

Court of Claims of the United States

No. 30252

(Decided June 9, 1924)

THE HEIRS OF SAMUEL GARLAND, DECEASED, *v.* CHOCTAW NATION

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT

I

This suit was filed on September 3, 1908, under Section 5 of the act of May 29, 1908, 35 Stat., 445, which provides:

"That the Court of Claims is hereby authorized and directed to to hear and adjudicate the claims against the Choctaw Nation of Samuel Garland, deceased, and to render judgment thereon in such amounts, if any, as may appear to be equitably due. Said judgment, if any, in favor of the heirs of Garland shall be paid out of any funds in the Treasury of the United States belonging to the Choctaw Nation, said judgment to be rendered on the principle of quantum meruit for services rendered and expenses incurred. Notice of said suit shall be served on the governor of the Choctaw Nation, and the Attorney General of the United States shall appear and defend in said suit on behalf of said nation."

II

By resolution of the Legislative Assembly of the Choctaw Nation approved November 9, 1853, P. P. Pitchlynn, Israel Folsom, Dixon W. Lewis, and Samuel Garland were appointed delegates of the Choctaw Nation to institute in behalf of said Nation a claim against the United States for compensation for the country east of the Mississippi ceded by said Nation to the United States by the treaty of 1830, and the said delegation was granted full power to settle and dispose of by treaty or otherwise "all and every claim and interest of the Choctaw people against the United States," and "in case of resignation or death of any of said delegation above mentioned, the Chiefs have the power to appoint any person to fill such

vacancy in his district." The said resolution is attached to these findings as appendix "A" and is made part hereof by reference. In pursuance of the resolution of November 9, 1853, Peter P. Pitchlynn, the business manager of the delegation, visited Washington alone, and in January, 1854, employed one Albert Pike, an attorney engaged in the practice of law at Little Rock, Arkansas, to prosecute the claim of the Choctaw Nation for compensation for their lands east of the Mississippi River ceded to the United States by the treaty of September 27, 1830 (7 Stat. 333), generally known as the "net proceeds claim," and March 13, 1854, a contract in writing was entered into between the said Pitchlynn and Pike, by the terms of which the said Pike was to receive 25 per centum of the amount recovered from the Government, one-fifth of which, by a private agreement, was to go to said Pitchlynn. After the execution of this contract Pike employed one John T. Cochrane, who had been Chief Clerk of the Indian Office and was then following the business of Indian Claim Agent, to assist him in the prosecution of the claim, and who was also to receive one-fifth of the compensation. Two-fifths were to go to other parties not disclosed. This contract was not submitted in evidence. After the employment of Cochrane, Pike returned in April, 1854, to his law practice in Arkansas, and later removed his law business to New Orleans. In the meantime, the said Cochrane prosecuted the said claim before Congress and its committees, submitting various papers containing facts and arguments in support of said claim. On November 10, 1854, the Choctaw Council passed a resolution authorizing the said delegation "to enter into any and all contracts which in their judgment are or may become necessary and proper, in the name of the Choctaw people, to bring to a final and satisfactory adjustment and settlement all claims or demands whatsoever, which the Choctaw tribe, or any member thereof, has against the Government of the United States by treaty or otherwise." On February 13, 1855, the said John T. Cochrane entered into a written contract with the full delegation, which, after reciting the fact that a contract had been entered into with the said Albert Pike on March 13, 1854, and had been abandoned by him, annulled the said contract with Pike and employed the said Cochrane to prosecute all its claims against the Government, for which he should receive 30 per centum of such amount as might be recovered thereon. (This contract is attached to these findings as Appendix "B," and is made part hereof by reference.) The Cochrane contract was never ratified by the Choctaw Council.

By and through the efforts of the said John T. Cochrane on June 22, 1855 (11 Stat. 611-619), a treaty was entered into between the United States and the Choctaw and Chickasaw Nations signed by George W. Manypenny for the United States and P. P. Pitchlynn, Israel Folsom, Samuel Garland, and Dixon W. Lewis, Choctaw Commissioners, and Edmund Pickins and Sampson Folsom, Chickasaw Commissioners, and ratified by the Choctaw and Chickasaw Nations and the United States. By article 11 the claim for the lands ceded by the treaty of September 27, 1830, was submitted to the United States Senate for final settlement, and by article 12 it was agreed that any award of the net proceeds of such lands made

by the Senate should be received by the Choctaw Nation in full satisfaction of all claims of the Choctaw Nation, whether national or individual, arising under any former treaty, and "so much of the fund, awarded by the Senate to the Choctaws, as the proper authorities thereof shall ascertain and determine to be necessary for the payment of the just liabilities of the tribe shall on their requisition be paid over to them by the United States."

Thereafter the said Albert Pike returned to Washington and he and John T. Cochrane resumed their partnership under the Cochrane contract and agreed between themselves to a division of the compensation of 30 per centum, 5 per centum to said Pike, 5 per centum to said Cochrane, and 5 per centum to one Luke Lea, who had been Commissioner of Indian Affairs, and the remaining 15 per centum to be paid to Peter P. Pitchlynn on his receipt, to be by him distributed "as justice and equity may demand," as he, the said Albert Pike, wished to have nothing to do with its distribution. The said Albert Pike subsequently employed one John B. Luce to assist him in prosecuting the claim before the Senate under the treaty of 1855, and through their joint efforts before Congress and its committees the Senate passed a resolution on March 9, 1859, fixing the value per acre of the said land sold up to January 1, 1859, and adopted a rule for ascertaining the amount due to the Choctaw Nation; and on the same day the Senate passed another resolution directing the Secretary of the Interior to render an account, stating the amount due in accordance with the principles of settlement laid down in the first resolution, and to report the same to Congress. The Secretary of the Interior on May 8, 1860, reported that there was a balance due the Choctaw Nation of \$2,981,247.30.

III

There was found among the records in the office of the national secretary of the Choctaw Nation on August 31, 1892, the following contract:

We, the undersigned chiefs, do hereby agree that the delegation, viz, Samuel Garland, P. P. Pitchlynn, Israel Folsom, and Dixon W. Lewis, shall receive twenty per cent upon all claims arising or accruing to this Nation or to individuals under the treaty of June 22, 1855, for their services in negotiating said treaty and for other services which are to be rendered hereafter at Washington. But it is directly understood and agreed upon that said delegation are to receive no fees for the lease money, nor from the funds which the Chickasaws are to pay for jurisdiction granted them in the treaty.

In testimony whereof, we hereunto set our hands and seals.

N. COCHNAUER, (SEAL.)
 GEO. W. HARKINS, (SEAL.)
 ALLEN WRIGHT, (SEAL.)
 P. C. C. N.

Given this, the 2d day of November, 1855. Approved as required by the third section of the schedule of the constitution this the 18th day of October, 1868.

