In the Court of Claims of the United States

Nos. L–51 and L–208

(Decided December 4, 1944)

THE SEMINOLE NATION v. THE UNITED STATES

Mr. Paul M. Niebell for the plaintiff. *Messrs. W. W. Pryor* and *C. Maurice Weidemeyer* were on the briefs.

Mr. Wilfred Hearn, with whom was *Mr. Assistant Attorney General Norman M. Littell*, for the defendant.

This case having been heard by the Court of Claims, the court, upon the evidence and the report of a commissioner, makes the following

SPECIAL FINDINGS OF FACT

1. Under Article 8 of the Treaty of August 7, 1856 (11 Stat. 699, 702), between the United States and the Creek and Seminole Nations of Indians, as a part of the consideration to be paid to the Seminole Nation, the United States agreed to establish a trust fund of $500,000 for the Seminole Nation, and to invest the same at 5 per centum per annum, "the interest of which at the rate aforesaid, shall be annually paid over to them per capita as an annuity."

2. After the passage of the Act of July 26, 1866 (14 Stat. 263, 264), Congress annually appropriated for each fiscal year from 1867 to 1909, both inclusive, the sum of $25,000 as provided for in the above article.

3. During the years 1870 to 1874 the United States through its appropriate disbursing officer paid the following amounts, due to have been paid per capita, to the tribal treasurer pur-

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suant to resolutions of the Seminole General Council asking that said sums be so paid:

Year:	Amount	
1870	$17,821.00	(a)
1871	12,500.00	(b)
1872	12,500.00	
1873	12,500.00	
1874	11,101.64	(c)
	66,422.64	

The disbursement of the above sums is explained in finding 5 (a), (b), and (c).

4. Captain T. A. Baldwin, U. S. Army, was Indian Agent from sometime in the middle of the year 1869 to the latter part of 1871. He was succeeded by Henry Breiner, who continued in said office through 1874.

5. The payments of the sums totaling $66,422.64, referred to in finding 3, were made under the following circumstances:

(a) February 8, 1870, the Commissioner of Indian Affairs advised the Indian agent as follows:

> In regard to the manner of paying the funds to the Seminoles, I would say that in case the Indians in council direct you to pay any claims against the tribe that may be presented to you, you are authorized to do so, but not otherwise. Any payment made by you under such authority, must be supported by a duly certified copy of the proceedings of the council, the same to be attached to the vouchers taken for the money. The residue of the item of $12,500.25 per tabular statement, after paying such claims, will be paid per capita in the usual manner, and in accordance with instructions contained in office letter of September 3, 1869. The other items in the tabular statement will be used for the object therein named.

April 8, 1870, the Seminole General Council passed an act providing in part as follows:

> That Capt. T. A. Baldwin, U. S. Agent, be and he is hereby authorized to pay the amount of Seventeen Thousand Eight Hundred and Twenty-one Dollars ($17,821) to the following individuals out of any money now paid in his hands for our Nation as annuity &c. after the manner and in the sums hereinafter prescribed. [Here followed a list of creditors of the Seminole Nation with annuities due each.]

Said payments were made to the parties and in the amounts as designated in said act of the Seminole General Council.

May 1, 1870, Captain Baldwin, Indian Agent, transmitted to the Commissioner of Indian Affairs an abstract of the disbursement of $17,821 made by him pursuant to the act of the Seminole General Council. The disbursements were as follows:

Chiefs and lawmakers	$12,414.50	
Drafts paid	2,406.50	
Trust funds paid to John Brown	3,000.00	
		[1] $17,821.00

He also reported the following disbursements:

Support of government	$500.00	
Wood for school	24.00	
Paid to Indians per capita	7,179.25	
		$7,703.25
		25,524.25

With reference to the payments to the tribal officers, Captain Baldwin wrote the Commissioner of Indian Affairs on the dates stated as follows:

On November 3, 1869, he wrote as follows:

> I have the honor to state that after making the payment of annuities to the Seminole Indians per "capita" as ordered, I asked the chiefs and warriors how they wished the next payment made.
>
> They replied that they wished it paid over to the chiefs to enable them to pay the national debt which has been accruing some time.
>
> I would respectfully recommend that the next annuities be ordered paid as requested, as the amount appropriated for the support of the Seminole Govt. is not adequate.

On December 6, 1869, Captain Baldwin wrote as follows:

> I have the honor to state that during the month of October, I recommended that when the next payment was made to the Seminole Nation, that the whole amount be turned over to the Chiefs of the nation, to enable them to pay off their national debt, and not paid upon rolls "per capita".

[1] See Item (a), finding 3.

I then supposed that the amount would be the usual payment made, $12,500.00. I would now recommend that if the amount now due and the amount which will be due for the 1st and 2nd quarters, 1870, be paid at the same time, that I be ordered to turn over to the Chiefs, and take their receipts for same, whatever amount the department may designate, to enable them to liquidate the national debt, which from all the information I am able to gain is about $6,000.00 that has accrued against the nation for Councils, and the salaries of its officials. The balance to be paid out per "Capita" upon rolls.

There is still another debt against the nation. Claimants John Chup-co, Fus Har-jo, and Chi-Cot-har-jo, Chiefs of the nation amounting to $9,000.00 it was formerly $18,000.00, or $6,000.00 each but a portion of it has been from time to time paid, leaving the balance above named. This $18,000 was to be paid them for making and signing the treaty made with the United States in 1865.

I would state that they are in the habit of calling Councils, for any little thing that may arise and spending from 2 to 15 days without effecting anything whatever, which would be of the least service to the nation, except in spending the funds; which are taken out of those ordered paid per "capita" to the nation.

I find that it has been the custom heretofore for the Chiefs to order how the payment should be made, but at the same time making returns to the department, upon rolls as if it had been paid per "Capita".

I think that it is an injustice to the majority of the people comprising this nation and the only way to avoid unnecessary expenditure of money for Councils, &c. which are of but little benefit to the nation (for example the last council held cost the nation $700.00 for edibles alone and did no business) is for the department to give special orders in reference as to what amount shall be turned over to the Chiefs and the balance paid to heads of families in person.

I would respectfully ask that special instructions be given me in reference to the next payment.

On January 12, 1870, Captain Baldwin wrote the Commissioner as follows:

> I would respectfully recommend that if practicable and in accordance with your approbation, the annuities now due the Seminoles be ordered paid, as they are more in need of money during the winter than in the summer season.

> There are many without shoes and other articles of wearing apparel necessary to defend them from the rigors of the season for the want of which they have been dying of pneumonia during the past two months. I think their funds would be of great benefit to them now as they feel the want of proper clothing and would provide themselves with it had they the means of so doing.

On June 30, 1870, Captain Baldwin wrote him as follows:

> I have the honor to recommend that the next payment be ordered made per capita to Seminole Nation for the reason that should it be made upon the same order of last payment the chiefs received the greater portion of the annuities while the people received as it were nothing.
>
> I would respectfully call attention to last payment made by me in which 68 Law Makers and Chiefs were paid the bulk of the $25,000.00 [1] while the people received but a pittance of the annuities due them.

On September 1, 1870, he wrote him as follows:

> *Per capita* payments are, in some instances, I think, a great evil; but as the system cannot be abolished, this nation [Seminole] having no constitutional government, and until such a form of government be adopted, I would recommend that the provisions of the treaty be rigidly enforced, and no moneys allowed to be paid except to the heads of families. Heretofore, as I have reported, the chiefs have been in the habit of taking out what amount they chose, allowing the balance to be paid *per capita*. This is an injustice, as few receive the bulk of their annuities.

Finally, on November 17, 1870, Captain Baldwin wrote the Commissioner as follows:

> I have the honor herewith to report that it is the wish of the Head Chiefs of this Nation that the next payment of annuities be made to the officers and law makers.
>
> The people to receive as in those cases nothing: I would respectfully call the attention of the Hon. Comm'r to the manner and amount in which a payment was made during the month of April last by me under instructions from your office, at that time the people

[1] The $25,000.00 referred to is itemized in finding 5.

needed many of the necessities of life; but a few leaders or chiefs pocketed the bulk of the annuities while the people received but a small portion.

It now costs the Seminole Nation from 12 to 13 thousand dollars for the payment of chiefs and law makers (for a population of less than 2,300 souls) who do nothing but eat and smoke.

I would respectfully recommend that the next payment be ordered to be made per capita, as during the winter months many who are in indigent circumstances die from exposure and want. And I would also recommend the payment be made as early in the month of January 1871 as practicable as the months of January and February are the most severe.

(b) During each of the years 1871, 1872, and 1873, Henry Breiner, who had succeeded Captain Baldwin as Indian Agent, paid into the treasury of the Seminole General Council the sum of $12,500, or a total of $37,500, pursuant to resolutions or acts of the General Council of the Nation.

The resolution of 1871 was for the expressed purpose of paying indebtedness incurred for salaries of its officers and other claims against its government. In 1872 the amount was stated to be for smiths shops, payment of smiths, and for governmental business. In 1873 the resolution of the Council did not list the particular items for which the money was to be used.

The money so paid was used in settling obligations of the Nation and paying expenses of the national government.

May 31, 1871, Indian Agent Breiner wrote the Commissioner of Indian Affairs as follows:

> I have to acknowledge, at this late date, the receipt of your communication of March 30, 1871, enclosing tabular statement of Seminole funds to the amount of $14,250, placed to my credit in the National Bank of Lawrence, Kansas, with instructions for the payment of said funds to the Seminoles.
>
> I have drawn the funds from the bank, and have complied in the use of those funds, with instructions from the Department, and with the treaty stipulations, as nearly as I could. In my communication to the General Council in reference to the payment, I quoted the instructions of the Department in reference to the matter. In reply the council stated that the $13,000 would not liquidate their national debt, and made the request for me to pay to the Seminole Treasurer the whole amount, to enable them to pay their creditors pro rata. I then asked that the council would state in their demand for the funds, the whole amount of their indebtedness, and have it duly certified, which they did, and the money was paid as authorized by them.
>
> It was understood by the whole Nation that this payment was to be made in this way, and I have heard of no complaints against it. But it is understood, and so stated to me by the chief, that the next payment is to be made per capita. So far as I have learned, the manner in which they have liquidated part of their old debt has proven satisfactory to the creditors. * * *

Under date of December 20, 1871, Indian Agent Breiner advised the Commissioner of Indian Affairs, in part, as follows:

> In reference to the Act I will say that I deemed it unnecessary to send it at the time for the reason that the Seminole Council had decided that the next annuity should be paid per capita by the agent, which was done on the 9th of November 1871. I am not fully convinced that the Seminoles are capable of managing their financial affairs economically and advantageously; yet if the Honorable Commissioner should authorize the agent to make the payments to the treasury it would relieve him of much writing but if we take their interests into consideration I would say that they be advised from the Department to allow the payments to be made as usual, i. e., every alternate payment to be made per capita and the other payments to be paid to the treasury for Government purposes.

January 5, 1872, the Acting Commissioner wrote the Indian Agent, in reply to his letter of December 20, 1871, in response to the request of the Seminole Chiefs that their national funds be paid thereafter to the treasurer instead of per capita, that it was not deemed advisable to change the manner in which annuities had theretofore been paid until the Department shall be fully satisfied that a proper disposition will be made of the funds if paid in the manner desired by the chiefs.

December 10, 1873, the Secretary of the Interior advised the Commissioner of Indian Affairs, with reference to an act passed by the Seminole Council requiring all annuity funds to be paid into the Seminole treasury, that the 8th

article of the Treaty of 1856 stipulates that the payment of annuities shall be made to the Indians per capita and that the payment must therefore be made in accordance with the treaty stipulation.

Under date of January 31, 1874, the agent for the Seminoles wrote the Commissioner of Indian Affairs:

> The Seminoles are beginning to feel that they are capable of managing their financial affairs without the aid of an agent, and hence the demand to have the whole of their annuity paid into their treasury. On account of their urgency I may have concurred in this demand, and recommended that their request be complied with, while at the same time I was fully convinced that they are not capable of managing their affairs to the best advantage; yet I believe, and still believe that they would be advised by me in matters of importance; and that, by allowing them to have the control of, say half their annuity, as recommended in my communication of the 1st inst., they would take a pride in making improvements, and in adopting a better system of education, and thus they would acquire a better and more practical knowledge of the management of their financial affairs than they ever could under the present management. But if they refuse to be advised, it would prove a failure, for they have, in common with all Indians, very little idea of the value and uses of money.
>
> In the management of financial affairs the Creeks have proved a failure, and I would anticipate the same result from the Seminoles if they should be their own advisors. Their credit as a nation is now good wherever they are known, and I should regret exceedingly to see them pursue a course that would injure it, as well as themselves.

(c) Under date of September 7, 1874, the Indian Agent wrote the Commissioner of Indian Affairs in part as follows:

> When I sent the regular report for the quarter ending June 30th, 1874, I believe I neglected to explain the reasons for making the annuity payment in the way I did in place of per capita as the treaty provides.
>
> 1st. There was no specific instruction received until after most of the payment was made.
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> 2nd. The Seminole Nation had outstanding drafts to the amount of $11,000 drawing 10% per annum which they promised to lift at that payment, and which had then been delayed three months longer than the time they had assured the holders that they would be paid.

> The holders of these drafts, to the amount of over $6,000 had drawn on them at 10% discount in St. Louis with the promise that they would be paid about the 1st of April.
>
> 3rd. The Council had decided that if I could not pay these drafts, they would appoint collectors to receive the money as it would be paid per capita. Under the circumstances, I thought it best and proper to lift the drafts, and to turn the balance over to their treasurer to pay their Blacksmith bills which would require the whole of the balance.

(The foregoing disbursements, referred to in paragraphs (a), (b), and (c), comprise the total sum of $66,422.64, referred to in finding 3.)

