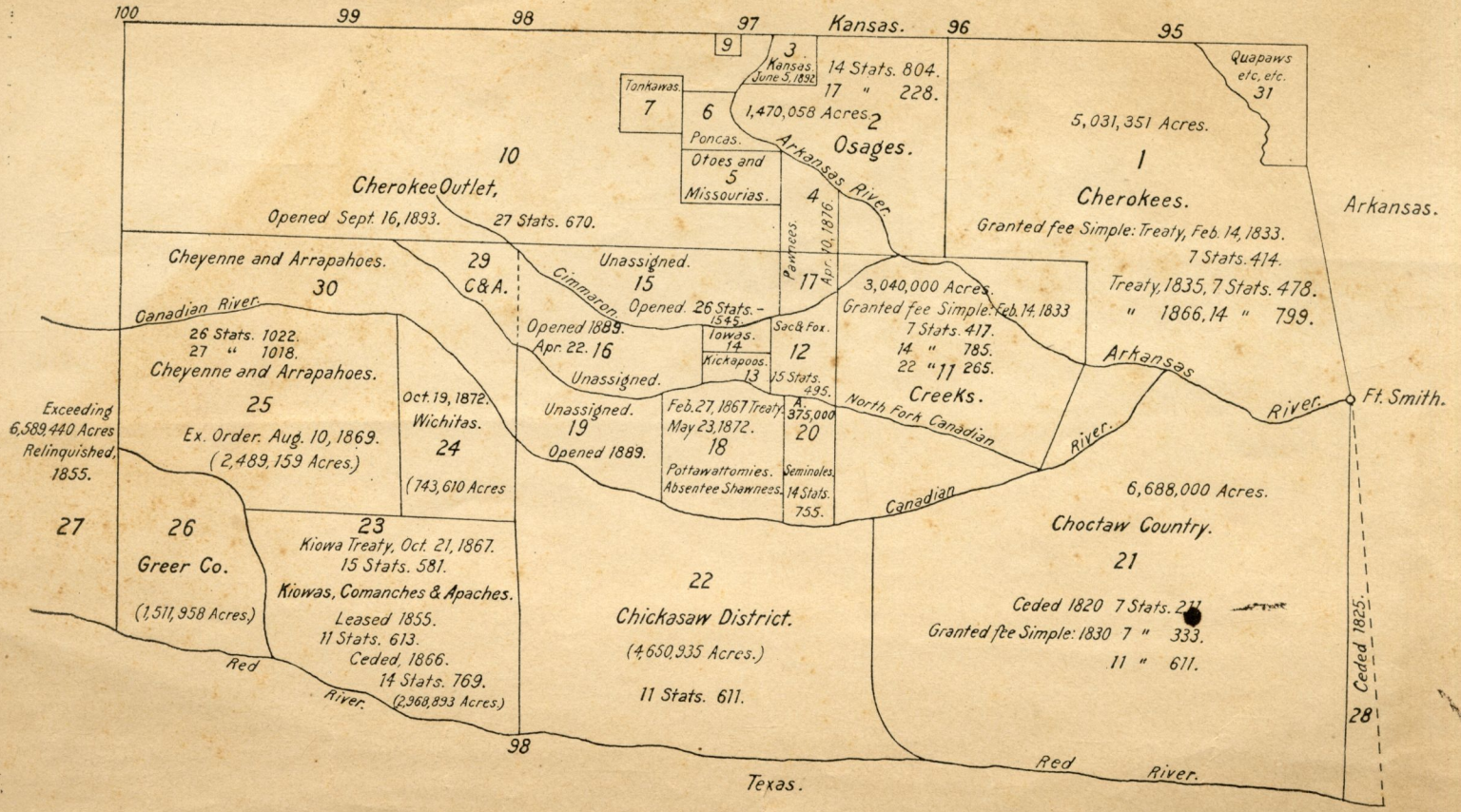
100
99
98
97
Kansas.
96
95
9
3
Kansas. June 5, 1891.
14 Stats. 804.
17 " 228.
Quapaws etc, etc.
31
Tonkawas.
7
6
1,470,058 Acres.
2
Poncas.
Osages.
5,031,351 Acres.
Otoes and Missourias.
5
Arkansas River.
10
Cherokee Outlet,
Opened Sept. 16, 1893.
27 Stats. 670.
4
Pawnees.
Apr. 10, 1876.
1
Cherokees.
Granted fee Simple: Treaty, Feb. 14, 1833.
7 Stats. 414.
Treaty, 1835, 7 Stats. 478.
" 1866, 14 " 799.
Arkansas.
Cheyenne and Arrapahoes.
30
29
C & A.
Unassigned.
15
Opened 26 Stats. - 1545
17
3,040,000 Acres.
Granted fee Simple: Feb. 14, 1833
7 Stats. 417.
14 " 785.
22 " 11 265.
Cimmaron
Canadian River.
26 Stats. 1022.
27 " 1018.
Opened 1889.
Apr. 22. 16
Iowas.
14
Sac & Fox.
12
Kickapoos.
13
15 Stats. 495.
Arkansas River.
Ft. Smith.
Cheyenne and Arrapahoes.
25
Ex. Order. Aug. 10, 1869.
(2,489,159 Acres.)
Oct. 19, 1872.
Wichitas.
24
(743,610 Acres
Unassigned.
Unassigned.
19
Opened 1889.
Feb. 27, 1867 Treaty.
May 23, 1872.
18
Pottawattomies.
Absentee Shawnees.
A. 375,000
20
Seminoles.
14 Stats. 755.
Creeks.
North Fork Canadian River.
Exceeding 6,589,440 Acres Relinquished. 1855.
27
26
Greer Co.
(1,511,958 Acres.)
23
Kiowa Treaty, Oct. 21, 1867.
15 Stats. 581.
Kiowas, Comanches & Apaches.
Leased 1855.
11 Stats. 613.
Ceded, 1866.
14 Stats. 769.
(2,968,893 Acres.)
Red River.
22
Chickasaw District.
(4,650,935 Acres.)
11 Stats. 611.
Canadian River.
6,688,000 Acres.
Choctaw Country.
21
Ceded 1820 7 Stats. 211
Granted fee Simple: 1830 7 " 333.
11 " 611.
Ceded 1825.
28
98
Texas.
Red River.

Tracts 1 to 10. Cherokee Lands. (7 Stats. 414.) Treaty 1833.

Deeded June 14, '83. Settled in full '93.

Tract 2. Set apart Treaty 1866 and sold to Osages. (17 Stats. 228.)
" 3. " " " " Kaws. June 5, 1872.
" 4. " " " " Pawnees, Apr. 10, 1876. (19 Stats., Secs. 4, 29.)
" 5. " " " " Otoes and Missourias, Mar. 3, 1881. (21 Stats. 387.)
" 6. " " " " Poncas, Aug. 15, 1876. (19 Stats. 192, 287; 20 Stats. 76; 21 S. 422.)
" 7. " " " " Nez Perces (20 Stats. 74. 23 Stats. 90.
" " " " " Tonkawas (24 Stats. 624.

Tracts 2 to 10. Bought and paid for full fee by U. S., $8,595,736.12. Mar. 3, 1893. (27 Stats. 640.)

" 11 to 20, 29 and 30. Creek and Seminole lands. Fee simple title. (7 Stats. 417.)

Tract 20. Set apart by Treaty 1866 and sold Seminoles. (14 Stats. 755.)

Settled in full 1889.

" 12. Set apart by Treaty 1866 and sold Sac and Foxes. (15 Stats. 496.)
" 13. Set apart by Treaty 1866 to Kickapoos. (Ex. order Apr. 15, 1883.)
" 14. Set apart by Treaty 1866 to Iowas. (Ex. order Apr. 15, 1883.)

Tracts 15, 16, 19. Set apart by Treaty 1866 and opened as original Oklahoma. Mch. 1, 1889.

Tract 18. Set apart Treaty 1866, and Pottawatomies and Shawnees located May 23, 1872, under Treaty Feb. 27, 1867.

" 17. Set apart by Treaty of 1866 and sold Pawnees @ 30c. an acre. Apr. 10, 1876. (19 Stats. 29, Sec. 4.)

Tracts 29 and 30. Set apart by Treaty of 1866 and assigned Cheyenne and Arapahoes. (Ex. order Aug. 10, 1869.)

" 21 to 28. Ceded Choctaws, 1820. Claim admitted except as to Tract 27.

Tract 27. Choctaw land ceded to Spain by U. S. without Choctaw consent, 1821.

" 28. Receded by Choctaws 1825, now in State of Arkansas.

" 22. Chickasaw District. Set apart by Choctaws, 1837. (4,650,935 acres.)

" 27. Relinquished to U. S. by Choctaws, 1855. (Exceeds 6,589,440 acres.)

Tracts 23 to 26. Leased District, 1855. Choctaws and Chickasaws retaining jurisdiction and full rights of settlement.

" 23 to 26. Ceded to U. S. in trust, to be purchased, for use of friendly Indians by Art. 3, Treaty 1866. (14 Stats. 769.) (7,713,239 acres.)

Tract 25. Assigned Cheyennes and Arapahoes. Ex. order Oct. 10, 1869, and freed from trust limitation by purchase, Mch. 3, 1891. (2,489,159 acres.)

" 24. Assigned Wichitas by Executive permission; now in litigation Court of Claims, Case 18,832. (743,610 acres.)

" 23. Lands "set apart" for Kiowas, Comanches, and Apaches. Oct. 21, 1867. (2,968,893 acres.)

" 26. Greer County. A portion of the Leased District formerly claimed by Texas and not assigned any Indians. (1,511,958 acres.)

"But as to persons other than purchasers of town and city lots, residing or carrying on business thereon, no question arises under the above act of 1898, and the persons who are pasturing cattle upon, or otherwise occupying part of the public domain of these Indian nations, without permission from the Indian authorities, are simply intruders, and should be removed, unless they obtain such permits, and pay the required tax, or permit, or license fee.

"In one of the questions submitted, you ask whether your department has 'authority in the case of a merchant refusing to pay such tax, to close his place of business, or to remove his stock of merchandise beyond the limits of the nation?'

"To this, I answer, your department may, and should, remove such merchant, unless he has his permit to reside and remain there; and to close his place of business, and his business, unless he has a permit to carry it on, and in all cases where such permit is required by law. The question of the right to remove his stock of merchandise beyond the limits of the Indian nation, is a different and more doubtful one. While he has no right to remain or carry on business there without a permit to do so, his want of right to keep his goods there, or the right of the department to remove them, is not so clear. While the law excludes him, and authorizes his removal, it does not do so expressly, at least, as to his goods. And, as the whole evil which is sought to be remedied is so done by the removal of the owner and the closing of his business, it is recommended that his goods be permitted to remain, if he so desires.

"Your question whether the lands of any Indian nation, in which a town or city is situated, will cease to be Indian country, etc., when the lands in such town or city are sold, is not one involving any present existing question, or one which I am authorized to answer.

"Your last question asks, 'What is the full scope of the authority and duty of the Department of the Interior in the premises under the treaties with these nations, and the laws of the United States regulating trade and intercourse with the Indians?'

"As applicable to the cases here in hand, which is so far as I am authorized to answer this question, and which is designed also as a comprehensive answer to all the other questions, save the one last referred to above, it may be said, generally, that the authority and duty of the Interior Department is, within any of these Indian nations, to remove all persons of the classes forbidden by treaty or law, who are without Indian permit or license; to close all business which requires a permit

or license, and is being carried on there without one, and to remove all cattle being pastured on the public lands, without Indian permit or license, where such license or permit is required; and this is not intended as an enumeration or summary of all the powers or duties of your department in this direction.

"In view of the number of persons, the magnitude of the interests involved, and also as tending to a more ready and better adjustment of the difficulties, it is suggested that public notice be first given to all persons residing or carrying on business without an Indian permit or license, where, for such residence or business, such permit is required; that unless such permit or license is obtained by a short day to be named, such persons will be removed, and such business closed; and in case of cattle pastured without permission, where permission is required, such cattle will be removed from within the nations.

"I return herewith the printed copy of the constitution and laws of the Chickasaw Nation, transmitted with your note.

Respectfully,

JOHN W. GRIGGS,

Attorney General."

The Honorable Commissioner of Indian Affairs and the Honorable Secretary of the Interior were required, then, to do what? To decide whether, under existing laws and treaties, and in view of the opinion of the Honorable Attorney General, an order could be issued to remove these plaintiffs from the Indian country, and to close their business and their places of business. They were required to exercise their judgment as to whether this could be done, and they decided that they could issue such an order. Their *judgment* is as follows:

"WASHINGTON, Oct. 10, 1900.

SHOENFELT, Agent,

Muskogee, I. T.:

It being my judgment that the continued presence of Sig. Simon, J. B. Spriggins, R. W. Randoll, A. Kloski, Jake Bodovitz, John Fielder and W. B. Lynn, in the Indian country, is detrimental to the peace and welfare of the Indians, I hereby direct, with the approval of the Secretary of the Interior, that you remove said parties from the Chickasaw Nation, and the Indian Territory, under and in accordance with the provisions of section twenty-one hundred and forty-nine of the Revised Statutes of the United States. You will also close their places of business and their business.

Approved:

E. A. HITCHCOCK, Sec'y.

W. A. JONES, Comm."

1.39 p. m.

The order itself commences with the words, "It being my judgment," and concludes with the words, "you will also close their places of business and their business." This was signed by the Honorable Commissioner of Indian Affairs, and approved by the Honorable Secretary of the Interior. How can it be said that the act of issuing this order, after all this consideration, and the rendition of this opinion by the Attorney General, the judicial officer of that department, was not an act requiring the exercise of judgment and discretion? But the court is not left to depend upon his own judgment upon this point, nor upon that of counsel. The Supreme Court of the United States has settled this question for this court, and its judgment must be respected.

We refer to the case of Decatur vs. Paulding, 14 Peters, 497; Lawyer's Ed. Book 10, page 569.

The court will remember that this case was presented by counsel for defendants in the oral argument of the case. This was a case involving the construction of *two* acts upon the subject of pensions. Only two. Both plain and unambiguous in their terms. It became necessary for the Secretary of the Navy, whose duty it was to enforce the laws relating to navy pensions, to pass upon the question as to whether or not, under the laws in question, Mrs. Decatur, the widow of Commodore Stephen Decatur, a deceased officer of the navy, was entitled to pay under both the general act of Congress and the resolution referred to in the opinion. Upon this point Chief Justice Taney says:

"The first question, therefore, to be considered in this case is, whether the duty imposed upon the Secretary of the Navy by the resolution in favor of Mrs. Decatur was a mere ministerial act.

"The duty required by the resolution was to be performed by him as the head of one of the executive departments of the government, in the ordinary discharge of his official duties.

"In general, such acts, whether imposed by an act of Congress or by resolution, are not mere ministerial duties. The head of an executive department of the government, in the administration of the various and important concerns of his office, is generally required to exercise judgment and discretion. He must exercise his judgment in expounding the laws and resolutions of Congress, under which he is from time to time required to act. If he doubts, he has a right to call on the Attorney General to assist him with his counsel; and it would be difficult to imagine why a legal adviser was provided by law for the heads of the departments, as well as for the President, unless their duties were regarded as executive, in which judgment and discretion were to be exercised.....The court could not entertain an appeal

from the decision of one of the secretaries, nor revise his judgment in any case where the law authorized him to exercise discretion or judgment. Nor can it by mandamus act directly upon the officer, and guide and control his judgment and discretion in the matters committed to his care in the ordinary discharge of his official duties."

It might almost be imagined that Chief Justice Taney was deciding the case of A. Kloski et al. vs. Jack Ellis et al. This is an act of the head of one of the departments. This is the act of a head of a department to whom is confided the sole management of Indian affairs. More than that, is not only confided the management of Indian affairs in the way that the Secretary of the Navy was confided with sole management of the affairs relating to the business of his department, but this jurisdiction was vested in that department of the government by the Constitution itself, and confirmed by acts of Congress and acquiesced in ever since the adoption of the Constitution up to this good hour. Its authority has never been questioned until now. Can this court entertain an appeal from the Secretary of the Interior or the Commissioner of Indian Affairs? Can this court revise their judgment upon a matter relating solely to intercourse with the Indian tribes? Can it be said that the law did not require him to pass, in his judgment, upon this question? Can it be said that it was not his duty to expound the laws relating to intercourse with the Indian tribes? Can it be said that, as the head of an executive department of the government, especially vested, by the Constitution, with jurisdiction to entertain matters arising "in the administration of the various and important concerns of his office," he is not required to exercise the highest degree of judgment and discretion? Can the Executive Department be restrained by injunction from executing the plain provisions of a treaty?

What is a ministerial act? A ministerial act is one so fixed, so plain, so definite, and so certain, that it requires the exercise of no judgment or discretion. Is this court willing to declare that the decision of the question involved here by the Honorable Commissioner of Indian Affairs, which decision was approved by the Honorable Secretary of the Interior, was one not involving the exercise of any degree of judgment or discretion? Can the court declare that this was a mere ministerial act involving the exercise of no discretion or judgment? A sufficient answer is found to these questions in the decision above quoted.

We especially invite the attention of the court to the opinion rendered by Justice Catron, in the same case. It is not a dissenting

opinion as asserted by the honorable counsel for plaintiffs in the oral argument of this cause. It was an assenting opinion, and was delivered by Justice Catron because of the importance of the subject, and the fact that he went further in upholding the inviolability of the jurisdiction of the executive department of the government than did the other justices upon the bench. We invite the court's attention to a careful reading of this opinion, as well as the opinion of Chief Justice Taney, delivered in the same case, because we are sure that all that is needed to convince the court that the temporary injunction in this case should never have been granted, and should now be dissolved, is a careful and close examination of the opinions above referred to in the case of Decatur vs. Paulding.

This case has never been overruled. Upon the contrary, it has been cited with approval in every decision involving this question rendered by the Supreme Court of the United States since that time, and has been quoted with approval in the very last decisions handed down on that subject by the Supreme Court of the United States.

In the case of Mary Jane Kimberlin vs. The Commission to the Five Civilized Tribes et al., Ms. Op. U. S. Circuit Court of Appeals for the Eighth Circuit, the questions involved here are ably discussed and the rule so clearly stated that we cannot do better than quote that part of the opinion in full:

"In the United States ex rel. Dunlap vs. Black, 128 U. S. 40, 48, Oscar Dunlap applied to the Supreme Court of the District of Columbia for a writ of mandamus commanding the Commissioner of Pensions to increase his pension. He averred in his petition that the fact was that he was so disabled that he was entitled to this increase under the acts of Congress, and that the Commissioner had so found the fact to be, but had erroneously held that under the law he was not entitled to it, and for that reason he refused to allow it. The writ was refused and that judgment was affirmed in the Supreme Court. Mr. Justice Bradley delivered the opinion. He carefully reviewed the cases of Kendall vs. United States and Decatur vs. Paulding, and then said: 'The principle of law deducible from these two cases is not difficult to announce. The court will not interfere by mandamus with the executive officers of the government in the exercise of their ordinary official duties, even where those duties require an interpretation of the law, the court having no appellate power for that purpose; but when they refuse to act in a case at all, or when by special statute, or otherwise, a mere ministerial duty is imposed upon them, that is, a service which

they are bound to perform without further question, then, if they refuse, a mandamus may be issued to compel them. Judged by this rule the present case presents no difficulty. The Commissioner of Pensions did not refuse to act or decide He did act and decide. He adopted an interpretation of the law adverse to the relator, and his decision was confirmed by the Secretary of the Interior, as evidenced by his signature of the certificate. Whether if the law were properly before us for consideration, we should be of the same opinion, or of a different opinion, is of no consequence in the decision of this case. We have no appellate power over the commissioner, and no right to review his decision That decision and his action taken thereon were made and done in the exercise of his official functions. They were by no means merely ministerial acts.'

"From these four cases and from the later decisions of the Supreme Court which have followed and emphasized the limit of the control which courts may exercise by mandamus over the acts of the executive officers of the government, which those decisions clearly fixed, the following established rules may be logically deduced :

"1. A writ of mandamus may lawfully issue from a court having jurisdiction to compel an executive officer to perform a mere ministerial act which does not call for the exercise of his judgment or discretion, but which the law gives him the power, and imposes upon him the duty to do. Marbury vs. Madison, 1 Cranch 137, 158, 161; Kendall vs. United States, 12 Pet. 254, 613; United States ex rel. McBride vs. Schurz, 102 U. S. 378; Butterworth vs. Hoe, 112 U. S 50.

"2. It may issue to command an executive officer to act and to decide even though his act and decision involve the exercise of his judgment and discretion, but in such a case it may not direct him in what particular way he shall act or decide.

"It may not lawfully issue to command or control an executive officer in the discharge of those of his duties which involve the exercise of his judgment or discretion either in the construction of the law or determining the existence or effect of the facts.

"3. It may not lawfully issue to review, reverse or correct the erroneous decision of an executive officer in such cases, even though there may be no other method of review or correction provided by law. Decatur vs. Paulding, 14 Pet. 497, 514, 516; United States ex rel. Dunlap vs. Black, 128 U. S. 40, 48; United States ex rel. Goodrich vs. Guthrie, 17 How. 284; Commissioner of Patents vs. Whiteley, 4 Wall.

522; Georgia vs. Stanton, 6 Wall. 50; Gaines vs. Thompson, 7 Wall. 347; United States ex rel. Redfield vs. Windom, 137 U. S. 636, 644; United States ex rel. Boynton vs. Blaine, 139 U. S. 306, 319; United States ex rel. International Contracting Co. vs. Lamont, 155 U. S. 303, 308."

Before the court can deny the motion to dissolve the temporary injunction in this case, it must hold, either that it will not be bound by the decision in the case of Decatur vs. Paulding, or that the act of the Honorable Commissioner of Indian Affairs, and the Honorable Secretary of the Interior, in issuing the order quoted above was *merely ministerial.* It would be a reflection upon the intelligence of the court to presume that it would hold that this was a purely ministerial act.

———o———

But is not the decision of the Honorable Commissioner of Indian Affairs and the Honorable Secretary of the Interior correct? Can the court say that a treaty, which has all the force of an act of Congress; a treaty, which it is the duty of the President, acting through the heads of the departments. and, in this case, through the officers who took action in the premises, to enforce, which provides that "no person shall expose goods or other articles of merchandise for sale without a permit," was improperly enforced by stopping the exposure of the goods, or other articles, for sale, as a trader, without a permit, by compelling the plaintiffs to close the doors of their stores and places of business, so as not to expose their goods for sale? In what other way could this provision of the treaty have been enforced? The officers who were charged with its execution had passed upon that question, and in Section 558 of the Regulations of the Indian Office, of 1894, had directed such places of business to be closed. Can the court say that that construction of the treaty was erroneous?

We invite the attention of the court to the fact that defendants, in closing these places of business, do no more than to force the proprietor to cease to expose his goods for sale without a permit. The key is returned to him. He is permitted to go into and out of his store. The goods are not taken into physical possession. No effort is made to confiscate them and he is perfectly free to box them up, move them away, sell them, or otherwise dispose of them. The officers of the government acting under this order required but one thing, and enforced but one thing. That is, a compliance with that provision of the treaty of 1866, that he shall not, until he pays the permit required by the Chickasaw Nation, expose these goods for sale.

This is an equitable action. It is a maxim of equity that he who seeks equity must do equity. Is it possible that a court of equity will lend its aid to a defiance of the government? Will lend its aid to a wilful violation by these plaintiffs of the most solemn treaty obligations? Will it protect them as dishonest debtors in the evasion of the duties which they assumod when they entered the Indian country? They must be assumed, legally, to have known of the laws of the Chickasaw Nation, under which they proposed to live, and of the provisions of the statutes of the United States, and the various treaties entered into with the Choctaws and Chickasaws. They are estopped from denying the validity of these taxes. They are estopped from complaining of the methods by which it is sought to be enforced. It must be assumed that, when they came into the Indian country, with these treaties and these laws in force, they assented to the conditions imposed upon them.

We take the position that, even in a court of law, if such a court had jurisdiction of the subject matter, they could not be permitted to either deny the validity of the tax, or complain at the method of its enforcement; and the contention that they have any standing in a court of equity is, to our minds, preposterous.

