

*barratt kyle*  
*Loyalty*

No report  
Oct 12, 1930

No. L-253.

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IN THE  
**UNITED STATES COURT OF CLAIMS**

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THE CHOCTAW AND CHICKASAW NATIONS,  
COMPLAINANTS,  
VS.

THE UNITED STATES OF AMERICA,  
DEFENDANT.

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**PETITION.**

(Filed June 26, 1930.)

Come the Choctaw and Chickasaw Nations of Indians, the complainants herein, and for their cause of action against the United States of America, the defendant herein, respectfully represent to the court:

I.

The Choctaw and Chickasaw Nations of Indians, the complainants herein, are “\* \* \* the Choctaw and Chickasaw Indian Nations or Tribes \* \* \*,” mentioned in the Act of Congress approved June 7, 1924 (43 Stat. 537), the first paragraph of which act is as follows:

"That jurisdiction be, and is hereby, conferred upon the Court of Claims, notwithstanding the lapse of time or the statutes of limitation, to hear, examine and adjudicate and render judgment in any and all legal and equitable claims arising under or growing out of any treaty or agreement between the United States and the Choctaw and Chickasaw Indian Nations or Tribes, or either of them, or arising under or growing out of any Act of Congress in relation to Indian affairs which said Choctaw and Chickasaw Indian Nations or Tribes may have against the United States, which claims have not heretofore been determined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States;"

and, by Act of Congress approved February 19, 1929 (Public Resolution 88, 70th Congress), the time for the filing of such suits was extended to June 30, 1930.

## II.

The coal and asphalt deposits belonging to the Choctaw and Chickasaw Nations and which constitute the subject-matter of this suit, in connection with the management and administration of which, by the United States, the said Choctaw and Chickasaw Nations claim that they have sustained loss and damage, and for the recovery of which claimed loss and damage this suit is filed, underlie lands which were acquired and are owned by the said Choctaw and Chickasaw Nations, under treat-

ties or agreements with the United States, as follows:

- Treaty of 1820 (7 Stat. 210).
- Treaty of 1830 (7 Stat. 333).
- Treaty of 1837 (11 Stat. 573).
- Treaty of 1855 (11 Stat. 611).
- Treaty of 1866 (14 Stat. 769).

## III.

Under Articles I and III of the said Treaty of 1837 (11 Stat. 573), the Chickasaw Nation, for a valuable consideration, purchased a common interest in the lands of the Choctaw Nation, and is the owner, in common with said Choctaw Nation, of such lands.

## IV.

The Act of Congress approved March 3, 1893 (27 Stat. 612), was a plain statement of the purpose of the United States to force said Choctaw and Chickasaw Nations to surrender their tribal relations and to abolish their tribal governments which had been guaranteed to them by treaty, such purpose of the United States, as expressed in said Act, being as follows:

"\* \* \* to enable the ultimate creation of a State or States of the Union which shall embrace the lands within said Indian Territory."

## V.

The Choctaw and Chickasaw Nations were loath to accede to these demands of the United

States, being satisfied with their tribal relations and with their tribal governments. It was with reluctance, therefore, that they entered into the "Atoka Agreement," which was ratified by Act of Congress, approved June 28, 1896 (37 Stat. 495).

## VI.

The Choctaw and Chickasaw Nations had a right to rely, and did rely, upon the guaranties of the United States that this agreement, for the division of their tribal property and the administration of their tribal affairs, would be complied with, according to its terms and provisions.

## VII.

Such agreement provided, among other things, for the leasing of their coal and asphalt deposits, as follows:

"It is agreed that all the coal and asphalt within the limits of the Choctaw and Chickasaw Nations shall remain and be the common property of the members of the Choctaw and Chickasaw Tribes (freedmen excepted), so that each and every member shall have an equal and undivided interest in the whole; and no patent provided for in this agreement shall convey any title thereto. The revenue from coal and asphalt, or so much as shall be necessary, shall be used for the education of children of Indian blood of the members of said tribes. Such coal and asphalt mines as are now in operation, and all others which may hereafter be leased and operated, shall

be under the supervision and control of two trustees, who shall be appointed by the President of the United States, one on the recommendation of the principal chief of the Choctaw Nation, who shall be a Choctaw by blood, whose term shall be for four years, and one on the recommendation of the governor of Chickasaw Nation, who shall be a Chickasaw by blood, whose term shall be for two years; after which the term of appointees shall be for four years. Said trustees, or either of them, may, at any time, be removed by the President of the United States for good cause shown. They shall each give bond for the faithful performance of their duties, under such rules as may be prescribed by the Secretary of the Interior. Their salaries shall be fixed and paid by their respective Nations, each of whom shall make full report of all his acts to the Secretary of the Interior quarterly. All such acts shall be subject to the approval of the said Secretary.

