# In the United States Court of Claims

**No. J. 231**

THE CHOCTAW NATION, *Complainant,*

*vs.*

THE UNITED STATES OF AMERICA, *and*
THE CHICKASAW NATION OF INDIANS,
*Defendant.*

## MOTION OF DEFENDANT, THE CHICKASAW NATION OF INDIANS:

(1) *To postpone final consideration of, and decision in, the instant case No. J. 231, until final decision, by the Supreme Court of the United States, in Case No. H. 37; and*

(2) *To consolidate, for final consideration and decision, by the United States Court of Claims, Cases No. J. 231 and No. K. 336.*

Comes now the defendant, The Chickasaw Nation of Indians, by William H. Fuller and Melven Cornish, its Special Attorneys, and respectfully represents:

FIRST.

That if the Choctaw National shall prevail in Case No. H. 37, in the Supreme Court of the United States, heretofore decided by this court and now pending in the Supreme Court of the United States upon petition for writ of *certiorari* to the United States Court of Claims, the decision of the Supreme Court, in that case, will nullify the claim of the plaintiff, the Choctaw Nation, in the instant case, No. J. 231; and,

SECOND.

That, in Case No. K. 336, now pending in this Court, the issues and parties are identical with the issues and parties in the instant case, No. J. 231; and that such two cases should be consolidated for final consideration and decision.

Wherefore, the defendant, The Chickasaw Nation, prays that this Honorable Court shall make and enter its order:

First, *To postpone final consideration of, and decision in, the instant case No. J. 231, until final decision, by the Supreme Court, in Case No. H. 37; and*

Second, *To consolidate, for final consideration and decision, Cases No. J. 231 and K. 336.*

Respectfully submitted,

WILLIAM H. FULLER,
MELVEN CORNISH,
*Special Attorneys for*
*The Chickasaw Nation of Indians.*



VERIFICATION OF MOTION.

State of Oklahoma,
County of Pittsburg.—ss.

Melven Cornish, being duly sworn, on oath states that he is one of the Special Attorneys for the Chickasaw Nation in the above styled and numbered case, and resides at McAlester, Oklahoma; and that he is associated with William H. Fuller as co-counsel in said case, under designation by the Commissioner of Indian Affairs and the Secretary of the Interior; and that he is authorized and does make this verification on behalf of himself and the said William H. Fuller. He also states that he has read the foregoing motion and that the statements therein contained are made upon information obtained from the files and records in the offices of the said Commissioner and Secretary, and the records and files of this Court; and the same are true, as affiant verily believes. He also states that copies of this motion and brief in support of the same, have been furnished to W. F. Semple, Special Attorney for the Choctaw Nation, at Tulsa, Oklahoma; and also to the Assistant Attorney General of the United States.

MELVEN CORNISH.

Subscribed and sworn to before me, on this 27th day of September, 1935.

J. E. LAYDEN,
(Seal) Notary Public.

My commission expires Nov. 28, 1938.

## BRIEF IN SUPPORT OF MOTION.

### *(1)* Statement of the present status of the case.

The instant Case No. J. 231 (entitled *"Choctaw Nation, Complainant, vs. The United States of America, Defendant"),* was filed in the United States Court of Claims, under the Jurisdictional Act of Congress of June 7, 1924 (and Acts of Congress amendatory thereto), permitting the Choctaw Nation and the Chickasaw Nation, either jointly or severally, to file suits and proceedings against the United States; and the jurisdiction of the Court of Claims, in the said Act of Congress of June 7, 1924, is therein fixed and defined as follows:

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

The same Act also provides:

> "The Court of Claims shall have full authority by proper orders and process to bring in and make parties to such suit any or all persons deemed by it necessary or proper to the final determination of the matters in controversy."



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The Choctaw Nation contends, in the instant case No. J. 231, that moneys arising from the sale of the common properties of the Choctaw and Chickasaw Nations have been apportioned and paid to the two Nations in the proportions of *Three-fourths* to the Choctaw Nation and *One-fourth* to the Chickasaw Nation; that such apportionments and payments were in violation of treaties and laws, in that moneys belonging to the Choctaw Nation have been paid to the Chickasaw Nation; and that the Choctaw Nation should have judgment against the United States for such moneys so apportioned and paid.

