# In the Court of Claims

Heirs of Samuel Garland, Plaintiffs,
vs.
The Choctaw Nation, Defendants.
No. 30,252

## PLAINTIFFS' SUPPLEMENTAL BRIEF.

Upon remand of this case by the Supreme Court plaintiffs filed their brief. Defendant suggesting that more evidence was desired to be taken, the case was remanded to the general docket.

Plaintiffs have taken the depositions of Sophia C. Pitchlynn (p. 81), George W. Scott (p. 109), Bonnie May Cole Doss (p. 114), and Henry McBride (p. 119). Reference will be made to certain Congressional Reports having a bearing upon the case, which were not before the court upon former hearings.

### Contracts With Delegates.

Much light now is thrown upon the contract with the delegates of 1853, and especially as to their liability for any obligations that may have rested against their compensation beyond the contract with the attorneys for their fees.

It now conclusively appears that originally the delegates were to get 20 per cent, upon the recovery. The

attorneys were to get 25 per cent, and 5 per cent was allocated to Pitchlynn, from which all obligations to other attorneys than those contracted with, and all claims that might arise against the claims of the delegates and contracting attorneys, of any persons whatsoever, were to be paid.

These arrangements were changed in that the entire 30 per cent was agreed to be paid to the attorneys, and they were to assume all these obligations.

This becomes important because, in the settlement of the case, all and every obligation, claim, promise, legal or otherwise, was taken out of the delegates' fund by LeFlore. The attorneys were paid the 30 per cent in full, without deduction, and in addition thereto, McKee, one of the attorneys, was paid the sum of $145,399.40, by LeFlore, as "delegate's part of the general expenses."

It is of interest, as well as of importance, to note that everyone received all—and more—than they were entitled to, except the delegates or their representatives. Their fund was absolutely looted and dissipated by LeFlore. He paid out in alleged legal claims against the fund, *$382,693.85*!

The contracts and assumption of liability by the attorneys is shown in the testimony taken by a committee of Congress that was appointed in 1872 to investigate Indian affairs. Among other matters investigated by this committee was the net proceeds claim. (H. Rep. 98, 42nd Cong. 2nd Sess.)

A great volume of testimony was taken by this committee, and much of it is of value in determining the facts in this case. We will refer to this report as H. Rep. 98.

These matters were again investigated by a Senate Committee in 1886-87, and much testimony taken involving the net proceeds claim. (S. Rep. 2nd Sess. 49th Cong., Vol. 3, Nos. 1962 to 1990.) We will refer to this report as Sen. Rep.

Allen Wright, who was Principal Chief in 1866, testifies that the contract with the attorneys was for 30



per cent and they were to assume and pay all claims of attorneys and others that might be legal charges against the fund. The delegates were to get 20 per cent, and received no salary. He says, "their services were to paid for out of the 20 per cent." * * * The Choctaws had agreed to pay the delegates 20 per cent "independent of the attorneys." H. Rep. p. 561.

In the contract between the delegates of 1853 and McKee and Blunt, which contract took the place of the old contracts between the delegates and Pike and Cochran, it was specifically agreed that the attorneys were, out of their 30 per cent to take care of all claims of attorneys and others for legal services rendered in the net proceeds claim. (p. 105 R.)

There can be no question whatever that this was the final understanding and contract between the delegates and McKee and Luce, the attorneys who succeeded Pike and Cochran in the prosecution of the case.

It is now made to appear *conclusively* that the called session of the Choctaw council of February, 1888, was secured through conspiracy and corruption on the part of LeFlore, McKee and others, and the session was called for the sole purposes of

First. To enable McKee and others to secure possession of the 30 per cent fee due them, and escape payment of any obligations to other attorneys or persons.

Second. To enable LeFlore to get into his hands the $638,944.36 that was due the delegates of 1853 or their representatives; and to enable him to exploit it at will, without bond or accounting.

These facts are self proving when we look to what followed; McKee got the full 30 per cent as well as an additional $145,399.40; was beset by law suits upon his return to Washington, and finally, to escape a rule for contempt for not paying over more than $100,000 to one of his associates adjudged against him by the court, fled the country. These are all matters of record in the courts of the District of Columbia of which this court may take judicial notice. Neither did he dis-

charge an obligation from the 5 per cent that was allocated to him out of the 30 per cent for that purpose. As stated, all and every claim, illegal, for bribery, lobbying or corruption was paid by LeFlore from the delegates' fund.

Likewise is the perfidy of LeFlore shown in his looting of the delegates' fund.

