

No. 615

In the Supreme Court of the United States

OCTOBER TERM 1936

THE CHOCTAW NATION, PETITIONER

v.

THE UNITED STATES AND THE CHICKASAW NATION

*ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF
CLAIMS*

BRIEF FOR THE UNITED STATES IN OPPOSITION

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(I)

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OPINION BELOW

The opinion of the Court of Claims (R. 12-32) is not yet reported.

JURISDICTION

The judgment sought to be reviewed was entered April 6, 1936 (R. 32). On June 3, 1936, petitioner filed a motion for a new trial (R. 32). On October 5, 1936, an order was entered overruling petitioner's motion for a new trial (R. 32). The petition for a writ of certiorari was filed January 2, 1937 (R. 32). The jurisdiction of this Court is invoked under Section 4 of the special jurisdictional Act

of June 7, 1924, c. 300, 43 Stat. 537, as modified by Section 3 of the Act of February 13, 1925, c. 229, 43 Stat. 936, 939.

QUESTION PRESENTED

Whether the funds arising from the sale of the lands and other common properties of the Choctaw and Chickasaw Nations should have been distributed among the members of the two Nations on the basis of the total membership of the two tribes, that is, 76.74 per cent to the Choctaw Nation and 23.26 per cent to the Chickasaw Nation, instead of on the basis of three-fourths to the Choctaw Nation and one-fourth to the Chickasaw Nation.

STATUTES AND TREATIES INVOLVED

The applicable statutes and treaties are found in the Appendix, *infra*, pp. 14-27.

STATEMENT

The salient facts as found by the Court of Claims (R. 7-12) may be summarized as follows:

The Choctaw Nation entered into a treaty with the United States on September 27, 1830 by which the Nation ceded all of its land east of the Mississippi in exchange for a described tract of country in what is now Oklahoma (R. 9). On October 20, 1832, the Chickasaw Nation made a similar cession by treaty with the United States in exchange for a tract west of the Mississippi which was later to be determined. The Choctaw and Chickasaw Na-

tions with the assent of the United States entered into a treaty on January 17, 1837, by which the Chickasaws purchased an interest in the lands of the Choctaws; they subsequently removed to a designated district within the Choctaw country. (R. 10.) The relations between the two Nations were subsequently clarified by the Treaties of June 22, 1855 and April 28, 1866, *infra*.

The members of the Dawes Commission to the Five Civilized Tribes, representing the United States, entered into an agreement with the Choctaw and Chickasaw Nations, known as the Atoka Agreement, on April 23, 1897. This agreement provided for allotments in severalty of their common lands and the sale or disposition of other common properties of the Nations. This agreement was adopted by the Act of June 28, 1898, *infra*, and was subsequently approved by a majority vote of the members of each Nation. In 1902 the United States and the Nations entered into a further agreement, known as the Supplemental Agreement, which was adopted by the Act of July 1, 1902, *infra*. This Act contained provisions for: (1) the appraisement and allotment of the lands; (2) the sale of the unallotted lands; (3) laying out town sites and the sale of lots; (4) the sale or disposition of coal and asphalt lands and other common properties; and (5) the distribution of all funds so realized. (R. 11.)

From June 28, 1898, to June 30, 1929, the United States had collected \$34,470,650.27 from the sale or disposition of unallotted lands, town lots, coal and asphalt lands and other common properties. This had been credited in the Treasury of the United States three-fourths to the Choctaw Nation and one-fourth to the Chickasaw Nation. The moneys had been disbursed to the individual members of each Nation on that basis. (R. 11.)

The final membership rolls show that the Choctaws constitute 76.74 per cent and the Chickasaws 23.26 per cent of the total membership of the two tribes. Had the funds been distributed on a purely per capita basis, without regard to tribal membership, the Choctaws would have received \$599,789.31 more, and the Chickasaws that much less, than they actually did receive. (R. 12.)