6. On January 9, 1874, the Commissioner of Indian Affairs wrote the Secretary of the Interior as follows:

> Sir: I have the honor to call the attention of the honorable Secretary of the Interior to the request of the Seminole Nation, through the Indian agent of that tribe, that hereafter the annuity payments to the Seminoles be paid to the authorities of the nation, to be disbursed under their direction, instead of being paid per capita, as provided for by the treaty of 1856.
>
> By the terms of the treaty, interest upon their funds amounting to $25,000 per annum is to be paid semi-annually per capita. The Seminoles desire to have it paid into their national treasury, in order to enable them to apply a portion of this money for educational and mechanical purposes of common benefit to the tribe, and also to defray the expenses of the national government. In the United States Statutes of 1870, vol. 16, page 360, it provided for, as follows:
>
> "That in every case where annuities are provided to be paid to any Indian tribe, it shall be the duty of the Secretary of the Interior to expend the same for such objects as will best promote the comfort, civilization, and improvement of the tribe entitled to the same: *Provided*, That the consent of such tribe to such expenditures can be obtained, and no claims for supplies for Indians, purchased without authority of law, shall be paid out of any appropriation for expenses of the Indian Department or for Indians."
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> If this provision is in the nature of general legislation, it will allow of the proposed change.
>
> I believe a substantial compliance with this request will be both expedient and beneficial. There are cer-

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tain necessary governmental expenses for this nation which cannot well be otherwise provided for, and the present school-fund is not sufficient for the tribal purposes. Besides, there are serious objections to paying any money in hand to Indians.

The tendency of such payment is naturally to pauperism rather than to civilization.

There is danger, however, if these funds are placed entirely in the control of those who may for the time be in authority, that the nation will not always receive its just benefit under the terms of the treaty.

To prevent this possible evil, as well as the evil of per capita payment, I respectfully invite the attention of the Hon. Secretary to the expediency of requesting from Congress authority to expend this Seminole fund, under direction of the Secretary of the Interior, for their national and other beneficial purposes. With this discretionary power lodged in the Department, such control can be held over the expenditures by national authorities of the Seminoles as will be likely to insure an economical and beneficial use of the nation's funds.

Upon this recommendation, the Secretary of the Interior wrote the Speaker of the House of Representatives, under date of January 9, 1874, transmitting draft of a bill providing for the manner of paying annuities to the Indian tribes. In this letter the Secretary expressed the hope that the proposed bill would become law and also stated:

> The Seminoles are considerably advanced in civilization, and have a national government, and as a nation are desirous of having the whole amount accruing annually upon the sum invested as above described, or at least a large portion thereof, paid into the national treasury of their nation, to be disposed of under the laws of the nation, for such purposes connected with their civilization and improvement as the national council may deem best.
>
> I have no doubt of the propriety of complying with their wishes, at least to some extent, and I am equally clear that such portion of their annuities as is not paid into the National Treasury should be expended by the Indian Office, with the sanction of the Secretary of the Interior and the President of the United States, in promoting the general comfort, civilization, and improvement of these Seminoles. In this connection I deem it my duty to refer to a recommendation contained in my annual report, namely, that all annuities, instead of being paid to Indian tribes per capita, be expended, as here indicated, in promoting their general welfare, civilization, and improvement. The payment of cash to individual Indians has, according to all the experience furnished by the Indian Office, tended to produce debauchery and demoralization, rather than to advance the civilization or improvement of Indian tribes.
>
> By the second section of the Indian appropriation act for the year 1870 (Stats. at Large, vol. 16, p. 360), provision is made for the expenditure of annuities, provided for in that act, in such manner as in the opinion of the Secretary of the Interior "will best promote the comfort, civilization, and improvement of the tribe entitled to the same." It may have been the intention of Congress to make the section here referred to applicable not only to annuities for which appropriations were then made, but to all annuities therein provided for, and thereafter to be authorized.

On these recommendations Congress passed the Act of April 15, 1874 (18 Stat. 29).

7. It is not shown that the officers of the United States authorizing the disbursement of the annuities to the tribal treasurer of the Seminole Nation, on order of its General Council during the years 1870 to 1874, knew that the General Council was corrupt, venal, or false to its trust in the discharge of its duty to the Seminole Nation; nor that said officers of the defendant acceded to demands made by the General Council which were not in the honest judgment of its officers for the best interest of said Seminole Nation; nor is it shown that during said years the Seminole General Council was in fact corrupt, venal, or false to its trust in the discharge of its duty to the Seminole Nation.

8. The Seminole Nation received the benefit of the payments in the sum of $66,422.64.

9. During the fiscal years 1899 to 1907, both inclusive, the sum of $864,702.58 was paid into the treasury of the Seminole Nation by the United States, the items making up the total being as follows:

> $212,500, interest on $500,000 paid pursuant to Article 8 of the Treaty of 1856 (11 Stat. 699).
>
> $29,750, interest on $50,000 under Article 3 of the Treaty of 1866, to be applied in support of schools (14 Stat. 558).

$622,156.87, interest on $1,500,000 deposited in the Treasury of the United States pursuant to the Act of Congress of March 2, 1889, which Act directed that said interest "be paid semiannually to the treasurer of said [Seminole] Nation" (25 Stat. 980, 1005).

$295.71 from an account known as "Indian Moneys, Proceeds of Labor."

All of the foregoing payments were made during the fiscal years 1899 to 1907, both inclusive.

10. During the years 1899 to 1907, both inclusive, the Seminole Nation of Indians, living on land located in the Indian country which later became part of the State of Oklahoma, was governed by a General Council composed of the band chiefs and other representatives of the several bands of the Nation.

John F. Brown was the principal chief or "Governor" of the Nation during this period. His brother, Andrew Jackson Brown, generally known as Jackson Brown, was treasurer of the Nation during the time in question. Jackson Brown had been treasurer for many years prior to this time, and John F. Brown had been the principal chief for many years prior to this time, with the exception of one term, when he was defeated for reelection.

11. The Seminole Indians had migrated, some years earlier, from Florida to the Indian country hereinabove described. They had owned negro slaves during their residence in Florida. Upon the emancipation of the slaves, the negroes among the Seminoles became freedmen and were organized or incorporated into bands, thereby becoming members of the tribe or Nation. The Seminoles who migrated from Florida to the Indian lands of the west (not all of the Seminoles moved from Florida) therefore included some negroes.

Before the migration, a white man named Brown, said to have been a Scotch physician, had made his home among the Seminoles in Florida. He married an Indian girl, after providing her with some degree of education in schools conducted by whites. Several children were born of this union, among them John F. Brown and Andrew Jackson Brown.

In 1899, John F. Brown was 56 years of age, having been born in 1843, and had held the position of Governor, as above

described, for many years. His tenure in that office extended over a period of 35 years, subject to a single interruption of one term of three or four years.

The Seminoles elected their principal chief or Governor by popular vote. When an election was to be held, the members of the tribe eligible to vote assembled at the Council House. The candidates for office took up positions facing each other, and the voters took positions behind the candidates of their choice. The election was determined by the "counting of noses."

It does not appear whether Jackson Brown was appointed or elected to the office of treasurer of the Nation. He did, however, continue in office as treasurer of the Seminole Nation over a period of many years, beginning long before 1899 and extending after 1907.

John F. Brown was the responsible, directing head of the Seminole Nation during his tenure of office, which included the period in question. He was the Governor of the Nation in fact as well as name. There were votes in the General Council in opposition to his policies from time to time, but for the most part he was able to dominate and control the policies of the General Council. He appears, however, to have maintained control by majority vote, and there is no evidence of coercion or corruption in the maintenance of such majority support.

12. Pursuant to section 16 of the Act of March 3, 1893 (27 Stat. 612), a commission was appointed for the purpose of securing an agreement from each of the Five Civilized Tribes for the extinguishment of the tribal title to lands within the Indian territory and for an allotment of these lands to the Indians in severalty so that a State embracing these lands could be created. This commission was known as the Dawes Commission. It conducted negotiations with the Indians over a period of a number of years. On November 20, 1894, it made a report to the Secretary of the Interior, a portion of which reads as follows:

Corruption of the grossest kind, openly and unblushingly practiced, has found its way into every branch of

> the service of the tribal governments. All branches of the governments are reeking with it, and so common has it become that no attempt at concealment is thought necessary. The governments have fallen into the hands of a few able and energetic Indian citizens, nearly all mixed blood and adopted whites, who have so administered their affairs and have enacted such laws that they are enabled to appropriate to their own exclusive use almost the entire property of the Territory of any kind that can be rendered profitable and available.

On November 18, 1895, it made a report, in which it said:

> The Commission is compelled by the evidence forced upon them during their examination into the administration of the so-called governments in this Territory to report that these governments in all their branches are wholly corrupt, irresponsible, and unworthy to be longer trusted with the care and control of the money and other property of Indian citizens, much less their lives, which they scarcely pretend to protect.

However, in that part of its annual report for 1899 dealing with the enrollment of citizens of the Seminole Nation preparatory to making allotments of land to them, it said:

> The Seminoles, as has already been seen, are the fewest in numbers of the Five Tribes, and their government has been free from corruption. The rolls of the tribe, while crude in a measure, were found free from all irregularities of a fraudulent character.

On December 16, 1897, the Dawes Commission entered into an agreement with the Seminoles, in which was incorporated the following provision:

> When this agreement is ratified by the Seminole Nation and the United States the same shall serve to repeal all the provisions of the Act of Congress approved June seventh, eighteen hundred and ninety-seven, in any manner affecting the proceedings of the general council of the Seminole Nation.

13. Sometime prior to 1899 the Browns (John F. and Jackson Brown) established two general stores, one at Wewoka, site of the Council House and therefore the capital of the Nation, and one at Sasakwa. John F. Brown lived at

Sasakwa, while Jackson Brown made his home at Wewoka and maintained his office at the Wewoka store, known as the Wewoka Trading Company.

Practically all of the testimony pertaining to the conduct of business and the credit extended at these stores relates to the Wewoka Trading Company.

After the opening of the Wewoka Trading Company, and sometime before 1894, the store began the practice of issuing a form of scrip, known among the Indians as "chokasutka," which was redeemable in merchandise at the store.

During the period 1899 to 1907 each Seminole man and woman was entitled to receive head payments in the approximate amount of $14.00 per year.

Upon application by an individual Indian, the Brown stores would issue to him chokasutka up to the amount of the next head payment to which he or she was entitled. Some Indians received all of their next head payment in chokasutka, others received a part, and others none at all.

Records were maintained by the Wewoka Trading Company so that each member of the tribe might receive the scrip in such amounts and at such times as desired, up to the limit of the head payment that would be due to him at the end of the year.

When the money for the head payments was received from agents of the United States, it was delivered to the treasurer, A. J. Brown, with the full knowledge of the members of the Nation. An accounting was then made, and each Indian received credit for his head right. If he had used it up in scrip, he received no money; but if he had not withdrawn his allowance in whole or in part, he received the amount due him in cash. If he had not used all of the chokasutka issued to him, he could turn in the unearned coupons for cash or he could keep them and trade them out later.

14. The sale of liquor was prohibited within the confines of the lands occupied by the Seminoles. Saloons were operated by white men, however, just outside the borders of the Seminole lands. Seminole Indians on occasion would trade their chokasutka to the saloonkeepers for liquor, or sell the

chokasutka to white men for cash and use the cash to buy whiskey.

After stores other than the Wewoka Trading Company came to Wewoka, Seminoles holding chokasutka sometimes traded at such stores, exchanging the scrip for goods on such terms as they could obtain, or paying for the goods with cash obtained by trading chokasutka for it.

The white men paid for the chokasutka the amounts for which the Indians were willing to relinquish it. The average exchange price appears to have been about 50 cents on the dollar, in terms of cash, for chokasutka, and somewhat higher when chokasutka was received for goods.

The Wewoka Trading Company redeemed chokasutka at face value by receiving it in exchange for goods on the shelves of the store at the prices listed thereon, making no distinction between presentation by white man or Indian.

Toward the end of the period in question, in 1905 or 1906, redemption of a sizable sum of chokasutka in the hand of a white saloonkeeper was refused, with the explanation as given by Governor John F. Brown that it was desired to discourage the practice of selling liquor to Indians.

Except for this instance, the Brown stores appear to have redeemed the chokasutka at face value for any holder thereof.

It is not shown whether or not prices on goods at the Wewoka Trading Company were higher than the prices of similar goods at other stores.

A small minority of Indians were able men and skilled in trading and business, but the majority of the full-blooded Indians had little knowledge or appreciation of the value of money, having, as the witnesses described it, no more business acumen than an average 12-year-old white child.

The Wewoka Trading Company also made credit loans to white men, extending credit that was redeemable in goods at the store. A discount was charged for such loans, the borrower agreeing to repay an amount in excess of the amount of credit entered and subject to withdrawal.

A discount of 10 percent was charged the Indians when chokasutka was issued to them; in other words, if they had $50.00 coming to them, they would be issued chokasutka in the amount of $45.00.

15. In 1905 Henry C. Lewis, an investigator for the Department of Justice, was sent to Wewoka to make an investigation of this practice. He reported in part as follows:

> When the credit is extended they are given a book containing the due bills and in this book is entered the particular appropriation which is to cover the advance in goods and the amount of advance so given, which of course, is the same amount as is given in due bills, so that when the Indians ask for $50.00 in credit upon a certain appropriation they are debited on the books of the company with fifty dollars, but are given only forty-five dollars in due bills, and consequently, get only that amount in goods. * * *
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> * * * * *
>
> To charge a discount where goods are given on credit is not unusual, but the system under which it is charged by this company is manifestly unfair, for the reason that when the money is received by the Trading Company the Indians may not have traded out all of the due bills which have been given them, or, in other words, all of the credit extended to them. The result is that a discount has been charged on a part, at least, of the amount given out in due bills, goods for which have not been obtained, while as a matter of fact, the Trading Company has the money in its possession representing such part for which goods have not been obtained, the Indians retaining the remaining due bills to be traded out in the future. It would seem that there should be a discount in favor of the Indians instead of the Trading Company. The Indians are at liberty to turn in the remaining due bills, states Mr. Brown, but they never do so, another result of their pitiable ignorance. Indeed, some of them do not even understand what these due bills represent when they receive them. There is in the record the testimony of one girl who stated that she did not know what the due bills were and threw them away. In point of fact, she threw away so much money. It is not too much to say that, in view of the ignorance of these Indians, this system of credit is dishonest. It should be condemned because it keeps these Indians in a constant state of poverty. They do not realize that these due bills are in fact money, and the result is that they are squandered without care. I am not informed as to whether the Department of the Interior has knowl-

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edge of this state of affairs. It should be brought to its attention, so that, if possible, it may take steps looking to the breaking up of the system, which can be done by having the appropriations distributed in some other manner.