*The iniquity of the whole proceedings lies in the fact that LeFlore used the delegates' money to discharge all obligations he incurred in making it possible that the robbery might be accomplished.*

And when defendants attempt to justify LeFlore's actions, reliance is had upon the testimony of witnesses implicated directly or most strongly by presumption, with LeFlore in the rape of the delegates' fund!

In the last opinion of this court, referring to the charge that LeFlore had been guilty of bribery and corruption, etc., the court said, "that theory at least is better sustained than any other. (Garland's Case 54 Ct. Cls., p. 67.)

Upon the evidence now before the court, what may then have been a suspicion or well founded presumption, as to the perfidy of LeFlore, now becomes a fixed and immovable conviction.

**Depositions Taken Under the Rules.**

Sophia C. Pitchlynn. Her father, P. P. Pitchlynn, was one of the delegates of the Choctaw Nation of 1853, in the prosecution of the net proceeds claim, as well as general delegate of the nation, and resided in Washington from 1866 until his death in January, 1881.

About August, 1888, Martin W. Chollar came to her mother's house in Washington and said that he had $107,000 for her, being the amount that was due her husband for his services as delegate. Her mother refused to accept this sum as full payment of what was due. Chollar left the house but came back within a day or two and said that was all the money he had and if



her mother did not accept that she would get nothing. She took the money but would give a receipt only against the $107,000 that Chollar had. Witness and her mother gave these receipts for the money (p. 93. See receipts, p. 106).

She sent petitions year after year to the Choctaw Council endeavoring to secure the balance that was due her father, and went to the nation and saw Governor Smallwood, who said that the claim was a just one and would be paid some time when the nation had the money. She went to the council to try to get it paid, but was told that it would take $30,000 to buy the council and get the claim paid. She regarded the nation as liable for what it owed her father, and as she could not get justice, there was nothing left for her to do but bring the suit.

Attached to Miss Pitchlynn's deposition are the following exhibits:

EXHIBIT 8. Contract between the Choctaw Nation and delegates (p. 100).

EXHIBIT 9. Directions from Wright, Principal Chief, to Pitchlynn to proceed to Washington to prosecute and defend the claims of the Choctaws under the treaties of 1830, 1855 and 1866 (p. 100 R.).

EXHIBIT 10. Proclamation of Wright, Principal Chief, reciting appointment of Pitchlynn, Garland and the two Folsoms as delegates in 1853; the making by them of the treaty of 1855; the action of the U. S. Senate in allowing the claim; constitutes them delegates, fully empowering them to do and perform all and singular the duties incumbent upon them, as mentioned in the preamble. It also recites, "All and any moneys appropriated by the Congress of the United States in liquidation of said claims *shall be paid into the National Treasury of the Choctaw Nation* (p. 100 R.).

EXHIBIT 11. Proclamation Wright, Principal Chief, obligating himself in the event of appropriation for pay-

ment of the net proceeds claim, to use his authority to see that 20 per cent of the sum is paid to P. P. Pitchlynn, Israel Folsom, Samuel Garland and Peter Folsom, "Choctaw Delegates under the contract of the Chief of the Choctaw Nation made with them, dated November 21st, 1855," etc. (p. 101 R.).

EXHIBIT 12. Agreement between Pitchlynn, Garland and the two Folsoms, "Delegates of 1853," respecting services and compensation in the net proceeds case. It is there stated that in the event of disability of any one or more of the delegates, "he or his heirs or assigns shall be entitled to and receive the same compensation that they would have been entitled to had they continued the prosecution of their business unto a final end" (p. 103 R.).

EXHIBIT 13. Authority given by Peter Folsom and Garland to Pitchlynn to act for them during their absence from Washington in all matters relating to the net proceeds claim (p. 104 R.).

EXHIBIT 14. Agreement between delegates and McKee and Blunt, attorneys (successors of Pike and Cochran, for fee of 30 per cent, reaffirming the former contracts, McKee and Blunt agreeing to adjust all claims of all parties against the net proceeds fund (p. 105 R.).

EXHIBITS 29-30. Receipts of Caroline and Sophia T. Pitchlynn to M. W. Chollar for $107,000 (p. 106).

(Chollar was associated with McKee as attorney. He had formerly been agent for the Choctaws.)

EXHIBIT 32. Letter from William Bryant, Principal Chief, to Pitchlynn, "Choctaw Delegate," dated December, 1872, referring to inclosure of a "paper in order that you may have authority to show your right to act in behalf of our people against the schemes of the speculators" (p. 106).

EXHIBIT 34. Letter from Bryant, Principal Chief of Pitchlynn, dated August, 1874, in which he says: "I am entirely worn out by the Cooperites by their blackmailing in order to plunder the nation" (p. 108).