Section 3 of the schedule to the constitution of the Choctaw Nation of 1860 (Laws of the Choctaw Nation, compilation of 1869, p. 23) reads:

"Any special appointments or contracts heretofore made and approved under existing laws or resolutions of the General Council shall be approved by the principal chief of this nation and the appointees commissioned and contracts so made ratified by him."

IV

Dixon W. Lewis died prior to November 4, 1857, and thereafter at some time prior to October 27, 1858, Peter Folsom was appointed a delegate to succeed said Lewis, the delegation of 1853 thereafter consisting of Peter P. Pitchlynn, Israel Folsom, Samuel Garland, and Peter Folsom.

On March 2, 1861, 12 Stat. 238, 239, Congress appropriated \$500,000 on account of the Choctaw claim under articles 11 and 12 of the treaty of June 22, 1855, *supra*, of which \$250,000 was to be paid in money and \$250,000 in Government bonds upon the requisition of the proper authorities of the Choctaw Nation. This \$250,000 that was to be paid in cash was collected by Peter P. Pitchlynn, "the business manager" of the delegation, who turned over \$135,000 to the United States Indian Agent D. H. Cooper to buy corn for the Choctaw Nation. He paid \$40,000 of it to Albert Pike for services in "net proceeds claim" and expended part in the purchase of corn which spoiled, and the balance was not accounted for satisfactorily. The said Pitchlynn retained \$115,000, and the evidence does not show to the satisfaction of the court that any part of this amount reached the Treasury of the Choctaw Nation. At least \$74,927.45 of said amount was appropriated by the delegation to its own use. The Civil War coming on, the \$250,000 bond issue to the Choctaw Nation was never carried into effect. The bond issue was suspended from time to time by Congress, and finally, on making other provision for the settlement of the "net proceeds claims," was dropped.

V

On July 12, 1861, a treaty was entered into between the Confederate States of America and the Choctaw and Chickasaw Nations by article 1 of which it was provided that "There shall be perpetual peace between the Confederate States of America and all of their States and people and the Choctaw and Chickasaw Nations and all the people thereof." By article 54 of said treaty the Confederate States assumed, among other things, the payment of "all sums of money * * * justly due and owing by the later United States under existing treaties to the Choctaw Nation or people, for itself or in trust for individuals." (Confederate Statutes at Large, by Matthews, p. 311.)

The General Council by the act of November 1, 1861, made a settlement with the delegation and its attorneys up to that time, stating that there was still due the said delegation \$84,394.23, of which \$14,140 was due John T. Cochrane, attorney for said delegation, and \$70,254.23 was due to the delegation. Under this settlement \$30,275.84 was paid to the delegation and \$9,583 was paid to Peter P. Pitchlynn, leaving a balance of \$30,395.39, of which \$7,000 was later

paid, date not given, leaving a balance of \$23,395.39 due under said settlement.

By the act of July 5, 1862, 12 Stat. 512, 528, Congress provided "that all appropriations heretofore or hereafter made to carry into effect treaty stipulations, or otherwise, in behalf of any tribe or tribes of Indians, all or any portion of whom shall be in a state of actual hostility to the Government of the United States, including the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, Wichitas, and other affiliated tribes, may and shall be suspended and postponed wholly or in part at and during the discretion and pleasure of the President: *Provided further*, That the President is authorized to expend such part of the amount heretofore appropriated and not expended and hereinbefore appropriated for the benefit of the tribes named in the preceding proviso as he may deem necessary for the relief and support of such individual members of said tribes as have been driven from their homes and reduced to want on account of their friendship to the Government."

The President was further given authority to abrogate the treaties of tribes engaged in actual hostilities such as was the case with the Choctaw Nation during the Civil War, but he did not do so.

VI

By an act of the Choctaw Council of October 17, 1865, a commission consisting of five persons was created to negotiate a new treaty with the United States, the members to be nominated by the principal chief and ratified by the Council. The act provided, among other things, that "The commissioners appointed under this act shall be entitled to compensation at the rate of three dollars each per day and mileage during the time for which service is rendered, in addition to the paying of their expenses."

The commissioners appointed under the act were Alfred Wade, Allen Wright, James Riley, John Page, and Robert Jones. Robert Jones did not sign the treaty that was subsequently entered into and does not appear to have taken any part in the negotiations.

The act of the Council creating the commission did not authorize the employment of attorneys by it, nor did the act of October 19, 1865, giving instructions to the committee confer such authority.

The Chickasaw Nation also passed an act creating a commission to negotiate a treaty with the United States and appointed five commissioners thereunder, and both commissions signed the treaty.

The Choctaw and Chickasaw Commissions on arriving in Washington, considering it necessary to employ counsel to protect the interests of the Choctaw and Chickasaw people, entered into informal agreements with one John H. B. Latrobe, a Baltimore lawyer, the agreement of the Choctaw Commission was reduced to writing and designated as a memorandum and signed by all of said commissioners, except Robert Jones, but was not signed by the said Latrobe. The Chickasaw commission entered into a separate contract with said Latrobe. The Choctaw memorandum agreement stipulated, among other things, as follows:

"That in case Mr. Latrobe should succeed in preventing the abrogation of our former treaties with the United States, save our annuities and other moneys which are not paid to us for the five years from 1861 to 1865, inclusive, and also secure us against the sale,

as required by the Government of the United States, of a large portion of our country east of the ninety-eighth degree of west longitude, the Choctaws on their part, and as their share of the expenses, would allow and pay to him the sum of not less than \$100,000. It being the understanding at the same time that, if the said unpaid annuities and other moneys belonging to the Choctaws were recovered and paid them, Mr. Latrobe should be entitled to and paid the one-half part thereof, the \$100,000 aforesaid." This agreement was never ratified by the Choctaw Council. The above agreement is attached to these findings as "Appendix C" and is made part hereof by reference.

Under the above agreement the said Latrobe employed the said John T. Cochrane and D. H. Cooper, who had been Choctaw agent prior to the Civil War under the United States and during the war under the Confederate Government, to assist in negotiating a treaty with the United States, and mainly through their efforts before Congress and its committees the treaty of April 28, 1866, 14 Stat. 769, was entered into and ratified by the United States and the Choctaw and Chickasaw Nations.

Article 10 of the treaty reads: "The United States reaffirms all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw Nations, entered into prior to the great rebellion, and in force at that time, not inconsistent herewith; and further agrees to renew the payment of all annuities and other moneys accruing under such treaty stipulations and acts of legislations from and after the close of the fiscal year ending on the thirtieth of June, in the year eighteen hundred and sixty-six."