Upon receipt of this report the Commissioner of Indian Affairs recommended to the Secretary of the Interior that the practice be prohibited. The First Assistant Secretary of the Interior replied on April 26, 1906, in part, as follows:

> You express the opinion that the Department cannot control the manner in which the Wewoka Trading Company transacts its business, but recommend that hereafter, when payments are made to Seminoles, such payments be made direct to the adult citizens and to the guardians of minors, and that during the time such payment is being made no member of said company or any of its agents or employes be allowed to be present.
>
> In this the Department concurs, and such course should be followed hereafter, should no objections appear.
>
> It is not considered advisable, as you suggest, to instruct the U. S. Indian Inspector for the Indian Territory to advise the Wewoka Trading Company "that the Department does not like its method of issuing coupon books and charging discounts, and that the Department would prefer that said business, insofar as the Seminoles are concerned, be transacted in the usual way and discounts and coupon books be not used or considered in the transaction of business of said company with Seminole Indians."

16. Both John F. Brown and Jackson Brown conducted an extensive merchandise and cotton business and an extensive credit business. They were considered wealthy men at one time, but due to bad investments they were in straightened financial circumstances in their later years.

17. The proof does not show that the Browns misappropriated $191,294.20 of tribal funds, nor that they misappropriated any other sum.

18. On January 29, 1898, the Secretary of the Interior transmitted to the President of the Senate, "for its information and consideration, a copy of a paper which purports to be a remonstrance adopted by a mass convention of members

of the Seminole tribe of Indians against the ratification of the said agreement [the agreement with the Seminole Nation] and transmitted to this Department by Hulbutta, as second chief of the Seminole Nation, in a letter dated the 24th instant, a copy of which is also inclosed herewith."

The protest was signed by twelve members of the Seminole tribe, allegedly on behalf of 100 male citizens of the Seminole Nation who had met in convention. Protest was made against ratification of the agreement because it had not been submitted to a vote of the people, and it was also stated:

> The national funds of the Seminoles are absorbed by only a few of their citizens who have grown rich at the public expense, and we firmly believe that these few persons are oppressing the poorer ones. As to the assertions pertaining to the Seminole government, we cite the following: In the year 1889 an agreement was entered into by the United States and the Seminoles by which the latter relinquished to the United States their title to lands known as Oklahoma for the consideration of $1,912,942.02. The Seminoles placed on interest with the United States $1,500,000. They withdrew $221,647.80, expending this amount for various national purposes. There was the sum of $191,294.20 which never entered the treasuries of the United States or the Seminoles. The reply given to us about the disposition of this money by our authorities was that during the transfer of these lands to the United States there was a lawyer who negotiated the agreement and took that amount for his pay. The name of the lawyer was never mentioned and no receipt of the alleged deal was ever shown. We call your attention to this. We ask that you take note of the townsite laws of Wewoka and see to whom only these laws are beneficial and whom they oppress. We call your attention to the fact that the annuities due the Seminoles by law July 1 are never paid until in October.
>
> We beg leave to state further that we have no law regulating the bond of our treasurer or chief, and according to the Seminole law no action or bill can be placed before the council without the consent of the chief. Our laws do not admit of an auditor, and our people are entirely ignorant of the condition of our finances. Therefore, in conclusion, we desire to say

that while the legislation has not been in line with our wishes, we must perforce of circumstances accept the inevitable. We ask that any disposition of moneys belonging to the Seminoles and the management of their schools be made with the approval of the Secretary of the Interior. We earnestly ask you to reconsider the new treaty as a whole in regard to us and relieve us from its obligations. We most respectfully ask you that we be allowed to hold our lands in common, as provided for in the treaty of 1866, and that we be given time to consider and change from our present manner of life. * * *

There is no proof in the record to support the charge that "the national funds of the Seminoles are absorbed by only a few of their citizens who have grown rich at the public expense, and we firmly believe that these few persons are oppressing the poorer ones."

19. In 1901 a Memorial was addressed to the members of the Senate and House of Representatives of the United States, signed by A. W. Crain, B. F. Bruner, Nero Noble, Geo. Ripley, Alex Harjo, and John Jefferson. In that Memorial it is stated:

> Our tribal government has long ceased to represent the wishes of the people, but only represents the will of an oligarchy, which has grasped all power and hemmed themselves about with prerogatives and laws that makes us unable to reform them. This is our government.
>
> We have an income of over one hundred thousand dollars. The mercantile interests of the tribe are controlled by two men; these are the Governor and his brother, the Treasurer, who is also Superintendent of schools. There is no Auditor.
>
> The officers are under no bond. The Treasurer's report is made to an uneducated people. No laws can be made to censure or for dismissal of officers without the Governor's consent. An obedient officer is sure of his position.
>
> The people have become so impoverished that the very few having any means control the trade and credit of the tribe. There can be no hope of reform under the present conditions, nor the free expression of opinion.

In this Memorial it is also stated:

> We believe the well-thinking people of the land know nothing of the true state of affairs here; did they, they would know that, astute as the officials of the Interior Department are, they have been duped and made tools of through all by a few obscure Indians who have amassed large fortunes and brought their tribe to poverty, and still contemplate greater wrongs. This United States Commission, now assuming to settle all Indian questions, and giving to each his share, does not inspire us with confidence. We believe a large United States appropriation for this work only means a new manner and guise for despoiling us. There is no need of deception; they are powerful enough to deal candidly. Town sites are cared for more than Indians. The common people are not opposed to the wishes of the United States government. Our tribal funds as now used are only a means to further the interests of schemers, add to the profits of merchants, and corrupt the officials. * * *

There is no proof in the record to support the charges made in this Memorial.

20. There is no proof in the record to support the charge of wrongdoing by Andrew Jackson Brown in the Loyal Seminole Payment matter.

21. The proof does not show that the Seminole General Council during the years from 1899 to 1907 was corrupt, venal, or false to its trust in the discharge of its duty to the Seminole Nation.

22. The proof does not show that the tribal officers during the years 1899 to 1907 were mulcting the Nation.

23. So far as the proof shows, the Seminole Nation received the benefit of such sums as were expended by the tribal treasurer during the years 1899 to 1907.

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24. By the treaty of March 21, 1866 (14 Stat. 755) the United States granted to the plaintiff 200,000 acres of land immediately west of the eastern portion of the Creek lands. Article III of said treaty provides in part as follows:

> * * * The United States having obtained by grant of the Creek Nation the westerly half of their lands, hereby grant to the Seminole Nation the portion thereof hereafter described, which shall constitute the national

domain of the Seminole Indians. Said lands so granted by the United States to the Seminole Nation are bounded and described as follows, to wit: Beginning on the Canadian river where the line dividing the Creek lands according to the terms of their sale to the United States by their treaty of February 6, 1866 [June 14, 1866], following said line due north to where said line crosses the north fork of the Canadian river; thence up said north fork of the Canadian river a distance sufficient to make two hundred thousand acres by running due south to the Canadian river; thence down said Canadian river to the place of beginning. In consideration of said cession of two hundred thousand acres of land described above, the Seminole Nation agrees to pay therefor the price of fifty cents per acre, amounting to the sum of one hundred thousand dollars, which amount shall be deducted from the sum paid by the United States for Seminole lands under the stipulations above written. * * *

25. In 1871 one Frederick W. Bardwell located the western boundary of the Creek tract. His survey was approved by the Secretary of the Interior on February 5, 1872. This line became the eastern boundary of the Seminole national domain, as provided for in the treaty of March 21, 1866. About two months thereafter Nathaniel Robbins was employed by the defendant to run the western line of plaintiff's domain so as to include the 200,000 acres granted plaintiff by defendant. This survey was completed in 1871 and was approved by the Secretary of the Interior February 5, 1872. According to Robbins' calculations, the number of acres included between the Canadian River on the south, the north fork of the Canadian River on the north, the Bardwell line on the east, and the Robbins' line on the west was 200,000.03 acres. The parties now agree, however, and it appears that there was included within these boundaries only 189,648.18 acres.

26. Pursuant to a treaty entered into with the Pottawatomie Indians on February 27, 1867 (15 Stat. 531), a tract of land was set aside for them as a reservation immediately to the west of the Seminole lands, and when Nathaniel Robbins located the western boundary of the Seminole lands the

Pottawatomies occupied all the territory immediately to the west thereof; but no patent was ever issued to them therefor, as was provided for by the above treaty.

27. By an agreement ratified by the Act of March 3, 1891 (26 Stat. 989, 1016), the Pottawatomies ceded to the United States the lands which had been set apart for them as a reservation, referred to above. This agreement and ratifying Act provided for allotments of portions of these lands to the Pottawatomie Indians in severalty and the opening of the balance for settlement by white settlers.

Pursuant to this agreement 3,818.21 acres of the 10,351.82 acres of the Seminole lands lying to the west of the Robbins line were allotted to members of this tribe, and in the following years the balance was patented to white settlers.

Year	Nature of Patent	Acres
1895	Fee Patents	124.03
1896	do	124.16
1897	do	69.63
1898	do	113.26
1899	do	899.80
1900	do	280.23
1901	do	966.51
1902	do	594.80
1903	do	540.61
1904	do	72.42
1905	do	409.45
1906	do	1,857.53
1907	do	197.64
1908	do	77.74
1909	do	84.68
1910	do	64.48
1913	do	56.64

Upon discovery of the fact that these Seminole lands had been allotted to the Pottawatomie Indians and patented to white settlers, no action was taken to cancel them, and the defendant intends to take none, but elects to stand upon what has been done.

28. That there had been an error in the location of the western boundary of the Seminole lands was not discovered until a number of years after Robbins had made his survey. As the result of a geological survey made in 1895 and 1896, it was discovered that there was a shortage in the entire Seminole domain, comprising the 200,000 acres granted by

the treaty of 1866, plus an additional 177,397.71 acres later granted to the Seminoles by the defendant, but it was not known until some years after that, the exact date of which does not appear, that the shortage in the entire domain was due to the incorrect location of the western boundary. Immediately upon discovering a shortage in the entire domain, the nation made demand for rectification of the error, and they have never, with full knowledge of the facts, agreed that the Robbins line was the true western boundary of the 200,000-acre tract.

29. The average value of all the lands so taken by the defendant in the years 1892 to 1913 was $7.00 an acre.

30. Under article III of the Treaty of 1866 it was agreed that $40,362 of the consideration due the Seminole Nation for the cession of lands to the United States should be used for subsisting the Seminole Indians. That amount was disbursed for that purpose during the fiscal year 1867. By act of July 27, 1868 (15 Stat. 199, 214), Congress appropriated $31,083.79 for the following purpose:

> To supply a deficiency in appropriation for subsisting Seminole Indians, thirty-one thousand and eighty-three dollars and seventy-nine cents; which amount shall be deducted from any money or funds belonging to said tribe of Indians.

The sum so appropriated was used by defendant during the fiscal year 1869 for the purchase of provisions for the Seminole Indians, but no deduction from plaintiff's funds has been made on that account as required by said act.

31. In undertaking to locate the Seminole Indians on the 200,000 acres provided for them by the treaty of 1866 prior to a survey, an error was made with respect to the location of the eastern boundary of the tract as described in the treaty, as a result of which the Seminoles were placed in possession of lands owned by the Creeks which were located east of and adjoining the tract of 200,000 acres. Upon these lands improvements were placed by the Seminoles before the error was discovered. By act of March 3, 1873 (17 Stat. 626), the Secretary of the Interior was authorized

to negotiate with the Creeks for the relinquishment to the United States of such parts of their country as may have been so occupied by the Seminoles. Thereafter the Creek Nation, for a consideration of $175,000, ceded to the United States 175,000 acres of its lands located east of and adjoining the 200,000 acres set aside for the Seminoles under the treaty of 1866. In 1888 a survey was made for the purpose of establishing the eastern boundary of the tract of 175,000 acres, but by reason of error in the survey the area inclosed was 177,397.71 acres, for which the Creeks were paid $175,000. This became a part of the Seminole reservation, in addition to the 200,000 acres, more or less, and was disposed of either by allotment to members of the tribe or by sale for the account of the tribe.

32. During the period from the beginning of the fiscal year 1857 and ending with the fiscal year 1866, the United States expended for the benefit of the Seminole Nation the sum of $42,861.54 for the following purposes:

Purpose	Gratuity Rept., G. A. O. pages	Amount
Agency buildings and repairs	27	$5,200.00
Clothing	142, 143	610.00
Education	38, 39	2,500.00
Expenses of delegates	127, 141	5,155.70
Fuel, light, and water	52, 53	98.50
Miscellaneous agency expenses	52, 53, 142	1,239.50
Pay of Indian Agents	125, 163	15,475.05
Pay of Interpreters	52, 124	3,910.00
Pay of miscellaneous employees	52, 141	158.50
Presents	127	168.80
Provisions and other rations	141, 142, 163	4,657.57
Transportation, etc., of supplies	52, 53	3,687.92
Total		42,861.54

Of the foregoing items the amounts spent for the following were spent gratuitously: clothing, education, presents, provisions and other rations, totalling $7,936.37.

33. During the period beginning with the fiscal year 1867 and ending with the fiscal year 1898, the United States ex-

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pended for the benefit of the Seminole Nation the sum of $27,720.90 for the following purposes:

Purpose	Gratuity Rept., G. A. O. pages	Amount
Education	37, 54, 55	$171.89
Expenses of delegations	40, 143	4,309.00
Feed and care of livestock	53, 54, 55, 67	345.00
Fuel, light, and water	54, 56, 67	68.50
Medical attention	55, 177	425.68
Miscellaneous agency expenses	27, 40, 53–57	6,749.94
Pay of Indian Agents	40, 55, 125	10,410.77
Pay of interpreters	57, 124	3,384.50
Pay of miscellaneous employees	54–56	180.00
Provisions and other rations	67, 143	659.12
Transportation, etc., of supplies	40, 53, 54	1,016.50
Total		27,720.90

Of the foregoing items the following were spent gratuitously: education, expenses of delegations, feed and care of livestock, medical attention, provisions and other rations, totalling $5,910.69.

