

General Accounting

No. K-544

IN THE
United States Court of Claims

THE CHICKASAW NATION, *Plaintiff,*

VERSUS

THE UNITED STATES, *Defendant.*

**Plaintiff's Request for Findings of Fact
and Brief.**

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Of Counsel.

(a)

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No. K-544

In the United States Court of Claims

THE CHICKASAW NATION, *Plaintiff,*

vs.

THE UNITED STATES, *Defendant.*

**PLAINTIFF'S REQUEST FOR FINDINGS OF FACT
AND BRIEF.**

The plaintiff, the Chickasaw Nation of Indians, considering the facts hereinafter set forth to be proven and deeming them material to the due presentation of this case in the special findings of fact, requests the court to find the same as follows :

Finding I.

This suit is brought under the special jurisdictional Act of Congress approved June 7th, 1924 (43 Stat. 537), Section 1 of which reads as follows :

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That jurisdiction be, and is hereby, conferred upon the Court of Claims, notwithstanding the lapse of time or statutes of limitation, to hear, examine, and adjudicate and render

judgment in any and all legal and equitable claims arising under or growing out of any treaty or agreement between the United States and the Choctaw and Chickasaw Indian Nations or Tribes, or either of them, or arising under or growing out of any Act of Congress in relation to Indian affairs which said Choctaw and Chickasaw Nations or Tribes may have against the United States, which claims have not heretofore been determined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States.

That said Act was later modified by Joint Resolution of May 19, 1926 (44 Stat. 568), permitting plaintiff to bring separate suits on one or more causes of action; and by the Act of Congress, approved February 19th, 1929 (45 Stat. 1229), extending the time for filing such suits to June 30th, 1930; and by the Act of Congress approved August 16, 1937 (50 Stat. 650), authorizing the filing of Amended Petitions, prior to January 1, 1938, to conform to the evidence.

Finding II.

A petition under the provisions of the said Act of 1924, was filed December 23rd, 1929; and in answer thereto, the defendant, on February 1, 1930, filed a general traverse.

With leave of court first obtained, plaintiff, on December 12, 1934, filed an amended petition; and with leave of court first obtained, plaintiff, on September 23, 1936, filed a second amended petition, to which, on November 2, 1936, defendant filed a general traverse.

Then, by the Act of Congress approved August 16, 1937 (50 Stat. 650), it is provided:

That in suits heretofore filed in the United States Court of Claims by the Five Civilized Tribes under their respective Jurisdictional Acts (* * * Choctaw and Chickasaw Nations, Act approved June 7, 1924, 43 Stat. 537; as amended by joint resolutions approved May 19, 1926, 44 Stat. 568; and February 19, 1929, 45 Stat. 1229), plaintiffs therein shall have the right, prior to January 1, 1938, to amend their petitions to conform to any evidence heretofore filed in said suits, whether such amended petitions develop original claims or present new claims based upon said evidence; and jurisdiction be, and is hereby, conferred upon said Court of Claims, notwithstanding the lapse of time or statutes of limitation, to hear, examine, adjudicate, and render judgment in any and all legal and equitable claims which may have been presented by said Indian Nations in any amended petitions heretofore filed, or which may be filed under the terms of this Act; and claims so presented shall be adjudicated by said court upon their merits as though presented by petition filed within the time limited by said respective original Jurisdictional Acts, as amended; and any case presenting claims which may have been dismissed upon the ground that new claims were set up by amended petition, after the expiration of the time limitation fixed in said original Jurisdictional Acts, as amended, shall be reinstated and retried by said court on their merits.

Under the terms of said Act of August 16, 1937, on December 22, 1937, plaintiff filed a third amended petition, to which, on February 16, 1938, defendant filed a general traverse.

Finding III.

The treaty of July 15th, 1794, executed at Philadelphia, between the United States and the Chickasaw Nation, provided that the United States pay to said Chickasaw Nation goods to the amount of \$3,000.00 annually (Act of February 25, 1799, 1 Stat. 619). This obligation continued in full force and effect from July 15, 1794, to the fiscal year 1902, when said annuity was funded (Act of March 3, 1901, 31 Stat. 960, 1062).

Although said amount of \$3000.00 was appropriated annually by Congress to fulfill this obligation of the United States (specific appropriations having been made during the period from 1798 to the fiscal year 1902; G. A. O. Rept., pp. 18-22, 633), yet the defendant failed to comply with said obligation, either in whole or in part for the years and in the amounts set forth as follows:

| Year | Amount Paid | Amount Due | G.A.O. Rep. |
|------|-------------|------------|-------------|
| 1794 | | 1,500.00* | 18-22, 28 |
| 1795 | | 3,000.00 | " |
| 1796 | | 3,000.00 | " |
| 1797 | | 3,000.00 | " |
| 1798 | | 3,000.00 | " |
| 1799 | | 3,000.00 | " |
| 1800 | | 3,000.00 | " |
| 1801 | | 3,000.00 | " |
| 1802 | | 3,000.00 | " |
| 1803 | | 3,000.00 | " |
| 1804 | | 3,000.00 | " |
| 1805 | | 3,000.00 | " |

*Claim for one-half year's annuity—July to and including December, 1794, said expenditures being then upon a calendar year basis.

| Year | Amount Paid | Amount Due | G.A.O. Rep. |
|------|-------------|------------|-------------|
| 1806 | | 3,000.00 | 18-22, 28 |
| 1807 | | 3,000.00 | " |
| 1808 | | 3,000.00 | " |
| 1809 | | 3,000.00 | " |
| 1810 | | 3,000.00 | " |
| 1811 | | 3,000.00 | " |
| | | 52,500.00 | |

The total treaty obligation at \$3,000.00 a year for the period 1812-1852, both inclusive, or 41 years, would be \$123,000.00. The amount paid on this treaty obligation during this period was \$112,277.81 (G. A. O. Rept., pp. 33-43). The balance of \$10,722.19 is now due and owing from the United States to the Chickasaw Nation under this treaty obligation during this period.

Therefore, the total amounts due the Chickasaw Nation under said treaty obligation is as follows:

| | |
|---|-----------|
| Period from 1794-1811, both inclusive.. | 52,500.00 |
| Period from 1812-1852, both inclusive.. | 10,722.19 |
| Total due and owing..... | 63,222.19 |

Finding IV.

Article 3 of the treaty of September 20th, 1816 (7 Stat. 150), between the United States and the Chickasaw Nation, provided that the United States pay the Chickasaw Nation "twelve thousand dollars per annum for ten successive years,"

The total obligation of the United States under this treaty provision was \$120,000. The General Ac-

counting Office Report, page 80, shows disbursements to fulfill this obligation as follows:

“Article 3
Annuity, cash \$118,000.00”

The difference between the total obligation of \$120,000 and the amount of \$118,000 paid, is \$2,000.00, which is now due and owing the Chickasaw Nation under this treaty obligation.

Finding V.

Article 3 of the treaty of October 19, 1818 (7 Stat. 192), between the United States and the Chickasaw Nation, provided that the United States pay the Chickasaw Nation “the sum of twenty thousand dollars per annum, for fifteen successive years, to be paid annually.”

The total obligation under this treaty provision was \$300,000. The General Accounting Office Report, page 97, shows disbursements to fulfill this obligation as follows:

“Article 3
Annuity, cash 298,951.00
Iron and steel 49.00

299,000.00”

The difference between the total obligation of \$300,000 and the amount of \$299,000.00 paid is \$1,000.00, which is now due and owing the Chickasaw Nation under this treaty obligation.

Finding VI.

Article II of the treaty of May 24, 1834 (7 Stat. 450), between the United States and the Chickasaw Nation, provided that the United States pay “three thousand dollars for fifteen years” for the education of Chickasaw children. That the total obligation of defendant under this treaty provision was \$45,000, which was appropriated by Congress (G. A. O. Rept., pp. 247, 249).

That although said \$45,000 was appropriated by Congress to fulfill this treaty obligation of defendant, yet the defendant failed to comply with said treaty obligation, and disbursed the following amounts only for said treaty purpose:

| G.A.O. Rept. | Amount |
|--------------|-----------|
| 247 | 32,000.00 |
| 249 | 4,000.00 |
| | <hr/> |
| Total | 36,000.00 |

Therefore, the sum of \$9,000.00 (the difference between the \$45,000.00 total obligation and the amount disbursed to fulfill it) is due from defendant to the plaintiff for the nonfulfillment of this treaty obligation.

Finding VII.

That from the fiscal years 1862 to 1866, both inclusive, the defendant illegally disbursed from Chickasaw funds for the subsistence of southern refugee Indians in Kansas, and not for Chickasaw Indians, the following amounts:

| G.A.O. Rep. Item | page | Amount |
|---------------------|---------|------------|
| (c) | 29-30 | 18,000.00 |
| (q) | 228-233 | 210,604.81 |
| (h) | 241-242 | 4,525.72 |
| (g) | 245-246 | 4,253.56 |
| Total | | 237,384.09 |

Therefore, the sum of \$237,384.09 is due from defendant to the plaintiff for the diversion of this Chickasaw money without proper authority of law.

Finding VIII.

During the fiscal years 1900, 1907 to 1932, both inclusive, there was disbursed by defendant from Choctaw and Chickasaw funds a total of \$176,444.10 for salaries of mining trustees, incident to the management of coal deposits owned jointly by these tribes. Of the \$176,444.10 so disbursed, \$89,746.97 was paid from Choctaw funds, and \$86,697.13 was paid from Chickasaw funds. (Reply of General Accounting Office, dated March 10, 1943, filed March 11, 1943.)

The income from these coal deposits was owned and apportioned between said tribes on a basis of *one-fourth* to the Chickasaws and *three-fourths* to the Choctaws.

Dividing said expense in accordance with the respective interests of these tribes in said coal deposits, the proper charge against Chickasaw funds would be one-fourth of \$176,441.10, or \$44,111.02. Therefore, the charge of \$86,697.13 made against Chickasaw funds for

this expense, exceeded the proper charge by the amount of \$42,586.11, which is claimed as an illegal disbursement by the Chickasaw Nation.

Finding IX.

