In the

Supreme Court of the United States

No. 80, October Term 1942.

THE CHOCTAW NATION OF INDIANS,
Petitioner,

VERSUS

THE UNITED STATES AND THE CHICKASAW NATION OF INDIANS.

ON PETITION OF THE CHOCTAW NATION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

REPLY OF THE CHOCTAW NATION TO THE MEMORANDUM FOR THE UNITED STATES AND BRIEF OF THE RESPONDENT, THE CHICKASAW NATION

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Our main object in filing this reply brief is to call the Court's especial attention to some of the provisions of the Jurisdictional Act of June 7, 1924 (43 Stat. 536), which is referred to by both respondents in their answer brief.

As stated by its counsel, the Chickasaw Nation (one of the respondents herein and plaintiff in the court below) filed its suit against the United States by authority of this Jurisdictional Act, part of which we quote as follows:

> Sec. 1. "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.

* * * * * * *

Sec. 3. "In said suit the court shall also hear, examine, consider, and adjudicate any claims which the United States may have against said Indian Nations, but any payment which may have been made by the United States upon any claim against the United States shall not operate as an estoppel, but may be pleaded as an offset in such suit.

* * * * * * *

Sec. 6. "The Court of Claims shall have full authority by proper orders and process to bring in and make parties to such suit any or all persons deemed by it necessary or proper to the final determination of the matters in controversy."

As will be noted, Section 1 of this Act conferred jurisdiction of the Court

> "to hear, examine, and adjudicate and render judgment in any and all legal and equitable claims arising under and growing out of any treaty or agreement between the United States and the Choctaw and Chickasaw 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."

Section 3 extended the jurisdiction of the Court to embrace claims of the United States against the Nations.

Nowhere in this Act do we find any provision authorizing the Court to adjudicate the claim of one Nation against the other, as it did in the case at bar.

It is true that Section 6 authorized the Court of Claims

> "to bring in and make parties to such suit any and all persons deemed by it necessary or proper to the final determination of the matters in controversy.",

but what were the "matters in controversy" involved in the original suit? Clearly, it was a claim of the Chickasaw Nation against the United States or whether the United States was indebted to the Chickasaw Nation for lands allotted to the Choctaw freedmen or claims by the United States against the Indian Nation. There can be no doubt as to that. We are, therefore, unable to see how Section 6 can have the effect of enlarging the jurisdiction of the Court so as to permit the adjudication of any alleged controversy between the Nations themselves. After considering what the "matters in controversy" were in this suit, and Section One of the Act, it is very apparent to us that the Court of Claims exceeded its jurisdiction in undertaking to adjudicate the alleged claim of the Chickasaw Nation as against the Choctaw Nation, even though the latter was made a party to the suit by its order. We feel that our position is strongly fortified in this respect by the fact that the Chickasaw Nation in its original cause of action sued only the United States. Certainly if the Chickasaw Nation had at any time thought the Choctaw Nation was or could be made liable, it would have been made one of the original defendants.

This Jurisdictional Act was a House Bill, known as H. R. 5325, and upon its introduction was referred to the Committee on Indian Affairs. On March 13, 1924, it was committed to the Committee of the Whole House on the State of the Union and ordered to be printed. The Commit-

tee's report to the House, numbered 295, 68th Congress, 1st Session, submitted by Mr. Garber, from the Committee on Indian Affairs, in describing the bill, used the following language:

> "The bill has for its purpose a final and complete settlement of all differences and accounts between the Government and the Choctaw and Chickasaw Indians by a judicial determination with the right of appeal to the Supreme Court of the United States. The affairs of the Choctaw and Chickasaw Tribes are about wound up; all of their lands have been allotted and their tribal funds disbursed."

Here we see unequivocally the legislative intent of the bill stated in plain language, which was "a final and complete settlement of all differences and accounts between the Government and the Choctaw and Chickasaw Indians by judicial determination." The description of the purpose of the bill by the House Indian Affairs Committee is the strongest argument we can make that the Court of Claims had no authority under the Jurisdictional Act to render a judgment against the Choctaw Nation in favor of the Chickasaw Nation.