Some time after the ratification of the treaty of April 28, 1866, *supra*, Allen Wright, one of the Commissioners, who was also treasurer of the Choctaw Nation, paid over to John T. Cochrane and D. H. Cooper, who had authority to receive it, the \$100,000 stipulated to be paid to the said J. H. B. Latrobe by the agreement before mentioned, who gave a receipt for \$100,000 to the said Wright. There were present when the payment was made Alfred Wade, John Page, Allen Wright, and James Riley, Choctaw Commissioners; Peter P. Pitchlynn was also present. The said Cochrane returned \$50,000 to the said Wright, who gave \$10,000 to the three other commissioners, kept \$10,000 himself, and gave the remaining \$10,000 to Peter P. Pitchlynn, according to arrangement between said commissioners and the said Latrobe. The \$50,000 retained by the said Cochrane was divided between himself, Latrobe, and Cooper in equal parts. The Choctaw Council was never informed of the division of the \$100,000 fee, but were left by the Treasurer, Wright, to believe it had all been paid to Latrobe. The Chickasaw Nation paid the same amount to Latrobe, Cochrane, and Cooper and its commissioners for the negotiation of said treaty, which cost the two nations \$200,000. Pitchlynn, when the payment of \$10,000 to him became known, was willing that it should be considered as a payment on account of the "net-proceeds claim." Pitchlynn was also paid \$2,834 per diem and expense money of Robert Jones; subsequently he gave Jones \$1,417 and retained \$11,417.

VII

The said John T. Cochrane died on October 21, 1866. By section 2 of the resolution of the Choctaw Council of November 18, 1867, the

delegates, P. P. Pitchlynn, Israel Folsom, Samuel Garland, and Peter Folsom, were directed, in the event that an appropriation should be made by Congress, in whole or in part in the "net proceeds claim," to report to the national attorney of the Choctaw Nation the fact of such appropriation, "who shall proceed to investigate the claim of such delegates as well as the amount that may be due their attorneys for fees under a certain contract said to have been made with John T. Cochrane, dated February 13, 1855, and shall report the amount due to the delegates and attorneys to the principal chief of this nation, who shall convene the Council, should he deem it necessary, in order to provide payment due under the contract aforesaid, as well as to carry into effect the twelfth article of the treaty of June 22, 1855. It being understood, however, that no money shall be paid on said contract, or any other contract which has not been duly authorized and approved by the Council; and when contracts are adjusted and paid they shall be duly cancelled and filed away in the office of the national secretary."

VIII

After the death of John T. Cochrane nothing of any consequence was done in furtherance of the "net proceeds claim" until the contract was made with James G. Blunt and Henry E. McKee. It is true a memorial signed by P. P. Pitchlynn, and prepared by J. H. B. Latrobe, was presented to the Judiciary Committee of the Senate in February, 1870, urging Congress to appropriate the balance of the Senate award, but nothing was accomplished.

Thereafter the following contract was entered into and signed on behalf of the Choctaw Nation by P. P. Pitchlynn and Peter Folsom, and on behalf of themselves by James G. Blunt and Henry E. McKee:

"Whereas the council of the Choctaw nation or tribe of Indians did, by resolution approved November 9th, 1853, appoint P. P. Pitchlynn, Israel Folsom, Dixon H. Lewis, and Samuel Garland, of the Choctaw Nation, as delegates to proceed to Washington, with full powers and authority to prosecute the claims of the Choctaw people against the United States arising from the sale of lands east of the Mississippi River, ceded by the Choctaw Nation to the United States, and for other purposes, which power and authority of said delegates was reaffirmed by the Choctaw council by resolution approved November 10th, 1854, with power to enter into contracts and in the name of the Choctaw people to do whatever in their judgment was necessary to a final adjustment and settlement of the aforesaid claims of the Choctaw people against the United States; and

"Whereas on behalf of the Choctaw people we have employed James G. Blunt, of the city and county of Leavenworth, State of Kansas, and Henry E. McKee, of Fort Smith, Arkansas, as counsel to prosecute said claim, and recover the same to the Choctaw Nation or people. It is therefore stipulated and agreed that for services rendered and money expended and to be expended by them in the prosecution of said claims, the said James G. Blunt and Henry E. McKee shall receive thirty (30) per centum of the one million eight hundred and thirty-four thousand and eighty-four (\$1,834,084) dollars, awarded and due to the Choctaw people by the United States,

or of any sum that may be paid by the United States on account of said claim which (30) per centum of said claim shall be paid to said Blunt and McKee, or their legal representatives, whenever the money or bonds arising from said claim shall come into the possession of the party or parties authorized by the Choctaw people to receive the same.

"The said Blunt and McKee to pay to Mrs. John T. Cochrane, of Washington City, D. C., (5) five per centum from the (30) thirty per centum before referred to whenever they shall receive the same; and the said Blunt and McKee further agree to adjust the claims of all parties who have rendered service heretofore in the prosecution of said claim upon the principle of equity and justice according to the value of the services so rendered.

"In witness whereof we have hereunto set our hands and affixed our seals this 16th day of July, A. D. 1870, at the city of Washington, D. C."

The following authorization, dated August 24, 1871, and addressed "to whom it may concern," was signed by James G. Blunt: "The undersigned, having been employed (in connection with Henry E. McKee, of Fort Smith, Ark.) by the authorized delegation of the Choctaw Nation, to prosecute and collect from the United States the claim known as the Choctaw "net-proceeds claims," I hereby authorize the said Henry E. McKee to employ such additional counsel to assist in the case as he may deem proper, hereby giving full assent to whatever he (the said McKee) may do in the premises."

Counsel employed by McKee under his contract were John J. Weed, who was employed to write documents and papers of that kind; John B. Luce, employed in 1872, because he had an intimate personal knowledge of the case that nobody else had, and who remained in Washington with McKee until the claim was concluded. F. P. Cuppy, a member of the Washington bar, was employed in 1873. Senator Matt. Carpenter was employed after he went out of the Senate, in 1875; he rendered little service and died before the claim was referred to the Court of Claims. Messrs. Shellabarger and Wilson were employed a few days before the Jurisdictional act of March 3, 1881, was passed. They took the place of Mr. Carpenter and were to have a fee of 2 per cent on the amount recovered, not to exceed \$50,000.

Memorial briefs and arguments to Congress and its committees were presented or made in 1871, 1872, 1873, 1874, 1876, 1877, 1879, 1881, beginning February 6, 1871, and ending February 8, 1881, by the said McKee, or attorneys employed by him, making a total of 682 pages, most of which were printed as public documents.