There are other exhibits to the Pitchlynn deposition, some printed and others not printed, that relate to the services of P. P. Pitchlynn as general delegate. These will be referred to on the brief in the Pitchlynn case.

George W. Scott is 50 years old. Was treasurer of the Choctaw Nation in 1899. Knows nothing of the pink pamphlet shown him. Never saw a copy of it (p. 110 R.).

The significance of this deposition is in that the name of "George W. Scott" appears written on a pink pamphlet filed as exhibits to defendants' depositions, which pamphlet purports to represent a settlement of the net proceeds fund made by LeFlore in October, 1888, filed with the national secretary, and distributed among the members of that council and others about the council. Credit was attempted to be given this theory or claim by the appearance of the name of "George W. Scott" written upon the pamphlet, and testimony to the effect that George W. Scott was Treasurer of the Choctaw Nation, at the time the session was held. This theory seemed to impress the court for it was said in the opinion, "a copy (of this pamphlet) in evidence bears the handwriting of a man shown to have been national treasurer." (Garland case 54 Ct. Cls. 66.)

While we do not charge knowing deception in thus endeavoring to make it appear that George W. Scott was treasurer in October, 1888, and that the appearance of his name upon the pamphlet might lend credit to its genuineness as a document filed with the national secretary and distributed as claimed at that time, this, when taken in connection with the manner in which the aforesaid pink pamphlet was made to appear as an itemized statement of the disbursements of LeFlore submitted to the October, 1888, session of the council, at least puts one upon inquiry as to the good faith of those responsible for these deceptions, for such they were, whether intentional or not. The court was seriously misled into declarations sustaining these

theories, when it is quite sure, if it had known the real facts, it would not have found as it did upon these two questions. We will refer later on to the falsity of the claim that the pink pamphlet was the document submitted to the 1888 council.

BONNIE MAY COLE DOSS. This witness is one of the Garland heirs and testifies as to who the Garland heirs are, entitled to distribution, their interest, etc., as is requested in Finding VIII (p. 114 R.).

HENRY MCBRIDE. If evidence, further than that adduced at former hearings, showing the perfidy of LeFlore in his maladministration of the delegates' fund were needed, it is more than amply supplied by the testimony of this witness.

Printed as a part of—*or rather bound with*—other documents in the pink pamphlet, is a letter from McBride to LeFlore, dated October 25, 1888, respecting differences between McBride and Smallwood as to certain money that McBride had received for himself and Smallwood. It appears that McKee, *not LeFlore (though LeFlore charges the $10,000 against the delegates' fund)*, sent to McBride $10,000, which was to compensate McBride for his services in securing the influence of Smallwood to get a session of the council called. Smallwood was complaining to LeFlore that McBride had not made a fair division with him.

Plaintiffs have felt all along if they could locate McBride and secure his testimony, that light would be thrown on this transaction as well as possibly others involving these transactions of LeFlore. After much delay McBride was located in Denver and his deposition was secured. A flood of light is thrown upon the actions of LeFlore, McKee and others both as to the manner in which the council was called, the purpose of the council and the accomplishments of LeFlore, McKee and others, once the right to administer the net proceeds money due the delegates of 1853 and the attorneys was taken from the treasurer of the nation and this money turned over to LeFlore and McKee.



McBride says, p. 127 R.: Along in December, 1888 or 1889 (in this date he is mistaken, as the year is shown to be 1887), he was living at Atoka; D. N. Robb came to him and said that LeFlore, McKee, his—Robb's—brother-in-law, a Doctor Paxton, from Springfield, Mo., and a nephew of old General Pike had come to Atoka from Washington in one or two special cars; that there were some matters in the council that were not satisfactory to them and they wanted to get a called session and get these difficulties repealed. Unless this was done, before the net proceeds money was paid, the money would go back to the U. S. Treasury and they would have to get a new appropriation.

We might say here, parenthetically, that we do not think the claim, that it was necessary to commission McCurtain as delegate, *that he might go to Washington and assist LeFlore in securing the appropriation,* can now be seriously considered. (Garland case, see p. 61.)

Further testifying, McBride says: Robb wanted him to get Smallwood to call a session of the council. He told Robb that he did not know that he could get Smallwood unless there was some money in it for him. Arrangements were made for the money. He went to see Smallwood, and for his services—these were all the services he rendered—McKee paid him $10,000 and he gave Smallwood $5,500 and kept the remainder.

It was claimed by McKee and others that if the money from the net proceeds went into the Choctaw treasury (as it would under the act of 1873), that the accounts would have to be passed upon by an auditing committee of the nation *and they were afraid of this.* John Hodges would be on the auditing committee and they were afraid of him. They said that it was necessary to get the law repealed on this account (p. 128).