We have dealt with the matter thus at length, because of the importance of it. As stated by Justice Catron, in the case of Decatur vs. Paulding, supra, between this "court and the executive department of the United States there is an open contest for power."

The court has entertained jurisdiction, and issued a temporary injunction, which forces the officers of this department of the government to cease the execution of the laws and treaties, by constitutional provision committed to their care. The consequence of permitting such an injunction to become permanent are so disastrous and far-reaching in their effect, that we have felt it necessary to strongly urge upon the court to take no such action. It would be especially unfortunate to do so in a case where the law is so well settled to the contrary. Where decisions of the Supreme Court of the United States have settled the question beyond all shadow of a doubt, certainly the court would not, anew, compel the litigation of this point by the Honorable Commissioner of Indian Affairs and the Honorable Secretary of the Interior, by the granting of a permanent injunction against them in this case Would not compel them to carry a question already adjudicated by the Supreme Court of the United States anew to that court for determination.

It will be remembered by the court that, although counsel for defendants insisted that the case of Decatur vs. Paulding, supra, was absolutely decisive of the case at bar, counsel for plaintiffs did not attempt to reply to the reasoning of the court in that case, nor to avoid the force of the decision in that case, unless the statement by one of the counsel for plaintiffs, that there was a difference between an application for mandamus and the issuance of an injunction in such a case, could be termed an attempt to do so. There is no excuse for counsel taking any such position, because, in the case of Gaines vs. Thompson, 72 U. S., 62, Lawyer's Edition, book 19, page 62, this very point is decided, as well as a strong reaffirmation of the doctrines here contended for.

The language of the court is as follows:

"It may, however, be suggested that the relief sought in all those cases was through a writ of mandamus, and that the decisions are based upon the special principles applicable to the use of that writ. ....This is only true so far as these principles assert the general doctrine that an officer to whom public duties are confided, by law, is not subject to the control of the courts in the exercise of the judgment and discretion which the law reposes in him as a part of his official functions. Certain powers and duties are confided to those officers, and to them alone, and however the courts may, in ascertaining the rights of parties in suits properly before them, pass upon the legality of their acts, after the matter has once passed beyond their control there exists no power in the courts, by any of its processes, to act upon the officer so as to interfere with the exercise of that judgment while the matter is properly before him for action. The reason for this is, that the law reposes this discretion in him for that occasion, and not in the courts. The doctrine, therefore, is as applicable to the writ of injunction as it is to the writ of mandamus."

So much for the only argument advanced in this case as against the authority cited by us.

We feel confident that an examination of these authorities, and a careful perusal of this brief, will lead the court to the same conclusions that the preparation of it, and a study of this question has led counsel for defendants, and that our motion to dissolve the temporary injunction will be granted.

Respectfully submitted,

MANSFIELD, McMURRAY & CORNISH,

Counsel for Choctaw and Chickasaw Nations, and of Counsel for Defendants.

In addition to the authorities submitt in the brief, we desire to call the court's attention to thollowing decisions of the Attorney General of the United States. We quote from syllabus of the opinion:

"Where the law directs a thing to be de without prescribing the means, the President may use such ans as may be necessary and proper to accomplish the end of e legislature...."

9 Opps. Atty. Genl. U. S. 516

"It is impossible for Congress to forse, and circumstantially provide for, all the possible futurcontingencies of executive business, either in respect of tbusiness itself or the manner of conducting it. A necessary scretion must exist, in the nature of things, somewhere, as to all such matters... Where the laws define what is to be done by a iven head of a department, and how he is to do it, there the esident's discretion stops; but if the law require an execive act to be performed, without saying how, or by whom, it ust be for him to supply the directions. ...."

6 Opps. Atty. Genl. U. S. 341.

Document No. 14 is a memorandum of argument, for use before the Secretary of the Interior, in connection with application for reference of questions of law to the Attorney General.

Plaintiff offers in evidence, Plaintiff's File C.

To which, defendants and the Attorney General object, for the reason that the same is incompetent, irrelevant and immaterial, and makes the objection specially to each one of the items.

A. I next refer to Plaintiff's File E in the case of Richard B. Coleman, et al. As stated above, the question of law in this case was, as to the power of the Commission and the Secretary of the Interior to strike from the Tribal Rolls, under the Acts of Congress of June 28, 1898 and May 31, 1900, names placed thereon by fraud, or without authority of law. It was contended by us, on behalf of the Choctaw and Chickasaw Nations, that the names of these applicants had been placed upon the tribal rolls by fraud and without authority of law, and should be stricken therefrom. This was a testor typical case, and the questions of law affected not only these applicants, but many other applicants in other cases similarly situated.

I will state that a protest of the Choctaw and Chickasaw Nations against the enrollment of these persons was first filed before the Commission to the Five Civilized Tribes had an open hearing at Atoka, Indian Territory, in June, 1900. At that time, many witnesses were summoned and heard before the Commission, and much testimony taken. The fees of such witnesses, and all expenses of such hearing were paid by us, and later, included in our expense accounts which were filed with the Principal Chief of the Choctaw Nation, and afterwards paid.

Document No. 1, comprising 26 pages, is a carbon of the original brief and argument filed with the Commission to the Five Civilized Tribes.

Document No. 2 is a copy of a reply brief filed by our firm, after considering briefs filed on behalf of applicants.

Document No. 4 is a copy of the decision of the Commission to the Five Civilized Tribes in the Coleman case.

Document No. 4½ is a copy of a dissenting opinion, filed by Chairman Bixby of the Commission.

Document No. 5 is a motion for a re-consideration of the majority opinion of the Commission, filed by our firm.

Document No. 6 is a memorandum of oral argument upon such motion.

Document No. 7 is a letter from our firm to the Secretary of the Interior, dated October 6, 1904, requesting that the questions of law involved in this case be referred to the Attorney General for a review of the opinion of the Assistant Attorney General for the Interior Department. In this connection, I will state that the Coleman case has been twice reviewed by the Attorney General of the U. S. This request by our firm, which was made on October 16th, 1904, was granted, as shown by Documents No. 8, No. 9,

No. 10 and No. 11. We submitted written arguments in support of our contention that these persons should be stricken from the tribal rolls because their names were placed thereon by fraud and without authority of law, and those questions of law were considered by the Attorney General in an opinion dated Sep. 28, 1904, which appears in this record as Document 12, and is signed by W. A. Day, Acting Attorney General. In that opinion, he holds in the last paragraph: "If it *clearly* appears that the act was procured by deliberate fraud and perjury, I do not think that Congress intended that benefits thereunder, should be enjoyed."

Notwithstanding this opinion, and the showing which was made upon the facts on behalf of the Choctaw and Chickasaw Nations, the Department of the Interior placed the names of these persons upon the tribal rolls.

Document No. 13 is a later opinion by the Ass't Attorney General for the Interior Department, holding that these persons should be enrolled.

Document No. 14 is a letter from our firm to the Secretary of the Interior, asking a re-hearing upon the opinion of the Assistant Attorney General.

Document No. 15 is a letter from our firm to the Secretary of the Interior, upon the same subject.

Document No. 16 is a formal motion for a reconsideration of the opinion of the Assistant Attorney General .

Document No. 17 is a memorandum of oral argument in my handwriting, which was used in the oral argument before the Assistant Attorney General and his Assistants in September, 1905.

Document No. 18 is a written argument, filed after the oral argument referred to.

Document No. 19 is a memorandum of argument filed with the Secretary of the Interior, in connection with our request for another reference of these questions of law to the Attorney General, for review.

Document No. 20 is a copy of a brief filed by Attorney for applicants, which was served upon us, at the time, as Attorneys for the Choctaw and Chickasaw Nations.

Document No. 21 is a brief and written argument on behalf of the Choctaw and Chickasaw Nations, comprising 40 pages, which was filed before the Attorney General of the United States, in connection with the matter of review.

Plaintiff offers in evidence "Plaintiff's File E."

To which, defendants and the Attorney General object, for the reason that the same is incompetent, irrelevant and immaterial, the objection going to the entire file, and each item thereof, specially.

By E. E. McInnis: I understand that none of the objections to any of these files goes to the question of improper identification, or to any point based on the fact that some of the papers included, are copies, and not originals?

By W. J. Turnbull: No.

Q. Mr. Cornish, did these Bonaparte matters originate, in point of time at the dates shown in these files, or had they been pending prior?

A. I have stated that the Coleman case started, as I now remember, in June, 1900, at a public hearing of the Commission to the Five Civilized Tribes, at Atoka, I. T., at which time many witnesses were examined, and much testimony taken. The other cases arose before the commission to the Five Civilized Tribes, at about the same time.

Q. Had your firm incurred any expenses in connection with these matters, prior to the dates recited in the files which have been introduced?

A. Well, some of these documents which appear in these files, were prepared as far back as June, 1900. That is especially true in the Richard B. Coleman case in which many witnesses were examined and such testimony taken, for which the Choctaw and Chickasaw Nations paid in June, 1900.

Q. How did the Choctaw and Chickasaw Nations pay?

A. These witnesses were summoned upon our request, by the Commission to the Five Civilized Tribes, and their fees and expenses were paid by us at the hearing, and later, expense accounts were presented against the Nations, and duly paid.

Q. Are those expenses so reimbursed to you, included in the warrants on which the counter claim in this case against Mr. McMurray, is based?

A. Yes.

Q. Did you incur any other expenses between the hearing at Atoka in 1900, and say, the beginning of the year 1904, in connection with these matters, or any of them?

A. We were incurring expenses constantly, in connection with these and other similar cases, in the matter of taking testimony, and personally appearing before the Commission to the Five Civilized Tribes at Muskogee, and the Interior Department at Washington.

Q. Were those expenses handled in the same way as the expenses of the 1900 hearing that you mentioned?

A. All expenses incurred by us were handled in the same way.

Q. Are those expenses included in the warrants on which the counter-claim of the Nations against McMurray in this case is based?

A. Yes.

Q. Can you give the Court some approximation of the amount of values saved to the Choctaw and Chickasaw Nations by your efforts in the matters which we refer to as the Bonaparte opinion matters?

A. I could not, without knowing the exact number of persons stricken from the tribal rolls, or refused enrollment finally, as a result of this agreement. In those days, the property rights of citizenship were considered to be worth approximately $5,000.00

each. The lands and other property representing the distributive share of a citizen is worth many times that amount now.

Q. I believe you have testified that several hundred who were demanding admission to the Rolls, or who had procured admission to the Rolls, were denied their claims on account of these proceedings?

A. Yes, many hundreds.

Q. I ask you yesterday, as to the bulk of the files of your firm in connection with these Indian matters. I will ask you to state whether it was possible for you and Mr. McMurray and Mr. Mansfield to handle these matters without the assistance of clerks, law clerks and other employes?

A. It was not. As the work progressed, it was necessery for us to occupy more office room, and to engage a larger force of office assistance. At one time, when the work was greatest in 1902, and 1903, we had in the office, including members of the firm, about fifteen people.

Q. How many of these were giving attention to Indian matters?

A. All of them, except one man. When the firm was originally organized in 1899, we took general law business. We were first employed by the Chickasaws in July, 1899, and by the Choctaws a little later, and the work became so extensive for the Choctaws and Chickasaws, that we paid no attention whatever, to general business, and accepted none. We had one man in the office, to whom we turned over whatever general business drifted into the office, and the members of the firm and those engaged in the conduct of the Choctaw and Chickasaw affairs, paid no more attention to these matters than if they had come into an office that was in no way connected with the firm. I will state now, once and for all, that from the latter part of 1899, to the end of our relations with the Choctaws and Chickasaws, we practiced law exclusively for them, and accepted no general business, and had no thought or ambition in the conduct of our business and in the practice of law, except to serve the Choctaws and Chickasaws and their interests. We did not practice law in a general sense.

Q. Do you know agreement, or arrangement or understanding there was, if any, between your firm and the Choctaw Nation of Indians in regard to compensation for your services performed, or to be performed in connection with the J. Hale Sypher matter?

A. We were employed to resist his claim before Congress and its Committees, and when the legislation was passed providing for its reference to the Court of Claims, we were employed by the Principal Chief of the Choctaw Nation to conduct that litigation, and we accordingly conducted it to a conclusion, by the taking of testimony, filing of briefs, the submission of oral arguments to the Court, and by doing all things necessary to properly conduct the suit on behalf of the Choctaw Nation.

Q. Was there any agreement as to what compensation you should receive for your services?

A. There was nothing. The only agreement was, that when the litigation should be disposed of, that our firm would be paid a reasonable compensation for services rendered.

Q. By saying there was nothing, you mean there was no specified amount?

A. There was no specified amount agreed upon.

Q. State the facts in the same manner relating to your services in connection with the John T. Ayres matter.

A. In that case, the claimants first sought relief at the hands of the Congress. Our services were engaged by the Governor of the Chickasaw Nation, that being strictly a Chickasaw matter, and we gave the matter necessary attention before Congress and its Committees. When legislation was passed, providing for its reference to the Court of Claims, we were directed by the Governor of the Chickasaw Nation, who was then Douglas H. Johnson, to conduct this litigation on behalf of the Chickasaw Nation. The case had been pending for some time in the Court of Claims, before we were especially directed to enter this case. It was being conducted by an Assistant Attorney General for the Interior Department, but Governor Johnston felt that the Chickasaw Nation should be represented. I was then in Washington, and I now remember the date to have been in the spring of 1907. We conferred with the Assistant Attorney General, and prepared a motion to permit the Chickasaw Nation to intervene in the case. That motion was presented to the Court, and resisted by the Attorney for the claimants. The Court sustained the motion, and permitted the Chickasaw Nation to intervene. We then prepared a brief on behalf of the Chickasaw Nation, which was filed with the Court. I personally appeared before the Court of Claims, and orally argued this case at the first hearing, which was, as I now remember, in the late spring or early summer of 1907. I was at San Antonio with my family at the time, and journeyed from San Antonio to Washington, for this purpose. Later on in that year, the Court decided the case, and made its findings of facts, sustaining the contentions of the Chickasaw Nation, and holding that the claimants were not entitled to payment. Attorneys for claimants then filed a motion for a reconsideration. Upon this motion, we prepared another brief, and filed it with the Court, and I again appeared before the Court of Claims, and orally argued the case as I now remember, in the late fall or early winter of 1907.

Q. Who represented the United States?

A. Honorable John Q. Thompson, Special Attorney for the Department of Justice.

Q. I hand you an instrument, which will be marked for its identification, "Plaintiff's Exhibit 5," and ask you to state what that instrument is?

A. That is a letter from Honorable John Q. Thompson, Special Attorney for the Department of Justice, addressed to Mansfield, McMurray & Cornish, dated August 19, 1907, in which he

transmits to the firm a copy of the printed motion of Attorney for applicants, to amend the Findings of Fact, of the Court of Claims.

Plaintiff offers in evidence, "Plaintiff's Exhibit 5."

Defendants and Attorney General object to same, for the reason that it is incompetent, irrelevant and immaterial.

Q. Mr. Cornish, as I catch your testimony, this matter was handled by you or by your firm, over a considerable period of time before it reached the Court of Claims, and then it seems that your services in connection with the matter were resumed, after it reached the Court of Claims. Why was it that your firm did not at first follow this matter into the Court of Claims?

A. The original petition filed by the claimants, made only the United States a party, but a careful examination of this petition will show that judgment is sought against both the U. S. and the Chickasaw Nation, and that payment is demanded out of Chickasaw moneys in the hands of the United States Government. It was upon the discovery of this condition that its substantial rights were affected, that caused the Chickasaw Nation to ask to be permitted to intervene and to defend the case. Inasmuch as the Chickasaw Nation was not made an original party when the suit was filed, no pleadings had been served upon the Chickasaw Nation, and it had no notice of the pendency of the suit. It was largely by accident that the discovery was made that judgment was sought against the Chickasaw Nation. After the motion to permit the Chickasaw Nation to intervene was sustained by the Court, the Chickasaw Nation was thereafter made a formal party in the case. In the first brief which was filed in the case after the motion for intervention, we appeared, as Attorneys for the Chickasaw Nation, as shown by the brief filed. In the later brief which was filed to resist the motion of Attorney for claimants to amend the Court's findings of fact, we appeared in the same brief with Hon. John Q. Thompson, Special Attorney for the United States. I personally conducted this litigation before the Court of Claims, and prepared both of these briefs. The later brief upon which the name of the Special Attorney for the U. S. appears, was prepared by me at Washington, and comprises and runs in the records of the Court from pages 165 to 231.

Q. Was there any arrangement or understanding in regard to what compensation your firm should receive for its services in this behalf?

A. None, except that we should be adequately compensated for services performed.

Q. What was the outcome of the litigation?

A. The outcome of the litigation was, that the Court adhered to its original findings of fact, and judgment was rendered against the claimants, and on behalf of the United States and the Chickasaw Nation.

Q. What compensation was your firm to receive for its services in connection with the incompetent fund matter?

A. We had a definite understanding with Governor Johnston

of the Chickasaw Nation, that we should receive $15,000 for those services, which was somewhere in the neighborhood of five per centum of the money saved to the members of the tribes, and subsequently distributed per capita to them.

Q. Was any part of this paid?

A. The Chickasaw Nation paid our firm $2500.00 of this amount.

Q. Has any of the balance ever been paid, so far as you know?

A. Nothing further has ever been paid. In the incompetent matter, the amount involved was known, the fund being $216-000.00.

Q. What compensation was your firm to receive for its services performed for the Nations in connection with the tribal taxes?

A. No definite amount was fixed at the time. The understanding was that we should be adequately compensated for our services in that matter.

Q. What compensation was your firm to receive from the Choctaw Nation, for those services in connection with the Bonaparte opinion matter?

A. There was no understanding with the officials of the Choctaw Nation in that regard. These are matters that would have been included in our regular cttizenship contract in the Choctaw Nation, if that contract had been complied with by the Choctaw Nation. No compensation was paid us under that contract, later than the fall of 1904.

Q. When was the bulk of the work done?

A. The bulk of the work in that matter was performed after the end of 1904, and up to March 4, 1907.

Q. What compensation was your firm to receive for its services in connection with the treaty matters?

A. No compensation was fixed, the only understanding being that at some time, and in some way, we should be adequately compensated for the conduct of these matters.

Q. Has any compensation ever been paid to your firm or any member of it, or any person for or on behalf of your firm or any member of it, other than the $2500 payment in the incompetent matter, for any of your services performed in connection with the Sypher matter, the Ayres matter, the tribal tax matter, the Bonaparte opinion matter, and the treaty matters or any of them?

A. No, no compensation has been received upon any of those matters, except the partial payment of $2500.00 in the incompetent matter, and certain fees which were charged by us and paid, in connection with actual cases tried and disposed of in the courts growing out of the collection of tribal taxes.

Q. You have stated at various points in your testimony, that certain payments were made to you for fees and for reimbursement of expenses, by the tribes. Please explain to the court how those payments were made, whether by a specific appropriation to your firm, or how?

A. Well, at this point, I wish to state that we were not particularly concerned as to how we were paid. We were employed by the Chief Executives of the Choctaw and Chickasaw Nations, to do certain things, and to protect their interests in such matters as arose affecting their interests and we endeavored to perform these services with all of the power that was in us. They assured us that we would be reimbursed for our expenses, and that we would be paid a reasonable compensation for our services as Attorneys. We performed these services as best we knew, and rendered our accounts to the Chief Executives of the Choctaw and Chickasaw Nations, for expenses incurred and services rendered, and they were paid. We of course, know in a general way that their legislative bodies took these matters into consideration, and provided the necessary funds for the payment of these accounts, and all other regular and necessary expenses in connection with the tribal government.

Q. By "other expenses" you mean the general expenses of the Government in which you were not concerned?

A. I mean by that, that while our work was much and extensive, it by no means covered all of the affairs of the tribes, nor the conduct of all tribal business. We presumed that all other regular and necessary expenses for the conduct of tribal affairs and tribal governments, were provided in the same way.

Q. Have you made any investigation to ascertain what fund was created or handled or used in the payment of your expenses and fees?

A. We are, of course, familiar with the proceedings of the legislative body, as shown by their published session laws and otherwise, and know, in a general way, that these matters were usually paid by the governors, out of their contingent funds. In no instance, either in the Choctaw or Chickasaw Nation, were there appropriations ever made for the payment of tribal moneys to the firm of Mansfield, McMurray & Cornish.

Q. Do I understand that the appropriation was made to the contingent fund of the Governor?

A. An examination of the acts of the legislative bodies from year to year, as shown by their published session laws, will show that these matters were handled in that way.

Q. Mr. Cornish, did your firm ever receive any payment whatever, of any amount which was not first subjected to the scrutiny of the legislature of the tribe affected, and to the scrutiny and order of the Chief Executive of that tribe?

A. In the Choctaw Nation, an examination of the legislative accounts will show that our accounts were submitted to the Finance Committees of both the Senate and the House of Representatives, and examined and approved by those Committees, and by both branches of the legislative body, before action was taken upon them by directing payment by the Governor, out of his contingent fund. The same is true in the Choctaw Nation, excepting as will be shown by the published acts of the legislative body, that payments were

made under one act, increasing the contingent fund of the Governor, and providing that he should pay all regular and necessary expenses, necessary to protect the interests of the tribes, out of his contingent fund. These accounts in the Chickasaw Nation, were submitted to the Governor, and by the Governor, submitted at stated times, to the legislative body, for its consideration and approval.

Q. Did your firm ever receive any funds whatever, from either the Choctaw or Chickasaw Nations, upon any expense account which represented any profit whatever to you?

A. Not a dollar. I will state in this connection, that we necessarily spent a great deal of money in connection with this great work, which was never included in our expense accounts. It would be difficult to estimate this amount, but from beginning to end, it would aggregate a considerable sum of money.

Q. What is your understanding, as to whether the warrants included in the counter-claim of the Choctaw and Chickasaw Nations in this case, include all money paid to you by the Tribes, both for expenses and for fees?

A. Well, I have not examined the entire schedule of warrants involved in the counter-claim of the Nations, but if that schedule is correct, and is based upon the actual warrants issued to us and paid by the tribes, that represents the money which we received.

Q. With the exception of your fee in the citizenship case?

A. I simply mean to say that I am assuming that the schedule, which is the basis of this counter-claim, is a correct schedule, and that the aggregate of such warrants and of the money received by us, is correct.

Q. Mr. Cornish, there has been some talk in this case, of a duplication of warrants, and it appears that the Choctaw and Chickasaw Nations are now suing to recover from Mr. McMurray, for amounts alleged to have been received by him on two sets of warrants, covering the same items. Do you know whether your firm ever received a payment twice, covering the same item or items?

A. I will state first, that we received payment on only one set of warrants. In the fall of 1900, the General Council of the Choctaw Nation passed an act for the payment of certain contingent expenses necessary to protect the interests of the Nation, and increasing the contingent fund to the Principal Chief therefor. Gilbert W. Dukes was the Principal Chief of the Choctaw Nation at that time. He employed us to represent the Choctaw Nation in certain matters requiring the services of Attorneys, and directed us to incur necessary expenses in connection with that work. Under that Act, we performed services and rendered accounts and received warrants aggregating $7596.40. Shortly after the passage of this Act, it developed that Governor Dukes had made certain contracts with certain other parties, to perform other services. It was felt by Green McCurtain, who had been the Principal Chief of the Choctaw Nation, and who was easily the leading man of the Choctaw Nation, and other prominent Choctaw Citizens, that Gov-

ernor Dukes was not justified in certain actions under this Act of Council, and objection was made. Thus the matter stood, until the session of the Choctaw Council in 1901. There was no claim upon the part of either Governor Dukes or Green McCurtain, or any of the officials of the Choctaw Nation, that we had not performed valuable services, or that we had not incurred the expenses for which the warrants aggregating $7596.40 had been issued to us. In order, however, to reach these other matters to which I have referred, an Act was passed by the Choctaw Council at its 1901 session, calling in all warrants issued under the Act of October 29, 1900, including our warrants. It was specifically stated, however, in this Act, that provision would subsequently be made for taking up these warrants issued to us, and we were specifically directed to present all accounts for expenses incurred and services rendered, to the next session of the Council, which was to meet in the fall of 1902, and provision would be made for payment. When the Council met in the fall of 1902, we represented accounts for legal services rendered and expenses incurred from April 1, 1900 to the meeting of the Council in the fall of 1902. These accounts for services and expenses, aggregated $16,078.45. This amount included the period over which we had rendered services and incurred expenses in the Duke's Administration and for which, warrants had been issued aggregating $7596.40. An appropriation was made by the Council of 1902, under an Act approved December 19, 1902, for $16,078.45.

