

General Accounting

No. K-544

In the Court of Claims of the United States

THE CHICKASAW NATION, PLAINTIFF

v.

THE UNITED STATES, DEFENDANT

**DEFENDANT'S OBJECTIONS TO PLAINTIFF'S REQUESTED
FINDINGS OF FACT AND DEFENDANT'S REQUESTED
FINDINGS OF FACT UNDER RULE 39 (a)**

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No. K-544

THE CHICKASAW NATION, PLAINTIFF

v.

THE UNITED STATES, DEFENDANT

DEFENDANT'S OBJECTIONS TO PLAINTIFF'S REQUESTED FINDINGS OF FACT UNDER RULE 39 (a)

PLAINTIFF'S FINDINGS I AND II (R. 15-17)

No objection.

PLAINTIFF'S FINDINGS III (R. 18-19)

The first paragraph of this finding is objected to because the proof fails to establish that the treaty dated July 15, 1794, between plaintiff and defendant was ever ratified by the Senate or approved by the President.¹

¹ The report of the General Accounting Office (p. 17) states: "A careful and exhaustive search of the records of the General Accounting Office, and certain records of the Office of Indian Affairs, the State Department and the War Department; and an examination of American State Papers, Annals of Congress, and Executive Journals, on file in the Library of Congress, failed to disclose a copy of the aforesaid Agreement of July 15, 1794"; furthermore, the proof fails to show that the consideration promised the defendant for the alleged undertaking to pay to plaintiff in goods in the amount of \$3,000 annually was paid or performed.

If plaintiff has any cause of action arising out of the circumstances, it must be predicated upon appropriations made by Congress rather than upon a treaty obligation. If plaintiff's claim is founded upon a treaty or agreement, then it is essential that plaintiff show its performance of the treaty obligations in order that a recovery may be had upon the obligations of the United States. This plaintiff has not done.

The second paragraph of the finding is objected to for the following reasons: (a) it is not an accurate statement of the facts. The first appropriation made by Congress which can be identified as applicable to the alleged treaty obligations was the Act of June 12, 1798, 1 Stat. 564; appropriations were not made for the years 1794 to 1797, both inclusive; (b) because it states, as against the weight of the evidence, that for the years 1798 to 1811, both inclusive, moneys appropriated by Congress for the purpose of paying to plaintiff nation "goods to the amount of three thousand dollars annually" were not used for that purpose although the report of the General Accounting Office (pp. 20-21) says:

* * * a careful search of the records of the General Accounting Office fails to disclose the disposition of the annual appropriations of \$3,000, aggregating \$42,000 appropriated as a permanent annuity pursuant to the Agreement of July 15, 1794, for the 14-year period from 1798 to 1811; how-

ever, an examination of the ledgers and journals of the office of the Accountant for the War Department, the records of the storekeeper at Philadelphia (now on file in the General Accounting Office), and various records found with the old miscellaneous papers on file in the Office of Indian affairs, discloses that goods of the following values were forwarded from Philadelphia for the Chickasaw Nation of Indians during the years listed:

Year	Value of goods	Remarks
1798.....	\$3,000.00	Annuity for 1798.
1799.....	3,000.00	Annuity for 1799.
1800.....	3,000.64	Annuity for 1800.
1806.....	6,000.54	Annuity for 1805-06.
1807.....	3,000.16	Annuity for 1807.
1808.....	3,002.89	Annuity for 1808.
1809.....	3,000.44	Annuity for 1809.
1810.....	3,000.56	Annuity for 1810.
1811.....	3,000.03	Annuity for 1811.

With respect to the years 1801 to 1804, both inclusive, the report of the General Accounting Office says (pp. 21-22):

Attention is also invited to the fact that no annuities are listed in the foregoing tabulation for the years 1801 to 1804. An examination of the aforementioned records fails to disclose any shipment of goods from Philadelphia for the Chickasaw Nation of Indians for said years; however, said examination does disclose the purchase of certain annuity goods by the Purveyor of Supplies and delivery of same to the Military Storekeeper at Philadelphia, for

distribution as annuities to various Indian tribes, including the Chickasaws, in the following amounts for the years set out:

Year	Value of goods	Remarks
1801.....	\$31,308.90	Annuity for 1801.
1802.....	23,406.73	Annuity for 1802.
1803.....	25,914.23	Annuity for 1803.
1804.....	31,810.29	Annuity for 1804.

The foregoing goods were purchased from moneys appropriated in fulfillment of various agreements and treaties with the Indians northwest of the Ohio, the Six Nations, Chickasaws, Cherokees, and Creeks.

PLAINTIFF'S FINDINGS IV AND V (R. 19-20)

No objection.

PLAINTIFF'S FINDING VI (R. 21)

There is no objection to the first paragraph of this finding.

The second and third paragraphs are objected to for the reason that the statements therein made are not sustained by the weight of the evidence.

The report of the General Accounting Office (p. 306) shows that during the calendar years 1835 and 1836 \$5,140.58 was disbursed for the education of Chickasaw youths pursuant to the obligations of Supplemental Article 2 of the treaty of 1834, 7 Stat. 540. The report also shows (pp. 299-302, 304) that of the \$45,000 appropriated by

Congress in fulfillment of the obligations of Supplemental Article II of the treaty of May 13, 1834, 7 Stat. 450, \$32,000 was disbursed for the education of Chickasaw children during the calendar years 1837 to 1842, both inclusive, and that during the calendar years 1845 to 1849, both inclusive, \$4,000 was disbursed for said purpose, in all \$41,140.58.

The record fails to show that the members of plaintiff tribe, who were required by the treaty provision to "select and recommend" the children who should receive the benefit of the funds, did so "select and recommend."

PLAINTIFF'S FINDING VII (R. 21-22)

This finding is objected to because the evidence does not show that the disbursements made by defendant for the subsistence of refugee Indians in Kansas were illegal disbursements. The record does show that the disbursements from plaintiff's funds for that purpose were made pursuant to the authority of the Acts of Congress of July 5, 1862, 12 Stat. 528, March 3, 1863, 12 Stat. 793, June 25, 1864, 13 Stat. 180, and March 3, 1865, 13 Stat. 562.

The second paragraph of this finding is objected to because it is not only a statement of conclusions of law but it is also a statement of erroneous conclusions of law.

In no event would this finding be a complete statement of the material facts unless it embodied

Article X of the treaty of April 28, 1866, 14 Stat. 69, which provides as follows:

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 late rebellion, and in force at that time, not inconsistent herewith; and further agrees to renew the payment of all annuities and others moneys accruing under such treaty stipulations and acts of legislation, from and after the close of the fiscal year ending on the thirtieth of June, in the year eighteen hundred and sixty-six.

PLAINTIFF'S FINDING VIII (R. 22-23)

This finding is objected to because it is not a complete statement of the material facts as shown by the record.

