1909 (35 Stat. L. 907-938), provided that the above-mentioned Act of June 30, 1906, so far as same provided for the payment of item two (\$1,111,284.70 with interest) of the judgment of the Court of Claims of May 18, 1905, in favor of the Eastern Cherokees, should be so construed as to carry interest on said item two up to such time as the roll of the individual beneficiaries entitled to share in said judgment should be finally approved by the Court of Claims. An appropriation of a sufficient sum to pay said interest was made.

The Indian Office records (Indian Appropriations, Vol. 61, page 55, and Ledger No. 2, pages 75 and 76), show the entry on said books on July 2, 1906, of the sum of \$4,972,992.04 (Appropriation warrant No. 11), and on April 19, 1909, of the sum of \$161,324.92 (Appropriation warrant No. 58), a total of \$5,134,316.96, covering the four items of the judgment of May 18, 1905, and certain interest thereon.

Three of said items (Nos. 1, 3, and 4), aggregating with the interest thereon, \$35,955.88, are not involved in the present cases in the Court of Claims.

Deducting said sum of \$35,955.88 from the aggregate appropriation of \$5,134,316.96, left the sum of \$5,098,361.08 as the amount appropriated by the

above-mentioned Acts of June 30, 1906, and March 4, 1909, for the Eastern Cherokee beneficiaries under item two of the above-mentioned judgment of May 18, 1905.

The Indian Office records (Indian Appropriations, Vol. 61, page 55, and Ledger No. 2, pages 75 and 76), show that, from said appropriated amount of \$5,098,361.08, payments were made as follows:

In July 1906, to the attorneys for the Eastern Cherokees and the Eastern and Emigrant Cherokees, fees amounting to-----	\$740, 555. 42
November 3, 1906, to the attorneys for the Cherokee Nation on account of item 2 of the judgment, fees amounting to-----	148, 245. 15
On various dates after July 2, 1906, and before final distribution of the fund, arising from said item 2, to Guion Miller, Special Commissioner of the Court of Claims, for fees and expenses-----	103, 749. 74
On and after March 15, 1910, to said Guion Miller for per capita distribution among the Cherokees entitled to share in the fund, the sum of-----	4, 105, 810. 77
Total-----	5, 098, 361. 08

In this connection, reference is herein made to 59 Ct. Cls. 862-76, and 270 U. S. 476-495.

In the matter of distribution by Guion Miller of the per capita shares of the fund to the Cherokee Indians entitled thereto, it was stated by Mr. Miller in his final report, dated April 12, 1911, to the Court of Claims, that he had delivered all the payment warrants issued to the individual beneficiaries except 65. It appears that the Court of Claims, by its order of April 13, 1911, directed Mr. Miller "to deliver to the Secretary of the Treasury all warrants issued to the individual beneficiaries entitled to participate in the fund arising from the judgment in the above entitled cause which remain

in his hands undelivered; which said warrants shall be held by the Secretary of the Treasury to be delivered upon demand to the respective payees or their legal representatives upon proper identification."

It further appears that in accordance with said Court order, said 65 payment warrants aggregating approximately \$8,657.35, were turned over to the Secretary of the Treasury, and that subsequently eleven of said warrants, aggregating approximately \$1,475.09, were delivered, through the Superintendent of the Union Agency, to the Cherokee Indians entitled thereto. The Indian Office records and papers apparently contain no information as to whether the remaining 54 payment warrants have been delivered to the Cherokee payees. It is presumed that information in said matter may be obtained from the Treasury Department.

In the matter of the claim of the Cherokee Nation to certain additional interest, reference is herein again made to the case of *The Cherokee Nation v. The United States* (59 Ct. Cls. 862, and 270 U. S. 476), in which case the Court of Claims dismissed the plaintiff's petition, which decision was affirmed by the Supreme Court of the United States.

To recapitulate concerning the above-mentioned appropriations and expenditures in these Western or Old Settler, and Eastern or Emigrant Cherokee matters, the Indian Office records show that the said payments to or on account of the Western or Old Settler Cherokee, including the sums paid for various expenses and including the amounts paid their attorneys and agents as fees and expenses, aggregate as follows:

	<i>Amounts (including interest)</i>
September 30, 1850 (9 Stat. L. 544-556)-----	\$887, 480. 15
August 23, 1894 (28 Stat. L. 424-451)-----	800, 386. 31
March 3, 1885 (23 Stat. L. 362-367)-----	1, 315. 86
March 3, 1899 (30 Stat. L. 1214-1235)-----	29, 850. 74
	<hr/> \$1, 719, 033. 06

and that the payments to or on account of the Eastern (Eastern Emigrant) Cherokees, including the sums paid for various expenses, including the amounts paid their attorneys and the attorneys for the Cherokee Nation as fees and expenses, and the sums paid Guion Miller, Special Commissioner of the Court of Claims, as salary and expenses, aggregate as follows:

	<i>Amounts (Including interest)</i>
September 30, 1850 (9 Stat. L. 544-556)-----	\$317, 989. 26
February 27, 1851 (9 Stat. L. 570-572)-----	1, 188, 349. 52
June 30, 1906 (34 Stat. L. 634-664)-----	4, 937, 036. 16
March 4, 1909 (35 Stat. L. 907-938)-----	161, 324. 92
Total -----	<hr/> \$6, 604, 699. 86
Totals:	
Western or Old Settler Cherokees-----	\$1, 719, 033. 06
Eastern (Eastern Emigrant) Cherokees-----	6, 604, 699. 86
Grand total -----	<hr/> \$8, 323, 732. 92

The present suits (Cases No. L-174, No. 42077, and No. 42078) involve the question as to whether in certain transactions and matters the Western or Old Settler Cherokees and the Eastern or Emigrant Cherokees have been paid in full the aggregate amounts to which they were entitled under the above-mentioned treaties and Acts.

To determine said matter requires a thorough and exhaustive audit of the financial transactions of the United States with the Cherokee Nation and with the Western or Old Settler and Eastern or Emigrant Cherokees.

It is understood that your Department has requested the General Accounting Office to make such audit and submit a report thereof. It is further understood that said audit report is in course of preparation and will be submitted by said General Accounting Office at the earliest practicable date for your information and use in said pending suits.

Sincerely yours,

(Sgd.) T. A. WALTERS,
First Assistant Secretary.

3-crb-14.

UNITED STATES
DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, January 28, 1935.

The Honorable The ATTORNEY GENERAL.

MY DEAR MR. ATTORNEY GENERAL: Reference is again made to certain suits pending in the United States Court of Claims, namely: No. L-174, *The Cherokee Nation v. The United States*; No. 42077, *Eastern or Emigrant Cherokees v. The United States*; No. 42078, *Western or Old Settler Cherokees v. The United States*; and to departmental letter of September 20, 1933, to you relative to said suits and concerning the matters involved.

Reference is also made herein to the General Accounting Office report of April 6, 1934, forwarded to you on said date by the Comptroller General which report appears to have been compiled in response to your request for said information in connection with the amended petition of the Cherokee Nation in the above-mentioned suit No. L-174 and intervening petition of the Western Cherokees or Old Settler Indians in said suit.

The claims of plaintiff and interveners arise principally from certain transactions pursuant to and in connection with the treaties of December 29, 1835 (7 Stat. L. 478) and August 6, 1846 (9 Stat. L. 871) of the United States with the Cherokee Indians, and have been discussed in considerable detail in the above-mentioned letter of this Department and report of the General Accounting Office.

The act of March 19, 1924 (43 Stat. L. 27), under which the Cherokee Nation instituted its suit, Case No. L-174, provides in Section 3, that in said suit

The court shall also hear, examine, consider, and adjudicate any claims which the United States may have against said Indian nation, but any payment which may have been made by the United States upon any claim against the United States shall not operate as an estoppel but may be pleaded as an offset in said suit.