By W. J. Turnbull.

Q. Are you testifying, from your own knowledge at this time, relative to the particular warrants involved?

A. The warrants received by us in the Dukes' Administration, aggregating $7596.40, appear upon page 27 of the Session Laws of the Choctaw Council of 1901, and I am assuming that to be correct.

Q. Do you know it to be correct?

A. I do not of my personal knowledge, but I am sure it is correct.

Q. Are you being assisted in your testimony by any other record or information, other than that printed in the session laws?

A. I am assuming that the schedule of warrants handed me by the Attorney for the Choctaw Nation, clearly sets forth the warrants issued under the Act of December 19, 1902. These will appear in the session laws of the Choctaw Council of 1902, but I have not only a copy of such session laws before me, and am only assuming these amounts to be correct. The aggregate amount of the warrants issued to us under the Dukes' Administration, appearing upon the schedule furnished me by the Attorney for the Choctaw Nation, corresponds to the warrants, and the aggregate amount of the warrants issued in the Dukes' Administration, as they appear upon page 27 of the Session Laws of 1901, and I therefore, feel warranted in assuming that the warrants, and the aggregate of such warrants issued under the Act of Dec. 19, 1902, is also correct.

Q. Do you know what the schedule furnished you by the Attorney for the Choctaws, is correct?

A. Not of my own personal knowledge. The Attorney for the Choctaw Nation has stated this schedule to be correct, and I have no reason to doubt it.

Q. Then, your testimony with reference to these matters is entirely hearsay, as to their correctness?

A. No. I would not go so far as to say that. I think it fair to assume that the warrants listed in the published session laws of the Choctaw Council of 1901, are correct, and I also think it fair to assume that the schedule furnished me by the Attorney for the Choctaw Nation, showing aggregate of the warrants issued in 1902, also is correct. If, under those facts and conditions, my testimony should be held or thought to be hearsay, then it is hearsay.

Q. Do you assume that the entire schedule furnished you by the Choctaw Attorney is correct?

Plaintiff objects, as incompetent, irrelevant and immaterial.

A. I have no means of knowing its correctness or incorrectness, but if it has been compiled, as stated, from official records of the Choctaw Nation and the Government of the U. S., I have no means at this time, of contradicting its correctness.

Defendants and the Attorney General object to the witness further testifying relative to the particular warrants, as to when they were issued, and for what purpose, because, from his own testimony, it clearly shows that he is testifying from hearsay, and the same would be incompetent, irrelevant and immaterial.

Answer of witness to Direct Examination by E. E. McInnis, continued.

Because of the action of Council in 1901, in calling in the Dukes warrants of $7596.40, we were required to turn over and deliver up to the Treasurer of the Choctaw Nation, enough of the 1902 appropriation to cover the Dukes warrants. The first two warrants issued under the 1902 appropriation are for $6,083.30 and $1,513.10. When these two amounts are added together, they aggregate exactly the $7596.40 issued to us under the Dukes Administration. These warrants aggregating $7596.40, issued under the 1902 Act, were turned over to the Choctaw Treasurer, to take the place of the Dukes warrants, and upon them we received no money whatever.

Q. Mr. Cornish, I will ask you to state as briefly as you can, any matter which occurs to you, bearing on the general relations of your firm with the Choctaw and Chickasaw Nations?

A. The files now in possession of the Court of Claims upon call to the Department of Justice, heretofore identified as Files 56843, A. B. & C., are papers taken from our files, and filed with the Department of Justice, many years ago, in connection with matters there pending, and especially in connection with the suit

of the United States against Mansfield, McMurray & Cornish, to recover upon warrants aggregating something over $40,000.00. We contended in that suit, that these warrants were issued for regular and necessary expenses of the tribal government, and these papers were taken from our files, and filed in that connection. After the dismissal of that suit by the Department of Justice, these papers remained in the files of the Department of Justice. Those files to which I have referred, as well as all of the papers which have been preserved by me and filed in connection with my evidence, show the relations existing between the firm of Mansfield, McMurray & Cornish, and the various officials of the Government of the United States, throughout all of these years. These papers are letters and telegrams and other communications, showing that we were in almost constant touch with these officials, and acting in cooperation with them, and under their direction. We were frequently summoned to meet officials of the U. S. Government in conference in connection with all of these matters, were addressed in numerous instances, as the Attorneys for the Choctaw Nation; frequently spent money for the tribes, in connection with matters affecting the tribes, upon the demands of the officers of the Government, and in many instances, as shown by these files, we appeared as the Attorneys for the Commission to the Five Civilized Tribes, the U. S. Indian Inspector, the U. S. Indian Agent and members of the U. S. Police. As stated, in many instances, we appeared in court as the sole attorneys for these officials, in connection with litigation affecting the power and authority of the United States, and the rights and interests of the tribes. In many other instances, we appeared with the regular U. S. Attorneys, upon their request, and upon the request of the officials of the Interior Department.

Q. Mr. Cornish, there has been some talk in connection with this litigation, bearing on the services of your firm as General Attorneys for the Choctaw and Chickasaw Nations. I will ask you to state whether you ever acted for those Nations in the capacity of General Attorneys, handling all of their matters for a specified compensation?

A. No, we did not. The term, "General Attorneys" might have been used, and is probably being used now, for the reason we were the only attorneys which they had at the time, and they arranged for us to handle all matters that arose affecting their interests, wherein the services of attorneys were required. In our first arrangement with Governor Dukes in the Choctaw Nation, it was his idea, nad we agreed to that idea at the time, that we should represent the Choctaw Nation in all legal matters, for a stipulated amount each year, but as shown by the Act of the Choctaw Council in 1901, the Council disagreed with him, and definitely provided that we should not be allowed a stated amount per year for services, but that we should be paid compensation in the various matters that arose.

Q. Was there ever a time in connection with the Chickasaw

Nation, when you were under any contract or agreement to take care of all their legal matters for a stipulated, annual salary?

A. No, our plan or arangement in the Chickasaw Nation was, that when any matter arose requiring the services of attorneys, the governors would direct us to take necessary action and to make a reasonable charge for it.

Cross Examination by W. J. Turnbull.

Q. Mr. Cornish, state how many different contracts your firm had with the Choctaws and Chickasaws, giving those in which you represented both Nations, and those in which you represented the Nations separately, during the time your firm was acting as Attorneys, beginning with the first.

A. I know of no formal contracts, except the contract I made, I think, on July 20, 1899, in the Chickasaw Nation, relating to citizenship, and a contract made, I think, sometime in January, 1900, to represent the Choctaw Nation in citizenship matters. Both of these contracts definitely provided that we should represent the Choctaw and Chickasaw Nations in all citizenship matters other than except those claimants known as court claimants, who had been admitted by the U. S. Courts in the Indian Territory, and whose cases were afterwards tried by the Choctaw and Chickasaw citizenship court. I say these court claimant citizenship cases were not included in either of these contracts. With the exception of those two contracts, I am sure we never entered into any formal contracts with either one of the chief executives, except the contract which we later made covering court claimant citizenship cases. There was a formal contract in the Chickasaw Freedmen litigation. Now, I think the only formal contracts were the two citizenship contracts, the court claimant citizenship contract, which was a joint contract, and the contract covering the Chickasaw Freedmen litigation. I think that is correct.

Q. Did you have a contract for the sale of the coal property of the Nations?

A. We entered into a contract with the chief executives several years later, but that contract is not a part of this suit.

Q. What compensation were you to receive under that contract?

Objected to by plaintiff, as copy of contract ought to be best evidence.

A. I don't remember. That contract was made a great many years ago, and shortly after that time the firm was dissolved, and for a great many years, I paid very little attention to those matters, and I don't remember at this time.

Q. Do you know what fee your firm expected it was to receive in that matter?

A. No. I do not. I don't remember. That contract, as I remember, was for undertaking to bring about a sale of the coal and asphalt deposits of the Choctaw and Chickasaw Nations. The reason for making that contract was that the supplementary agree-

ment provided that the coal and asphalt deposits should be sold in two years. That agreement was made in 1902, and no action was ever taken by the government, to carry out its provision, and the Indians felt that they should take steps to bring about the sale of the coal and asphalt, as agreed by the government.

Q. Enumerate the other agreements or understandings which did not amount to what you term a formal contract, had between your firm and the two nations during this time?

A. That would be difficult, since there were dozens and scores, and I think I would be justified in saying, hundreds of suits and proceedings in every court in that part of the I. T. comprising the Choctaw and Chickasaw Nations, and various other matters. Without data before me, it would be impossible for me to enumerate all of these matters wherein we were directed to protect the interests of the Nations as their Attorneys. I can enumerate, if you wish it, a great many.

Q. What was the first one?

A. Well, now if you wish me to think the matter over, I can name a great many, and if you wish it, I will be glad to do so. It will be from memory, but by using the records which are in evidence, I would be able to refresh my memory, and refer to a great many cases.

Q. All right.

A. One of the first in the Chickasaw Nation, was the matter of *Watkins v. Potts.*

Q. Under what arrangement or understanding, did you act in that case?

A. Well, as I started to say, the case of *Watkins* v. *Potts* was pending in the United States Court for the Southern District of the Indian Territory at Ardmore. That involved a very vital question of the jurisdiction of the Chickasaw Probate Courts. We were directed by Governor Johnston, in that case, to attend to it as Attorneys for him and the Chickasaw Nation, which we did. Later, we charged a fee in that case, and were paid. The exact amount, I do not now remember. At that time, railroads were being built through the I. T. in almost every direction. The railroad companies refused to pay a reasonable compensation for lands occupied by such roads as right-of-ways, and for station grounds and side-tracks. There were possibly twenty of such proceedings. There were not that many railroads, but there were that many or more actual proceedings where we gave attention to these matters before the proper officials of the government of the United States and required them to pay a reasonable compensation for the land taken. I remember one of the earliest of such instances was the construction of the St. Louis, Oklahoma & Southern Railroad, which is now the Frisco Railroad running South through Ada and Madill in the Chickasaw Nation. That Company was represented by an attorney whose name I now remember as Atterbury. They declined to pay anything like reasonable compensation for such lands, and we met him in conference before the Legislature of the

Chickasaw Nation in 1900, as I now remember, and induced him to agree to pay for such lands at the rate of $90.00 per mile. That money was later paid into the Treasury of the Chickasaw Nation. I remember that a very important controversy arose over the laying out of the present town of Madill, in the Chickasaw Nation. We were appealed to by the United States Attorney, W. B. Johnson, to take steps to either prevent the laying out of this townsite, or to require the parties to pay a reasonable sum for such land. There is a letter in the files of the Department of Justice from W. B. Johnson, upon the subject. We gave it necessary attention for the Chickasaw Nation.

Q. You are enumerating some of the services performed. My particular question was, what was the first arrangement or understanding by which you subsequently rendered services?

A. We had no general arrangement or understanding except a general statement by the Governor of the Chickasaw Nation, that he wished us to hold ourselves in readiness to serve the Chickasaw Nation in such matters as might arise. We had also the same general understanding with the Principal Chief of the Choctaws, that we would be expected to respond upon his call, whenever matters arose, requiring the services of attorneys.

Q. About when this first arrangement made with the governor of the Chickasaws?

A. I am unable to fix the exact time, but think it was some time in the summer of 1899.

Q. Where was this arrangement entered into?

A. My recollection is that the first conversation on that subject was at our offices at South McAlester, Indian Territory.

Q. Do you remember when that was?

A. Not more exactly than I have stated. Sometime in the summer of 1899, as I now remember.

Q. Do you know whether there had been an Act of the Chickasaw Council, authorizing the government to make such an arrangement with you?

A. No, I don't know.

Q. Was there any writing of memoranda made of this agreement?

A. I don't think so. We felt, in a general way, that the Governor had authority to give directions, and we didn't question his authority.

Q. What was said as to the compensation which you were to receive for services?

A. Nothing, except that we should make a reasonable charge for our services, which we did as matters arose, and as we performed such services, accounts were presented and duly paid.

Q. Was there ever any limits placed on the amount that would be paid you for your services or expenses under that arrangements?

A. No, we felt that our reputations as attorneys were involved, and we had no thought but that the Governor had ample

authority to direct us, and we went ahead as we felt it our duty to do, not only acting under his instructions, but having in mind our reputation and standing as Attorneys.

Q. How often were you paid by the Chickasaws under that arrangement?

A. At no stated times. As we performed services, and such services were completed, we decided what would be a reasonable compensation, and presented accounts for services and expenses, and they were paid.

Q. Were your accounts ever acted upon by the Chickasaw Council, before they were paid?

A. I only know in a general way, that Governor Johnston submitted all of his matters to the Chickasaw Legislature. I don't think in every instance, that those accounts were presented to the legislature before being paid, as we understood in a general way, that the governor was directing these services to be performed, and directing these expenses to be incurred under his authority as Governor of the Chickasaw Nation, and that they would be paid out of his contingent fund, as a part of the necessary expenses of the tribal government.

Q. Did you present an account for fees and expenses in every matter which you handled for the Chickasaws, under that arrangement?

A. I am sure there were a great many minor matters, involving advice upon matters of smaller importance—the preparation of correspondence and other things, for which we never made a charge.

Q. Did you ever appear in Court in connection with cases for which no charge was ever made?

A. I think we usually charged a reasonable fee for cases cases which we handled for the Chickasaw and Choctaw Nations. It is barely possible that there are cases in which we made an appearance for which we never made a charge.

Q. I will ask you if it isn't a fact that you reported numerous cases to the Governor of the Chickasaws, where you had performed services, and for which no charge for services or expenses were ever made?

A. I don't remember any cases at this time. As stated above, we usually made a charge for legal services rendered.

Q. Did you make a report to the Governor, of your services?

A. Yes.

Q. How often?

A. We were in almost constant touch with him. I would say that from 1899 to the end of our services, we were with the Governor of the Chickasaw Nation at least once a week, that is, some memeber of our firm would be in personal touch with him as often as that.

Q. What I mean is, did you make a general report in writing, at any stated periods of what services you had performed?

A. We were in constant correspondence with him, reporting

in detail upon these matters as they progressed. Then we made a general report to him at the end of each year.

Q. When did you enter into the first arrangement with the Choctaws?

A. Green McCurtain was Principal Chief of the Choctaw Nation when our services began, and we handled a great many of these matters about which you are inquiring, for the Choctaw Nation, before he retired as Principal Chief in the fall of 1900.

As I now remember it, he commenced to call upon us for the performance of these services, early in 1900.

Q. What was the agreement between your firm and the Principal Chief of the Choctaws?

A. We had no understanding. except as I have detailed in the Chickasaw Nation. Governor McCurtain had confidence in us, and was apparently satisfied with our ability to handle these matters to his entire satisfaction, and we commenced to handle such matters as stated, early in 1900. Just where the first conversation occurred, and when, I do not remember. I call attention to the actual performance of these services from that time to the end of our service, as the best evidence of the fact that such an understanding had been reached.

Q. Did you handle any matters for the Choctaws, for which no charge was made?

A. We felt, in all of these matters, that our services were valuable, and that we should receive compensation, and I do not remember that we failed to make a reasonable charge for all legal services rendered.

Q. Under your arrangement with the Choctaws, were you paid so much, annually, or did you charge for the work which you did?

A. As stated above in answer to a previous question, Governor Dukes, after he came in as Principal Chief, felt that an annual arrangement should be made with us. He insisted upon this arrangement, and we agreed to it at the time, but that action by him was subsequently revoked by the Act of the Choctaw Council at its 1901 session.

Q. How much did you receive for your services prior to that time?

A. That involves a further discussion of what is known as the Dukes warrants. For the time covered by the Dukes warrants, we drew warrants at the rate of $2,500.00 per year, but those warrants were called in by the Choctaw Council, and it was definitely stated, in the Act calling in these warrants, that the action of Governor Dukes in making this annual arrangement was not satisfactory to the Council, and it was accordingly revoked.

Q. How much were you to receive under the annual arrangement?

A. Under the arrangement made with Governor Dukes, which the Choctaw Council afterwards revoked, we were to receive, as I now remember it, $2,500.00 per year, as Attorneys. That is my present recollection of the transaction.

Q. Anything for expenses?

A. Yes, I think we were authorized to incur whatever expenses were actually necessary, in the conduct of these matters.

Q. Was there any limit, on how much you should spend for expenses?

A. I don't think there was. I have a copy of the 1900 Act before me, and am not able to state, but the records show that the total amount received by us for legal services and expenses in the Dukes Administration, was about $7,500.00, and that covered a period from early in 1900 to the fall of 1901.

Q. I notice, from a report of the Burke Committee in vol. 2, page 1208, in your report to the Governor o the Chickasaws, that the various items of charges made for services, amounted to $5,500.00, and you only charge $5,000.00 for services performed during the year 1900. Will you explain why you were paid $5,000 instead of $5,500?

A. I am assuming that this document printed in this report is correct, and observe that we made a charge of $500.00 for services in *Roff* v. *Chickasaw Nation,* and $250.00 for services in *Watkins* v. *Potts,* to which I have previously referred, and $1,000 for services in some 5 or 6 tribal tax cases, and $500 in the townsite case of *Blosson* v. *Sterrett,* and $1,000 for some four cases pending in the United States Court, Central District of the Indian Territory, wherein the Dawes Commission was party defendant, and $750.00 for services in various matters involving the construction of railways, and $750.00 for various matters of detail. Whatever those amounts aggregate, the aggregate can be shown. If they aggregate $5,000.00, that is a coincidence to which I attach no importance. As a matter of fact, they appear to aggregate $5,250.00, and not $5,000.00.

O. Do you know why you were paid $5,000.00, instead of $5,250.00.

A. I do not know that we were paid $5,000.00. I have nothing before me to show what we were actually paid.

Q. Do you know why you charged $5,000 instead of $5250.00?

A. If the account shows the total to be $5,000.00, that total is $250.00 less than we were actually entitled to, as shown by this account, and the only way I can account for that is that it was an error against us in addition.

Q. Did that include pay for all the services you rendered the Chickasaws in 1900?

A. That account is for services rendered, as shown by the account, and if paid, was in payment for those services, and no other services. There were other services being rendered at that time, which were not completed, and for which a charge was not included in this account.

Q. Were all of those matters referred to there, completed at that time?

A. I think they were. I could not state definitely, at this time, but I think they were.

Q. Following, on page 1208 is a statement which shows how much the Chickasaws were due you for services from Jan. 1, 1901, to Jan. 1, 1902. Does that show what services you performed for the Chickasaws during that period of time?

A. I presume it does.

Q. Does that show all of the services which you rendered?

A. My recollection is that it shows the services which had been completed.

Q. How much does that statement show you were paid for services that year?

A. I don't understand this purported statement, and am not prepared to say now, that it is correct. Answering your question I will say that the aggregate of that statement appearing in the middle of page 1208, as the aggregate of those figures, whether they are correct or not,—is $7,500.00, if I make no mistake.

Q. Didn't you have an arrangement with the Governor of the Chickasaws, by which you were to spend not exceeding $2,500, under that arrangement for expenses?

A. We did not. Our arrangement was that we should incur all legal and necessary expenses in the conduct of these matters, and we were as economical as the interests of the Chickasaw Nation and the proper and orderly conduct of the litigation justified.

Q. I note in that connection that you make a charge of $1,000 for services in connection with the Supplementary Agreement. What work had been performed in connection with the Supplementary Agreement up to that time, that is, at the close of the year 1901?

A. That evidently has reference to the Supplementary Agreement made in February, 1901, referred to in my testimony on yesterday, as the 3rd Supplementary Agreement. This purported copy cannot be correct as to dates, because in the title it states definitely, that it is for legal services rendered in the year 1900, and is apparntly dated at McAlester, in 1902. Just how that error occurs, I cannot explain, but as above stated, this item in connection with the Supplementary Agreement evidently has reference to the 3rd Agreement, made in the spring of 1901.

Q. Isn't it a fact that the Supplementary Agreement was practically complete by January 1, 1902?

A. It is not.

Q. Isn't it a fact that it had been delayed principally by a failure of Congress to act on the matter previous to the time that it was finally ratified by Congress?

A. As stated in my testimony on yesterday, there were four efforts to make a Supplementary Agreement, and since the title of this alleged act shows that it was for legal services for the year 1900, I am sure it would not include anything done except within the year 1900. The Third and Fourth Supplementary Agreements were made after that time. I will state also that if we

applied mathematics to the proposition, that eighty per cent of the work involving all the supplementary agreements was done in connection with the Supplementary Agreement of 1902, which was subsequently ratified, and became the law.

Q. What year were you paid the $2500.00 for services in the incompetent matter?

A. That was in the year 1901. As I remember, because I know, our services in the incompetent matter were rendered principally in the summer of 1901; therefore, since this item occurs in the same account, it could apply only to matters attended to at that time, and within that year. I do state, whatever my recollection may be about other matters, that the incompetent matter was disposed of in the summer of 1901.

Q. I will ask you to read into the record, Exhibit "32" as reported on pp. 1207 and 1208 of Volume 2 of the Report of the Burke Investigating Committee?

A. Well, I decline to accept this document as authentic, because it bears errors of date upon its face, and if it will be of any accommodation to you to here insert it in the record, you may do so, since it appears on the pages named, in the book named.

Q. Do you object to reading it into the record?

A. I object to assuming any responsibility for what it shows, because it bears errors of date upon its face, as explained by me, but if you wish me to do so, I have no objection to its insertion in the record.

Witness reads:

"EXHIBIT 32.

Account of legal services rendered by Mansfield, McMurray and Cornish for Chickasaw Nation during year 1900.

South McAlester, Ind. T., May 31, 1902.

To Hon. Douglas H. Johnston,
Governor of the Chickasaw Nation:

The case of *A. B. Roff* v. *The Chickasaw Nation*, tried in the United States court at Ardmore, and appealed to the United States Court of Appeals for Indian Territory, at South McAlester, where the same is now pending, involving the question of the right of Chickasaw Nation in citizenship cases, $500.

The case of *Wadkins* v. *Potts, et al.*, tried in the United States Court at Ardmore, and appealed to the United States Court of Appeals for Indian Teritory, where the same is now pending, involving the jurisdiction of the courts of the United States to entertain probate of wills of Indian citizens, $250.

Various cases instituted and tried in the United States Court for the southern district of the Indian Territory, involving the validity of the tribal taxes of the Chickasaw Nation, and the power of the United States Courts to enforce the intercourse laws. These suits are as follows: *Randoll* v. *Love et al.*, *Wynne* v. *Miller*,

Chickasaw Cattle Men v. *Love et al., Bodivitx* v. *Ream, Ellis et al., Weiss* v. *Real, Ellis et al.,* $1000.

The case of *Blossom et al.* v. *Sterrett et al.,* tried in the United States Court at South McAlester, involving the jurisdiction of the Town Site Commissions for the Choctaw and Chicaksaw Nations to appraise and sell town-site property under the terms of the Atoka agreement, services chargeable to the Chickasaw Nation, $500.

The case of *Harris et al.* v. *The Dawes Commission, Benson et al.* v. *The Dawes Commission, Cundiff* v. *The Dawes Commission, Marshall et al.* v. *The Dawes Commission, and Carter* v. *The Dawes Commission,* involving the power of the courts of the United States to control the discretion vested in such commission by law, $1,000.

The matter of receiving adequate compensation for the right of way of the St. Louis, Oklahoma & Southern Railway, and other matters relative to right of way of the Arkansas & Choctaw Railway, Western Oklahoma Railway, Kiowa, Comanche & Fort Smith Railway, Gainesville, McAlester & St. Louis Railway, and additional station grounds for the Chicago, Rock Island & Pacific Railway, for services chargeable to the Chickasaw Nation, $750.

The matter of the power of the Government of the United States to control the schools of the Chickasaw Nation, and services rendered in connection with securing the disbursement of the Chickasaw coal and asphaltum royalties upon the school indebtedness of the Chickasaw Nation, $500.

Various matters of detail that have arisen from time to time, during the year 1900, requiring legal advice and assistance, $750.00.

The total amount due us as for such services as general counsel for the Chickasaw Nation for the year 1900 is $5,000.