It appears from the record that by the Act of Congress of June 28, 1898, 30 Stat. 495, 510, which ratified an agreement between the Choctaw and Chickasaw Nations and the United States executed on April 23, 1897 (Atoka agreement), the mineral trustees for the respective tribes were to be selected by each tribe and the amounts of their salaries fixed by the respective tribes. The pertinent provision of the agreement is as follows:

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 the Chickasaw Nation, who shall be a Chickasaw by blood, whose term shall be for two years;* after which the term of appointees shall be 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 said Secretary. [Italics supplied.]

Pursuant to the aforesaid agreement the Chickasaw and Choctaw Nations selected and fixed the salaries of their respective mining trustees until the Act of June 5, 1924, 43 Stat. 390, 397-398, which, among other things, provided that one trustee should be selected representing both tribes and that the salary of said trustee should be paid out of the funds of both tribes. Thereafter the salary of the trustee was paid in approximately the following proportions: three-fourths from the funds of the Choctaw Nation and one-fourth from the

funds of the Chickasaw Nation (Reply, G. A. O. to plaintiff's call, filed Mar. 11, 1943).

PLAINTIFF'S FINDING IX (R. 23-28)

There is no objection to the first paragraph of this finding.

The second paragraph is objected to because it is not sustained by the evidence. The evidence shows that not less than \$145,471.89 was expended for Chickasaw schools during the scholastic year ending June 30, 1905 (Rept. Sec. Int., filed July 18, 1935, pp. 6-7; Supp. Rept., G. A. O., of May 22, 1943).

The table thereafter set forth as a part of the finding is objected to because, as above shown, it is inaccurate.

PLAINTIFF'S FINDING X (R. 29-32)

This finding is objected to because, as shown by the record, it is both misleading and inaccurate. Many of the items of disbursement set forth in the table accompanying the finding were specifically authorized to be made by Acts of Congress, or they were disbursements made for purposes which were excepted from the prohibition in the Act of August 12, 1912, 37 Stat. 518, 531, and the subsequent Acts which provided that "no moneys shall be expended from the tribal funds belonging to the Five Civilized Tribes without specific appropriation by Congress, except as follows:"

Equalization of allotments, per capita and other payments authorized by law to individual members of the respective tribes, tribal and other Indian schools for the current fiscal year under existing law, *salaries and contingent expenses of governors, chiefs, assistant chiefs, secretaries, interpreters, and mining trustees of the tribes for the current fiscal year, and attorneys for said tribes employed under contract approved by the President, under existing law, for the current fiscal year: * * ** [Italics supplied.]

all of which purposes were exceptions to the prohibition contained in section 18 of the Act of August 24, 1912, 37 Stat. 518, 531, and the subsequent similar Acts.

The facts with respect to the items set out in this finding are as follows:

Advertisement and sale of Bloomfield Seminary and appraisement thereof.—Bloomfield Seminary was one of the Chickasaw boarding schools. The Act of April 25, 1906, 34 Stat. 143, authorized the Secretary of the Interior to sell any or all buildings belonging to the Five Civilized Tribes and to pay the expenses of sales from the proceeds therefrom. This was a specific direction by Congress that the cost of making such sales be deducted from the proceeds of sales.

Attorneys' fees.—The disbursements of \$10,698.96 in the fiscal year 1921, and \$9,400 in the fiscal year 1922 were made pursuant to the au-

thority of the Act of May 25, 1918, 40 Stat. 561, 583.

The supplemental report of the General Accounting Office of May 22, 1943, shows (pp. 3-4) that said payments were made on warrants issued to the firm of Mansfield, McMurray and Cornish to cover attorneys' fees; that in compliance with the provisions of the foregoing Act the settlement of the claim was agreed to by the Governor of the Chickasaw Nation. The disbursement during the fiscal year 1928 of \$8,377.08 was made in satisfaction of a judgment of the Court of Claims in the case of *McMurray v. Choctaw and Chickasaw Nations*, decided by the Court of Claims on July 1, 1926, and reported in 62 C. Cls. 458, 516.

Chickasaw warrants.—The supplemental report of the General Accounting Office of May 22, 1943, shows the purposes for which the warrants were issued. From this report it appears that the warrants were issued for one or more of the following purposes: Salaries of Governor, attorney under contract approved by the President, mining trustee, secretaries, and contingent expenses of said officers.

Expense of collecting revenue—Fiscal years 1913 and 1914.—The Acts of August 24, 1912, 37 Stat. 518, 531, and June 30, 1913, 38 Stat. 77, 96, authorized disbursements from the funds of any of the Five Civilized Tribes to cover "expenses incident to and in connection with collection of rents of unallotted lands and tribal buildings, such amount as

may be necessary: *Provided*, That such expenditures shall not in the aggregate exceed ten per centum of the amount collected."

The record does not show that disbursements were made during the fiscal years 1913 and 1914 for the collection of rents (or revenue) in excess of ten percent of the amount collected.

Disbursements during the fiscal years 1915 to 1922, both inclusive, to cover cost of collecting rent or revenue were authorized under the provisions of appropriation acts of Congress, each of which authorized the disbursement of a certain sum from plaintiff's funds to cover the expense of sales of tribal lands and property, including the advertising and sale of the land within the segregated coal and asphalt area of the Choctaw and Chickasaw Nations or the surface thereof, but which acts limited the amount to be disbursed therefrom for expenses of the collection of rents (or revenue). For this reason the disbursements for the collection of revenue during the fiscal years 1915 to 1922, both inclusive, will be discussed in connection with the item covering "expenses of sale of unallotted land."

Sale of segregated coal and asphalt lands and deposits.—By the Act of February 19, 1912, 37 Stat. 67, 70, the Secretary of the Interior was authorized to expend the sum of \$50,000 out of the Choctaw and Chickasaw funds to cover the expenses of the appraisal and sale of the segregated coal and asphalt lands and the coal and asphalt deposits. By Joint Resolution of Decem-

ber 8, 1913, 38 Stat. 767, \$5,000 additional was appropriated out of Choctaw and Chickasaw tribal funds for the completion of the work authorized in connection with the sale of said coal and asphalt lands and deposits. On February 8, 1918, 40 Stat. 433, 435, \$50,000 was appropriated to be paid out of the Choctaw and Chickasaw funds to pay the expenses of appraisements, advertisement and sale of the coal and asphalt deposits in the segregated mineral land in the Choctaw and Chickasaw Nations.

By the Act of February 22, 1921, 41 Stat. 1107, Congress authorized the Secretary of the Interior to reappraise and sell the remainder of the segregated coal and asphalt deposits in the Choctaw and Chickasaw Nations and authorized the expenditure of the balance appropriated by the Act of February 18, 1918, for that purpose.

From the report of the General Accounting Office in the instant case it appears that the expenditures made to cover expenses of the sale of the coal and asphalt lands and coal and asphalt deposits in the Choctaw and Chickasaw Nations did not exceed the sum authorized to be disbursed by the foregoing Acts of Congress.