It is interesting to note that:

John Hodges got *from the delegates' fund* $5,000.

Smallwood got *from the delegates' fund* $5,500.

D. N. Robb got *from the delegates' fund* $6,250.

McBride got *from the delegates' fund* $4,500, and an additional $4,500 as husband of one of the Folsom heirs. He could not inherit under the Choctaw inheritance law, which restricts inheritance to heirs of the blood.

Thompson McKinney *got $5,000 from the delegates' fund.* He was Principal Chief and called and presided at the October, 1888, council. Telle, the secretary of the council, got *$1,000 from the delegates' fund.* Campbell LeFlore *got $33,750 of the delegates' fund.*

Ed. McCurtain, Green McCurtain, and the estate—the widow—of Jack McCurtain, *got between them $30,000 of the delegates' fund* (pp. 172-3 R.).

The McCurtains were all prominent in national politics and had been chiefs of the nation (p. 124 R.).

J. S. Standley was a lawyer at Atoka at the time. *He got $2,500 of the delegates' fund* (p. 123).

The Ainsworths were strong in their testimony that the settlement of LeFlore was highly praised for its equity and justice(?) (pp. 50-54). T. D. Ainsworth *got $5,000 of the delegates' fund.* Dukes, the "sympathy" witness (p. 149 R.), is another authority upon the fact that the report submitted by LeFlore to the 1888 council gave satisfaction (?). Among those who participated in the distribution of the $382,693.85 of the money appropriated for the delegates of 1853, there is little doubt that this distribution was looked upon as eminently equitable and just. The only ones heard to complain are the Pitchlynns and Garlands. In no way did they participate in the gratuitous distribution of their money, but protested against the robbery at the time, to the extent, on the part of Crocket Garland, of almost a personal encounter with LeFlore; and on the part of the Pitchlynns, by first refusing to accept the money sent them through Chollar, *an associate of McKee's,* and then an acceptance with refusal to receipt in full. And this was followed up by Miss Sophia Pitchlynn trying for years to get payment of the balance due, and finally bringing suit as soon as an act could be



secured from Congress giving this court jurisdiction of her case.

### Payments Claimed Other than Those Under Tushkahomma Promises.

The fraud in these payments is even more glaring—if that be possible—than those alleged as made under the "Tushkahomma Promises."

According to LeFlore's statement of July 3, 1889 (not October, 1888, as claimed), the very large sum of $382,693.85 was paid out as legitimate charges against the delegates' fund of $638,944.36, which was paid over to him by the U. S. Treasury Department. These payments were as follows:

| | |
|---|---|
| Paid upon Tushkahomma Promises | $ 85,020.00 |
| Paid to McKee "as delegates' part of the general expenses | 145,399.15 |
| Paid delegates of 1866 | 11,889.84 |
| Paid Eastern Boundary delegates | 7,758.36 |
| Paid Blunt and Loyal Choctaws | 25,000.00 |
| Paid upon memorandum of P. P. Pitchlynn | 107,626.50 |
| | $382,269.85 |

The Tushkahomma payments are so admittedly fraudulent and unlawful, the consideration being bribery and corrupting the council, that we do not deem a discussion as to them necessary.

Likewise the payment to McKee of the sum of $145,399.40, is without a semblance of authority. McKee had been paid the full 30% fee contracted for, and was obligated to discharge any and all obligations incurred in and about the prosecution of the case from this fee. A side-light as to what is meant—by McKee and LeFlore—as to "delegates' expenses," is seen in the payment of McKee to McBride of $15,000, which was paid by *McKee's personal check.*

McBride testifies that he was told by Telle that LeFlore was "paying off" at Fort Smith. He went

there and LeFlore told him that McKee was to pay him the $10,000 for himself and Smallwood. LeFlore gave him a U. S. Treasury warrant for $10,000 drawn on the sub-treasury at St. Louis, and told him if, upon returning home he found McKee's check for the $10,000, to return to him the treasury warrant. Upon arriving home he found McKee's check for the $10,000 and returned the warrant to LeFlore. This $10,000 is one of LeFlore's charges upon the "Tushkahomma Promises (p. 145 R.).

The only data afforded by the record as to the payment to the Eastern Boundary delegates is that the contract which provided for services by the delegates in this matter, and it is covered by the 20% compensation. LeFlore made requisition for $38,550, "being 50% of judgment of the Court of Claims of the United States on the Eastern Boundary claim, etc. (p. —, Orig. Bf.).