Statement.

On regular and necessary expenses incurred by the Governor of the Chickasaw Nation, in the employment of Mansfield, McMurray & Cornish to represent the Chickasaw Nation in various matters that have arisen, from January 1, 1901, to January 1, 1902:

The case of *Johnston & Dukes* v. *McKenna & Page,* $500.

The case of *Johnston & Dukes* v. *Bounds et al.,* $1,000.

The case of *Johnston & Dukes* v. *Sterrett et al.,* and *Thompson* v. *Sterritt, et al.,* $500.

The case of *Thompson* v. *Morgan,* and other similar cases, $500.

The case of *Harness* v. *Ellis et al., Raines & Sharp* v. *Ellis et al., Sharp* v. *Ellis et al., Bowers* v. *Ellis et al., Hale* v. *Ellis et al., I. J. R. Clark* v. *Ellis et al., Ikard* v. *Ellis et al., Maxwell* v. *Ellis et al., Johnston* v. *Ellis et al., Weiss* v. *Ellis et al., Bodovitz* v. *Ellis et al., Davis et al.* v. *Love et al.,* and petition of Dorset Carter for Habeas Corpus, $1,000.

Services in connection with rights of way and additional station grounds of St. Louis, Oklahoma & Southern Railway, Gainesville, McAlester & Fort Smith Railway, Kiowa, Chickasaw & Fort Smith Railway, and the Fort Smith & Western Railway, $500.

Services in connection with supplementary agreement, $1,000.

Services in the matter of the claims of "incompetents" $2,500.

I, Douglas H. Johnston, governor of the Chickasaw Nation, hereby certify that the above is a true and correct statement of the regular and necessary expenses incurred by me, in the employment of Mansfield, McMurray & Cornish, to represent the Chickasaw Nation and protect its interests, in the various matters that have arisen from January 1, 1901, to January 1, 1902; and I hereby direct that the same be paid out of my contingent fund, as provided in the act of legislature of the Chickasaw Nation, passed and approved October 26, 1900.

....................,
Governor of Chickasaw Nation."

Q. I will ask you now to turn to page 1234 of the same volume, and call your attention to Exhibit 37, and ask you to read the same into the record?

A. I will state, in connection with this instrument, as stated in connection with the former one, that I have no means of knowing that it is correct, but have no objection to assisting you in the matter of its insertion in the record, since it already appears in a government publication.

At this time, plaintiff objects to the introduction of these instruments. for the reason that they are irrelevant, incompetent and immaterial, and are written hearsay.

By W. J. Turnbull: Does counsel contend that none of the matters contained in Volumes 1 and 2 of the Reports of the Burke Investigating Committee of the 61st Congress, Third Session, reports being No. 2273 is admissible in evidence?

By E. E. McInnis: Our objection goes to the Documents offered.

By Turnbull: Will you specify more particularly, your objection?

By McInnis: It is irrelevant, incompetent and hearsay. Hearsay is the gist of the objection.

By Turnbull: The reason I ask counsel the question is, that he has heretofore, in examining witnesses, offered contents of the same into the record, and assuming that the same were admissible, I am now making the same offer, and I insist upon knowing counsel's position as to whether the same are admissible for any purpose.

By McInnis: Counsel declines to make any answer to that, except an explanation of the objection made might be furnished. Our objection to the two instruments just offered does not go to their identification, and does not raise the question as to whether they are genuine copies of the instrument which they purport to be,

but our contention is, that we are not bound by any statement which Governor Moseley or any other third person might have made in writing, concerning our affairs.

By Turnbull:

Q. Mr. Cornish, you have heretofore testified that you have no interest in this suit, and I take it that you have no objection to reading such matters into the record, requested by counsel for the defendants. Assuming that to be correct, I ask you to read the matter into the record.

A. I have stated heretofore, that I have no financial interest in this litigation, but being a former member of the firm whose affairs are being questioned, I have that interest which may be easily understood, but notwithstanding that, as heretofore stated, I have no objection, in response to your question, to the inclusion of these alleged instruments in the record, as a part of my testimony, but I assume no responsibility for what they show, because I have no means of knowing that they are true and perfect copies of the originals.

Q. I am not requesting that you assume any responsibility, but merely requesting that you read the matter into the record. If you are now ready, you may proceed.

A. Exhibit 37, on page 1234 of the Burke Report reads as follows: (Witness reads)

"EXHIBIT 37.

Account of legal services rendered by Mansfield, McMurray & Cornish for Chickasaw Nation during year 1903.

Account of legal services rendered by Mansfield, McMurray & Cornish in protectnig the interests of the Chickasaw Nation in the various matters that have arisen from January 1, 1904, in pursuance of the act of the legislature of the Chickasaw Nation approved October 26, 1900, as follows:

In the case of Weimer, et al. vs. Zevely et al., and other cases pending in the United States Court for the central and southern districts of the Indian Territory involving the validity of the tribal tax laws of the nations, $1,000.

In the case of Leeper et al. vs. Harrison et al., Bokahoma Lumber Company vs. Harrison et al., Smart & Jackson vs. Harrison et al., Marcum Brothers vs. Shoenfelt et al., Safe Lumber Company vs. West et al., Wallender vs. West et al., and other cases pending in the United States court involving the right of the Secretary of the Interior to seize lumber and timber belonging to the nations and sell the same, $500.

In the cases of City of South McAlester vs. Choctaw and Chickasaw Nations, Incorporated Town of Spiro vs. Choctaw and Chickasaw Nations, involving the condemnation of lands for waterworks and the collection of the money awarded the nations therefor, $500.

In the case of the Arkansas and Choctaw Railway Company vs. Board of Referees regarding their right to proceed to fix the

compensation due the tribes for lands taken for right of way, $250.

In various proceedings before boards of referees appointed by the United States court for the central and southern districts of the Indian Territory to fix the compensation due the nations for lands taken for right of way, station grounds, additional station grounds, reservoirs, water stations, and pipe-line purposes by the following named railways: Kiowa, Chicasha & Fort Smith Railway Co., Eastern Oklahoma Railway Co., Chicago, Rock Island & Pacific Railway Co., St. Louis & San Francisco Railway Co., Western Oklahoma Railway Co., Missouri, Kansas & Texas Railway Co., Choctaw, Oklahoma & Gulf Railway Co., St. Louis, San Francisco & New Orleans Railway Co., Enid & Anadarko Railway Co., $750.

In counselling and advising the various officers of the Chickasaw Nation in matters that have arisen from time to time within the year in connection with the discharge of their duties, wherein legal advice and counsel was necessary, and in representing the nations generally, before the various departments of the Government of the United States, wherein representations and appearances by us on behalf of the Nations were necessary to adequately protect its interests, $2,000.

Total amount $5,000.

I, Palmer S. Moseley, governor of the Chickasaw Nation, hereby certify that the above and foregoing account of legal services rendered by Mansfield, McMurray & Cornish in protecting the interests of the Chickasaw Nation in the various matters that have arisen from January 1, 1903, to January 1, 1904, in pursuance of the act of the legislature of the Chickasaw Nation approved October 26, 1900, is hereby approved, and I hereby direct that the same be paid out of my consingent fund, as provided in said act; and the national auditor will draw his warrant therefor in their favor for said account.

Palmer S. Moseley,
Governor Chickasaw Nation."

A. I observe that that Exhibit makes reference to many cases about which I have a personal recollection. The first case is that of Weimer, et al. vs. Zevely, et al. That is a tribal tax case about which I have a personal recollection, and about which I testified on yesterday, involving the collection of tribal taxes in the Choctaw Nation.

Q. Did you collect anything for your services in the Weimer case?

A. My recollection is that we did.

Q. How much?

A. I have no personal recollection at this time, but if this instrument is correct, the amount which we charged was $1,000. This was probably the most bitterly contested tribal tax case that ever arose in the Choctaw and Chickasaw Nations, and was surrounded by the bitterest and most intense feeling on the part of

the white people who were called upon to pay the taxes. The defendants in that case were J. W. Zevely, who was a United States Indian Inspector, and J. Blair Shoenfelt, U. S. Indian Agent. We appeared in that case, and argued the case in open Court, and otherwise gave it necessary attention, upon their request.

Q. Counsel deems that this question has been answered, and desires to ask the witness other questions, and objects to his proceeding to make voluntary statements about matters not in reply to questions asked.

By E. E. McInnis: Proceed Mr. Cornish.

A. I also notice the cases of Leeper, et al. vs. Harrison, et al., and Bokahoma Lumber Co. vs. Allen, et al., Smart & Jackson vs. Allen, et al. The Harrison who was the defendant in those cases, was a member of the United States Indian Police force, and these cases were handled by us, upon the request of the U. S. Indian Agent. I also notice the case of Marcum Brothers vs. Shoenfelt, et al. The Shoenfelt who was the defendant in that case was the U. S. Indian Agent, and it was upon his request that we appeared in that case. I notice the case of Safe Lumber Company vs. West, et al. The "West" who was the defendant in that case was the Captain of the United States Indian Police force, and we appeared in those cases, upon the request of the U. S. Indian Agent. These cases arose out of the attempt of adventurers in the southeastern timber belt of the Choctaw Nation, to take timber and make it into lumber from the public domain of the Choctaw Nation without warrant of law. The lumber thus made was seized by the Indian Agent and the U. S. Indian Police force, and these suits resulted. This effort upon the part of these people, to violently seize the property of the Choctaw Nation, was a matter of the greatest public interest at the time, and was the occasion of a trip to the Indian Territory, by the Secretary of the Interior, Ethan A. Hitchcock, himself, who personally conferred with us about these cases, and about these efforts to violently take the property of the tribes.

Q. Then the matters set forth in Exhibit 37 are approximately correct?

A. Approximately correct, yes, sir.

Q. How much did you receive for your services, during that year?

A. If the instrument referred to is correct, the aggregate of that amount is $5,000.

Q. Do you have copies of the various reports which your firm made to the Governor of the Chickasaws as Attorneys?

A. Do you have reference to our annual reports?

Q. Yes?

A. Yes, we have those.

Q. Have you copies of accounts for services and expenses?

A. No, sir, we have not.

Q. Where are they?

A. The originals were filed with the tribal authorities at the time, and presumably were taken possession of by the officials of

the government of the United States, when all tribal records were turned over by the tribes, to the government. We kept carbon copies of these accounts at the time, but those copies were taken to Washington by Mr. McMurray, while the Choctaw civil suit, involving the legality of these warrants, was being considered and disposed of, and his statement to me is that they were turned over to the Department of Justice, in connection with that investigation.

Q. Do you know whether he has those copies at this time?

A. I do not think he has.

Q. Do you know about how much you received each year for services rendered the Chickasaws, under this arrangement about which you spoke, and under which you rendered these various services?

A. I could not state at this time, but the warrants and accounts filed will show.

Q. Could you give us an idea of about how much?

A. No, I would not attempt to speak from recollection on that point.

Q. In all of these instances, was it necessary that the Governor first call your attention to any matter needing attention, and request your services before you acted?

A. In some instances, emergency matters arose, and we gave them immediate attention. We thus reported to the Governor, and received his further instructions in regard to it. In most instances, we were able to confer with him before it was necessary to perform the services.

Q. Did you consider it a part of your duty to look after all the matters needing attention, whether requested or not?

A. We felt perfectly sure that we would be directed to take care of all legal matters that arose, and I wish to state that we were at all times, on guard, to protect the interests of the Choctaw and Chickasaw Nations.

Q. Was there ever any limitation in the Chickasaw Nation, on the amount you were to spend for expenses, or how much you were to be paid for the services during any year?

A. No, there was no limitation. The only direction was, that we should perform legal services, and make a reasonable charge therefor, and to incur all legal and necessary expenses in connection with those matters. I am assuming that your questions have no reference to citizenship matters. In citizenship cases, we were limited to an allowance of $2700.00 per year, un-under the citizenship contract heretofore referred to.

Q. What particular question was raised in the case of Weimer against Zevely?

A. Weimer, who was one of the most prominent merchants of the then city of South McAlester, I. T. had openly and notoriously refused to pay his merchandise tax, and defied the authorities. Upon request of the Principal Chief of the Choctaw Nation, his store on Choctaw Avenue was closed, and this proceeding resulted.

Q. What question of law was involved?

A. In the suit, the question of the authority of the Government of the United States to close his place of business, under the laws relating to trade and intercourse with Indian Tribes.

Q. Was that case ever appealed?

A. No. Judge Clayton granted a temporary writ of injunction, and that stood until the United States authorities took over the matter of the collection of tribal taxes, shortly thereafter.

Q. Judge Clayton was Judge of what court?

A. Of the U. S. Court for the Central District of the Indian Territory.

Q. Is that all the fees that you ever collected for services in the Weimer case?

A. I don't remember. I think we charged a reasonable fee for whatever services we rendered in that case.

Q. Did you charge a fee in any other tax cases?

A. In a great many others.

Q. About how much, aproximately, did you collect from the Chickasaws, for handling the tax cases?

A. I couldn't state from memory. There were a great many cases, and we charged fees in all cases which we handled.

Q. Were your expenses also paid in those matters?

A. They were.

Q. Mr. Cornish, I will ask you to state how many other outstanding claims there are now, against the Choctaws and Chickasaws, in favor of your firm, or in favor of Mr. McMurray, as assignee of your firm?

A. I have no interest in them, and know nothing about them.

Q. I mean services performed by your firm, and now held by Mr. McMurray as assignee of the firm, against the Choctaws and Chickasaws?

A. I have no means of knowing, and would not feel justified in discussing any claims that are not involved in this suit.

Q. If he has any claims against the Choctaws and Chickasaws, incurred while the firm was still doing business, you would know about them, would you not?

By E. E. McInnis: We object to any questions relating to claims which are not the subject of this litigation, as irrelevant, incompetent and immaterial.

A. I would not feel justified in discussing any of Mr. McMurray's business that is not involved in this suit.

Q. Why do you not feel justified in stating what the facts really are?

A. Well, I don't feel that I would have any authority at this time, to discuss them, because I have no means of knowing what his plans are, if any, for the future.

Q. I am not asking you to exercise any authority or to state what any of his plans are for the future, but merely asking that you state certain facts as to what other outstanding claims there

are; whether assigned to Mr. McMurray, or still retained by the individual members of the firm.

By McInnis: May our objections be considered as going to all these questions?

By Turnbull: Yes.

A. I can state and will state that a great many expenses were incurred by the firm of Mansfield, McMurray & Cornish, from the late fall of 1904 to 1907, which represent money actually expended in the conduct of various matters that arose between those dates, which are not included in this suit, and which, according to my view, should be included in this suit, but my understanding is that the data, showing the details of those expenses, have been lost, and are not available, some having been lost outright, and some having been used in connection with the Choctaw civil suit, which was afterwards dismissed by the Department of Justice. The exact amount of those expenses, I cannot state, but I do state positively, that considerable sums of money were spent by the firm of Mansfield, McMurray & Cornish, out of their own private means, in connection with various matters between those dates, which will probably never be covered.

Q. I believe you stated that your firm originally had an arrangement with Governor Dukes, by which you were to look after all Choctaw matters, for a specified amount, and that that arrangement was subsequently changed?

A. Yes.

Q. Under what arrangement did you act after the change was made?

A. We were simply directed by the Principal Chief of the Choctaw Nation, to give necessary attention to all legal matters, which we did. An examination of that act will show that that is the plan of instruction laid down by the Choctaw Council.

Q. From that time, did you proceed to act in accordance with the acts of the Choctaw Council?

A. We knew very little about that, except our knowledge of the existence of the act. We were under the directions of the Principal Chief of the Choctaw Nation, and acted according to his instructions.

Q. Isn't it a fact that you advised the Choctaw and Chickasaw Legislature frequently, about matters of legislation?

A. We advised wherever directed by the Governors to do so.

Q. And were you not familiar generally, at all times, with the proceedings and acts of the two Councils?

A. No, sir; we gave very little attention to the matters that did not concern our particular work. There was a large volume of business transacted by the legislative body, and the other departments of the Choctaw tribal governments, about which we had nothing to do, and about which we knew nothing.

Q. Under what authority of law was this first arrangement made with Governor Dukes?

A. I am not sure that we knew at the time. We probably

did. I am not sure of this. He disclosed to us that the services of attorneys were necessary, and we were perfectly willing to act under his direction and did not make any particular inquiry as to his authority.

Q. Do you know of any act of the Choctaw Legislature which authorized him to make this kind of an arrangement?

A. The act of the Council passed in 1901 makes reference to an Act of Council of 1900. I presume our first arrangement with Governor Dukes was under the 1900 Act, and we probably knew of it at the time.

Q. Is that the same act which was submitted to the President for his approval, and by him disapproved?

A. I only know that some of it appears in the face of the Act of 1901.

Q. Under what authority did the Governor of the Chickasaw Nation enter into the arrangement with your firm, by which the various services which you have enumerated, were rendered?

A. As stated hereofore, we made no particular inquiry into the matter of his authority. We knew he was the Governor of the tribes.

Q. Do you know of any act of the Chickasaw Legislature authorizing him to enter into such an arrangement?

A. I know of an act of the Legislature dated in October, 1900, which provides that the Governor of the Chickasaw Nation may take all steps necessary to protect the interests of the nation in the various matters that arise, and is authorized to incur all regular and necessary expenses to that end, and that his contingent fund is increased a sufficient amount to take care of those matters. I also remember that our accounts for services rendered and expense incurred outside of citizenship matters were required to be made up and filed under this act.

Q. Is that the act under which your firm acted?

A. Our firm acted at no time, under any special act of either legislative body in either one of the tribes. We were directed to perform these servics and incur these expenses by the legally constituted authorities of the Choctaw and Chickasaw Nations. We performed the services and spent the money, and filed our accounts with the proper authorities, and they were regularly passed upon and paid, and beyond the performing of the services, the expending of the money, and the matter of our reimbursement, we gave little concern.

Q. Did the Chickasaw Nation have a legally organized government at the time you were first employed?

A. It did.

Q. What different branches did it have?

A. Well, it had an executive branch, composed of the governor and various national officials; it had a legislative department composed of the two houses of the legislature, and it had a judicial department composed of various judges throughout the nation.

Q. Did it have its system of schools?

A. Yes, sir.

Q. Did it have a government similar to that of the different states?

A. Its government was patterned largely after the governments of surrounding states.

Q. Did it exercise exclusive jurisdiction over the members of the tribe and its property in the nation?

A. At that time, in 1899, under Acts of Congress, the United States had jurisdiction of Indian citizens in the matter of certain criminal offenses. With that and other exceptions, the tribal government had jurisdiction of its members.

Q. The exception which you have mentioned was in cases where a United States citizen, and a member of the Chickasaw Nation were interested, were they not?

A. I think so. I would not presume to speak with any degree of accuracy upon those matters, because I never practiced law along those lines, and am not very familiar with those laws.

Q. How long did this government continue?

A. Under the Atoka Agreement, which was ratified on June 28, 1898, and by a vote of the Choctaw and Chickasaw citizens on August 25, as I now remember, 1898, the tribal governments were extended for a period of eight years.

Q. Did the government actually exist for that period of time?

A. Yes.

Q. Were the expenses of the government and its various departments and branches of the Chickasaw Nation, paid out of Chickasaw funds?

A. Well, I don't know about that. About all I know, and about all we know is, that when we held warrants of the Chickasaw Nation, we usually got them paid by the Treasurer of the Chickasaw Nation. As to their other financial affairs, I don't know anything about them.

Q. Did the Choctaws have a regularly organized government?

A. Yes, similar to the Chickasaw Nation.

Q. With its different branches and schools?

A. About the same.

Q. How long did it continue?

A. The same act continued both governments for eight years from the Atoka Agreement.

Q. Did it actually exist for that period of time?

A. I think so.

Q. Do you know how the expenses of that government were paid?

A. Only in a general way. I think the affairs of both tribal governments were handled about in the same way.

Q. Mr. Cornish, give an estimate, as near as you can, of the amount of moneys received by your firm during this period of time for all purposes, from the Choctaw and Chickasaw Nations?

A. I have heretofore stated that our contract in court claimant citizenship cases was separate and apart from all other matters. That is probably what you wish to develop. The citizenship contracts which we originally made in the Choctaw and Chickasaw Nations especially excluded the court claimant citizenship cases, because they rested upon an entirely different basis. When we were first employed by the tribes, these claimants had already been admitted by the U. S. Courts, and were in possession of tribal lands of the value of more than twenty millions of dollars at the time. These lands are now easily worth one hundred million dollars. Shortly after we were employed in the Choctaw and Chickasaw Nations, the executives appealed to us to know what might be done in the matter of the court-claimants. We made investigations extending throughout the Indian Territory, Mississippi and many of the other southern states, and developed facts showing that these persons had been admitted upon affidavits and other evidence involving the grossest and most outrageous fraud and perjury. As a result of these facts, a provision was made for the re-trial of these cases, after several years of effort by the Choctaw and Chickasaw citizenship court. These cases were tried, beginning in the summer of 1902, and ending on December 31, 1904. We made a special contract covering those cases, under which we were to receive nine per centum of the property saved the tribes. It was provided in the act creating the Choctaw and Chickasaw citizenship court, that the court should fix our compensation after the completion of the work. When the work was completed, and practically all of these claimants had been denied, the court decided that we were entitled to a fee of $750.00. This fee was paid by the U. S. Government, through the Treasury Department. Under the act creating the citizenship court, it was provided that all expenses incurred in the trial of those cases should be paid by the U. S. Government, out of the funds of the tribes. Expenses were incurred by us in excess of $26,000.00, and those expense accounts are involved in this suit, and have never been paid. I make this statement to set out from all other matters, our connection with the court-claimant citizenship cases. As to the amounts received by us for services rendered and expenses incurred I am not able to state from memory, just what they aggregate, but the records will show.

Q. Give us your best estimate as to how much was paid your firm in addition to the $750,000.00 fee?

A. I would not be willing to make this statement from memory. Such of the records as are in existence are available, and will show better than I can state.

Q. Speaking of the citizenship court claimant cases, was that contract ever approved by the Secretary?

A. That contract was submitted to the Secretary of the Interior, but did not meet his approval, and Congress, in its wisdom, saw fit to vest authority in the Choctaw and Chickasaw citizenship court to fix our compensation in court claimant citizenship cases.

Q. To refresh your memory, I will ask you if the Secretary did not approve the contract for $250.00, which was not accepted by your firm?

A. I think it is true that the contracts were given conditional approval by the Secretary of the Interior, but on account of the magnitude of the service required, and the amount of property involved, we did feel that that amount would be adequate compensation.

Q. Which one of your firm usually looked after matters of legislation at Washington?

A. Mr. McMurray was in Washington very much of the time during which we represented the Choctaw and Chickasaw Nations, and gave more attention to those matters, than any other member of the firm. Frequently, Mr. Mansfield and I were called to Washington, and spent much time there.

Q. What part of the work did Mr. Mansfield usually look after?

A. Mr. Mansfield was an older man than I, and a more experienced lawyer in the actual trial of cases in court, and while we assisted him at all times, in these matters, he had more to do with the actual trial of suits in court, outside of citizenship matters, than any other member of the firm. I will state that in the trial of all citizenship cases before the Choctaw and Chickasaw citizenship court, I conducted the trial of every case, and they numbered something like 260, with the exeption of one or two. I do not mean to say that Mr. Mansfield and Mr. McMurray did not assist in these matters, but I had particular charge of all citizenship matters, and was present in court in the trial of all of these cases, with the exception of one or two.

Q. When the fee was fixed at $750,000.00 by the citizenship court, were the Choctaws and Chickasaws represented by other attorneys?

A. They sure were not. No other individual or firm appeared in the trial of these cases, except the firm of Mansfield, McMurray & Cornish.

Q. Where was the court sitting at that time?

A. The court sat at South McAlester, I. T., for the Choctaw Nation, and at Tishomingo, I. T. for the Chickasaw Nation, but it was a rule of court that all testimony should be taken orally, before a member of the court. It developed that in the former trial of these cases, they were disposed of upon affidavits and depositions, to the great damage of the Choctaws and Chickasaws, and the court, upon our motion, adopted a rule that no evidence would be received, except that taken either oral in open court, or before some member of the court. In pursuance of this rule, testimony was taken in every southern state, except possibly Maryland and Missouri. I should say that testimony was taken orally, before a member of the court, a member of our firm being present in not less than forty appointments in the State of Texas, twenty or thirty in the State of Arkansas, not less than forty in the State of

Mississippi, perhaps a dozen in the State of Louisiana, perhaps a dozen in the States of Alabama and Georgia; and perhaps six or eight places in North and South Carolina. Testimony was taken at several appointments in Kentucky, Virginia and West Virginia.