Expenses of sale of unallotted lands—Fiscal year 1913.—For the fiscal year 1913 the finding states that the disbursement of \$138.78 made for that purpose was “not specifically appropriated for by Congress.” The fact is that the Act of

August 24, 1912, 37 Stat. 518, 531, authorized the disbursement of \$25,000 to cover expenses of advertisement of sale and sale of the unallotted lands and other tribal property belonging to any of the Five Civilized Tribes.

Fiscal year 1915.—For the fiscal year 1915 the finding states that disbursements in the total sum of \$7,554.85 were made from plaintiff's funds without specific appropriation by Congress. The fact is that the Act of August 24, 1914, 38 Stat. 518, 530–531, authorized an expenditure of an amount not exceeding \$40,000 for the purpose of paying the expenses of sale of tribal lands and property, including the segregated coal and asphalt lands of the Choctaw and Chickasaw Nations or the surface thereof, provided that not to exceed \$2,500 of such amount may be used in connection with the collection of rents of unallotted lands and tribal buildings. Under authority of said Act plaintiff's funds were used for the purposes specified, as follows:

Sale of unallotted land-----	\$7,554.85	(Rept. G. A. O., p. 589)
Collecting revenue-----	1,693.85	(Rept. G. A. O., pp. 589–593)
Total-----	9,248.70	

Fiscal year 1916.—For the fiscal year 1916 the finding states that \$8,805.72 was disbursed from plaintiff's funds without specific appropriation by Congress. The Joint Resolution of March 4, 1915, 38 Stat. 1228, making appropriations for the fiscal year 1916, authorized the use of the tribal funds not to exceed the amount appropriated for the fis-

cal year 1915. Under the authority of the resolution, plaintiff's funds were used as follows:

Sale of unallotted land.....	\$8,805.72	(Rept. G. A. O., p. 589)
Expense of collecting revenue.....	1,169.13	(Rept. G. A. O., p. 589)
Total	9,974.85	

Fiscal year 1917.—During the fiscal year 1917 the finding states that \$8,515.78 was disbursed from plaintiff's funds without specific appropriation by Congress. The Act of May 18, 1916, 39 Stat. 123, 148, authorized that \$35,000 be disbursed from plaintiff's funds for said purposes during this fiscal year, provided that not more than \$10,000 be used for the collection of rents of unallotted lands and tribal buildings. Under authority of the Act disbursements were made from plaintiff's funds as follows:

Sale of unallotted land.....	\$8,515.78	(Rept. G. A. O., p. 589)
Expense of collecting revenue.....	790.56	(Rept. G. A. O., p. 589)
Total	9,306.34	

Fiscal year 1918.—During the fiscal year 1918 the finding states that disbursements were made from plaintiff's funds to cover expenses of the sale of unallotted lands and the collection of revenue as follows:

Expenses of sale of unallotted land..	\$7,444.40	(Rept. G. A. O., p. 590)
Expenses of collecting revenue.....	1,283.81	(Rept. G. A. O., p. 590)
Total	\$8,728.21	

The Act of March 2, 1917, 39 Stat. 969, 984-985), authorized the use of \$35,000 for said purposes, provided that not to exceed \$5,000 be used for the collection of rents.

Fiscal year 1919.—During this fiscal year the finding states unauthorized disbursements were made for said purposes as follows:

Expenses of sale of unallotted lands	\$7,846.50	(Rept. G. A. O., p. 590)
Expense of collecting revenue.....	80.21	(Rept. G. A. O., p. 589)
Total	7,926.71	

The Act of May 25, 1918, 40 Stat. 561, 581, authorized the use, for said purposes, of \$30,000, provided that not to exceed \$2,500 be used for the collection of rents.

Fiscal year 1920.—The finding states that during this year unauthorized disbursements were made from plaintiff's funds for said purposes as follows:

Expense of sale of unallotted lands	\$2,200.88	(Rept. G. A. O., p. 590)
Expense of collecting revenue.....	00.00	(Rept. G. A. O., p. 590)
Total	2,200.88	

The Act of June 30, 1919, 41 Stat. 2, 23-24, authorized the use of plaintiff's funds for both purposes of \$10,000, provided that not to exceed \$2,500 be used for the collection of rents.

Fiscal year 1921.—The finding states that during this year unauthorized disbursements were made from plaintiff's funds for said purposes as follows:

Expense of sale of unallotted lands	\$2,093.53	(Rept. G. A. O., p. 591)
Expense of collecting revenue.....	150.97	(Rept. G. A. O., p. 591)
Total	2,244.50	

The Act of February 14, 1920, 41 Stat. 408, 427, authorized the use of \$7,500 of plaintiff's funds for said purposes, provided that not to exceed \$2,500 be used for collecting rents.

Fiscal year 1922.—The finding states that during this fiscal year unauthorized disbursements were made from plaintiff's funds for said purposes as follows:

Expense of sale of unallotted lands.....	\$00. 00	(Rept. G. A. O., p. 591)
Expense of collecting revenue..	24. 85	(Rept. G. A. O., p. 591)
Total.....	24. 85	

The Act of March 3, 1921, 41 Stat. 1225, 1242-1243, authorized disbursements from plaintiff's funds for both purposes in the sum of \$7,500, provided that not to exceed \$2,500 be used for collecting rents.

Fiscal year 1923.—The finding states that during this fiscal year unauthorized disbursements were made from plaintiff's funds for said purposes as follows:

Expense of sale of unallotted lands.....	\$324. 99	(Rept. G. A. O., p. 591)
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The Act of May 24, 1922, 42 Stat. 552, 575, authorized disbursements from plaintiff's funds of \$6,000 to cover the expenses of the sale of unallotted lands and the collection of revenue.

Fiscal year 1924.—The finding states that unauthorized disbursements during this fiscal year for said purposes were made as follows:

Expense of sale of unallotted lands.....	\$1, 219. 81	(Rept. G. A. O., p. 593)
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The Act of January 24, 1923, 42 Stat. 1174, 1196, authorized disbursements from plaintiff's funds for said purposes in the sum of \$6,000.

Fiscal year 1925.—The finding states that during this fiscal year unauthorized disbursements for said purposes were made as follows:

Expense of sale of unallotted lands....	\$906.57	(Rept. G. A. O., p. 593)
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The Act of June 5, 1924, 43 Stat. 390, 398, authorized disbursements from plaintiff's funds for said purposes in the sum of \$5,000.

Fiscal year 1926.—The finding states that during this fiscal year unauthorized disbursements were made for said purposes as follows:

Expense of sale of unallotted lands...	\$1,353.47	(Rept. G. A. O., p. 593)
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The Act of March 31, 1925, 43 Stat. 1141, 1148, authorized disbursements from plaintiff's funds for said purposes in the sum of \$6,860.

Fiscal year 1927.—The finding states that during this fiscal year disbursements were made from plaintiff's funds for said purposes as follows:

Expense of sale of unallotted lands...	\$1,491.66	(Rept. G. A. O., p. 595)
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The Act of May 10, 1926, 44 Stat. 453, 460, authorized disbursements from plaintiff's funds for said purposes in the sum of \$6,500.