The Act of June 7, 1924 (43 Stat. 537) as modified by the Act of May 19, 1926 (44 Stat. 568) gave the Court of Claims jurisdiction to consider all legal and equitable claims of the Choctaw or Chickasaw Nations growing out of any treaty with the United States or arising under any Act of Congress, if they had not been previously adjudicated, notwithstanding any lapse of time. Any such suit was to be brought within five years. The court was given power to bring in and make parties to the suit all persons deemed by it to be necessary or proper. Appeal as in other cases was provided to this Court. (R. 7-9.)

On April 24, 1928, petitioner filed its petition in the Court of Claims asking judgment for the amount of \$468,000, on the theory that the above payments to the individual members of the two Nations should have been on a purely per capita basis, without regard to tribal membership (R. 1-6). On January 5, 1935, the Court of Claims granted the motion of the United States that the Chickasaw Nation be brought in as a party defendant (R. 6). On April 6, 1936, the Court of Claims dismissed the petition, and on October 5, 1936, denied a petition for rehearing (R. 32).

ARGUMENT

This controversy relates to the distribution of the proceeds realized on the sale of certain property owned in common by the Choctaw and Chickasaw Nations. The United States distributed them per capita after dividing the fund three-fourths to the Choctaw Nation and one-fourth to the Chickasaw Nation. Petitioner's contention that the distribution should have been purely on a per capita basis without regard to tribal membership would result in giving 76.74 per cent to the Choctaws and 23.26 per cent to the Chickasaws.

1. The proceeds from the sale of unallotted lands and of the land for the Sulphur reservation were to be distributed per capita "as other funds of the tribes." Sections 14, 64, Act of July 1, 1902, *infra*. The proceeds from the sale of coal and

asphalt lands and deposits were to be distributed per capita "with the other moneys belonging to said tribes in the manner provided by law." Section 59, Act of July 1, 1902, *infra*.

It seems plain that the Act, which contains no other direction as to distribution, contemplates that it should be done according to some earlier established system, so well known that repetition was thought unnecessary. The history of distributions to the Choctaws and Chickasaws demonstrates that the uniformly adopted basis is three-fourths to the Choctaws and one-fourth to the Chickasaws. In Article 10 of the Treaty of 1855, *infra*, it was provided that the \$800,000 paid for the sale of the lands west of the one-hundredth degree and the lease of the lands west of the ninety-eighth degree of longitude should be paid three-fourths to the Choctaws and one-fourth to the Chickasaws. The same basis was adopted in Article III of the Treaty of 1866, *infra*, when the land west of the ninety-eighth degree was ceded to the United States. Articles XXXVII and XLVI of the latter treaty, *infra*, also provided for a distribution of sums paid by the United States, in compensation for the introduction of the Kansas Indians into the territory, on a basis of three-fourths to the Choctaws and one-fourth to the Chickasaws. Article XXX of the same treaty, *infra*, provided for the reception of three-fourths of the Kansas Indians in Choctaw territory and of one-fourth in Chickasaw territory. The Act of August 2, 1882, *infra*, in granting a rail-

way right of way through the lands of the two Nations, provided that the quarterly payments by the railroad should be made three-fourths to the Choctaws and one-fourth to the Chickasaws. The Act of March 3, 1891, *infra*, appropriated \$2,991,450 as compensation for lands occupied by the Cheyennes and Arapahoes, three-fourths to be paid to the persons authorized by Choctaw laws and one-fourth to those authorized by the Chickasaw laws. The legislatures of each Nation requisitioned the designated fraction of this payment. Sen. Exec. Doc. No. 42, 52d Cong., 1st Sess.; see R. 25-26. The Act of June 10, 1896, *infra*, designated \$21,686.80 as compensation for lands occupied by Wyandotte Indians, three-fourths to be paid to the Choctaw treasurer and one-fourth to the Chickasaw treasurer.