"All coal and asphalt mines in the two Nations, whether now developed, or to be hereafter developed, shall be operated, and the royalties therefrom paid into the Treasury of the United States, and shall be drawn therefrom under such rules and regulations as shall be prescribed by the Secretary of the Interior.

"All contracts made with the National Agents of the Choctaw and Chickasaw Nations for operating coal and asphalt, with any person or corporation, which were, on April twenty-third, eighteen hundred and ninety-seven being operated in good faith are hereby ratified and confirmed, and the lessee shall have the right to renew the same when they expire, subject to all of the provisions of this Act.

"All agreements heretofore made by any person or corporation with any member or members of the Choctaw or Chickasaw Nations, the object of which was to obtain such member or member's permission to operate coal or asphalt, are hereby declared void. *Provided*, that nothing herein contained shall impair the rights of any holder or owner of any leasehold interest in any oil, coal rights, asphalt or mineral which have been assented to by Act of Congress, but all such interests shall continue unimpaired hereby and shall be assured by new leases from such trustees of coal or asphalt claims described therein, by application to the trustees within six months after the ratification of this agreement, subject however, to payment of advance royalties herein provided for.

"All leases under this agreement shall include the coal or asphaltum, or other mineral, as the case may be, in or under nine hundred and sixty acres, which shall be in a square as nearly as possible, and shall be for thirty years, the royalty on coal shall be fifteen cents per ton of two thousand pounds on all coal mined, payable on the 25th day of the month next succeeding that in which it is mined. Royalty on asphalt shall be sixty cents per ton, payable same as coal: *Provided*, that the Secretary of the Interior may reduce or advance royalties on coal and asphalt when he deems it for the best interests of the Choctaws and Chickasaws to be so paid. No royalties shall be paid except into the Treasury of the United States as herein provided.

"All lessees shall pay on each coal or asphalt claim at the rate of one hundred dollars per annum, in advance, for the first

and second years; two hundred dollars in advance for the third and fourth years; and five hundred dollars for each succeeding year thereafter. All such payments shall be treated as advanced royalty on the mine or claim on which they are made, and shall be a credit as royalty when each said mine is developed and operated and its production is in excess of such guaranteed annual advance payments, and all persons having coal leases must pay said annual advanced payments on each claim whether developed or undeveloped: *Provided*, however, that should any lessee neglect or refuse to pay such advanced annual royalty for the period of sixty days after the same becomes due and payable on any lease, the lease on which default is made shall become null and void, and the royalties paid in advance thereon shall then become and be the money and property of the Choctaw and Chickasaw Nations.

\* \* \* \* \*

"That whenever the members of the Choctaw and Chickasaw Tribes shall be required to pay taxes for the support of schools then the fund arising from such royalties shall be disposed of for the equal benefit of their members (freedmen excepted) in such manner as the tribes may direct."

### VIII.

Under said "Atoka Agreement," leases were made and entered into with various lessees, aggregating some one hundred thousand acres, more or less, of the coal and asphalt deposits belonging to the Choctaw and Chickasaw Nations; and all of such leases were made and entered into between

the following dates: June 28, 1898 (the date of the approval of the "Atoka Agreement"), and July 1, 1902 (the date of the approval of the "Supplementary Agreement"), which provided that all leasing should cease, and for the segregation and sale of the coal and asphalt lands, both leased and unleased, of the Choctaw and Chickasaw Nations.

#### IX.

The forms and terms of all of such leases, and all rules and regulations relating to the same, were prescribed by the Secretary of the Interior for and on behalf of the United States; and no power or authority, in connection therewith, by the Choctaw and Chickasaw Nations, was authorized or permitted, except that such leases were formally executed by the mining trustees of the Choctaw and Chickasaw Nations, acting under the direction of said Secretary of the Interior. All responsibility for requiring such lessees to comply with the terms of such leases and the law governing the same, was assumed and exercised by the said Secretary of the Interior, acting for and on behalf of the United States, from the time such leases were originally made and entered into to the present time.