Fiscal year 1928.—The finding states that during this fiscal year unauthorized disbursements were made from plaintiff's funds for said purposes as follows:

Expense of sale of unallotted lands...	\$1,443.53	(Rept. G. A. O., p. 611)
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The Act of January 5, 1927, 44 Stat. 941, 943, authorized disbursements from plaintiff's funds for said purposes in the sum of \$6,000.

Fiscal year 1929.—The finding states that during this fiscal year unauthorized disbursements were made from plaintiff's funds for said purposes as follows:

Expense of sale of unallotted lands— \$1,629.41 (Rept. G. A. O., p. 613)

The Act of March 7, 1928, 45 Stat. 200, 206, authorized disbursements from plaintiff's funds for said purposes in the sum of \$6,000.

Per capita payments, expenses.—The finding states that \$1,224.96 of plaintiff's funds were disbursed during the fiscal year 1929 to cover per capita payment expenses and that Congress did not specifically authorize this disbursement.

The truth is that Congress did specifically authorize the disbursement in the Act of March 7, 1928, 45 Stat. 200, 223, in the following language:

For the expense of per capita payments to the enrolled members of the Choctaw and Chickasaw Tribes of Indians, Five Thousand Dollars to be paid from the funds held by the United States in trust for said Indians.

Payment in lieu of allotments.—The finding states that during the fiscal years 1917, 1920, 1923, and 1924, \$2,384.11 was disbursed from plaintiff's funds without specific authority. By the Act of August 1, 1914, 38 Stat. 582, 600, it was in part provided:

The Secretary of the Interior is hereby authorized to enroll on the proper respective rolls of the Five Civilized Tribes, as

indicated, the persons enumerated in Senate Document Numbered Four hundred and seventy-eight, Sixty-third Congress, second session: *Provided*, That when so enrolled there shall be paid to each and every such person out of the funds in the Treasury of the United States to the credit of the respective tribe with which such person is enrolled the following sums in lieu of allotment of land: * * * to each such person placed on the Choctaw, Chickasaw * * * rolls, a sum equal to twice the appraised value of the allotment of such tribe as fixed by the Commission to the Five Civilized Tribes for allotment purposes * * *.

The foregoing provision of the Act of August 1, 1914, constituted both a specific authority and a continuing authority to make payments in lieu of allotments until the designated allottees were paid.

Payments for improvements.—The finding states that \$8,459.45 was disbursed from plaintiff's funds without specific authority therefor to cover payments for improvements. Section 58 of the Act of Congress of July 1, 1902, 32 Stat. 641, 654, which ratified the supplemental agreement between the United States and the Choctaw and Chickasaw Nations, provides as follows:

No lands so reserved shall be allotted to any member or freedman, and the improvements of any member or freedman existing

upon any of the lands so segregated and reserved at the time of their segregation and reservation shall be appraised under the direction of the Secretary of the Interior, and shall be paid for out of any common funds of the two tribes in the Treasury of the United States, upon the order of the Secretary of the Interior. [Italics supplied.]

Expenses covering insurance, medical attention, miscellaneous agency expenses, including employees, pay of grazing fee collector, pay of miscellaneous employees, pipe line damage, protection of timber, timber investigation and roads and bridges do not appear to have been specifically authorized by acts of Congress.

PLAINTIFF'S FINDINGS XI

“(a)” Defendant objects to the inclusion in this finding of the item of \$1,259.98, set forth under the heading (a), because it does not appear from the record that said amount was lost to plaintiff. With respect to this item the report of the General Accounting Office states (Note j, p. 520) that this amount was unaccounted for because “Settlement No. 43,517-1903 of the account of George Beck, Superintendent of Schools, Chickasaw Indians,” could not be located.

The item of \$890.19 is objected to because it is shown in a letter addressed to the Attorney General by the Comptroller General of April 14, 1933, of May 22, 1943, that said amount had been disbursed

for the benefit of the Chickasaw Nation. The letter, in part, states:

Your attention is invited to page 522 of the aforesaid report wherein an amount of \$890.19 is set out as a balance unaccounted for. (See Item (p) on page 522.) When report on the Chickasaw case was being compiled, the record in which this item is accounted for could not be located and the report was forwarded to you with said item explained by note. (See Note (p) on page 524.)

The aforementioned record has now been located and an examination thereof discloses that the aforesaid amount of \$890.19 was disbursed for the benefit of the Chickasaw Nation of Indians during the fiscal year 1907 from the fund “Indian Moneys, Proceeds of Labor, Chickasaw National, Royalties, Grazing, etc.,” * * *

“(b)” Defendant objects to a finding that there was a shortage in the account of a disbursing officer of \$6,585.92 which has not been returned to plaintiff, because the record shows that the shortage claimed has been fully reimbursed by defendant.

By the Act of August 30, 1852, 10 Stat. 43, Congress appropriated “for payment to the Chickasaw Indians for the amount of defalcation of Captain R. D. C. Collins, United States Disbursing Agent, together with interest thereon at the rate of six percent per annum from March Eighteen Thirty-nine, until paid” \$24,892.29.

In the report of the General Accounting Office, page 230, it is shown that pursuant to said Act \$45,592.68, representing \$24,982.29 principal, and \$20,610.39 interest was credited to plaintiff's account on September 24, 1852.

The compelling conclusion is that when Congress made this appropriation to reimburse plaintiff for the shortage in the accounts of Collins the appropriation was intended to and did cover the full amount of the shortage.

“(c),” “(d),” “(f),” and “(g).” The items of this finding, appearing under the heading (c), (d), (f), and (g) and which are shown by the report of the General Accounting Office to have been transferred to the funds of other Tribes, deposited in the funds of other Tribes or disbursed for other Tribes, are objected to because there is no evidence showing that in any instance error was made.

An examination of the reports of the General Accounting Office in *Choctaw* case No. K-260, the *Creek* case, No. H-510, the *Cherokee* case, No. L-268, and the *Seminole* case, No. L-51, all general accounting cases, shows that in each report funds of one Tribe have been transferred to the funds of other Tribes. For example, in the report filed in the *Creek* case, No. H-510, at page 628 it appears that \$18,299.51 of Creek funds was deposited to the credit of the Choctaw and Chickasaw Tribes and that other amounts were deposited to the credit of other of the Five Civilized Tribes.

Again, in the *Creek* case the report shows at page 641 that \$4,881.00 was transferred from the Creek fund to an account of the Chickasaw Nation.

In the report in the *Choctaw* case, No. K-260, on page 693 it appears that \$7,030.84 of Choctaw funds was disbursed for the benefit of the Chickasaw Nation. On page 685 of the same report it is shown that \$1,125.00 was transferred from a Choctaw deposit to a Chickasaw account, and on pages 694 and 695 it is shown that the sum of \$16,190.10 was transferred from a Choctaw account to a Chickasaw account.