That Section 10 of the Act of April 26, 1906 (34 Stat. 137), provides in part that the Secretary of the Interior shall have control and direction of the schools of the Five Civilized Tribes, and authorizes him to use

“only such portion of said funds of each tribe as may be requisite for the schools of that tribe, not exceeding in any one year, for the respective tribes, the amount expended for the scholastic year ending June 30, 1905.”

That only the amount of \$20,871.88 was disbursed from Chickasaw funds for Chickasaw schools during the scholastic year 1905 (G. A. O. Rep., p. 555), and under said Section 10 the said Secretary was expressly prohibited from expending Chickasaw tribal funds in excess of said \$20,871.88 in any one year thereafter.

That notwithstanding said express inhibition of Congress, the said Secretary, in violation thereof, illegally disbursed from Chickasaw funds amounts over and above said \$20,871.88 yearly limit, in the amounts and for the years set forth as follows:

| Fund | G.A.O. | | Total Amt. spent | Expended on Tribal Wts. | Total less Tribal Wts. | Yearly net totals | Excess |
|-------------------------|--------------|--------------|---------------------|---|---------------------------|----------------------|-----------|
| | Rep. page | Fis. Year | | | | | |
| Ind. Mon. Pro. of Labor | 555 | 1905 | 20,871.88 | <i>(17,566.59 for months of calendar year (Brig. R. 142))</i> | | | |
| “ “ | 557 | 1906 | 150,790.19 | 147,382.21 | 3,407.98 | | |
| Chickasaw National | 267 | “ | 298,494.08 | 298,494.08 | | 3,407.98 | |
| “ “ | 267 | 1907 | 196,896.46 | 156,579.96 | 40,316.50 | | |
| Int. on Chick. National | 284 | “ | 21,630.22 | | 21,630.22 | | |
| Ind. Mon. Pro. of Labor | 557 | “ | 17,280.87 | 6,162.59 | 11,118.28 | 73,065.00 | 52,193.12 |
| Chickasaw National | 267 | 1908 | 134,345.90 | 123,924.55 | 10,421.35 | | |
| Int. on Chick. National | 285 | “ | 50,808.84 | 1,152.88 | 49,655.96 | | |
| Ind. Mon. Pro. of Labor | 557 | “ | 31,909.93 | 201.80 | 31,708.12 | 91,785.41 | 70,913.56 |
| Chickasaw National | 268 | 1909 | 10,997.59 | | 10,997.59 | | |
| Int. on Chick. National | 285 | “ | 15,251.57 | 251.60 | 14,999.97 | | |
| Ind. Mon. Pro. of Labor | 559- 560 | “ | 55,901.55 | | 55,901.55 | 81,899.11 | 61,027.23 |
| Chickasaw National | 268 | 1910 | 9,072.74 | | 9,072.74 | | |
| Int. on Chick. National | 285 | “ | 2,710.08 | 140.40 | 2,569.68 | | |
| Ind. Mon. Pro. of Labor | 559- 560 | “ | 50,831.10 | 144.18 | 50,686.92 | | |

| | | | | | | | |
|-------------------------|-------------|------|------------|-------|------------|-----------|-----------|
| Ind. Mon. Pro. of Labor | 572 | “ | 1,368.00 | | 1,368.00 | 63,697.34 | 42,825.46 |
| Int. on Chick. National | 286 | 1911 | 6,880.74 | | 6,880.74 | | |
| Ind. Mon. Pro. of Labor | 559- 560 | “ | 41,052.95 | | 41,052.95 | 47,933.69 | 27,061.81 |
| Int. on Chick. National | 286 | 1912 | 109.83 | 12.50 | 97.33 | | |
| Ind. Mon. Pro. of Labor | 562 | “ | 47,117.50 | | 47,117.50 | | |
| “ “ | 574 | “ | 4,695.55 | | 4,695.55 | 51,910.38 | 31,038.50 |
| “ “ | 562 | 1913 | 44,328.57 | | 44,328.57 | | |
| “ “ | 575 | “ | 730.46 | | 730.46 | 45,059.03 | 24,187.15 |
| “ “ | 562 | 1914 | 39,022.95 | | 39,022.95 | 39,022.95 | 18,151.07 |
| “ “ | 563- | | | | | | |
| “ “ | 564 | 1915 | 45,148.86 | | 45,148.86 | | |
| “ “ | 589 | “ | 35.79 | | 35.79 | 45,184.65 | 24,312.77 |
| “ “ | 563- | | | | | | |
| “ “ | 564 | 1916 | 34,718.57 | | 34,718.57 | 34,718.57 | 13,846.69 |
| “ “ | 563- | | | | | | |
| “ “ | 564 | 1917 | 65,385.90 | | 65,385.90 | 65,385.90 | 44,514.02 |
| “ “ | 565 | 1918 | 67,836.92 | | 67,836.92 | 67,836.92 | 46,965.04 |
| “ “ | 565 | 1919 | 118,108.69 | | 118,108.69 | | |

| Fund | G.A.O. | | Total Amt. spent | Expended on Tribal Wts. | Total less Tribal Wts. | Yearly net totals | Excess |
|------------------------------|--------------|--------------|---------------------|----------------------------|---------------------------|----------------------|------------|
| | Rep. page | Fis. Year | | | | | |
| " | " | 605 | " | 288.39 | 288.39 | 118,397.08 | 97,525.20 |
| " | " | 565 | 1920 | 64,253.51 | 64,253.51 | | |
| " | " | 605 | " | 528.94 | 528.94 | 64,782.45 | 43,910.57 |
| " | " | 566 | 1921 | 34,807.77 | 34,807.77 | | |
| " | " | 592 | " | 93,999.95 | 93,999.95 | | |
| " | " | 605 | " | 577.63 | 577.63 | | |
| " | " | 608 | " | 591.96 | 591.96 | 129,977.31 | 109,105.43 |
| " | " | 566 | 1922 | 24.35 | 24.35 | | |
| " | " | 592 | " | 68,500.52 | 68,500.52 | | |
| " | " | 606 | " | 857.06 | 857.06 | | |
| " | " | 608 | " | 4,123.86 | 4,123.86 | 73,505.79 | 52,633.91 |
| " | " | 592 | 1923 | 55,228.55 | 55,228.55 | | |
| Int. Chick. mon. dep. in bks | | 600 | " | 1,238.99 | 1,238.99 | | |
| Ind. Mon. Pro. of Labor | | 606 | " | 84.17 | 84.17 | | |
| " | " | 608 | " | 1,220.08 | 1,220.08 | 57,771.79 | 36,899.91 |

| | | | | | | | |
|------------------------------|---|---------|------|-----------|-----------|-----------|-----------|
| " | " | 566 | 1924 | 143.29 | 143.29 | | |
| " | " | 593- | | | | | |
| " | " | 594 | " | 63,134.20 | 63,134.20 | | |
| " | " | 606 | " | 74.43 | 74.43 | | |
| " | " | 609 | " | 2,134.86 | 2,134.86 | 65,486.78 | 44,614.90 |
| " | " | 593-594 | 1925 | 73,138.81 | 73,138.81 | | |
| " | " | 607 | " | 76.08 | 76.08 | | |
| " | " | 609 | " | 216.64 | 216.64 | 73,431.53 | 52,559.65 |
| " | " | 569 | 1926 | 3,000.00 | 3,000.00 | | |
| " | " | 587 | " | 17,000.23 | 17,000.23 | | |
| " | " | 593-594 | " | 20,220.57 | 20,220.57 | | |
| Int. Chick. mon. dep. in bks | | 601 | " | 16,742.35 | 16,742.35 | | |
| Ind. Mon. Pro. of Labor | | 609 | " | 50.39 | 50.39 | 57,013.54 | 36,141.66 |
| " | " | 595 | 1927 | 1,050.05 | 1,050.05 | | |
| " | " | 610 | " | 114.50 | 114.50 | | |
| Proc. Land, FCT (Chick.) | | 611- | " | 56,858.96 | 56,858.96 | 58,023.51 | 37,151.63 |
| | | 612 | | | | | |
| Ind. Mon. Pro. of Labor | | 595 | 1928 | 36,479.61 | 36,479.61 | | |
| Int. Chick. mon. dep. in bks | | 601 | " | 7,995.95 | 7,995.95 | | |
| Proc. Land, FCT (Chick.) | | 611- | " | 44,403.53 | 44,403.53 | 88,879.09 | 68,007.21 |
| | | 612 | | | | | |

| Fund | G.A.O. Rep. page | Fis. Year | Total Amt. spent | Expended on Tribal Wts. | Total less Tribal Wts. | Yearly net totals | Excess |
|-------------------------------|---------------------|-----------|---------------------|----------------------------|---------------------------|----------------------|-----------|
| | | | | | | | |
| Ind. Mon. Pro. of Labor | 597 | 1929 | 1,205.78 | | 1,205.78 | | |
| Int. Chick. mon. dep. in. bks | 602 | " | 231.93 | | 231.93 | | |
| Ind. Mon. Pro. of Labor | 610 | " | 440.30 | | 440.30 | | |
| Proc. Land, FCT (Chick.) | 613 | " | 90,422.95 | | 90,422.95 | 92,320.96 | 71,449.08 |
| | -614 | | | | | | |

Total payments from Chickasaw trust funds in excess of the \$20,871.88 authorized under Section 10, Act of 1906.....\$1,107,035.57

Finding X.

