

Chickasaw Nation
1/4 of 5540 @ 2x100 -
Int 30 yrs
1/4 Chickasaw

354,100
53,110
88,250

No. K-336.

No report
Oct 12, 1923

IN THE
UNITED STATES COURT OF CLAIMS

THE CHICKASAW NATION,
COMPLAINANT,
VS.
THE UNITED STATES OF AMERICA,
DEFENDANT.

PETITION.

(Filed August 5, 1929.)

Comes now the Chickasaw Nation, the complainant herein, and for its cause of action against the United States of America, respectfully represents to the court:

I.

The Chickasaw Nation, the complainant herein, is the Chickasaw Indian Nation or Tribe 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 limitations, 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 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 the 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.

Title and ownership in and to the lands which are the subject matter of this suit were acquired by the Choctaw and Chickasaw Nations under treaties or agreements with the United States of America 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 treaty of 1837 (11 Stat., 573) the Chickasaw Nation, for a valuable consideration, purchased a common interest in the lands of the Choctaw Nation.

IV.

Under Article I of the Treaty of 1855, the title to, and ownership of, the Choctaw and Chickasaw Nations, in and to such lands, was guaranteed and defined, as follows:

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

V.

All moneys resulting from the sale of tribal lands and properties of the Choctaws and Chickasaws, so held and owned, has always been paid to the Choctaw and Chickasaw Nations, by the United States, under all treaties and laws, in the proportions of three-fourths to the Choctaw Nation and one-fourth to the Chickasaw Nation.

VI.

Under the treaty between the United States and the Choctaw and Chickasaw Nations, known as the "Atoka Agreement" (Act of Congress approved June 28, 1898, 30 Stat., 495) and the "Supplementary Agreement" (Act of Congress approved July 1, 1902, 32 Stat., 641) providing for the distribution of the tribal estates of the Choctaw and Chickasaw Nations, in preparation for Oklahoma Statehood, Choctaw and Chickasaw Freedmen were given allotments of forty acres each, coupled with provisions safeguarding the rights of the Choctaw and Chickasaw Nations in the lands allotted to such Freedmen, as between the two nations, and as between them and the United States.

VII.

The Chickasaw Nation claims that it has a one-fourth interest in the lands allotted to Choctaw Freedmen; that, being a common owner (with the Choctaw Nation) in such lands so allotted, and never having participated in the alleged adoption of such Choctaw Freedmen, that their adoption by the Choctaw Nation was null and void, in so far as the interests of the Chickasaw Nation are concerned; that it agreed that allotments be made to such Choctaw Freedmen only after the insertion, upon its insistence, in the said treaties of 1898 and 1902, of definite and specific provisions for the

adjustment of, and settlement for its interest in the lands so allotted such Choctaw Freedmen, as between the Chickasaw Nation and the Choctaw Nation and also as between the Chickasaw Nation and the United States; that such provisions for the adjustment of, and settlement for, its interest in such lands, have not been carried out; and that it is now entitled to have judgment against the United States for the fair value of its one-fourth interest in such lands so allotted such Choctaw Freedmen.

VIII.

Article III of the treaty of 1866 (14 Stat., 759), between the United States and the Choctaw and Chickasaw Nations, relating to Choctaw and Chickasaw Freedmen, is as follows:

"The Choctaws and Chickasaws, in consideration of the sum of three hundred thousand dollars, hereby cede to the United States the territory west of the ninety-eighth degree west longitude, *known as the leased district*, provided that the said sum shall be invested and held by the United States, at an interest not less than five per cent in trust for the said nations, until the legislatures of the Choctaw and Chickasaw Nations respectively shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent, resident in the said nations at the date of the treaty of Fort Smith, and their descendants, heretofore held in slavery among said nations, except in the annuities, moneys, and public domain claimed by, or