34. During the period beginning with the fiscal year 1899 and ending with the fiscal year 1934, the United States expended for the benefit of the Seminole Nation the sum of $32,309.21 for the following purposes:

Purpose	Gratuity Rept. G. A. O., pages	Amount
Appraising	43, 47, 48	$3,474.93
Clothing	167–168	5.42
Enrolling	42, 45, 46, 48	432.96
Education	96, 97, 98, 104, 105, 107, 109, 144–151, 152–154, 173, 174.	20,377.89
Expenses of delegates	153	149 90
General office expenses	14, 16, 43, 45, 47	2,539.40
Livestock	167	35.00
Medical attention	51, 152	1,124.12
Miscellaneous agency expenses	64, 164, 165	109.69
Pay miscellaneous employees	167	10.00
Per capita payment expenses	14, 16, 78	507.96
Preservation of records	128	40.15
Probate expenses	129, 136	2.00
Protecting property interests	137, 138	17.50
Provisions and other rations	168	216.00
Sale of townsites	18, 20	1.65
Surveying	43, 45, 48	501.95
Surveying and allotting	25	2,663.24
Traveling expenses	76, 77	99.45
Total		32,309.21

Of the foregoing items the following were spent gratuitously: clothing, expenses of delegates, livestock, medical attention, provisions and other rations, totalling $1,529.54.

35. During the period from the beginning of the fiscal year 1857 and ending with the fiscal year 1866, the United States expended for the benefit of the Seminole and Creek Nations of Indians the sum of $1,852.75 for the following purposes:

Purpose	Gratuity Rept. G. A. O., page	Amount
Miscellaneous agency expenses	52	$370.75
Pay of miscellaneous employees	52	1,027.00
Transportation, etc., of supplies	52	455.00
Total		1,852.75

None of the above items were spent gratuitously.

36. During the period from the beginning of the fiscal year 1867 and ending with the fiscal year 1898, the United States expended for the benefit of the Seminole and Creek Nations of Indians the sum of $1,572.16 for the following purposes:

Purpose	Gratuity Rept. G. A. O. pages	Amount
Annuity expenses	53	$1,316.66
Miscellaneous Agency expenses	54, 57	230.50
Pay of Interpreters	124	25.00
Total		1,572.16

None of the above items were spent gratuitously.

37. During the fiscal years 1857 to 1934 the Seminole Tribe of Indians composed, approximately, 15 per cent of the total population of the Creek and Seminole Tribes, but what portion of the expenditures set out in findings 35 and 36 was made for the benefit of the Creeks and what portion for the benefit of the Seminoles does not appear.

38. During the period from the beginning of the fiscal year 1867 to the end of the fiscal year 1898, the United States expended for the benefit of the Creek, Cherokee, Choctaw, Chickasaw, and Seminole Nations of Indians the sum of $305,292.80 for the following purposes:

Purpose	Gratuity Rept. G. A. O. pages	Amount
Agricultural implements and equipment	56, 58, 59, 68	$152.20
Feed and care of livestock	56–59, 67	1,396.28
Fuel, light, and water	56–64, 67	791.50
General office expense	41–42	135,219.60
Hardware, glass, oils and paints	56, 59	11.24
Livestock	56, 58, 59	547.50
Medical attention	56–59	161.65
Miscellaneous agency expenses	56–64, 172	4,139.91
Pay and expenses of farmers	59	226.67
Pay and expenses of Indian police	58, 59, 63, 68, 123, 169	86,983.17
Pay of Indian agents	121, 125	37,389.53
Pay of miscellaneous employees	56–64, 73	43,857.75
Pay of skilled employees	56–59, 68	415.80
Total		305,292.80

Of the foregoing items the following were spent gratuitously: agricultural implements and equipment, feed and care of livestock, livestock, medical attention, pay and expenses of farmers, totaling $2,484.30.

During the foregoing period the Seminole Tribe of Indians composed approximately 4.38 percent of the total population of the Cherokee, Creek, Chickasaw, Choctaw, and Seminole Nations. Allocating the foregoing expenditures to the several tribes on the basis of their population, the defendant spent gratuitously for the benefit of the Seminole Nation the sum of $108.81 during the period and for the purposes shown above.

39. During the period from the beginning of the fiscal year 1899 to the end of the fiscal year 1934 the United States expended for the benefit of the Creek, Cherokee, Chickasaw, Choctaw, and Seminole Nations of Indians the sum of $11,416,066.55 for the following purposes:

Purpose	Gratuity Rept. G. A. O. pages	Amount
Agricultural aid	23, 24, 166, 167, 168	$24,331.81
Allotting	16, 17, 20	36.65
Appraising	44–47, 49	18,665.01
Appraising and selling lands	14–20	205,959.07
Appraisal and sale of restricted lands	26	24,999.20
Automobiles and repairs	22–24, 51, 70, 166–167, 180	23,799.99
Construction and maintenance of Claremore Hospital.	50–51, 84, 92, 150–151	77,127.98
Copying allotment records	69	14,648.72
Education	28–36, 50–51, 83, 85–105, 106–114, 144–154, 167–168.	2,179,846.86
Equalization of allotments, expenses	14, 16, 20, 47, 49	207.88
Examining records in disputed citzenship cases.	44, 45, 49	26,105.59
Feed and care of horses	74–80, 139	3,371.96
Fuel, light and water	64, 71	108.20
General office expenses	14, 16–20, 42–49	4,218,065.39
Household equipment	166–168	2,625.33
Incidental expenses	66–74, 80, 139–140	30,115.98
Investigating leases	116, 117	29,955.95
Leasing of mineral and other land	14, 16, 20, 42, 49	4,514.39
Livestock	68, 167, 168	1,290.00
Medical attention	51, 152, 154, 170, 177	976.41
Miscellaneous agency expenses	22–24, 51, 64–68, 70–72, 164–174.	215,416.02
Oil and gas expense	16, 17, 19, 20	7,028.28
Oil and gas mining supervision, allotted lands	118, 119	85,703.40
Pay and expenses of farmers	23, 24, 81–83, 115	327,566.96
Pay and expenses of field matrons	81–83	6,217.32
Pay and expenses of Indian police	71, 72, 81–83, 123	174,860.56
Pay of Indian agents	121	30,250.00
Pay of clerks	120	4,721.62
Pay of Indian inspectors	79, 80, 122	22,381.97
Pay of interpreters	81–83, 164–168	125,783.64
Pay of miscellaneous employess	23, 51, 64, 67, 71, 72, 74–83, 120, 139–140, 164–168.	1,717,185.80
Pay of superintendents	126, 167, 168	11,220.25
Per capita payment expenses	15, 66, 67	141.68
Preservation of records	128	8,886.62
Probate expense	72, 81–83, 121–136, 166, 168	1,053,120.71
Protecting property interests	137–138	386,847.59
Protecting property interests of restricted members.	15–16	4,741.70
Provisions and other rations	167–168	139.27
Purchase of horses	77, 139	720.00
Removal of alienation restrictions	159–161	88,346.12
Sale of allotted lands	15	265.12
Sale of restricted lands	15	1,577.09
Sale of town lots	15, 17, 18, 47, 49, 79, 80	250.44
Sale of town sites	47, 49	416.71
Sale of unallotted lands	15, 162	53,538.80
Surveying	15, 17, 18, 44–47	49,695.31
Surveying and alloting	25	7,331.24
Surveying segregated coal and asphalt lands	16, 21	6.76
Surveying, sale, etc., of lands	71, 164–168	80,809.05
Timber estimating	15, 44	33,776.10
Transportation, etc., of supplies	56, 57, 60, 61, 64, 65, 71, 144–150, 166, 167, 174, 175.	7,966.50
Traveling expenses	66, 74, 80, 139, 140, 176	22,401.55
Total		11,416,066.55

No finding is made on whether or not any part of these expenditures were gratuities.

CONCLUSION OF LAW

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides as a matter of law that the plaintiff is entitled to recover the sum of $221,066.58, and that defendant is entitled to offset against this amount the sum of $221,569.20 for gratuities expended for plaintiff's benefit. Since the amount spent by the defendant gratuitously for plaintiff's benefit exceeds the amount plaintiff is entitled to recover, the court decides as a conclusion of law that the plaintiff is not entitled to recover, and its petitions are therefore dismissed.

OPINION

WHITAKER, *Judge*, delivered the opinion of the court:

These cases, Nos. L–51 and L–208, have been consolidated in accordance with the opinion and mandate of the Supreme Court in *Seminole Nation* v. *United States*, 316 U. S. 287.

We shall first discuss case L–51. In that case the original petition was filed on February 24, 1930. An amended petition was filed on September 19, 1934, setting forth additional claims. On December 2, 1935, we rendered a decision holding the plaintiff was entitled to recover $1,317,087.27 (82 C. Cls. 135). The Supreme Court granted certiorari and reversed the decision of this court, on the ground, among others, that judgment had been rendered on claims first asserted in the amended petition which had been filed after the expiration of the statute of limitations fixed in the Act giving this court jurisdiction.

Thereafter, Congress passed the Act of August 16, 1937 (50 Stat. 650), authorizing the filing of an amended petition to set up the claims denied. A second amended petition setting up these claims was then filed, in which plaintiff made claim against the defendant on five items, set out in sections III to VII of its petition. We allowed recovery of $1,790.00 on item 1 (section III of the petition), $13,501.10 on item 2 (section IV), $3,097.20 on item 3 (section V), and we disallowed all of item 4 (section VI) and item 5 (section VII). The Supreme Court affirmed us as to items 1, 3, and 4, but remanded the case for further findings on items 2 and 5.

These items only are now before us. There is also before us the offsets to which the defendant is entitled for gratuitous expenditures made for plaintiff's benefit.

Item 2 is a claim based upon the defendant's obligation under article VIII of the Treaty of 1856 to pay to the tribe per capita $25,000 per year. We found that there had not been paid to the tribe per capita $92,423.74 of the amount so due, but that during the years 1870 to 1874, $66,422.64 of this amount had been paid to the tribal treasurer and to certain designated creditors of the tribe at the request of the General Council of the tribe, and that in 1907, $12,500.00 had been paid to the Indian Agent under authority of an act of Congress. Credit against the $92,423.74 was given for these payments. Our decision on this item was affirmed, except as to the payments made to the tribal treasurer in the years 1870 to 1874.

The Supreme Court remanded the case with instructions to find whether or not at the time these payments were made to the tribal treasurer and to creditors of the tribe the General Council of the tribe was corrupt, venal, and false to its trust to the Seminole people, and whether at the time the payments were made the disbursing officers of the United States knew of such corruption, venality, and falsity, and if both questions were answered in the affirmative, whether the Nation got the benefit of the payments made.

Before discussing the case on the merits we must first consider the defendant's defense that we have no jurisdiction to render judgment for the payments made to the tribal treasurer in the years 1870 to 1874, because the plaintiff did not base its right to recover them upon the ground advanced by the Supreme Court, to wit, that, when the payments in part satisfaction of them were made to the tribal treasurer and to certain creditors of the tribe on order of the General Council of the tribe, the General Council was corrupt, venal, and false to its trust and that the officials of the United States making the payments knew that it was.

Whether or not plaintiff's petition is broad enough to permit assertion of such a ground, it was never in fact asserted in this court, either in briefs or argument or in any form whatever. On the contrary, the allegations of the

petition, the requests for findings of fact, and the statements in the briefs show that plaintiff's claim was not based upon this ground. The defendant never understood that it was, and this court never understood that it was, and neither the defendant nor the court had any reason to think that it was.

Section IV of plaintiff's petition (item 2) merely alleges that defendant "either illegally disbursed or failed or neglected to disburse" the amounts appropriated by Congress to fulfill the treaty obligation. Why any of the disbursements were illegal was not stated. It is plain, though, that it was not based on the fact that the General Council was corrupt at the time these payments were made to the tribal treasurer and to certain creditors on order of the General Council, because in section VII of its petition, relating to payments made in alleged violation of section 19 of the Curtis Act (item 5), it is alleged that "*since the passage of said Act of April 15, 1874*, it was reported by the officers of defendant that the Seminole tribal officials were misappropriating the Seminole tribal funds entrusted to them and robbing the members of the tribe of an equal share of the tribal income." [Italics ours.] The payments in question were made from 1870 to 1874, prior to the passage of the Act of April 15, 1874.

Plaintiff's request for findings of fact also shows that no claim was made on this ground. With respect to this item it reads in pertinent part:

> The United States disbursed the sums thus appropriated for the years involved, either by making direct payment *per capita* to members of the tribe, *or by cash payment to the treasurer of the Seminole Nation*, except for the fiscal years following, in which the amounts stated were neither disbursed to members of the tribe nor paid to the Seminole national treasurer. [Italics ours.]

No claim was made for payments to the tribal treasurer.

No claim is made for such payments in its brief. On the contrary, on page 39, in discussing the payments made in alleged violation of section 19 of the Curtis Act (item 5), it says:

> Before the passage of the Curtis Act, the Seminole Nation was entrusted with the disbursement of certain of its tribal income, the payments of which were authorized to be made to the tribal treasurer (Acts of April 15, 1874, 18 Stat. 29; and March 2, 1889, 25 Stat. 980, 1004). However, *soon after the passage of said Act of April 15, 1874, the Seminole tribal officials ceased to be representative of the majority of the tribe, and began using tribal moneys to further their own private interests.* [Italics ours.]

These statements are negations of a claim that the General Council was false to its trust during the years 1870 to 1874.

It is, of course, true that a disbursement to officials of the tribe who were corrupt, venal, and false to their trust would be an "illegal" disbursement; but the mere allegation that the sums were "illegally disbursed," without an allegation of any facts to support the charge of illegality, complies neither with section 159 of the Judicial Code nor with Rule 10 of this court. Section 159 requires a claimant to "fully set forth in his petition the claim" and rule 10 requires him to set forth in his petition "a plain statement of the facts. * * *" No facts are alleged to show why the disbursements were illegal. It would be impossible from this allegation for the defendant to gain any intimation as to the basis of plaintiff's claim.

In *Merritt* v. *United States*, 267 U. S. 338, 341, the Supreme Court said:

> The practice of the Court of Claims, while liberal, does not allow a general statement of claim in analogy to to the common counts. It requires a plain, concise statement of the facts relied upon. See Rule 15, Court of Claims. The petition may not be so general as to leave the defendant in doubt as to what must be met. *Schierling* v. *United States*, 23 C. Cls. 361; *The Atlantic Works* v. *United States*, 46 C. Cls. 57, 61; *New Jersey Foundry & Machine Co.* v. *United States*, 49 C. Cls. 235; *United States* v. *Stratton*, 88 Fed. 54, 59.