There were no printed hearings, so far as we have been able to find, on this bill by the House Indian Affairs Committee. It passed the House on March 18, 1924, with certain amendments as shown by the Committee's report.

The Senate Indian Affairs Committee considered the bill and amended the same and in its report to the Senate, known as Report No. 440, 68th Congress, 1st Session, used the same language with reference to the purpose of the bill as the House Indian Affairs Committee.

Need one look further for conclusive proof that the Court of Claims exceeded its jurisdictional authority than

the language used by both Committees in making their reports to their respective Bodies when the purpose of the bill was stated? Both Committees made the same report. There was no disagreement between them as to the purpose of the bill.

When this bill was up for consideration on the floor of the Senate, the following occurred, as shown by the Congressional Record on May 15, 1924, Vol. 65, Part 9, 68th Congress, 1st Session:

> "Mr. King: Will the Senator state to me what contingent liability under this bill would rest upon the Government of the United States?
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> "Mr. Harreld: This Indian estate involving about $25,000,000 already realized and distributed, with about $12,000,000 more yet to be realized from the sale of assets, is now in its final stages. These tribes assert that they have certain claims as to which they ought to be allowed to bring suit in the Court of Claims to establish the claims against the Government itself. This is necessary in order to put these tribal affairs in a condition to be wound up and closed.
>
> "Mr. Robinson: A similar or identical bill has passed with reference to the other tribes?
>
> "Mr. Harreld: Yes; with reference to the other tribes and this is in exactly the same form.
>
> "Mr. King: Is it not more of an action to quiet title than to recover damages?
>
> "Mr. Harreld: No; it is more of an action to surcharge a guardian, to have a court finally pass on the report of a guardian, or something of that sort.
>
> "Mr. King: Is there any information before the Committees which indicate any possible judgment against the Government?
>
> "Mr. Harreld: The Indians have several things they want to include in this suit. I think some of their

claims are just and some are unjust; but it is necessary to authorize them to go into court. Then it can be determined which are just and which are unjust. In other words, I think this litigation is absolutely necessary to a final winding up of the affairs of these tribes.

"Mr. Robinson: I should think they ought to be permitted to sue."

The bill was passed and approved June 7, 1924.

Senator Robinson stated he thought they ought to be permitted to sue. Sue whom? Who did he mean by "they"? Unquestionably in the first instance he was referring to the United States and "they" means the Choctaw and Chickasaw Nations. We do not see how any other interpretation could be put on his language. Especially, in view of Senator Harreld's saying

"It is more of an action to surcharge a guardian, to have a court finally pass on the report of a guardian."

If our analysis of this statute is correct and according to the rule laid down by the United States Supreme Court in *United States* v. *U. S. Fidelity & Guaranty Company,* 309 U. S. 506, which holds that

"The public policy which exempted the dependent as well as the dominent sovereignties from suit without consent continues this immunity even after dissolution of the tribal government.",

any judgment rendered by the Court against the Choctaw Nation in favor of the Chickasaw Nation would be void. These Indian Nations are exempt from suit without Congressional authorization. *Turner* v. *U. S.,* 248 U. S. 354; *Adams* v. *Murphy,* 165 Fed. 304, 308; *Thebo* v. *Choctaw Tribe of Indians,* 66 Fed. 372.

In *Thebo* v. *Choctaw Tribe of Indians,* 66 Fed. 372, the Circuit Court said:

"It has been the policy of the United States to place and maintain the Choctaw Nation and other civilized Indian Nations in the Indian Territory, so far as relates to suits against them, on the plane of independent states. A state, without its consent, cannot be sued by an individual."

We, therefore, respectfully submit that the Court of Claims was without authority under the Jurisdictional Act, under which this suit was brought, to render judgment against the Choctaw Nation. Accordingly, the Choctaw Nation renews its prayer for a Writ of Certiorari and a review and reversal of said decision.

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