#### X.

Under such leases, all lessees agreed and undertook to pay certain specified advanced

royalties; to pay certain specified minimum tonnage royalties; and to pay certain specified royalties upon all coal or asphalt actually mined, such lessees to have the privilege of charging the royalties due upon any coal or asphalt actually mined against any advanced royalties or minimum tonnage royalties that may have accumulated to their credit upon any particular lease. Such leases provided that all payments should be made to the United States for the use and benefit of the Choctaw and Chickasaw Nations; and the United States undertook to require all of such lessees to comply with the terms and obligations of such leases and with the law governing the same.

#### XI.

It is the contention of the Choctaw and Chickasaw Nations that if the United States has failed to require such lessees to comply with the terms and obligations of the leases which they have made and entered into and with the law governing the same, and loss and damage has thereby resulted to them, the United States should respond, in damages, for the total amount of such loss; and that they are entitled to have judgment against the United States for the total amount of such loss and damage, when the same shall have been ascertained.

## XII.

The Choctaw and Chickasaw Nations allege, upon information, belief, and state the fact to be, that they have sustained losses and damages, from time to time, because of the failure of the United States to require such lessees to comply with the terms and obligations of such leases and the law governing the same; and that such losses and damages have resulted more particularly in this:

The United States has failed to collect royalties upon all coal or asphalt actually mined upon each particular lease; and when the royalties due and payable upon coal or asphalt actually mined upon each particular lease are computed it will be found that a considerable total sum of such royalties are still due and unpaid;

The United States has failed to collect all advanced royalties due upon certain of such leases; and, upon computation, it will be found that a considerable total sum of such advance royalties due and payable prior to the cancellation of such leases is still due and payable;

The United States has failed to collect all royalties which lessees agreed to pay upon the minimum tonnage which they agreed and undertook to mine; that is to say: when such leases were made and entered into such lessees agreed to mine a certain specified minimum tonnage of coal or asphalt and to pay royalties upon such specified minimum tonnage, irrespective of whether such coal or asphalt was mined or not mined; and a computation will show that a considerable total sum of such minimum tonnage royalties are still due and unpaid;

The United States has failed, in the matter of the collection of royalties and in making settlements and adjustments with lessees in connection therewith, to treat each lease as being separate and apart from every other lease; that is to say: where one lessee was the owner of more than one lease, the United States has permitted such owner to make use of moneys paid in to the credit of one lease (as advanced royalties or minimum tonnage royalties, as the case may be) for the payment of royalties due and payable for coal or asphalt actually mined upon another lease; and

That all of such acts, upon the part of the United States and its officials, in failing to require such lessees to comply with the terms and obligations of such leases and the law governing the same, have resulted to the loss and damage of the Choctaw and Chickasaw Nations; and they are entitled to have judgment against the United States for the total amount of such loss and damage, when the same shall have been ascertained.

## XIII.

The Choctaw and Chickasaw Nations are unable to state, at this time, the exact total amount of the loss and damage they have sustained because of the failure of the United States to require such lessees to comply with the terms and obligations of such leases and the law governing the same, for the reason that all records of all financial transactions, settlements and adjustments, between such lessees and the United States, have been kept by, and are wholly in the possession of, the United States and its officials.

### XII.

The Choctaw and Chickasaw Nations allege, upon information, belief, and state the fact to be, that they have sustained losses and damages, from time to time, because of the failure of the United States to require such lessees to comply with the terms and obligations of such leases and the law governing the same; and that such losses and damages have resulted more particularly in this:

The United States has failed to collect royalties upon all coal or asphalt actually mined upon each particular lease; and when the royalties due and payable upon coal or asphalt actually mined upon each particular lease are computed it will be found that a considerable total sum of such royalties are still due and unpaid;

The United States has failed to collect all advanced royalties due upon certain of such leases; and, upon computation, it will be found that a considerable total sum of such advance royalties due and payable prior to the cancellation of such leases is still due and payable;

The United States has failed to collect all royalties which lessees agreed to pay upon the minimum tonnage which they agreed and undertook to mine; that is to say: when such leases were made and entered into such lessees agreed to mine a certain specified minimum tonnage of coal or asphalt and to pay royalties upon such specified minimum tonnage, irrespective of whether such coal or asphalt was mined or not mined; and a computation will show that a considerable total sum of such minimum tonnage royalties are still due and unpaid;

The United States has failed, in the matter of the collection of royalties and in making settlements and adjustments with lessees in connection therewith, to treat each lease as being separate and apart from every other lease; that is to say: where one lessee was the owner of more than one lease, the United States has permitted such owner to make use of moneys paid in to the credit of one lease (as advanced royalties or minimum tonnage royalties, as the case may be) for the payment of royalties due and payable for coal or asphalt actually mined upon another lease; and

That all of such acts, upon the part of the United States and its officials, in failing to require such lessees to comply with the terms and obligations of such leases and the law governing the same, have resulted to the loss and damage of the Choctaw and Chickasaw Nations; and they are entitled to have judgment against the United States for the total amount of such loss and damage, when the same shall have been ascertained.