The Act of April 25, 1932 (47 Stat. L., 137), under which the Western Cherokees or Old Settler Indians intervened in the above-mentioned case, No. L-174, and instituted their suit, case No. 42078, and the Eastern or Emigrant Cherokees instituted their suit, case No. 42077, provides in Section 3 that

In said suit or suits the court shall also hear, examine, consider, and adjudicate any claims which the United States may have against the said Indians or any of them, but any payment or payments which have been made by the United States upon any such claim or claims shall not operate as an estoppel but may be placed as an offset in such suit or suits, and the United States shall be allowed to plead and shall be given credit for all sums, including gratuities, paid to or ex-

pendent for any of said classes of Indians: *Provided, however,* That in any claim sued on by said Cherokees for any part of an interest-bearing fund upon which account any payment or payments shall have been made, such payment or payments shall first be applied to reduction or payment of interest earned to the date of such respective payments, and the balance, if any, shall then be applied to reduce the interest-bearing principal and not otherwise.

In connection with the claim of the Western or Old Settler Cherokees, reference is herein made to the suit of *The Western Cherokee Indians v. The United States* (27 Ct. Cls. 1, and 28, Ct. Cls. 557 and 567), and to the decision of April 3, 1893, of the Supreme Court of the United States in said case (*United States v. Old Settlers, and Old Settlers v. United States*, 148 U. S. 427).

In connection with the claim of the Eastern or Emigrant Cherokees, reference is herein made to the suits of *The Cherokee Nation v. The United States*, *The Eastern Cherokees v. The United States*, and *The Eastern and Emigrant Cherokees v. The United States* (40 Ct. Cls. 252; 41 Ct. Cls. 507; 45 Ct. Cls. 104 and 229; and 46 Ct. Cls. 658), and especially to the decisions of the Supreme Court of the United States, dated April 30, 1906 (202 U. S. 101), and dated March 20, 1911 (220 U. S., 83).

In the matter of certain additional interest claimed to be due the Eastern Cherokees, reference is herein made to the suit of *The Cherokee Nation v. The United States* (59 Ct. Cls. 862) and especially to the decision of April 12, 1926, of the Supreme Court of the United States therein (270 U. S. 476).

The Supreme Court in its decision of April 12, 1926, refers to the judgment rendered by it in 1906 (202 U. S. 101) and states that after the rendition of said judgment in 1906,

The Treasury had some difficulty in deciding how the interest was to be calculated on the amounts declared in the judgment. We have no doubt that the judgment should have been paid in accordance with its exact terms, namely, with simple interest down to the time of actual payment, and that the intervention of the judgment of 1906 made no difference in the calculation of the interest. This is the necessary effect of the judgment.

The court further said, referring to the judgment of 1906, that by Section 18 of the Act of June 30, 1919 (41 Stat. 3-21),

Congress provided for the payment of certain interest on items 1 and 4 of the judgment. The provision in this section as to item 1 seems to have been largely an overpayment. That as to item 4 seems also to have involved a considerable overpayment, though it also included ten years' interest due on the principal under the judgment which by the Government's error was not embraced in the payment under the Act of 1906.

The Supreme Court further said:

It is quite clear that the mistake made by the Treasury, and by Congress, too, in attempting to carry out the judgment of this Court, was in assuming, first, that 4 percent should be allowed on the total of all items and interest between the date of filing the transcript of the judgment in the Treasury Department and the date of the mandate of

affirmance by the Supreme Court, as already pointed out. A further mistake was made in calculating interest at 5 percent after the date of affirmance by this Court on the total of the judgment and the interest until final payment. It should have been confined to interest on the principal sums. The eighth finding of the Court of Claims shows in more or less detail how the interest was calculated. The methods adopted we have already criticised. The Solicitor General in his brief makes it evident that in the case of no one of the four items is the amount which has been actually paid less than that which should have been paid down to the day of payment, in accordance with the judgment, including the principal and 5 percent simple interest to the date of payment. There is no attempt on the part of the appellant to question the demonstration of this fact. The truth is that the errors in the calculation increased by a substantial sum the amounts which under the judgment should have been paid. As this was more favorable than it should have been to the Cherokees, they cannot complain. On this appeal, under the Act of 1919, and in compliance with its requirement, we hold that there is no more interest due to the Cherokees beyond that which they have already received. The Government is not in a position, in view of the fact that the errors referred to have been embodied in legislation, and the overpayments have been made by direction of Congress, to seek to recover them back. Indeed it has not attempted to do so (270 U. S. 492 to 496, inclusive).

It may be that the matter of the overpayment of interest referred to by the Supreme Court in the

above-quoted paragraphs of its decision of April 12, 1926, has been reopened by the provisions of Section 3 of the above-mentioned jurisdictional act of April 25, 1932 (47 Stat. L. 137), and that the amount of said interest overpayment by the Government should be considered as among the offsets against the claims of the plaintiffs in the present cases (No. L-174, No. 42077, and No. 42078).

As indicated in Department letter of September 20, 1933, relating to the Western or Old Settler and the Eastern or Emigrant Cherokee claims and matters, the Indian Office records show that there has been paid to or on account of the Western or Old Settler Cherokees (including the sums paid for various expenses, and including the amounts paid their attorneys and agents as fees and expenses), the aggregate sum of \$1,719,033.06, and that there has been paid to or on account of the Eastern (Eastern-Emigrant) Cherokees (including the sums paid for various expenses and including the amounts paid their attorneys and the attorneys for the Cherokee Nation as fees and expenses, and the sums paid Guion Miller, Special Commissioner of the Court of Claims, as salary and expenses), the aggregate sum of \$6,604,699.86. In this connection reference is also made to the General Accounting Office report of April 6, 1934, pages 5 to 62, inclusive.

As hereinbefore stated Section 3 of the jurisdictional act of April 25, 1932, provides that in the suit or suits under said act, the court shall also hear, examine, consider, and adjudicate any claims which the United States may have against said Indians, or any of them, but any payment or pay-

ments which have been made by the United States upon any such claim or claims shall not operate as an estoppel, "but may be placed as an offset in such suit or suits, and the United States shall be allowed to plead and shall be given credit for all sums, including gratuities paid to or expended for any of said classes of Indians."

The General Accounting Office in its above-mentioned report of April 6, 1934, states that, therefore, "disbursements made by the United States for the benefit of the Cherokee Nation of Indians, under other than treaty appropriations" are included in its report. Said report (Part 2, pages 63 to 232, inclusive) discloses that during the period from January 1, 1813, to June 30, 1932, the United States has expended large sums of money, the disbursements of a considerable part of which sums are described in the General Accounting Office report as disbursements made by the United States for the benefit of the Cherokee Nation of Indians under other than treaty appropriations.

The General Accounting Office states that an examination of its records shows that a total of \$2,359,266.55 was disbursed by the United States "for the direct benefit of the Cherokee Nation of Indians under other than treaty appropriations" for the period above mentioned, and that in addition thereto a total of \$4,209,018.40 was disbursed by the United States "for the benefit of the Cherokee Nation of Indians jointly with the Choctaw, Chickasaw, Creek, and Seminole Nations of Indians." Pages 66 and 67 of the General Accounting Office report disclose the purposes for which the expenditures were made, and pages 71 to 76, inclusive, set forth the titles of the various appro-

priations out of which said disbursements were made. Copies of pages 63 to 67, inclusive, and of pages 71 to 76, inclusive, of the General Accounting Office report are transmitted herewith for convenient reference. The General Accounting Office (on page 64 of its report) states that—

Said disbursements are shown in the accounts and claim settlements on file in the General Accounting Office as having been made for the benefit of the Cherokee Nation of Indians without regard to class. Therefore, it has been impossible to segregate the amounts disbursed for the benefit of the Western or Old Settler Cherokees from the amounts disbursed for the benefit of the Eastern or Emigrant Cherokees.

In this connection reference is made herein to pages 238 to 262, inclusive, of the General Accounting Office report, which pages refer to the various appropriations by title and list the appropriation acts.

The appropriation entitled "Cherokee delegation to Washington, in 1832" (page 239 of the General Accounting Office report) was made in the Act of June 15, 1832 (4 Stat. L. 532), in the sum of \$772.00. As to said item the appropriation act reads that the appropriation was "For defraying the expenses of the Cherokee delegation, west of the Mississippi, now in the City of Washington." The appropriation entitled "Expenses of Indian Delegations" (page 244 of the General Accounting Office report) was made in the Act of June 28, 1834 (4 Stat. L. 707). As to said item the appropriation act reads that \$5,600.00 was appropriated "For expenses of thirteen delegates from the Eastern

Cherokees", and that \$2,600.00 was appropriated "For the expenses of five delegates from the Western Cherokees."