This sum was paid to him by the U. S. Treasury Department, and so far as the record shows, 20% of this belonged to the delegates. There is absolutely nothing to show to the contrary. If it was, originally, an obligation of the delegates of 1853, this obligation was transferred to the attorneys, under their contract with the delegates. However, in the face of the fraud, bribery and corruption practiced by LeFlore and McKee in all these transactions, it is hardly thought that the court would look with favor upon a mere memorandum statement made by LeFlore, and not even given the sanctity of an oath as evidence to support it.

"*Paid delegates of 1866, $11,899.84.*" As stated upon the original brief, p. —, this alleged payment is absolutely fraudulent. These delegates were paid in 1866, from an appropriation of $25,000 made for that purpose and is testified to by Allen Wright, who was one of the 1866 delegates as well as national treasurer at the time (H. Rep., p. 104).

"*Paid Blunt and Loyal Choctaws, $25,000.*" This alleged payment is equally as fraudulent as the one



last referred to. In the Cong. H. Rep., p. 693, the committee took the deposition of Henry McKee, who testified that in the settlement of the Loyal Choctaw claim $109,000 was distributed to them. Blunt was their attorney and got half the claim. Of this money Blunt and the Loyal Choctaws loaned *the nation* $25,000, and this sum was to be paid back *by the nation* out of the net proceeds money whenever collected. In no sense was this an obligation of the delegates or even the attorneys.

One Sampson Folsom, who is denominated by one of the witnesses before the Congressional committee, as a "rascally Indian," represented the nation in this settlement.

It may be of interest to note that LeFlore paid to him *out of the delegates' fund $5,000.*

The delegation who negotiated the treaty of 1866 were Allen Wright, John Paige, James Riley and Alfred Waide. *Campbell LeFlore was secretary of the committee.*

The delegation of the Chickasaws who, in a measure joined with the Choctaws in the treaty of 1866, had as their secretary *one E. S. Mitchell.*

The fraudulent conduct of both these delegations, *and their secretaries LeFlore and Mitchell,* were most roundly denounced by this committee.

*It is of interest to note that LeFlore gave Mitchell $3,000 of the delegates' money* (p. 173 R.).

Another of the pirates of 1866 was one E. B. Grayson. He claimed to have rendered some service to Pike or Cochran early in the prosecution of the net proceeds case. He tried to graft onto the net proceeds fund to the extent of $6,000. This action was denounced by the Congressional committee as "a contemptible attempt at fraud" (H. Rep., p. 76).

While thus attempting to graft upon the claim, he wrote McPherson (McPherson was representing the Cochran interests), "I am desirous of getting to Texas

where a portion of my family reside, and will take $6,000 from anyone in interest for the amount I claim" (H. Rep., p. 75).

There is little, if any, doubt that the $6,000 paid by LeFlore to S. M. Grayson represents this claim which the Congressional committee denominated as a contemptible fraud. We know that many of the payments by LeFlore was made to representatives, as was the payment to Jane McCurtain, William Roebuck and others.

Pomroy, at one time a lawyer about Washington, was paid $10,000. Weed and Denver were members of this bar. Sampson Folsom was an Indian lawyer. Possibly others on the alleged "Pitchlynn Promises" were lawyers. We do know that these obligations rested upon the attorneys, if they had any legal foundation. Discredited as is this LeFlore so-called settlement, it is inconceivable that a court of justice can credit the good faith of any claim of payment, with nothing by way of competent or satisfying proof to sustain it; only a bare memorandum, thoroughly impeached wherever an item on it has been reached by either oral or documentary evidence.

This impeached document is all the *evidence* offered to sustain the defense that the payments claimed to have been made were lawful charges against the delegates' fund. Surely the maxim of *falsus in uno falsus in omnibus* has not lost its efficacy as a rule of evidence. This evidence is shown false in many respects. If any items are legal and honest, they are the exception and not the rule, and we submit that, in these circumstances, a new rule of evidence will have to be invoked if plaintiffs are required to show that every item *not shown fraudulent is to be presumed as legal.*

We submit that the following irresistible conclusions must be reached upon a consideration of all the evidence as now presented in the case:

*First.* That the council of February, 1888, was called as a result of a conspiracy between LeFlore, delegate



for the Choctaw nation, and others of the nation, and McKee and other attorneys associated with him.

*Second.* That the sole purpose for which the council was held was to repeal certain laws of the nation under which all money to be paid the nation in the net proceeds claim would have gone into the treasury of the nation and been disbursed by the treasurer of the nation, and

*Third.* That the full 30% due the attorneys might be paid direct by the U. S. Treasury to McKee and his associates without any deduction whatever for obligations the attorneys had assumed, and for which they were liable under their contracts; and further to enable McKee and those associated with them to defraud other of their associates who were not in the conspiracy with them, and

*Fourth.* To enable LeFlore to secure possession of the full amount due the delegates of 1853, or their representatives, without bond or accounting, that he might discharge immoral and illegal obligations from said fund and exploit it at will.