As instances which justify the transfer of moneys deposited in the Chickasaw accounts to the Choctaw accounts, or the use of money deposited in the Chickasaw account for the benefit of the Choctaws, the attention of the Court is invited to the deposits of money belonging to the two Tribes arising from the sale of tribal property in which they were interested at the ratio of one to three. In many instances the deposits to the accounts of the Chickasaw Nation were greater than one-fourth of the whole as shown by the General Accounting Office report in the instant case. For example, deposits were made in the Treasury to the credit of the Chickasaw Nation of proceeds from the sale of unallotted land, in the sum of \$5,635,657.43 and to the credit of the Choctaw Nation in the sum of \$16,863,849.28. Thus it appears that the Chickasaw Nation received \$10,-

780.76 in excess of one-fourth of the total (Rept. G. A. O., pp. 511-512).

Deposits were made to the credit of the Chickasaw Nation as "proceeds of labor, royalties, grazing, etc." in the sum of \$1,653,392.16 and to the credit of the Choctaw Nation in the sum of \$4,898,752.36. Here the Chickasaws received \$15,355.80 in excess of one-fourth of the total (Rept. G. A. O., pp. 511-512).

If it should be proper to find as a fact that the items set forth in plaintiff's finding constituted bookkeeping errors, then defendant submits that the finding should also set forth similar errors made in favor of the Chickasaw Nation and a balance shown as was done in the *Creek* case (78 C. Cls. 474, 483).

"(e)" "*Exchange fees.*"—The record fails to disclose that Congress authorized disbursements to cover "Exchange fees." However, such disbursements were for the benefit of plaintiff and constituted a gratuity.

DEFENDANT'S REQUESTED FINDINGS

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

FINDING I

Plaintiff's suit was brought pursuant to the authority of a Special Jurisdictional Act approved

June 7, 1924, 43 Stat. 537, as modified by Joint Resolution of May 19, 1926, 44 Stat. 568, and by the Acts approved February 19, 1929, 45 Stat. 1229, and August 16, 1937, 50 Stat. 650.

FINDING II

(See plaintiff's finding III, R. 18-19.)

By Act approved February 25, 1799, 1 Stat. 619, appropriations were authorized to defray the expenses "which may arise, in carrying into effect certain Treaties between the United States and several tribes or nations of Indians." This Act in part provided as follows:

An agreement made and entered into with the chiefs of the Chickasaw Nation, in Philadelphia, on the Fifteenth of July One Thousand Seven Hundred and Ninety-four, to pay to the said Nation goods to the amount of \$3,000 annually.

The agreement referred to in the Act appears never to have been formally ratified by the United States Senate. A careful and exhaustive search by the General Accounting Office in the records of the Office of Indian Affairs, the State Department, the War Department and an examination of American State Papers, Annals of Congress, and Executive Journals on file in the Library of Congress fails to disclose a copy of said agreement. The only evidence tending to establish the obligations of said agreement is contained in the Act of February 25, 1799, *supra*.

The Act of Congress of June 12, 1798, 1 Stat. 563, 564, made an appropriation for the Indian Department "for the payment of annuities to the Six Nations, Chickasaws, Cherokees, and Creeks the sum of Fourteen Thousand Dollars."

Pursuant to the Act of February 25, 1799, *supra*, payment were made from the Treasury on account of the aforesaid agreement for the years 1799 to 1831, both inclusive, and by the Appropriation Acts of June 4, 1832, 3 Stat. 527, February 20, 1833, 4 Stat. 617, June 26, 1834, 4 Stat. 683, March 3, 1835, 4 Stat. 788, and June 15, 1836, 5 Stat. 44, annual appropriations of \$3,000 were made pursuant to said alleged agreement.

During each of the years 1837 to 1902, both inclusive, Congress appropriated \$3,000 to fulfill the stipulation and agreement of July 15, 1794.

By Act of March 3, 1901, 31 Stat. 1062, Congress authorized an appropriation of \$60,000, using the following language:

That the Secretary of the Treasury is hereby authorized and directed to place upon the books of the Treasury, to the credit of the Chickasaws, the sum of \$60,000, being in full for the permanent annuity in money or otherwise, as guaranteed to them by the Treaty of July Fifteen, Seventeen Hundred and Ninety-four.

The report of the General Accounting Office, pages 20-21, states:

* * * a careful search of the records of the General Accounting Office fails to disclose the disposition of the annual appropriations of \$3,000, aggregating \$42,000 appropriated as a permanent annuity pursuant to the Agreement of July 15, 1794, for the 14-year period from 1798 to 1811; however, an examination of the ledgers and journals of the office of the Accountant for the War Department, the records of the storekeeper at Philadelphia (now on file in the General Accounting Office) and various records found with the old miscellaneous papers on file in the Office of Indian Affairs, discloses that goods of the following values were forwarded from Philadelphia for the Chickasaw Nation of Indians during the years listed:

Year	Value of goods	Remarks
1798.....	\$3,000.00	Annuity for 1798.
1799.....	3,000.00	Annuity for 1799.
1800.....	3,000.64	Annuity for 1800.
1806.....	6,000.45	Annuity for 1805-06.
1807.....	3,000.16	Annuity for 1807.
1808.....	3,002.89	Annuity for 1808.
1809.....	3,000.44	Annuity for 1809.
1810.....	3,000.56	Annuity for 1810.
1811.....	3,000.03	Annuity for 1811.

The report of the General Accounting Office with respect to the years 1801 to 1804, both inclusive, further states (pp. 21-22):

Attention is also invited to the fact that no annuities are listed in the foregoing tabulation for the years 1801 to 1804. An examination of the aforementioned records

fails to disclose any shipment of goods from Philadelphia for the Chickasaw Nation of Indians for said years; however, *said examination does disclose the purchase of certain annuity goods by the Purveyor of Supplies and delivery of same to the Military Storekeeper at Philadelphia, for distribution as annuities to various Indian tribes, including the Chickasaws, in the following amounts for the years set out:*

Year	Value of goods	Remarks
1801.....	\$31,308.90	Annuity for 1801.
1802.....	23,406.73	Annuity for 1802.
1803.....	25,914.23	Annuity for 1803.
1804.....	31,810.29	Annuity for 1804.

The foregoing goods were purchased from moneys appropriated in fulfillment of various agreements and treaties with the Indians northwest of the Ohio, the Six Nations, *Chickasaws, Cherokees, and Creeks.*

It thus appears that the plaintiff nation received the benefits of all moneys appropriated on account of this obligation for the years 1798 to 1811, both inclusive; and that during the period 1812 to 1852 of the moneys appropriated on said account \$10,722.19 is not shown to have been disbursed for plaintiff's benefit.

FINDING III

(See plaintiff's finding IV, R. 19-20.)

By Article III of the Treaty of September 20, 1816, 7 Stat. 150, between the United States and

the Chickasaw Nation the United States agreed to pay to the Chickasaw Nation \$12,000 per annum for ten successive years. Appropriations were made by Congress in the total sum of \$120,000 on account of this treaty obligation. The record shows that of the amount so appropriated \$118,000 was disbursed for the purposes as designated in the treaty.

FINDING IV

(See plaintiff's finding V, R. 20.)

