

Court of Claims of the United States.

No. 23,115.

THE UNITED STATES, COMPLAINANT,

v.

THE CHOCTAW NATION AND THE CHICKASAW
NATION AND THE CHICKASAW FREEDMEN, DE-
FENDANTS.

The Answer of The Chickasaw Freedmen, One of the Above-named Defendants, to the Bill of Inter- pleader, and for Relief.

1. The Chickasaw Freedmen, one of the defendants above named, appear herein by their counsel, said counsel having been duly appointed to represent them in this cause by the Secretary of the Interior pursuant to a provision in section 39 of an act of Congress "to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes," approved July 1, 1902. A certificate of said appointment is filed herewith.

2. These defendants admit the allegations in each of the sections numbered 1 to 8, inclusive, in said bill of interpleader; and, having thus answered, beg leave of the court to set forth herein their claims and rights to citizenship and property and to pray for alternative relief, with like effect as though the same were set up in an original or cross bill.

3. By treaty of October 20, 1832, the Chickasaw Indians ceded to the United States, for the purposes of sale, their country east of the Mississippi River, and about two years later were permitted by the United States to leave their country and migrate west of the Mississippi River. By the treaty between the Choctaw and Chickasaw tribes of Indians of June 17, 1837, the Chickasaw tribe was permitted to occupy, in common with the Choctaw Nation, certain territory within the United States, and by a treaty between said Indian tribes and the United States, dated June 22, 1855, such occupation by said tribes was confirmed. The land so occupied in common is described as follows, to wit: "Beginning at a point on the Arkansas River, one hundred paces east of old Fort Smith, where the western boundary-line of the State of Arkansas crosses the said river, and running thence due south to Red River; thence up Red River to the point where the meridian of one hundred degrees west longitude crosses the same; thence north along said meridian to the main Canadian River; thence down said river to its junction with the Arkansas River; thence down said river to the place of beginning."

4. The United States, by said treaty last mentioned, guaranteed the lands thus described "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, and that said lands shall revert to the United States if said Indians and their heirs become extinct or abandon the same."

5. By said treaty it was also further provided that said "Choctaws and Chickasaws do hereby lease to the United States all that portion of their common territory west of the ninety-eighth degree of west longitude, for the permanent

settlement of the Wichita and such other tribes or bands of Indians as the Government may desire to locate therein; * * * *Provided, however,* The territory so leased shall remain open to settlement by Choctaws and Chickasaws as heretofore." This district is commonly known, and is hereinafter referred to, as the "leased district."

6. The Choctaws and Chickasaws are separate nations, the Chickasaw Nation having a written constitution, a legislative body, judicial and executive officers; but they are dependent nations, subject to the general jurisdiction, authority, and sovereignty of the United States. Pursuant to said treaties and the laws of the United States it became and was the duty of said Choctaw and Chickasaw Nations to observe peaceful and friendly relations with the United States and to recognize the general jurisdiction, authority, and sovereignty of the United States over said territory, subject only to the right of said Indian nations to occupy said described territory and to govern and control their internal affairs according to their own customs and laws; any allotment of said lands in severalty among the members of said Indian nations, and the rights of members to such allotments when made, and the rights of either of said nations, or any member thereof, or of any person to any moneys held by the United States for said nations, are matters under the general jurisdiction and authority of the United States, and no allotment in said lands or rights to such funds can be determined by said nations independently.

7. Prior to the outbreak of the Civil War in 1861 slavery existed in said Indian nations, and certain people of African descent were held in involuntary servitude by said Indians. Upon the breaking out of the Civil War aforesaid and the organization of the slave States into what is commonly known as the Confederacy, the said Choctaw and Chickasaw Nations, disregarding their treaty relations with the United States as dependent nations, joined the said Confederacy by

entering into treaty relations with the same, and took up arms against the United States.