Disbursements made by the Secretary of the Interior from Chickasaw tribal funds during the fiscal years 1913 to 1929, both inclusive, for purposes which were not specifically appropriated for by Congress:

| Item | Fiscal G.A.O. | | | Total |
|--|---------------|--------|-----------|-----------|
| | Year | Report | Amount | |
| Advertising sale of Bloomfield Seminary, | 1918 | 590 | 40.04 | 40.04 |
| Appraising Bloomfield Seminary | 1917 | 589 | 2.80 | 2.80 |
| Attorneys fees, | 1921 | 591 | 10,688.96 | 28,466.04 |
| | 1922 | 600 | 9,400.00 | |
| | 1928 | 611 | 8,377.08 | |
| Chickasaw warrants, | 1913 | 286 | 12,531.45 | 28,466.04 |
| | " | 561 | 7,371.31 | |
| | 1914 | 287 | 2,594.03 | |
| | " | 561 | 14,048.55 | |
| | 1915 | 563 | 18,929.65 | |
| | 1916 | " | 17,155.67 | |
| | 1917 | " | 16,532.78 | |
| | 1918 | 565 | 1,308.00 | |
| | " | 590 | 11,866.70 | |
| | 1919 | 565 | 9,842.42 | |
| | " | 590 | 7,226.73 | |
| | 1920 | 565 | 15,818.27 | |
| | 1921 | 566 | 17,451.84 | |
| | " | 591 | 161.93 | |
| | 1922 | 566 | 6,000.00 | |
| | " | 600 | 10,660.58 | |
| | 1923 | 591 | 16,146.06 | |

| Item | Fiscal G.A.O. | | | Total |
|---|---------------|--------|-----------|------------|
| | Year | Report | Amount | |
| | 1923 | 600 | 1,422.23 | |
| | 1924 | 593 | 16,458.39 | |
| | 1925 | " | 11,764.87 | |
| | 1926 | " | 12,338.41 | |
| | 1927 | 595 | 11,746.86 | |
| | 1928 | " | 179.27 | |
| | " | 611 | 10,049.29 | |
| | 1929 | 613 | 11,523.58 | 261,128.87 |
| Choctaw-Chickasaw hospital | 1917 | 563 | 90.58 | |
| | 1923 | 591 | .09 | 90.67 |
| Expenses of sale of timber lands, forest reserve, | 1913 | 588 | 5.45 | 5.45 |
| Expenses of collecting revenue | 1913 | 561 | 3,835.45 | |
| | 1914 | " | 1,626.01 | |
| | 1915 | 563 | 162.27 | |
| | " | 589 | 1,531.58 | |
| | 1916 | " | 1,169.13 | |
| | 1917 | " | 790.56 | |
| | 1918 | 590 | 1,283.81 | |
| | 1919 | " | 80.21 | |
| | 1921 | 591 | 150.97 | |
| | 1922 | " | 24.85 | 10,654.84 |
| Expenses of sale of segregated coal and asphalt lands and deposits, | 1917 | 589 | 122.92 | |
| | 1918 | 590 | 744.82 | |
| | 1920 | " | 1,777.72 | |
| | 1921 | 591 | 1,760.10 | |
| | 1923 | " | 1,927.41 | |
| | 1924 | 593 | 363.74 | |
| | 1925 | " | 545.59 | |
| | 1926 | " | 357.13 | 7,599.43 |

| Item | Fiscal G.A.O. | | | Total |
|--|---------------|--------|----------|-----------|
| | Year | Report | Amount | |
| Expenses of sale of unallotted lands, | 1913 | 588 | 138.78 | |
| | 1915 | 589 | 7,554.85 | |
| | 1916 | " | 8,805.72 | |
| | 1917 | " | 8,515.78 | |
| | 1918 | 590 | 7,444.40 | |
| | 1919 | " | 7,846.50 | |
| | 1920 | " | 3,200.88 | |
| | 1921 | 591 | 2,093.53 | |
| | 1923 | " | 324.99 | |
| | 1924 | 593 | 1,219.81 | |
| | 1925 | " | 906.57 | |
| | 1926 | " | 1,353.47 | |
| | 1927 | 595 | 1,491.66 | |
| | 1928 | 611 | 1,434.53 | |
| | 1929 | 613 | 1,628.41 | 53,959.88 |
| Insurance, | 1916 | 563 | 595.35 | |
| | 1921 | 591 | 1,525.45 | 2,120.80 |
| Medical attention | 1920 | 603 | 13.50 | |
| | 1924 | " | 13.50 | |
| | 1925 | " | 282.45 | |
| | 1926 | 604 | 18.00 | |
| | 1928 | " | 594.15 | |
| | 1929 | " | 168.00 | 1,089.60 |
| Miscellaneous agency expenses including employees, | 1913 | 561 | 480.34 | |
| | 1914 | " | 180.00 | |
| | 1917 | 563 | 11.30 | 671.64 |
| Pay of grazing fee collector, | 1914 | 269 | 93.75 | 93.75 |
| Pay of miscellaneous employees, | 1915 | 269 | 25.00 | 25.00 |

| Item | Fiscal G.A.O. | | Total | |
|---------------------------------|------------------------------|--------------------|------------|----------|
| | Year | Report Amount | | |
| Payments in lieu of allotments, | 1917 | 589 | 195.00 | |
| | 1920 | 590 | 2,066.35 | |
| | 1923 | 591 | 45.12 | |
| | 1924 | 593 | 77.64 | |
| | | | 2,384.11 | |
| Payments for improvements, | 1914 | 561 | 745.00 | |
| | 1915 | 563 | 404.25 | |
| | 1917 | 589 | 164.25 | |
| | 1918 | 590 | 40.90 | |
| | 1919 | " | 160.33 | |
| | 1921 | 591 | 66.72 | |
| | 1926 | 593 | 5,050.44 | |
| | 1927 | 595 | 1,613.81 | |
| | 1928 | 611 | 213.75 | |
| | | | | 8,459.45 |
| | Per capita payment expenses, | 1929 | 613 | 1,224.96 |
| | | | | 1,224.96 |
| | | Pipe line damages, | 1916 | 563 |
| 1917 | | | " | 59.48 |
| 1919 | 590 | | 140.91 | |
| 1920 | " | | 33.60 | |
| | 1927 | 595 | 8.02 | |
| | | | 254.01 | |
| Protection of timber | 1915 | 589 | 103.12 | |
| | | | 103.12 | |
| Roads and bridges, | 1913 | 561 | 25.50 | |
| | | | 25.50 | |
| Timber investigation, | 1917 | 589 | 20.78 | |
| | | | 20.78 | |
| Total | | | 378,420.74 | |

Finding XI.

The Report of the General Accounting Office, filed herein, shows that defendant, having the sole and complete management of Chickasaw treaty and trust funds, made various miscellaneous charges against said funds, which resulted in losses to plaintiff. These charges are classified and specifically set forth as follows:

| Statement No. | Fund | G. A. O. Rep. | | Total |
|---------------|---|---------------|---------------|-----------|
| | | Page | Item Amount | |
| | (a) Unaccounted for balances of plaintiff's funds advanced to disbursing officers of defendant for disbursement to plaintiff but which were not so disbursed, and never returned to plaintiff's funds by defendant. | | | |
| 45 | Carrying into effect treaty with Chickasaws | 229 | (cc) 8,257.63 | |
| 79 | I.M.P.L., Chick. Ind., Ind. Territory | 519 | (j) 1,259.98 | |
| 80 | I.M.P.L., Chick. Na. Roy., Graz., etc. | 522 | (p) 890.19 | 10,407.80 |
| | | | | |
| | (b) Shortage in disbursing officer's accounts, which has not been returned to plaintiff's funds by defendant. | | | |
| 45 | Carrying into effect treaty with Chickasaws | 229 | (bb) 6,585.92 | 6,585.92 |

| Statement No. | Fund | G. A. O. Rep. | | Amount | Total |
|---|---|---------------|------|-----------|----------|
| | | Page | Item | | |
| (c) Unauthorized transfers of Chickasaw funds to funds of other tribes: | | | | | |
| 48 | Int. on Chick. National Fund | 237 | (p) | 1,150.00 | |
| 80 | I.M.P.L., Chick. Na., Roy. Graz., etc. | 522 | (n) | 685.83 | |
| 81 | I.M.P.L., Chickasaw (Cattle tax) | 525 | (e) | 13.68 | |
| 82 | I.M.P.L., Chick. Na., Right of Way | 526 | (d) | 34.12 | |
| 84 | I.M.P.L., Chick. Na., Town Lots | 528 | (i) | 381.73 | |
| 85 | I.M.P.L., Chick. Na., Unallotted Lds. | 530 | (j) | 2,595.07 | |
| 85 | " " " | 531 | (p) | 40.00 | |
| 85 | " " " | " | (q) | 1,300.00 | |
| 88 | Int. on Chick Moneys on Dep. in Banks | 537 | (l) | 2,088.68 | |
| 88 | " " " | " | (m) | 90.85 | 8,379.96 |
| (d) Unauthorized deposit of Chickasaw moneys to funds of other tribes: | | | | | |
| 77 | Fulfilling Treaties with Choc. & Chick. | 512 | (m) | 15,211.95 | |
| 77 | " " " | " | (n) | 1,477.02 | |
| 77 | " " " | " | (o) | 63.63 | |
| 77 | " " " | " | (o) | 567.79 | |
| 77 | " " " | " | (p) | 3.84 | |

Finding XI.

The Report of the General Accounting Office, filed herein, shows that defendant, having the sole and complete management of Chickasaw treaty and trust funds, made various miscellaneous charges against said funds, which resulted in losses to plaintiff. These charges are classified and specifically set forth as follows:

| Statement No. | Fund | G. A. O. Rep. | | Amount | Total |
|---|---|---------------|------|----------|-----------|
| | | Page | Item | | |
| (a) Unaccounted for balances of plaintiff's funds advanced to disbursing officers of defendant for disbursement to plaintiff but which were not so disbursed, and never returned to plaintiff's funds by defendant. | | | | | |
| 45 | Carrying into effect treaty with Chickasaws | 229 | (cc) | 8,257.63 | |
| 79 | I.M.P.L., Chick. Ind., Ind. Territory | 519 | (j) | 1,259.98 | |
| 80 | I.M.P.L., Chick. Na. Roy., Graz., etc. | 522 | (p) | 890.19 | 10,407.80 |
| (b) Shortage in disbursing officer's accounts, which has not been returned to plaintiff's funds by defendant. | | | | | |
| 45 | Carrying into effect treaty with Chickasaws | 229 | (bb) | 6,585.92 | 6,585.92 |

ARGUMENT.

This claim of the Chickasaw Nation is one of accounting, and is similar to the claims presented in *Creek Nation v. United States* (78 C. Cls. 474), and in *Seminole Nation v. United States* (82 C. Cls. 135); and the law of this case is settled by these two decisions.

A general accounting of all Chickasaw funds has been made by the General Accounting Office, and the figures set forth in the plaintiff's requested findings of fact are taken from this report.

The questions of law presented fall into two general classes:

1. The *failure* of the United States to make payments in the amounts and manner provided in its treaties and agreements with the Chickasaw Nation; and
2. The illegal disbursement of Chickasaw trust funds made by the Secretary of the Interior without authority of law, which funds were entrusted by Congress to his custody.