Subsequent events showed that these were the purposes of the called session of the council.

McKee and his associates secured direct from the Treasury Department the full 30% (and McKee secured from LeFlore an additional $145,399.40), and escaped payment of any claims against the fund. He swindled his associates, as the records of the Supreme Court of the District of Columbia will show, in one instance withholding more than $100,000 from one of his associates, for refusal to pay which an order for contempt stands against him today.

The manner in which LeFlore exploited the delegates' fund has been shown. All manner of fictitious payments are claimed to have been made; bribery and corruption were the rule with him rather than the exception, and upon the present showing, this conduct cannot be glossed over, but it stands out as the most hideous debauchery of a trust fund that can possibly

be imagined. Surely the conscience of a court of justice must be shocked at the exposures made in this case. As we have stated, as to these transactions, what may have been suspicious or very well grounded presumptions upon the former trials of the case, are now fixed convictions.

### McBride Confused as to Dates.

McBride says that LeFlore, McKee and others came to Atoka in their special car or cars in December, 1888, or 1889. It was before Christmas. They came down to secure the repeal of the law so that the money would not go into the Choctaw treasury. The session was called after Christmas. This was the only session that McBride ever attended. They secured the legislation they wanted, and the money was paid out by LeFlore that summer.

It will be noted from the foregoing that his testimony relates to a specific session of the Choctaw Council where certain legislation was secured. The contemporaneous documentary evidence shows that this council was held in February, 1888.

Further, it will be noted that the money was paid out that summer. The Pitchlynns received their payments, as shown by the receipts, on August 23, 1888 (p. 106 R.).

McBride's letter to LeFlore, which related to a payment that had been previously made to him (not by LeFlore or by McKee), *is dated October 25, 1888* (p. 174 R.). It is hardly conceivable that one would date a letter "1888" that was written as late as October the following year. We know that sometimes in the very first part of a new year the date of the old year may be erroneously given. This date, "October, 1888," must be correct, as it was a date that followed payments made in the summer following the date of the special session which repealed the former laws relating to receipt and disbursement of the net proceeds fund.



Another feature of the McBride testimony relates to Smallwood as being the Principal Chief of the Choctaw Nation, whose services were to be purchased in order to secure the called session, at the time of the events narrated by McBride.

We again have the prominent fact that the incidents related to a proposed called session of the council for a certain purpose as stated Smallwood was not the Principal Chief at that time. Thompson McKinney was then chief.

A fair explanation of this discrepancy in McBride's testimony is as follows:

McBride says there were two political factions or parties in the nation at that time, the McKinney and the Smallwood parties. Doubtless it was necessary, as a political expediency, to secure both parties, or at least the leaders. And we might suggest, as it is a more probable and reasonable theory than any other, that many of the large payments made to those prominent in the politics of the nation, notably the McCurtains, Dukes, and others, was a part of these political necessities. Unfortunately for plaintiffs, their fund was used by LeFlore to buy not only the political power in control, but as well to buy the acquiescence of the opposition.

In that direct connection this very important fact appears: The leaders of the opposing parties in the nation at the time were Smallwood and Thompson McKinney. *The former was paid $5500,* and the latter (who called and presided over the council), *was paid $5000 by LeFlore. Telle, the secretary of the council, was paid $1000.* Hodges (who would have been one of the auditors for the nation had the delegates fund gone into the national treasury, and of whom McKee and LeFlore were afraid), *was paid $5000 by LeFlore.*

We do not think that it can be reasonably contended that McBride's testimony relates to any other time or events than those just preceding and covering the council of February, 1888, as well as to happenings

subsequent to the council—in the summer of 1888—which involved the distribution of the fund by LeFlore among those he had corrupted and conspired with.

We think the rule is quite well settled that where there is a conflict between the testimony of a witness relating to events long antecedent to the transactions testified about, and contemporaneous documentary or written evidences, the latter must control. Especially is this true, where the witness is testifying from memory or recollection, the fallability of which is always recognized.

We wish to advert to two matters that were discussed by the court in its opinion upon the last hearing of the case. We think that the court may not now have the same impressions respecting them that it had when the opinion was handed down.

