

In the Court of Claims of the United States.

THE UNITED STATES, COMPLAINANT,
v.
THE CHOCTAW NATION AND THE CHICKASAW Nation and the Chickasaw Freedmen, defendants. } No. 23115.

BILL OF INTERPLEADER.

(Filed November 26, 1902. J. R.)

To the honorable

THE JUDGES OF THE COURT OF CLAIMS:

The Attorney-General of the United States, on behalf of the United States, respectfully showeth:

1. For a number of years prior to the year 1866 there resided within the territory of the Chickasaw Nation a number of persons of African descent who were held in slavery in said nation.

2. The treaty between the United States and the Choctaw and Chickasaw Indians, concluded April 23, 1866, and proclaimed July 10, 1866, provided *inter alia* as follows:

ARTICLE II. The Choctaws and Chickasaws hereby covenant and agree that henceforth neither slavery nor involuntary servitude,

otherwise than in punishment of crime whereof the parties shall have been duly convicted, in accordance with laws applicable to all members of the particular nation, shall ever exist in said nations.)

ARTICLE III. 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 the 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 upon 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 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.

ARTICLE IV. The said nations further agree that all negroes, not otherwise disqualified or disabled, shall be competent witnesses in all civil and criminal suits and proceedings in the

Choctaw and Chickasaw courts, any law to the contrary notwithstanding; and they fully recognize the right of the freedmen to a fair remuneration on reasonable and equitable contracts for their labor, which the law should aid them to enforce; and they agree, on the part of their respective nations, that all laws shall be equal in their operation upon the Choctaws, Chickasaws, and negroes, and that no distinction affecting the latter shall at any time be made, and that they shall be treated with kindness and protected against injury; and they further agree that while the said freedmen, now in the Choctaw and Chickasaw nations, remain in said nations, respectively, they shall be entitled to as much land as they may cultivate for the support of themselves and families, in cases where they do not support themselves and families by hiring, not interfering with existing improvements without the consent of the occupant, it being understood that in the event of the making of the laws, rules, and regulations aforesaid, the forty acres aforesaid shall stand in place of the land cultivated as last aforesaid.

3. The legislature of the Chickasaw Nation has taken action at various times in regard to the said Chickasaw freedmen, as follows:

On November 9, 1866, the Chickasaw legislature passed an act declaring it to be the unanimous desire of the legislature that the United States hold the share of the Chickasaw Nation in the \$300,000 stipulated for the cession of the "Leased district" for the benefit of the Chickasaw freedmen and remove them beyond

the limits of the Chickasaw Nation, according to the third article of the treaty of 1866.

In 1868 similar action was taken by the Chickasaw legislature asking for the removal, by the United States, of the Chickasaw freedmen from the Chickasaw country.

The law of January 10, 1873, provided as follows:

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,* The 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.

SEC. 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.

That act was submitted by the governor of the Chickasaw Nation, by letter of the same date, to the President of the United States, and was submitted by the Secretary of the Interior to the Speaker of the House of Representatives, on February 10, 1873, with recommendation for appropriate legislation for extending the time for the execution of the third article of the treaty. The papers were referred to the Committee on Freedmen Affairs, but no action thereon was had at that time. (See Annual Report Indian Office, 1882, p. 57; and H. R. Ex. Doc. 207, Forty-second Congress, third session.)

The law approved October 18, provided, *inter alia*, as follows:

SECTION 1. *Be it resolved by the legislature of the Chickasaw Nation*, That four commissioners, one from each county of the Chickasaw Nation, shall be elected by joint vote of the senate and house of representatives of the present session of the legislature, to visit the capital of the Choctaw Nation, during the next regular session of the general council of said nation, with

instructions to confer with commissioners on the part of the Choctaw Nation, and agree upon some plan whereby the freedmen, former slaves of the Choctaws and Chickasaws, and their descendants, shall be removed from and kept out of the limits of the Choctaw and Chickasaw country.

The law approved October 17, 1876 or 1877, provided, *inter alia*, as follows:

SEC. 3. *Be it further enacted*, That the provisions contained in article 3 of the said treaty, giving the Chickasaw legislature the choice of receiving and appropriating the three hundred thousand dollars therein named, for the use and benefit, or passing such laws, rules, and regulations as will give all persons of African descent certain rights and privileges, be, and it is hereby, declared to be the unanimous consent of the Chickasaw legislature, that the United States shall keep and hold said sum of three hundred thousand dollars for the benefit of the said negroes, and the governor of the Chickasaw Nation is hereby requested to notify the Government of the United States that it is the wish of the legislature of the Chickasaw Nation that the Government of the United States remove the said negroes beyond the limits of the Chickasaw Nation, according to the requirements of the third article of the treaty of April 28, 1866.