On October 30, 1873, the Choctaw Council passed an act providing, "That as soon as any amount may be appropriated by Congress for the net proceeds, the national treasurer be authorized and directed to receive the same at Washington and to pay not exceeding thirty (30) per cent in fulfillment of the Choctaw contracts and twenty (20) per cent of such appropriation for the delegates of 1853 and 1854, to enable them to discharge all liabilities and obligations under said contracts and all expenses necessarily incurred in recovering said claim, the other half to be returned for claim of individuals or for national purposes as indicated in 11th and 12th articles of the

treaty of 1855, provided that all just debts due the nation, whether from the said delegation or for any sum improperly advanced under the Cochrane contract, shall first be deducted and the residue coming under said contract or to said delegation, respectively, after final settlement at Washington shall be paid to them or their representative by said treasurer, the object of the act being to secure a fair settlement and full payment of 30 per cent, deducting whatever has already been paid."

Samuel Garland died in 1870, prior to March 20; Israel Folsom died in 1870, prior to July 16, and Peter P. Pitchlynn died January 17, 1881. Thereafter Peter Folsom became the sole surviving delegate and business manager of the delegates of 1853.

IX

Following the efforts of the said Henry E. McKee and the attorneys employed by him, as described above, the act of March 3, 1881 (21 Stat. 504), was passed by Congress, providing, among other things, "That the Court of Claims is hereby authorized to take jurisdiction of and try all questions of difference arising out of treaty stipulations with the Choctaw Nation, and to render judgment thereon; power is hereby granted the said court to review the entire question *de novo*, and it shall not be estopped by any action had or award made by the Senate of the United States in pursuance of the treaty of eighteen hundred and fifty-five."

At the request of the said Henry E. McKee, Peter Folsom on April 26, 1881, entered into a written contract with the said John B. Luce by which the said John B. Luce agreed to prosecute the "net proceeds claim" before the Court of Claims and the Supreme Court, and the said Peter Folsom agreed that the said John B. Luce should receive for such services 5 per cent of any amounts that might be recovered, which should be considered as payment in full for all services rendered, as well as before the Senate in securing its award as before said courts, and it was agreed between said McKee and Luce outside of said contract between Folsom and Luce that the said 5 per cent should be paid out of the 30 per cent compensation stated in McKee's contract of July 16, 1870.

The contract between Folsom and Luce is appended to these findings as Appendix "D" and made part hereof by reference.

On February 26, 1884, the Choctaw Nation filed a substitute petition in the Court of Claims, which was demurred to by the United States, and on March 3, 1884, the demurrer was overruled and an opinion handed down. The case was argued on behalf of the Choctaw Nation by Mr. Samuel Shellabarger and Mr. F. P. Cuppy (19 Ct. Cls. 243).

The case of the *Choctaw Nation vs. United States* was afterwards heard by the Court of Claims on merits, and "Messrs. John B. Luce, John J. Weed, Samuel Shellabarger, and F. P. Cuppy, on behalf of the claimants, addressed the Court at great length, the arguments extending over twenty days, and the briefs filed containing many hundred pages." The court held that the Senate award was not conclusive upon it, and that under the jurisdictional act it

was authorized to go behind the award. The court held that under its findings of fact the Choctaw Nation was entitled to recover \$658,120.32, less \$250,000 paid on the Senate's award under the act of 1861, and rendered judgment for the balance, \$408,120.32. *Choctaw Nation v. United States*, 21 C. Cls. 59.

The case afterwards went up to the Supreme Court on appeal, and was argued on behalf of the Choctaw Nation by Messrs. John J. Weed, Jeremiah M. Wilson, and Samuel Shellabarger. The Supreme Court held that the Choctaw Nation was entitled to recover the award of the Senate, \$2,981,247.30, subject to the deduction of \$250,000 paid under the act of 1861, to unpaid annuities amounting to \$59,449.32, and for Choctaw land taken by the United States in fixing the boundary line between the State of Arkansas and the Choctaw Nation, \$68,102.00. The total amount of the judgment the Court of Claims was directed to render was \$2,858,798.62, with interest from December 16, 1886, to June 29, 1888, amounting to \$3,078,370.23, which was appropriated by Congress by the act of June 29, 1888. 25 Stat. 239.

X

On February 25, 1888, the following act was passed by the Choctaw Council:

"Whereas the delegates of the Choctaw Nation of 1853, composed of P. P. Pitchlynn and others, have recovered from the United States Government in favor of the Choctaw Nation for \$2,858,798.62; And whereas under the contract of the Choctaw Nation with said delegates, dated Nov. 2nd, 1855, it is entitled to be paid twenty (20) per cent of said judgment: Now therefore

"Be it enacted by the General Council of the Choctaw Nation assembled:

"Sec. 1. That the sum of twenty (20) per cent of the amount appropriated by Congress as payment of said judgment is hereby appropriated out of said fund and directed to be paid to Campbell Leflore and Edmund McCurtain, delegates and successors to P. P. Pitchlynn and other delegates of 1853 to enable them to pay the expenses and discharges the obligation in the prosecution of said claim and to settle with the respective distributees of said delegation.

"Sec. 2. Be it further enacted that the sum of \$23,395.39, being the balance due the delegation under the settlement of Nov., 1861, is hereby appropriated out of said fund, less 10% on \$1500.00.

"Sec. 3. Be it further enacted that the said sums shall be paid to Campbell Leflore and Edmund McCurtain, delegates of the Choctaw Nation, successors to P. P. Pitchlynn and others, and where so paid shall be accepted as a complete payment and a final discharge of all debts and obligations of the Choctaw Nation to said delegation under said contract.

"Sec. 4. Be it further enacted that the sum of twenty (20) per cent herein provided to be paid to the delegation aforesaid, and the sum of thirty (30) per cent heretofore provided to be paid to the attorneys shall be accepted as full and final settlement of the amount due under their respective contracts and that the remaining half or fifty (50) per cent of the amount appropriated for the payment of said judgment shall be retained in the Treasury of the United States subject to the legislation and requisition of the General Council of

the Choctaw national purposes and for the payment of the claims of individual Choctaws under the twelfth (12) article of the treaty of 1855.

"SEC. 5. Be it further enacted that this act shall take effect and be in force from and after its passage."

On the same day another act was passed, as follows:

"That the principal chief be and is hereby authorized and directed for and on behalf of the Choctaw Nation to make requisition upon the proper authorities of the United States in such form as may be required by such authorities for the payment to Campbell Leflore and Edmund McCurtain, delegates, successors to P. P. Pitchlynn and others, or to their order, the sum of twenty (20) per cent of whatever may be appropriated by Congress in payment of the judgment of the Court of Claims in favor of the Choctaw Nation rendered, on the 15th day of December, 1886, and in addition thereto the sum of \$23,395.39, the same to be paid in such sums and such times and places as shall be requested by the said Leflore and Edmund McCurtain, less 10% on \$1,500, and such requisitions when made shall be taken and accepted as and is hereby declared to be such, requisition as is required by the twelfth (12) article of the treaty of 1855.