From examination of the acts of Congress in respect to the appropriations referred to in the General Accounting Office report (pages 237 to 262, inclusive), it does not appear that any of said appropriations, except in the few instances above noted, were made specifically for the Western or Old Settler Cherokee Indians or for the Eastern or Emigrant Cherokee Indians. Some of these appropriations were made for the Cherokee Nation or tribe or for Cherokee Indians; some were made for the Five Civilized Tribes, including the Cherokee nation, but the larger part of the appropriations were made for the Indians generally or for general purposes connected with the administration of Indian affairs. In this connection reference is made herein to the titles of the various appropriations.

Pages 66 and 67 of the General Accounting Office report show that the disbursements made from said appropriations were for various purposes; some of said expenditures were apparently made to or for the direct benefit of the Cherokee nation, some for the benefit of the tribe generally, and others for the benefit of individual Indians. It also appears that a large part of the disbursements were made in connection with the Government administration of Indian affairs relating to said Indian tribe, and some of which expenditures were made for salaries and expenses of Government employees. For your further information as to the purposes of said expenditures and the amounts expended, reference is herein made to pages 66 to

232, inclusive, of the General Accounting Office report. As to whether these expenditures should be considered as gratuities and other disbursements which may properly be offset against the claims of the Cherokee Nation or Western or Old Settler Cherokee Indians or the Eastern or Emigrant Cherokee Indians in the above-mentioned suits (No. L-174 and Nos. 42077 and 42078), are matters to be determined under the provisions of the jurisdictional act under which the suits were brought.

Relative to the general subject of offsets or counterclaims, including gratuities, reference is made herein to the views expressed by the United States Court of Claims in its decisions May 28, 1928, in the case of *The Osage tribe of Indians v. The United States* (66 Ct. Cls. 64); of December 1, 1930, in the case of *The Fort Berthold Indians v. The United States* (71 Ct. Cls. 308); and of December 4, 1933, in the case of *The Blackfeet, et al., tribes of Indians v. The United States* (No. E-427).

As hereinbefore stated, the General Accounting Office (on page 64 of its report), referring to disbursements which it states are shown from its records and papers as having been made for the benefit of Cherokee Nation of Indians without regard to class, says it has been impossible to segregate the amounts disbursed for the benefit of the Western or Old Settler Cherokees from the amounts disbursed for the benefit of the Eastern or Emigrant Cherokees. The Indian Office has been unable from its records to indicate what amounts, if any, of the expenditures referred to on pages 66 to 67 of the General Accounting Office report may be considered as having been disbursed for the benefit of the Western or Old Settler Cherokees, or

what amounts, if any, have been disbursed for the benefit of the Eastern or Emigrant Cherokees.

The Cherokee Nation, or tribe, prior to the treaty of July 8, 1817 (7 Stat. L., 158) resided in certain of the southern states east of the Mississippi River. Under the treaty of 1817 about $\frac{1}{3}$ of the nation emigrated west of the Mississippi. The Indians who thus emigrated with accessions down to 1835 were known as the "Old Settlers" or "Western Cherokees." Under the provisions of the treaty of December 29, 1835, of the United States with the Cherokee Nation, the larger part of the Cherokee Indians who had remained in the east emigrated to their new country west of the Mississippi. These Indians who emigrated under the treaty of 1835 or subsequent thereto were known as the Eastern or Emigrant Cherokees. Ultimately the Eastern Cherokees who emigrated or were removed to the country west and the Old Settlers or Western Cherokees were united again in a common government by the treaty of 1846 (9 Stat., 871). (See *Cherokee Nation v. United States*, 270 U. S., 476-479.) From thence afterward until 1866 these two groups of Cherokee Indians constituted the united Cherokee Nation. The Western or Old Settler Cherokees constituted about $\frac{1}{3}$ of the membership of the nation and the Eastern or Emigrant Cherokees constituted about $\frac{2}{3}$ of the membership of the nation.

Under the provisions of Article 9 of the treaty of July 19, 1866, of the United States with the Cherokee Nation (14 Stat. L., 799-801), the freedmen (former slaves of the Cherokee Indians) and free colored persons in the Cherokee Nation were made members of said Cherokee Nation. In this

connection reference is made herein to Section 5 of the amendments to Article 3 of the Constitution of the Cherokee Nation, which amendments were enacted by the National Council of the Cherokee Nation on November 26, 1866.

By agreement of April 8, 1867, by and between the Cherokee Nation and the Delaware tribe of Indians, a number of Delaware Indians were adopted into membership of the Cherokee Nation with certain rights.

By an agreement of June 7, 1869, by and between the Cherokee Nation and the Shawnee tribe of Indians, a number of Shawnee Indians were adopted into membership of the Cherokee Nation with certain rights.

Many white persons became citizens of the Cherokee Nation under Cherokee laws, by intermarriage with Cherokees by blood prior to November 1, 1875.

Relative to the rights of these various classes of Cherokee citizens admitted to citizenship since 1866, reference is herein made to the Whitmire case (44 Ct. Cls. 453; 223 U. S. 108); the Cherokee intermarriage cases (40 Ct. Cls. 411; 203 U. S. 76); *Charles Journeycake, Principal Chief of the Delaware Indians v. The United States*; and the Cherokee Nation (28 Ct. Cls. 281; 155 U. S. 196); and *Johnson Blackfeather, Principal Chief of the Shawnee Indians v. The United States and the Cherokee Nation* (155 U. S. 218).

It may thus be seen that the Cherokee Nation or tribe in Oklahoma consists at the present time not only of Cherokee Indians by blood but also of certain Delawares, Shawnees, freedmen, intermarried whites, and other adopted citizens. The question, therefore, arises as to whether the disbursements

referred to on pages 66 to 232, inclusive, of the General Accounting Office report, as having been made for the benefit of the Cherokee Nation of Indians, which, as above indicated, includes various classes of citizens, can be properly offset against the claims of the Western or Old Settler Cherokees and the Eastern or Emigrant Cherokees who constitute only a part of the nation.

If these expenditures by the United States referred to on pages 66 to 232, inclusive, of the General Accounting Office report as having been made for the benefit of the Cherokee Nation, or any of said disbursements, are found to be chargeable properly as offsets against the claims of the plaintiffs in the above-mentioned suits (Cases No. L-174, No. 42077 and No. 42078), the only practicable way the amounts of such offsets may be ascertained is by computation based upon the proportionate membership of the Old Settler or Western Cherokees and of the Eastern or Emigrant Cherokees to the whole membership of the Cherokee Nation.

As to the sums stated to have been disbursed for the benefit of the Cherokee Nation jointly with the Choctaw, Chickasaw, Creek, and Seminole Indians, the computation would have to be first based upon the proportion of the membership of the Cherokee Nation to that of the total membership of the Five Civilized Tribes and then when the amount chargeable to the Cherokee Nation was found, a further computation should be made to ascertain the proportion thereof properly chargeable to the Old Settler or Western Cherokees and to the Eastern or Emigrant Cherokees. The amounts ascertained by such computations would only show the approximate sum which might be chargeable as offsets

against the claims of the plaintiffs in the present cases in the event that the items of expenditures as indicated in the General Accounting Office report are found to be such as would constitute proper offsets in said cases. Tabulated statements and copies of other papers showing the comparative membership of the various Indian Nations of the Five Civilized Tribes, including the Cherokee Nation, and also the membership of the several groups or classes of members of the Cherokee Nation at various times are transmitted herewith for your information.

If conclusion is reached that the expenditures referred to on pages 66 to 232, inclusive, of the General Accounting Office report, or any of said expenditures are proper offsets against the claims of the plaintiffs in the present cases and that such expenditures as may be properly chargeable as offsets against the claims of the Western or Old Settler Cherokees and/or against the claims of the Eastern or Emigrant Cherokees should be computed and proportioned on the basis of the relative membership of said groups of Cherokee Indians to the whole membership of the Cherokee Nation, the tabulated statements herewith furnished as to said comparative membership at various times, may be used as a basis for such computation.