### XIII.

The Choctaw and Chickasaw Nations are unable to state, at this time, the exact total amount of the loss and damage they have sustained because of the failure of the United States to require such lessees to comply with the terms and obligations of such leases and the law governing the same, for the reason that all records of all financial transactions, settlements and adjustments, between such lessees and the United States, have been kept by, and are wholly in the possession of, the United States and its officials.

## XIV.

Wherefore, the Choctaw and Chickasaw Nations pray that an order be made and entered by this Honorable Court, requiring the proper officials of the United States to prepare and file, in this case, a full and complete report of all financial transactions, settlements and adjustments between such lessees and the United States, relating, separately to each lease made and entered into under the provision of said Act of Congress, approved June 28, 1898 ("Atoka Agreement"), showing, definitely and specifically, as follows:

1. What tonnage of coal or asphalt has been mined upon each of such leases; and what royalties, if any, have not been collected upon such coal or asphalt so actually mined;
2. What advance royalties, if any, have not been collected upon each of such leases;
3. What royalties if any have not been collected upon the minimum tonnage of coal or asphalt which lessees undertook and agreed to mine, or to pay, in the event of their failure to mine such minimum tonnage; and
4. What settlements or adjustments, if any, have been made with any lessee, (the owner of more than one lease) by permitting such lessee to use the royalties (whether advanced or minimum tonnage royalties) paid in to the credit of one particular lease, for the payment of royalties due upon coal or asphalt actually mined upon another lease;

and, upon the coming in of such report, that they be permitted to amend this petition by setting out

the exact amount or amounts of the loss and damage which they claim to have sustained because of the failure of the United States to require such lessees to comply with the terms and obligations of such leases and the law governing the same; and that, upon a final hearing, they may have judgment against the United States for the total amount of such loss and damage, with interest thereon at the rate of five per cent per annum; and for all other and further relief to which they may be entitled.

WILLIAM F. SEMPLE,  
JOHNSON and McGILL,

*Special Attorneys for the Choctaw Nation.*

WILLIAM H. FULLER,  
MELVEN CORNISH,

*Special Attorneys for the Chickasaw Nation.*

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*State of Oklahoma, County of Bryan, ss.*

W. F. Semple, on oath, states that he is one of the special attorneys employed by the Principal Chief of the Choctaw Nation, under the Act of Congress, approved June 7, 1924 (Public Document 222, 68th Congress), which said contract was duly approved by the Commissioner of Indian Affairs on September 25, 1925, and by the Assistant Secretary of the Interior on September 29, 1925, and is authorized to and does make this verification; that he has read the foregoing petition and knows the contents thereof, and that the statements and allegations therein contained are made upon information

obtained from the records in the office of the Secretary of the Interior and his subordinate officers, and that they are true and correct, as he verily believes.

W. F. Semple.

Subscribed and sworn to before me, on this  
June 21, 1930.

Loudia Reed,  
Notary Public.

My commission expires July 8, 1933.

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*State of Oklahoma, County of Pittsburg, ss.*

William H. Fuller, on oath states that he is the William H. Fuller employed by Douglas H. Johnston, Governor of the Chickasaw Nation, as one of the special attorneys, on behalf of the Chickasaw Nation, under contract executed pursuant to the provision of the Act of Congress approved June 7, 1924, (Public Document 222, 68th Congress) and which said contract was thereafter duly approved by the Commissioner of Indian Affairs on January 25, 1926, and by the Assistant Secretary of the Interior on January 12, 1926 and is authorized to and does make this verification.

That he has read the foregoing petition and knows the contents thereof, and that the statements therein contained are based upon the treaties and laws referred to in said petition and upon information obtained from the records in the office of the

Secretary of the Interior and his subordinate officers; and that they are true, as he verily believes.

William H. Fuller.

Subscribed and sworn to before me on this  
June 21, 1930.

Sarah Miller,  
Notary Public.

My commission expires January 5, 1932.