8. On the 22d day of September, 1862, the President of the United States issued a proclamation containing, among other things, the following, to wit: "That on the 1st day of January, 1863, all persons held as slaves within any State, or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free." By proclamation of January 1, 1863, the President, as Commander-in-Chief of the Army, etc., and "as a fit and necessary war measure for suppressing said rebellion," declared all persons held as slaves within certain States and designated parts of States free. The Thirteenth Amendment to the Constitution of the United States, in force December 18, 1865, provides that "neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." By this provision of the Constitution the act of emancipating all slaves within the territory and jurisdiction of the United States was complete, and by virtue thereof all persons held in involuntary servitude, except as a punishment for crime, etc., by any dependent State or nation within the territory of the United States, became and were free; and these defendants allege that all slaves held by the Choctaw and Chickasaw Nations became entitled to all the rights of free men in the United States upon the adoption of said thirteenth amendment.

9. Said freedmen, to the number of about 9,066, according to the returns of the Twelfth Census of the United States, are the survivors and the descendants of the slaves held by the Chickasaw Nation, one of the defendants above named.

10. In addition to the Choctaw and Chickasaw Nations of Indians, who joined said Confederacy, the Creeks, Cherokees, and Seminoles rebelled against the United States, and by a treaty entered into at Fort Smith, Arkansas, on the 10th day of September, 1865, between Commissioners designated by the President of the United States and persons representing the Choctaw and Chickasaw Nations and the other three nations comprising what is known as the Five Civilized Tribes, it is recited and agreed as follows, to wit: "Whereas the aforesaid nations and tribes, or bands of Indians, or portions thereof, were induced by the machinations of the emissaries of the so-called Confederate States to throw off their allegiance to the Government of the United States, and to enter into treaty stipulations with said so-called Confederate States, whereby they have made themselves liable to a forfeiture of all rights of every kind, character, and description, which had been promised and guaranteed to them by the United States; and whereas the Government of the United States has maintained its supremacy and authority within its limits; and whereas it is the desire of the Government to act with magnanimity with all parties deserving its clemency, and to re-establish order and legitimate authority among the Indian tribes; and whereas the undersigned, representatives of parties connected with said nations and tribes of Indians, have become satisfied that it is for the general good of the people to reunite with, and be restored to, the relations which formerly existed between them and the United States, and as indicative of our personal feelings in the premises, and of our several nations and tribes, so far as we are authorized and empowered to speak for them; and whereas questions have arisen as to the status of the nations, tribes, and bands that have made treaties with the enemies of the United States, which are now being discussed, and our relations settled by treaty with the United States Commissioners now at Fort Smith for that purpose:

"The undersigned do hereby acknowledge themselves to

be under the protection of the United States of America, and covenant and agree that hereafter they will in all things recognize the Government of the United States as exercising exclusive jurisdiction over them, and will not enter into any allegiance or conventional arrangement with any State, nation, power, or sovereign whatsoever; that any treaty of alliance for cession of land, or any act heretofore done by them or any of their people, by which they renounce their allegiance to the United States, is hereby revoked, canceled, and repudiated.

"In consideration of the foregoing stipulations made by the members of the respective nations and tribes of Indians present, the United States, through its commissioners, promises that it will re-establish peace and friendship with all the nations and tribes of Indians within the limits of the so-called Indian country; that it will afford ample protection for the security of the persons and property of the respective nations or tribes, and declares its willingness to enter into treaties to arrange and settle all questions relating to, and growing out of, former treaties of said nations with the so-called Confederate States, at this council now convened for that purpose, or at such time in the future as may be appointed."

The representatives of the Choctaw and Chickasaw Nations signed the above treaty, and subsequently the said treaty was ratified by the legislature of the Chickasaw Nation.