Q. Mr. Cornish, was your account for services in connection with the supplementary agreements and these other agreements about which you have testified, ever presented to the executives or the legislatures of the two nations, for payment?

A. No; you will understand that most of the matters or I may say, all of the matters involved in plaintiff's counter claim were held in abeyance until these vital matters, like citizenship cases before the Dawes Commission and the Secretary of the Interior and before the Choctaw and Chickasaw citizenship court were disposed of. We felt that the payment of those regular and necessary expenses, greatly taxed the resources of the tribes, and we were not unwilling to hold these matters in abeyance until those were disposed of. No warrants were drawn after the end of 1904, because we then became involved in a controversy with the Secretary of the Interior over other matters, which later resulted in the filing of the civil suit in the Choctaw Nation, involving the validity of these warrants.

Q. Did you hold any other matters of claims for fees and services in abeyance, for the same reason?

A. My statement has reference to the matters involved in this suit, and also to the large volume of expenses which were actually incurred from 1904 to 1907, in connection with which the data has been lost and destroyed, and which will probably never be recovered.

Q. You have testified that at the time you were rendering services in connection with the tax matters, it was understood by the officials of the Department of the Interior, and the various tribal officers, that you would be paid; or something in substance to that effect?

A. I have stated nothing that could be construed into a statement that we had an understanding with the officials of the Government of the United States, as to our compensation. We did operate in co-operation with them, and under their direction, and they were advised at all times, of the extent of our services, and of the benefits to the tribes, but we knew enough of the manner in which the business of the United States Government is conducted, to know that its officials would not undertake to assume any responsibility in that regard. They gladly and constantly availed themselves of our services, leaving the matter of the payment of compensation and expenses to the tribes. They did know at all times, that these expenses were being paid by the tribes, and they also knew of the services for which we were paid by the tribes.

Q. Didn't you testify in substance, that it was understood, by your firm, the government and tribal officials, that your firm would be compensated for your services in the tax matters?

A. I haven't made any statement that justifies that question. I have never made any statement to that effect, that bound or sought to bind any officials of the Government of the United States in this matter, and am unable to understand how such a question could be framed, when we understand what has been said by me in this record.

Q. Well, was it understood by any officials of the Department of the Interior, that your firm would be paid for services in the tax matter?

A. I am unable to state what view they took in this matter. I only know that they gladly and constantly availed themselves of our services in actual suits in which they themselves were defendants, and knew that we were spending money and rendering services, and that the tribal officials were paying for the same.

Q. Did you ever advise any of the officers of the department, as to your relation with the Choctaw or Chickasaw Nations in the tax matter?

A. The government's officials were fully advised of the fact that we were representing the Choctaw and Chickasaw Nations in these matters, as will be shown by voluminous claims appearing in the records already introduced.

Q. Were they ever advised of the nature of your contract?

A. We had no formal contract.

Q. I believe you have testified that you were requested or directed to render certain services, by the officers of the Department at Muskogee?

A. Yes, sir.

Q. Under what authority of law did these officials direct you to perform these services?

A. I do not know. I only knew that they called upon us in many cases where they themselves were defendants, and we responded to their request and represented them. I have before me, the record heretofore introduced, which is 56843A, filed in the Court of Claims on October 30, 1919, and which refers to a few cases wherein the Commission to the Five Civilized Tribes was the defendant.

By Turnbull: Counsel for defendants have not asked the witness to testify relative to any particular matters rendered at the suggestion of any officials of the department, and object to his volunteering any testimony relative to the same.

A. (continuing) The case of *Nancy Marshall* v. *Dawes, Bixby, McKennan and Needles, Commissioners to the Five Civilized Tribes,* was filed in the U. S. Court for the Central District of the Indian Territory. The original petition is document No. 14, of the file above referred to.

The next sheet, not numbered, is a demurrer which we filed on behalf of the commission. There was also the case of *Benson* v. *The Commission,* filed about the same time.

Document No. 24 is a demurrer which we filed on behalf of

the commission. The case of *Harris* v. *The Commission* was filed about the same time.

Document No. 27 of the same file is a demurrer which we filed on behalf of the comimssion.

Document No. 28 is an amended demurrer filed in the same case by us.

Document No. 29 is a second amended demurrer which we filed for the Commission to the Five Civilized Tribes, as its attorneys. There are many other cases where we appeared as the attorneys for the other officials of the Government of the United States, as heretofore stated.

Q. Have you ever made any claim against the Government of the United States, for these services rendered at the request of the officials of the department?

A. No, we have not.

Q. In each instance, would you first advise with the executives of the two nations, and receive their instructions, before you proceeded?

A. I am sure we did, for we were in constant touch with them.

Q. Mr. Cornish, during these times, did the tribes have any other representatives who were active and assisting in the various matters involved in this suit?

A. They had no other attorneys.

Q. Did they have any representatives of any nature?

A. Early in our administration of these affairs, the Choctaws and Chickasaws had citizenship commissions. Just how long they served, I do not know. It was expected of us that we would give all necessary attention to citizenship matters, and while we conferred with these commissions and received some assistance from them in the way of information, the names, residences of witnesses, and to that extent we used them.

Q. Mr. Cornish, can you give an estimate of the number of applications pending for enrollment before the Dawes Commission, at the time you were first employed?

A. You know perhaps, as well as I, the number of citizens in the Choctaw Nation, and the number of citizens in the Chickasaw Nation. The citizenship of the Choctaw Nation is small, between 20,000 and 25,000, and the citizenship of the Chickasaw Nation is slightly in excess of 5,000. The applications of all of these persons were pending for enrollment, since the commission was engaged in making up the Final Rolls.

Q. Do you know how many were stricken, or refused enrollment by the Dawes Commission, after your employment?

A. No, I could not give you a very correct estimate of the number of cases which we contested, but I will only state, in a general way, that after we secured the Bonaparte Opinion, and after it was applied to the records of the Government and the Rolls made in accordance with it and preceding opinions, we felt that the Rolls were fairly accurate, and that few persons were

placed upon the Rolls who were not entitled, and that practically all who were not entitled to enrollment, were not.

Q. Could you give us in figures, about how many were refused enrollment?

A. No, I could not. To give some idea of the number and extent of contested enrollment cases, I remember that at one open hearing before the Commission to the Five Civilized Tribes at Atoka, in the spring of 1900, we had summoned and used as witnesses in excess of 200 witnesses at one appointment.

Q. Under what contract of employment did your firm handle the Mississippi Choctaw cases?

A. We considered that those cases came within our regular citizenship employment.

Q. How many applications for enrollment did that matter involve?

A. It would probably surprise you to know that under the authority granted, the Commission to the Five Civilized Tribes to identify Mississippi Choctaws, more than 20,000 applications were filed by persons having no right to enrollment, and that more than ninety per centum of these applications were made by persons who either then resided in the surrounding states, or who had only very lately removed to the Indian Territory. Practically all of these applicants were denied enrollment.

Q. Under what contract or arrangement did you act in that matter?

A. That being an act of citizenship, we considered that would be included in our regular citizenship employment.

Q. How many were denied enrollment?

A. Practically all of them. Those who were really identified as Mississippi Choctaws, were those full blood Indians who remained in Mississippi, and did not remove to the Indian Territory until arrangements were made in the years 1902 and 1903. Those persons were identified as Mississippi Choctaws, and were entitled to identification. Under the law granting the Commissioner authority to identify Mississippi Choctaws, these others to whom I have referred, filed their application.

Q. What period did those matters cover?

A. That extended from 1899 until the Rolls were finally completed.

Q. Were those matters constantly before the Commission?

A. They were, but the application of this large number of persons possessed so little merit, that they gave us no particular concern, and their denial was made by the Commission without very much effort upon our part.

Q. Have any of those who were denied enrollment, been enrolled since then?

A. I am not able to say. I have not been in close touch with these matters for more than ten years.

Q. Have any of the persons who were stricken or refused, by the Bonaparte Opinion, since enrolled?

A. I am not advised upon this point, but I am inclined to think that some of them have been enrolled.

Q. Do you know about how many?

A. No, sir, I do not. I will say that many of these persons who may have been enrolled, have been enrolled since our connection with the Choctaw and Chickasaw citizenship matters ended. None were ever enrolled while we represented the Nations in these matters.

Re-Direct Examination by E. E. McInnis.

Q. Mr. Cornish, certain questions were asked you about the relation of your firm to the Tribes, in connection with the matter of tribal schools. I will ask you to state what were the activities of your firm, if any, in connection with the system of schools of the two Nations?

Defendants and Attorney General object to the question, because that matter was not asked about in the examination, and the same is not competent, relevant or material to any of the issues.

A. In 1900 a controversy arose between Governor Johnston of the Chickasaw Nation, and the Secretary of the Interior, in regard to the administration of the affairs of the schools of the Chickasaw Nation. The Secretary of the Interior contended that he should have some authority in the matter of examining teachers, and otherwise administering the affairs of the school. That controversy continued through 1900, and up until the spring of 1901, and in April, 1901, I went with Governor Johnston to Washington, to confer with the Secretary of the Interior upon this subject. These conferences were held in the office of the Honorable Thomas Ryan, Assistant Secretary of the Interior, and extended throughout several days. Honorable John D. Benedict was then Superintendent of Schools for the Indian Territory. He was also present at these conferences, having been engaged in the controversy with Governor Johnston. That conference resulted in the drafting of rules and regulations for the Government of the Chickasaw Schools, and is dated April 11, 1901, signed by E. A. Hitchcock, Secretary of the Interior and D. H. Johnston, Governor of the Chickasaw Nation, and is Document No. 22 of the Department of Justice Files 56843 A.

Document No. 21 of the same file, is a rough draft in my own handwriting, upon which those regulations were based. As stated, I made this trip to Washington, and sat with Governor Johnston and Mr. Benedict and the Secretary of the Interior in these conferences, which resulted in the regulations referred to.

The same controversy existed in the Choctaw Nation, and upon our return home, we had considerable correspondence with Mr. Benedict, the Sup't of Schools, and a conference was arranged at South McAlester, at our office, and the result of this conference was the adoption of the same plan in the Choctaw Nation, for the administration of Choctaw Schools.

Document No. 1 of that file, is the rough draft of a personal letter from me to the Secretary of the Interior, suggesting that the same plan agreed upon at our conference at Washington, be made effective in the Choctaw Nation, and suggesting that the matter be placed in the hands of his representative in the Indian Territory.

Document No. 2 of the same files a letter from Honorable Thomas Ryan, Acting Secretary of the Interior, to me, acknowledging receipt of my letter, and stating that the Department has no objection to Superintendent Benedict's meeting the Governor of the Choctaw Nation, for the purposes stated. This correspondence is personal between me and Mr. Ryan, because of the fact that I sat for days in the conference at Washington, and became well acquainted with him, and we both realized that it was for the best interests of the Choctaw and Chickasaw Nations on the one hand, and the Government on the other hand, to reach this agreement as to the friendly control of the tribal schools.

Q. About what was the date of that session in Washington?

A. The Chickasaw matter was arranged on April 11, 1901, this correspondence shows, after my return home, and the Secretary's letter is dated May 22, 1901.

Document No. 3 is a letter from Sup't Benedict to me, agreeing to meet the Governor on June 15, 1901, at our offices at McAlester, for a conference regarding Choctaw Schools. This conference resulted in the adoption of regulations similar to those adopted for the Government of the Chickasaw Schools.

Q. Mr. Cornish, how often did your firm render statements of account to the Choctaw Nation and the Chickasaw Nation?

A. I think in the Choctaw Nation, our accounts were usually rendered once a year; in the Chickasaw Nation, I think they were rendered oftener.

Q. Would those accounts be paid as rendered?

A. Warrants would be issued upon the approval of the accounts by the Chief Executive. If there was money available, the warrants were paid. If not, they were held until the money was available.

Q. Were those accounts paid immediately, or, did they await any action on the part of the legislative bodies?

A. In the Choctaw Nation, the accounts were usually submitted to the Governor, and by the Governor submitted to the legislative body, and were examined by that body. If found correct, and it met their approval, they usually passed an Act authorizing the Governor to pay these, as regular and necessary expenses, out of his contingent funds and increased his contingent fund a sufficient amount for that purpose.

Q. How was the matter handled in the Chickasaw Nation in this regard?

A. There was a general Act in the Chickasaw Nation, authorizing the Governor to incur such expenses as were necessary,

to protect the interests of the Nation, and we were required to file our accounts under that Act.

Q. What was your custom as to the time when you would file accounts for moneys disbursed by you as expenses, in the Chickasaw Nation?

A. There was no stated time for the filing of these accounts. We carried them along, until the burden got pretty heavy, and we needed the money which we had previously paid, and then made up the accounts and filed them.

Q. Did your accounts as filed, undertake to include all the expenses incurred up to the date of filing?

A. Usually so I think; that was our purpose.

Q. State the facts in that regard, as to expense accounts against the Choctaw Nation?

A. Yes; that is true as to the Choctaw Nation.

Q. From your knowledge of the way those matters were handled, I will ask you to state—suppose that an item of expense were incurred on April 5, 1902, for railroad fare expended by you on business for the Choctaw Nation, and that your first expense account after that time, was rendered in September, 1902, would that item ordinarily in the regular course of your business, be included in that expense account?

A. Yes.

Q. Do you remember of any instances, where matters of expense relating to the conduct of various general matters of the tribe, were omitted from the next succeeding expense account, and included in a later sum?

A. I don't remember any such instance. There may have been.

Q. What was the rule?

A. Yes, the rule was to so include it, and that an account filed included all expenses incurred prior to that time.

Q. Mr. Cornish, you have testified here as to the feeling in the Indian Country, adverse to the collection of these tribal taxes. I will ask you to state if there is any incident that suggests itself to you in connection with the Weimer case to illustrate what was the feeling?

Objected to by defendant, as incompetent, irrelevant and immaterial.

A. It would be difficult to make a statement accurately, setting forth the intensity of the feeling on the part of the white people against the Indian officials, in the matter of collecting tribal taxes. As stated, the Weimer case was one of the most important suits growing out of this matter. The Court House was filled to suffocation, by those opposed to payment of tribal taxes. The Judge sympathized with their views, as shown by his granting the temporary injunction. Every statement of the Judge adverse to the Indians and the Government was wildly applauded by the spectators. Judge Stuart represented Weimer, and his statements were

greeted with outbursts of applause. So great was the rejoicing, because of the granting of the injunction, and so great was the obligation of those opposed to the tax, to Judge Stuart, that after the case was disposed of at this hearing, a fund was raised by popular subscription, and a silver plate purchased. This plate was properly inscribed with the title of the case, and the date, and inserted in Judge Stuart's desk, where it no doubt remains to this day. We, the firm of Mansfield, McMurray & Cornish, representing the Indians in that litigation, were not so popular, and received no such recognition for our services. The question was asked me about the future progress of this case. My work was almost entirely in connection with citizenship matters, and this case was specially handled by Mr. Mansfield of the firm. It was appealed to the higher courts, as I now remember, and later reversed, and the power and authority of the Indians to collect the tax, and the power and authority of the officers of the Government to close the places of business of those who refused to pay the tax, was upheld.

Q. Did you communicate this result to any officers of the Interior Department?

A. Yes, a comprehensive report of this hearing, and the disposition of this suit was reported by our firm to the Secretary of the Interior, and a carbon of that letter has heretofore been offered by me in evidence.

Q. In the files of the Department of Justice transmitted in this case, there are contained certain instruments, instructing you to perform certain services in connection with townsite matters, and particularly in connection with the matter involving an assault committed on one Shepherd, I will ask that you recite as briefly as possible, the connection and activities of your firm in connection with townsite matters and the Shepherd matter.

Defendant objects to same as incompetent, irrelevant and immaterial.

A. Next to tribal taxes more feeling and bitterness arose out of the appraisal of townsites. The white people were in possession of town lots, and the Atoka Agreement provided that they should be appraised under the direction of the Secretary of the Interior, and paid for. To these appraisers, the white people made strenuous and bitter objection. We represented the Choctaw and Chickasaw Nations in many matters growing out of the appraisement of townsites, and I remember one incident with especial force. The town lots of the town of Hartshorne, Choctaw Nation, Indian Territory had been appraised by the Townsite Commission, of which Charles O. Shepherd was the Chairman and the representative of the U. S. Government. The people of Hartshorne protested against this appraisement, and went so far as to threaten the life of the Chairman of the Commission. On one occasion, while in Hartshorne, he was decoyed into an alley and brutally assaulted and beaten. Immediately after his arrival at McAlester, his wife telephoned our office, and I was the only member of the firm present. I went at

once to the hotel to which he had been brought, and he was bruised and beaten and bleeding, and in a sad plight. He appealed to us to give him protection. The whole matter was reported to Muskogee, and to the Secretary of the Interior. Later investigation developed that the actual assault had been made by one Ungles, but that it had been planned by other citizens of Hartshorne. Ungles was arrested and prosecuted by us, upon orders from the Solicitor General of the United States. He was convicted, and served a sentence in the United States Jail at McAlester.

Q. Mr. Cornish, I hand you a package of papers, marked for identification, "Plaintiff's File P," and ask you what those papers are?

A. That is a file of correspondence, in which we reported to the Secretary of the Interior, general conditions existing in the Choctaw and Chickasaw Nations.

Q. Are those the original copies of your letters retained by your firm?

A. These are carbon copies of original letters which were sent at the time.

Q. Where are the originals?

A. The originals were sent to the various officials to whom they were addressed.

Plaintiff offers in evidence, "Plaintiff's File P," to which defendants and Attorney General object, for the reason that the same is incompetent, irrelevant and immaterial.

A. (continued) Document No. 1 is a letter from the firm to the Solicitor General of the United States, reporting upon various matters handled by us for the tribes, and general conditions in the Choctaw and Chickasaw Nations.

Document No. 2 is a carbon copy of a letter written by our firm to the Secretary of the Interior, along the same line.

Document No. 3 is a carbon copy of a letter written by our firm to the Solicitor General of the United States, reporting upon conditions in the Choctaw and Chickasaw Nations, and the feeling existing against the tribes and the officials of the Government of the United States.

Documents Nos. 4 and 5 bear upon the same subjects.

Further referring to the connection of our firm with townsite matters, and the prosecution of Ungles for the assault upon Charles O. Shepherd, U. S. Townsite Commissioner, I refer to Document No. 10 of the Department of Justice File 56843. That is a copy of a letter from E. A. Hitchcock, Secretary of the Interior to the Attorney General of the United States, dated October 6, 1904, and reads as follows:

Defendants object to witness reading any of the language contained in the letter, for the reason that the same is incompetent, irrelevant and immaterial.

Witness reads: "Department of the Interior, Washington, Oct. 6, 1904. I. T. D. 8638-1904. Honorable Attorney General,

Department of Justice. Sir: Referring to a communication dated September 30, 1904, addressed to you by this Department, relative to an assault upon Charles O. Shepherd, Chairman of the Townsite Commission for the Choctaw Nation, I would state that this Department has information that in the towns of Hugo and Hartshorne, Indian Territory, the officials of the Government under this Department have recently been prevented from the performance of their lawful duties, by violence. The Townsite Commission, Charles O. Shepherd, Chairman, while engaged in the sale of town lots in the town of Hugo, Indian Territory, as required by law, was forced to discontinue the sale by a mob, led by the Mayor of the town, who intimidated would-be purchasers from bidding, and pursued the Chairman of said Townsite Commission from the place of sale, along the street, to his rooms, with threats of personal violence. Subsequently the Chairman of this Townsite Commission, Mr. Shepherd, while in the discharge of his official duty in the town of Hartshorne, Indian Territory was, because of his official acts, which seem to have been lawful and proper in every respect, brutally assaulted by a ruffian, pursuant to a conspiracy of leading citizens of the town, from which Mr. Shepherd sustained serious injuries.

Mr. George A. Mansfield, who for several years has been continously employed as Attorney for the Choctaw Nation, is familiar with the facts and circumstances relative to these offenses, in view of which, and because of his well-known ability as a lawyer, it is respectfully suggested that he be commissioned by your Department as a Special Attorney, to assist in the prosecution of these offenders.

I should also request that the United States Marshal for that District be instructed to furnish the Townsite Commission such protection as may be needed to enable it to complete its official work in the said towns of Hugo and Hartshorne." Signed "Respectfully, E. A. Hitchcock, Secretary."

Under that appointment, Mr. Mansfield conducted the prosecution for our firm on behalf of the Choctaws and Chickasaws, and the assailant was convicted, and served a term in jail.

Re-Cross Examination by W. J. Turnbull.

Q. Were you paid a fee for the services in the school matter about which you testified?

A. I don't think we were.

Q. Did you ever present a claim for a fee?

A. No, sir, I don't think we ever did.

Q. Under what arrangement did you render those services?

A. I went to Washington, and performed the services under the direction, and upon the request of Governor Johnston.

Q. Does your firm of Mr. McMurray propose to present those claims for payment?

A. I don't know what Mr. McMurray's purpose is. I have no such purpose.

By Mr. E. E. McInnis.

Q. You have no interest in the claim, if there is one?

A. I have no interest in it.

MR. J. F. McMURRAY, recalled, testified as follows:

Mr. J. F. McMurray Recalled by W. J. Turnbull.

Q. Mr. McMurray, you have testified, during the examination in chief, that all of these matters set up in your supplemental petition grew out of matters in which you were paid moneys as expenses or fees, and evidenced by certain of the warrants set up in the counter claims. I will ask you to state whether you have examined the original warrants sued on in the counter claim?

A. No, I haven't seen the warrants.

Q. Have you ever examined the warrant stubs?

A. I have not.

Q. Do you know of your own knowledge, whether any of those warrants include moneys that were paid you in these various matters about which you have testified and included in your supplemental petition?

A. I examined carefully, the counter-claim of the defendants, and the different amounts set up, both of the Choctaw Nation and the Chickasaw Nation. I know what time the services were performed, when those services were reported to the nations, and that they were included in the Expense Accounts at the next presentation of the expense accounts to the particular nation. Those different items were paid and included in the warrants that had been sued upon by the defendants.

Q. Are you able to state, at this time, of your own independent knowledge, without refreshing your memory from any instruments of any nature whatever, that any one of the items sued upon in the counter-claim includes moneys that were paid you in any one of the matters set up in your supplemental petition?

A. No; without referring to your counter-claim, and the warrants that you set up, I can't determine that, but by referring to your counter-claim, and covering that with my knowledge of the expenses when they were incurred, in the different items, I am able to know that they include the expenses in the different items which I have detailed.

Q. Do you know, at this time, the date, amount or series number of any of the warrants sued upon?

A. No, I do not, but to illustrate, for instance, here is a bunch of Choctaw warrants set up by you, in the sum of $16078.43. I know that the payment of that amount was provided for under the Act of December 19, 1902, I know this of my own knowledge. I remember it very well. I know that there were included in those warrants, expenses in the tribal tax cases. I went through your counter-claim carefully, and selected these amounts, and determined that each of the items included in the bill had payments in

the different items. Our first purpose was to include the services in the general tax litigation, resulting in what is known as the Geo. W. Choat case, but we were deprived of jurisdiction, because there were no expenses in your counter-claim that were incurred in this particular.

Q. Did you find any items of money in the counter-claim which you did not receive?

A. It is difficult to determine that question. I remember very well the various and sundry items, from the dates, and some of them from the amounts. The amount of $16,078.43 directly represents the warrants that we received, as shown by the Act of the Choctaw Legislature, but it is difficult to determine the exact amounts of the other warrants.

Q. In other words, all that you are now able to state is, that you were paid certain moneys along about the same time that it is alleged in the counter-claim that you received certain moneys, and you merely assume that the warrants sued upon are the ones by which you collected the money in the various matters set up in your supplemental petition?