No distribution of funds realized on the sale of common property, so far as we know, contemplated any other division of the funds. It is plain that a division of three-fourths to the Choctaws and one-fourth to the Chickasaws was the settled basis of distribution, uniformly adopted by Congress and apparently never protested by either Nation;¹

¹ Petitioner asserts (Pet. 10) that these payments relate to western lands only. But the record does not show the location of the land involved in the payments for the land occupied by the Kansans, Cheyennes, Arapahoes, and Wyandottes, or included in the railroad right-of-way. It is possible but improbable that none of these involve lands actually occupied by the tribes. Petitioner suggests no reason why a different basis should be adopted for the western lands than for the other lands owned in common.

indeed it originated in the Treaties of 1855 and 1866, which were agreements between the Nations themselves. This must, therefore, have been the basis contemplated by the Act of 1902 when it referred to "the manner provided by law" or "as other funds of the tribes."

Petitioner stresses that the allotments of land were to be made equally to each member of both tribes without regard to his tribal membership, and argues that it must follow that distribution of the proceeds from the sale of property commonly owned must be made on the same basis (Pet. 8-9). But this want of uniformity cannot serve to supply a new basis for the distribution of funds to the members of the tribes. The different bases of ownership and of the distribution of the proceeds from sales are as long established as the rule of division of the funds. The Treaty of 1855, in Article 1, *infra*, secured the lands to the members of the two tribes "so that each and every member of either tribe shall have an equal, undivided interest in the whole." The Treaty of 1866, while providing that unselected land should remain the common property of the two Nations in their corporate capacities (Article XXXIII, *infra*), declared that each member of the two tribes, whether Choctaw or Chickasaw, should receive a quarter section of land (Article XV, *infra*). Yet in both of these treaties provision was made for the dis-

tribution of funds on the basis of three-fourths to the Choctaws and one-fourth to the Chickasaws. Therefore, the provisions in the Act of June 28, 1898, *infra*, that each member of the two tribes was to receive an equal allotment of land and was to have an equal and undivided interest in the coal and asphalt deposits, carries no implication that the *funds* were not to be distributed on the customary basis. Indeed, Article 5 of the Treaty of 1855, *infra*, provided for equal rights of settlement in the territory of each Nation but made express provision that there should be no right to participate in the funds of the other Nation.

Petitioner's basic error lies in its failure to recognize the separate identity of the Choctaw and Chickasaw Nations, with the resulting fact that the individual members claimed through their governments, not as individuals. The Chickasaws came into the Choctaw territory pursuant to the Act of May 28, 1830, and the ensuing Treaty of 1837. Section 3 of the Act of 1830, *infra*, authorized the President to guarantee permanent tenure of the new land to the tribe or nation. The Treaty of January 17, 1837, in Articles I and V, *infra*, contemplated a limited amalgamation of the Chickasaws into the Choctaw Nation. This arrangement being productive of discord, a new treaty was entered into on June 22, 1855. See Preamble, *infra*. By this treaty the Choctaws were reconstituted

a separate Nation. Article 4, *infra*. Their separate character was reaffirmed by Article VII of the Treaty of 1866, *infra*. Accordingly, by Article XXXIII of this treaty, *infra*, the unselected lands were held by the Nations in their corporate capacities. Various of the distributions of funds provided, after dividing the fund three-fourths to the Choctaws and one-fourth to the Chickasaws, that the fund should then be distributed to the tribal treasurer or to the persons or in the manner that the legislatures of the tribes should direct. See Article 10 of Treaty of 1855; Article XLVI of the Treaty of 1866; Act of March 3, 1891, all *infra*. All the other distributions were made directly to the individuals but on a tribal basis of three-fourths and one-fourth. The provisions that each member, irrespective of his tribal membership, should share equally in the actual allotments of lands, it is true, look to a different basis, but this disparity is of long standing and has never interfered with a tribal distribution of funds.