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The Assistant Attorney General, on behalf of the defendant, the United States, concluded that the Chickasaw Nation was a necessary and proper party, "to the final determination of the matters in controversy", and, to that end and under the provision of the Jurisdictional Act of Congress of June 7, 1924, last above quoted, on December 20, 1934, filed a "MOTION TO BRING IN AND MAKE THE CHICKASAW NATION A PARTY TO THIS SUIT"; and on January 5, 1935, such Motion was allowed. Thus, the Chickasaw Nation was made a party defendant.

The Chickasaw Nation has heretofore filed, in the Court of Claims, under the same Jurisdictional Act of Congress of June 7, 1924 (and Act of Congress amendatory thereto) several suits and proceedings *against*

the United States; but the instant case is the only one in which it has been made a *party defendant.*

It has heretofore employed "Special Attorneys", with the consent of the Commissioner of Indian Affairs and the Secretary of the Interior, to represent it in all suits and proceedings wherein it is the *complainant* and the United States is the *defendant.*

When it was made a *party defendant,* in the instant case No. J. 231, it was found that its "Special Attorneys", theretofore employed, were without power and authority to plead and defend, in its behalf.

The Governor of the Chickasaw Nation called this situation to the attention of the Commissioner of Indian Affairs and the Secretary of the Interior; and by letter dated March 11, 1935, the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, advised the Governor of the Chickasaw Nation that the Chickasaw Nation should be represented in the instant case; and that if he saw fit to enter into and submit a contract, for that purpose, the same would be considered and acted upon without delay.

Such a contract was duly entered into, between the Governor of the Chickasaw Nation and the "Special Attorneys" who now file and present this Motion; and the same was duly approved by the Commissioner of Indian Affairs on May 1, 1935, and by the Secretary of the Interior on May 13, 1935.

The instant case was set for hearing on the May Calendar of the Court of Claims; and no Special Attorneys having been formally employed, none were authorized to plead and defend, on behalf of the Chickasaw Nation.



In this situation, the Commissioner of Indian Affairs and the Secretary of the Interior gave special permission to the Attorneys who now file and present this Motion, to call to the attention of the Court the existing status of the case.

Accordingly, a "MOTION FOR EXTENSION OF TIME FOR HEARING AND FINAL CONSIDERATION" was filed on March 14, 1935, which Motion was duly allowed by the Court, and the case was removed from the May Calendar.

Such Motion, after setting out the facts, as above stated, contained the following prayer:

> "Wherefore, upon consideration of the foregoing statement of facts, the Chickasaw Nation prays that this Motion be allowed; and that an order be made and entered by this Honorable Court, striking the instant case from its May Calendar, and that the same be placed upon a future calendar *when it shall be ready for hearing and final consideration.*"

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The "Special Attorneys" thus employed, on behalf of the Chickasaw Nation, then immediately began a consideration and study of the case, by conferences with the Attorneys representing the United States and otherwise, for the purpose of determining what steps should be taken to adequately protect the best interests of the defendant, the Chickasaw Nation.

Such consideration and study, by an examination of the records and documents in the instant case (No.

J. 231) and the two other cases (Nos. H. 37 and K. 336) to which this Motion applies, has progressed as rapidly as the importance of the cases and issues would permit.

After such consideration and study, the Special Attorneys for the defendant, the Chickasaw Nation, have concluded that this Motion should be filed and presented; and it is felt that this history of the events leading up to the filing of the same is necessary, in order that the diligence of such Special Attorneys may be shown.

***(2)* Final decision, by the Supreme Court, in Case No. H. 37, if favorable to Choctaw Nation, will nullify the claim of the plaintiff, the Choctaw Nation, in the instant case No. J. 231; and final consideration and decision, in Case No. J. 231, should be postponed until final decision, by the Supreme Court, in Case No. H. 37.**

In Case No. H. 37, entitled *"Choctaw Nation, Plaintiff. vs. United States, Defendant"*, decided adversely to the plaintiff, the Choctaw Nation, by the Court of Claims, on January 14, 1935, *(and now pending in the Supreme Court of the United States upon petition for writ of certiorari to the Court of Claims)*, the Choctaw Nation contends that so-called "Mississippi Choctaws" are *only* entitled to *allotments of land*, under the Choctaw-Chickasaw Agreement of 1902 (ratified by Act of Congress of July 1, 1902; 32 Stat. 641), but that they are *not entitled to share in the per capita distribution of moneys.*

In the instant case, No. J. 231, the contention of the Choctaw Nation is that the basis of apportionment



which the United States has always followed, of Three-fourths to the Choctaw Nation and *One-fourth* to the Chickasaw Nation, is not a *true basis;* but that the true basis would be a fraction giving the Choctaws *more* than Three-fourths and the Chickasaws *less* than One-fourth, because of some 1660 "Mississippi Choctaws" added to the citizenship rolls of the Choctaw Nation.