A. No; I know definitely, when these different matters were up, both in the Choctaw and Chickasaw Nation for consideration, and for action, and when the money was spent in connection with the same. I also know when I was in Washington, in connection with these matters, and when I spent money connected therewith. I know that these expense accounts were made immediately after the expenses were incurred, and turned in to the expense accounts that were presented to the nation at the next time designated by them for the consideration of our expense accounts, and that these expense accounts were included in the accounts by them, and that warrants were issued for those amounts. You have a list of warrants that you say is a correct list, as coming from the Department of the Interior. You also have, or should have the expense accounts that we filed with the two nations, somewhere in the papers of the Interior Department or the Department of Justice. These accounts will show you that I am correct in my statement about these items being included in the warrants, as I have indicated.

Q. But if you have not examined these original warrants, you do not know, of your own knowledge, what particular warrants are sued upon in the counter-claim; that is, for what particular expense or service they were issued? I am asking you now, about your own knowledge.

A. Mr. Turnbull, our service for the Choctaw and Chickasaw Nations was such that it would be impossible for us to forget the service and the time. Take, for instance, the services in the Chickasaw Nation, and the expenses in connection with the tribal tax matters. We know when that work took place, in 1900, in 1901, in 1902, and can take your counter-claim, and know that those items are included in warrants that you have here. Take the expenses in connection with the treaty, for instance. I know that I left home the first day of January, 1902, for Washington;

that I was there constantly, from that time, until July 10, 1902, except the time that it took me to make two or three trips to St. Louis, to meet Mr. Mansfield and Mr. Cornish, to confer in reference to the details of the supplementary agreement then pending before Congress. I know that at that time I spent money, a great deal of money; that that money was turned in on the expense accounts that were rendered to the nations in the fall of 1902, and that those expenses are included in the warrants that were issued to us in the fall of 1902, under the Act of December 19, 1902.

By Mr. Turnbull: In view of the witness' testimony, which clearly demonstrates that he has no personal knowledge whatever, as to whether any of the warrants sued upon in the counter-claim, were given his firm in payment of any services or expenses in connection with matters set up in his supplemental petition, the defendants and the Attorney General object to any and all of his testimony relative to having received payment in those matters set up in his supplemental petition, for the reason that the testimony is incompetent, irelevant and immaterial, and is based entirely upon hearsay; and also move the court to strike from the record the testimony of the witness, McMurray, and the witness, Cornish, for the reasons heretofore stated.

Cross Examination by E. E. McInnis.

Q. Mr. McMurray, you stated a moment ago, to the Choctaw National Attorney, that he has a list of the warrants sued on in this case. Do you mean that he has it at this time?

A. He did have it.

By W. J. Turnbull: Counsel states that the Choctaw National Attorney now has with him, a list of the Choctaw and Chickasaw warrants sued upon in the counter-claim, which shows the number, date and amount of each warrant, and agrees that the same may be offered in evidence and used for the purposes of this hearing, upon condition that petitioner agrees that the same were received by the firm of Mansfield, McMurray & Cornish, and the same were paid to them by the Choctaw and Chickasaw Nations out of tribal funds, but does not agree that the same may be used for any purpose, unless it is first agreed that the firm was paid the amounts stated.

Re-Cross Examination by McInnis continued.

Q. Mr. McMurray, I call your attention to page 1321 of the Burke Report, the matter there headed "General Contingent from April 24, 1901 to August 1, 1901" a copy of expense account as shown by the government print. I will ask you to state whether that expense account contains any items relating to tax matters?

A. Yes, sir.

Q. I will ask you to state whether that expense account contains any items relating to the Supplementary Treaty?

A. It does.

Counsel for defendants object to the witness' testimony rela-

tive to these matters, until it is first shown that these expense accounts are related with the items sued upon in the counter-claim. There has been no connection. The same has not been shown to be material, and it is incompetent and irrelevant.

Q. I will ask you to state whether this expense account contains any item relating to the incompetent matter?

By Turnbull: Let the objection be made general to any and all expense items, which may be asked of the witness at this time.

By McInnis: It is agreed.

A. Yes, sir.

Q. What is the total of that expense account?

A. $1637.80.

Q. Does it bear any memoranda as to the number of warrants issued in payment of it?

A. Yes, sir; warrant No. 875 for $500.00; warrant No. 876 for $1137.80.

Q. I ask you to refer to page 1241 of Volume 2 of the Burke Report, and state whether you find any mention of warrants No. 875 for $500.00, and warrant No. 876, for $1137.80?

A. Here is warrant 875, December 1901, for $500.00; warrant 876, for $1137.80.

Q. I call your attention to page 1324 and 1325 of the Burke Report, the expense account, aggregating $1206.45, and ask you whether this expense account contains any item relating to the Supplementary Treaty?

Counsel for defendants object to witness reciting into the record hearsay testimony from certain reports contained in the Report of the Burke Committee, because the same is hearsay, incompetent, irrelevant and immaterial.

A. Yes, sir; it includes the Supplementary Treaty.

Q. Does it include any item relating to the incompetent matter?

A. Yes, sir.

Q. Does that expense account bear any memoranda of warrant number by which it was paid?

A. Yes, sir; warrant No. 554.

Q. Refer to page 1241 of the same report, and state whether the same warrant is mentioned?

A. Yes, sir; it is; warrant No. 554, June 4, 1901, $1206.45.

Q. I ask you to refer to page 1323 of Volume 2 of the Burke Report, at the expense account shown at the top of that page, and state whether there is any item in that expense account relating to the Supplementary Treaty?

A. Yes, sir.

Q. Is there any item in that expense account relating to tax matters?

A. Yes, sir.

Q. What is the total of that expense account?

A. $480.45.

Q. Does the expense account bear any memoranda as to the number of the warrant by which it was paid?

A. Yes, sir; warrant No. 877.

Q. I will ask you to refer to page 1241 of the same Report, and state whether there is any mention of warrant No. 877?

A. Yes, sir; here is warrant No. 877, December 19, 1901, $480.45.

Q. Read to the commissioner from page 1241, the caption of Exhibit 42 there shown.

A. (witness reads) "List of Chickasaw Warrants under Act of October 26, 1900, not submitted for approval, covering expense protecting interest of nation, payable out of principal chief's contingent fund."

Q. Mr. McMurray, I call your attention to the amended complaint in the case of the United States of America vs. Mansfield *et al.*, set forth as Document No. 59 in file 56843 of the Department of Justice; and I call your attention to the counter-claim of the defendants in this case, suing on account of Choctaw warrants aggregating $29,583.00. Do you find a similar item in the amended complaint in that case?

A. Yes, I find an item of $29,583.50.

Q. I call your attention to an item sued for in defendants' counter-claim, of warrants aggregating $16078.43, and ask you whether you find a similar item in the amended complaint in that case?

A. I do.

Q. I call your attention to an item of warrants aggregating $9,324.00, sued for in the defendants' counter-claim, and ask you whether you find a similar item in the amended complaint in that action?

A. I do.

Q. I call your attention to item of warrants aggregating $4263.10, and ask you whether you find a similar item in the amended complaint in that case?

A. I do.

Q. I call your attention to an item of warrants aggregating $8824.64, sued for in the defendants' counter-claim in this case, and ask you whether you find a similar item in the amended complaint in that case?

A. I do.

Q. I call your attention to an item of warrants aggregating $11858.49, sued for in the defendants' counter-claim in this case, and ask you whether you find a similar item in that case?

A. I do.

Q. Is there any item sued for in that case, shown by the amended complaint in so far as relates to Choctaw warrants, which is not sued for in this case?

A. No, sir; the same amount and the same warrants.

Q. Is there any item sued for in the counter-claim in this

case, in so far as relates to Choctaw warrants, which is not sued for in that case?

A. None at all; they are the same.

Re-Cross Examination by W. J. Turnbull.

Q. Mr. McMurray, do you know that those items are correct, about which counsel has just asked you?

A. I do not; I haven't checked them over. I only know that they are the same items that are included in the counter-claim.

Q. You are reading from what purports to be copy of a petition, are you not?

A. Yes, sir.

Q. Have the warrants to which he has called your attention, been paid?

A. I haven't been over them.

Q. All that you know is what the records before you show?

A. All I know just now is, that they correspond exactly with the warrants in the counter-claim. In looking through them, I do recognize certain warrants.

Defendants object to counsel having witness recite into the record certain matters which appear and certain copies of papers, because the same is not competent, not material and not relevant, because the witness has no personal knowledge as to their correctness, or whether they correspond with any of the items in the counter-claim, and so far as his testimony is concerned at this time, is purely hearsay, and renews the objection to a continuation of a recital of matters into the record.

Re-Direct Examination by E. E. McInnis.

Q. Mr. McMurray, have you examined the list of warrants submitted to you by the Choctaw Tribal Attorney, as being the list of the warrants on which the counter-claim is based in this action?

A. I have. Mr. Cornish and I spent the night over them last night, or a good part of the same.

Q. State the facts in regard to whether these warrants were actually issued to you, and whether payments were actually made to you, in accordance with these warrants?

A. The list of Choctaw warrants, submitted by the attorney for the Choctaw Nation was checked carefully by Mr. Cornish and myself, and, coupling our recollection of these transactions with the list of warrants, and refreshing our minds by a comparison of the tribal acts upon the different groups of warrants, I am convinced that the Choctaw list is correct, with the exception of the warrants issued in the Dukes' Administration, aggregating $7,596.40, and being the warrants issued in the first year of the Dukes' Administration, and listed under the head of "II General Act, Oct. 29, 1900." being the same warrants that I have already testified to as having been called in, under the Act of October, 1901, and heretofore discussed as the "duplicate warrants."

Q. From the investigation which you have made, can you make a statement as to whether payments were actually received by your firm, in accordance with these warrants? If so, state the facts.

A. Yes, sir. I am sure payments were made, as indicated by these warrants, except the warrants issued under the first year of the Dukes' Administration, above referred to, and aggregating $7596.40.

Q. What can you say in regard to the correctness of the Chickasaw list?

A. We also checked the Chickasaw list as best we could. The information given us by the list is meagre, and it was difficult to check, but, coupling the warrants as shown by the list, with our recollection, I am satisfied that the warrants were issued, as shown by the list, and that the money was paid to us on said warrants.

By E. E. McInnis: It is agreed by the attorneys for the plaintiff and the attorney for the defendants and the attorney general, that the lists submitted by the Choctaw Tribal Attorney, which will be marked for identification, "Plaintiff's Exhibit 5" and "Plaintiff's Exhibit 6," are lists of the warrants upon which the counter-claim in this action is predicated. Upon this agreement, the plaintiff offers in evidence, "Plaintiff's Exhibit 5" and "Plaintiff's Exhibit 6."

Q. I call your attention to the list marked "Plaintiff's Exhibit 5," being the list of the Choctaw warrants sued on in the counter-claim, and ask you to state whether you can pick out from that list, for illustration, any warrant which is known to you to contain an item of expense incurred by you, and repaid to you, in connection with the J. Hale Sypher case?

A. Yes, sir.

Q. Which warrant.

A. Under heading 5A, Act November 1, 1904, warrant No. 4I, issued Nov. 2, 1904, for $5282.46, includes items of expense rendered to the Choctaw Nation in the J. Hale Sypher case.

Q. I will ask you if you can pick out from that list, any warrant which includes a reimbursement to you of expenses incurred by you in connection with the Bonaparte opinion matter?

A. Yes, the same warrant includes items of expense in connection with the Bonaparte opinion.

Q. Are there other warrants in that list which include items of expense in connection with the Sypher matter, or the Bonaparte matter, or both?

A. Yes, sir.

Q. Name them?

A. The warrants under list "2A, Act Dec. 19, 1902." Warrant No. 18A and 20A include items of expense charged, and paid to us, with reference to the Bonaparte Opinion. Also under the list 3A, Act October 30, 1903, warrant No. 10 I includes such expenses.

Q. What is the amount of it?

A. $2321.00.

Q. Referring to warrant No. 4 I, which was the first warrant mentioned by you, do you remember any particular expense incurred by you in connection with the Sypher case, which is included in that warrant?

A. I do.

Q. State it.

A. I remember that that warrant includes a trip of mine to Washington, the expenses while there in connection with this case. I remember also, that it includes an item of expense for copying the records in what is known as the Thebo case, in the U. S. Court, Central District of the Indian Territory, and that those records were furnished the Court of Claims, and will likely be found among the papers of the Sypher case.

Q. Were those records when copied, certified, so that an examination of them would furnish a check as to you recollection of the date?

A. I think so.

Q. And your recollection is that they are in the files in the Sypher case, in the Court of Claims?

A. Yes, sir; they were there, and ought to be there now.

Q. Can you state any item of expense which you remember to have incurred in connection with the Bonaparte opinion, which is included in any of the warrants that you have mentioned?

A. Yes, sir; I remember my expenses were included in connection with the trip of Bonaparte and Woodruff representatives of the Department of the Interior, in making certain investigations of Indian matters in the Indian Territory, the purposes being to get these gentlemen to recommend that the fixing of the Rolls of the Choctaws and Chickasaws from that time on should be submitted to a court, rather than the Department of the Interior.

Q. Which warrant includes those expenses?

A. Warrant 4 I above referred to.

Q. Do you remember any other particular expense which was included in any of these warrants?

A. Yes, a trip to Washington by me, in connection with this same work, is included in that same warrant, 4 I.

Q. You mean your expense for a trip to Washington?

A. Yes, sir.

Q. Not for services rendered?

A. No, sir.

Q. Can you pick out from this list any warrants that were issued to you to cover expenses in the tax matters?

A. Yes, sir; expenses in the tax matter were included in the warrant last referred to, 4 I, and also included in almost all of the expense warrants issued under the Act of December 19, 1902, and all other expense warrants in the Choctaw Nation, after that time. Under the Act of December 19, 1902, the appropriations for $16,078.45 include all fees and expenses for two years, running back to April, 1900.

Q. Can you pick out any warrants in this list which include a reimbursement of expenses paid out by you in connection with treaty matters?

A. Yes, sir; the expense warrants included under general head "2 A Act Dec. 19, 1902," include many expenses incurred and paid in connection with the Supplementary Treaties.

Q. Mr. McMurray, I call your attention to the Chickasaw warrant list, marked for identification, "Plaintiff's Exhibit 6," and ask you to state whether in that list of warrants you can pick out any warrant which contains an item of expense paid out by you in connection with the Ayres case, and reimbursed to you as a part of the warrant?

A. Yes, sir; Chickasaw warrants Numbers 943, 944 and 945 include items of expenses incurred in the John T. Ayres case; also Chickasaw warrants numbers 1477, 1478 and 1479, include such items of expense incurred and paid in the John T. Ayres case.

Q. Mr. McMurray, I will ask you to state whether you have in your possession any document which will refresh your memory as to the date of any visit which you made to Washington in connection with the John T. Ayres case?

A. Yes, I have the claimant's statement and abstract of evidence in case No. 11903 in the Court of Claims, being the Ayres case, showing where report was made by Senator Stewart of Nevada, Chairman of Committee on Indian Affairs, and by Senator Dubois, a member of the same committee. While these reports were being made up, I went to Washington, and had this matter before Senator Stewart's Committee on Indian affairs, and also with Senator Dubois.

Q. What were the dates of these reports?

A. Senator Stewart's report seems to have been made March 21, 1904, and Senator Dubois' Jan. 22, 1904.

Q. What time were you in Washington on this business, with reference to the dates those reports were made?

A. I was at Washington in 1903 in 1904 in connection with this work.

Q. Were you there in 1904 before or after the making of these reports?

A. Before and after.

Q. In what warrant or warrants are your expenses incurred in 1903 in this behalf, included?

A. Warrants Nos. 1477-78-79, above referred to.

Q. In what warrants were your expenses for your trips to Washington in this behalf incurred in 1904, included?

A. Warrant No. 2235, issued July 28, 1904, for $3,879.45.

Q. Have you checked this list to determine whether your testimony yesterday, based on Chickasaw warrants and Chickasaw expense accounts shown at pages 1240 and 1241, and at pages 1322 to 1326 inclusive, is correct?

A. Yes, sir; I have. It is correct.

Q. Do you find it to be correct that warrant No. 553 for

$496.40 is included, each one of the warrants sued on in this action?

A. Yes, sir.

Q. That warrant I believe you stated was issued in payment of an expense account, a copy of which is set forth at page 1322 of Volume 2 of the Burke Report?

A. Yes, sir.

Q. State whether warrant No. 877 for $480.45 is included in the warrants sued on in this action, as shown by this list?

A. Yes, sir; it is.

Q. That warrant was issued in payment of an expense account, a copy of which is set forth at page 1323 of the Burke Report?

A. Yes, sir.

Q. State whether according to this list, the counter-claim is also based on warrant No. 879, for $1993.65?

A. Yes, sir; it is.

Q. That warrant was in payment of expense account, a copy of which is set forth at page 1323 of the Burke Report?

A. Yes, sir.

Q. State whether this list shows that the counter-claim is also based on warrants No. 875 and 876 for $500.00 and $1137.80 respectively?

A. Yes, sir.

Q. Those warrants were issued in payment of an expense account set forth at pages 1323 and 1324 of the Burke Report?

A. Yes, sir.

Q. State whether this list shows the counter-claim to be based on warrant No, 878, for $201.25?

A. Yes, sir.

Q. That warrant was issued in payment of an expense account, a copy of which is set forth at page 1324 of the Burke Report?

A. Yes, sir.

Q. State whether this list shows the counter-claim to be based also upon warrant No. 554, for $1206.45?

A. Yes, sir.

Q. That warrant was issued in payment of an expense account set forth at pp. 1324 and 1325 of the Burke Report?

A. Yes, sir.

Q. Mr. McMurray, I call your attention to a copy of an expense account set forth at pages 1325 and 1326 of the Burke Report, and ask you to state how that expense account was paid if it was paid, designating the warrants which paid it.

A. It was paid by the Treasurer of the Chickasaw Nation. The warrants on the list are very confused, the total amounts having been split up into various warrants. Warrants No. 804, 805, 806 and 807 are included in this amount. I do not see, upon this hasty examination, the other warrants that make up the full amount, but I am sure they are on this list.

Q. What balance is necessary to make up the full amount?

A. The amount is $5,000.00.

Q. Referring to expense account No. 553, for $496.40, state whether any of the matters sued upon in your Amended Petition in this case, are covered by that warrant?

A. Yes, sir, the tax matters are covered by that warrant.

Q. Make a similar statement regarding Expense Account of $480.45, which was paid by warrant No. 877.

A. Yes, sir, that includes tax expenses and supplementary treaty expenses.

Q. Make a similar statement regarding expense account for $1993.65, paid by warrant 879.

A. That includes tax expenses, the $2.00 per diem and expense for U. S. Indian Police. These are tax expenses, and all other expense in that item seems to be in connection with the tribal tax matter.

Q. Make a similar statement regarding the facts as to expense account for $1637.80, paid by warrants 875 and 876.

A. This warrant includes tribal tax expenses, supplementary treaty expenses, incompetent claim expenses and other expenses.

Q. What about expense account for $201.25 paid by warrant No. 878?

A. That includes tribal tax expenses, including the $2.00 per diem, and the expenses of the U. S. Indian Police under orders from the U. S. Indian Agent.

Q. Make a statement in regard to expense account for $1206.45, paid by warrant No. 554?

A. That includes expenses in connection with the supplementary treaties, the incompetent matter and other expenses.

Q. I call your attention to the expense account for $6865.00, as shown at pages 1325 and 1326 of the Burke Report, and ask you to state whether this expense account contains any items relating to any of the matters upon which you base your supplemental petition in this case?

A. Yes, sir.

Q. State the items which bear on your supplemental petition.

A. It includes expenses in connection with the supplementary treaty, tribal tax expenses, election expenses bearing upon the supplementary treaty, the Bonaparte Opinion expenses.

Q. What is the item in this account that refers to the Bonaparte Opinion expense?

A. The expenses of myself to Washington.

Q. State what date, as shown by this?

A. From January 1, 1902, to July 10, 1902.

Q. Can you pick out from this list of warrants, any other warrants which include a reimbursement to you of expenses theretofore incurred, and paid in connection with the Bonaparte Opinion matters?

A. The warrants issued April 16, 1903, and those issued

February 3, 1904, include items in connection with the Bonaparte Opinion. Our original expense accounts were filed with the officials of the Choctaw and Chickasaw Nations. The Attorney for the Choctaw Nation has indicated that he had previously had access to some of these expense accounts, or copies thereof. The others should be with the Department, and will show that the statements I have made in connection with these matters, are correct, and will show many items in connection with these matters, in other warrants that I have not mentioned.

Q. Mr. McMurray, in your testimony, have you undertaken to recite a detail of all of the warrants which contain items of expense which relate to the matters sued upon in your supplemental petition, or have you simply named warrants for purposes of illustration?

A. Only typical warrants; not all of them, by any means.

Further Cross Examination by W. J. Turnbull.

Q. I understand from your statement, Mr. McMurray, that all of the items which you have testified about, were paid your firm, as indicated by the list?

A. Yes, sir; except what has been termed the duplicate warrants under the Dukes Administration.

Re-Direct Examination by E. E. McInnis.

Q. State whether you know of any other matter relative to the claims in question, and if you do, state it.

A. Nothing, except matters amplifying upon these same propositions.

MELVEN CORNISH, recalled, testified as follows:

Melven Cornish Recalled by E. E. McInnis.

Q. Mr. Cornish, state whether you know of any other matter relative to the claims in question, and if you do, state it?

A. Very much more could be stated in that connection, as bearing upon the general relations existing between the firm of Mansfield, McMurray & Cornish, and the officers of the Government of the United States in the conduct of these matters from 1899 to the end of our relation. I would refer to all of the papers filed upon the various branches of this case, not only those papers filed by Mr. McMurray in connection with the items sued upon in his supplemental petition, but also the various letters, telegrams, court pleadings, and all papers taken from our files, and now referred to as the files of the Department of Justice. All of these papers show that from the beginning of these affairs to the end, we were acting at all times with the full knowledge of the officers of the Government of the United States, and in co-operation with them and under their direction, in protecting the interests of the Choctaw and Chickasaw Nations, and in furthering the plans of the United States Government for the fair and equitable distribution of their property.

Attorney for plaintiff suggests that the examination of Mr. Cornish has not been directed to the first count, the second count, or the third count of the original petition filed. Mr. Cornish of course, knows a great many things about these counts, but we presume that no rule will be insisted upon to require us to go into those counts with Mr. Cornish, because of his incidental reference to matters which might have a bearing on the first three counts.

By W. J. Turnbull: We are not insisting that he testify about those matters.

By McInnis: The plaintiff will offer in evidence certified copies of certain papers in the civil action commenced in the United States Court for the Central District of the Indian Territory, and now lodged in the files of the District Court of the United States for the Eastern District of Oklahoma, at Muskogee.

Testimony for the Claimant.

Washington, D. C., April 3, 1920.
Saturday at 10:30 o'clock a. m.

The parties met, pursuant to agreement, to take testimony on the part of the claimant in the above entitled cause.

Present, Adolph A. Hoehling, Esq., counsel for the claimant; Wilfred Hearn, Esq., counsel for the defendant; the claimant, J. F. McMurray in proper person, and the commissioner.

Whereupon:

JOHN F. McMURRAY, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposed and said that his name was John F. McMurray; that he is 58 years of age; that his occupation was that of attorney at law; that his place of residence was the State of Oklahoma; and that he was the claimant in the above entitled cause.

And thereupon the said witness was examined by the counsel for the claimant, and, in answer to interrogatories, testified as follows:

Direct Examination by Mr. Hoehling.

1 Q. Mr. McMurray, you have heretofore been examined as a witness in this case?

A. I have.

2 Q. There are one or two matters that have been touched upon in your former examination in respect of which I wish to ask you further questions. On pages 322, 323, 324 and 325 of the transcript of the testimony you make reference to the report of Mr. Nagle made in August, 1908, of a report made by Mr. Wick-

ersham in December, 1912, and of the report to the President in January, 1913, stating therein, briefly, that you secured copies of these reports at the Department of Justice, and from which reports you read extracts into the record in this case. Will you please state from whom, and the circumstances under which, you received those several copies of reports?

A. From the Attorney General himself. I was laying these matters before the Attorney General, including what is known as the Anderson opinion in the case of McLish against Leslie M. Shaw, the then Secretary of the Treasury, and others, and in connection with this work the Attorney General gave me copies of those papers.