"Sec. 2. Be it enacted that this act shall take effect and be in force from and after its passage."

Pursuant to Section 9 of the act of June 29, 1888, 25 Stat., 239, and the act of the Choctaw Council of February 25, 1888, the Principal Chief of the Choctaw Nation, on July 9, 1888, made requisition on the Secretary of the Treasury for 20 per cent of the said judgment and interest thereon, plus \$23,395.39 remaining due said delegates from the settlement of 1861, less 10 per cent of \$1,500, advanced to the estate of Israel Folsom, to be paid to the order of the said Campbell Leflore and Edmund McCurtain. On July 28, 1888, 55 drafts of \$10,000 each, 17 drafts of \$5,000 each, and one draft of \$3,944.46 on the Assistant Treasurer at New York, amounting to \$638,944.46, were forwarded to the said Leflore and McCurtain at Fort Smith, Arkansas.

XI

On February 25, 1888, the Choctaw Council passed an act which, after reciting the contract of July 16, 1870, with Henry E. McKee, and of April 26, 1881, with John B. Luce, and a contract between said McKee and Luce that the 5 per cent promised to Luce should be paid out of the 30 per cent promised to McKee, and stating that "the said McKee, by means of his own labors and the aid and assistance rendered by his associates in the prosecution of said claims, has recovered a judgment of \$2,858,798.62," acknowledged and recognized said contracts as "valid and subsisting contracts with the Choctaw Nation duly authorized by law, and the service required by said McKee and the said Luce under said contracts as having been fully performed," stated that they were entitled to be paid the compensation agreed upon out of said judgment, and then proceeded to appropriate out of any amount that might be appropriated by Congress to pay said judgment, 5 per cent thereof to the legal representatives of the said John B. Luce, less \$13,000 paid to said Luce in his lifetime, and 25 per cent of any appropriations by

Congress for said purpose was appropriated for Henry E. McKee, or his executors, administrators or assigns. The said act also appropriated out of any money received by the Choctaw Nation for the United States in payment of said judgment, \$14,140.00, shown by the act of the Choctaw Council of November 1, 1861, to be due the late John T. Cochrane, the said amount to be paid to the said Henry E. McKee "as herein authorized and directed." The said act is attached to these findings as Appendix "E" and is made part hereof by reference.

By act of the Choctaw Council of the same date, Campbell Leflore, and Edmund McCurtain were authorized to make requisition upon the proper authorities of the United States in such form as may be required by said authorities for payment to Henry E. McKee the sum of \$714,699.65, with interest, and said sum of \$14,140.00 due the said John T. Cochrane, said amounts to be paid in such sums and at such times and places as shall be requested by said McKee.

On July 3, 1888, Campbell Leflore, "delegate of the Choctaw Nation," addressed a communication to the Secretary of the Treasury requesting him to pay to Henry E. McKee \$714,699.65, with interest from December 16, 1886, to June 29, 1888, together with the further sum of \$14,140.00, without interest. On July 7, 1888, there was paid to said Henry E. McKee \$714,699.65, with interest from December 16, 1886, to June 29, 1888, \$54,924.17, and a further principal sum of \$14,140.00, making a total of \$783,763.82.

On the written request of Campbell Leflore, dated July 3, 1888, the fee of John B. Luce of \$129,939.93 (\$142,939.93—\$13,000) was paid by the Treasury Department on July 10, 1888, as follows: To Shellabarger and Wilson, \$50,000; Titus R. Meigs, \$24,000; William Belden Nobe, executor of Belden Nobe, deceased, \$5,000; Samuel Stevens, \$6,000; Jeremiah M. Wilson, \$1,200; John J. Weed, \$1,200; and Cornelia P. Luce, \$42,539.93.

XII

On October 24, 1888, Campbell Leflore and Edmund McCurtain reported to the General Council of the Choctaw Nation that they had distributed \$1,641,896.57 of the "net proceeds" judgment paid to them by the United States Treasury on requisitions made in accordance with acts of the Choctaw Council, as follows: To J. B. Luce and others, \$129,939.93; to H. E. McKee, \$783,763.82; to Choctaw Treasurer, \$89,248.36; and to the Choctaw delegation, \$638,944.46. They further reported that there remained of said judgment in the Treasury of the United States subject to requisition of the Choctaw Council \$1,436,207.15.

Attached to said report of Leflore and McCurtain was a statement of disbursements of 20 per cent of the judgment on the "net proceeds claim" to the delegation of 1853 to persons to whom the said delegation had incurred liabilities during the prosecution of the claim. The statement shows there was paid to P. P. Pitchlynn, \$107,311.29; to Israel Folsom, \$45,894.29; to Samuel Garland, \$49,894.29; to Peter Folsom, \$46,953.39. There was paid to the delegates of 1866 the sum of \$11,889.84. This was because the item of the judgment for \$59,449.32 for unpaid annuities was erroneously added to the item of \$2,731,247.30, judgment for balance of judgment on "net proceeds

claim" after deduction of \$250,000, making the amount on which the 20 per cent was computed that much too great.

There was paid to the boundary delegates "as per contract with delegates of 1853," \$7,758.36. There was erroneously added to the item of the judgment on the net proceeds claim \$2,731,247.30, the amount of the item of the judgment for Choctaw land taken by the United States in fixing the boundary between Arkansas and the Choctaw Nation, \$68,102, making the amount on which the 20 per cent was computed that much too great, and the amount to be paid the delegation of 1853, \$38,944.46, too great by \$13,620.40, of this amount by agreement between the delegates of 1853 and the boundary delegates, it was settled for \$7,758.36.

There was paid Blunt and loyal Choctaws per agreement with delegates of 1853, \$25,000. This money was loaned by the loyal Choctaws through their agent and attorney, James G. Blunt, out of a sum of \$108,942, awarded them under article 49 of the treaty of April 28, 1866. It was loaned September 23, 1868, and its return was agreed to in writing by the delegation of 1853 on February 11, 1869, out of the compensation to be paid by the Government on the "net proceeds claim."

There was "paid from memorandum of P. P. Pitchlynn" to twenty persons the sum of \$107,626.40. Peter P. Pitchlynn, in his will dated January 1, 1881 (he died January 17, 1881), in item 14th stated he did not "owe any Choctaw anything in the way of a personal debt and nothing at all except in connection with the Net Proceeds Claim, as I have shown in another statement separate from this, for the information of Polson and our counsel."