2. The Act of June 28, 1898, adopted the so-called "Atoka Agreement" with the tribes. In Section 15, *infra*, it provided that the funds derived from the sale of town sites of any tribe should "be paid per capita to the members of the tribe." The Agreement, adopted by Section 29, provided that "each member of the two tribes" was "to receive an equal portion thereof." These provisions

were superseded by the Act of May 31, 1900, c. 598, 31 Stat. 221, 237-238, which was adopted by Section 45 of the Act of July 1, 1902, *infra*, embodying the so-called Supplemental Agreement with the tribes. Under the Act of May 31, 1900, no express provision for distribution of the proceeds from the sale of town sites was made, nor was there any such provision in the Act of July 1, 1902 (see sections 45-54). However, the Act of April 28, 1904, provided in Section 1, *infra*, that the town-site money "shall be divided and paid to the Choctaws and Chickasaws (freedmen excepted), each member to receive an equal portion thereof."

If this language stood alone it would appear to be equally susceptible of either interpretation: (1) that it was to be paid equally to every member of *each* tribe; or (2) that it was to be paid equally to every member of both tribes, irrespective of tribal membership. However, there is no necessity to choose between these two interpretations of the ambiguous language. The only committee report relating to the Act of April 28, 1904, is that made to the House (H. Rpt. No. 2363, 58th Cong., 2d Sess.). It makes plain that the distribution was intended to be on a tribal basis, saying:

The object of this bill is to authorize the Secretary of the Interior to pay to the Choctaw and Chickasaw Indians the money now in the Treasury of the United States and which may hereafter be paid into the Treasury to the credit of the Choctaw and Chicka-

saw nations, derived from the sale of town lots in said nations.

By the terms of the agreement with the Choctaws and Chickasaws, the money derived from the sale of town lots *was to be paid to said nations annually*. It has not been paid as agreed, because the rolls were not complete, but provision is made in this bill for the retention, from the town-site fund, of an amount equal to the pro rata shares of all persons claiming to be members of the Choctaw and Chickasaw nations, and who, if enrolled, will be entitled to share in said fund. (Italics added.)

In addition, there had been a uniform Congressional practice for over half a century of distributing funds derived from the sale of common property three-fourths to the Choctaws and one-fourth to the Chickasaws. This of itself would be sufficient to compel choice of the interpretation which accorded with the established Congressional practice. This Court has stated the applicable rule, speaking of the analogous income tax legislation, in *Helvering v. Morgan's, Inc.*, 293 U. S. 121, 126, when it said:

But the true meaning of a single section of a statute in a setting as complex as that of the revenue acts, however precise its language, cannot be ascertained if it be considered apart from related sections, or if the mind be isolated from the history of the income tax legislation of which it is an integral part.

In summary, the decision of the Court of Claims is not contrary to the words of the statute, it is in accord with the uniform practice of Congress over the preceding 50 years, it follows the uniform administrative interpretation both before the passage of the Act and for a quarter of a century thereafter, and it adopts the basis which the Nations themselves had agreed upon in the Treaties of 1855 and 1866 and confirmed again in 1891.

CONCLUSION

The decision of the Court of Claims is correct and no important question of law is presented. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

STANLEY REED,

Solicitor General.

GEORGE T. STORMONT,

CHARLES H. SMALL,

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Attorneys.

FEBRUARY, 1937.

APPENDIX

Act of May 28, 1830, c. 148, 4 Stat. 411:

SEC. 3. *And be it further enacted*, That in the making of any such exchange or exchanges, it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made, that the United States will forever secure and guaranty to them, and their heirs or successors, the country so exchanged with them; and if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same: *Provided always*, That such lands shall revert to the United States, if the Indians become extinct, or abandon the same.

* * * * *

Treaty of January 17, 1837, 11 Stat. 573:

ARTICLE I. It is agreed by the Choctaws that the Chickasaws shall have the privilege of forming a district within the limits of their country, to be held on the same terms that the Choctaws now hold it, except the *right* of disposing of it, which is held in common with the Choctaws and Chickasaws, to be called the Chickasaw district of the Choctaw Nation, to have an equal representation in their General Council, and to be placed on an equal footing in every other respect with any of the other districts of said nation, except a voice in the management of the consideration which is given for these rights and privileges; and the Chickasaw people to be entitled to all the rights

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and privileges of Choctaws, with the exception of participating in the Choctaw annuities, and the consideration to be paid for these rights and privileges, and to be subject to the same laws to which the Choctaws are; but the Chickasaws reserve to themselves the sole right and privilege of controlling and managing the residue of their funds, as far as is consistent with the late treaty between the said people and the Government of the United States, and of making such regulations and electing such officers for that purpose as they may think proper.