The Jurisdictional Act under which plaintiff sued gave it the right to file an amended petition before January 1, 1938. Since no such petition was filed before that time setting

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up this ground of recovery, there is grave doubt of our authority to consider it. However, we do not pass on the question, since, as hereafter appears, we are of opinion plaintiff is not entitled to recover on the merits.

The defendent interposes the same defense to recovery on item 5.

In section VII of its petition dealing with item 5 plaintiff seeks to recover $864,702.58 paid to the tribal treasurer during the years 1899 to 1907 in alleged violation of section 19 of the Curtis Act. We held that section 19 of the Curtis Act did not apply to these payments and that plaintiff was not entitled to recover. The Supreme Court agreed that this section of the Curtis Act had no application to these payments, but remanded the case to us with instructions to find whether or not during the years 1899 to 1907 the General Council of the Nation was corrupt, venal, and false to its trust and whether the disbursing officers of the defendant knew at the time the payments were made that this was so, and if so, whether the nation got the benefit of the money.

It seems plain that plaintiff did not seek recovery on this ground. In its petition dealing with this item plaintiff alleges that by the acts of April 15, 1874, *supra*, and of March 2, 1889 (25 Stat. 980, 1004), certain payments were authorized to be paid to the tribal treasury, but that after the passage of the Act of 1874, it was reported to defendant that the tribal officials were corrupt and were robbing the members of the tribe of the income to which they were entitled, and that, in order to correct such conditions, Congress enacted the Curtis Act, approved June 28, 1898 (30 Stat. 495), section 19 of which was set out. It was then alleged that the sum of $864,702.58 was paid to the tribal treasurer in violation of this section of this Act. Section VII of its petition concludes:

> Therefore, the defendant is liable to plaintiff in the amount of $864,702.58 thus illegally disbursed in violation of said section 19 of said Act of June 28, 1898.

The prayer of the petition reads:

> Wherefore, plaintiff prays that judgment be entered against defendant for the total amounts due plaintiff under said unfulfilled treaty obligations of defendant, *and for the total amounts of Seminole tribal funds illegally disbursed by defendant in violation of said section 19 of the Curtis Act*, together with interest on same at five per cent per annum; and that plaintiff may have such other and further relief as to the court may seem just and proper. [Italics ours.]

It is plain that recovery was sought because the payments were made in violation of section 19 of the Curtis Act, and not because at the time they were made the General Council was corrupt. There are allegations of corruption in the petition, but they are alleged to show the reason for the passage of the Curtis Act and for its applicability to the payments made; they are not made as a ground of recovery.

Plaintiff's request for findings of fact on this item requests only a finding on the amount of the payments during the years in question. No request for a finding of corruption in the General Council is made. A large part of its brief on this item is devoted to allegations of corruption in the tribe, but this is all for the purpose of showing that section 19 of the Curtis Act was intended to apply to the character of payments for which plaintiff sued. Plaintiff asserted no right to recover except for the violation of section 19. Since no claim for recovery was made because the payments were made to corrupt officials, we did not consider its right to recover on this ground.

However, although plaintiff based its right to recover on the violation of section 19, it nevertheless did allege that as to the years 1899 to 1907 the tribal officials were corrupt and introduced proof to support this allegation, and under its prayer for general relief we suppose on our own motion we might have remanded the case for further proof to give defendant an opportunity to refute this charge, and if the facts warranted it, we might have rendered judgment on this ground. We think, at least, we had jurisdiction to do

so, and that we now have jurisdiction to do so, a petition setting up these facts having been filed within the time fixed by the jurisdictional act.

The defendant also says we have no jurisdiction to adjudicate a claim based upon defendant's breach of its fiduciary duty to plaintiff, because the jurisdictional act conferred jurisdiction on us only of those claims "arising under or growing out of any treaty or agreement between the United States and the Seminole Indian Nation or Tribe, or arising under or growing out of any Act of Congress in relation to Indian Affairs." It says a claim arising out of a breach of a fiduciary duty is not one arising out of a treaty or an act of Congress. We do not think this defense is good. If the defendant has ever owed plaintiff the duty of a fiduciary, it owed it this duty when the treaties were signed and the Acts were passed on which plaintiff sues. Implicit in those agreements and in the Acts was the obligation to carry out their terms with the fidelity a fiduciary owes his ward. If in paying the amounts it had promised to pay, it paid them to a person it knew would misappropriate them, defendant has not discharged the obligation it undertook.

We do not understand this holding to be in conflict with what we said in *Choctaw and Chickasaw Nations* v. *United States*, 75 C. Cls. 494, nor with the Supreme Court's decision in *Creek Nation* v. *United States*, 318 U. S. 629. It is in line with our decision in *Menominee Tribe of Indians* v. *United States*, 101 C. Cls. 22.

Since we think we have jurisdiction to render judgment for the payments claimed in item 5 on the ground that the General Council was corrupt and that at the time they were made the defendant knew this to be so, we shall consider the case on its merits.

First, as to fraud and corruption during the period from 1870 to 1874. The only evidence of corruption and fraud before the Commissioner of Indian Affairs at the time he authorized the payments to the tribal treasurer during this period, as requested by the General Council of the tribe, were the reports of the Indian Agent, Captain Baldwin. We do not consider the reports of John P. C. Shanks, dated August 9, 1875, and of A. B. Meacham, dated November 20, 1878, because they were received after the payments were made

and, therefore, could not have charged the defendant with knowledge of any corruption and fraud at the time the payments were made.

Agent Baldwin assumed the duties of Indian Agent in July 1869. On November 3, 1869, he recommended that the next annuity payment be paid to the chiefs to pay their national debt, which seems to have been for salaries due the tribal officials, since, he said, "the amount appropriated for the support of the Seminole Govt., [sic] is not adequate." (This amount was fixed at $1,000 per year by the treaty of 1856.)

On December 6, 1869, he renewed this recommendation, stated what the national debt was, and for what contracted, but called attention to the fact that "they are in the habit of calling councils for any little thing that may arise and spending from 2 to 15 days without effecting anything whatever which would be of the least service to the nation, except in spending the funds." He, therefore, recommended that it be determined what amount was to be turned over to the General Council in the future and what amount was to be turned over to heads of families, so that the chiefs and lawmakers would have no encouragement to run up these debts.

Thereafter, in the years 1871, 1872, 1873, and 1874, it became the practice to turn over to the General Council every other payment. It is for these payments and the payments made in 1870 that plaintiff sues.

It will be observed that Captain Baldwin did not recommend that none of these annuities be turned over to the General Council, but only that the amount to be turned over be definitely fixed. He had recommended a month earlier that some amount be turned over to them, "since the amount appropriated for the support of the Seminole Govt., [sic] is not adequate."

About a month later, on January 12, 1870, he recommended that the next annuity payment be paid per capita because needed to protect the people from the rigors of the winter season.

Six months later, on June 30, 1870, he again recommended that the annuities be paid per capita because the 68 chiefs and lawmakers had received the bulk of the $25,000 paid

within the last year. (His report of May 1, 1870, shows that only $7,179.25 of the $25,000 had been paid per capita.)

On September 1, 1870, he stated "per capita payments are, in some instances, I think, a great evil," but he recommended that until the system could be abolished all annuities be paid per capita, since few of the people had been receiving "the bulk of their annuities."

On November 17, 1870, he wrote the Commissioner of Indian Affairs with reference to a request of the chiefs that the next payment of annuities be made to the officers and lawmakers. He said that when the last payment was made that the people needed many of the necessities of life, but that "a few leaders or chiefs pocketed the bulk of the annuities while the people received but a small portion." He, therefore, recommended that the next payment be made per capita.

The substance of all of Captain Baldwin's recommendations is that, while he believed some of the annuity payments should have been paid for the support of the government of the tribe, he thought too much of them had been devoted to that purpose.

In the next year, one-half of the annuities were paid to the tribal treasurer and one-half per capita. Indian Agent Breiner, who succeeded Captain Baldwin as Indian Agent, recommended that this practice be continued. In his letter of May 31, 1871, he said that he paid the sum deposited to his credit for the use of the Seminoles in settlement of their national debt, and that "It was understood by the whole nation that this payment was to be made in this way, and I have heard of no complaints against it. But it is understood, and so stated to me by the chief, that the next payment is to be made per capita."

In his letter of December 20, 1871, he said:

> * * * I am not fully convinced that the Seminoles are capable of managing their financial affairs economically and advantageously; yet if the Honorable Commissioner should authorize the agent to make the payments to the treasury it would relieve him of much writing but if we take their interests into consideration I would say that they be advised from the Department to allow the payments to be made as usual, i. e., every alternate payment to be made per capita and the other payments to be paid to the treasury for Government purposes.

Finally, on January 31, 1874, this agent wrote the Commissioner of Indian Affairs in part as follows:

> The Seminoles are beginning to feel that they are capable of managing their financial affairs without the aid of an agent, and hence the demand to have the whole of their annuity paid into their treasury. On account of their urgency I may have concurred in this demand, and recommended that their request be complied with, while at the same time I was fully convinced that they are not capable of managing their affairs to the best advantage; yet I believed, and still believe that they would be advised by me in matters of importance; and that, by allowing them to have the control of, say half their annuity, a recommended in my communication of the 1st inst., they would take a pride in making improvements, and in adopting a better system of education, and thus they would acquire a better and more practical knowledge of the management of their financial affairs than they ever could under the present management. But if they refuse to be advised, it would prove a failure, for they have, in common with all Indians, very little idea of the value and uses of money.

This, then, was the information before the Commissioner when he authorized the payments to the tribal treasurer: protests by Captain Baldwin in 1870 that too much was being paid on order of the General Council for the benefits received from the payments, and a recommendation from the succeeding agent that every other payment be made to the treasurer, which was done.

We do not think it can be concluded from this that the Commissioner of Indian Affairs had knowledge of the fact that the General Council was corrupt, venal, and false to its trust. He had reason to believe that the chiefs and lawmakers put too high a value on their services to the nation, that they wanted their own services paid for, even if the other members of the nation needed the money more than they did, and that they were overanxious to render services and run up bills against the nation. Such charges are not infrequently leveled at the law-making bodies and public officials of the white man; but they do not amount to charges of corruption, venality, and fraudulent breach of trust.

Nor can we say that the Commissioner permitted these chiefs and lawmakers to run riot with the tribal funds. He may have allowed them too great a share of them, but what he did allow was that recommended by his agent on the ground, and there is nothing to show that this agent did not act in good faith.

It is hard to believe that the Commissioner of Indian Affairs and the Secretary of the Interior would have made to Congress the recommendation they did on January 9, 1874, if they had believed the General Council was corrupt. On that date, on the recommendation of the Commissioner of Indian Affairs, the Secretary of the Interior wrote the Speaker of the House in part as follows:

> The Seminoles are considerably advanced in civilization, and have a national government, and as a nation are desirous of having the whole amount accruing annually upon the sum invested as above described, or at least a large portion thereof, paid into the national treasury of their nation, to be disposed of under the laws of the nation, for such purposes connected with their civilization and improvement as the national council may deem best.
>
> I have no doubt of the propriety of complying with their wishes, at least to some extent, and I am equally clear that such portion of their annuities as is not paid into the National Treasury should be expended by the Indian Office, with the sanction of the Secretary of the Interior and the President of the United States, in promoting the general comfort, civilization, and improvement of these Seminoles. In this connection I deem it my duty to refer to a recommendation contained in my annual report, namely, that all annuities, instead of being paid to Indian tribes per capita, be expended, as here indicated, in promoting their general welfare, civilization, and improvement. The payment of cash to individual Indians has, according to all the experience furnished by the Indian Office, tended to produce debauchery and demoralization, rather than to advance the civilization or improvement of Indian tribes.

On this recommendation Congress passed the Act of April 15, 1874 (c. 97, 18 Stat. 29), which expressly authorized the Commissioner of Indian Affairs to pay the annuities "into the

treasury of the Seminole Nation to be used as the Council of the same shall provide, instead of paying the same per capita according to the terms of said treaty."

We cannot believe any such authority would have been granted by Congress if it had reason to believe the Council was corrupt, venal, and false to its trust.

In the foregoing discussion we have not considered the report to the Commissioner of Indian Affairs of John P. C. Shanks, the comments on that report by George A. Ingalls, Indian Agent, Union Agency, nor the report of Special Agent A. B. Meacham, because none of these reports were before the Commissioner when he authorized the payments in question to the tribal treasurer.

Shanks, in his letter of August 9, 1875, paints quite a lurid picture of oppression of the people by the chiefs, but a good deal of doubt as to the bona fides of this report is raised by the statement of Agent Ingalls, who says Shanks asked him to tell the Seminoles what he had done for them for the purpose of trying to induce them to agree to his employment as attorney for the Five Civilized Tribes.

Of the men charged with oppression by Shanks, and especially criticized by plaintiff in its brief, Ingalls said:

> I have had considerable business relation with John Chupco, Chief, Col. John Jumper, 2d Chief, James Factor, Treasurer, and with all other officers of the Seminole Nation and I have never known either of them to speak falsely or misrepresent matters concerning themselves or others and I believe all of them to be honorable gentlemen.

Meacham in his report of November 20, 1878, also says the chiefs were trying to "gobble" the money belonging to the people; but the Commissioner of Indian Affairs, with these conflicting reports before him, continued from 1874 on to make payments of a part of the annuities to the tribal government, and plaintiff in its petition does not complain thereof.

It is not unreasonable to believe that there were some in the tribe who would have "gobbled" all the money if they could have, but we are not convinced that the Commissioner

of Indian Affairs permitted them to do so, nor that he paid to them more than was proper in his honest judgment to be expended by the tribal government.

Next, as to payments made from 1899 to 1907. To show corruption and fraud from 1899 to 1907 plaintiff cites, first, the reports of the Dawes Commission of November 20, 1894, and of November 18, 1895. That Commission was appointed pursuant to section 16 of the Appropriation Act of March 3, 1893 (27 Stat. 612), for the purpose of securing an agreement from the Five Civilized Tribes for the extinguishment of the title of the tribes to lands within the Indian territory so that a State embracing these lands could be created. In its report to the Secretary of the Interior dated November 20, 1894, the Commission said:

> Corruption of the grossest kind, openly and unblushingly practiced, has found its way into every branch of the service of the tribal governments. All branches of the governments are reeking with it, and so common has it become that no attempt at concealment is thought necessary. The governments have fallen into the hands of a few able and energetic Indian citizens, nearly all mixed blood and adopted whites, who have so administered their affairs and have enacted such laws that they are enabled to appropriate to their own exclusive use almost the entire property of the Territory of any kind that can be rendered profitable and available.