There was "paid on promises made at Tushkahomma" \$85,020. Tushkahomma was the capital of the Choctaw Nation and the Choctaw National Council consisting of a House and Senate held its sessions there and it was there the Choctaw officials had their offices. This \$85,020.00 was distributed among sixteen different persons. Hy McBride was paid \$10,000 to induce Governor Smallwood to call the Choctaw Council in special session to secure an act authorizing the distribution of the "net proceeds" payment without an audit by the net proceeds commission. He obtained action by Governor Smallwood and paid him \$5,500 for such services and retained \$4,500 for his own services. Five of these distributees had been governor of the Choctaw Nation, a number of them had been members of the Council, and all were influential in Choctaw national affairs. The most of those who were "paid from memorandum of P. P. Pitchlynn" were influential Choctaw politicians; several were white attorneys of Pitchlynn, and all on the two lists were paid for services in the prosecution of the "net proceeds claim," most of them for efforts and influence in securing the passage of the acts of February 25, 1888, ratifying the delegates' contract for 20 per cent and the McKee contract for 30 per cent for legal services, and the payment of said 50 per cent of the net proceeds judgment through the said Campbell Leflore and Edmund McCurtain without audit by the proper officers of the Choctaw Nation.

There was a payment to H. E. McKee of \$145,399.15 as the delegates' share of the general expenses of the prosecution of the claim. After 1865 the "net proceeds claim" was prosecuted exclusively at the expense of the delegation, and after his contract of July 16, 1870,

the expense of the prosecution appears to have been borne by the said H. E. McKee. Under the will of said Pitchlynn, Henry E. McKee, John B. Luce, and S. Temple were delegated to settle his affairs.

The report of the said Leflore and McCurtain and the attached statement of disbursements were printed in pamphlet form, and during the session of the Choctaw Council thereafter were generally distributed as a public document among members of the Council, and such of the tribe not members who happened to be present, and were carried to every County in the Nation, and everybody was satisfied with the equity and justice of the distribution. Several copies were filed in the office of the national secretary. While no formal action was taken by the Council on said report and statement, it does appear that informally there were general expressions of satisfaction with the report. That this money received by Leflore and McCurtain was distributed, as shown by the report, is not disputed.

The distribution of the 20 per cent in the report and statement was made prior to August 23, 1888. The said report and statement of disbursements is attached to these findings as Appendix "F" and is made part of this finding by reference.

XIII

The final distribution of the remainder of the "net proceeds" judgment, \$1,436,000, was made by a Choctaw commission appointed for that purpose, and was approved by the Choctaw Council by the act of December 24, 1889. (Law of the Choctaw Nation, p. 55.)

XIV

The Constitution of the Choctaw Nation contained, prior to the disbursements by Leflore and McCurtain of the delegates' 20 per cent, and until the State of Oklahoma was admitted into the Union in 1907, the following provisions:

"SEC. 1. The judicial power of this nation shall be vested in one supreme court, in circuit and county courts.

* * * * *

"SEC. 5. The circuit courts shall be composed of one circuit judge in each district, and shall have original jurisdiction in all criminal cases which shall not be otherwise provided for by law, and exclusive original jurisdiction of all crimes amounting to felony, and original jurisdiction of all civil cases which shall not be cognizable before the judges of the county, until otherwise directed by law, and original jurisdiction in all matters of contracts and in all matters of controversy where the same is over fifty dollars. It shall hold its term at such times and places in each district as are now specified by law or may hereafter be provided.

"SEC. 6. The circuit courts shall exercise a superintending control over the county courts, and shall have power to issue all necessary writs and process to carry into effect their general and specific powers under such regulations and restrictions as may be provided by law.

"An act to organize and establish the circuit courts of the Choctaw Nation, and to define their power and jurisdiction, approved October 24, 1860, contains the following provisions:

* * * * *

"SEC. 4. Be it further enacted, That the circuit courts of law in the several counties of the nation shall have original jurisdiction of all suits and actions for the recovery of money founded on any bonds or other written contracts when the principal of the sum in controversy exceeds fifty dollars, and all causes, matters, and things arising under the constitution and laws of this nation, which are not expressly cognizable in some other court established by law; and said circuit court shall have power to hear and determine all prosecutions in the name of the nation, by indictment for treason, murder, and all other felonies, crimes, and misdemeanors committed within their respective jurisdictions, except such as may properly belong to county court or in some other court of the nation or of the United States; as also to hear and determine all prosecutions by information as are designated in the constitution; and, moreover, shall have and exercise all the powers incident or belonging to a court of oyer and terminer and general jail delivery, and to do and perform all other acts properly pertaining to a circuit court of law; and the judges of said courts and each of them shall have power either in vacation or term time, to grant writs of habeas corpus, and all other remedial writs returnable according to law into any or either of said circuit courts.

"SEC. 5. Be it further enacted, That the said circuit courts shall have and possess original jurisdiction over all matters of divorce and for the foreclosure of mortgages; and the judges of said courts shall have power, either in vacation or term, to grant writs of injunction, to stay waste, to enjoin execution of a judgment, or to stay proceedings at law; to grant writs of ne exeat, and all other remedial writs returnable to a court of law."

XV

After the distribution of the delegates' 20 per cent by Leflore and McCurtain in August, 1888, no steps were taken by the heirs at law of Samuel Garland to obtain any further compensation in the courts of the Choctaw Nation by suit against the said Leflore and McCurtain or against said Choctaw Nation, or to require the said Leflore and McCurtain to give bond for faithful performance of their duties under the act of the Choctaw Council of February 25, 1888. Nothing was done by said heirs until a bill was introduced in the Choctaw Council on November 6, 1897, to pay the heirs at law of the said Samuel Garland \$115,786.65 out of any funds in the National Treasury not otherwise appropriated, as the balance due said heirs by reason of the contract of November 2, 1855, between the Choctaw Nation and the delegation of 1853. On the same day, November 6, 1897, the bill was passed by the Choctaw Council and referred to the principal Chief, or as he was generally known, the Governor of the Choctaw Nation, by whom it was vetoed.

XVI

The full Choctaw delegation of 1853 signed a number of communications addressed to the Commissioner of Indian Affairs and Douglas H. Cooper, United States Agent for the Choctaws in relation to the "net proceeds claim," the leased district claim, matters of dispute between the Choctaw and Chickasaw Nations, objection

of the Choctaw Nation to the Wichita and other tribes being located on their land, and other matters of tribal interest. One communication dated February 3, 1855, relating to the net proceeds claim, signed by the full delegation, was addressed to President Pierce. These papers were prepared by the attorneys employed by the delegation. The full delegation signed the contract of John T. Cochrane, and the full delegation signed the treaty of June 22, 1855. What Samuel Garland did individually or what any of the other delegates, except Peter P. Pitchlynn, did individually in aid of the prosecution of the net proceeds claim does not appear. The record shows that there was much more labor, expense, and difficulty required in procuring the passage of the jurisdictional act of March 3, 1881, and in securing the final judgment of the Court of Claims under said act than in securing the award of the Senate.