3 Q. What became of those copies that he gave you?

A. I had them before the Department of the Interior in certain hearings connected with those matters, and whether I left them with the department or not I don't know. But they were lost in connection with this work.

4 Q. Prior to their being so lost, Mr. McMurray, state whether you had copies made of those reports, or any parts of the reports?

A. I did. I filed a brief in connection with this work and had copies made of certain parts of them that have been quoted in this record.

5 Q. State whether or not you know, Mr. McMurray, where the originals of those several reports are at the present time?

A. In the Department of Justice.

Mr. Hoehling: In this connection, Mr. Hearn, I would like to state upon the record that, because of the suggestion made during the taking of Mr. McMurray's testimony in connection with this same matter of the reports, that call should be made for the originals thereof, and in pursuance of that suggestion of record, I heretofore sent to Assistant Attorney General, Frank Davis, Jr., a motion for call covering these three several reports, and requesting his consent. That subsequently the motion was returned to me by Mr. Davis, with letter, in substance declining to consent. There is the letter, and I therefore offer it in evidence in connection with this deposition—the original of the letter from Mr. Davis to me, and the copy of the motion for call. I ask the commissioner to copy each into the record at this place, in addition to filing the same.

Mr. Hearn: Objection is made to the introduction of the papers referred to by the defendant, on the ground that the same are incompetent.

(The papers referred to are filed herewith by the commissioner, marked Claimant's Exhibits J. A. L. Nos. 1 and 2, and copied into the record, at the request of counsel, as follows:)

Department of Justice
Washington.

CTS-SJM

G. T. S.

February 11, 1920.

Mr. A. A. Hoehling,
1416 F. Street, N. W.
Washington, D. C.

Dear Sir:

Replying to your letter of February 5th with reference to the case of J. F. McMurray vs. The Choctaw & Chickasaw Nations of Indians, No. 33996 in the Court of Claims, I return herewith motion for call on the Secretary of the Interior, on which I have endorsed "no objection" as requested. I also return motion for call on the Attorney General, and copy thereof, to which I cannot for obvious reasons accord my assent.

Respectfully,
For the Attorney General,
Frank Davis, Jr.
(Frank Davis, Jr.)
Assistant Attorney General.

(Enclosure.)

In the Court of Claims. John F. McMurray, Petitioner v. *The Choctaw Nation of Indians and The Chickasaw Nation of Indians. No.* 33996.

Motion for Call.

Comes now John F. McMurray, the petitioner above named, by his attorneys, and moves that a call issue herein addressed to the Honorable, the Attorney General of the United States, requesting him to transmit to this court for use in the above entitled cause either the originals or copies of the certain letters, reports, communications and documents now in the Mails and Files Division of the Department of Justice, and hereinafter more particularly referred to, to-wit:

(1) Report rendered in August, 1908, or 1909, by the Hon. Charles Nagel of St. Louis, Missouri, to the Attorney General on several actions against Mansfield, McMurray & Cornish, containing the following language:

"From Assistant Attorney General Russell's letter to you, I now gather that there is no occasion for such a suit. So far as the additional grounds in the amended bill given in the Assistant Attorney General's letter. I have to say, that in my judgment, they are very little force. In my report at the time I concluded that the approval of the President was probably not necessary for a contract such as was here involved. While I have not examined the matter with respect to the approval of the Secretary of the Interior, I am disposed to reach the same conclusion as to it. But, if my conclusions were otherwise as to the law, my opinion is that the reports of expenditures made and amounts received, submitted to the Department of the Interior at the time, are quite sufficient to constitute the approval which the law may have contemplated."

(2) Letter of December 11, 1912 by Attorney General Wickersham to the President, containing the following quotation:

"There was furnished to me with the other papers a copy of a memorandum prepared apparently for the Secretary of the Interior, not signed, but initialed 'J. W. H.' in which are set forth in detail, the reasons for the position taken by the department. I do not deem it necessary or appropriate to reply in detail to the statements made in the memorandum in this connection. I think it sufficient to say that in my opinion they are highly improper and evidence a bias of mind on the part of the writer which demonstrates his entire unfitness to pass judgment on the validity of the claims by or against the claimants. Both the indictments and civil suits referred to were dismissed by personal direction after a thorough consideration of the subject."

(3) Letter of date January 4, 1913, by the Attorney General to the President, containing the following quotation:

"The Secretary of the Interior was advised that the action of this department in dismissing the suit against Mansfield *et al.*, for $42,384.68 and its failure to sue on the other items was the result of a careful consideration of the whole matter."

The said papers above referred to embrace papers which are not only material and relevant to the issues involved herein, but are essential and indispensable to petitioner in the proper presentation of his case upon the evidence.

Petitioner accordingly respectfully asks that call issue herein requesting that said above described letters, reports, communications and documents be transmitted to this court for the use of counsel and court in the trial of this cause; or, if it be not agreeable to said department to transmit the originals of the papers embraced in the foregoing description, or be impracticable to send the originals, then copies of each and all of the papers embraced in the foregoing list be transmitted to this court.

GORDON, MCINNIS & MOORE,
HEAD, DILLARD, MAXEY & HEAD,
Attorneys for Petitioner.

CECIL H. SMITH,
Of Counsel.

By Mr. Hoehling:

6 Q. I notice, Mr. McMurray, in the copy of the report of the testimony which is before me, there seems to be some little discrepancy in dates, and I will ask whether or not you know the exact date of each of those three reports to which I have called your attention, or if you have investigated that matter?

A. I don't know the exact dates.

7 Q. Well, regardless of what the exact dates may be as shown by the records of the Department of Justice, I understand the fact to be that the extracts that you have introduced are the exracts made from the copies of opinions that were delivered to you by the Attorney General at the Department of Justice?

A. That is correct.

8 Q. During the former taking of your testimony it is stated that you would procure and file a copy of the petition in the suit known, as the $42,000.00 suit, and of the order of court dismissing that, and if you have secured a certified copy of that petition and order of court, I will ask you to produce the same and file it as an exhibit?

A. I have procured a certified copy and herewith file the same.

Mr. Hoehling: I offer it in evidence.

Mr. Hearn: Defendant objects to the introduction of the papers referred to, for the reason that the same are incompetent.

(The paper referred to is filed herewith by the commissioner, marked Claimant's Exhibt J. A. L. No. 3)

9 Q. At page 207 of the record of your former testimony in this case, you made reference to A. A. Hoehling, Jr., which is myself, having an interest in the fee claimed in what is known as the Sypher case, but you didn't explain just how that interest arose. Will you explain that matter, briefly, please?

A. Mr. A. A. Hoehling, Jr., was employed by Mansfield, McMurray and Cornis as associate counsel at Washington in the Sypher case, and assisted in the presentation and trial of the case before the Court of Claims.

10 Q. So that the interest in whatever may be recovered on account of compensation for professional services rendered in the Sypher case is his interest for his participation in a professional capacity in that case?

A. Yes, sir.

Cross Examination by Mr. Hearn.

11 xQ. Mr. McMurray, state what service Mr. Hoehling rendered in the Sypher case?

A. He assisted in taking the testimony of witnesses in Washington in this case; he assisted in presenting the case before the Court of Claims, or in the trial of the case in the Court of Claims.

12 xQ. Who prepared the brief in this case?

A. Mansfield, McMurray and Cornish, assisted by Mr. Hoehling.

13 xQ. Where was the brief prepared, in Washington or in McAlester?

A. In the Indian Territory and in Washington. We prepared the brief originally in Indian Territory, and brought it to Washington for the purpose of securing better library facilities and referring the matter to Mr. Hoehling, who assisted us in completing the brief here.

14 xQ. Who argued the case?

A. As I recollect it now, Mr. Mansfield and Mr. Hoehling. I was also present myself. I took no part in the argument.

15 xQ. To what extent did Mr. Hoehling take testimony?

A. To a considerable extent. The record will show the exact testimony that was taken in Washington. He assisted in taking all that testimony.

16 xQ. What per cent of the work done in that case do you consider was done by Mr. Hoehling?

A. It would not be possible for me to divide it into per cents, but he took an active part in all the work that I have suggested.

17 xQ. Did he do little or much of the service?

A. Well, he packed his part of the load and did his part of the work.

18 xQ. Was more testimony taken in Washington than any other place?

A. I should say that it was pretty equally divided in Washington and in the Indian Territory.

19 xQ. What did Mr. George Minor Anderson have to do with the case?

A. Who?

20 xQ. Mr. George Minor Anderson, of the Department of Justice?

A. He represented the government in connection with the case.

21 xQ. Did he take any active part in the preparation of the brief or in the argument of the case before the court?

A. Mr. Anderson was there, interested in the claim, but as to whether he took any active participation in it or not, I don't remember.

Re-Direct Examination.

By Mr. Hoehling:

22 rdQ. In connection, Mr. McMurray, with the question asked you as to the extent of the participation, if any, of Mr. George M. Anderson, who was one of the attorneys in the Department of Justice at the time this Sypher suit was brought, defending cases, I show you a letter dated June 8, 1904, addressed to me from Mr. George M. Anderson, and I will ask you if that letter refreshes your recollection as to what, if anything Mr. Anderson did in connection with that Sypher case?

A. Without looking at the letter, I remember very distinctly that the burden of the case, from the beginning of the taking of the testimony until the final hearing in the Court of Claims, was borne by Mansfield, McMurray and Cornish and Mr. A. A. Hoehling, Jr. Yes, the letter brings back the fact that I have suggested.

Mr. Hoehling: I offer this letter in evidence, and ask that it be copied into the record.

Mr. Hearn: The introduction of the letter is objected to, for the reason that it is not a letter written by the witness, or written to the witness, and, for the further reason, that it is incompetent.

(The letter referred to is filed herewith by the Commissioner, marked Claimant's Exhibit J. A. L., No. 4, and copied into the record, at the request of counsel, as follows):

J. R. W.

Department of Justice,
Washington, D. C.

June 8, 1904.

A. A. Hoehling, Jr., Esq.,
1416 F. Street, N. W.,
Washington, D. C.

Sir:

I have this day filed in the case of J. Hale Sypher v. The Choctaw Nation of Indians, No. 25021, a report from the Secretary of the Interior. The report consists of a report made by the Secretary of the Interior to Congress upon a bill pending there for the payment of General Sypher for services as attorney for the Choctaws. I think it would perhaps be of some advantage to you in your defense of the suit to examine this report, as it may suggest to you a line of defense that might not otherwise occur to you.

This case was assigned to me with the understanding that I was to conduct the defense provided the Choctaws failed to employ an attorney. After I learned that you had been employed I, of course, felt that their interests were perfectly safe in your hands. However, I am at your service to render any assistance that may be in my power.

Very respectfully,
Geo. M. Anderson,
Assistant Attorney.

23 rdQ. You were asked on cross examination as to the extent of my personal participation in the Sypher case, what connection, if any, did I have in that matter prior to the filing of the suit in the Court of Claims?

A. My recollection is you had no connection with it whatever.

The examination by counsel being concluded, the witness, in compliance with the rule of the court required him to state whether he knows of any other matter relative to the claim in question. and if he does to state it, says:

A. No.

.....

Subscribed before me this day of April, 1920.

.....
Commissioner.

Thereupon—

L. T. MICHENER, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and said that his name was L. T. Michener; that his age was 71 years; that his occupation was that of attorney at law; that his place of residence was Washington, D. C.; that he had no interest, direct or indirect, in the claim which was the subject of inquiry in this cause, and that he was not related to any one connected therewith.

And thereupon the said witness was examined by the counsel for the claimant and, in answer to interrogotories, testified as follows:

Direct Examination by Mr. Hoehling.

Q. General, you are a member of the local bar?

A. Yes, sir; I have been practicing law here for more than 29 years. I have been engaged in all kinds of practice here except pensions and patents. I have had a very considerable practice in the Departments, in the Court of Claims, Supreme Court of the United States, and occasionally only in the local courts, in injunction cases or mandamus cases, in which government officials were defendants.

2 Q. Prior to your coming to Washington, General, where were you located in the practice of your profession?

A. Indiana. At two different points in Indiana. I lived most of the time at Shelbyville, and practiced there, after leaving Brookville, for 54 years, and in Indianapolis, as the Attorney General of the State.

3 Q. You are acquainted with Mr. J. F. McMurray, I believe, General, the plaintiff in this case?

A. Yes; I have been acquainted with Mr. McMurray 15 or 20 years, meeting him occasionally only; having no professional relations with him.

4 Q. Now, during that period, General, and from your personal contact with Mr. McMurray, I will ask you whether you formed any opinion as to his professional ability, or otherwise, and if so what that opinion is?

A. I did. My opinion has been, and is, that he is an excellent lawyer.

5 Q. In connection with the several questions which I am about to ask relating to professional services claimed to have been rendered to the Choctaw and Chickasaw Nations of Indians, by the firm of Mansfield, McMurray & Cornish, attorneys at law, formerly of McAlester, Indian Territory, it may be assumed that the firm named, from the year 1899 down during the years covering the various matters that are embraced in this suit, and about which I am about to inquire, had both knowledge and experience in matters concerning, particularly, the Choctaw and Chickasaw Nations, and the affairs, treaties, laws and concerns of those Nations. The matter in respect of which I am about to enquire is embraced in Count 4, of the Supplemental Petition in this case, and relates to what I may briefly describe as the Sypher Case.

Assume that on March 3, 1891, Congress appropriated some $2,900,000 and odd to the Choctaw and Chickasaw Nations, covering the community interest of those nations in certain lands in what was known as the "leased district"—whereof some $2,200,000. and odd was the share of the Choctaw Nation; that the latter Nation, not being able to secure the payment of the amount so appropriated, sent a delegation to Washington, in October, 1891;

and, while there, entered into a written agreement with one J. Hale Sypher, an attorney at law, to represent the Nation in its efforts to secure the payment of the appropriation, agreeing to pay him for his services a fee of 10%, which would have been some $220,000. and odd; that controversy subsequently arose between the said Sypher and the Choctaw Nation as to whether the former performed any real service in the matter mentioned; that the appropriation mentioned was finally paid to the Choctaw Nation, in February, 1893; that in 1902, Sypher began effort, in Congress to secure a direct appropriation in his favor in the said sum of $220,000. and odd, above-mentioned; that, thereupon, Governor McCurtain, of the Choctaw Nation, stated to the firm of Mansfield, McMurray & Cornish, of McAlester, Indian Territory, that he had been advised by the Senate Committee on Indian Affairs that Sypher was urging the claim before the committee named, and that it was suggested that the Nation give the matter attention; that the said Governor employed the firm in the matter, and requested Mr. McMurray, of the firm, to go to Washington and represent the Nation in defense of the claim; that, in the Spring of 1902, Mr. McMurray went to Washington from the Indian Territory, and took up the matter with the members of the Senate Committee on Indian Affairs, and explained the facts; that nothing further was done by the Senate at that session; that in the Fall of the year, McMurray again went to Washington for the Nation, when the matter was again before the Senate Committee, and it again went over; that during the year 1903. the claim was before Congress on several occasions, and McMurray went to Washington from the Indian Territory on each such occasion; that the efforts of Sypher to secure an appropriation in the said sum of $220,000, and odd was abandoned; and, in lieu thereof, an item of $50,000. was inserted in an appropriation bill, but the same was defeated, by a very small margin, by vote on the floor of the Senate; that McMurray was in Washington at that time, keeping in close touch with the situation, and doing all that he properly could for the Nation in defense of its position in the matter; that, finally, in 1904, and as the result of agreement between both sides of the controversy, (McMurray representing the Nation therein), an item was inserted in a bill which became the act approved April 21, 1904, which conferred jurisdiction on the Court of Claims to hear, ascertain and determine the controversy and claim, upon the principles of a *quantum meruit;* that, thereupon, on April 28, 1904, Sypher filed suit in the Court of Claims against the Choctaw Nation, (the same being No. 25,021), claiming the sum of $220,000. and odd; that said firm of Mansfield, McMurray & Cornish represented the Nation therein, and retained A. A. Hoehling, Jr., an attorney at law, as local counsel, in Washington, D. C., to assist them in the defense of the suit; that answer was prepared and filed for the Nation, testimony was taken in Washington, in June and September, 1904, and in the Indian Territory, in November, 1904, a printed brief was filed for the

Nation; and the case was argued orally before the Court of Claims, on January 25, 1905, by the late John M. Thurston, for the claimant, and by Mansfield and Hoehling, respectively, for the Nation; with the result that, on February 20, 1905, the Court of Claims entered judgment for claimant in the sum of $5,000., which was subsequently paid—in other words, that the claim for upwards of a quarter of a million dollars was finally settled for $5,000.

In connection with the services rendered by Mansfield, McMurray & Cornish, and by Hoehling, in the matter named, please, also, assume that the Nation reimbursed counsel for all costs and personal expenses up to the Fall of 1904, (not including, however, anything for compensation), but that, from the Fall of 1904, and continuously thereafter, no such costs and expenses were or have been reimbursed, not even for the taking of the testimony or the printing of the brief, nor the expenses (personal) of the members of the firm named in coming from the Indian Territory to Washington in the service of the case and for its trial, although no separate claim is being made therefor by said firm, and, further, that nothing has been paid for the services so rendered in the matter mentioned, either to the firm named or to the said Hoehling. The charge made for the entire service named is $25,000.

Assuming that there was no definite or fixed amount of fee agreed upon for the service named, but that the agreement was that the firm should be compensated by the Nation for the services rendered; and assuming further that the services were rendered as stated, and, that the subject matter of the suit and the final result were as stated; and having in mind the experience and knowledge of the attorneys named in matters affecting the rights and affairs of the Choctaw Nation; state what, in your opinion, would be a fair, reasonable and proper charge for the professional services so rendered.

A. I think $40,000.00 would have been fair and reasonable.

6 Q. The next matter as to which I am about to inquire is embraced in Count 5, of said Supplemental Petition, and relates to what may be briefly described as the

ELI AYRES CASE.

Assuming that one Eli Ayres, claiming to have purchased certain rights during the first half of the Nineteenth Century from the Chickasaws, concerning or growing out of the proceeds of lands sold in Mississippi, for and in respect of which he asserted claim during the years; that, upon his death, his son, John T. Ayres, and who was also his executor, took up the matter, and, in 1902, began to press the same vigorously before Congress; that, in that year, the Governor of the Chickasaw Nation employed the firm of Mansfield, McMurray & Cornish to represent said Nation before Congress, and wherever necessary, in resistance of the claim, so far as the same concerns the Nation; that said Governor requested McMurray to go to Washington in connection with the matter, which he did in 1902, and on several occasions thereafter during that

year and the years 1903, 1904 and 1905; that, on such occasions, McMurray appeared before the Committees of the Senate on Claims and Indian Affairs, respectively, before which bills were pending, at different times, in respect of the claim mentioned, and he represented the Nation before said Committees; that effort was being made by Ayres to secure a direct appropriation from Congress, but, finally, and as a result of the presentation of the matter before Congress, both on behalf of the claimant, Ayres, and on behalf of the Chickasaw Nation, an act was passed, approved February 24, 1905, referring the claim to the Court of Claims for adjudication; and that was followed by a suit filed by the claimant in that Court. The members of the firm named made frequent trips to Washington in connection with the claim and with the suit, and represented the Chickasaw Nation in the suit in said Court. The case was briefly and orally argued in the Court of Claims, the firm named appearing for and representing the said Chickasaw Nation herein, with the hesult that the Court made and filed its findings adverse to the claimant, April 29, 1907, (42 *Court Claims,* 385). The case was afterwards re-heard by the Court, upon motion of the claimant; it was again briefed and orally argued on both sides, the firm named again appearing for the Chickasaw Nation, and with like result, December 14, 1908, (44 *Court Claims,* 48). The claim involved some $191,000. as against the Chickasaw Nation, and some $42,000. as against the United States.

In connection with the representation of the Chickasaw Nation by the firm named in respect of this manner, it may be assumed that the costs and personal expenses of the firm were reimbursed by the Nation up to the Fall of 1904; but that thereafter no reimbursement of such costs or personal expenses of the firm was or has been made by the Nation, although no separate claim is being made therefor by said firm. The claim is made in this suit for the sum of $25,000. for the professional services rendered in the matter named.

Assuming that there was no definite or fixed amount of fee agreed upon for the services named, but that the agreement was that the firm should be compensated by the Nation for the services rendered; and assuming further that the services were rendered as stated, and that the subject matter and the final result thereof were as stated; and having in mind the experience and knowledge of the attorneys named in matters affecting the rights and affairs of the Chickasaw Nation, state what, in your opinion, would be a fair, reasonable and proper charge for the professional services so rendered?

A. I would put $40,000,00 in that case as a reasonable charge for these services.

7 Q. The matter about which I next inquire is embraced in Count 6 of the Supplemental Petition in this case, and relates to what may be briefly described as the

INCOMPETENT FUND.

Assuming that, under the Treaty of 1834, the Chickasaws were divided into three classes—competents, incompetents, and orphans; that the lands of the class designated as incompetents were dissipated, and taken from them by speculators, and that for many years, the Chickasaws demanded that the United States pay for the lands so taken from the incompetents, until, in 1899, the principal sum of $99,000. was appropriated by Congress, and finally distributed among the then alleged living representatives of the original incompetents, and distribution being made through what was known as the Chickasaw commission; that later on, and in connection with what is known as the Atoka Agreement, the Chickasaws conceived the idea that if the United States justly owed the principal sum of $99,000., just referred to, from a time shortly after the making of the Treaty of 1834, it, also, owed interest on that sum for the entire intervening period; and that that claim and contention finally resulted in an appropriation made in 1898 of some $580,000 to pay arrears of interest, of which amount $216,000. was the amount of interest on the incompetent fund; that, thereupon, the same individual claimants who had started in the distribution of the principal sum of $99,000., began to assert their rights to the interest; that the Governor, and other officials of the Nation, believed that many frauds had been committed in the former distribution of the $99,000. amount, and that because of the great lapse of time, it was almost impossible to establish heirship with any degree of accuracy, and also believe that, because the heirs of the original incompetents were mixed and mingled with nearly every family in the Chickasaw Nation, the only safe way to distribute this $216,000. interest fund would be to divide the money *per capita* among the members of the Nation.

Assume that, in that situation, the Governor of the Nation (Johnston) employed Mansfield, McMurray & Cornish to represent the Nation in endeavoring to bring about a *per capita* distribution of the moneys; that, in connection with the service, members of said firm went from the Indian Territory to Washington, D. C. on several occasions, where they had divers conferences with the Secretary of the Interior and with other officials of that Department; that they prepared and filed a brief and argument with said Secretary in relation to the matter; all of which finally resulted in an opinion of the Assistant Attorney General to the effect that the moneys could not be distributed *per capita* until the individual claim of the alleged living representatives of the original incompetents were first disposed of; that regulations were then adopted establishing a course of procedure, under which, individual claims, of the kind just referred to, were required to be filed with the United States Indian Agent in the Indian Territory, page 243 of such cases being so filed; that each case was separately tried out on the facts; that testimony of a great many of the members of the Tribe in different parts of the Territory was taken, members of said firm traveling over thousands of miles (in the aggregate) in a buggy in connection with the testimony and evidence in the different cases; that a statement of the testimony in each case, also a brief in each case, and a brief on the general proposition, were filed by said firm with the Indian Agent, who finally denied each and every of the 243 claims, thus resulting in a distribution of $40, *per capita* of said $216,000. interest fund.

Also, assuming that the services rendered extended during the years 1899 and 1900; and that, for the service mentioned the Nation agreed to pay said firm the sum of $15,000. and did pay it the sum of $2,500. on account. Claim is made herein to recover the sum of $12,500. balance of the amount named.

Assuming that the services were rendered as stated, and that the subject-matter thereof and the final result were as stated; and, having in mind the experience and knowledge of the attorneys named in matters affecting the rights and affairs of the Chickasaw Nation; state what, in your opinion, would be a fair, reasonable and proper charge for the professional services so rendered?

Mr. Hearn: Now, before any answer is made to this question, I want to enter this objection. The defendant objects to any inquiry regarding the Counts Nos. 4, 5 and 6, referred to, for the reason that the Court of Claims has no jurisdiction of the matter set out therein.