*First.* Referring to the court's opinion, 54 Ct. Cls., p. 66, full credit seems to have been given to the claim that the itemized account of the receipts and expenditures of and by LeFlore were filed with the national secretary and distributed among the members of the council *of October 1888. In fact the court so found.*

This conclusion is absolutely not warranted. If any account was filed with the national secretary and distributed it was a report of October 9, 1888 (p. 174 R.). This is not the *itemized* account that the court was misled into supposing to be the one filed. The account of October 9, 1888, is only a statement of the gross amount received and the gross distribution as shown in four items, as follows:

| | |
|---|---|
| Favor of J. B. Luce et al | $ 129,939.93 |
| Favor H. E. McKee | 783,763.82 |
| Favor Choctaw Treasurer | 89,248.46 |
| Favor Choctaw Delegation | 638,944.46 |
| | $1,641,896.57 |

There is no information whatever as to disbursements by LeFlore afforded by above statement. It only shows



the gross of the payments of the U. S. Treasury Department upon the requisitions of the Choctaw Council. No such account, *as an account of itemized disbursements,* was introduced in evidence as an exhibit to Duke's deposition and identified by him as such.

On p. 150, R., Dukes was handed *the above report of October 9, 1888,* and asked to identify it and state if he had ever seen it and when.

He answered that Campbell LeFlore had handed him one, and that it was during the council of 1888, as well as he remembers.

There can be no question whatever that this report of October 9, 1888 (which was not an itemized account showing disbursements at all), was the report that Dukes says was handed him and "circulated" and against which he heard no complaint.

The itemized account is dated *July 3, 1889,* and could not have been before the council in October, 1888.

The fact is that there were several documents relating to the delegates' account with the nation.

Exhibit 4 to Duke's deposition dated January 16, 1888, is a statement of the gross amount due the delegates of 1853 (p. 179).

Statement A is a computation of the balance amount due the delegates of 1853 upon the collection of the $250,000 in 1861. It shows a balance due of $30,-395.39. The council only allowed in the requisition, $23,395.39.

There can be only one conclusion as to this so-called report as identified as a pink covered pamphlet.

In July, 1889, LeFlore had completed the rape of the delegates' fund and made the report or account of July 3, 1889. This, and the other documents found therein—including the real report of October 9, 1888, *were bound together as a pamphlet with pink paper cover.*

This pamphlet exhibited *as an itemized account of disbursements,* was handed to witnesses, *who identified the whole document* as the one filed with the national

secretary and distributed at the October council, 1888. In fact, the only account in existence at that time, so far as the record shows, *was that of October 9, 1888, in no sense an account at all; merely a statement requisitions was made for the delegates and attorney's money.*

The court was clearly (and cleverly), misled into treating the whole pamphlet as the itemized account of the disbursements by LeFlore in connection with the delegates' fund. The witness who identified the pink pamphlet as a document filed with the national treasurer and circulated among the members of the council in October, 1888, was either mistaken or a deliberate and willing perjurer, and the latter seems the most probable.

We do not think the court can now view this pink pamphlet as it did upon the former trial. It evidently had some weight with the court, as it was taken as giving notice to plaintiffs and the whole world that such a settlement of the fund had been made by LeFlore, and therefore great publicity must have been given thereto.

Plaintiffs' counsel admits that he did not discover this deception until after the second trial, and endeavored upon his motion for a new trial to direct the court's attention to the same, but as oral argument of the motion was not allowed, possibly the real significance of the exposure did not fully reach the court's attention.

The suggestion of the court that McCurtain's appointment as delegate to assist LeFlore in securing the appropriation, and that this was possibly due to the fact that quite a period had then elapsed since the judgment and no appropriation had been made, is now wholly untenable.

Not only was the appropriation held up by LeFlore, McKee, McCurtain and other of the conspirators for their nefarious purposes, but the Choctaw people were threatened with its utter defeat unless they amended



the law so as to enable McKee to secure the full amount due the attorneys, and escape all obligations resting against the fund, and that LeFlore and McCurtain might get possession of the delegates' money, and plunder the fund as they did.

We cannot believe that the court can now have this view of the necessity for the appointment of McCurtain. We think that the reasonable presumption may be indulged that the interests in the delegates' fund were so varied and momentous, with the hundreds of thousands of dollars promised to be paid out of same (*a very large amount to the McCurtains*) that there were two purposes to be served in the appointment of McCurtain; First, that, in the event of death or other misfortune whereby LeFlore could not carry out the scheme of plunder, McCurtain would be in authority to do so; second, as there were two political factions involved in the proposed distributions, that McCurtain representing one faction might be held as a check on LeFlore identified with the other in the protection of their interests.

It is difficult to attribute anything lawful or rightful to any of the acts of the 1888 council. It seems the whole purpose of this council was to enable some one to pilfer the delegates' fund, and to enable McKee to defraud his associates, and escape payment of any obligations that might have rested against his contract as attorney.