And in its report of November 18, 1895, it said:

> The Commission is compelled by the evidence forced upon them during their examination into the administration of the so-called governments in this Territory to report that these governments in all their branches are wholly corrupt, irresponsible, and unworthy to be longer trusted with the care and control of the money and other property of Indian citizens, much less their lives, which they scarcely pretend to protect.

These charges are directed at the five tribes indiscriminately and without making any exception. It would appear, however, that the Commission either did not mean to include the Seminoles in the indictment or that at the time it was unacquainted with conditions in this tribe, because

in the part of its annual report for 1899 dealing with the enrollment of citizens of the tribe preparatory to making allotments of land to them it said:

> The Seminoles, as has already been seen, are the fewest in numbers of the Five Tribes, and their government has been free from corruption. The rolls of the tribe, while crude in a measure, were found free from all irregularities of a fraudulent character.

Furthermore: As a result of the reports of the Dawes Commission, Congress, in the Appropriation Act of June 7, 1897 (30 Stat. 62, 84), enacted that all the Five Civilized Tribes should certify all their acts and resolutions to the President of the United States and that these acts should not take effect if disapproved by him or until 30 days after their passage if the President failed to act upon them in the meantime. But when the Commission came to make an agreement with the Seminoles about six months later, on December 16, 1897, they incorporated therein this provision:

> When this agreement is ratified by the Seminole Nation and the United States the same shall serve to repeal all the provisions of the Act of Congress approved June seventh, eighteen hundred and ninety-seven, in any manner affecting the proceedings of the general council of the Seminole Nation.

This agreement was ratified by Congress on July 1, 1898 (30 Stat. 567). This tribe was evidently exempted from the requirement for Presidential approval of the acts of its General Council for the reason that its General Council was believed to be trustworthy and, hence, did not need Presidential supervision.

Thus it appears that the reports of this Commission, instead of proving that the General Council was corrupt, testify to its fidelity to its trust.

Indeed, plaintiff points to no specific act of the General Council as being corrupt; it confines itself to undertaking to show that the Principal Chief (sometimes called "Governor") and Treasurer were corrupt in their dealings with the people, and that the General Council was dominated by them. To prove this, plaintiff says these men issued scrip to the Indians in advance of the annuities they were due to receive,

which were redeemable only in merchandise at one of the two stores run by these two men; that a discount of from 10 to 20 percent was charged, and that the prices charged for the merchandise were from 25 to 50 percent higher than at other stores, and that the Indians were forced to accept this scrip whether or not they wanted it. Plaintiff also charges that the Governor and Treasurer misappropriated $191,294.20 of the tribal funds, and that they acquired from the tribe the Wewoka townsite lots at a fraction of their value. It also complains of the action of Andrew J. Brown, the Treasurer, in the Loyal Seminole Payment matter.

John F. Brown was the Principal Chief, and his brother, Andrew Jackson Brown, was Treasurer. They were half-breeds. The charge that they misappropriated $191,294.20 of tribal funds is supported only by a charge that this money never entered the treasury, which was made by a group of 100 men of the tribe who are said to have met to protest against the agreement of December 16, 1897, negotiated by the Dawes Commission. In the resolutions adopted they said this money never found its way into the treasury and that the only explanation offered therefor by the authorities was that it was paid to a lawyer who negotiated the 1889 agreement for the sale of some of their lands to the United States, and that they were not given the name of the lawyer nor shown his receipt for the money.

There is nothing in the record to support this charge. There was evidently nothing to it, because with this charge before it Congress ratified the agreement on July 1, 1898, knowing at the time that John F. Brown was still Principal Chief and that A. J. Brown was Treasurer.

Nor is there anything in the record to support the charges made in the Memorial to Congress signed by A. W. Crain, B. F. Bruner, Nero Noble, Geo. Ripley, Alex Harjo, and John Jefferson, in which it is charged, among other things, that a few Indians had amassed large fortunes, and had brought their tribe to poverty. Crain was John F. Brown's brother-in-law, but had been at enmity with him for many years. Whether this had anything to do with the charges, we do not know.

In *Seminole Nation* v. *United States*, 92 C. Cls. 210, we held that plaintiff had not proven that the sale of the Wewoka townsite lots was fraudulent. Certiorari was denied, *Seminole Nation* v. *United States*, 313 U. S. 563.

There is no proof in the record to support the charge of wrongdoing by Andrew Jackson Brown in the Loyal Seminole Payment matter. The only thing reflecting thereon are certain statements in a brief filed by P. L. Soper, Special Assistant United States Attorney, in support of exceptions taken to the confirmation of a report by A. J. Brown, who seems to have been appointed administrator for certain deceased and incompetent persons among the Loyal Seminoles. This, of course, is no proof at all. What action the court took on the exceptions we are not told.

Plaintiff relies principally on the issuance of this scrip, called by the Indians "chokasutka," to show that the tribal officers were mulcting the nation. It charges that a discount was deducted, that the Indians were forced to take the scrip, and that the goods in which it alone was redeemable were sold at exorbitant prices.

The commissioner of this court has found that no discount was charged, but we think the preponderance of the evidence shows that it was. There is some dispute as to the amount of it, but the greater weight of the evidence shows that it was 10 percent.

There is no proof to show the Indians were required to take this scrip whether or not they wanted it. If they wanted merchandise and did not have the money to pay for it, they could go to one of these stores and get this scrip up to the amount of the next annuity payment to which they were entitled, less the discount charged; but there is no proof whatever that they were forced to do this. They could get it or not as they wished.

There is filed in evidence a photostatic copy of an account book kept by A. J. Brown, the treasurer, showing payments made to members of the tribe. This book is explained by a former employee of the Wewoka Trading Company, Allen W. Crain, and by Mrs. John W. Wilmott, another former employee. At the time these former employees testified both of the Browns were dead. On the account book are listed the

names of members of the different bands. In the columns headed "W" and "S" are entered certain figures. These, it is explained, show the amount of chokasutka issued to the individuals at the Wewoka and Sasakwa stores run by the Browns. The figures in the column to the left of the column headed "W" show the cash paid. The first item on page 56, for example, shows $12.00 was paid to "Jennie" in cash and $2.00 issued to her in scrip at the Wewoka store; the next four drew their entire annuity in scrip; the next one drew $8.00 in cash and $6.00 in scrip; the next two drew their entire annuity in cash; the next five drew all their annuity in scrip; the next two in cash; the next one drew $10.00 in cash and $4.00 in scrip; and so on.

It is apparent from this that the Indians were not forced to take their annuity in scrip. They could get either scrip or cash as they wished.

This refutes the statement of Delegate Flynn made on the floor of Congress, whatever probative value it may have, that "This money is paid to Jackson Brown, the treasurer, and the Indians never see a dollar of it, but the Browns issue to the Indians due bills good for so much goods at the Brown store." It would appear that his statement was more oratorical than accurate.

There is little, if any, credible evidence that exorbitant prices were charged for the merchandise sold. There is in evidence a report, dated February 26, 1912, to the United States Indian Superintendent at Muskogee, Oklahoma, made by a man whose signature is illegible, but who signs himself "probate attorney," which gives a comparison of the prices charged at that time by the Wewoka Trading Company, which did a credit business, and by a man named Varnum, who sold for cash. It relates to a time after the period in question and, of course, is not competent evidence; we refer to it because it is the only definite statement in the record reflecting at all on the charge of exorbitant prices. There is some testimony by several members of the tribe that the Wewoka Trading Company did charge higher prices, but their testimony is so general and vague that it is of no real assistance. The probate attorney's report shows that the prices charged for lard, coffee, and rice were the same. The Wewoka Trading Company charged slightly more for beans. It charged for cornmeal 45 cents against 35 cents; 7 to 8 cents for sugar against 6½ cents; 13½ to 14 cents a pound for salt meat against 10 cents; and $3.00 a cwt., for flour against $2.40 to $2.70.

We have a suspicion that higher prices were charged during the period in question, but there is no competent proof worthy of belief to show that they were exorbitant.

We have, then, the oft-encountered practice of merchants dealing with customers who were ignorant and shiftless, who lived only from day to day, who never laid up a cent but were always in debt. Commissaries of logging camps, mines, factories, etc., have long engaged in the practice followed here. These even paid off their workers in scrip. The tenant farmer, as a class, is never out of debt to the landowner or the merchant or the banker, and high rates of interest are charged him. In later years the laws of the States have done much to correct the practice, but it was by no means uncommon forty or fifty years ago. The Department of the Interior corrected that practice of these two stores when it was brought to its attention.

In 1905 Henry C. Lewis, an investigator for the Department of Justice, was sent to Wewoka to make an investigation of this practice. He reported in part as follows:

> When the credit is extended they are given a book containing the due bills and in this book is entered the particular appropriation which is to cover the advance in goods and the amount of advance so given, which of course, is the same amount as is given in due bills, so that when the Indians ask for $50.00 in credit upon a certain appropriation they are debited on the books of the company with fifty dollars, but are given only forty-five dollars in due bills, and consequently, get only that amount in goods. * * *
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> * * * * *
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> * * * To charge a discount where goods are given on credit is not unusual, but the system under which it is charged by this company is manifestly unfair, for the reason that when the money is received by the Trading Company the Indians may not have traded out all of the due bills which have been given them, or, in other words, all of the credit extended to them. The result

is that a discount has been charged on a part, at least, of the amount given out in due bills, goods for which have not been obtained, while as a matter of fact, the Trading Company has the money in its possession representing such part for which goods have not been obtained, the Indians retaining the remaining due bills to be traded out in the future. It would seem that there should be a discount in favor of the Indians instead of the Trading Company. The Indians are at liberty to turn in the remaining due bills, states Mr. Brown, but they never do so, another result of their pitiable ignorance. Indeed, some of them do not even understand what these due bills represent when they receive them. There is in the record the testimony of one girl who stated that she did not know what the due bills were and threw them away. In point of fact, she threw away so much money. It is not too much to say that, in view of the ignorance of these Indians, this system of credit is dishonest. It should be condemned because it keeps these Indians in a constant state of poverty. They do not realize that these due bills are in fact money, and the result is that they are squandered without care. I am not informed as to whether the Department of the Interior has knowledge of this state of affairs. It should be brought to its attention, so that, if possible, it may take steps looking to the breaking up of the system, which can be done by having the appropriations distributed in some other manner.

Upon receipt of this report the Commissioner of Indian Affairs recommended to the Secretary of the Interior that the practice be prohibited. The First Assistant Secretary of the Interior replied on April 26, 1906, in part, as follows:

> You express the opinion that the Department cannot control the manner in which the Wewoka Trading Company transacts its business, but recommend that hereafter, when payments are made to Seminoles, such payments be made direct to the adult citizens and to the guardians of minors, and that during the time such payment is being made no member of said company or any of its agents or employes be allowed to be present.
>
> In this the Department concurs, and such course should be followed hereafter, should no objections appear.
>
> It is not considered advisable, as you suggest, to instruct the U. S. Indian Inspector for the Indian Territory to advise the Wewoka Trading Company "that the Department does not like its method of issuing coupon books and charging discounts, and that the Department would prefer that said business, in so far as the Seminoles are concerned, be transacted in the usual way and discounts and coupon books be not used or considered in the transaction of business of said company with Seminole Indians."

It thus appears that as soon as the Commissioner of Indian Affairs and the Secretary of the Interior had definite knowledge of this practice they put an end to it.

Even though the Commissioner of Indian Affairs had continued to make these payments to the tribal treasurer with knowledge of the fact that the Wewoka Trading Company, which was owned by the Principal Chief and Treasurer, was extending credit to the Indians at this discount, we would not conclude that the payments had been made by the defendant with knowledge of the fact that the tribal officials were mulcting the nation. We are not at all sure the individual Indian would have been better off if the annuities had been paid to him in cash and he had been prohibited from pledging his annuity payments to secure credit. In all probability, as soon as the money was received it would have been spent for this and for that, leaving him in dire need of credit until the next payment came due. In 1874 the Secretary of the Interior wrote a letter to the Speaker of the House in which he said:

> The payment of cash to individual Indians has, according to all the experience furnished by the Indian Office, tended to produce debauchery and demoralization, rather than to advance the civiliation or improvement of Indian tribes.

During the years in question defendant paid to the tribal treasurer $864,702.58. We cannot say the defendant should pay this money again because the treasurer of the tribe, as a merchant, extended credit to the members of the tribe on the faith of the annuity payments at 10 percent discount, with the defendant's knowledge. But whether or not this is so, it definitely appears that as soon as the defendant acquired knowledge of the practice it no longer paid the per capita payments to the treasurer, but paid them

to the Indians direct. In no event could defendant be liable for payments made in the absence of knowledge of the practice.

Of the total amount paid, $622,145.87 was paid the tribal treasurer pursuant to the direction of Congress in section 12 of the Act of March 2, 1889 (25 Stat. 980). Until this Act was repealed by the Act of April 26, 1906 (34 Stat. 137), which abolished the tribal governments, the Commissioner of Indian Affairs had no discretion to do anything other than to pay this money into the tribal treasury. We have no reason to believe that when Congress passed the Act of 1889 it was aware of corruption in the General Council of the tribe or that the tribal officials were mulcting the people.

We are of opinion the plaintiff is not entitled to recover on item 5.

CASE L–208

By an amended petition filed in this court on December 27, 1937, in case L–208, plaintiff seeks to recover the value of 11,550.54 acres of land. It is alleged that under the third article of the treaty of March 21, 1866 (14 Stat. 755), the defendant had conveyed to plaintiff a 200,000-acre tract of land immediately west of the Creek lands, but that when the boundaries of this tract were surveyed and laid off the amount included therein was 11,550.54 acres short of 200,000 acres, and that this shortage had been allotted to members of the Pottawatomie tribe and patented to white settlers.