The claims under each of the above classes will be treated separately, in the order in which they are presented in the requested findings.

I.

The failure of the United States to make payments in the amounts and manner provided in its Treaties and Agreements with the Chickasaw Nation.

The Chickasaw Nation, under the terms of its jurisdictional act, has the right to claim amounts due it from the United States under the provisions of treaties made with it. The comprehensive report of the General Accounting Office shows all disbursements made by the United States to fulfill its treaty obligations with the Chickasaw Nation.

In formulating the claims herein presented, we have checked the amount disbursed to fulfill a treaty obligation, against the amounts of the obligations of the United States; and if the treaty obligation has not been fully met by the United States, claim is made for the amount of the deficit.

In the *Seminole case* (82 C. Cls. 135, 153-154), this Court established the principle to be applied in this phase of the case, as follows:

“In determining the plaintiff's right to recover as to these items, we have applied the rule that an Indian tribe is entitled to have the full amount due it under the terms of a treaty with the United States disbursed in the manner and for the precise purposes named in the treaty, unless Congress by subsequent legislation provides that payments be otherwise made, and that the United States is liable to the tribe for the balance of any moneys not so disbursed and expended.”

We discuss separately below each claim falling within this principle.

Finding III.*Claim under the Treaty of July 15, 1794.*

The treaty of July 15th, 1794, executed at Philadelphia, between the United States and the Chickasaw Nation, provided that the United States pay to said Chickasaw Nation goods to the amount of \$3,000.00 annually. Although the text of this treaty seems to be lost to us (G. A. O. Rept. pp. 17-19), yet this obligation is adequately set forth in the Act of February 25, 1799 (1 Stat. 619), which reads in part as follows:

“An agreement made and entered into with the chiefs of the Chickasaw Nation, in Philadelphia, on the fifteenth July, one thousand seven hundred and ninety-four, to pay to the said nation goods to the amount of three thousand dollars annually: * * *”

In commenting upon the early appropriations made by Congress to fulfill this treaty obligation, the report of the General Accounting Office, states as follows (p. 18):

“The first appropriation made by Congress that can be identified as applicable to the aforesaid Agreement of July 15, 1794, was made by the act of June 12, 1798, 1 Stat. 564, where among various appropriations made for the Indian Department is set out the following item:

‘For the payment of annuities to the Six Nations, Chickasaws, Cherokees and Creeks, the sum of fourteen thousand dollars.’”

The authorization to pay this Chickasaw annuity from the date of the execution of this treaty up to the

passage of said act of June 12, 1798, were undoubtedly included in the general appropriations for the Indian Department, but were not set out specifically, as were the appropriations subsequently made to fulfill this treaty obligation of the United States.

Yearly specific appropriations of \$3,000.00 were made regularly from the calendar year 1799 to the fiscal year 1902, when this permanent annuity was funded (G. A. O. Rept. pp. 19, 22, 633, 638-639).

The Act of March 3, 1901 (31 Stat. 960), 1062, provides in part as follows:

“For permanent annuity, in goods, three thousand dollars: Provided, That the Secretary of the Treasury is hereby authorized and directed to place upon the books to the credit of the Chickasaws, the sum of sixty thousand dollars, being in full for the permanent annuity in money or otherwise, as guaranteed to them by the treaty of July fifteenth, seventeen hundred and ninety-four.”

Notwithstanding the fact that yearly appropriations of \$3,000.00 were thus made during the period of this treaty obligation, the defendant failed to comply with said yearly obligation for the years and in the amounts set forth in Finding III.

Therefore, a total sum of \$63,222.19 is due the Chickasaw Nation from defendant for the nonfulfillment or underpayment of this \$3,000.00 annual treaty obligation.

Finding IV.

Claim under treaty of September 20, 1816.

In Finding IV plaintiff claims the amount of \$2,000.00 for the nonfulfillment of Article 3 of the Treaty of September 20, 1816 (7 Stat. 150), between the United States and the Chickasaw Nation.

Said Article 3 provides in part as follows:

“In consideration of the relinquishment of claim, and cession of lands, made in the preceding article, the commissioners agree to allow the Chickasaw Nation twelve thousand dollars per annum for ten successive years. * * *”

Although said \$12,000.00 annually was appropriated during the period of this treaty obligation, yet said total amount of this obligation was not paid to the Chickasaw Nation, as specifically set forth in said Finding IV.

Therefore, a total sum of \$2,000.00 is due the Chickasaw Nation from defendant for the nonfulfillment of said treaty obligation.

Finding V.

Claim under Treaty of October 19, 1818.

In Finding V plaintiff claims the amount of \$1,000.00 for the nonfulfillment of Article 3 of the Treaty of October 19, 1818 (7 Stat. 192), provides in part as follows:

“In consideration of the relinquishment of claim and cession of lands in the preceding article, and to perpetuate the happiness of the Chick-

asaw Nation of Indians, the commissioners of the United States, before named, agree to allow the said nation the sum of twenty thousand dollars per annum, for fifteen successive years, to be paid annually; * * *”

Although said \$20,000.00 annually was appropriated during the period of this treaty obligation, yet said total amount of this obligation was not paid to the Chickasaw Nation, as set forth in said Finding V.

Therefore, a total sum of \$64,825.00 is due the Chickasaw Nation from defendant for the nonfulfillment of said treaty obligation.

Finding VI.

Claim under Treaty of May 24, 1834.

In Finding VI plaintiff claims the amount of \$9,000.00 for the nonfulfillment of Article II (supplemental) of the Treaty of May 24, 1834 (7 Stat. 450).

Said Supplemental Article provides as follows:

“The Chickasaw people express a desire that the Government shall at the expense of the United States, educate some of their children, * * * therefore, with the advice and consent of the President and Senate of the United States, it is consented, that three thousand dollars for fifteen years, be appropriated and applied under the direction of the Secretary of War, for the education and instruction within the United States, of such children male and female or either, as the seven persons named in the treaty to which this is a supplement, and their successors, with the approval of the agent, from time to time, may select and recommend.”

The total obligation under this treaty provision was \$45,000. The General Accounting Office Report, pages 247, 249, shows that \$36,000 only was disbursed under this treaty provision.

Therefore, a total of \$9,000.00 (the difference between the total obligation and the total amount disbursed to fulfill it), is due the Chickasaw Nation from defendant for the nonfulfillment of said treaty obligation.

Finding VII.

Illegal Disbursements for Refugee Indians.

In Finding VII plaintiff claims the amount of \$237,384.09 which was disbursed from Chickasaw tribal funds during the Civil War Period, for the fiscal years 1862-1866, inclusive.

The report of the General Accounting Office, pages 30, 233, 242 and 246, shows that all of this money, except two small items was disbursed for *Indians other than Chickasaws*. The amount of \$30.85 was disbursed for Cherokee and Chickasaw Indians, and the amount of \$4,126.10 was disbursed for Choctaw and Chickasaw Indians (G. A. O. Rep., p. 233). However, no division of these amounts between these tribes is shown, and there is no evidence presented by defendant to show how much is to be charged to the Chickasaws.

We know of no law which authorizes the diversion of Chickasaw annuities and trust funds for southern refugee Indians generally; and most certainly

there is no law authorizing these Chickasaw funds to be disbursed for Indians other than Chickasaws.

The General Accounting Office suggests that the Act of July 5, 1862 (12 Stat. 528), may have been the basis for such diversion. This report, at pages 23-25, states in part as follows:

“With further reference to the aforesaid disbursement of \$18,000 for the relief of refugee Indians, attention is invited to the act of July 5, 1862, 12 Stat. 528, wherein, among other things, is set out the following pertaining to the disbursement of treaty moneys applicable to certain tribes of Indians during the period immediately subsequent to said date:

“ * * * That all appropriations heretofore or hereafter made to carry into effect treaty stipulations, or otherwise, in behalf of any tribe or tribes of Indians, all or any portion of whom shall be in a state of actual hostility to the government of the United States, including the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, Wichitas, and other affiliated tribes, may and shall be suspended and postponed wholly or in part at and during the discretion and pleasure of the President: *Provided, further,* That the President is authorized to expend such part of the amount heretofore appropriated and not expended and hereinbefore appropriated for the benefit of the tribes named in the preceding proviso as he may deem necessary, for the relief and support of such individual members of said tribes as have been driven from their homes and reduced to want on account of their friendship to the Government. * * *

“Similar provisions with regard to the relief of refugee Indians were contained in the acts of March 3, 1863, 12 Stat. 793; June 25, 1864, 13 Stat. 180, and March 3, 1865, 13 Stat. 562.

“The major portion of the disbursements made for the relief of refugee Indians was made by W. G. Coffin, Superintendent of Indian Affairs in charge of the Southern Superintendency, and his successor, Elijah Sells. Said refugee Indians were located at various camps and agencies within the states of Kansas and Oklahoma, and the surrounding territory. * * *”

The Act of July 5, 1862, above quoted, is so drawn that it does not become operative except during the discretion and pleasure of the President. Upon being urged to act, President Lincoln refused and withheld judgment in the matter, and this act never became effective as to the Five Civilized Tribes. (See *American Indian under Reconstruction*, by Dr. Annie Heloise Abel, Lib. Cong., Call No. E 540.13A22, notes 496 and 497, pages 251-252.)

In commenting upon the effect of this act, this Court, in the *Seminole case* (82 C. Cls. 135, 146), states as follows:

“The act of July 5, 1862, *supra*, was operative only ‘during the discretion and pleasure of the President.’ It is not shown that the President ever took any action under this statute either by declaring by proclamation the abrogation of ‘all treaties’ with the Seminoles, or by directing that ‘appropriations heretofore or hereafter made’ to carry into effect treaty stipulations with them ‘be suspended and postponed wholly or in part.’ With-

out action on the part of the President the act by its own terms was ineffective.”

Even if this Act of July 5, 1862, and the subsequent similar acts, had become effective as to the Chickasaws, we respectfully submit that it would not authorize such a diversion of Chickasaw funds for Indians other than Chickasaw refugees.

The Act authorizes the President to use said funds “for the relief and support of such individual members of said tribes as have been driven from their homes and reduced to want on account of their friendship to the Government.” Certainly, this provision would permit Chickasaw funds to be used for Chickasaw refugees only, and not for refugees of other tribes.