belonging to, said nations respectively; and also to give to such persons who were residents as aforesaid, and their descendants, forty acres each of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land, after the Choctaws and Chickasaws and Kansas Indians have made their selections, as herein provided; and immediately on the enactment of such laws, rules, and regulations, the said sum of three hundred thousand dollars shall be paid to the said Choctaw and Chickasaw Nations in the proportion of three-fourths to the former and one-fourth to the latter—less such sum, at the rate of one hundred dollars *per capita*, as shall be sufficient to pay such persons of African descent before referred to as within ninety days after the passage of such laws, rules and regulations shall elect to remove and actually remove from the said nations respectively. And should the said laws, rules, and regulations not be made by the legislatures of the said nations respectively, within two years from the ratification of this treaty, then the said sum of three hundred thousand dollars shall cease to be held in trust for the said Choctaw and Chickasaw Nations, and be held for the use and benefit of such of said persons of African descent as the United States shall remove from the said territory in such manner as the United States shall deem proper—the United States agreeing, within ninety days from the expiration of said two years, to remove from said nations all such persons of African descent as may be willing to move; those remaining or returning after having been removed from said nations to have no benefit of said sum of three hundred

thousand dollars, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations.”

IX.

By an act of its general council, approved May 21, 1883, the Choctaw Nation attempted to adopt the Choctaw Freedmen. Such act set out:

“* * * the inability of the Choctaw Nation to prevail upon the Chickasaws to adopt any joint plan for adopting said Freedmen * * *”

The Chickasaw Nation never took any action, by cooperation with the Choctaw Nation or otherwise, for the adoption of Choctaw Freedmen and no action was ever taken by it that could be construed as a waiver or surrender of its interest in the lands which were allotted Choctaw Freedmen, under the said treaties of 1898 and 1902.

X.

Chickasaw Freedmen were never adopted; and the Choctaw and Chickasaw Nations have been compensated for the lands allotted to them, as will hereinafter appear.

XI.

Throughout all the years intervening, from 1866 until the said treaties of 1898 and 1902 were entered into, the status of Choctaw and Chickasaw Freedmen was a matter of dispute between the Choctaw

and Chickasaw Nations and between such nations and the United States; and provisions were agreed upon and inserted in the treaties of 1898 and 1902, fixing the status of Choctaw and Chickasaw Freedmen and for the adjustment and settlement of all questions of dispute relating to them.

XII.

In the "Atoka Agreement" (Act of Congress approved June 28, 1898, 30 Stat., 495) the Choctaw and Chickasaw Nations agreed that allotments of forty acres each might be made to Choctaw and Chickasaw Freedmen, but, in view of the fact that there was no claim of adoption, either by or for Chickasaw Freedmen, it was provided:

"That the Commission to the Five Civilized Tribes shall make a correct roll of Chickasaw Freedmen entitled to any rights or benefits under the treaty made in eighteen hundred and sixty-six between the United States and the Choctaw and Chickasaw Tribes and their descendants born to them since the date of said treaty, and forty acres of land, including their present residences and improvements, shall be allotted to each, to be selected, held, and used by them until their rights under said treaty shall be determined, in such manner as shall hereafter be provided by Act of Congress."

XIII.

The Chickasaw Nation, having always claimed and insisted that the adoption of Choctaw Freedmen, without their participation or consent, was

null and void, in so far as their common interest in the lands proposed to be allotted to them was concerned, proposed, as a condition precedent to their agreement that lands be allotted to Choctaw Freedmen, that there should be an adjustment, and settlement for, their interest in such lands, either by having them deducted from the allotments of Choctaw citizens or otherwise, by the insertion of a provision for their protection, to that end, and such a provision was agreed upon and inserted in such treaty, as follows:

"That the lands allotted to the Choctaw and Chickasaw Freedmen are to be deducted from the portion to be allotted under this agreement to the members of the Choctaw and Chickasaw Tribe so as to reduce the allotment to the Choctaws and Chickasaws by the value of the same."

XIV.