By Article III of the Treaty of October 9, 1818, 7 Stat. 192, between the United States and the Chickasaw Nation the United States agreed to pay to the Chickasaw Nation the sum of \$20,000 per annum for fifteen successive years. Congress made appropriations in accordance with said obligation in the total sum of \$300,000. Of the amount so appropriated \$299,000 is shown to have been paid to the Chickasaw Nation for the purposes named in the treaty.

FINDING V

(See plaintiff's finding VI, R. 21.)

The Supplemental Article II to the Treaty of May 24, 1834, 7 Stat. 450, between the United States and the Chickasaw Nation provided as follows:

The Chickasaw people express a desire that the Government shall, at the expense of the United States, educate some of their

children, and they urge the justice of their application, on the ground that they have ever been faithful and friendly to the people of this country—that they have never raised the tomahawk to shed the blood of an American, and have given up heretofore to their white brothers extensive and valuable portions of their country, at a price wholly inconsiderable and inadequate and from which the United States have derived great wealth and important advantages; therefore, with the advice and consent of the President and Senate of the United States, it is consented that three thousand dollars for fifteen years, be appropriated and applied, under the direction of the Secretary of War, for the education and instruction within the United States, of such children, male and female or either, as the seven persons named in the treaty to which this is a supplement, and their successors, with the approval of the agent, from time to time may select and recommend.

In fulfillment of the obligations of said provision Congress made annual appropriations in the total sum of \$45,000. During the calendar years 1835 and 1836, \$5,150.58 was disbursed therefrom for the education of Chickasaw youths (Rept. G. A. O., p. 306). Of the \$45,000 so appropriated the sum of \$32,000 was disbursed for the education of Chickasaw children during the calendar years 1837 to 1842, both inclusive, and the sum of \$4,000 was disbursed for the same

purposes during the calendar years 1845 to 1849, both inclusive (Rept. G. A. O., pp. 299–302). The record fails to show that the children who were to receive the benefit of the moneys appropriated were selected and recommended by the seven members of the Tribe as required by the treaty provision.

FINDING VI

(See plaintiff's finding VII, R. 21–22.)

On July 12, 1861, the Chickasaw Nation entered into a treaty with the states which had seceded from the Union and thereupon with said states took up arms against the United States (Rept. Commr. Ind. Affrs. of 1865, p. 482). At that time the United States was obligated by treaty stipulations to pay certain annuities to the Chickasaw Nation. On February 22, 1862, the Senate and House of Representatives of the United States adopted a resolution (12 Stat. 614) which authorized the Secretary of the Interior to pay out of the annuities payable to the Five Civilized Tribes “and which had not been paid, in consequence of the cessation of intercourse with said tribe, so much of the same as may be necessary to be applied to relief of such portions of said tribes as have remained loyal to the United States, and have been or may be driven from their homes in the Indian Territory in the State of Kansas or elsewhere.”

The Indian Appropriation Act of July 5, 1862, 12 Stat. 512, 528, contained the following provisions:

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 Appropriation Acts of March 3, 1863, 12 Stat. 774, 793, June 25, 1864, 13 Stat. 161, 180, and March 3, 1865, 13 Stat. 541, 562, contain similar provisions.

The treaty between the Chickasaw and Choctaw Nations and the United States of April 28, 1866, 14 Stat. 769, 774, contained the following article:

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 late rebellion, and in force at that time, *not inconsistent herewith*; and *further agrees to renew the payment of all annuities and others moneys accruing under such treaty stipulations and acts of legislation, from and after the close of the fiscal year ending on the thirtieth of June, in the year eighteen hundred and sixty-six.*

FINDING VII

(See plaintiff's finding VIII, R. 22-23.)

The agreement between the Chickasaw and Choctaw Nations and the United States of April 23, 1897 (Atoka Agreement), ratified by the Act of June 28, 1898, 30 Stat. 495, 510, contained the following provision:

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 the Chickasaw Nation, who shall be a Chickasaw by blood, whose term shall be for two*

years; after which the term of appointees shall be 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 said Secretary.

Pursuant to the foregoing provision of said agreement and up to the beginning of the fiscal year 1925 the Chickasaw and Choctaw Nations selected and fixed the salaries of their respective mining trustees. The salaries of said trustees were paid out of the funds of the respective tribes.

The Indian Appropriation Act of June 5, 1924, 43 Stat. 390, 397-398, making appropriations for the fiscal year 1925, provided "that for the current fiscal year money may be so expended [by the Secretary of the Interior from tribal funds] for * * * salaries and contingent expenses of the Governor of the Chickasaw Nation and Chief of the Choctaw Nation and one mining trustee for the Choctaw and Chickasaw Nations at salaries at the rate heretofore paid." The Indian Appro-

priation Acts for the fiscal years 1926 to 1932, both inclusive, contained like provisions.

During the fiscal years 1925 to 1932 there was disbursed from the Chickasaw funds in payment of the salary of the mining trustee the total sum of \$6,235.71, and during the same period there was disbursed from Choctaw funds on account of said salary the total sum of \$17,458.23 (Reply G. A. O. to plttf's call, filed Mar. 11, 1943).

FINDING VIII

(See plaintiff's finding IX, R. 23.)

By an Act of Congress approved April 26, 1906, 34 Stat. 137, 140, the Secretary of the Interior was directed to assume control and direction of the schools of the Chickasaw Tribe of Indians and other schools of the Five Civilized Tribes and to expend from the funds of said tribe money necessary to defray the expenses therefor, but not to exceed in any one year the amount expended for the scholastic year ending June 30, 1905. The amount of money expended for the schools of plaintiff Tribe during the scholastic year 1905 was not less than \$145,471.89 (Rept. Sec. Int., filed herein July 18, 1935, pp. 6-7; Supp. Rept. G. A. O., of May 22, 1943).

During no scholastic year from 1907 to 1929, both inclusive, has defendant disbursed from plaintiff's funds moneys for plaintiff's schools in excess of \$145,471.89.

FINDING IX

(See plaintiff's finding X, R. 29-32.)

During the fiscal years 1913 to 1929, both inclusive, disbursements were made from plaintiff's funds by defendant for plaintiff's benefit, which plaintiff claims were made without the specific authority of Congress. The amounts of such disbursements and the congressional authority therefor, if any, are set forth under headings indicating the purpose thereof.

Appraising Bloomfield Seminary and advertising its sale.—Bloomfield Seminary was a Chickasaw girls' boarding school. The amount disbursed for expenses incident to the appraisalment of its value and advertising its sale was \$42.84 (Rept. G. A. O., pp. 589, 590).

The Act of April 25, 1906, 34 Stat. 143 authorized the Secretary of the Interior to sell any and all buildings belonging to the Five Civilized Tribes and to pay the expenses of sale out of the proceeds.