Thereafter, to wit: on the 28th day of April, 1866, a treaty was entered into between the United States and the Choctaw and Chickasaw Nations, which treaty, among other things, provided that "Permanent peace and friendship are hereby established between the United States and said nations," and which treaty recognized the existing freedom of all persons within the territory of said Indian nations; but, desiring to obligate the said nations to observe in the future by their laws and administration the freedom of all persons within their jurisdiction, the United States caused to be inserted in Article II of said treaty the following provision:

"The Choctaws and Chickasaws hereby covenant and agree that henceforth neither slavery nor involuntary servitude, otherwise than in punishment of crime whereof the party shall have been duly convicted, in accordance with laws applicable to all members of the particular nation, shall ever exist in said nations."

11. It is further provided in said last-named treaty (Article III) as follows, to wit: "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 98° 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, all the rights, privileges, and immunities, including the right of suffrage, of citizens of 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 proportions 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 the said two years, to remove from said nations all such persons of African descent as may be willing to remove; 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.”

12. The Choctaw and Chickasaw Nations did not, nor did either of them, during the two-year limitation mentioned in said Article III above quoted, pass any laws, rules, or regulations giving to said freedmen resident in said nations at the date of the treaty of Fort Smith, and their descendants, the rights, privileges, and immunities, including the right of suffrage, nor did they give them each forty acres of land, nor make any provision whatsoever regarding their rights in said nations or to any property belonging to said nations, nor did the United States remove said freedmen from the territory occupied by said nations.

13. By and under the laws of the United States the said Indian nations are independent and self-governing in matters pertaining to the internal affairs of said nations, and have a right to determine who are to be adopted into said

nations and become citizens thereof, and upon what terms and conditions such adoption may be effected, and the United States has not at any time undertaken to control or in any manner to direct said Indian nations in the matter of the adoption of persons into the nations, that subject being under the exclusive and independent control of the Indian nations. It has, however, been the policy of the United States to secure by treaty the adoption of the freedmen by the Indian nations which had held them in slavery, so as to secure for said freedmen the opportunities of education and self-support.

14. Prior to 1867 the constitution of the Chickasaw Nation provided, among other things, as follows, to wit: “The Legislature shall have the power, by law, to admit, or adopt, any person to citizenship in this Nation, except a negro, or descendant of a negro: *Provided, however,* That such an admission, or adoption, shall not give a right, further than to settle and remain in the Nation, and to be subject to its laws. * * * The Legislature of this Nation shall have no power to pass laws for the emancipation of slaves without the consent of their owners, nor without paying their owners previous to such emancipation a full equivalent in money for the slaves so emancipated. They shall have the right to pass laws to prevent the owners of slaves to emancipate them, saving the rights of creditors. They shall have full power to pass laws which will oblige the owners of slaves to treat them with humanity—to provide for their necessary food and clothing—to abstain from all injuries to them, extending to life or limb: *Provided, also,* That laws be passed to prohibit the introduction into this Nation of slaves who have committed high crimes in violation of the laws of other countries.”

By a new constitution, adopted August 16, 1867, such restrictions upon the legislature were removed and did not thereafter exist, and on, to wit: the 10th day of January,

1873, an act was passed by the Chickasaw legislature, and promulgated, in words as follows, to wit:

"SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation*, That all the negroes belonging to the Chickasaws at the time of the adoption of the treaty of Fort Smith, and living in the Chickasaw Nation at the date thereof, and their descendants, are hereby declared to be adopted in conformity with the third article of the treaty of 1866, between the Choctaws, Chickasaws, and the United States: *Provided, however*, That the proportional part of the three hundred thousand dollars, specified in the third article of the said treaty, with the accrued interest thereon, shall be paid to the Chickasaw Nation for its sole use and benefit: *And provided further*, That said adopted negroes of the Chickasaw Nation shall not participate in any part of the said proportional part of the said three hundred thousand dollars, nor be entitled to any benefit from the principal and interest on our invested funds or claims arising therefrom, nor to any part of our common domain, or the profits arising therefrom (except the forty acres *per capita* provided for in the third article of the treaty of eighteen hundred and sixty-six), nor to any privileges or rights not authorized by treaty stipulations: *And provided further*, That the said adopted negroes, upon the approval of this act, shall be subject to the jurisdiction and laws of the Chickasaw Nation, and to trial and punishment for offenses against them in every case just as if the said negroes were Chickasaws.