In the case of *The Seminole Nation v. United States*, this Court in commenting upon said Act of July 5, 1862, stated as follows (93 C. Cls. 500, 516):

“* * * A total of \$249,731.88 thereof has been spent for the relief of refugee Indians. Of this amount \$31,599.68 was spent for the benefit of refugee Seminole Indians (pp. 28, 29, G. A. O. report, filed September 6, 1934). The expenditure of so much thereof was authorized by said act. It may be doubted that power resided in the Congress to authorize the expenditure of Seminole funds for the benefit of Indians of other tribes, * * *”

The court then decided that the release in the Seminole treaty of March 21, 1866, ratified the Seminole payments and prevented recovery by the Seminole Nation.

In the case at bar there is no such release ratifying the diversion of Chickasaw annuities for refugee Indians generally. We submit that the Act of July 5, 1862, and subsequent similar acts, if properly construed, would not authorize the diversion of Chickasaw moneys for other than Chickasaw refugees. However, should said acts be construed to authorize such diversion for other than Chickasaw refugees, then we submit that Congress has no power to give Chickasaw moneys away to other tribes, without incurring an obligation to render "*just compensation*" therefor.

Such disbursement of Chickasaw moneys for the benefit "*of others*" who had no rights of ownership therein, would not be an act of *administration* under the plenary power of the United States, but an act of *confiscation*, for which it would have to render "*just compensation*" for the loss thus sustained. (*United States v. Creek Nation*, 295 U. S., 103).

Therefore, the Chickasaw Nation claims the amount of \$237,384.09 of Chickasaw moneys illegally disbursed for other than Chickasaw refugee Indians, as set forth in Finding VII.

II.

The Illegal Disbursement of Chickasaw Trust Funds Made Without Authority of Law by the Secretary of the Interior.

The claims hereafter presented arose after Chickasaw funds were directed by Congress to be placed in the custody of the Secretary of the Interior for dis-

bursement by him under the direction of Congress, but which were not so disbursed by said Secretary.

The general principle governing the claims presented in this branch of the case was established by this Court in the *Creek* case (78 C. Cls. 474, 485), followed in the *Seminole* case (82 C. Cls. 135, 154), and is stated as follows:

"That Congress has plenary power over the administration of Indian affairs is well settled. *Cherokee Nation v. Georgia*, 5 Pet. 1; *Cherokee Nation v. Hitchcock*, 187 U. S. 294; *Lone Wolf v. Hitchcock*, 187 U. S. 553. The Secretary of the Interior has only such authority over the funds of Indian tribes as is confided in him by Congress. He cannot legally disburse and pay out Indian funds for purposes other than those authorized by law. This rule is the test by which the legal right of the Secretary to make the disbursements involved must be determined."

The decisions in the *Creek* and *Seminole* accounting cases will be further referred to from time to time for guidance in the discussion of claims hereinafter presented, when said decisions are applicable to the questions now before us.

Finding VIII.

Claim is made in Finding VIII for \$42,586.11, the amount disbursed from Chickasaw funds over and above one-fourth of the total expense of the salaries paid to mining trustees of coal deposits jointly owned by the Choctaw and Chickasaw Nations.

In the case of *The Choctaw Nation v. The United States and the Chickasaw Nation of Indians*, No. J-231, decided April 6, 1936 (83 Ct. Cls., 140), this Court stated as follows:

“The proportional interest of the two tribes in moneys arising from the disposition of their common properties, as fixed in preceding treaties and acts of Congress on the basis of three-fourths to the Choctaws and one-fourth to the Chickasaws, was in no way changed in the agreements of 1898 and 1902. That was the legal basis for the apportionment and payment of the moneys involved in suit. The United States apportioned and paid such moneys to the respective Nations on that basis.
* * *”

As the income from this common property was divided on a fixed basis of *three-fourths* to the Choctaws and *one-fourth* to the Chickasaws, the expense incurred in producing this income should have been so divided between these tribes.

The total expense of this operation was \$176,444.10, and *one-fourth* of this amount would be \$44,111.02, the proper proportion to be charged against Chickasaw funds. However, \$86,697.13 was charged against Chickasaw funds, which is an excess of \$42,586.11 over and above the fair and just proportion of the Chickasaw Nation. Therefore, this amount of \$42,586.11 is claimed as an illegal disbursement from Chickasaw funds.

Finding IX.

Unauthorized School Expenditures.

In Finding IX plaintiff claims a total of \$1,107,035.57 for excess yearly disbursements from Chickasaw trust funds for education. Congress has specifically limited disbursements from Chickasaw trust funds for the operation of Chickasaw Schools; but disregarding the express mandates of Congress, the Secretary disbursed amounts over and above the yearly limitation, as set out specifically in Finding IX.

In the *Creek* case (78 C. Cls. 474-498), this Court granted recovery on a similar claim to the one herein presented, and held as follows:

“Our conclusion on this branch of the case is that the amounts disbursed by the Secretary of the Interior for education in excess of the amounts fixed for that purpose in * * * section 10 of the act of April 26, 1906, were made without the authority of Congress, * * *. These disbursements were not only made without the authority of Congress, but were in each case made in violation of limitations imposed by Congress on the expenditure of the funds.”

This claim for excess illegal disbursements for the operation of Chickasaw schools is based upon Section 10 of the Act of April 26, 1906, 34 Stat. 137. Said Section 10 provides in part that the Secretary of the Interior shall have control and direction of the schools of the Five Civilized Tribes and authorizes him to use—

“only such portion of said funds of each tribe as may be requisite for the schools of that tribe, not

exceeding in any one year, for the respective tribes, the amount expended for the scholastic year ending June 30, 1905."

The Report of the General Accounting Office, page 555, shows that during the year 1905 the amount of \$20,871.88 was disbursed for schools, and this amount became the "yardstick" for measuring these disbursements for all subsequent years. Any amounts disbursed over and above this \$20,871.88 would be an excess illegal disbursement, as it would not be authorized by said Section 10 of the Act of April 26, 1906.

We have checked all yearly disbursements for the operation of Chickasaw schools, and claim only for disbursements from Chickasaw funds made by the Secretary of the Interior *over and above said \$20,871.88.*

Section 10 of the Act of 1906 was continued in force by the Act of August 24, 1912, 37 Stat. 518, 531, which reads in part as follows:

"Provided, That during the fiscal year ending June thirtieth, nineteen hundred and thirteen, no moneys shall be expended from the tribal funds belonging to the Five Civilized Tribes without specific appropriation by Congress, except as follows: * * * tribal and other Indian schools for the current fiscal year under existing law."

The annual Indian appropriation acts subsequent to said above act of 1912, limit disbursements from Chickasaw funds in similar language to that of the above quoted provision in regard to school disbursements.

It will be noticed that the above quoted exception

to the proviso limits the use of tribal funds for school purposes to expenditures authorized "under existing law". The "existing law" limiting such school expenditures was Section 10 of the Act of April 26, 1906.

With the continuation of the limitation in said Section 10 of the Act of 1906, over the whole period of this claim, Congress specifically directed the Secretary of the Interior to hold disbursements from Chickasaw tribal funds for education down to the yearly limit of \$20,871.88.

Therefore, the amount of \$1,107,035.57 is due the Chickasaw Nation from defendant, for the illegal disbursement of its trust funds over and above the yearly limit authorized by said Section 10 of the Act of April 26, 1906.

Finding X.

Disbursements Made in Contravention of the Proviso in the Act of August 24, 1912, and Subsequent Annual Indian Appropriation Acts.

In Finding XI plaintiff claims the amount of \$378,420.74 for disbursements made by the Secretary of the Interior from Chickasaw trust funds in contravention of the express inhibition contained in the Act of August 24, 1912, 37 Stat. 518, and subsequent Indian appropriation acts.

This question was decided in the *Creek* case (78 C. Cls. 491, 500, 501), and we will quote that part of the court's opinion upon which we rely:

"* * * An important limitation on the expenditure of the tribal funds generally was carried in

Section 18 of the Indian Appropriation Act for the fiscal year beginning July 1, 1912 (37 Stat. 518), which reads:

'Sec. 18. Provided, That during the fiscal year ending June thirtieth, nineteen hundred and thirteen, no moneys shall be expended from the tribal funds belonging to the Five Civilized Tribes without specific appropriation by Congress, except as follows: Equalization of allotments, per capita and other payments authorized by law to individual members of the respective tribes, tribal and other Indian schools for the current fiscal year under existing law, salaries, and contingent expenses of governors, chiefs, assistant chiefs, secretaries, interpreters and mining trustees of the tribes for the current fiscal year, and attorneys for said tribes employed under contract approved by the President, under existing law, for the current fiscal year: * * *

"This provision was continued in each annual Indian appropriation act thereafter until the Act of May 24, 1922, 42 Stat. 575, when the provision 'That hereafter no money shall be expended from tribal funds belonging to the Five Civilized Tribes without specific appropriation by Congress' was made a permanent provision of law.

"* * * However, in view of the plain and unmistakable meaning of the language used by Congress, we see no room for discussion of the effect of the proviso on the authority of the Secretary of the Interior to expend the tribal funds. Congress, in the exercise of its plenary power over the funds, declared in the Act of August 24, 1912, 37 Stat. 518, that with certain exceptions therein stated no part of the funds should be expended without specific appropriation. This limitation

was continued by repeated enactments during the entire remaining period of the claim. During and for the fiscal years 1912 to 1927, inclusive, the Secretary of the Interior made payments from the tribal funds which were not specifically appropriated by Congress. To hold that the Secretary of the Interior had the legal right to expend such funds, in the face of positive prohibition against their expenditure without specific appropriation would be equivalent to holding that the Secretary of the Interior, not Congress, had full administrative control and power over the property of the plaintiff tribe. The court cannot say that, and consequently it must be held that all the disbursements from plaintiff's tribal funds set out in Finding 2 that do not fall within the exceptions contained in the proviso of Section 18 of the Act of August 24, 1912, and succeeding acts, were made by the Secretary of the Interior without authority of law. Such payments were not only made without authority of law but were made in contravention of positive provisions of law."