ARTICLE II. The Chickasaw districts shall be bounded as follows, viz: * * *

ARTICLE III. The Chickasaws agree to pay the Choctaws, as a consideration for these rights and privileges, the sum of five hundred and thirty thousand dollars; * * *

* * * * *

ARTICLE V. It is hereby declared to be the intention of the parties hereto, that equal rights and privileges shall pertain to both Choctaws and Chickasaws to settle in whatever district they may think proper, and to be eligible to all the different offices of the Choctaw Nation, and to vote on the same terms in whatever district they may settle, except that the Choctaws are not to vote *in any wise* for officers in relation to the residue of the Chickasaw fund.

Treaty of June 22, 1855, 11 Stat. 611:

Whereas, the political connexion heretofore existing between the Choctaw and the Chickasaw tribes of Indians, has given rise to unhappy and injurious dissensions and controversies among them, which render necessary a readjustment of their relations

to each other and to the United States: and whereas, the United States desire that the Choctaw Indians shall relinquish all claim to any territory west of the one hundredth degree of west longitude, and also to make provision for the permanent settlement within the Choctaw country, of the Wichita and certain other tribes or bands of Indians, for which purpose the Choctaws and Chickasaws are willing to lease, on reasonable terms, to the United States, that portion of their common territory which is west of the ninety-eighth degree of west longitude: * * *

* * * * *

ARTICLE I. The following shall constitute and remain the boundaries of the Choctaw and Chickasaw country, viz: * * *

And pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within the said limits, to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common; so that each and every member of either tribe shall have an equal, undivided interest in the whole: *Provided, however,* no part thereof shall ever be sold without the consent of both tribes; and that said land shall revert to the United States if said Indians and their heirs become extinct, or abandon the same.

ARTICLE 4. The government and laws now in operation and not incompatible with this instrument, shall be and remain in full force and effect within the limits of the Chickasaw district, until the Chickasaws shall adopt a constitution, and enact laws, superseding, abrogating, or changing the same. And all judicial proceedings within said district, commenced prior to the adoption of a consti-

tution and laws by the Chickasaws, shall be conducted and determined according to existing laws.

ARTICLE 5. The members of either the Choctaw or the Chickasaw tribe, shall have the right, freely, to settle within the jurisdiction of the other, and shall thereupon be entitled to all the rights, privileges, and immunities of citizens thereof; but no member of either tribe shall be entitled to participate in the funds belonging to the other tribe. * * *

ARTICLE 9. The Choctaw Indians do hereby absolutely and forever quitclaim and relinquish to the United States * * *; and the Choctaws and Chickasaws do hereby lease to the United States all that portion of their common territory west of the ninety-eighth degree of west longitude, * * *

ARTICLE 10. In consideration of the foregoing relinquishment and lease, and, as soon as practicable after the ratification of this convention, the United States will pay to the Choctaws the sum of six hundred thousand dollars, and to the Chickasaws the sum of two hundred thousand dollars, in such manner as their general councils shall respectively direct.

* * * * *

Treaty of April 28, 1866, 14 Stat. 769:

ARTICLE III. The Choctaws and Chickasaws, in consideration of the sum of three hundred thousand dollars, hereby cede to the United States * * * said sum of three hundred thousand dollars shall be paid to the said Choctaw and Chickasaw nations in the proportion of three fourths to the former and one fourth to the latter * * *

* * * * *

ARTICLE VII. The Choctaws and Chickasaws agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian territory: *Provided, however,* Such legislation shall not in any wise interfere with or annul their present tribal organization, or their respective legislatures or judiciaries, or the rights, laws, privileges, or customs of the Choctaw and Chickasaw nations, respectively.