As hereinbefore stated an examination of the appropriation acts referred to on pages 237 to 262, inclusive, of the General Accounting Office report does not show, except in a few instances above-mentioned, that any of the appropriations as named on said pages of the General Accounting Office report were made specifically for the West-

ern or Old Settler Cherokees or for the Eastern or Emigrant Cherokees. The records and papers relating to the expenditures referred to on pages 66 to 232, inclusive, of the General Accounting Office report do not show, so far as can be ascertained, that any of said disbursements were made specifically for said Western or Old Settler Cherokees or for the Eastern or Emigrant Cherokees as classes.

The question is, therefore, whether the expenditures stated by the General Accounting Office to have been made by the United States for the benefit of the Cherokee Nation of Indians under other than treaty appropriations can be properly chargeable as offsets against the claims of the plaintiffs in the present cases, and if so, on what items, and in what amounts; said plaintiffs being, as indicated by the enclosed papers, but a part of the membership of the Cherokee Nation though doubtless a substantial part thereof. This question, however, is one largely for the court to determine.

Sincerely yours,

(Sgd.) T. A. WALTERS
First Assistant Secretary.

Enclosure 597571.

TABULATED STATEMENTS AND OTHER DATA COMPILED
IN INDIAN OFFICE FROM VARIOUS REPORTS AND
PAPERS IN SAID OFFICE RELATIVE TO NUMBER OF
MEMBERS AND FREEDMEN OF THE FIVE CIVILIZED
TRIBES AT VARIOUS PERIODS

MEMORANDUM

The approved final rolls of members and freedmen of the Five Civilized Tribes were completed and closed by operation of law on March 4, 1907 (Section 2, Act of April 26, 1906, 34 Stat. L., 137).

The Commissioner of the Five Civilized Tribes in his Annual Report (page 7) for the fiscal year 1908, stated the enrollment on said final rolls to be as follows:

Chickasaws:		
Full bloods	1,540	
Mixed, three-fourths or more	252	
One-half to three-fourths	706	
Less than one-half, including whites	3,821	
Freedmen	4,670	
Total		10,989
Choctaws:		
Full bloods	7,076	
Mixed, three-fourths or more	706	
One-half to three-fourths	1,636	
Less than one-half, including whites	9,563	
Freedmen	5,994	
Total		24,975
Mississippi Choctaws:		
Full bloods	1,344	
Mixed, three-fourths or more	85	
One-half to three-fourths	27	
Less than one-half, including whites	183	
Freedmen		
Total		1,639
Cherokees:		
Full bloods	8,698	
Mixed, three-fourths or more	1,783	
One-half to three-fourths	2,966	
Less than one-half, including whites	23,427	
Freedmen	4,924	
Total		41,798
Creeks:		
Full bloods	6,835	
Mixed, three-fourths or more	538	
One-half to three-fourths	1,150	
Less than one-half, including whites	3,372	
Freedmen	6,807	
Total		18,702
Seminoles:		
Full bloods	1,255	
Mixed, three-fourths or more	132	

Seminoles—Continued.

One-half to three-fourths.....	344
Less than one-half, including whites.....	407
Freedmen.....	986
Total.....	3,124
Grand Total.....	101,227

Approximately 300 names were added to the above-mentioned final rolls by provision of Section 17 of the Act of Congress of August 1, 1914 (38 Stat., 582-600). The approved final rolls of the Five Civilized Tribes show the enrollment of 101,506 persons, including those enrolled by the Act of August 1, 1914. The rolls show the number of citizens by classes as follows:

Cherokee Nation:

Citizens by blood (including Shawnees).....	36,422
Delawares.....	197
Intermarried whites.....	286
Freedmen.....	4,919
Total.....	41,824

Choctaw Nation:

Citizens by blood.....	19,202
Intermarried whites.....	1,597
Freedmen.....	6,029
Total.....	26,828

Chickasaw Nation:

Citizens by blood.....	5,668
Intermarried whites.....	648
Total enrolled citizens.....	6,304
Freedmen ¹	4,662

¹ The Freedmen are not citizens of the Chickasaw Nation, but were entitled to certain land rights by reason of certain provisions of the Act of July 1, 1902 (32 Stat. L., 641).

Total members and freedmen.....	10,966
Creek Nation:	
Citizens by blood.....	11,952
Freedmen.....	6,809
Total.....	18,761

Seminole Nation:	
Citizens by blood.....	2,141
Freedmen.....	986
Total.....	3,127
Grand Total.....	101,506

MEMORANDUM

Extract copy from Annual Report of November 25, 1838, of Commissioner of Indian Affairs, relative to the Cherokees.

The latest advices give assurance that the last of the Cherokees would be on the road early in November. It has been estimated that 12,000 will be removed by John Ross and the other chiefs, which added to the number that had emigrated previously during the year (believed to be about 6,000), will give an aggregate 18,000 Cherokees, who have ceased to live east of the Mississippi during the spring, summer, and autumn. * * *

The last annual report of my predecessor made the number of East Cherokees 14,000; but when General Scott had collected the great body of the Indians for emigration, it was computed that there remained, after deducting those who had removed since the above report was made, 12,000. Those emigrants being reckoned, as before stated, at 6,000, would make the whole number 18,000 a year ago.

MEMORANDUM

Census of North Carolina or Eastern Cherokees taken under Act of Congress of July 29, 1848 (9 Stat. L., 264), as shown by roll prepared by John C. Mulloy, Special Agent, sets forth the names of 1,517 persons.

MEMORANDUM

The roll of Eastern Cherokees residing west of the Mississippi River in 1851, and prepared in that year by United States Special Agent Drennan, contains the names of 14,069 persons.

MEMORANDUM

The Old Settlers or Western Cherokee payment roll of 1851, by John Drennan, Superintendent of Indian Affairs, contains the names of 3,273 persons.

MEMORANDUM

The Old Settler Cherokee roll of 1851, showing the names of Old Settler Cherokees then west of the Mississippi River, contains the names of 3,272 persons.

MEMORANDUM

The roll of Cherokees residing east of the Mississippi in 1851, prepared by Special Agent Siler in 1851, contains the names of 1,882 persons.

MEMORANDUM

The roll of Eastern Cherokees, residing east of the Mississippi River in 1851, which roll was prepared by Alfred Chapman in 1851, contains the names of 2,133 persons. The payment roll prepared by Alfred Chapman in the following year contains the same number of persons.

INFORMATION COMPILED FROM EXHIBIT NO. 40, ANNUAL REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR 1852

Mr. Butler, Cherokee Agent, in his report of September 30, 1852, to John Drennan, Superintendent, Indian Affairs, Southern Superintendency, referring to a late census of Cherokees taken by a committee of the nation, stated—

The returns show the number of inhabitants to be seventeen thousand five hundred and thirty.

INFORMATION COMPILED FROM EXHIBIT NO. 66, ANNUAL REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR 1853

Douglas H. Cooper, Agent for Choctaws, in his letter of September 3, 1853, to Sup't Drew, Southern Superintendency, referring to the Choctaws, stated that

It is therefore difficult to present a correct estimate of the members of the tribe; but I believe the number is not far from fifteen thousand, most of whom are engaged in agriculture.

INFORMATION COMPILED FROM EXHIBIT NO. 62, ANNUAL REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR 1853

A. J. Smith, Chickasaw Agent, in a letter of August 29, 1853, to the Commissioner of Indian Affairs, stated that

It would be the surest source of wealth to them, as they have more territory than would be required for such a number of people, there being only 4,709 Chickasaws according to the last census—men, women, and children.

INFORMATION COMPILED FROM EXHIBIT NO. 63, ANNUAL
REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS FOR
THE FISCAL YEAR 1853

Mr. B. H. Smithson, Sub-Agent for Seminole
Indians, in his letter of September 1, 1853, to Thos.
S. Drew, Superintendent of the Southern Superin-
tendency, referring to the Seminoles, stated that

From the best information I can obtain
their numbers appear to contain near the
same as heretofore—say about 2,500.