Thus the matter of the contention of the Chickasaw Nation for an adjustment of, and settlement for its interest in the lands to be allotted Choctaw Freedmen stood, without further action, until the "Supplementary Agreement" (Act of Congress approved July 1, 1902, 32 Stat., 641) was entered into.

XV.

Such treaty provided for carrying out the plan for allotments of forty acres each to Choctaw and Chickasaw Freedmen, as provided in the said treaty

of 1898, but included a more definite and specific plan for safeguarding the rights and interests of the Choctaw and Chickasaw Nations in the lands to be allotted to such freedmen.

XVI.

As to Chickasaw Freedmen, it was provided that a test suit should be filed in the United States Court of Claims (with right of appeal to the Supreme Court of the United States).

“* * * to determine the existing controversy respecting the relations of the Chickasaw Freedmen to the Chickasaw Nation and the rights of such Freedmen in the lands of the Choctaw and Chickasaw Nations * * *”

and that

“* * * in the event that it shall be finally determined in said suit that the Chickasaw Freedmen were not, independently of this agreement, entitled to allotments in the Choctaw and Chickasaw lands, the Court of Claims shall render a decree in favor of the Choctaw and Chickasaw Nations, according to their respective interests, and against the United States, for the value of the lands so allotted to the Chickasaw Freedmen * * *.”

XVII.

The Chickasaw Nation, still claiming and insisting (as was claimed and insisted when the said treaty of 1898 was entered into) that it was entitled to an adjustment of, and settlement for, its interest in the lands allotted Choctaw Freedmen, proposed the insertion, in such treaty, of a

further and more definite and specific provision to that end, and accordingly, it was done, as follows:

“*Provided*, that nothing contained in this paragraph (relating to the final decree in the Chickasaw Freedmen suit) shall be construed to affect or change the existing status or rights of the two tribes as between themselves respecting the lands taken for allotment to freedmen, or the money, if any, recovered as compensation, therefor, as aforesaid.”

XVIII.

The final decision of the Supreme Court of the United States in the case of “*United States and Chickasaw Freedmen v. Choctaw Nation and Chickasaw Nation*” (193 U. S., 115), was rendered on February 23, 1904, in which it was held that Chickasaw Freedmen had no rights in the lands of the Choctaw and Chickasaw Nations which had been allotted to them. Then, after the roll of such Chickasaw Freedmen had been completed and the total number of acres of land allotted to them had been determined, and the total value of such lands had been computed, as directed by the said treaty of 1903, there was appropriated, under the Indian Appropriation Act of Congress, approved June 25, 1910, in satisfaction of the final judgment of the Court of Claims, in the Chickasaw Freedmen case, the sum of six hundred and six thousand, nine hundred and thirty-six dollars and eight cents (\$606,936.08). This sum of money was

placed to the credit of the Choctaw and Chickasaw Nations, in proportion of three-fourths to the Choctaw Nation and one-fourth to the Chickasaw Nation.

XIX.

The tribal officials of the Chickasaw Nations still claiming and insisting that it was entitled to an adjustment of, and a settlement for, its interest in the lands allotted to Choctaw Freedmen and claiming and insisting, further, that, under the definite and specific provisions which had been inserted in the said treaties of 1898 and 1902, for such adjustment and settlement, demanded of the proper officials of the United States that the sum of money (to-wit, \$606,936.08) appropriated for the satisfaction of the judgment in the Chickasaw freedmen case, be subjected, first, to the payment to the Chickasaw Nation of the compensation due it for its one-fourth interest in the lands allotted to Choctaw Freedmen; and that the balance thereof, if any, be then placed to the credit of the Choctaw and Chickasaw Nations, in the proportion of three-fourths to the Choctaw Nation and one-fourth to the Chickasaw Nation.

XX.

This demand was refused by the officials of the United States; and they proceeded to place three-fourths of such total sum to the credit of

the Choctaw Nation and one-fourth of such total sum to the credit of the Chickasaw Nation, in violation of the rights of the Chickasaw Nation and ignoring the definite and specific provisions of the said treaties of 1898 and 1902, which had been inserted therein, upon their insistence, for the adjustment of, and settlement for, their one-fourth interest in the lands theretofore allotted to Choctaw Freedmen.