The parties agree that the tract between the Bardwell line, which is the eastern boundary of the original Seminole tract, and the Robbins line, which is the western boundary of the tract, contains only 189,648.18 acres; in other words, that the 200,000-acre tract was short 10,351.82 acres. They also agree that this was due to the incorrect location of the Robbins line and that plaintiff is entitled to recover the value of the shortage at the time it was taken by the defendant. They disagree as to the time of the taking.

The defendant says it took the lands at the time it set them apart as a reservation for the Pottawatomies. This was done under the following circumstances:

On February 27, 1867 (15 Stat. 531), the defendant had entered into a treaty with the Pottawatomies, under article I of which it was agreed that a commission representing the United States and a delegation of the Pottawatomies should visit the Indian country "in order to select, if possible, a suitable location for their people without interfering with the locations made for other Indians; and if such location shall be found satisfactory to the Pottawatomies, and approved by the Secretary of the Interior, such tract of land, not exceeding thirty miles square, shall be set apart as a reservation for the exclusive use and occupancy of that tribe; and upon the survey of its lines and boundaries, and ascertaining of its area, and payment to the United States for the same, as hereinafter mentioned and set forth, the said tract shall be patented to the Pottawatomie nation." Pursuant thereto the Indian country was visited shortly prior to February 24, 1870, and a tract of land was selected which lay immediately west of the Seminole country. Report of this was made to the Secretary of the Interior, who approved the selection on November 9, 1870, in a letter to the Commissioner of Indian Affairs, the last paragraph of which reads as follows:

> I hereby approve the selection made, and give the authority for th removal of the Pottawatomies as recommended by you, with the direction that, until the western boundary of the Seminole country is surveyed and marked, they will locate so far west of that tribe as not to intrude upon their lands.

Subsequently, Nathaniel Robbins surveyed and marked the western boundary of the Seminole tract. The report of his survey was made on January 5, 1872. It was approved by the Secretary of the Interior on February 5, 1872. Thereafter, the Pottawatomies occupied the lands up to the west of this line, but it does not appear that a patent to the lands was ever issued to the nation as provided for in the treaty.

At the time the Robbins' report was made and approved it was thought that the Robbins' line had been located so as to enclose between it and the Bardwell line a tract of 200,000 acres, but it was discovered that it did not when the defendant made a geological survey of the lands in the years

1895 and 1896, and it then became known that the Pottawatomies may have been settled on part of the Seminole lands.

In the meantime the Pottawatomies, by an agreement ratified by the Act of March 3, 1891 (26 Stat. 989, 1016), had ceded to the United States the lands assigned to them under the treaty of February 27, 1867, *supra*. The agreement and ratifying Act provided for allotments of portions of these lands to the Pottawatomie Indians in severalty and for the opening of the balance to settlement by white settlers. Believing at this time that the 10,351.82 acres, in issue here, belonged to the Pottawatomies, the defendant in 1892 allotted 3,818.21 acres of them to members of this tribe, and from 1895 to 1913 it patented the balance to white settlers. Later the defendant discovered that these lands belonged not to the Pottawatomies but to the Seminoles, but it took no action to cancel the allotments to the Pottawatomie Indians and the patents to white settlers, and none is contemplated; instead defendant admits plaintiff is entitled to recover the value of the lands in this suit.

Under the foregoing facts we are required by the opinions of the Supreme Court in *Creek Nation* v. *United States*, 295 U. S. 100, and 302 U. S. 620, to hold that the defendant exercised ownership over and appropriated to its own use these lands from the date it allotted them to the Pottawatomies in severalty in 1892 and from the dates of the patents to white settlers, as set out in finding 27. There is no material distinction between the facts in the *Creek* case and in this.

In the *Creek* case the Sac and Fox Indians were inadvertently located on a part of the Creek lands due to an erroneous survey of the boundary between the Creek lands and that of the Sac and Fox. This boundary line was run by one Darling. He placed it east of a line previously run by Bardwell. In 1889 the United States and the Creeks agreed on the Bardwell line as the correct boundary (Act of March 1, 1889, 25 Stat. 757), but nevertheless the Sac and Fox Indians by an agreement ratified on February 13, 1891, ceded to the United States certain lands described by metes and bounds (26 Stat. 750), which either actually included the Creek lands between the Darling and Bardwell lines or was thought to include them, and these lands were allotted to Sac and Fox Indians and patented to white settlers. The

Supreme Court held that there had not been a taking in 1873 when the Sac and Fox Indians were erroneously settled on these Creek lands, but that the taking occurred when the lands were disposed of to persons other than Creek Indians pursuant to the agreement ratified by Congress under which the lands were ceded to the United States. This was held to be a taking, since no action was taken to set aside the allotments and the patents upon discovery of the error.

So in the case at bar the settlement of the Pottawatomie Indians on the Seminole lands in 1872 as the result of an erroneous survey did not constitute a taking of these lands. The lands were not taken until the United States disposed of them pursuant to the agreement with the Pottawatomies under which they were ceded to the United States.

Defendant says the *Creek* case is not controlling because in that case Congress by the Act of March 1, 1889 (c. 317, 25 Stat. 757), repudiated the erroneous survey; whereas, Congress expressly adopted this erroneous survey by the Act of March 3, 1891, *supra*. This, however, is a distinction without a difference, because, while Congress first repudiated the erroneous survey in the *Creek* case, it later accepted a cession of lands included within the erroneous survey, as was done in the case at bar. Furthermore, Congress' adoption of the erroneous survey in both cases was done in ignorance of the fact that they were erroneous. Their adoption in such circumstances could not be a taking, because the intention to take was lacking. In this case, as in the *Creek* case, there was not a taking until the patents were issued and until the failure of Congress to direct their cancellation after it was discovered that they were issued on lands belonging to the Seminoles.

The defendant says that under the authority of *Shoshone Tribe of Indians* v. *United States*, 299 U. S. 476, the taking occurred when the Pottawatomies were settled on the land in 1872. In that case plaintiff had the right of use and occupancy only; in this case the plaintiff owned the fee in the lands. This right of use and occupancy in the *Shoshone* case was first impaired when the Arapahoes were settled on their lands, over the protest of the Shoshones, and, hence, it was held that their rights in the lands had been taken as of this date. In the case at bar plaintiff does not sue for its loss of use and occupancy while the Pottawatomies occupied the

lands as a reservation; it claims the fee and sues because it has been divested of this fee. It is entitled to recover as of the date of the divestiture. This occurred when the lands were disposed of pursuant to the agreement with the Pottawatomies under which the Seminole lands were conveyed to the United States.

If I, through mistake, erect a structure on land my neighbor owns in fee, or otherwise occupy it, I have not taken his land, unless after discovery of the error I refuse to remove from it. On the contrary, if my neighbor has only a lease on the lands he occupies and does not own the title, and I erect a structure on his lands over his protest, then I have taken from him the only interest he has in the lands, the right of use and occupancy, from the date I erected the structure on it. This, it would seem, is the distinction between the *Creek* case and the *Shoshone* case.

At any rate, it would seem clear that the Supreme Court in the *Shoshone* case did not intend to overrule the *Creek* case. Instead, it suggested a comparison between the two cases; it evidently did not think they were in conflict with one another; and at the next term of the court after the *Shoshone* opinion, the opinion in *Creek Nation* v. *United States*, in 295 U. S. 100, was expressly approved and adopted. See *Creek Nation* v. *United States*, 302 U. S. 620.

Since the facts in the *Creek* case and in the case at bar are the same, we hold that this case is ruled by the decisions in the *Creek* case.

There is much conflict in the testimony over the value of these lands from 1892 to 1913. The values testified to by the witnessess range from $3.50 an acre for the uplands to $30.00 an acre. The highest value put on the bottom lands was $50.00 in 1892, and from $75.00 to $100.00 from 1900 to 1910.

There is in the record, however, evidence more reliable than that of the testimony of witnesses as to values forty to fifty years prior to their testimony.

From 1895 to 1900, 1611.12 acres of the 10,351.82 were patented, and from 1901 to 1906, 4,441.32 acres were patented. During the years 1894 to 1901 the Pottawatomie and Absentee Shawnee Indians disposed of 90,447.86 acres, or about 1/6 of their allotments, at prices averaging $5.52 an acre, and the sales at these prices were approved by the Secretary of the Interior. From 1901 to 1906 they disposed of 67,841.82 acres

at prices averaging $8.22 an acre, and the sales at these prices were approved by the Secretary of the Interior. This is a weighted average of $7.50 per acre. This seems to us the best evidence of the value of the lands during these two periods. In 1892, 3,818.21 acres were allotted to the Indians. There were no sales of comparable lands in that year, but we assume their value was substantially the same as in the period 1894 to 1901.

Actual sales of large tracts of comparable lands, therefore, establish an average value of about $7.00 per acre throughout the period from 1892 to 1906. Less than 500 acres were disposed of thereafter. We are of opinion from all the testimony that a valuation of $7.00 an acre for all the lands throughout the whole period from 1892 to 1913 is fair and equitable.

It results that the plaintiff is entitled to recover from the defendant for the taking of this tract of land $72,462.74, plus such amount as will produce the present full equivalent of the value of the land if paid contemporaneously with the taking. In determining this amount we have computed interest on the value of the land at the time of the taking at 4 percent per annum, which is the rate the Government in agreements with Indian tribes in the period between the taking and today has agreed to pay on Indian funds in its hands. We have computed interest at this rate from 1899, by which time about one-half of the acreage had been allotted or patented, to date of judgment. This amounts to $130,215.54.

It results that plaintiff is entitled to recover in this suit the total sum of $202,678.28.

GRATUITIES

On the former hearing of case L–51 we found the defendant was indebted to the plaintiff in the sum of $18,388.30, and this was affirmed by the Supreme Court. This figure, added to the amount of the recovery allowed in case L–208, makes a total recovery of $221,066.58. Against this amount defendant first claims an offset of $31,083.79 (finding 30). The plaintiff admitted on the former trial that the defendant was entitled to this offset, and it was allowed by us. We reaffirm that holding.

Defendant's following offsets are claimed under the provisions of the Act of August 12, 1935 (49 Stat. 571, 596), under section 2 of which this court is directed in any suit brought by an Indian tribe against the United States "to consider and to offset against any amount found due the said tribe or band all sums expended gratuitously by the United States for the benefit of said tribe or band."

Defendant's first claim under this Act is for the sum of $175,000 which was paid the Creek Nation for lands purchased from it and given to the plaintiff nation in addition to the tract of 200,000 acres which the defendant was obligated to give it under the treaty of 1866.

By the third article of the treaty of March 21, 1866, *supra*, heretofore referred to, it was recited that the defendant had secured from the Creek Nation the westerly half of their lands, and defendant agreed to convey to plaintiff so much of these lands as lay between the lands retained by the Creeks and between the Canadian River on the south, and the north fork of the Canadian River on the north, and a line drawn on the west at such place as would include 200,000 acres of land. Prior to the time that the boundary line between the Creeks on the east and the Seminoles on the west had been run, the defendant found it desirable to move the Seminoles, who were then refugeeing in Kansas, to their domain. When the boundary line between the Creeks and Seminoles was finally definitely established it was found that through error some of the Seminoles had been settled on a part of the lands retained by the Creeks. In the meantime the Seminoles had made improvements on these lands, and for this reason the defendant wished to avoid moving them from these lands to their own domain. Hence, Congress, by the Act of March 3, 1873 (17 Stat. 626), authorized the Secretary of the Interior to see if he could induce the Creeks to sell to the United States 175,000 acres of the land retained by them, and to give these lands to the Seminole Nation in addition to the 200,000 acres which the defendant was obligated to give them by the treaty of 1866. Pursuant to this authorization the Secretary purchased from the Creek Nation 175,000 acres of land for the sum of $175,000, and these lands were conveyed to the plaintiff tribe in addition to the 200,000 acres.

(The actual number of acres conveyed was 177,397.71, due to an erroneous survey.) The defendant claims an offset of this amount under the Act of August 12, 1935, *supra*.

The defendant was under no obligation to grant to the plaintiff tribe more than 200,000 acres. When it discovered its error in locating the Seminoles on Creek lands, it was under the obligation of removing them to their own domain. The erroneous settling of them on the Creek lands created no obligation on its part to secure these lands for them; nor was it legally responsible for the damages incurred by the plaintiff tribe as a result of the acts of its officers and agents in erroneously locating them on the Creek lands. Certainly it incurred no liability on account of the alleged promises of these officers to the plaintiff tribe that they would protect them from loss on account of the improvements they had made on the lands. No officer, of course, has the power to bind the United States, in the absence of congressional authority to do so, and it is not even contended that Congress authorized these officers to make any such promise nor that it directed them to locate the plaintiff tribe on the Creek lands. Cf. *Shoshone Tribe* v. *United States*, 299 U. S. 476, 494; *United States* v. *North American Co.*, 253 U. S. 330, 333.

Congress, when it enacted the Act of March 3, 1873, *supra*, authorizing the purchase of this additional 175,000 acres of land, was not discharging any legal obligation incurred; its only legal obligation was to give the Seminole Nation the 200,000 acres of land it had promised it, not 375,000 acres. It recognized, however, that an unfortunate error had been made, and in a spirit of generosity, not because it was under the legal duty to do so, it decided to buy the lands and give them to plaintiff. This was a gratuitous act, the cost of which we are required by the Act of March 12, 1935, to offset against any amount due the tribe.

We hold, therefore, that the defendant is entitled to an offset of the amount paid for this additional acreage, to wit, $175,000.00.

In our former opinion in this case (reported in 93 C. Cls. 500, 511–515, as amended by our opinion on motion for a new trial, 93 C. Cls. 534–537) we allowed certain offsets, as set out in findings 11 to 19 of that opinion. In its brief on this

trial of the case defendant asked that we allow the same offsets. The plaintiff in its brief on this trial does not mention this part of the case, but in its former brief it covered it fully.

In our former opinion we allowed the following items which plaintiff vigorously opposed: "Pay of Indian Agents," "Pay of interpreters," "Pay of miscellaneous employees," "Fuel, light, and water," "Transportation etc. of supplies." After setting out plaintiff's contentions with reference to these items which, in brief, was that these expenditures were required by treaty, we said:

> However persuasive this argument may once have been, this question has heretofore been decided adversely to the plaintiff by the cases of *Blackfeet, et al. Tribes* v. *United States*, 81 C. Cls. 101, 137, and *Shoshone Tribe* v. *United States*, 82 C. Cls. 23, 93. We hold accordingly that the defendant is entitled to these offsets.