Up to the time of the death of Samuel Garland in the winter or spring of 1870, nothing beyond the Senate award of May 8, 1860, had been accomplished in the net proceeds claim. He first came to Washington in the spring of 1854 and was also there in 1855, 1856, and 1869.

Samuel Garland was paid out of the \$250,000 appropriated by the act of March 2, 1861, the sum of \$18,731.86. He was paid by order of the Choctaw Council by the acts of November 4, 1857; October 22, 1858; October 20, 1859; and October 27, 1860, the sum of \$11,000. He was paid by Peter P. Pitchlynn \$1,000, a total of \$30,731.86. He was paid by Campbell Leflore and Edmund McCurtain, the settlement of 1888, the sum of \$49,894.29, making, in all, the sum of \$80,626.15 in cash. Campbell Leflore and Edmund McCurtain paid the following liabilities of the delegation of 1853: \$11,889.84, "paid delegates of 1866 on account with the delegates of 1853"; \$7,758.36, "paid eastern boundary delegates as per contract with delegates of 1853"; \$25,000, "paid Blunt and loyal Choctaws as per agreement with delegates of 1853"; \$107,626.50, "paid from memorandum of P. P. Pitchlynn," personal liability, not chargeable to Nation.

XVII

Samuel Garland, claimants' decedent, was a member of the Choctaw Tribe of Indians and a citizen and resident of the Choctaw Nation, in the Indian Territory, and departed this life during the year 1870, leaving a last will and testament by which he bequeathed to his wife, Mary P. Garland, his interest in a claim against the Choctaw Nation for services as a member of the delegation of 1853, referred to as the "net proceeds."

Said Mary P. Garland died in the year 1886 or 1887, leaving a last will and testament by which she bequeathed to her grandson, David Crockett Garland, one-third of all moneys due her from the United States Government or the Choctaw Nation to her deceased husband, Samuel Garland, for services rendered as delegate of the Choctaw Nation in the settlement of the net-proceeds claim; one-third of said moneys to her daughter, Mary Eliza Rogers, and the remaining one-third of said moneys, in equal shares, to the heirs of the said Mary Eliza Rogers, her grandchildren.

Said Mary Eliza Rogers died intestate in 1906, leaving surviving her five children, Georgia C. McCaffree, Laura Cole, Leona Stealey, Minnie I. Thomas, and John M. Rogers. John M. Rogers is deceased, intestate, and without issue.

The interests of the heirs of the said Mary P. Garland in the "net proceeds" (who are the grandchildren and great-grandchildren of Samuel Garland and Mary P. Garland) are as follows: The heirs of David Crockett Garland are entitled to one-third and the heirs of Mary Eliza Rogers, as such and under the will of Mary P. Garland, are entitled to two-thirds of the fund.

David Crockett Garland departed this life on January 28, 1899, and left surviving him as his only heirs at law and next of kin his wife, Ellen Garland, and four children, Thomas A. Garland, Leonidas M. Garland, Margrett Garland, and Ellen Garland. Ellen Garland, wife of David C. Garland, and Ellen Garland, the daughter, are dead, the latter without issue. The heirs at law of the said David C. Garland are at present Thomas M. Garland, Leonidas M. Garland, and Margrett Ledbetter, nee Garland. Their interest in the "net proceeds" is one-ninth each.

Said Laura Cole departed this life and left surviving her as her only heirs at law and next of kin three children, Bonnie May Cole (now married to Doss), Rogers L. Cole and Presley B. Cole, and the present heirs and next of kin of said Laura Cole are Bonnie May Cole Doss, Rogers L. Cole, and Presley B. Cole. Their interest in the "net proceeds" is one-eighteenth each.

Said Leona Stealey departed this life and left surviving her as her only heirs at law and next of kin three children, Lorenzo P. Stealey, Goodwin B. Stealey, and Cathleen Stealey. Goodwin B. Stealey died intestate and without issue. The heirs of said Leona Stealey are: Lorenzo P. Stealey and Cathleen Stealey. Their interest in the "net proceeds" is one-twelfth each.

Said Minnie I. Thomas, after the death of her husband, Ab Thomas, married William P. McBride, and thereafter departed this life, leaving surviving her as her only heirs at law and next of kin two children, Edward G. Thomas and Pleasant McBride. The heirs at law and next of kin of said Minnie I. Thomas are: Edward G. Thomas and Pleasant McBride. Their interest in the "net proceeds" is one-twelfth each.

Georgia C. McCaffree is living, and her interest in the "net proceeds" is one-sixth.

CONCLUSION OF LAW

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiffs are not entitled to recover, and the petition is therefore dismissed.

Judgment is rendered against the plaintiffs for the cost of printing the record in this cause, the amount therefor to be entered by the clerk and collected by him according to law.

OPINION

Booth, *Judge*, delivered the opinion of the court.

This case and the one of the Heirs of Peter Pitchlynn differ only as to the extent of the services rendered. The special jurisdictional

acts sending both cases to this court are identical in every respect, 35 Stat. 445. What was said in the Pitchlynn case with reference to the history and development of the controversy applies with equal force to the present case, and we will not repeat it herein.

The present plaintiffs, heirs of Samuel Garland, deceased, are contending for a judgment in the sum of \$115,786.65 for his part in securing the final settlement of the net proceeds claim. This contention rests upon a conclusion that Samuel Garland is legally entitled to the full five per centum accorded him in the contract between the delegation of 1853, of which he was a member, and the Choctaw Nation, set out in Finding III.

The jurisdictional act limits recovery upon the principles of *quantum meruit*, what the services rendered were reasonably worth, and while the contract is evidentiary, it is not conclusive, and we are not bound to observe it, especially as entitling the heirs to have it enforced after the death of Samuel Garland. Congress manifestly refused to circumscribe our jurisdiction in this respect, and intended, as expressed in the jurisdictional act, to grant authority to award a judgment for what may appear from the record as equitably due.

Samuel Garland was a member of the Choctaw Nation, conspicuous at times in its affairs. He lacked many of the characteristics of Peter Pitchlynn, his associate delegate, and was far from the equal of Pitchlynn in ability or assertiveness. Pitchlynn dominated the delegation of 1853 and was the moving force. Garland and the remaining delegates simply followed along. The plaintiffs, in their long, very exhaustive, and interesting briefs in this case, do not point out any conspicuous individual service on the part of Garland. So far as the record discloses, Garland was only in Washington four times, once in 1854, and again in the years 1855, 1856, and 1869, and if he did more than approve what Pitchlynn was actively engaged in doing, we are unable to extract it from the present record. He, of course, was a part of the delegation, and his name appears in its proceedings, and the council of the Nation in its dealings with the delegation duly recognized him as a part thereof; but when the task is imposed of segregating the individual services of the plaintiffs' decedent from those of his associates and ascertaining what he did in the preparation of papers, supplying information, or suggesting plans and procedure, forwarding settlements, or manual and mental work of any character, it is most difficult to ascribe to Samuel Garland the doing of any vast amount of labor or contributing to the result accomplished to any predominating extent.