As showing the facts relating to the enrollment of the so-called "Mississippi Choctaws", and that this condition (as will be shown by later quotations from the briefs of the Special Attorneys for the Choctaw Nation) furnished the basis for their contentions in the instant case No. J. 231, we quote from the briefs of the attorneys for the Choctaw Nation and the United States.

On page 315 of the brief for the Choctaw Nation appears the following:

> "It appears from the report of the Secretary, dated February 25, 1932, that there were 1,660 persons put on the final rolls as Mississippi Choctaws entitled to allotment and that the total sum of $1,170.00 per head has been paid out to such persons as per capita payments, or a total of $1,-942,200.00."

On page 347 and 348 of the brief of the Assistant Attorney General appears the following:

> "By authority of and pursuant to (referring to various Treaties and Acts of Congress, bearing upon the subject) * * * some 1,660 Mississippi Choctaw Indians, more or less, were enrolled as citizens or members thereof on the final rolls of the Choctaw Nation and were allotted tribal lands

or funds and shared in the per capita distribution of the tribal funds of said Indian nation."

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Prior to the enrollment of the so-called "Mississippi Choctaws" and prior to the alleged erroneous apportionments of the moneys of which the Choctaw Nation complains, in the instant case, No. J. 231, the proportion of *Three-fourths* to the Choctaw Nation and *One-fourth* to the Chickasaw Nation was *approximately correct.*

If the Choctaw Nation is correct, as to its contention, in the instant case, No. J. 231, the proportion formerly existing, as between the two Nations, *was changed by the enrollment of the so-called "Mississippi Choctaws".*

For the purpose of showing that the proportion of *Three-fourths* and *One-fourth,* as between the two Nations, which existed prior to the enrollment of the so-called "Mississippi Choctaws", has been changed by the enrollment of *that class* of citizens, to the proportion of *more* to the Choctaw Nation and *less* to the Chickasaw Nation for which the Choctaw Nation contends, in the instant case, No. J. 231, and that a decision favorable to the Choctaw Nation, by the Supreme Court, in Case No. H. 37, would restore the percentage and proportion theretofore existing, and would nullify the claim of the Choctaw Nation in the instant case, we quote from the briefs of the "Special Attorneys" for the Choctaw Nation.

On pages 55 and 56 of their original brief, it is said:



"We are proceeding in the instant case (No. J. 231) on the theory adopted by the Government that the Mississippi Choctaws are entitled to share in the common property and to take per capita payments and if they are considered a part of the total membership of the tribe the true ratio is as above set forth. But we think it proper to fully state our position to the court: We think we are correct in our contention in the case involving the per capita payments to Mississippi Choctaws and if our contentions in that case are sustained, then it would be necessary for the plaintiff to reduce the amount claimed in the present case."

Then on page 130 of their reply brief appears the following:

"Prior to the enactment in 1902 of legislation looking to the enrollment of the Mississippi Choctaws, the true ratio was approximately three-fourths to one-fourth."

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The view herein stressed that a decision, favorable to the Choctaw Nation, by the Supreme Court, in Case No. H. 37, would restore the proportions of *Three-fourths* to the Choctaw Nation and *One-fourth* to the Chickasaw Nation, heretofore existing, and would thus nullify the claim of the plaintiff, the Choctaw Nation, in the instant case No. J. 231, is supported by that part of the report of the Secretary of the Interior, dated June 2, 1933, and herein filed, and appearing upon pages 16 and 17, of the record as follows:

"In a suit by the Choctaw and Chickasaw Nations against the United States, Case No. H. 37, pending in the Court of Claims, it is contended by said Indian Nations that the Mississippi Choc-

taws, enrolled members of the Choctaw Nation of Oklahoma, were not entitled to share in the per capita payment from the tribal funds of said Choctaw and Chickasaw Nations, and said Indian Nations in said case claimed that they should be reimbursed for the amounts illegally and improperly paid by the United States to the Mississippi Choctaws out of said tribal funds. If this contention be true, then only 19,139 enrolled members of the Choctaw Nation were entitled to share in the tribal funds, and, on said basis, the Choctaws were entitled to only approximately 75% and the Chickasaws to approximately 25% of the funds derived from the sale of their tribal lands. In other words, the division and apportionment of the proceeds of the sales of the Choctaw and Chickasaw tribal lands upon the basis of three-fourths to the Choctaw Nation and one-fourth to the Chickasaw Nation was correct as based upon the relative membership of the two tribes."

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If the Choctaw Nation shall prevail in Case H. 37, now pending in the Supreme Court, and it shall be held that the so-called "Mississippi Choctaws" are not entitled to share in the per capita distribution of moneys, then, in that event, the proportion of *Three-fourths* for the Choctaws and *One-fourth* to the Chickasaws, heretofore existing, *will be restored.*

If that proportion shall be restored by a decision of the Supreme Court favorable to the Choctaw Nation, in Case No. H. 37, then, in that event, there will be no substantial basis for their contentions in the instant case No. J. 231.

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It is apparent, therefore, as we contend, that the instant case No. J. 231 cannot, and should not, be considered and decided, upon its merits, until the Supreme Court shall have rendered its final decision in Case H. 37.

***(3)* Issues and parties identical in Cases J. 231 and K. 336; and the two cases should be consolidated for final consideration and decision.**

Case No. K. 336 (entitled *"The Chickasaw Nation, Complainant, vs. The United States of America, Defendant"),* was filed under the same Jurisdictional Act of Congress of June 7, 1924, above quoted (and Acts of Congress amendatory thereto), and the same is now pending in the Court of Claims.

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In that case (No. K. 336) the Chickasaw Nation contends that the United States has allotted lands to Choctaw Freedmen, in which the Chickasaw Nation has an interest, in violation of treaties and laws; and that the Chickasaw Nation should have judgment against the United States for the value of the lands so allotted.

Those parts of the petition of the Chickasaw Nation in Case No. K. 336, setting out its contentions, as against the United States and the Choctaw Nation, are as follows:

"VI. Under the treaty between the United States and the Choctaw and Chickasaw Nations, known as the 'Atoka Agreement' (Act of Congress approved June 28, 1898, 30 Stat., 495) and the 'Supplementary Areement' (Act of Congress approved July 1, 1902, 32 Stat., 641) providing

for the distribution of the tribal estates of the Choctaw and Chickasaw Nations, in preparation for Oklahoma Statehood, Choctaw and Chickasaw Freedmen were given allotments of forty acres each, coupled with provisions safeguarding the rights of the Choctaw and Chickasaw Nations in the lands allotted to such Freedmen, as between the two nations, and as between them and the United States."

"VII. The Chickasaw Nation claims that it has a one-fourth interest in the lands allotted to Choctaw Freedmen; that, being a common owner (with the Choctaw Nation) in such lands so allotted, and never having participated in the alleged adoption of such Choctaw Freedmen, that their adoption by the Choctaw Nation was null and void, in so far as the interests of the Chickasaw Nation are concerned; that it agreed that allotments be made to such Choctaw Freedmen only after the insertion, upon its insistence, in the said treaties of 1898 and 1902, of definite and specific provisions for the adjustment of, and settlement for its interest in the lands so allotted such Choctaw Freedmen, as between the Chickasaw Nation and the Choctaw Nation and also as between the Chickasaw Nation and the United States; that such provisions for the adjustment of, and settlement for, its interest in such lands, have not been carried out; and that it is now entitled to have judgment against the United States for the fair value of its one-fourth interest in such lands so allotted such Choctaw Freedmen."

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"XI. Throughout all the years intervening, from 1866 until the said treaties of 1898 and 1902



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

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"XIII. The Chickasaw Nation, having always claimed and insisted that the adoption of Choctaw Freedmen, without their participation or consent was null and void, in so far as their common interest in the lands proposed to be allotted to them was concerned, proposed, as a condition precedent to their agreement that lands be allotted to Choctaw Freedmen, that there should be an adjustment, and settlement for, their interest in such lands, either by having them deducted from the allotments of Choctaw citizens or otherwise, by the insertion of a provision for their protection, to that end, and such a provision was agreed upon and inserted in such treaty, as follows: ('Atoka Agreement', Act of Congress, June 28, 1898; 30 Stat., 495.)