"SECTION 2. *And be it further enacted*, That this act shall be in full force and effect from and after its approval by the proper authority of the United States; and all laws, or parts of laws, in conflict with this act are hereby repealed."

By an act of the Choctaw Council, approved May 21, 1883, it was enacted, among other things, as follows, to wit: "That all persons of African descent resident in the Choctaw

Nation at the date of the treaty of Fort Smith, September 13, 1865, and their descendants, formerly held in slavery by the Choctaws or Chickasaws, are hereby declared to be entitled to and invested with all the rights, privileges, and immunities, including the right of suffrage, of citizens of the Choctaw Nation, except in the annuities, moneys, and the public domain of the nation."

Thereafter by an act of Congress, approved August 15, 1894, the act of adoption of the Chickasaw legislature above quoted was approved by the United States in the following words, to wit: "That the approval of Congress is hereby given to 'An act to adopt the negroes of the Chickasaw Nation,' and so forth, passed by the legislature of the Chickasaw Nation and approved by the governor thereof January tenth, eighteen hundred and seventy-three, particularly set forth in a letter from the Secretary of the Interior transmitting to Congress a copy of the aforesaid act, contained in House Executive Document Numbered Two Hundred and Seven, Forty-second Congress, third session."

And this defendant alleges that upon the approval of said act of the Chickasaw legislature by the United States said freedmen became and are citizens and members of the Chickasaw Nation by adoption, and entitled to all the rights, privileges, and immunities, including the right of suffrage, of citizens of said Chickasaw Nation, excepting only rights to share in certain property and moneys specified in said act of said legislature. And the said freedmen, upon the approval of said act of said legislature, became and are entitled to have and receive forty acres *per capita* of the land of said Chickasaw Nation on the same terms as the Chickasaws, to be selected on the survey of said land as provided in the third article of the treaty of 1866.

15. By the agreements between the United States and the Choctaw and Chickasaw Nations, dated respectively April 23, 1897, and March 21, 1902, mentioned on pages 9 to 14,

inclusive, in the bill of interpleader herein, said freedmen are to receive forty acres *per capita* of average land of the Choctaw and Chickasaw Nations, which land may be selected by each allottee so as to include his improvements, the same to be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of certificate or allotment; and in the event that it shall be finally determined in this suit that said freedmen are not, independently of said agreements, entitled to allotments in the Choctaw and Chickasaw lands this court shall render a decree in favor of said nations according to their respective interests against the United States for the value of the lands so allotted to said freedmen, as ascertained by the appraisal thereof made by the Commission to the Five Civilized Tribes for the purpose of allotment.

16. The Chickasaw freedmen allege that since their emancipation as aforesaid they have resided in the Chickasaw Nation, but that said nation, disregarding the rights of said freedmen as free men and disregarding the laws of the United States, have at all times refused and still do refuse to give said freedmen the rights and privileges accorded to all other free persons in the said Chickasaw Nation—that is to say, said freedmen have always been and now are denied the right to attend the public schools of said nation or to receive any education or instruction in the schools supported by said nation because and solely on account of their color, race, and previous condition of servitude, while said schools are open to all other free persons, whether members of the nation or not.

17. Ever since their adoption, as hereinbefore set forth, said freedmen have been and are refused the rights, privileges, and immunities of citizens of the Chickasaw Nation to which they are entitled under the law. The right of suffrage has been and is refused them upon all occasions, when

other citizens of the Chickasaw Nation are permitted to exercise such privilege, and said freedmen, on account of their color, race, and previous condition of servitude, are not permitted to hold or exercise the functions and duties of any public office or place of trust in said nation; all of which said rights, and others of a public nature, are unjustly and unlawfully denied to said freedmen.