MEMORANDUM

Charles E. Mix, Acting Commissioner of Indian
Affairs, in a letter of January 26, 1854, to Hon.
Galusha I. Grow, of the H. R. Committee on Indian
Affairs, states that—

According to the census of the Cherokees
taken in the year 1835, there were then re-
maining East of the Mississippi river in
number,

Cherokees -----	16,536
Slaves -----	1,592
Whites connected by marriage -----	201
	<u>18,329</u>

That according to the census taken in the year 1851, there were remaining East in number -----	2,133
and that there were in West exclusive of the Old Settlers -----	14,098
	<u>16,231</u>

INFORMATION COMPILED FROM EXHIBIT NO. 121, ANNUAL
REPORT OF COMMISSIONER OF INDIAN AFFAIRS FOR
FISCAL YEAR 1855

Indian Nation or Tribe:	Population
Cherokee (west of Arkansas) see Agent Butler's report of 1872 -----	17,500

Indian Nation or Tribe—Continued.	Population
Cherokees (North Carolina, etc.) see reports of Special Agents 1851-1855 -----	2,000
Choctaws (west of Arkansas) -----	16,000
Choctaws (Mississippi) -----	1,000
Chickasaw (west of Arkansas) annuity pay roll of 1854 --	4,787
Creeks (west of Arkansas) -----	25,000
Creeks (Alabama) -----	100
Seminoles (west of Arkansas) -----	2,500
Seminoles (Florida) -----	100
Total -----	<u>69,187</u>

INFORMATION COMPILED FROM EXHIBIT NO. 92, ANNUAL
REPORT OF COMMISSIONER OF INDIAN AFFAIRS FOR THE
FISCAL YEAR 1857

[Extract copy]

SEMINOLE AGENCY,
August 17, 1857.

SIR: I have the honor to submit my annual report
for this agency for 1857.

The Seminoles west number in population nine-
teen hundred and seven souls; of males, about nine
hundred; of females, about one thousand.

Very respectfully, your obedient servant,

J. W. WASHBOURNE,
U. S. Agent for Seminoles.

MAJOR ELIAS RECTOR,
Superintendent Indian Affairs,
Fort Smith, Arkansas.

INFORMATION COMPILED FROM EXHIBIT NO. 91, ANNUAL
REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS
FOR THE FISCAL YEAR 1857

[Extract copy]

CREEK AGENCY, WEST OF ARKANSAS,
September 21, 1857.

SIR: In compliance with the regulations, I have
the honor to submit the following as my annual
report.

* * * * *

According to the census recently taken of the
Creeks, the entire tribe now numbers fourteen
thousand eight hundred and eighty-eight souls,
showing a very great decrease in the last twenty
years. The number enrolled as emigrants to this
country under and after the treaty of 1852 was, I
am informed, about twenty-two thousand.

There were already here some three thousand
who had emigrated previously; making the entire
strength of the tribe in 1836, when the great body
of it was removed, about twenty-five thousand.

* * * * *

I am, sir, very respectfully, your obedient
servant,

W. H. GARRETT,
United States Agent for the Creeks.

MAJOR ELIAS RECTOR,
Superintendent Indian Affairs.

INFORMATION COMPILED FROM EXHIBIT NO. 51, ANNUAL
REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS FOR
FISCAL YEAR 1858

[Extract copy]

SEMINOLE AGENCY,
August 18, 1858.

SIR: I have the honor to submit the following
report showing the present condition of the Semi-
nole Indians, in compliance with the regulations of
the Indian Bureau.

* * * * *

The number of Seminoles according to the census
of last fall, including the emigrants who arrived
from Florida the present season, is two thousand
and sixty; of that number eight hundred and eighty
seven are females.

* * * * *

Very respectfully, your obedient servant,
SAMUEL M. RUTHERFORD,
United States Indian Agent.

MAJOR ELIAS RECTOR,
*Superintendent Indian Affairs,
Fort Smith, Arkansas.*

INFORMATION COMPILED FROM EXHIBIT NO. 49, ANNUAL
REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS FOR
THE FISCAL YEAR 1859

[Extract copy]

CHEROKEE AGENCY,
TAHLEQUAH, CHEROKEE NATION,
September 10, 1859.

SIR: Since my last annual report, I have to note
a gradual improvement of the people living within
this agency.

* * * * *

It will be impossible for me to give an exact statistical report of the census of this nation, without consuming more time than has been allowed, besides incurring considerable expense; and from the fact of this office having no money to defray the expense, I can but make the following estimate, which has been carefully compiled from reliable information which has been received at this office. Whole number of Cherokees, 21,000; number of voters, 4,000; number of whites, 1,000; negroes, 4,000; * * *

Very respectfully, your obedient servant,
 -- GEORGE BUTLER,
Cherokee Agency.

ELIAS RECTOR, ESQ.,
*Superintendent of Indian Affairs,
 Fort Smith Arkansas.*

INFORMATION COMPILED FROM EXHIBIT NO. 58, ANNUAL
 REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS FOR
 THE FISCAL YEAR 1859

[Extract copy]

NEW SEMINOLE AGENCY,
August 29, 1859.

SIR: I have the honor to submit the following as my annual report, showing the condition of the Seminole tribe of Indians, in compliance with the regulations of the Indian Office:

* * * * *

The number, according to the recent census, including the Florida and Mexican emigrants, amounts to 2,253; of that number 1,009 are females.
 * * * *

Very respectfully, your obedient servant,
 SAM'L. M. RUTHERFORD,
U. S. Seminole Agent.

ELIAS RECTOR, ESQ.,
*Supt. Indian Affairs,
 Fort Smith, Arkansas.*

INFORMATION COMPILED FROM EXHIBIT NO. 55, ANNUAL
 REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS FOR
 THE FISCAL YEAR 1859

[Extract copy]

CREEK AGENCY, C. N.,
September 12, 1859.

SIR: Below I have the honor to submit my annual report.

* * * * *
 The census just taken of the Creek Indians proves the nation to number, bona fide citizens, thirteen thousand five hundred and fifty souls.
 * * * *

W. H. GARRETT,
United States Agent for Creeks.

ELIAS RECTOR, ESQ.,
*Sup't Southern Supt'y,
 Fort Smith, Arkansas.*

INFORMATION COMPILED FROM EXHIBIT NO. 49, ANNUAL
REPORT OF COMMISSIONER OF INDIAN AFFAIRS FOR THE
FISCAL YEAR 1860

[Extract copy]

CREEK AGENCY,
October 15, 1860.

SIR: I have the honor to submit the following as
a report of the condition of the Indians comprised
within this agency.

* * * *

According to recent census returns, the Creek
population is ascertained to be thirteen thousand
five hundred and fifty.

* * * *

I am, sir, very respectfully, your obedient
servant,

WILLIAM H. GARRETT,
Creek Agent.

ELIAS RECTOR, ESQ.,
*Sup't of Indian Affairs,
Fort Smith, Arkansas.*

INFORMATION COMPILED FROM EXHIBIT NO. 88, ANNUAL
REPORT OF COMMISSIONER OF INDIAN AFFAIRS, FOR
FISCAL YEAR 1861

Indian Nation or Tribe:	Population
Cherokees (Cherokee Agency, Ind. Ter.)-----	22,000
Choctaws (Choctaw-Chickasaw Agency, Ind. Ter.)-----	18,000
Chickasaws (Choctaw-Chickasaw Agency, Ind. Ter.)-----	5,000
Creeks (Creek Agency, Ind. Ter.)-----	13,550
Seminoles (Seminole Agency, Ind. Ter.)-----	2,267
Total-----	60,817

In above-mentioned exhibit, it was stated rela-
tive to these figures, that "Owing to the disturb-
ances in the Southern Superintendency, there has

been no report of the Cherokee, Creek, Seminole,
and Choctaw and Chickasaw Agencies since that of
1860, which is here given again."

MEMORANDUM

In re Annual Reports of Commissioner of Indian
Affairs for the fiscal years 1862, 1863, and 1864,
contain no tabulated statement of population of the
Five Civilized Tribes.

INFORMATION COMPILED FROM ANNUAL REPORT OF COM-
MISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR
1865

[Exhibit No. 195, Tabulated statement of population.]