Attorneys' fees.—The Appropriation Act of May 25, 1918, 40 Stat. 561, 583, contained a provision which authorized the Court of Claims to hear and determine certain claims of J. F. McMurray, which had been assigned to him by the law firm of Mansfield, McMurray & Cornish, against the Chickasaw and Choctaw Nations. Two of the claims mentioned in the Act were on warrants issued by the Chickasaw Nation to said

firm to cover legal services. The Act also provided as follows:

Provided, That the Secretary of the Interior is hereby authorized to adjust, by mutual agreement with the interested parties herein, under the terms hereof and within sixty days after its approval by the President of the United States, any or all of the matters covered by the above provisions, and should such agreement be made by the Secretary of the Interior, he is hereby authorized and directed to make requisition upon the Treasurer of the United States for the payment of the same out of any funds of the Choctaw and Chickasaw Indians as their interests may appear, and the Treasurer shall pay the same: * * *.

Under the authority of this Act, and as specified therein, the claims on the two Chickasaw warrants were settled by mutual agreement. During the fiscal year 1921, there was disbursed from Chickasaw funds the sum of \$10,688.96 in satisfaction of one warrant (Rept. G. A. O., p. 591) and during the fiscal year 1922 \$9,400 was so disbursed in satisfaction of the second warrant (Rept. G. A. O. of May 22, 1943).

On the remaining claims McMurray filed a petition in the Court of Claims against the Choctaw and Chickasaw Nations. That case (No. 33996) was decided on July 1, 1926, and is reported in Volume 62, Court of Claims Reports, pages 458-

516. In that case a judgment was rendered against the Choctaw and Chickasaw Nations in the sum of \$33,508.35. The payment made from plaintiff's funds to cover attorneys' fees during the fiscal year 1928, of \$8,377.08 (Rept. G. A. O., p. 611), was in satisfaction of one-fourth of the amount of said judgment.

Chickasaw warrants.—During the fiscal years 1913 to 1929, both inclusive, warrants issued by the Chickasaw Nation in the total amount of \$261,128.87 were paid by defendant from Chickasaw funds. The warrants so paid were issued by the Chickasaw Nation for the following purposes:

- (a) Salary of Governor.
 - (b) Expenses of Governor.
 - (c) Attorneys' fees and expenses, under contract approved by the President.
 - (d) Salary of Mineral Trustee.
 - (e) Pay of Secretaries.
 - (f) Pay of Interpreter.
- (Supp. Rept., G. A. O., of May 22, 19⁴³14.)

The Appropriation Act of August 1, 1912, 37 Stat. 518, contained the following provision:

Provided, That during the fiscal year ending June thirtieth, nineteen hundred and thirteen, no moneys shall be expended from the tribal funds belonging to the Five Civilized Tribes without specific appropriation by Congress, except as follows: Equalization of allotments, per capita and other payments authorized by law to individual members of the respective tribes, tribal and

other Indian schools for the current fiscal year under existing law, salaries and contingent expenses of governors, chiefs, assistant chiefs, secretaries, interpreters and mining trustees of the tribes for the current fiscal year, and attorneys for said tribes employed under contract approved by the President, under existing law, for the current fiscal year: * * *

All of the above-mentioned warrants were issued for purposes which fell within the exceptions contained in said Act and all subsequent acts making appropriations for the Indian Service and the payments thereof were authorized to be made "without specific appropriation by Congress."

Expenses of collecting revenue during fiscal years 1913 and 1914.—The Acts of August 24, 1912, 37 Stat. 518, 531, and June 30, 1913, 38 Stat. 77, 96, authorized disbursements from the funds of any of the Five Civilized Tribes to cover "expense incident to and in connection with collection of rents of unallotted lands and tribal buildings, such amount as may be necessary: *Provided*, That such expenditures shall not in the aggregate exceed ten per centum of the amount collected."

The record does not show that disbursements were made during the fiscal years 1913 and 1914 for the collection of rents (or revenue) in excess of ten percent of the amount collected.

Expenses of sale of unallotted land and collecting revenue.—During the fiscal years 1913 to 1929,

both inclusive, defendant made disbursements from plaintiff's funds to cover expenses of sale of plaintiff's unallotted lands and collecting plaintiff's revenue, pursuant to the authority of acts of Congress, as follows:

Fiscal year	Acts authorizing disbursement	Amount authorized	Ex-penses, collect-ing revenue	Rept. G. A. O. (page)	Ex-penses, sale un-allotted land	Rept. G. A. O. (page)	Total disburse-ment
1913	Aug. 24, 1912 (37 Stat. 518, 531).....	\$25,000.00	\$3,835.45	561	\$138.78	588	\$4,074.23
1914	June 30, 1913 (38 Stat. 77, 96).....	40,000.00	1,626.01	561			1,626.01
1915	Aug. 1, 1914 (38 Stat. 530-531).....	40,000.00	1,693.85	563, 589	7,554.85	589	9,248.70
1916	Mar. 4, 1915, J. Res. (38 Stat. 1228).....	40,000.00	1,169.13	589	8,805.72	589	9,974.85
1917	May 18, 1916 (39 Stat. 123, 148).....	35,000.00	790.56	509	8,515.78	589	9,183.42
1918	Mar. 2, 1917 (39 Stat. 969, 984-985).....	35,000.00	1,283.81	590	7,444.40	590	8,728.21
1919	May 25, 1918 (40 Stat. 561, 581-582).....	30,000.00	80.21	590	7,846.50	590	7,926.71
1920	June 30, 1919 (41 Stat. 2, 22-23).....	10,000.00	00.00		3,200.88	590	3,200.68
1921	Feb. 14, 1920 (41 Stat. 408, 427).....	7,500.00	150.97	591	2,093.53	591	2,244.50
1922	Mar. 3, 1921 (41 Stat. 1225, 1242-1243).....	7,500.00	24.85	591	00.00		24.85
1923	May 24, 1922 (42 Stat. 552, 575).....	6,000.00	00.00		324.99	591	324.99
1924	Jan. 24, 1923 (42 Stat. 1174, 1196).....	6,000.00	00.00		1,219.81	593	1,219.81
1925	June 5, 1924 (43 Stat. 390, 398).....	5,000.00	00.00		906.57	593	906.57
1926	Mar. 31, 1925 (43 Stat. 1141, 1148).....	6,860.00	00.00		1,353.47	593	1,353.47
1927	May 10, 1926 (44 Stat. 453, 460).....	6,000.00	00.00		1,491.66	595	1,491.66
1928	Jan. 5, 1927 (44 Stat. 941, 943).....	6,000.00	00.00		1,431.54	611	1,431.54
1929	Mar. 7, 1928 (45 Stat. 200, 206).....	6,000.00	00.00		1,628.41	613	1,628.41

Expenses of sale of segregated coal and asphalt lands and deposits.—During the fiscal years 1913 to 1929, defendant disbursed from plaintiff's funds the total sum of \$13,572.28 to cover the expenses

of the sale of plaintiff's segregated coal and asphalt lands, and coal and asphalt deposits (Rept. G. A. O., pp. 561, 589, 590, 591, 593).

By the Act of February 19, 1912, 37 Stat. 67, Congress authorized the sale of the surface of the segregated coal and asphalt lands of the Choctaw and Chickasaw Nations and appropriated out of the funds of said nations the sum of \$50,000 to pay the expenses of the classification, appraisement, and sale of said lands.