We have reviewed our holding on these items and have concluded that we were in error.

On August 7, 1856, the United States entered into a treaty with the Creek and Seminole Tribes of Indians (11 Stat. 699), the preamble of which recited that it was desirable that all the treaty stipulations between the parties be incorporated into one comprehensive instrument. In that document there was definitely set out and described the Creek territory and the Seminole territory. In Article XV it was provided, among other things: "* * * all persons not being members of either tribe, found within their limits, shall be considered intruders and be removed from and kept out of the same by the United States agents for said tribes, respectively: (assisted, if necessary, by the military;) * * *." Under Article XVII the United States agent was required to issue a license to anyone to trade with the Creeks and Seminoles and to approve the compensation to be paid by them for the land and timber they should use. Article XVIII provided in part: "The United States shall protect the Creeks and Seminoles from domestic strife, from hostile invasion, and from aggression by other Indians and white persons * * *." Under Article VIII the United States was required to distribute certain sums to the Indians *per capita*. Under Article IX it was required to remove the Seminoles in Florida to the

west and to provide them with rations and subsistence during their removal and for 12 months thereafter. Under Article XXI it was required to survey and mark the boundaries of the reservations.

Under Article I of the Treaty of March 21, 1866 (14 Stat. 755), with the Seminoles, the United States agreed: "* * * In return for these pledges of peace and friendship, the United States guarantee them quiet possession of their country, and protection against hostilities on the part of other tribes * * *." Under Article IV the United States agent was required to make a roll of those members of the tribe who had not committed acts of hostility against the Government of the United States in the War between the States so they could be compensated for losses incurred by them as a result of their cooperation with the United States Government. Under Article VII the United States undertook to take a census of the tribe for the purpose of electing delegates to a general council of all the tribes in the Indian territory.

The plaintiff says that maintenance of an agency was for the purpose of fulfilling these treaty obligations. It seems to us this necessarily must be so, in part at least. No doubt this agent did for this tribe a great many things not required by treaty, but undoubtedly a considerable part of his time was devoted to fulfilling the obligations the United States had assumed in the treaties of 1856 and 1866, in consideration for which the United States reaped large benefits.

The proof shows, and indeed it is common knowledge, that white people were constantly encroaching on the Indian lands and that Indian traders were constantly imposing upon and defrauding the Indians, necessitating revocation of licenses and careful investigations before issuing others. Protection of the Indians against these two things was enough to keep an agent and many employees busy all their time.

What part of their time was devoted to fulfilling treaty obligations, what part of the interpreters' time or the miscellaneous employees' time was consumed therein, what part of the expenses of the agency was thus incurred, the proof does not show. In the absence of such proof we can allow no part of these items as gratuities.

The item of "fuel, light, and water," we presume, was in connection with the agency, but we do not know. At any rate, it is not shown to have been a gratuity. Nor is it shown that the "transportation of supplies" was a gratuity. This expense may have been incurred in connection with the removal of the Florida Seminoles to the west, or it may have been for the transportation of agency supplies. What it was incurred for we are not shown.

In our former opinion we allowed these items as gratuities on the authority of *Blackfeet* v. *United States*, 81 C. Cls. 101, and *Shoshone Tribe* v. *United States*, 82 C. Cls. 23. It appears, however, that the plaintiff did not contend in the *Blackfeet case* that the defendant incurred these expenses in the performance of a treaty obligation, but only that they were strictly governmental expenditures and that the tribes did not receive any benefit from the expenditures, or if so, to what extent. Only this contention was considered in our opinion. See pp. 137 and 138. The same is true in the *Shoshone* case. See pp. 93 and 94. These cases are not authority, as we had supposed, on the question raised by plaintiff in this case.

These items, or some of them, are met with in findings 11, 12, 13, 14, 15, 17, and 18 of our former opinion, and in findings 32, 33, 34, 35, 36, and 38 of this opinion. They cannot be allowed as gratuities in the absence of the necessary proof.

The defendant admitted on oral argument that agency expenses were not gratuities, although it had previously claimed that they were.

The second class of gratuities to which plaintiff raises particular objection are expenses incurred in connection with the allotment of the tribal lands to the individual Indians in severalty. Such items are found in finding 34 as follows: appraising, enrolling, general office expenses, preservation of records, probate expenses, protecting property interests, sale of townsites, surveying, surveying and allotting, traveling expenses.

These expenses, or some of them, were incurred in carrying out the Seminole Agreement ratified by the Act of July 1, 1898 (30 Stat. 567), and the Supplemental Seminole Agreement ratified by the Act of June 2, 1900 (31 Stat. 250), under which tribal ownership of the lands was abolished and the lands were allotted to the Indians in severalty.

These agreements superseded the treaties of 1856 and 1866. Article IV of the former treaty provided that no portion of the land conveyed to the tribe by that treaty "shall ever be embraced or included within, or annexed to, any Territory or State, nor shall * * * ever be erected into a Territory without the full and free consent of the legislative authority of the tribe owning the same." That same treaty in article XV provided that the "Seminoles shall be secured in the unrestricted right of self-government, and full jurisdiction over persons and property, within their respective limits; * * *."

However, by 1893 white people had crowded into this Indian Reservation in such numbers that they far outnumbered the Indians, and so it became desirable, if not imperative, to abolish the tribal governments in this territory and to bring it under the dominion of the laws of the United States. In view of this situation, Congress, on March 3, 1893, passed an act (27 Stat. 645) appointing a commission to enter into negotiations with the tribes—

> * * * for the purpose of the extinguishment of the national or tribal title to any lands within that Territory * * * either by cession of the same or some part thereof to the United States, or by the allotment and division of the same in severalty among the Indians of such nations or tribes, * * * with a view to such and [an] adjustment * * * as may * * * be requisite and suitable to enable the ultimate creation of a State or States of the Union which shall embrace the lands within said Indian Territory.

The act directed the commissioners to undertake to secure an agreement from the Indian tribes permitting an allotment of the lands in severalty, upon the accomplishment of which they were directed to "cause the lands of any such nation or tribe or band to be surveyed, and the proper allotment to be designated."

This commission was known as the Dawes Commission. It entered into negotiations with the several tribes to accomplish the purposes of the Act, but found all of them quite

reluctant to accede to the wishes of Congress. Such agreements, however, were finally secured after several years of dickering. That with the Seminoles was entered into in 1897 and was ratified by Congress on July 1, 1898. It provided in part: "that all lands belonging to the Seminole tribe of Indians * * * shall be divided among the members of the tribe so that each shall have an equal share thereof in value * * *. Such allotment shall be made under the direction and supervision of the commission to the Five Civilized Tribes in connection with the representative appointed by the tribal government. * * *" This agreement further provided for the exclusion from lands to be allotted of certain coal, mineral, oil, and natural gas lands, etc., for the leasing and sale thereof, and for the payment to the individual members of the tribe of the proceeds thereof, together with such other money as might be in the hands of the United States belonging to the tribe. These payments were to be made "by a person appointed by the Secretary of the Interior."

It is apparent, therefore, that these agreements were entered into at the behest of the defendant and as the result of much persuasion of the Indians, and that the defendant acquired substantial benefits therefrom, to wit, among others, no doubt, the incorporation into a State of the Union of the Indian lands on which many white people had settled, free from the jurisdiction and laws of the Indians, and had been guaranteed by the treaty of 1856, and subject to the exclusive jurisdiction and laws of the United States and one of its States.

In return for these benefits the United States agreed that the allotments of the lands should be done "under the direction and supervision of the commission to the Five Civilized Tribes in connection with the representative appointed by the tribal government."

Certainly whatever expenses were incurred by the commission in directing and supervising the allotments should be borne by the defendant, because this is a duty it agreed to perform, in return for benefits received. There is no express agreement on its part to bear the expense of doing the actual work of appraising and surveying the lands and

of making up rolls of citizens of the tribe entitled to an allotment and the other necessary things preliminary thereto, but we think this agreement is to be implied under all the circumstances. The Indians did not want individual allotments; they were accustomed to and preferred tribal ownership. The Indians wanted their own tribal governments; this had been guaranteed to them in the treaty of 1856; they did not want the government of the white man. The Indians did not want to be incorporated into a State of the Union; it had been expressly promised them that they would not be. The defendant wanted all these things. The Indians acquired as a result of the agreement no land or money or other thing of advantage to which they were not already entitled.

Under such circumstances it would be highly inequitable to charge them with the expense of the metamorphosis, and we have no idea they understood that they would be. They had a right to assume, we think, that when the defendant agreed that the Dawes Commission should direct and supervise the allotments it intended to agree to bear the expense of making them.

They had knowledge, no doubt, of the act of 1893 under which the commission to the Five Civilized Tribes was created; at least they may be presumed to have known of it. They knew that that Act, in section 15, appropriated the sum of $25,000 for the survey of such lands as might be allotted by the tribes to the individual members thereof. They knew that in section 16 the commission therein created was directed to "cause the lands of any such nation or tribe or band [as should consent to the allotment of their lands to the individual Indians in severalty] to be surveyed and the proper allotment to be designated." Thus they knew that the officers of the United States were directed to designate and survey the allotments and that the United States had appropriated some money to pay the expense of doing some of the work. What was there that could have given them the slightest intimation that the United States intended to charge them with the expense of doing so?

It seems plain that the United States had no such intention, but, on the contrary, intended to pay the expense itself, as

it should have done, since the abolition of the tribal governments and the allotments of the lands were things it wanted, not what the Indians desired or had requested.

A total of several millions of dollars was appropriated to pay the salary and expenses of the commission to the Five Civilized Tribes,[2] and there is not a suggestion in any one of the appropriation acts that the sums appropriated should be charged to the account of the Indians.

We are of the opinion the defendant intended to pay these expenses itself and that the Indians so understood when they signed the Seminole Agreement ratified July 1, 1898, and the Supplemental Agreement ratified June 2, 1900.

In our former opinion we disallowed these expenses on the authority of *Choctaw Nation* v. *United States*, 91 C. Cls. 320, 366, 371. However, we then overlooked the fact that the agreement under construction in that case had specifically provided that the United States should bear certain expenses incident to the breaking up of tribal ownership and that the claim there asserted by plaintiff was to recover other expenses charged to it which had not been assumed by the United States. We held that the specific assumption by the United States of a certain part of the expenses negatived an intention to assume others. In the case at bar the agreement was altogether silent as to who should bear any part of the expenses.

Although the defendant in its briefs requested the allowance as gratuities of expenses incident to allotments, it admitted on oral argument that it was not entitled to them.

There may be some doubt that some of the items in finding 34, which we have been discussing, were connected with the change from tribal to individual ownership; the indications are that all of them were; but, at any rate, the defendant has not shown that they were gratuities, and the burden is on it to do so.

[2] Acts of Mar. 3, 1893, 27 Stat. 646; Mar. 2, 1895, 28 Stat. 939; June 10, 1896, 29 Stat. 339; June 7, 1897, 30 Stat. 83; July 1, 1898, 30 Stat. 591; Mar. 1, 1899, 30 Stat. 939; May 31, 1900, 31 Stat. 236; Mar. 3, 1901, 31 Stat. 1073, 1074; May 27, 1902, 32 Stat. 258, 259; Mar. 3, 1903, 32 Stat. 994; Feb. 18, 1904, 33 Stat. 34; Apr. 21, 1904, 33 Stat. 205; Mar. 3, 1905, 33 Stat. 1060; Mar. 3, 1905, 33 Stat. 1237; Feb. 27, 1906, 34 Stat. 39; June 21, 1906, 34 Stat. 340; Dec. 19, 1906, 34 Stat. 842; Mar. 1, 1907, 34 Stat. 1026; Apr. 30, 1908, 35 Stat. 91; Mar. 3, 1909, 35 Stat. 804.

In finding 17 of our former opinion (finding 38 of this opinion) appears an item of office expense, $135,219.60. The defendant admits that a part of this was incurred by the Dawes Commission in negotiating agreements with the tribes. It admits in its brief in the Supreme Court that so much of this item should not be charged as a gratuity. How much, if any, should be so charged the defendant does not show us and, hence, the entire item must be disallowed, whether or not it should be disallowed for the reason set out above.

We have set out in finding 39 expenditures made for the joint benefit of the Creek, Seminole, Cherokee, Chickasaw and Choctaw Nations, but we have not determined what part of them were made gratuitously, because the gratuities set out in the preceding findings exceed the amount the plaintiff is entitled to recover.

Except for the foregoing, our former findings and opinion with reference to the expenditures listed in findings 11, 12, 13, 14, 15, 16, 17, 18, and 19 of our former opinion, as modified by findings 32, 33, 34, 35 36, 37, 38, and 39 of this opinion, are adopted and reaffirmed.

It results that defendant is entitled to offset against the amount due plaintiff under this opinion the following items:

Finding 30	$31,083.79
Finding 31	175,000.00
Finding 32	7,936.37
Finding 33	5,910.69
Finding 34	1,529.54
Findings 35, 36, and 37	0.00
Finding 38	108.81
Total	221,569.20

The amount which we have found plaintiff is entitled to recover is $221,066.58. Since the amounts spent by the defendant gratuitously for plaintiff's benefit exceed the amount plaintiff is entitled to recover, plaintiff's petitions will be dismissed. It is so ordered.

MADDEN, *Judge;* LITTLETON, *Judge;* and BOOTH, *Chief Justice*, (retired), recalled, concur.

WHALEY, *Chief Justice*, concurring in part and dissenting in part:

I concur in the result in Case No. L–51.

I dissent to the majority opinion in Case No. L–208.

In my judgment the lands were taken from the Seminole Nation when the Pottawatomies were placed thereon under the terms of a treaty made with them, 15 Stat. 531, and not when the lands were surveyed and allotted after the Pottawatomies had ceded the lands back to the defendant. 26 Stat. 989, 1016. *Shoshone Tribe* v. *United States*, 299 U. S. 476.

I cannot find anything to justify the price of seven dollars an acre for unimproved western lands in the early nineties, especially so when the Government was selling parcels of this same tract to white settlers for one dollar and twenty-five cents per acre. The prices obtained by allottees and settlers upon resale were for the land after improvement. The value of improved lands should not establish the standard of value of unimproved lands.

A true copy.
Test:

Clerk, Court of Claims
of the United States.

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