Indian Nation or Tribe:	Population
Cherokees (Indian Territory)-----	² 14,000
Choctaws (Indian Territory)-----	² 12,500
Chickasaws (Indian Territory)-----	² 4,500
Creeks (Indian Territory)-----	14,396
Seminoles (Indian Territory)-----	2,000
Total-----	47,396

INFORMATION COMPILED FROM ANNUAL REPORT OF COM-
MISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR
1866

[Exhibit No. 173, Tabulated statement of Population]

Indian Nations or Tribes:	Population
Cherokee (Indian Territory)-----	14,000
Choctaws (Indian Territory)-----	12,500
Chickasaws (Indian Territory)-----	4,500
Creeks (Indian Territory)-----	14,396
Seminoles (Indian Territory)-----	2,000
Total-----	47,396

² Estimated.

INFORMATION COMPILED FROM EXHIBIT 135, ANNUAL REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR 1867

[Tabulated statement of population]

Indian Nation or Tribe:	Population
Cherokees (Indian Territory)-----	14,000
Choctaws (Indian Territory)-----	12,500
Chickasaws (Indian Territory)-----	4,500
Creeks (Indian Territory)-----	12,294
Seminoles (Indian Territory)-----	2,236
Total-----	45,530

In the above-mentioned annual report, the Acting Commissioner of Indian Affairs states that within the bounds of the Southern Superintendency are the Cherokees numbering about 13,566, the Choctaws 12,500, the Chickasaws 4,500, the Seminoles 2,000, and the Creeks 14,300.

INFORMATION COMPILED FROM EXHIBIT NO. 111, ANNUAL REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR 1867

J. W. Duncan, U. S. Indian Agent for Creeks, in his annual report for 1867 to the Superintendent of Indian Affairs, Southern Superintendency, stated that—

A payment of per capita money, stipulated by treaty of 1866, was made in the spring of this year by your predecessor, Judge W. Byars. An enumeration of the people, obtained after considerable time and trouble, discovered the number of the Creeks, including the freedmen, to be 11,445. This does not include the disaffected band of Creeks, now located in the Cherokee country, number probably 370.

INFORMATION COMPILED FROM EXHIBIT 105, ANNUAL REPORT OF COMMISSIONER OF INDIAN AFFAIRS FOR FISCAL YEAR 1868

Indian Nation or Tribe:	Population
Cherokees (Indian Territory)-----	³ 14,000
Choctaws (Indian Territory)-----	³ 12,500
Chickasaws (Indian Territory)-----	³ 4,500
Creeks (Indian Territory)-----	³ 12,294
Seminoles (Indian Territory)-----	1,950
Total-----	45,244

INFORMATION COMPILED FROM EXHIBIT NO. 85, ANNUAL REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR 1868

George A. Reynolds, U. S. Indian Agent, in his report of September 1, 1868, to the Superintendent of Indian Affairs, Southern Superintendency, relative to the Seminoles, stated—

I have just completed a census of the tribe for the purpose of making their annual payment. Last year there were on the pay roll 2,236 persons, while this year there are only 1,950 returned.

INFORMATION COMPILED FROM EXHIBIT 153, ANNUAL REPORT OF COMMISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR 1869

Indian Nation or Tribe:	Population
Cherokees (Indian Territory)-----	14,000
Choctaws and Chickasaws (Indian Territory)-----	17,000
Creeks (Indian Territory)-----	12,294
Seminoles (Indian Territory)-----	2,136
Total-----	45,430

Extract from the Annual Report of the Commissioner of Indian Affairs for 1869.

³ The above-mentioned Exhibit 105 indicates that these figures were taken from the report of 1867.

Cherokees number about 14,000 * * * * *
 Choctaws and Chickasaws, originally from
 the State of Mississippi number, the former
 12,500, and the latter 4,500, * * * * *
 Creeks, * * * * * have a population of
 about 12,000. * * * * * Seminoles number
 2,105. * * * * *

INFORMATION COMPILED FROM ANNUAL REPORT OF COM-
 MISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR
 1870

[Exhibit No. 124, Tabulated statement of Population]

Indian Nation or Tribe:	Population
Cherokees (Indian Territory)-----	14,000
Choctaws and Chickasaws (Indian Territory)-----	17,000
Creeks (Indian Territory)-----	12,294
Seminoles (Indian Territory)-----	2,136
Total -----	45,430

In the Annual Report of September 30, 1870, of
 the Superintendent of the Southern Superintend-
 ency (Exhibit No. 103 of the Report of the Com-
 missioner of Indian Affairs), it is stated that

The treaty of 1866 provided for the intro-
 duction of other Civilized Indians among
 the Cherokees, and about one thousand of
 the Delaware and Shawnee tribes have set-
 tled in the northern part of the Territory
 and become Cherokee citizens.

INFORMATION COMPILED FROM ANNUAL REPORT OF COM-
 MISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR
 1871

[Exhibit No. 118, tabulated statement of population]

Indian Nation or Tribe:	Population
Cherokees (Indian Territory)-----	14,682
Choctaws (Indian Territory)-----	15,000

Indian Nation or Tribe—Continued.	Population
Chickasaws (Indian Territory)-----	5,000
Creeks (Indian Territory)----- ²	13,000
Seminoles (Indian Territory)-----	2,300
Total -----	49,982

INFORMATION COMPILED FROM ANNUAL REPORT OF COM-
 MISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR
 1872

[Exhibit No. 85, tabulated statement of population]

Indian Nation or Tribe:	Population
Cherokees (Indian Territory)-----	18,000
Choctaws (Indian Territory)-----	16,000
Chickasaws (Indian Territory)-----	6,000
Creeks (Indian Territory)-----	13,000
Seminoles (Indian Territory)-----	2,398
Total -----	55,398

The Commissioner of Indian Affairs states, in
 his annual report, that the Creeks “numbered at
 the latest date of enumeration, 12,295”, and that
 the Seminoles numbered 2,398.

INFORMATION COMPILED FROM ANNUAL REPORT OF COM-
 MISSIONER OF INDIAN AFFAIRS FOR FISCAL YEAR 1873

[Exhibit No. 79, Tabulated statement of population]

Indian Nation or Tribe:	Population
Cherokees (Indian Territory)-----	17,217
Choctaws (Indian Territory)-----	16,000
Chickasaws (Indian Territory)-----	6,000
Creeks (Indian Territory)-----	13,000
Seminoles (Indian Territory)-----	2,438
Total -----	54,655

² Estimate.

INFORMATION COMPILED FROM ANNUAL REPORT OF COMMISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR 1874

[Tabulated statement of population]

Indian Nation or Tribe:	Population
Cherokees, including 1,300 freedmen (Union Agency, Indian Ter.)	17,217
Choctaws (Union Agency, Indian Ter.)	16,000
Chickasaws (Union Agency, Indian Ter.)	6,000
Creeks, including 2,000 freedmen (Union Agency, Indian Ter.)	16,000
Seminoles (Union Agency, Indian Ter.)	2,438
Total	54,655

In the above-mentioned tabulated statement, it is stated that the figures were taken from report of 1873.

INFORMATION COMPILED FROM ANNUAL REPORT OF COMMISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR 1876

[Tabulated statement of population]

Indian Nation or Tribe:	Population
Cherokees (Union Agency, Indian Ter.)	18,672
Choctaws (Union Agency, Indian Ter.)	16,000
Chickasaws (Union Agency, Indian Ter.)	5,800
Creeks (Union Agency, Indian Ter.)	2,553
Total	43,025

INFORMATION COMPILED FROM ANNUAL REPORT OF COMMISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR 1877

[Tabulated statement of Population]

Indian Nation or Tribe:	Population
Cherokees (Union Agency, Indian Ter.)	18,672
Choctaw (Union Agency, Indian Ter.)	16,000
Chickasaw (Union Agency, Indian Ter.)	5,600
Creek (Union Agency, Indian Ter.)	14,000
Seminole (Union Agency, Indian Ter.)	2,443
Total	56,715

The Union Agent, in his annual report of September 11, 1877, stated that the population of each tribe, "according to the last census taken", is as above indicated.

He further stated that "The Delawares, now numbering 733, are incorporated with the Cherokee Nation, * * *."