18. The said Chickasaw Nation unlawfully refuses to allow said freedmen to have and receive by allotment forty acres *per capita* of the lands of said Choctaw and Chickasaw Nations, as provided in said act of adoption and by Article III of the treaty of 1866.

19. And this defendant alleges that, by reason of its refusal to recognize, and its denial of, the rights of this defendant above set forth, the Chickasaw Nation ought not to have or receive from the United States any part of the moneys held by the United States under the terms set forth in Article III of the treaty of 1866; but that said moneys and the interest thereon should be held, administered, and paid to this defendant by the United States.

20. By virtue of the provisions in section 36 of said act “to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes,” approved July 1, 1902, authority is conferred upon this honorable court 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 under any and all laws enacted by the Chickasaw legislature or by Congress subsequent to the treaty of 1866, aforesaid.

Wherefore this defendant, by said counsel, prays your honorable court:

1. That the Choctaw and Chickasaw Nations, defendants herein, be required to answer this bill.

2. That this honorable court determine and by decree declare that by virtue of the said thirteenth amendment to the Constitution of the United States, and upon its adoption, all persons of African descent heretofore held in slavery by the Choctaw and Chickasaw Nations became free, and have since been entitled to all the rights, privileges, and immunities of free men within the United States, and that all discrimination against them by said Chickasaw Nation on account of their color, race, and previous condition of servitude is and has been unlawful and contrary to the laws of the United States.

3. That by virtue of said act of the legislature of the Chickasaw Nation, in force January 10, 1873, and approved by Congress August 15, 1894, said freedmen of the Chickasaw Nation were adopted, and on the date last aforesaid that said freedmen became citizens and members of the Chickasaw Nation, entitled to all the rights, privileges, and immunities, including the right of suffrage, possessed by members of the Chickasaw Nation, upon the limitations only that they should not share in the proportional part of the Chickasaw Nation in the three hundred thousand dollars specified in Article III of the treaty of 1866, with the accrued interest thereon, nor in any benefit from the principal and interest on the invested funds or claims arising therefrom or any part of the common domain or profits arising therefrom, excepting forty acres *per capita* provided for in the third article of the treaty of 1866, and that said Chickasaw Nation may be directed by this honorable court to permit said freedmen to have and enjoy and exercise said rights and privileges of citizenship, including the right of suffrage, in said Chickasaw Nation.

4. That this honorable court further find and decree that said freedmen are entitled to forty acres of average land *per capita* of the lands belonging to said Choctaw and Chickasaw Nations, as provided in Article III of the treaty of 1866, the

same to be allotted to them in accordance with the provision of the treaties and acts of Congress hereinabove referred to.

5. That out of the moneys held by the United States on account of the said leased district there be paid to, or applied for the use of, said freedmen a proper and reasonable amount for the maintenance of schools for their use and education, they having been unjustly and unlawfully deprived of school privileges by said Chickasaw Nation since they became free men.

6. That as alternative relief, in the event that the court shall find that said freedmen are not entitled to the relief above prayed for, said freedmen pray that they may have allotted to them forty acres of the average land *per capita* of the land of said nations, together with their improvements thereon, in accordance with, and upon the terms specified in said act of Congress to "ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes," approved July 1, 1902.

7. And, as further alternative relief in the event said court shall find that said freedmen were not adopted, that it be decreed that said Chickasaw Nation is not entitled to have and receive their proportionate share of said three hundred thousand dollars held by the United States on account of the leased district, but that said proportionate amount shall be paid to, or applied to the use of, said freedmen by the United States.

8. And that this defendant may have such other and further relief in the premises as to this honorable court shall seem meet and the nature of the case may require.

As in duty bound, this defendant will ever pray, etc.

THE CHICKASAW FREEDMEN,
By CHARLES W. NEEDHAM,
Special Counsel.