* * * * *

ARTICLE XV. At the expiration of the ninety days' notice aforesaid, the selection which is to change the tenure of the land in the Choctaw and Chickasaw nations from a holding in common to a holding in severalty shall take place, when every Choctaw and Chickasaw shall have the right to one-quarter section of land, whether male or female, adult or minor, and if in actual possession or occupancy of land improved or cultivated by him or her, shall have a prior right to the quarter-section in which his or her improvement lies; and every infant shall have selected for him or her a quarter-section of land in such location as the father of such infant, if there be a father living, and if no father living, then the mother or guardian, and should there be neither father, mother, nor guardian, then as the probate judge of the county, acting for the best interest of such infant, shall select.

* * * * *

ARTICLE XXX. The Choctaw and Chickasaw nations will receive into their respective districts east of the ninety-eighth degree

of west longitude, in the proportion of one fourth in the Chickasaw and three fourths in the Choctaw nation, civilized Indians from the tribes known by the general name of the Kansas Indians * * *.

ARTICLE XXXIII. All lands selected as herein provided shall thereafter be held in severalty by the respective parties, and the unselected land shall be the common property of the Choctaw and Chickasaw nations, in their corporate capacities, subject to the joint control of their legislative authorities.

* * * * *

ARTICLE XXXVII. In consideration of the right of selection hereinbefore accorded to certain Indians other than the Choctaws and Chickasaws, the United States agree to pay to the Choctaw and Chickasaw nations, out of the funds of Indians removing into said nations respectively, under the provisions of this treaty, such sum as may be fixed by the legislatures of said nations, not exceeding one dollar per acre, to be divided between the said nations in the proportion of one fourth to the Chickasaw nation, and three fourths to the Choctaw nation * * *

* * * * *

ARTICLE XLVI. Of the moneys stipulated to be paid to the Choctaws and Chickasaws under this treaty for the cession of the leased district, and the admission of the Kansas Indians among them, the sum of one hundred and fifty thousand dollars shall be advanced and paid to the Choctaws, and fifty thousand dollars to the Chickasaws * * *

* * * * *

Act of August 2, 1882, c. 371, 22 Stat. 181:

SEC. 4. That for and in consideration of the uses and grants aforesaid the said railway company shall pay quarter-annually to the national treasurers of said nations every year during the existence of the rights and privileges granted to said company by this act, to be used for the benefit of schools therein, the sum of seven hundred and fifty dollars, one-fourth of said payments to be paid to the Chickasaws and three-fourths to be paid to the Choctaws; and until the first of such payments be made, no right or power to enter upon said lands, except for the purpose of surveying and locating its line of road and telegraph, * * *.

Act of March 3, 1891, c. 543, 26 Stat. 989, 1025:

SEC. 15. * * *

And the sum of two million nine hundred and ninety-one thousand four hundred and fifty dollars be, and the same is hereby, appropriated out of any money in the Treasury not otherwise appropriated, to pay the Choctaw and Chickasaw Nations of Indians for all the right, title, interest, and claim which said nations of Indians may have in, and to certain lands now occupied by, the Cheyenne and Arapahoe Indians under executive order; said lands lying south of the Canadian River, and now occupied by the said Cheyenne and Arapahoe Indians, said lands have been ceded in trust by article three of the treaty between the United States and said Choctaw and Chickasaw Nations of Indians, which was concluded April twenty-eighth, eighteen hundred and sixty-