XXI.

The jurisdictional act of June 7, 1924 (referred to and partly set out in Paragraph I of this petition) affords the Chickasaw Nation an opportunity to have a judicial determination of its rights in and to the lands allotted to Choctaw Freedmen and of its claim for compensation therefor; and it is for that purpose that this petition is filed.

XXII.

Wherefore, the Chickasaw Nation prays that an order be entered by this court requiring the proper officers of the United States to prepare and file, in this suit, a statement of the total number of Choctaw Freedmen to whom allotments of the lands of the Choctaw and Chickasaw Nations have been made, the total number of acres of such lands so allotted, to such Choctaw Freedmen, and also a statement of the total value of such lands, computed upon the basis of twice the value thereof,

placed upon such lands for purposes of allotment; and the Chickasaw Nation prays further that it may have judgment against the United States for one-fourth such total sum, together with interest at the rate of five per centum per annum from the date of the completion of allotments to such Choctaw Freedmen, and for all other and further relief to which the court may find it entitled.

WILLIAM H. FULLER,
MELVEN CORNISH,
*Special Attorneys for the
Chickasaw Nation.*

G. G. McVAY,
*National Attorney for the
Chickasaw Nation.*

State of Oklahoma, County of Pittsburg, ss.

William H. Fuller, being duly sworn on oath states that he is the William H. Fuller employed by Douglas H. Johnston, Governor of the Chickasaw Nation as attorney, under contract executed pursuant to the provisions of the Act of Congress approved June 7, 1924 (Public Document No. 222, 68th Congress), and which said contract was thereafter duly approved by the Commissioner of Indian Affairs on January 5, 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 statutes referred to in said petition and upon information obtained from the records in the office of the Secretary of the Interior and his subordinate officers and are true and correct as affiant verily believes.

William H. Fuller.

Subscribed and sworn to before me on this
1st day of August, 1929.

(Seal) Sarah Miller,
Notary Public.
My commission expires Jan. 5, 1932.

5540 Choctaw Freedmen @ 130
 4720.980
 4 1441960
 360.490 3024
 1802450
 54073500

Joint

Chickocoon

Suits: Interest of Chickocoon

①	Minor Chocoten Freedmen	121,160
②	Prepaid purchase Freedmen	188,792
③	Minor school payments	591,480
④	Lay on R.R.	104,859
⑤	Chocoten Freedmen	1,446,810
⑥	Bal 3000 Live and Diet	90,250
⑦	Balance on Interest into our hands	4,897,503
⑧	Eastern Boundary	161,175
⑨	Green County	1,181,225
⑩	Chickocoon Schools	900,000
⑪	Chocoten Freedmen	885,250
Total (Chickocoon)		10,543,504

Suits: Total Claims of both Parties

①	Minor school 484,640	②	Prepaid purchase 755,170
③	Minor payments 2,365,920	④	Lay on R.R. 419,439
⑤	Chocoten Freedmen 5,767,240	⑥	Bal 3000 L.P. 391,000
⑦	Balance 19,590,015	⑧	Eastern Boundary 161,175
⑨	Green County 1,181,225	⑩	Chickocoon Schools 900,000
⑪	Chocoten Freedmen 885,250		
Total 32,904,074			

Part of bond

Record of Gov Johnston since 1898.

- ① - Control of Schools - various systems - Best now files
- ② - Court claims - say per capita
- ③ - Sale of tax - Confiscation of homes
- ④ - Per capita payments - 26,000,000 -
- ⑤ - Expenses of Reconstruction - Homes raised -
- ⑥ - Adm of schools - attempt to reopen
- ⑦ - act of June 1, 1940 -
- ⑧ - New law a good whole myself -

Brother
Keto

"One year" -