We are fearful that this unfortunate declaration of the court may have influenced Mr. Justice McKenna to think that there *were* services rendered after the death of the original delegates in securing the congressional appropriation, and that such services would have to be considered in determining what was due the delegates.

*Garland Heirs* v. *Choctaw Nation*, 256 U. S. 445.

Only for this theory, the Supreme Court might have remanded the case with directions for judgment, as it had the entire record before it upon which the adjudication was made in the lower court.

**Conclusion.**

We respectfully again submit that this case should be determined upon the theory stated by the court in the opinion. * * *

> "If they (LeFlore and McCurtain), were merely the agents of the nation, appointed to discharge obligations of the nation to other individuals, and entrusted with money for that purpose, and other delegates or their beneficiaries stood in the relation of individual claimants, it would of necessity be incumbent to inquire and determine whether there was a misappropriation of the fund, and failure by reason thereof to award and pay plaintiffs that to which they were entitled. (Garland Case, 54 Ct. Cls., p. 58)."

The Supreme Court has decided all questions involved in the above in the affirmative of the statement. It was held that LeFlore and McCurtain were the *agents of the nation* appointed to disburse a Congressional appropriation. The delegation was not an entity and continuing body, and the Supreme Court says that the very action of the nation (and of LeFlore himself in his distribution) treated with them as individuals.

In other words, under this decision, LeFlore and McCurtain were only disbursing agents of the Choctaw Nation, appointed to disburse a particular fund. The plaintiffs were entitled to receive, as individual claimants, whatever was due them, as such and it was so held by the Supreme Court.

A test of this question might be this: Suppose this court now determines this case upon the above theory; suppose the court holds that there was paid to LeFlore and McCurtain the $638 and odd thousand dollars that the council declared was due the delegates of 1853 (two previous councils, one in 1866 and another in 1873, had so declared, and as shown in the Congressional investigations, *everyone* admitted this contract of 20 per cent); suppose the court finds that this fund belonged



to the representatives of Pitchlynn, Garland, and the two Folsoms (and we again show that it was these *only* that the nation in these previous acts admitted as entitled to distribution, and LaFlore himself made the distribution upon this theory) and suppose the court finds that the attorneys under their contract were obligated to discharge all claims other than those of the delegates and themselves that might have been *lawfully* asserted against the net proceeds claim; and suppose the court finds that the council repealing former acts etc., was called as a result of the conspiracy as charged, and that through bribery and corruption, it was induced, in the interest of LeFlore and McKee and their associates in the conspiracy, to repeal former laws for the reasons we contend; and further, suppose the court finds that in the distribution of the fund, LeFlore (McCurtain was a mere figure head), was guilty of all the maladministration that is shown; and suppose the court further finds (as it did upon the first trial) that the only evidence of disbursements is an unsworn account, never approved by any authority of the nation, upon which many of the items of payment are fictitious, unlawful and fraudulent, and that as evidence for any purpose it is impeached, and of no probative value; and suppose finally, the court finds that one-fourth of the appropriation, $159,729.85, belonged to Samuel Garland, and that there was paid to him by LeFlore only $49,894.29 (these are LeFlore's figures, p. 172 R.) and that there is a balance due Garland or his heirs, the sum of $115,786.65, and a judgment in favor of the heirs of Samuel Garland for the sum is awarded, *is there the remotest question that this judgment would be affirmed by the Supreme Court, if called upon to review such judgment?*

Every suggestion or querry as to the facts of this case, as suggested in the foregoing, is overwhelmingly shown and proven by the evidence in the case. Then why question as to what should be done?

We finally submit that there is now no obstacle in the way of the courts determining this case upon the theory of the contract and that the delegates' fund, a fixed and determined amount, was received by LeFlore and McCurtain, and if there was not a proper administration of this fund, the nation (whose agents LeFlore and McCurtain were) is responsible for their misconduct, and not the delegates or their representatives.

The petition is upon this theory, and the direction in the jurisdictional act that the case be determined upon the theory of *quantum meruit*, does not limit the court in determining the case alone upon this theory. The Supreme Court declared that this contention was technical, and that a case was sufficiently stated by the petition to warrant the court to proceed to judgment for whatever may be found as due plaintiffs.

The *jurisdiction* of the court is clear and full. The procedure is one within the very broad and liberal powers of the court. What Congress intended that the court should do, was to find what if anything was due the Garland heirs, and to award judgment for whatever is found due.

We should feel very safe against danger of disturbance by the Supreme Court of a judgment rendered upon this theory.

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