six, and proclaimed on the tenth day of August of the same year, and whereof there remains, after deducting allotments as provided by said agreement, a residue ascertained by survey to contain two million three hundred and ninety-three thousand one hundred and sixty acres; three-fourths of this appropriation to be paid to such person or persons as are or shall be duly authorized by the laws of said Choctaw Nation to receive the same, at such time and in such sums as directed and required by the legislative authority of said Choctaw Nation, and one-fourth of this appropriation to be paid to such person or persons as are or shall be duly authorized by the laws of said Chickasaw Nation to receive the same, at such times and in such sums as directed and required by the legislative authority of said Chickasaw Nation; this appropriation to be immediately available and to become operative upon the execution by the duly appointed delegates of said respective nations specially authorized thereto by law of releases and conveyances to the United States of all the right, title, interest, and claim of said respective nations of Indians in and to said land (not including Grier County, which is now in dispute) in manner and form satisfactory [to] the President of the United States; and said releases and conveyances, when fully executed and delivered, shall operate to extinguish all claim of every kind and character of said Choctaw and Chickasaw Nations of Indians in and to the tract of country to which said releases and conveyances shall apply.

Act of June 10, 1896, c. 398, 29 Stat. 321, 344:

The Secretary of the Interior is hereby authorized and directed to locate and estab-

lish certain Kansas Indians known as the Absentee Wyandotte Indians in the Choctaw and Chickasaw Nations, in accordance with the provisions of articles thirty, thirty-one and thirty-seven of the treaty made between the Government of the United States and the Choctaw and Chickasaw Nations April twenty-eighth, anno Domini eighteen hundred and sixty-six, and the sum of fifteen thousand six hundred and eighty-six dollars and eighty cents, appropriated by Act of August fifteenth, eighteen hundred and ninety-four, made for the purpose of buying homes for the said Absentee Wyandotte Indians, and the additional sum of six thousand dollars, appropriated by Act of March second, eighteen hundred and ninety-five, shall constitute a fund to be used by the Secretary of the Interior for the payment to the Choctaw and Chickasaw Nations, according to the provisions of article thirty-seven of the treaty of eighteen hundred and sixty-six herein referred to not less than eighty acres per capita for the said Absentee Wyandotte Indians, which said fund shall be paid to the national treasurers of the Choctaw and Chickasaw Nations in the proportions of three-fourths to the former and one-fourth to the latter, the tender of the same being equivalent to the payment thereof. And the Secretary of the Interior is hereby authorized and directed to carry out and enforce the said articles thirty, thirty-one and thirty-seven of the treaty of eighteen hundred and sixty-six in such manner as may be necessary and sufficient for the purposes of this Act.

Act of June 28, 1898, c. 517, 30 Stat. 495:

SEC. 15. * * *

The person authorized by the tribe or tribes may execute or deliver to any such purchaser, without expense to him, a deed conveying to him the title to such lands or town lots; and thereafter the purchase money shall become the property of the tribe; and all such moneys shall, when titles to all the lots in the towns belonging to any tribe have been thus perfected, be paid per capita to the members of the tribe: * * *.

SEC. 29. That the agreement made by the Commission to the Five Civilized Tribes with commissions representing the Choctaw and Chickasaw tribes of Indians on the twenty-third day of April, eighteen hundred and ninety-seven, as herein amended, is hereby ratified and confirmed, and the same shall be of full force and effect if ratified before the first day of December, eighteen hundred and ninety-eight, by a majority of the whole number of votes cast by the members of said tribes at an election held for that purpose; * * *

* * * * *

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

* * * And all coal and asphalt in or under the lands allotted and reserved from allotment shall be reserved for the sole use of the members of the Choctaw and Chickasaw tribes, exclusive of freedmen: *Provided*, That where any coal or asphalt is hereafter opened on land allotted, sold, or reserved, the

value of the use of the necessary surface for prospecting or mining, and the damage done to the other land and improvements, shall be ascertained under the direction of the Secretary of the Interior and paid to the allottee or owner of the land by the lessee or party operating the same, before operations begin. That in order to such equal division, the lands of the Choctaws and Chickasaws shall be graded and appraised so as to give to each member, so far as possible, an equal value of the land: *Provided further*, That the Commission to the Five Civilized Tribes shall make a correct roll of Chickasaw freedmen entitled to any rights or benefits under the treaty made in eighteen hundred and sixty-six between the United States and the Choctaw and Chickasaw tribes and their descendants born to them since the date of said treaty, and forty acres of land, including their present residences and improvements, shall be allotted to each, to be selected, held, and used by them until their rights under said treaty shall be determined, in such manner as shall hereafter be provided by act of Congress.