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

"XIV. Thus the matter of the contention of the Chickasaw Nation for an adjustment of, and

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

"XV. Such treaty provided for carrying out the plan for allotments of forty acres each to Choctaw and Chickasaw Freedmen, as provided in the said treaty of 1898, but included a more definite and specific plan for safeguarding the rights and interests of the Choctaw and Chickasaw Nations in the lands to be allotted to such freedmen."

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"XVII. The Chickasaw Nation, still claiming and insisting (as was claimed and insisted when the said treaty of 1898 was entered into) that it was entitled to an adjustment of, and settlement for, its interest in the lands allotted Choctaw Freedmen, proposed the insertion, in such treaty, of a further and more definite and specific provisions to that end, and accordingly, it was done, as follows:

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

"XVIII. The final decision of the Supreme Court of the United States in the case of 'United States and Chickasaw Freedmen *v.* Choctaw Nation and Chickasaw Nation' (193 U. S. 115), was rendered on February 23, 1904, in which it was



held that Chickasaw Freedmen had no rights in the lands of the Choctaw and Chickasaw Nations which had been allotted to them. Then, after the roll of such Chickasaw Freedmen had been completed and the total number of acres of land allotted to them had been determined, and the total value of such lands had been computed, as directed by the said treaty of 1902, there was apportioned, under the Indian Appropriation Act of Congress, approved June 25, 1910, in satisfaction of the final judgment of the Court of Claims, in the Chickasaw Freedmen case, the sum of six hundred and six thousand, nine hundred and thirty-six dollars and eight cents ($606,936.08). This sum of money was placed to the credit of the Choctaw and Chickasaw Nations, in proportion of three-fourths to the Choctaw Nation and one-fourth to the Chickasaw Nation."

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

the proportion of three-fourths to the Choctaw Nation and one-fourth to the Chickasaw Nation."

* * * * * * *

"XXII. Wherefore, the Chickasaw Nation prays that an order be entered by this court requiring the proper officers of the United States to prepare and file, in this suit, a statement of the total number of Choctaw Freedmen to whom allotments of the lands of the Choctaw and Chickasaw Nations have been made, the total number of acres of such lands so allotted, to such Choctaw Freedmen, and also a statement of the total value of such lands, computed upon the basis of twice the value thereof, placed upon such lands for purposes of allotment; and the Chickasaw Nation prays further that it may have judgment against the United States for one-fourth such total sum, together with interest at the rate of five per centum per annum from the date of the completion of allotments to such Choctaw Freedmen, and for all other and further relief to which the court may find it entitled."

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In the instant case (No. J. 231) the Choctaw Nation contends that the United States has apportioned and paid to the Chickasaw Nation, moneys belonging to the Choctaw Nation; and that the Choctaw Nation should have judgment against the United States for the amount of such moneys so apportioned and paid.

Those parts of the petition of the Choctaw Nation in the instant case No. J. 231, setting out its contention, as against the United States and the Chickasaw Nation, are as follows:



"10. That although it was expressly stipulated in the treaties to which reference has been made herein, that the funds arising from the sale of the common property of said nations should be collected by the United States Government and paid out to the Choctaw and Chickasaw Indians, freedmen excepted, so that the members of the two tribes should receive an equal portion thereof, the Secretary of the Interior, or other officers of the United States Government, have, without authority of law and in violation of the treaties above mentioned, arbitrarily set aside from the common fund of said nations a one-fourth to the Chickasaws and three-fourths to the Choctaws. That said arbitrary division and apportionment of the funds has been adhered to as the fixed policy of the Government of the United States and has been applied as the standard or rule governing the distribution of all tribal funds of whatsoever nature. That as the funds or revenues arising from the sale of the common property or from the leasing of the same have been received they have been placed to the credit of said nations, by giving a one-fourth to the Chickasaw Indians and a three-fourths to the Choctaw Indians, and the said one-fourth has been distributed among the enrolled members of the Chickasaw Tribe of Indians, and the three-fourths and no more has been distributed to the aggregate enrolled membership of the Choctaw Tribe of Indians."