Each of the yearly Indian appropriation acts, beginning with the Act of August 24, 1912 (for the fiscal year 1913), stands alone in authorizing disbursements from Chickasaw trust funds during the fiscal year in which it is applicable. We have checked each of these acts with the disbursements made for each year, and the items claimed in this finding do not fall within the exceptions to the proviso. Therefore, the amount of \$378,420.74 is due the Chickasaw Nation because of said illegal disbursements.

Finding XI.

Claims of Plaintiff for Losses as Shown by Balance Sheets of Chickasaw Funds in the G. A. O. Report.

In Finding XI plaintiff claims the amount of \$117,479.35, representing a total of items shown on the balance statements of various Chickasaw funds in the Report of the General Accounting Office, as having been lost to the Chickasaw Nation in the handling of these funds by the defendant's disbursing officers. These items are classified and set forth in detail in this finding.

These entries set forth the actual disposition of the funds involved and clearly show that the plaintiff never received the benefit of these amounts. All of these amounts were a part of the moneys appropriated by Congress for plaintiff, and were placed in plaintiff's trust funds for disbursement to plaintiff. Although the credits show that these amounts were not disbursed for the benefit of plaintiff, yet they show that defendant's accounting officers charged off and took credit for these amounts without ever reimbursing these losses to the funds to which they belong. Thus these losses were erroneously charged against plaintiff.

Some of these items of loss to plaintiff arose out of transactions between the defendant and its own disbursing officers. Certain amounts of plaintiff's moneys were advanced to disbursing agents of defendant for disbursement to plaintiff. However, these disbursing agents never accounted for the moneys turned over to them, and in certain cases shortages were discov-

was continued by repeated enactments during the entire remaining period of the claim. During and for the fiscal years 1912 to 1927, inclusive, the Secretary of the Interior made payments from the tribal funds which were not specifically appropriated by Congress. To hold that the Secretary of the Interior had the legal right to expend such funds, in the face of positive prohibition against their expenditure without specific appropriation would be equivalent to holding that the Secretary of the Interior, not Congress, had full administrative control and power over the property of the plaintiff tribe. The court cannot say that, and consequently it must be held that all the disbursements from plaintiff's tribal funds set out in Finding 2 that do not fall within the exceptions contained in the proviso of Section 18 of the Act of August 24, 1912, and succeeding acts, were made by the Secretary of the Interior without authority of law. Such payments were not only made without authority of law but were made in contravention of positive provisions of law."

Each of the yearly Indian appropriation acts, beginning with the Act of August 24, 1912 (for the fiscal year 1913), stands alone in authorizing disbursements from Chickasaw trust funds during the fiscal year in which it is applicable. We have checked each of these acts with the disbursements made for each year, and the items claimed in this finding do not fall within the exceptions to the proviso. Therefore, the amount of \$378,420.74 is due the Chickasaw Nation because of said illegal disbursements.

Finding XI.*Claims of Plaintiff for Losses as Shown by Balance Sheets of Chickasaw Funds in the G. A. O. Report.*

In Finding XI plaintiff claims the amount of \$117,479.35, representing a total of items shown on the balance statements of various Chickasaw funds in the Report of the General Accounting Office, as having been lost to the Chickasaw Nation in the handling of these funds by the defendant's disbursing officers. These items are classified and set forth in detail in this finding.

These entries set forth the actual disposition of the funds involved and clearly show that the plaintiff never received the benefit of these amounts. All of these amounts were a part of the moneys appropriated by Congress for plaintiff, and were placed in plaintiff's trust funds for disbursement to plaintiff. Although the credits show that these amounts were not disbursed for the benefit of plaintiff, yet they show that defendant's accounting officers charged off and took credit for these amounts without ever reimbursing these losses to the funds to which they belong. Thus these losses were erroneously charged against plaintiff.

Some of these items of loss to plaintiff arose out of transactions between the defendant and its own disbursing officers. Certain amounts of plaintiff's moneys were advanced to disbursing agents of defendant for disbursement to plaintiff. However, these disbursing agents never accounted for the moneys turned over to them, and in certain cases shortages were discov-

ered in their accounts. Other items claimed are clearly mistakes of the accounting officers of defendant, consisting of unauthorized transfers of Chickasaw funds to the funds of other Indian tribes, unauthorized deposits of Chickasaw moneys to the funds of other tribes, unauthorized disbursements of Chickasaw funds for the benefit of other Indian tribes, failures of defendant's officers to credit Chickasaw moneys to Chickasaw funds, and Chickasaw moneys erroneously returned to surplus.

For all of these items the United States took credit without making good these losses to plaintiff. For the convenience of the court we will discuss each item separately below:

- (a) ***Unaccounted for balances of plaintiff's funds advanced to disbursing officers of defendant for disbursement to plaintiff, but which were not so disbursed, and never returned to plaintiff's funds by defendant.***

\$8,257.63 Item.

The G. A. O. Report, page 229, shows the following item on the balance sheet of the appropriation "Carrying into effect treaty with Chickasaws":

"Balance unaccounted for in disbursing officers' hands (cc) 8,257.63"

On page 231, this entry is explained as follows:

"(cc) Balances unaccounted for in the accounts of the following disbursing officers:

| | |
|----------------|-----------|
| J. J. Miller | \$ 119.16 |
| H. R. Pitchlyn | 75.00 |

| | |
|----------------|------------|
| E. W. Andrews | 112.50 |
| E. W. Sehon | 5,250.00 |
| C. Sangtree | 243.93 |
| T. H. Porter | 1.20 |
| D. Thompson | 1,565.93 |
| D. Vanderslice | 889.91 |
| | <hr/> |
| | \$8,257.63 |

A careful search of the records of the General Accounting Office fails to disclose the disposition of the aforesaid amounts.”

These unaccounted for balances were a part of the money appropriated to fulfill the obligations of the United States under the Treaty of May 24, 1834 (7 Stat. 450), and were a part of the moneys advanced to the agents of the United States for disbursement to the Chickasaw Nation. We properly claim the total amount of these unaccounted for balances for the Chickasaw Nation.

\$1,259.98 Item.

The G. A. O. Report, page 519, shows the following entry on the balance sheet of the fund “Indian Moneys, Proceeds of Labor, Chickasaw Indians, Indian Territory”:

“Balance unaccounted for (j) 1,259.98”

On page 520 of this report is the following explanation:

“(j) Settlement No. 43617-1903 of the account of one George Beck, Superintendent of Schools, Chickasaw Indians, could not be located in the files of the General Accounting Office, however, the prior settlement No. 40432, 1903,

carried a balance to said missing settlement of \$1,272.73, and the Indian Office ledger shows an advance of \$1.400 to said Beck, making a total of \$2,672.73 to be accounted for in said settlement. The ledger shows a refund of \$492.70 and the subsequent settlement, No. 45310 shows a new balance of \$920.05, leaving an unaccounted for balance of \$1,259.98.”

The United States cannot account for the \$1,259.98 as the disbursing officer’s account is missing. Therefore, we claim this amount for the Chickasaw Nation, as it is not known whether the Chickasaws ever received this money.

\$890.19 Item.

The G. A. O. Report, page 522, shows the following item on the balance sheet of the fund “Indian Moneys, Proceeds of Labor, Chickasaw Nation, Royalties, Grazing, etc.”:

“Balance unaccounted for (p) 890.19”

On page 524 of this report is the following explanation:

“(p) Settlement No. 75197-1907, of the account of F. H. Umholtz, School Supervisor, Chickasaw Indians, carried a balance of \$1,000 to the subsequent settlement, No. 75375, which settlement could not be located in the files of the General Accounting Office. In the subsequent settlement, No. 216, said Umholtz is given credit for \$109.81, leaving a balance of \$890.19 unaccounted for.”

The United States cannot account for the \$890.19 as the disbursing officer’s account is missing. There-

fore, we claim this amount for the Chickasaw Nation, as it is not known whether the Chickasaws ever received this money.

(b) Shortage in disbursing officer's accounts, which has not been returned to plaintiff's funds by defendant.

\$6,585.92 Item.

On page 229, the G. A. O. Report shows the item on the balance sheet of the appropriation "Carrying into effect treaty with Chickasaws", as follows:

"Shortage in the accounts of R. D. C.
Collins (bb) 31,568.21"

On this same balance sheet, the G. A. O. Report, at page 228, shows the following "debit" entry:

"Appropriated by Congress:
To cover shortage, in part, in the ac-
counts of R. D. C. Collins (h) 45,592.68"

In explaining this last "debit" entry, the G. A. O. Report, page 230, states as follows:

"(h) Appropriated by the act of August 30, 1852, 10 Stat. 43; 'For payment to the Chickasaw Indians for amount of defalcation of Captain R. D. C. Collins, United States disbursing agent, together with interest thereon at the rate of six per cent per annum from March, eighteen hundred and thirty-nine, until paid twenty-four thousand nine hundred eighty-two dollars and twenty-nine cents.'

Pursuant to the aforesaid act, a total of \$45,592.68, representing \$24,982.29 principal, and \$20,610.39 interest, was credited to said In-

dians on Appropriation Warrant No. 65, dated September 24, 1852. See also page 659."

As the Chickasaw Nation lost \$31,568.21 through this defalcation, and received reimbursement for only \$24,982.29 of this amount (the \$20,610.39 being interest on this \$24,982.29 from date of defalcation to date of payment), there is now due the Chickasaw Nation the difference between \$31,568.21 and \$24,982.29, or \$6,585.92, which is claimed under this item.

(c) Unauthorized transfers of Chickasaw funds to funds of other tribes.

\$1,150.00 Item.

The G. A. O. Report, page 237, shows the following entry on the balance sheet of the fund "Interest on Chickasaw National Fund":

"Adjustment of appropriations (p) 1,500.00"

On page 238 of this report is the following explanation of the above item:

"(p) To adjust the following appropriations:

| | |
|---|-----------|
| 'Indian Moneys, Proceeds of Labor Five Civilized Tribes, Okla' | \$ 294.92 |
| 'Cherokee National Fund' | 100.00 |
| 'Chickasaw 3% Fund' | 2.40 |
| 'Administration of Affairs Five Civilized Tribes' | 319.84 |
| 'Industrial Work and care of Timber, 1916' | 30.67 |
| 'Interest on Cherokee Moneys on Deposit in Banks' | 168.20 |

| | |
|--|--------------|
| 'Interest on Seminole Moneys on Deposit in Banks' | 191.74 |
| 'Interest on Chickasaw Moneys on Deposit in Banks' | 350.00 |
| 'Probate Attorneys, Five Civilized Tribes, Oklahoma, 1916' | 42.23 |
| | <hr/> |
| | \$1,500.00'' |

This amount was taken from the "Interest on Chickasaw National Fund", and all but \$350.00 was placed in funds other than those of the Chickasaws. There is no authority of law for this entry, and we claim this item for the Chickasaw Nation. The total amount of this entry is \$1,500.00, \$350.00 of which was transferred from one Chickasaw fund into another Chickasaw fund, so this amount was not lost by the Chickasaw Nation. The balance of \$1,150.00, however, was lost to the Chickasaw Nation in this entry, and we claim this amount for the Chickasaw Nation.