By the Act of June 30, 1913, 38 Stat. 77, 94-95, the Act approved February 19, 1912, *supra*, was amended to provide that the classification and appraisement of such lands shall be completed not later than December 1, 1913, and added \$10,000 to the appropriation in the amended Act for that purpose.

The Act of February 18, 1918, 40 Stat. 433, authorized the sale of the coal and asphalt deposits in the segregated mineral land in the Choctaw and Chickasaw Nations and appropriated out of any Choctaw and Chickasaw funds the sum of \$50,000 to pay the expenses of appraising, advertising, and sale of the coal and asphalt deposits in said land.

The Act of February 22, 1921, 41 Stat. 1107, authorized the Secretary of the Interior to sell the remainder of the coal and asphalt deposits in the Choctaw and Chickasaw Nations and further authorized that the unexpended balance appropriated for said purpose by the Act of February

8, 1918, *supra*, be appropriated out of the Choctaw and Chickasaw tribal funds for that purpose.

The record fails to show that disbursements in excess of the amounts authorized by the foregoing acts of Congress were made from plaintiff's funds for the purpose of paying the expenses of the sale of the segregated coal and asphalt lands and deposits of the Choctaw and Chickasaw Nations.

Payment in lieu of allotments.—By the Act of August 1, 1914, 38 Stat. 582, 600, it was provided:

The Secretary of the Interior is hereby authorized to enroll on the proper respective rolls of the Five Civilized Tribes, as indicated, the persons enumerated in Senate Document Numbered Four hundred and seventy-eight, Sixty-third Congress, second session: *Provided*, That when so enrolled there shall be paid to each and every such person out of the funds in the Treasury of the United States to the credit of the respective tribe with which such person is enrolled the following sums in lieu of allotment of land: * * * to each such person placed on the Choctaw, Chickasaw * * * rolls, a sum equal to twice the appraised value of the allotment of such tribe as fixed by the Commission to the Five Civilized Tribes for allotment purposes * * *

During the fiscal years 1917, 1920, 1923, and 1924 defendant disbursed from plaintiff's funds the sum of \$2,384.11 in making payments in lieu

of allotments pursuant to the authority of the foregoing provision of the Act of August 1, 1914, *supra*.

Payments for improvements.—Section 58 of the Act of Congress of July 1, 1902, 32 Stat. 641, 654, which ratified the supplemental agreement between the United States and the Choctaw and Chickasaw Nations, provides as follows:

No lands so reserved shall be allotted to any member or freedman, and the improvements of any member or freedman existing upon any of the lands so segregated and reserved at the time of their segregation and reservation shall be appraised under the direction of the Secretary of the Interior, and shall be paid for out of any common funds of the two tribes in the Treasury of the United States, upon the order of the Secretary of the Interior.

Pursuant to the authority granted in said Act, defendant made disbursements from plaintiff's funds during the fiscal years 1914 to 1925, both inclusive, in the total sum of \$8,459.45 (Rept. G. A. O., pp. 561, 563, 589, 590, 591, 593, 595, 611).

Per capita payment expenses.—During the fiscal year 1929 defendant disbursed from plaintiff's funds the sum of \$1,224.96 to cover expenses in making *per capita* payments to the members of the Chickasaw Tribe (Rept. G. A. O., p. 613), pursuant to the authority of the Act of March 7, 1928, 45 Stat. 200, 223, which authorized that

\$5,000 of the funds of the Choctaw and Chickasaw Tribes be used for the expenses of the per capita payment directed in the Act to be made to the members of said Tribes.

Choctaw-Chickasaw hospital, insurance, medical attention, miscellaneous agency expenses including employees, pay of grazing fee collector, pay of miscellaneous employees, pipe-line damages, protection of timber, roads and bridges and timber investigation.—Specific authority was not granted by Congress for disbursements made subsequent to the Act of August 1, 1912, 37 Stat. 518, from plaintiff's funds for the above purposes. Disbursements shown to have been made from defendant's funds for said purposes were made for the benefit of plaintiff.

DEFENDANT'S CONDITIONAL FINDING X

(See plaintiff's finding XI (R. 33-36.))

In the event the Court should find that any of the items of plaintiff's claim, as set forth in plaintiff's finding XI, constituted errors of book-keeping, or a misuse of plaintiff's funds, which resulted in a loss to plaintiff, then defendant requests that the Court make a finding as follows:

The balanced statements of Chickasaw funds set forth in the report of the General Accounting Office show that plaintiff's accounts were erroneously credited with

funds of other of the Five Civilized Tribes as shown in the following table:

State- ment Number	Fund	Rept. G. A. O. Instant case		Amount of Credit
		Page	Item	
48	Int. on Chickasaw Nat'l.....	236	(J)	\$1,125.00
79	Ind. money, P. L.....	519	(b)	684.68
79	Ind. money, P. L.....	519	(c)	870.56
80	Ind. money, P. L., Royalties.....	521	(b)	1,001.90
80	Ind. money, P. L., Royalties.....	521	(e)	199.10
84	Ind. money, P. L., Town Lots.....	528	(d)	16,190.00
85	Ind. money, P. L., Unallotted Lands.....	530	(b)	79.14
85	Ind. money, P. L., Unallotted Lands.....	530	(d)	1,076.32
85	Ind. money, P. L., Unallotted Lands.....	530	(e)	3,801.09
85	Int. on Moneys, Deposits.....	537	(i)	9.17
85	Int. on Moneys, Deposits.....	537	(j)	2.53
			Rept. G. A. O. Choctaw case, K-260	
109	Ind. Moneys, Town Lots.....	693	(i)	7,030.84
112	Interest collected.....	703	(h)	259.89
112	Interest collected.....	703	(i)	145.60
117	Ind. Moneys, P. L., Royalties, etc.....	710	(f)	31.30
			Rept. G. A. O. Creek case, H-510	
52	Ind. Moneys, P. L.....	628	(g)	14,574.87

¹ \$18,299.51 of Creek funds deposited in the United States Treasury to the credit of Choctaw and Chickasaw Nations. One-fourth is claimed as credited to Chickasaw account.

The report of the General Accounting Office also shows that the moneys received as proceeds from the sale and management of the Choctaw and Chickasaw joint tribal property was deposited in the accounts of the Tribes as follows:

G. A. O. Rept. (page)	Style of account	Deposited to credit of Chickasaws	Deposited to credit of Choctaws
511-512	Ind. Money, P. L., Royalties, etc.....	\$1,653,392.16	\$4,898,752.36
511-512	Ind. Money, P. L., Unalotted Land.....	5,635,657.43	16,863,849.28
511-512	Ind. Money, P. L., Town Lots.....	704,726.25	2,107,262.28
511-512	Proceeds of Land, Five Civilized Tribes.....	271,618.25	793,560.01
		8,265,394.09	24,663,423.93

Respectfully submitted.

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MAY 1943.