The law of October 22, 1885, provided, *inter alia*, as follows:

SECTION 1. *Be it enacted by the legislature of the Chickasaw Nation*, That the Chickasaw people hereby refuse to accept or adopt the freed-

men as citizens of the Cherokee Nation upon any terms or conditions whatever, and respectfully request the governor of our nation to notify the Department at Washington of the action of the legislature in the premises.

SEC. 2. *Be it further enacted*, That the governor is hereby authorized and directed to appoint two competent and discreet men, of good judgment and business qualifications, to visit Washington City, D. C., during the next session of Congress, and memorialize that body to provide a means of removal of the freedmen from the Chickasaw Nation to the country known as Ok-la-ho-ma, in the Indian Territory, or to make some suitable disposition of the freedmen question, so that they be not forced upon us as equal citizens of the Chickasaw Nation.

The resolution of October 4, 1887, provided *inter alia* as follows:

And whereas the Chickasaw people have kindly and friendly feeling toward the freedmen, their former slaves, and wishing them to receive full valuation of the places they live upon, for their support, as provided for in section 4 of the treaty of 1866, do hereby agree that they shall have two years from the passage of this act to sell their improvements in the Chickasaw Nation to the best advantage, that no loss may accrue to them: Therefore,

Be it resolved by the legislature of the Chickasaw Nation, That the nation shall refund to the United States the sum of \$55,000, to be used in removing the freedmen in the Chickasaw Nation to their new home, as provided under

the third and fourth articles of the treaty of 1866, made between the United States and the Choctaw and Chickasaw nations of Indians. (See Sen. Ex. Doc. 166, Fiftieth Congress, first session.)

4. The act of Congress of August 15, 1894, section 18 (28 Stats., 336), provides as follows:

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 10, 1873, particularly as 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.

5. The agreement between the United States and the Choctaw and Chickasaw tribes of Indians, dated April 23, 1897, and ratified and confirmed by the act of June 28, 1898, section 29 (30 Stats., 505), provides, *inter alia*, as follows:

That all the lands within the Indian Territory belonging to the Choctaw and Chickasaw Indians shall be allotted to the members of said tribes, so as to give to each member of these tribes, so far as possible, a fair and equal share thereof, considering the character and fertility of the soil and the location and value of the lands.

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.

That the said Choctaw and Chickasaw freedmen who may be entitled to allotments of 40 acres each shall be entitled each to land equal in value to 40 acres of the average land of the two nations.

6. The agreement between the United States and the Choctaw and Chickasaw nations, made the 21st day of March, 1902, ratified and confirmed by the act of July 1, 1902, chapter 1362, provides as follows:

11. There shall be allotted to each member of the Choctaw and Chickasaw tribes, as soon as practicable after the approval by the Secretary of the Interior of his enrollment as herein provided, land equal in value to three hundred and twenty acres of the average allottable land of the Choctaw and Chickasaw nations, and to each Choctaw and Chickasaw freedman, as soon as practicable after the approval by the Secretary of the Interior of his enrollment, land equal in value to forty acres of the average allottable land of the Choctaw and Chickasaw nations, to conform, as nearly as may be, to the areas and boundaries established by the Government survey, which land may be selected by each allottee so as to include his improvements. For the purpose of making allotments and designing homesteads hereunder, the forty-acre or quarter-quarter subdivisions established by the Government survey may be

dealt with as if further subdivided into four equal parts in the usual manner, thus making the smallest legal subdivision ten acres, or a quarter of a quarter of a quarter of a section.

13. The allotment of each Choctaw and Chickasaw freedman shall be inalienable during the lifetime of the allottee, not exceeding twenty-one years from the date of certificate or allotment.

15. Lands allotted to members and freedmen shall not be affected or encumbered by any deed, debt, or obligation of any character contracted prior to the time at which said land may be alienated under this act, nor shall said lands be sold except as herein provided.