\$685.83 Item.

The G. A. O. Report, page 522, shows the following item on the balance sheet of the fund "Indian Moneys, Proceeds of Labor, Chickasaw Nation, Royalties, Grazing, etc.":

"Refunded to other funds (n) 5,352.67"

On page 523 of this report is the following explanation:

"(n) This amount represents \$3,800.09 refunded to 'Indian Moneys, Proceeds of Labor, Chickasaw Nation Unallotted Lands,' and is included in Item (e), page 530; \$15.17 refunded to 'Indian Moneys,

Proceeds of Labor' (Creek), and is included in Item (d), page 635 of the General Accounting Office Report, In re: Creek Petition No. H-510; \$866.75 refunded to 'Indian Moneys, Proceeds of Labor, Collins Institute,' see page 539, Item (b); \$14.61 refunded to 'Indian Moneys, Proceeds of Labor, Choctaw Town Lots,' see General Accounting Office Report, In re: Choctaw Petition No. K-260; and \$656.05 was refunded to 'Indian Moneys, Proceeds of Labor, Choctaw Royalties, Grazing, etc.,' see also said report on Choctaw Petition No. K-260."

The above note shows Chickasaw moneys going to the funds of other Indian tribes in the following amounts:

| | |
|---------|--------|
| Creek | 15.17 |
| Choctaw | 14.61 |
| " | 656.05 |
| | <hr/> |
| | 685.83 |

We claim for the Chickasaw Nation the amount of \$685.83, which was transferred to Creek and Choctaw funds, and was therefore lost to the Chickasaw Nation.

\$13.68 Item.

The G. A. O. Report, page 525, shows the following entry on the balance sheet of "Indian Moneys, Proceeds of Labor, Chickasaw (Cattle Tax)":

"Refunded to 'Indian Moneys, Proceeds of Labor, Choctaw Town Lots' (e) 13.68"

As this amount of Chickasaw moneys went to Choctaw funds we claim this amount for the Chickasaw Nation.

\$34.12 Item.

The G. A. O. Report, page 526, shows the following entry on the balance sheet of "Indian Moneys, Proceeds of Labor, Chickasaw Nation, Right of Way":

"Refunded to other funds (d) 187.99"

On page 526 of this report is the following explanation:

"(d) Of this amount \$153.87 was refunded to 'Indian Moneys, Proceeds of Labor, Chickasaw Nation, Royalties, Grazing, etc.,' and is included in Item (h), page 521; \$28.12 was refunded to 'Indian Moneys, Proceeds of Labor, Choctaw Town Lots,' see General Accounting Office Report, In re: Choctaw Petition No. K-260; and \$6 was refunded to 'Indian Moneys, Proceeds of Labor, Choctaw Royalties, Grazing, etc.,' see also said report on Choctaw Petition No. K-260."

The above note shows that \$153.87 of the \$187.99 item was transferred from one Chickasaw fund to another one, which occasioned no loss to the Chickasaw Nation. However, we claim the following amounts for the Chickasaw Nation for the above note shows that they went to Choctaw funds:

| |
|---------------------------------------|
| \$28.12 |
| 6.00 |
| <hr style="width: 50px; margin: 0;"/> |
| \$34.12 |

\$381.73 Item.

The G. A. O. Report, page 528, shows the following entry on the balance sheet of the fund "Indian Moneys, Proceeds of Labor, Chickasaw Nation, Town Lots":

"Refunded to other funds (i) 1,240.18"

On page 529 of this report is the following explanation:

"(i) Of this amount \$381.73 was refunded to 'Indian Moneys, Proceeds of Labor, Choctaw Town Lots,' see General Accounting Office Report, In re: Choctaw Petition No. K-260; \$3.14 was refunded to 'Indian Moneys, Proceeds of Labor, Chickasaw Nation, Royalties, Grazing, etc.,' included in Item (h), page 521; and \$855.31 was refunded to 'Indian Moneys, Proceeds of Labor, Chickasaw (Cattle Tax),' and is included in Item (b), page 525."

Only \$381.73 of the \$1,240.18 was lost to the Chickasaw Nation because of this entry, said \$381.73 having been transferred to Choctaw funds. Therefore, we claim the \$381.73 only for the Chickasaw Nation.

\$2,595.07 Item.

The G. A. O. Report, page 530, shows the following entry on the balance sheet of the fund "Indian Moneys, Proceeds of Labor, Chickasaw Nation, Unallotted Lands":

"Refunded to other funds (j) 2,595.51"

On page 532 of this report is the following explanation:

"(j) This sum represents \$.44 refunded to 'Indian Moneys, Proceeds of Labor, Chickasaw Nation, Royalties, Grazing, etc.,' and is included in Item (h), page 521; and \$2,595.07 refunded to 'Indian Moneys, Proceeds of Labor, Choctaw Unallotted Lands,' see General Accounting Office Report, In re: Choctaw Petition No. K-260."

The amount of \$2,595.07 of Chickasaw moneys was transferred to Choctaw funds, and the Chickasaw Nation lost this amount. The \$.44 was transferred to another Chickasaw fund, and was not lost to the Chickasaw Nation. We claim for the \$2,595.07 only.

\$40.00 Item.

\$1,300.00 Item.

The G. A. O. Report, page 531, shows the following entries on the balance sheet of the fund "Indian Moneys, Proceeds of Labor, Chickasaw Nation, Unallotted Lands":

"Transferred to:

| | | |
|--|-----|-----------|
| 'Indian Moneys, Proceeds of Labor, Choctaw Unallotted Lands' | (p) | 40.00 |
| 'Interest on Choctaw Moneys on Deposit in Banks' | (q) | 1,300.00" |

These entries show Chickasaw moneys from the fund "Indian Money, Proceeds of Labor, Chickasaw Nation, Unallotted Lands" going to Choctaw funds, and we claim them for the Chickasaw Nation.

\$90.85 Item.

The G. A. O. Report, page 537, shows the following item on the balance sheet of the fund "Interest on Chickasaw Moneys on Deposit in Banks":

"Refunded to other funds (m) 440.85"

On page 538 of this report is the following explanation:

"(m) Of this amount \$350 was refunded to 'Indian Moneys, Proceeds of Labor, Chickasaw Nation,

Royalties, Grazing, etc.,' and is included in Item (h), page 521; and \$90.85 was refunded to 'Interest on Creek Moneys on Deposit in Banks,' and is included in Item (c), page 643 of the General Accounting Office Report In re: Creek Petition No. H-510."

The amount of \$90.85 only of the \$440.85 of Chickasaw moneys was lost to the Chickasaws by this entry, the said \$90.85 having been transferred to Creek funds. We claim the \$90.85 for the Chickasaw Nation.

\$2,088.68 Item.

The G. A. O. Report, page 537, shows the following item on the balance sheet of the fund "Interest on Chickasaw Moneys on Deposit in Banks":

"Transferred to Interest on Choctaw Moneys on Deposit in Banks (l) 2,088.68"

This Chickasaw money was lost to the Chickasaw Nation by transfer to Choctaw funds, and we claim it for the Chickasaw Nation.

(d) Unauthorized deposit of Chickasaw moneys to funds of other tribes.

\$15,211.95 Item.

The G. A. O. Report, page 512, shows various amounts designated "(m)" which were "Deposited in the United States Treasury to the credit of the Choctaw Nation". On page 513 of this report appears the following explanation:

“(m) See General Accounting Office Report, In re: Choctaw Petition No. K-260. Included in these amounts is \$15,211.95 Chickasaw school receipts.”

This note shows that \$15,211.95 of Chickasaw moneys were erroneously deposited in Choctaw funds, and we claim this amount for the Chickasaw Nation.

\$1,477.02 Item.

The G. A. O. Report, page 512, shows the following item:

“Deposited in the United States Treasury to the credit of the following:

Cherokee Nation:

‘Indian Moneys, Proceeds of Labor,
Cherokee Unallotted Lands’ (n) 5,908.10”

On page 513 of this report is the following explanation:

“(n) See General Accounting Office Report, In re: Cherokee Petition No. L-268. This sum was derived from the sale of Chickasaw and Choctaw unallotted lands.”

As this money was derived from the sale of Chickasaw and Choctaw unallotted lands, it should have been deposited in their funds, instead of being deposited in Cherokee funds. This was an error, and because of it the Chickasaws and Choctaws lost \$5,908.10. As this amount was Chickasaw-Choctaw joint moneys, the Chickasaws claim only one-fourth of it, or \$1,477.02, for which claim is made under this item.

\$63.63 Item.

\$567.79 Item.

\$3.84 Item.

The G. A. O. Report, page 512, shows the following entry:

“Deposited in the United States Treasury to the credit of the following:

* * * * *

Creek Nation:

‘Indian Moneys, Proceeds of Labor’ (o) 2,334.78

‘Proceeds of Land, etc., Five Civilized

Tribes (Creek)’ (p) 15.39”

On page 513 of this report are the following explanations of the above items:

“(o) This sum was derived from the following sources:

Sale of subsistence, Chickasaw school \$ 61.62

Sale of cotton, Chickasaw school 2.01

Sale of Chickasaw and Choctaw unal-
lotted lands 649.40

Sale of Chickasaw and Choctaw town
lots 1,621.75

\$2,334.78,

and is included in Item (d), page 635 of the General Accounting Office Report, In re: Creek Petition No. H-510.”

“(p) This amount was derived from the sale of Chickasaw surface segregated lands in the sum of \$3.84 and from Choctaw surface segregated lands in the sum of \$11.55. See Item (b), page 646, of the General Accounting Office Report, In re: Creek Petition No. H-510.”