INFORMATION COMPILED FROM ANNUAL REPORT OF COMMISSIONER OF INDIAN AFFAIRS FOR FISCAL YEAR 1878

[Tabulated statement of population]

Indian Nation or Tribe:	Population
Cherokee (Union Agency, Indian Ter.)	18,672
Choctaw (Union Agency, Indian Ter.)	16,000
Chickasaw (Union Agency, Indian Ter.)	5,600
Creek (Union Agency, Indian Ter.)	14,000
Seminole (Union Agency, Indian Ter.)	2,443
Total	56,715

Notation to the effect that these figures were taken from report of 1877.

INFORMATION COMPILED FROM ANNUAL REPORT OF COMMISSIONER OF INDIAN AFFAIRS FOR FISCAL YEAR 1880

[Tabulated statement of population]

Indian Nation or Tribe:	Population
Cherokee (Union Agency, Indian Ter.)	19,720
Choctaw (Union Agency, Indian Ter.)	15,800
Chickasaw (Union Agency, Indian Ter.)	6,000
Creek (Union Agency, Indian Ter.)	15,000
Seminole (Union Agency, Indian Ter.)	2,667
Total	59,187

The Union Agent, in his report of October 10, 1880, stated that—

The Cherokees * * * number, according to the census taken in June last, 19,720.

The Choctaws * * *. No census has been taken for several years, but they must number nearly 16,000.

Among the Choctaws there are more than 3,000 negroes, who were their former slaves, * * *.

The Chickasaws * * * number about 6,000.

The Creeks * * * number as near as can be estimated 15,000.

The Seminoles * * *. They numbered 2,636 at their per capita payments last spring.

INFORMATION COMPILED FROM ANNUAL REPORT OF COMMISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR 1881

[Tabulated statement of population]

Indian Nation or Tribe:	Population
Cherokee (Union Agency, Indian Ter.)	19,720
Choctaw (Union Agency, Indian Ter.)	15,890
Chickasaw (Union Agency, Indian Ter.)	6,000
Creek (Union Agency, Indian Ter.)	15,000
Seminole (Union Agency, Indian Ter.)	2,667
Total	59,277

INFORMATION COMPILED FROM ANNUAL REPORT OF COMMISSIONER OF INDIAN AFFAIRS FOR FISCAL YEAR 1882

[Tabulated statement of population]

Indian Nation or Tribe:	Population
Cherokee (Union Agency, Indian Ter.)	20,336
Choctaw (Union Agency, Indian Ter.)	16,000
Chicasaw (Union Agency, Indian Ter.)	6,000
Creek (Union Agency, Indian Ter.)	15,000
Seminoles (Union Agency, Indian Ter.)	2,700
Total	60,036

INFORMATION COMPILED FROM ANNUAL REPORT OF COMMISSIONER OF INDIAN AFFAIRS FOR FISCAL YEAR 1884

[Tabulated statement of population]

Indian Nation or Tribe:	Population
Cherokee (Union Agency, Indian Ter.)	23,000
Choctaw (Union Agency, Indian Ter.)	18,000
Chickasaw (Union Agency, Indian Ter.)	6,000
Creek (Union Agency, Indian Ter.)	14,000
Seminole (Union Agency, Indian Ter.)	3,000
Total	64,000

MEMORANDUM

The census list of Cherokee Indians residing east of the Mississippi River in 1884 as shown by the roll prepared by Joseph G. Hester, United States Special Agent, in 1884, contains the names of 2956 persons.

INFORMATION COMPILED FROM ANNUAL REPORT OF COMMISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR 1885

[Tabulated statement of Population]

Indian Nation or Tribe:	Population
Cherokee (Union Agency, Indian Ter.)	23,000
Choctaw (Union Agency, Indian Ter.)	18,000
Chickasaw (Union Agency, Indian Ter.)	6,000
Creek (Union Agency, Indian Ter.)	14,000
Seminole (Union Agency, Indian Ter.)	3,000
Total	64,000

Notation to the effect that these figures were taken from the report for 1884.

The Union Agent, in his report for the fiscal year 1885, stated that the population of the Five Civilized Tribes was as follows:

POPULATION

Cherokees (native), adopted whites, Delawares, Shawnees, and Freedmen (about) 22,000.

Choctaws (native), adopted whites, and freedmen (about) 18,000.

Chickasaws (native) (about) 6,000.

Muskogeas or Creeks (about) 14,000.

Seminoles (about) 3,000.

INFORMATION COMPILED FROM ANNUAL REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR 1886

[Tabulated Statement of Population]

Indian Nation or Tribe:	Population
Cherokee (Union Agency, Indian Ter.)	22,000
Choctaw (Union Agency, Indian Ter.)	18,000
Chickasaw (Union Agency, Indian Ter.)	6,000
Creek (Union Agency, Indian Ter.)	14,000
Seminole (Union Agency, Indian Ter.)	3,000
Total	61,000

Notation to the effect that these figures are estimates.

The Union Agent, in his annual report of September 20, 1886, stated that—

The population is not materially changed from last year except the natural increase, and is as follows, to wit:

Cherokees, native, adopted whites, Delawares, Shawnees, and freedmen (about) 23,000.

Choctaws, native, adopted whites, and freedmen (about) 18,000.

Chickasaws, native, adopted whites, and freedmen (about) 6,000.

Muskogeas or Creeks, native, adopted whites, and freedmen (about) 14,000.

Seminoles, native, adopted whites, and freedmen (about) 3,000.

* * * * *

INFORMATION COMPILED FROM ANNUAL REPORT OF COMMISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR 1887

[Tabulated statement of population]

Indian Nation or Tribe:	Population
Cherokee (Union Agency, Indian Ter.)	23,000
Choctaw (Union Agency, Indian Ter.)	18,000
Chickasaw (Union Agency, Indian Ter.)	6,000
Creek (Union Agency, Indian Ter.)	14,000
Seminole (Union Agency, Indian Ter.)	3,000
Total	64,000

The Union Agent, in his report of September 1, 1887 (for the fiscal year 1887), states—

The population is not materially changed from last year, except the natural increase and immigration of white labor, and is estimated as follows, to wit:

Cherokees, native, adopted white, adopted Delawares and Shawnees, and freedmen (about) 23,000.

Choctaws, native, adopted white, Indians and freedmen (about) 18,000.

Chickasaws, native, adopted white, and freedmen (about) 6,000.

Muskogeas or Creeks, natives, intermarried whites, and freedmen (about) 14,000.

Seminoles, natives, adopted whites, and freedmen (about) 3,000.

The Union Agent, in his report of September 1, 1887 (Annual report for 1887) stated—

The adopted citizens of the Cherokee Nation—about 1,100 whites, about 550 Shawnees, about 765 Delawares, and about 2,400 negroes, total 4,815—have been denied the rights of full participation as Cherokees in every respect, especially in regard to funds

derived from lands west of the 96th meridian. The Cherokees claim that a fair construction of the purposes of the treaties would not give them this right, while the claimants, with apparent justice from the language, argue it gives them all.

INFORMATION COMPILED FROM ANNUAL REPORT OF COMMISSIONER OF THE INDIAN AFFAIRS FOR THE FISCAL YEAR 1888

[Tabulated statement of population]

Indian Nation or Tribe:	Population
Cherokee (Union Agency, Indian Ter.)	23,300
Choctaw (Union Agency, Indian Ter.)	18,200
Chickasaw (Union Agency, Indian Ter.)	6,100
Creek (Union Agency, Indian Ter.)	14,200
Seminole (Union Agency, Indian Ter.)	3,050
Total	64,850

According to Union Agent's report of August 27, 1888, these figures include Indian natives, adopted whites, intermarried whites, freedmen. In the Cherokee Nation, adopted Shawnees and Delawares are also included.

INFORMATION COMPILED FROM ANNUAL REPORT OF COMMISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR 1889

[Tabulated statement of population]

Indian Nation or Tribe:	Population
Cherokee (Union Agency, Indian Ter.)	⁴ 24,400
Choctaw (Union Agency, Indian Ter.)	⁵ 18,000
Chickasaw (Union Agency, Indian Ter.)	⁶ 6,000
Creek (Union Agency, Indian Ter.)	⁶ 14,200
Seminole (Union Agency, Indian Ter.)	⁵ 2,600
Total	65,200

Reference also to annual report of Union Agent for 1889 to above effect.