Act of July 1, 1902, c. 1362, 32 Stat. 641:

14. When allotments as herein provided have been made to all citizens and freedmen, the residue of lands not herein reserved or otherwise disposed of, if any there be, shall be sold at public auction under rules and regulations and on terms to be prescribed by the Secretary of the Interior, and so much of the proceeds as may be necessary for equalizing allotments shall be used for that purpose, and the balance shall be paid into the Treasury of the United States to the credit of the Choctaws and Chickasaws and

distributed per capita as other funds of the tribes.

* * * * *

45. The Choctaw and Chickasaw tribes hereby assent to the act of Congress approved May 31, 1900 (31 Stats., 221), in so far as it pertains to town sites in the Choctaw and Chickasaw nations, ratifying and confirming all acts of the Government of the United States thereunder, and consent to a continuance of the provisions of said act not in conflict with the terms of this agreement.

* * * * *

59. All lands segregated and reserved under the last preceding section, excepting those embraced within the limits of a town site, established as hereinbefore provided, shall, within three years from the final ratification of this agreement and before the dissolution of the tribal governments, be sold at public auction for cash, under the direction of the President, by a commission composed of three persons, which shall be appointed by the President, one on the recommendation of the Principal Chief of the Choctaw Nation, who shall be a Choctaw by blood, and one on the recommendation of the Governor of the Chickasaw Nation, who shall be a Chickasaw by blood. * * * The proceeds arising from the sale of coal and asphalt lands and coal and asphalt deposits shall be deposited in the Treasury of the United States to the credit of said tribes and paid out per capita to the members of said tribes (freedmen excepted) with the other moneys belonging to said tribes in the manner provided by law. * * *

* * * * *

64. The two tribes hereby absolutely and unqualifiedly relinquish, cede, and convey

unto the United States a tract or tracts of land at and in the vicinity of the village of Sulphur, in the Chickasaw Nation, of not exceeding six hundred and forty acres, to be selected, under the direction of the Secretary of the Interior, within four months after the final ratification of this agreement, and to embrace all the natural springs in and about said village, and so much of Sulphur Creek, Rock Creek, Buckhorn Creek, and the lands adjacent to said natural springs and creeks as may be deemed necessary by the Secretary of the Interior for the proper utilization and control of said springs and the waters of said creeks, which lands shall be so selected as to cause the least interference with the contemplated town site at that place consistent with the purposes for which said cession is made, and when selected the ceded lands shall be held, owned, and controlled by the United States absolutely and without any restriction, save that no part thereof shall be platted or disposed of for town site purposes during the existence of the two tribal governments. Such other lands as may be embraced in a town site at that point shall be disposed of in the manner provided in the Atoka agreement for the disposition of town sites. Within ninety days after the selection of the lands so ceded there shall be deposited in the Treasury of the United States, to the credit of the two tribes, from the unappropriated public moneys of the United States, twenty dollars per acre for each acre so selected, which shall be in full compensation for the lands so ceded, and such moneys shall, upon the dissolution of the tribal governments, be divided per capita among the members of the tribes, freedmen excepted, as are other funds of the tribes. * * *

Act of April 28, 1904, c. 1822, 33 Stat. 571:

* * * That the money now accumulated and which may be hereafter accumulated in the United States Treasury to the credit of the Choctaw and Chickasaw nations, derived from the sale of town lots in the said Choctaw and Chickasaw nations, shall be paid to the members of the Choctaw and Chickasaw tribes (freedmen excepted) in the manner following: That, beginning the first day of May, nineteen hundred and four, or as soon as practicable thereafter, the said town-site money so accumulated shall be divided and paid to the Choctaws and Chickasaws (freedmen excepted), each member to receive an equal portion thereof.