"11. That while a three-fourths of the common funds have been duly credited to the Choctaw Nation and a one-fourth to the Chickasaw Nation to be distributed as hereinbefore set forth, the true interest of the members of said tribes in proportion to their enrolled membership would give the aggregate Choctaw membership 76.56

per cent of the common funds and would give to the Chickasaws 23.44 per cent of the common funds, leaving a difference in favor of the Choctaw Indians of 1.56 per cent of all funds collected by the Government of the United States since the common property has been under the control of the defendant herein."

"12. Complainant would therefore respectfully show to the court that the division and distribution of the common funds, as made by the officers of the United States Government, is arbitrary and illegal and constitutes a violation of the Acts of Congress and the Treaties entered into between the Choctaw and Chickasaw Nations as hereinbefore set forth."

* * * * * * *

"Wherefore, the complainant, The Choctaw Nation, prays that it have judgment against the defendant, The United States, for the total sum of $468,000.00 and for all other and further relief to which complainant is entitled."

(In the brief of the plaintiff, the Choctaw Nation, the amount of the judgment claim, in the original petition, is changed as follows:

Page 53, "The plaintiff in this case, in its original petition asked for judgment in the sum of $468,000.00 alleged to have been an over-payment to the Chickasaw Nation of Indians of the tribal funds in violation of the treaties and Acts of Congress, but since the filing of the report of the Comptroller General it becomes apparent that if plaintiff is entitled to judgment it should be for the sum of $599,789.51.")

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These quotations from the petitions in the two cases (No. K. 336 and the instant case No. J. 231) are set out for the purpose of showing that the *issues and parties* are *identical;* that, in each case, judgment is sought against the United States because of the alleged disposition of moneys or property of *one* Nation which the *other* Nation claims to own, or to have an interest, in violation of Treaties and laws; and that, in both cases, the liability of the United States, and the liability of each Nation to the other, upon a final accounting, must be determined.

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In the instant case (No. J. 231), upon motion of the United States, the Chickasaw Nation has been made a party defendant.

It is fair to assume that, if the right of the Choctaw Nation for reimbursement should be established, it will be contended by the United States that the Chickasaw Nation, the alleged beneficiary, should be required to respond.

It is also fair to assume that like action, in Case No. K. 336, will be taken by the United States; and that, at the proper time, a motion will be filed to make the Choctaw Nation a party defendant, so that, if the right of the Chickasaw Nation to recover for the value of its interest in the land allotted to Choctaw Freedmen, be established, it will, likewise, be contended by the United States that the Choctaw Nation, the alleged beneficiary, should be required to respond, under the

saving clauses contained in the Choctaw-Chickasaw Treaties of 1898 and 1902, above quoted.

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It is not our purpose in this Motion, to attempt to comment upon, or to present (nor would the same be proper) the merits or demerits of these several contentions by either the Choctaw Nation, the Chickasaw Nation or the United States.

It is deemed sufficient, for the purposes of this Motion, to show that the two cases (Nos. J. 231 and K. 336) are identical as to *issues and parties;* and that their final consideration and decision will require:

*First,* A determination of the liability of the United States for the use and disposition of moneys or other property of *one* Nation which the *other* Nation claims to own, or to have an interest; and,

*Second,* The liability of *one* Nation to the *other* Nation, under existing Treaties and laws, upon a final accounting between the *two* Nations.

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It would seem, therefore, as we contend, that it would be futile to attempt to consider and decide the issues in *one* case without, at the same time, considering and deciding all the *identical issues* in the two cases; and that the two cases (Nos. J. 231 and K. 336) should be consolidated for final consideration and decision.

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The foregoing Motion, on behalf of the defendant, the Chickasaw Nation, prays that this Honorable Court make and enter its order:

(1) *To postpone final consideration of, and decision in, the instant Case No. J. 231, until final decision, by the Supreme Court of the United States, in Case No. H. 37; and*

(2) *To consolidate, for final consideration and decision, by the United States Court of Claims, Cases No. J. 231 and No. K. 336;*

and it is respectfully submitted, for the reasons herein set out, that the same should be allowed.

WILLIAM H. FULLER,
MELVEN CORNISH,
*The Chickasaw Nation of Indians.*
*Special Attorneys for*