This money should have been deposited in either Choctaw or Chickasaw funds, instead of being deposited in Creek funds, as it was derived from the sales of Choctaw and Chickasaw property.

The claim for the Chickasaws under Item (o) is worked out as follows:

The amounts of \$61.62 and \$2.01, or a total of \$63.63, were derived from the sale of Chickasaw property exclusively, and we claim this amount of \$63.63 for the Chickasaw Nation. The balance of this \$2,334.78, or the items of \$649.40 and \$1,621.75, a total of \$2,271.15, was derived from the sale of Chickasaw and Choctaw joint property. The Chickasaws claim one-fourth of the \$2,271.15, or \$567.79, under this item.

The claim for the Chickasaws under Item (p) is worked out as follows:

Only \$3.84 of the \$15.39 entry was derived from Chickasaw property sales, so we claim this amount for the Chickasaw Nation; the balance, or \$11.55, was derived from the sale of Choctaw property exclusively, and we do not claim it.

\$200.00 Item.

\$4,845.33 Item.

\$110.67 Item.

The G. A. O. Report, page 535, shows the following items on the balance sheet showing moneys deposited in Oklahoma banks for the Chickasaw Nation:

“Deposited in the United States Treasury in the following funds:

| | | |
|---|-----|----------|
| ‘Interest on Cherokee Moneys on Deposit in Banks’ | (f) | 200.00 |
| ‘Interest on Choctaw Moneys on Deposit in Banks’ | (g) | 4,845.33 |
| ‘Interest on Creek Moneys on Deposit in Banks’ | (h) | 110.67” |

These amounts being Chickasaw moneys should have been deposited in Chickasaw funds, and we claim them for the Chickasaw Nation as they were lost to the Chickasaws by erroneous transfers from their funds.

(e) *Illegal disbursements for exchange fees made from Chickasaw funds without authority of law.*

\$2,749.43 Item.

The G. A. O. Report, page 512, shows the following item:

| | |
|----------------|-----------|
| “Exchange fees | 2,749.43” |
|----------------|-----------|

There is no explanation of this item in the accounting report, and there is no law authorizing this disbursement.

(f) *Illegal disbursements of Chickasaw funds made by defendant for other tribes.*

\$20,436.65 Item.

The G. A. O. Report, page 521, shows the following item on the balance sheet of “Indian Moneys, Proceeds of Labor, Chickasaw Nation, Royalties, Grazing, etc.”:

| | | |
|---|-----|------------|
| “Disbursements for the benefit of the Choctaw Nation of Indians | (k) | 20,436.65” |
|---|-----|------------|

On page 523 of this report is the following explanation of the above item:

“(k) Disbursed for the benefit of the Choctaw Nation of Indians for the following purposes:

| | | | |
|--|--------|----|--------------|
| Choctaw Nation | | | |
| Education: | | | |
| Clothing | \$8.75 | | |
| Traveling expenses of school employees | 2.90 | \$ | 11.65 |
| | | | |
| Mississippi Choctaws | | | 20,425.00 |
| Per capita payments | | | |
| | | | <hr/> |
| | | | \$20,436.65” |

These amounts are improper charges against Chickasaw funds, and we claim them for the Chickasaw Nation.

\$41,262.05 Item.

On page 528, G. A. O. Report, is the following item on the balance sheet of “Indian Moneys, Proceeds of Labor, Chickasaw Nation, Town Lots”:

“Disbursements for the benefit of the Choctaw Nation of Indians (g) 41,262.05”

On page 529 of this report is the following explanation:

“(g) This amount was disbursed for the Choctaw Nation of Indians for the following purposes:

| | | | |
|-----------------------------|-------------|--|--------------|
| Choctaw Nation | | | |
| Per capita payments | \$27,175.07 | | |
| Mississippi Choctaws | | | |
| Per capita payments | 14,011.59 | | |
| Per capita payment expenses | 75.39 | | |
| | | | <hr/> |
| | | | \$41,262.05” |

We claim this amount for the Chickasaw Nation, as it was spent for Choctaws from Chickasaw moneys.

\$1.97 Item.

The G. A. O. Report, page 534, shows the following item on the balance sheet of “Proceeds of Land, etc., Five Civilized Tribes (Chickasaw)”:

“Disbursements for the benefit of the Choctaw Nation of Indians (c) 1.97”

On page 534 of this report is the following explanation:

“(c) Disbursed for the Choctaws for:

| | | | |
|----------------------------|--|--|---------|
| Education: | | | |
| Transportation of supplies | | | \$1.97” |

As this disbursement came out of Chickasaw moneys, and was made for the Choctaws, we claim the amount for the Chickasaw Nation.

(g) Errors of defendant in failing to credit Chickasaw funds with Chickasaw moneys.

\$480.73 Item.

The G. A. O. Report, page 519, shows the following entry on the balance sheet of the fund “Indian Moneys, Proceeds of Labor, Chickasaw Indians, Indian Territory”:

“Adjustment to fund (e) 480.73”

On page 520 of this report is the following explanation of this item:

“(e) Represents an amount refunded by J. M. Simpson, Supervisor of Schools on repay covering

Warrant No. 775, dated June 20, 1901, which amount was posted to this fund but not included in the ledger total. See Settlement No. 34996, fourth quarter 1901; also see Indian Office Ledger 54, folio 70."

The Chickasaw Nation lost this amount of \$480.73 because of an erroneous bookkeeping entry, as it was not included in the total of the ledger account, evidently due to an error in addition. We claim this item for the Chickasaw Nation.

\$3,700.00 Item.

The G. A. O. Report, page 530, shows the following item on the balance sheet of the fund "Indian Moneys, Proceeds of Labor, Chickasaw Nation, Unallotted Lands":

"Advanced to the Bank of Tuttle, Tuttle, Oklahoma (i) 3,700.00"

On page 532 of this report is the following explanation:

"(i) This amount represents an advance to the Bank of Tuttle, Tuttle, Oklahoma (see Settlement No. 17808-1920) which amount was transferred to D. Buddrus, Disbursing Agent, Union Agency, and taken up by him as Creek funds and disbursed as such. See page 635, Item (e), of the General Accounting Office Report, In re: Creek Petition No. H-510."

This was Chickasaw moneys which was disbursed for Creek Indians, and we claim this amount for the Chickasaw Nation.

\$609.00 Item.

The G. A. O. Report, page 530, shows the following item on the balance sheet of the fund "Indian Moneys, Proceeds of Labor, Chickasaw Nation, Unallotted Lands":

"Adjustment of moneys on deposit in banks (k) 609.00"

On page 533 of this report is the following explanation:

"(k) Bank deposits to the credit of the Chickasaw Nation of Indians, transferred to D. Buddrus, Disbursing Agent, Union Agency, and taken up by him as Choctaw moneys, as follows:

| Bank Settlement No. | Officers' Settlement No. | Amount | |
|---------------------|--------------------------|------------|-------------|
| 15823 | 16742 | \$1,000.00 | |
| 17404 | 17770 | 3,750.00 | |
| 17145 | 17770 | 2,734.00 | |
| 17344 | 17770 | 9,000.00 | \$16,484.00 |
| | | - | - |

Bank deposits to the credit of the Choctaw Nation of Indians, transferred to the aforesaid Buddrus and taken up by him as Chickasaw moneys as follows:

| Bank Settlement No. | Officers' Settlement No. | Amount | |
|---------------------|--------------------------|------------|-----------|
| 21912 | 16742 | \$2,500.00 | |
| 36625 | 17770 | 3,375.00 | |
| 35851 | 17770 | 10,000.00 | 15,875.00 |
| | | - | - |

Net loss of funds to Chickasaw Nation \$ 609.00"

This amount of \$609.00 we claim for the Chickasaw Nation as an erroneous bookkeeping entry.

(h) *Chickasaw moneys erroneously returned to surplus by defendant.*

\$100.00 Item.

The G. A. O. Report, page 245 shows the following item on the balance sheet of the fund "Interest on Chickasaw Incompetent Fund":

"Surplus Warrant No. 732, dated June 30,
1877 (j) 100.00"

On page 246 of the G. A. O. Report this item is explained as follows:

"(j) A careful search of the records of the General Accounting Office fails to disclose the reason for this amount being returned to the surplus fund."

As this amount of \$100.00 was taken from this Chickasaw fund the United States could not properly return this amount to the surplus fund of the Treasury of the United States, and we claim this item for the Chickasaw Nation.

\$264.09 Item.

The G. A. O. Report, page 419, shows the following item on the balance sheet of the appropriation "Fulfilling Treaties with Choctaws and Chickasaws":

"Surplus Warrant No. 531, dated August
31, 1872 1,056.36"

No reason is given for the return of this amount to surplus, and as this amount was taken from a joint Choctaw and Chickasaw fund we claim one-fourth only for the Chickasaws, or \$264.09.

\$21.52 Item.

The G. A. O. Report, page 546, shows the following item on the balance sheet of "Judgment, Court of Claims, Choctaw and Chickasaw Nations":

"Surplus Warrant No. 62, dated March
19, 1929 86.08"

This money should not have been returned to surplus, as the Court of Claims awarded these Indians judgment for \$606,936.08, the amount appropriated. As this is a joint fund with the Choctaws, we claim one-fourth, of \$86.08, or \$21.52, for the Chickasaw Nation.

Finding XII.

Interest Claimed.

Illegal disbursements were made from the "Chickasaw National Fund", which drew interest at the rate of 5 per cent per annum. This fund was established under the provisions of the Treaty of May 24, 1834, 7 Stat. 450. (See G. A. O. Report, pp. 164-165, 168-170, 236, 686-691.)

Interest at 5 per centum per annum is claimed on illegal disbursements from this fund, as set forth in Finding XII, from the close of the fiscal year in which they were made, to date of judgment.

CONCLUSION.

We respectfully submit that for the items enumerated and discussed above, the plaintiff, The Chickasaw Nation, should recover from the defendant the sum of \$1,958,128.05, with interest upon the items and at the rate which we have indicated.

Respectfully submitted,

MELVEN CORNISH,

Special Attorney, Chickasaw Nation.

PAUL M. NIEBELL,
Of Counsel.