We awarded judgment in the Pitchlynn case, crediting him with his full five per centum of the sum realized in the net proceeds case, and we believe this to be ample, and in a measure generous, and if Garland was in the same situation we would do likewise in this case. Samuel Garland died in March, 1870, sixteen years prior to the final settlement of the claim, and obviously, unless we may ascribe what was accomplished prior to his death as the real, important, and substantial thing accomplished, we can not allow his estate for what was done after his death. The recovery sought here is for personal services. It is true Pitchlynn died in 1881, five years prior to the final judgment, but it seemed to us that at the time of his death all that he could have possibly accomplished had been done, and all that remained to be done depended upon lawyers and not laymen. Pitchlynn had exhausted the field of his endeavors.

We may, we think, with propriety and fairness to all concerned, recognize the division of this contest as time and events apportioned it. According full recognition to Garland's efforts, the equal of Pitchlynn in this respect, what had been the real beneficial results obtained up to the date of Garland's death? The treaty of 1855 had been obtained, the Senate award had been reported in 1861, and \$250,000 in cash had been paid and \$250,000 in bonds awarded, but not then or afterwards paid until 1886. Then the Civil War came on, and for four or more years nothing was done. The next step was the treaty of April, 1866, procured by the commission appointed by the Nation in October, 1865, a treaty repairing the damage occasioned the Indians by the intervention of war and restoring the rights accorded the Nation in the treaty of 1855, thus completing, as we believe we may well say, the first half of the contest. To secure the benefits of the treaty of 1855, revived by the one of 1866, required twenty years of labor and effort. The treaty of 1866 marked out the limits of settlement, the Senate in its award followed the lines so marked out, and there the two factors stood definite and available, but to secure appropriations and a fulfillment of the treaty and award required an effort and expenditure of labor and service equally as extensive as all that had been expended in prior efforts. The repeated and earnest efforts of a small army of people, directed in every available channel, failed to secure to the Nation its accorded rights until the contest was removed from the uncertainties of the departmental and legislative departments of the Government to the courts, where it was ultimately settled with reasonable dispatch. Unfortunately Samuel Garland died before the final struggle had taken definite shape; he was not a part of it, and surely it may not be said that what was done subsequent to 1866 was relatively of less importance than what preceded this date. One was indeed as important as the other. As we said in the Pitchlynn case, we regard the services rendered in finally procuring the jurisdictional act sending the case to the courts as one of signal value and importance. It closed the case; it afforded a forum where reciprocal rights and liabilities might be adjudicated, where the parties were assured of full and complete hearing, and what is of more value, assured the parties that a judgment rendered would be promptly and fully paid. This was accomplished eleven years after Samuel Garland's death.

It is said, and most significantly, that the authorities of the Nation as late as 1888 recognized the Nation's liability to Samuel Garland as extending to five per centum of the final sum obtained, in effect conceding his services to be worth this amount. The legislation of the council appointing Leflore and McCurtain delegates to receive and disburse the money coming to the Nation as a result of the judgment in the net proceeds case, clearly imports a legislative intent to settle with the delegates of 1853 and *their successors*. The language is, "settle with the respective distributees of said delegation." The delegation, as originally established, was a continuing body; provision was made for vacancies due to death or resignation, vacancies did occur, and the personnel of the delegation changed. So that while Leflore and McCurtain did treat the Garland estate as entitled to the full one-fifth of the judgment, they, at the same time, made a vast number of charges against his gross compensation, which included

money paid to delegates, successors to the original delegation. Again, we repeat, under the jurisdiction granted this court, we are not to import verity to what Leflore and McCurtain did, nor are we bound to accept their settlement or interpretation of the authority under which they acted. The case is to be disposed of upon the principles of *quantum meruit*, and what concerns the court now is not a confirmation of Leflore and McCurtain's settlement, but was the sum the Garland estate received from them, added to other sums paid, reasonably compensatory for Garland's services during his life? The Supreme Court in the Garland case, 256 U. S. 439, had before it in the findings of this court the Leflore and McCurtain settlement, it was then exactly as it is now, and notwithstanding these available balances, the case was remanded for us to find, "What, if anything, is due Garland." If the record of fraud and corruption erected by the plaintiffs' counsel is to prevail, and we have not the slightest doubt of its truthfulness, the ease with which the legislative council of the Nation yielded to sinister influence is, indeed, a most potent factor in supporting the court in scanning what was done with the greatest care, and casts an unwholesome suspicion upon Choctaw legislation and council approvals of the disbursements of Indian funds. In this case, without apparent opposition, and with a unanimity acutely suspicious, the council of the Nation, whenever called upon, unhesitatingly approved the disbursement of more than one-half of the net proceeds judgment, a vast sum of money, which in many instances found its way into the pockets of certain individuals whom the committee of Congress denounced as nothing short of venal and corrupt.

We have not, of course, disregarded these favorable manifestations in Garland's behalf. We have given them, along with the contract, the probative value we think they are entitled to receive. If they are conclusive, then obviously all we were to do under the order of remand was a bookkeeping accounting. This has not been our view of the case, nor our construction of the intention of Congress in conferring jurisdiction upon this court in the premises.

Samuel Garland received out of the \$250,000 cash appropriated by Congress in March, 1861, \$18,731.86. The Choctaw Council, by its appropriation acts for the years 1857, 1858, 1859, and 1860, paid him \$11,000, or in all \$29,731.86 received by him personally. After his death, under the settlement of Leflore and McCurtain, his estate received an additional allowance of \$49,894.29, or \$79,626.15 in all. He should be charged with one-fourth of \$25,000 loaned by the loyal Choctaws to the delegation of 1853 and which they in writing agreed and authorized payment out of the fees paid the delegation from the net-proceeds case, which amounts to \$6,250, a sum of money the delegates received, and the record shows they admitted as due from them, making all told the sum of \$85,876.15 paid as remuneration for his services. It is absolutely inconceivable that he could have earned more. Expenses incurred are not claimed, and are proved to have been paid. Treating the case on the principles of *quantum meruit*, aside from contract provisions, and giving the record the most liberal consideration, it is our opinion that the petition should be dismissed. It is so ordered.

HAY, *Judge*; DOWNEY, *Judge*; and CAMPBELL, *Chief Justice*,
concur.