⁴ Includes Cherokees, native, other Indians, adopted whites, and freedmen.

⁵ Include Indians, native, adopted whites, and freedmen.

⁶ Includes Indians, native, and adopted freedmen.

MEMORANDUM

The schedule of Cherokee freedmen entitled to share in a certain distribution of Cherokee funds, which roll was prepared by Special Agent Wallace in 1890, contains the names of 3,216 persons.

MEMORANDUM

A schedule of Shawnee members of the Cherokee Nation entitled to share in the per capita distribution of certain Cherokee funds, which schedule was prepared by John W. Wallace, Special Agent, in 1891, contains the names of 694 Shawnee members of the Cherokee Nation.

INFORMATION COMPILED FROM ANNUAL REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR 1891

[Tabulated statement of population]

Indian Nation or Tribe:	Population
Cherokee (Union Agency, Indian Ter.)	25,000
Choctaw (Union Agency, Indian Ter.)	18,000
Chickasaw (Union Agency, Indian Ter.)	6,000
Creek (Union Agency, Indian Ter.)	15,000
Seminole (Union Agency, Indian Ter.)	2,600
Total	66,600

Notation indicates that these figures were taken from report of previous year.

MEMORANDUM

A payment roll of Shawnee Indians residing in the Cherokee Nation in 1892, which roll was prepared by Lee E. Bennett, United States Indian Agent, in connection with the matter of a payment of Shawnee funds, contains the names of 812 persons.

MEMORANDUM

[Relative membership of Delawares and Shawnees to the total membership of the Cherokee Nation in 1893]

In the case of *Charles Journeycake, Chief of the Delaware Indians v. The Cherokee Nation and the United States*, decided by the Court of Claims on March 16, 1895. The court stated in reference to its decree of April 24, 1893, in the same case, that the question determined by the court was not the absolute number of Delawares but the relative proportion which they bore to the whole number of Cherokee citizens. The court further stated that,

In that proportion the fund of \$600,000 was to be distributed and the amount of their share in it ascertained. The enumeration upon which the court acted is as follows:

Cherokees by blood.....	21,232
Adopted whites.....	2,011
Delawares.....	759
Shawnees.....	624
Creeks.....	82
Choctaws.....	11
Negroes.....	2,052
Total.....	26,771

30 Ct. Cls. 172-176.

INFORMATION COMPILED FROM ANNUAL REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR 1894

[Tabulated statement of population]

Indian Nation or Tribe:	Population
Cherokee (Union Agency, Indian Ter.).....	26,500
Choctaws (Union Agency, Indian Ter.).....	20,000
Chickasaws (Union Agency, Indian Ter.).....	6,000
Creeks (Union Agency, Indian Ter.).....	15,000
Seminoles (Union Agency, Indian Ter.).....	3,000
Total.....	70,500

Notation indicates that these figures were taken from report of previous year.

INFORMATION COMPILED FROM ANNUAL REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR 1895

[Tabulated statement of population]

Indian Nation or Tribe:	Population
Cherokee (Union Agency, Indian Ter.).....	25,388
Choctaws (Union Agency, Indian Ter.).....	17,819
Chickasaws (Union Agency, Indian Ter.) ⁷	⁸ 6,000
Creeks (Union Agency, Indian Ter.).....	13,863
Seminoles (Union Agency, Indian Ter.).....	2,900
Total.....	65,970

The Superintendent of the Union Agency, in his annual report for the fiscal year 1895, states—

The population of the Five Tribes is about as follows, according to information furnished me by authorities of said tribes. According to the census of 1890, Chief Harris says the population of the Cherokee was—

Cherokees by blood.....	21,232
Cherokee freedmen.....	2,052
Cherokee (intermarried white).....	2,011
Creeks residing in Cherokee Nation.....	82
Choctaws residing in Cherokee Nation.....	11
Total.....	25,388

⁷ Exclusive of freedmen.

⁸ Notation to effect that the figures for the previous year were erroneous.

A census was taken in 1893 of the Cherokee by blood of said tribe and the number of such Cherokees amounted to something over 25,000.

According to a late census, just completed, the Creeks number as follows:

Creeks by blood.....	9,447
Creek freedmen.....	4,416
Total.....	13,863

The Choctaws number as follows:

Choctaws by blood.....	14,000
Choctaw freedmen.....	3,819
Total.....	17,819

In the above estimate of Choctaws by blood, intermarried citizens are included and I do not think they will exceed 1,000.

The Chickasaws, exclusive of negroes, number about 6,000. * * *

The Seminoles number 2,900.

MEMORANDUM

The Cherokee Old Settler payment roll of 1895 contains the names of 10,946 persons, of whom 3,146 are described as original beneficiaries.

INFORMATION COMPILED FROM ANNUAL REPORT OF COMMISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR 1896

[Tabulated statement of population]

Indian Nation or Tribe:	Population
Cherokees (Union Agency, Indian Ter.).....	25,388
Choctaws (Union Agency, Indian Ter.).....	17,819
Chickasaws (Union Agency, Indian Ter.).....	6,000
Creeks (Union Agency, Indian Ter.).....	13,863
Seminoles (Union Agency, Indian Ter.).....	2,900
Total.....	65,970

¹ Exclusive of freedmen.

MEMORANDUM

A payment roll of Shawnees of the Cherokee Nation, prepared in 1896 by James G. Dickson, United States Special Indian Agent, in connection with the matter of payments under the Act of March 3, 1893, contains the names of 832 persons.

MEMORANDUM

The Kern-Clifton roll of Cherokee freedmen prepared under a decree of February 3, 1896, of the Court of Claims by a Commission composed of William Clifton, William Thompson, and Robert H. Kern, which roll was approved on January 16, 1897, by the Secretary of the Interior, contains the names of 4,533 persons.

MEMORANDUM

The Cherokee freedmen payment roll of 1897 by James G. Dickson, Special United States Indian Agent, shows the names of 4,551 persons.

INFORMATION COMPILED FROM ANNUAL REPORT OF THE COMMISSIONER OF INDIAN AFFAIRS FOR THE FISCAL YEAR 1898

[Tabulated statement of population]

Indian Nation or Tribe:	Population
Cherokee (Union Agency, Indian Ter.).....	⁹ 32,161
Choctaw (Union Agency, Indian Ter.).....	⁹ 18,456
Chickasaw (Union Agency, Indian Ter.).....	⁹ 8,730
Creek (Union Agency, Indian Ter.).....	⁹ 14,771
Seminole (Union Agency, Indian Ter.).....	¹⁰ 2,900
Total.....	77,018

⁹ That these figures include freedmen and exclude intermarried whites.

¹⁰ That figures were taken from report of 1897.

MEMORANDUM

A roll of Shawnee Indians of the Cherokee Nation paid by the Auditor for State and other Departments in 1901 upon judgment of the Court of Claims of March 12, 1900, in their favor, which roll was prepared by Charles McNicols, United States Indian Agent, contains the names of 905 persons.

MEMORANDUM

The Delaware Indian per capita payment roll of 1904, described as containing the names of Delaware Indians residing in the Cherokee Nation who under the treaty of July 6, 1866, elected to preserve their tribal relations, and who entered into and carried out the agreement with the Cherokees of April 8, 1867, and their descendants, or legal representatives, contains the names of 1,100 persons.

MEMORANDUM

The roll of Eastern Cherokees found entitled to participate in the fund arising from the judgment of the Court of Claims of May 28, 1906, which roll was prepared by Guion Miller, Special Commissioner of the Court of Claims, and was approved by the Court of Claims on March 15, 1910, contains the names of 30,517 persons, of whom 25,336 were enrolled on the final rolls of the Cherokee Nation by the Dawes Commission. The names of 5,181 persons on the Guion Miller roll do not appear on the final rolls of members of the Cherokee Nation of Oklahoma. Of those not on the Dawes' Commission roll approximately 595 appear to be the children of persons on said Dawes' Commission roll.