7. The same agreement provides as follows:

36. Authority is hereby conferred upon the Court of Claims 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 under the third article of the treaty of eighteen hundred and sixty-six between the United States and the Choctaw and Chickasaw nations, and under any and all laws subsequently enacted by the Chickasaw legislature or by Congress.

37. To that end the Attorney-General of the United States is hereby directed, on behalf of the United States, to file in said Court of Claims within sixty days after this agreement becomes effective, a bill of interpleader against the Choctaw and Chickasaw nations and the Chickasaw freedmen, setting forth the existing controversy

between the Chickasaw Nation and the Chickasaw freedmen, and praying that the defendants thereto be required to interplead and settle their respective rights in such suit.

38. Service of process in the suit may be had on the Choctaw and Chickasaw nations, respectively, by serving upon the principal chief of the former and the governor of the latter a certified copy of the bill, with a notice of the time for answering the same, which shall not be less than thirty nor more than sixty days after such service, and may be had upon the Chickasaw freedmen by serving upon each of three known and recognized Chickasaw freedmen a certified copy of the bill, with a like notice of the time for answering the same, and by publishing a notice of the commencement of the suit, setting forth the nature and prayer of the bill, and the time for answering the same, for a period of three weeks in at least two weekly newspapers having general circulation in the Chickasaw Nation.

39. The Choctaw and Chickasaw nations, respectively, may in the manner prescribed in sections twenty-one hundred and three to twenty-one hundred and six, both inclusive, of the Revised Statutes, employ counsel to represent them in such suit and protect their interests therein; and the Secretary of the Interior shall employ competent counsel to represent the Chickasaw freedmen in said suit and to protect their interests therein; and the compensation of counsel so employed for the Chickasaw freedmen, including all costs of printing their briefs

and other incidental expenses on their part not exceeding six thousand dollars, shall be paid out of the Treasury of the United States upon certificate of the Secretary of the Interior setting forth the employment and the terms thereof, and stating that the required services have been duly rendered; and any party feeling aggrieved at the decree of the Court of Claims, or any part thereof, may, within sixty days after the rendition thereof, appeal to the Supreme Court, and in each of said courts the suit shall be advanced for hearing and decision at the earliest practicable time.

73. This agreement shall be binding upon the United States and the Choctaw and Chickasaw nations and all Choctaws and Chickasaws, when ratified by Congress and by a majority of the whole number of votes cast by the legal voters of the Choctaw and Chickasaw tribes in the manner following: The principal chief of the Choctaw Nation and the governor of the Chickasaw Nation shall, within one hundred and twenty days after the ratification of this agreement by Congress, make public proclamation that the same shall be voted upon at any special election to be held for that purpose within thirty days thereafter, on a certain day therein named; and all male citizens of each of the said tribes qualified to vote under the tribal laws shall have a right to vote at the election precinct most convenient to his residence, whether the same be within the bounds of his tribe or not. And if this agreement be ratified by said tribes as aforesaid, the date upon which

said election is held shall be deemed to be the date of final ratification.

74. The votes cast in both the Choctaw and Chickasaw nations shall be forthwith returned and duly certified by the precinct officers to the national secretaries of said tribes, and shall be presented by said national secretaries to a board of commissioners consisting of the principal chief and the national secretary of the Choctaw Nation and the governor and national secretary of the Chickasaw Nation and two members of the commission to the Five Civilized Tribes; and said board shall meet without delay at Atoka, Indian Territory, and canvass and count said votes, and make proclamation of the result.

8. The said agreement between the United States and the Choctaws and Chickasaws having been ratified and confirmed by the act of July 1, 1902, as aforesaid, and having been ratified in accordance with the provisions of paragraphs 73 and 74 of said agreement, by elections held on September 25, 1902, became effective on that date.

Wherefore, the Attorney-General prays your honorable court:

1. That the defendants may answer the premises, and that the defendants, to wit, the Choctaw and Chickasaw nations on the one part, and the Chickasaw freedmen on the other part, may be decreed to interplead and settle and determine between themselves the existing controversy respecting the relations of the Chickasaw freedmen and the Chickasaw Nation, and the

rights of such freedmen in the land of the Choctaw and Chickasaw nations under the third article of the treaty of April 28, 1866, between the United States and the Choctaw and Chickasaw nations, and under any and all laws subsequently enacted by the Chickasaw legislature or by Congress.

2. Such other and further relief as the nature of the case may require.

P. C. KNOX,
Attorney-General.

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