A. As I understand that question, the agreement between the lawyers and the Indians was for a $15,000.00 fee.

8 Q. Of which $2,500.00 was paid?

A. Of which $2,500.00 was paid, leaving $12,500.00.

9 Q. Yes.

A. I think the fee agreed upon was very low, and therefore I am obliged to say that the $12,500.00 is less than reasonable. Certainly the services were worth the amount of money, $15,000.00, agreed upon.

10 Q. The next matter about which I will inquire is embraced in Count 7, of said Supplemental Petition, and relates to what may be briefly described as

TRIBAL TAXES.

Assume that in 1899, the Choctaw and Chickasaw Nations were practically without funds, or without sufficient funds, with which to pay the expense of their local Governments; that certain laws were on the statute books of the Nations providing for the collection of taxes from the non-citizens doing business within the borders of the two Nations, such, for example, as cattle tax, merchandise tax, permit tax, stone tax, etc.; but the said Nations had been unable for many years to make collection of said taxes because of the refusal of said non-residents to pay the same, and the seeming lack of power and authority of the Nations to enforce the payment; that, because of the lack of funds, the warrants of the different counties of the Nations were only worth from ten to twenty-

five cents on the dollar; that there was no market for the same, and they were only used in the payment of obligations between the members of the Tribes; that in 1899, and assuming the situation at that time to have been as just stated, the Governors of the two Nations applied to the firm of Mansfield, McMurray & Cornish to look into said tax question, with a view to putting in motion, in both Nations, the machinery to enforce the collection of the tribal taxes; that said firm studied the question with care, their investigation covering a period of several weeks, and thereafter reported to the Governors their opinion that the taxes could be collected, provided the Department of the Interior and its officials would co-operate and assist by issuing the necessary orders; that the members of said firm first took up the matter with the United States Indian Agent and also with the United States Indian Inspector and other officials of the Government in the Indian Territory; that members of the firm went to Washington, where the matter was taken up by them with the then Secretary of the Interior (Hitchcock); that it was represented to the United States officials by said firm that, unless co-operation was given the Indians, as requested, they could collect no tribal taxes, nor would they have sufficient revenue to support and administer their tribal government; that favorable action was finally taken by the Department of the Interior, and it was agreed that it would issue the necessary orders to co-operate and assist in the collection of the taxes; that the members of the firm returned from Washington to the Indian Territory, and, thereafter, the active operations of the enforced collection of tribal taxes began, the procedure being, in brief, that the Nations sent their tax collectors into the field, the territory involved embracing some 110 miles by 250 miles the taxes were demanded and, if refused, as they all were at that time, the matter would be reported to the head of the Nation immediately concerned, who would report it to the Indian Agent, and the latter, in turn, would report it to the Secretary of the Interior, and, if he deemed it a proper case, he directed the Indian Agent to use the United States Indian Police to enforce the orders of the Interior Department; the United States Indian Police would go with the collector to the merchant, for example, and demand payment of the tax, and, if refused, would close the store and guard the exits, back and front, with the Indian Police, and thus suspend the doing of any further business until the tax was paid.

Assume further that said firm of Mansfield, McMurray & Cornish not only formulated the policy above referred to, and devoted considerable time and effort, both in the Indian Territory and in Washington, in the matter of securing favorable action by the Interior Department, but, also, actively participated and assisted in the execution and enforcement of the collection of tribal taxes; their services in connection with the matter running through say early in 1900 to late in 1902.

Assume further that, in the beginning of the actual work of enforcing the collection of the taxes, the Chickasaw Nation appropriated $5,000. for the actual expenses of the collection (not, however including therein anything in the way of compensation for said attorneys), but that, as the service required the employment of the Indian Police, of wagons and outfits, and of cowboys to round up the cattle in the open territory, the initial operations were expensive and the $5,000. was exhausted, and that the Governors of the Nations then appealed to said firm to raise additional moneys for the Nations; Mr. McMurray being requested by said Governors to go to Texas for the purpose of borrowing moneys from the banks; that he did so, raising, in all, something over $50,000. in the manner stated, upon the individual endorsement of the members of the firm, and which moneys were thereafter expended in the actual cost of the tax collections, no part thereof, however, being paid to the firm on its own account, but being devoted solely to the purposes stated.

Assume further that the result of the operations during the period covered by the services of the firm was the collection of money amounting to between $600,000. and $700,000. for the Nations named; and, further, that the warrants of the different countries, as the result of the improvement of the finances of the Nations, went to par, and so remained as long as the Tribes had charge of their own finances.

For the professional services rendered in connection with the foregoing matters, claim is made herein in the sum of $100,000.

Assuming that there was no definite or fixed amount of fee agreed upon for the services named, but that the agreement was that the firm should be compensated by the Nations for the services rendered; and assuming, further, that the services were rendered as stated, and that the subject matter and the final result thereof were as stated; and having in mind the experience and knowledge of the attorneys named in matters affecting the rights and affairs of the Choctaw and Chickasaw Nations; state what, in your opinion, would be a fair, reasonable and proper charge for the professional services so rendered?

Mr. Hearn: The defendant objects to the introduction of any evidence in support of the 7th Count of the Petition, for the reason that the Court of Claims has no jurisdiction thereof.

A. I would put the reasonable charge there at $150,000.00.

11 Q. The next matter about which I will inquire is embraced in Count 8, of the Supplemental Petition, and relates to what may be briefly described as the

BONAPARTE OPINION.

Assume that for a number of years prior to 1907, the Choctaw and Chickasaw Nations contended that there were divers persons upon the tribal rolls of the nation who were not lawfully entitled to such enrollment, and that the officers of the Interior Department were vested with authority to strike unlawful enrollments from the rolls; the cases here referred to being those which

originated and were always before the Commission to the Five Civilized Tribes and the Secretary of the Interior, and having no relation to the cases which were within the jurisdiction of the Choctaw and Chickasaw Citizenship Court; that, in connection with the matter of bringing about, if possible, the disenrollment of those so claimed not to be lawfully entitled to enrollment, the Governors of the Choctaw and Chickasaw Nations employed said firm of Mansfield, McMurray & Cornish, but the employment, so far as concerns the Chickasaw Nation is not embraced in this suit, and need not be further considered; and that said Choctaw Nation agreed to pay said firm the reasonable value of the services rendered.

Assume that, in pursuance of said employment, said firm took steps before the Commission named to cause to be removed from the rolls divers persons alleged not to be lawfully entitled to enrollment; that the Commission, in most of such cases, agreed with the contentions made by said firm, but, on appeal by the claimants to the Secretary of the Interior, the officials of that Department reached conclusions of law in respect of the questions involved which were at variance with the conclusions of said Commission, as well, also, at variance with the views and contentions of said firm; that, because of the very great importance of the questions involved, which unless the then holdings of the Interior Department were changed, would probably result in several thousand persons being enrolled, said firm, in the Summer of 1905, addressed a communication to the Secretary of the Interior, requesting a rehearing in some five (5) typical cases; the rehearing was granted; and one of the members of the firm (Cornish) went to Washington, in September, 1905, and there, the said five (5) cases were orally argued on both sides before the Assistant Attorney General of the Interior Department and three of his assistants, (Proudfit, Pollock and Webster), and four sitting as a tribunal, a day being consumed as to each said case; that, after the oral arguments, said member of the firm prepared and filed written argument in each said case, as did, also, the attorney for the applicants; and that, thereafter, the Department adhered to its former ruling, and which was adverse to the contentions of said firm; and thus the matter stood until say December, 1906, or January, 1907.

Assume further that, under the provisions of existing treaties, agreements and laws, the Rolls were to close finally on March 4, 1907, and that unless, prior to that date, relief could be secured from said adverse holdings and decisions of the Interior Department, a vast number of persons would be enrolled, who, as claimed and contended, were not lawfully entitled to enrollment, and which would mean the taking from the regularly enrolled members of the Tribes of several millions of dollars in value of tribal property.

Assume further that said firm then appealed to the Secretary of the Interior to submit the matter to the Attorney General of the United States for opinion, but that he declined so to do, upon the stated ground that it was the rule of the Department not to request

advice from the Attorney General unless he, the Secretary, and his advisers were in doubt, which they were not in this particular matter; that, thereupon, said firm, or one of its members, laid the matter, personally, before the then President of the United States, with the result that the Attorney General was requested to have the matter submitted to him for consideration, and that was done.

Assume further that the said firm, or one or more of its members, appeared before the Assistant Attorney General of the Department of Justice to whom the matter had been referred by the Attorney General, and presented the same to him; that, thereafter, the Attorney General of the United States, on February 19, 1907, promulgated an opinion, in which the contentions made by said firm were substantially sustained, and the Secretary of the Interior was advised that the persons involved were not entitled to enrollment; the opinion in question being that briefly described in this case as the "Bonaparte Opinion."

Assume further that, inasmuch as there then remained but a comparatively short time in which to derive the substantial results authorized by the opinion mentioned, namely, from February 19, 1907, to March 4, 1907, when the Rolls would close, one of the members of said firm who had been in Washington assisting in the presentation of the matter before the Department of Justice, left Washington shortly before the opinion mentioned was formally promulgated, and went to Muskogee in the Indian Territory, where he immediately took up the matter with the Commission to the Five Civilized Tribes, (a copy of the opinion having, in the meantime, arrived there,) and hand in hand and in close and constant cooperation with that Commission, working day and night, the opinion was applied to the records of the Commission, and a list was prepared for immediate transmission to Washington of the persons affected by the opinion. The list mentioned reached Washington before March 4, 1907, and the persons affected by the opinion, who had already been enrolled were stricken from the rolls, and those who had not been enrolled were denied final enrollment; and furthermore, one of the members of said firm assisted the representatives of the Department of Justice in preparing the Government's defense to a suit in mandamus filed by applicants in the Supreme Court of the District of Columbia, March 11, 1907, to compel the Secretary of the Interior to enroll them.

Assuming that the value of the lands, funds, properties and rights incident to individual Indian enrollment in the Nations mentioned has been variously estimated as from $5,000, to $10,000; that the total number of those either removed from the rolls or denied enrollment under the said Bonaparte Opinion has been estimated at more than 1,000 or between 1,300 and 1,400; and that the net result of the favorable outcome of the matter was a saving to the Nations aggregating, according to the estimates stated, a minimum of $5,000,000., with the probability of a greater amount if the larger estimates be used.

The claim made herein for compensation for said professional services rendered the Choctaw Nation is $100,000.

Assuming that there was no definite or fixed amount of fee agreed upon for the service named, but that the agreement was that the firm should be compensated by the Choctaw Nation, for service rendered to that Nation; and assuming further that the services were rendered and that the subject-matter and final result were as stated; and having in mind the experience and knowledge of the Attorneys named in matters affecting the rights and affairs of the Choctaw and Chickasaw Nations, state what, in your opinion, would be a fair, reasonable and proper charge for the professional services so rendered the Choctaw Nation?

Mr. Hearn: Defendant objects to the introduction of any evidence in support of Count 8, for the reason that the Court of Claims has no jurisdiction in the matter.

A. I will put a reasonable fee there at $150,000.00.

12 Q. The last matter, General, about which I will inquire is embraced in Count 9, of the Supplemental Petition in this case, and relates to what may be briefly described as the

INDIAN AGREEMENTS,

Assume that, after the making of what is known as the Atoka agreement, in 1899, the Commission to the Five Civilized Tribes, Indian Territory, in September, 1899, presented to the Choctaw and Chickasaw Nations a proposed supplemental or short agreement, which was signed, September 5, 1899; that the Nations felt that many matters of vital interest and concern to them had been overlooked in said Atoka agreement; and that a new agreement should be made which would save their tribal property and protect their interests; that the short agreement mentioned was ratified by the General Council of the Choctaw Nation, but was not ratified by the Chickasaws; that the said nations employed said firm of Mansfield, McMurray and Cornish to represent them in the matter of negotiating further treaties and agreements concerning the establishment of the Indian rolls, the allotment of tribal lands to the Indians in severalty, and the division, distribution and protection to the individual Indians of the tribal properties and fund; that said firm, in pursuance of the said employment, beginning with the year 1900, assisted, advised and counseled with the representatives of the nations in their repeated conferences with the various officers of the United States having such matters in charge; that a form of proposed second supplemental agreement was prepared and considered and finally, and after much labor performed by the firm in various parts of the Indian Territory, it was approved by the representatives of the two nations and sent on to Washington, but it did not receive the approval of the Secretary of the Interior, and hence, was not submitted to Congress.

Following the failure of said proposed second supplemental agreement, the firm again resumed work on the matter, with the

result that a proposed *third* supplemental agreement was prepared, and finally signed by the Commission to the Five Civilized Tribes, and by the Commissioners representing the Choctaw and Chickasaw Nations. That proposed third supplemental agreement was then sent forward to the Secretary of the Interior, but, after full consideration, was not approved by him, and was not submitted to Congress for ratification.

As to each of the two proposed agreements referred to which were sent to Washington, but not approved, one or more of the members of said firm went to Washington from the Indian Territory and were in conference with various of the officials of the Interior Department in connection therewith.

Following the failure of the Department to approve said proposed third supplemental agreement, the firm on behalf of the nations, resumed activities along the line of having the Government and its officials proceed with the making of another agreement; and, in that behalf, there was a great deal of correspondence, rough drafts and tentative drafts of proposed agreements prepared, the members of the said firm actively participating therein, until, finally, a form of proposed *fourth* supplemental agreement was prepared, agreed upon, and signed, and thereafter, ratified by Congress July 1, 1902, the same being known as the Choctaw and Chickasaw Supplementary Agreement. It was ratified by vote of the Choctaw and Chickasaw citizens on September 25, 1902.

Assume further that after the ratification of this agreement by Congress, July 1, 1902, considerable controversy occurred in the two Nations, each thereof having two factions, one favorable, the other opposed; and that a Governor for each said Nation was then up for election, each said faction being represented by a candidate; that feeling in the matter ran high; that the officials of the Government received the cooperation and assistance of said firm in endeavoring to have the agreement ratified, and in preventing the election by fraudulent means or methods of the candidate for Governor in each nation opposed to the ratification.

The result of the matter was that the candidate for Governor, in each Nation, favorable to the agreement, was duly elected, and the ratification of the agreement by both Nations followed.

Assume further that the treaty which was ratified by Congress, July 1, 1902 (32 Stat. 641), and, subsequently, by the Choctaw and Chickasaw Nations (and to which I have above referred), involved the entire lands and property of the two Nations, extending from Arkansas to the Western boundary line of Oklahoma, (about 250 miles), and from the Canadian to the Red River (about 110 miles), and that the said lands and property were worth hundreds of millions of dollars; and that said Treaty provided for the equitable division of the value of the property of the nations among its citizens. For the services so rendered by the firm, claim is made herein for $50,000.00.

Assuming that there was no definite or fixed amount of fee agreed upon for the services named, but that the agreement was

that the firm should be compensated by the Nations for the services rendered; and assuming further that the services were rendered and that the subject matter and the final result thereof were as stated; and having in mind the experience and knowledge of the attorneys named in matters affecting the rights and affairs of the Choctaw and Chickasaw Nations; state what in your opinion, would be a fair, reasonable and proper charge for the professional services so rendered?

Mr. Hearn: Defendant objects for the reason that the Court of Claims has no jurisdiction of the subject-matter in Count 9 of the petition.

A. I would say $75,000.00 would be the reasonable charge there.

Cross Examination, by Mr. Hearn.

13 xQ. Mr. Michener, do you remember these cases by their names if called, one the Sypher and the Ayres cases—do you remember them?

A. I think so. Let's try it.

14 xQ. I believe in the Sypher case you testify that the reasonable fee for services rendered, both before Congress and the Court of Claims, was $40,000.00?

A. Yes.

15 xQ. What part of the fee of $40,000.00 do you fix as a reasonable amount for the services before Congress?

Mr. Hoehling: That question is objected to on the ground that the hypothetical question propounded to the witness in respect of the services claimed to have been rendered by the firm was as an entirety, covering both Congress and the Court of Claims, and the separate items or elements of the services he was not interrogated about.

A. I have made no separation at all.

16 xQ. Did you fix your reasonable amount of the fee in both cases, Sypher and the Ayres cases, upon the basis of a contingency, that is to say, upon the basis of the claimant's claims being denied?

A. No, my testimony is based upon what I think is the fair value of the services rendered in each case.

17 xQ. To what extent did the amount involved affect the amount which you have stated?

A. I considered that, of course, but I didn't set apart any particular part of the fee on account of the amount involved in either case.

18 xQ. That did, though, have some effect upon it, didn't it?

A. Oh, yes.

19 xQ. If the same service was rendered on a claim involving $50,000.00, the fee would be considerably less, is not that true?

A. Well, that would depend on circumstances in my judgment. Of course, broadly speaking, the amount involved always has some weight in establishing the value of the service rendered, because the amount involved figures in the final results.

20 xQ. That is, it adds responsibility?

A. Yes, and generally, also, to the amount of work to be done.

21 xQ. Well, sometimes there is more work to be done in a case involving very little than there is in a case involving a great deal?

A. Yes.

22 xQ. But you can't charge the same for your services, and that is due, is it not, to the responsibility differing in two cases?

A. Yes, if there is no difference in the amount of work.

23 xQ. So, then, as the amount involved decreases the fee decreases?

A. To some extent.

The examination by counsel being concluded, the witness, in compliance with the rule of the court requiring him to state whether he knows of any other matter relative to the claim in question, and if he do to state it, says:

A. No. .....

Subscribed before me this ....day of April, 1920.

Thereupon—

FRANCIS W. CLEMENTS,

being first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposed and said that his name was Francis W. Clements; that his age was 56 years; that his occupation was that of attorney at law; that he resided in the City of Washington; that he had no interest, direct or indirect in the claim which was the subject of inquiry in this case, and that he was not related to any one connected therewith.

And thereupon the said witness was examined by the counsel for the claimant, and, in answer to interrogatories, testified as follows:

Direct Examination, by Mr. Hoehling.

1 Q. Mr. Clements, you are a member of the local Bar?

A. Yes, sir.

2 Q. What is your present professional connection?

A. I have an association with the firm of Britton and Gray.

3 Q. In the practice of the law?

A. In the practice of the law.

4 Q. How long has that association been in existence, Mr. Clements?

A. Since January, 1914.

5 Q. Prior to January, 1914, how and in what capacity were you employed, and during how many years?

A. Well, for a period of 30 odd years I was employed by the government in connection with the Interior Department. During that time, or the greater part of that time, I was employed in what is known as the Assistant Attorney General's office, being the law

branch of the Interior Department, and, for a considerable portion of that time, I was what is known as First Assistant Attorney.

6 Q. What familiarity, if any, Mr. Clements, during the years that you were in the Interior Department, did you have with the various affairs of the Choctaw and Chickasaw Nations?

A. Well, it was part of my duties to supervise in the nature of an appellate authority the final action of the several bureaus, including the Indian Office, and in that way all matters respecting Indian affairs were likely, and generally were, brought before the Assistant Attorney General's office, either under reference by the several Commissioners, or through appeal or other proceedings involving other action.

7 Q. In a general way, Mr. Clements, and during the time you were in the Interior Department, were you familiar with what is known as the Incompetent Fund of the Indians, and with what is known as the Bonaparte Opinion?

A. Well, I was only in a sort of a—by conference or by general advice. But matters of that sort were generally handled by certain divisions of the office. For instance, Indian matters were generally delegated to Mr. Pollock or General Webster. But the matters were, before final disposition, a matter of general conference in the entire office, and, in that way I had that knowledge that I have acquired, and with respect to which it has been some while, and I only have that general knowledge.

8 Q. And did that general knowledge also extend, in addition to those two matters I mentioned, to what I might describe as the collection of tribal taxes and the making of that supplemental agreement with the Choctaws and Chickasaws?

A. I have but an indistinct recollection with respect to these several matters, but remember very well that the matters were under consideration.

9 Q. While you were in the Department of the Interior were you acquainted with Mr. J. F. McMurray and the members of his firm?

A. Yes, I was.

10 Q. Do you know how they were regarded before the Department as to ability as attorneys representing those two Nations?

A. Regarded highly; that is, regarded as capable attorneys.

Mr. Hearn: Defendants object for the reason that the statement of the witness is incompetent, irrelevant and immaterial, and states an opinion that is not even his own.

11 Q. I will ask you, Mr. Clements, in view of the objection, to supplement your statement, in addition to your knowledge as to how they were regarded in the office generally, as to what your individual opinion was as to the capability, or otherwise, of the firm named and its members?

A. From my association with business in which they appeared, I found them to be persistent, earnest and capable in presenting their matters.

12 Q. Since your association with the firm of Britton and Gray, beginning in 1914, I believe you stated, I wish you would state, in a general way, the character of business that you have attended to?

A. Our business covers all matters before the several departments, particularly the Interior Department, the local courts, the Court of Appeals, and the Supreme Court of the United States.

13 Q. How about the Court of Claims?

A. And the Court of Claims.

14 Q. Mr. Clements, you were present and heard the question which I propounded to General Michener in relation to the Sypher matter. I will ask you please, to state your answer to that question?

A. Considering the services rendered and its result, and the period of employment, I would regard the $25,000.00 as extremely low.

15 Q. You were also present and heard the question which I propounded to General Michener about the Eli Ayres case, and I will ask you to state your answer to the question?

A. I think the charge was fair and reasonable.

16 Q. And you were present, also, and heard me propound the question to General Michener in respect of the claim for compensation growing out of what is known as the Incompetent Fund?

A. Yes, sir.

17 Q. I will ask you to please state your answer to the same question?

A. It seems unreasonable that counsel could have agreed on such a small fee had they have understood at the time the agreement was entered into that it would entail such an amount of work. I, therefore, must regard it as at least reasonable.

18 Q. And you were also present and heard the question I propounded to General Michener in respect to claim for compensation or services claimed to have been rendered in connection with the collection of Tribal Taxes, and I will ask you to please give your answer to the same question?

A. As I understand the question, it involves not only the performance of legal services, but practically a financing of the operations following the advice of counsel given in his legal capacity. I should think that, with respect to the results obtained, and under these circumstances, the Nation could not object to the sufficiency of the services where the amount claimed was not in excess of the $100,000.00.

19 Q. You were also present and heard me propound the question to General Michener in relation to this matter which I described as the Bonaparte Opinion, and I will ask you, please, to give your answer to the same question?

A. Reckoned with regard to the value of the services to the Nation, a large element, I would say $100,000.00 was very reasonable.

20 Q. You were also present and heard me propound the question to General Michener in respect of the claim for compensation in connection with the matter described as Indian Agreements, and I will ask you to please give your answer to the same question?

A. The service rendered was extraordinary, and was of such value to the Nation that the fee charged is surely not excessive.

21 Q. What do you say, Mr. Clements, as to its being reasonable, or otherwise?

A. I would say that it was very reasonable.

Mr. Hoehling: That is all.

Mr. Hearn: The defendant objects to each of the questions propounded to the witness as to Counts 4, 5, 6, 7, 8 and 9, and to the answers thereto, for the reason that the court has no jurisdiction of the subject matter involved in the same.

Cross Examination, by Mr. Hearn.

22 xQ. In regard to the Sypher case, about which you have testified, I don't believe you stated what would be a reasonable fee. I believe you stated that $25,000.00 fee would be low. What would be a reasonable fee?

A. The Sypher case, as I recall it, was a case growing out of services rendered the Nation by an attorney that involved a sum in excess of $200,000.00.

23 xQ. That is the case?

A. It was ultimately settled by a payment of a fee of $5,000.00., and for which the service now charged for is at the rate of $25,000.00.

24 xQ. Did the amount involved, which you say was something over $200,000.00, have anything to do in fixing the fee of $25,000.00?

A. It did. It is an element—a large element in connection with the amount of service, the time required and the character of the service.

25 xQ. What effect on the reasonable compensation would the likelihood that there would not be a recovery have?

A. That is a matter, in my opinion, which was of more concern to the employer than to the attorney, the service being one extended after the principal had taken into consideration all matters affecting the likelihood of favorable result.

26 xQ. An attorney who is competent to attend to a matter of that nature should be in a position to pretty well determine the likelihood of a recovery, is not that true?

A. Well, an attorney generally advises his client as to the likelihood of recovery, but he does not control his client in the matter of prosecuting a matter in which he is interested.

27 xQ. At any rate, the attorney would perhaps know, or would know more about the probability of a recovery than the client would know?

A. As I recall, there was nothing in the question that even

suggested that counsel gave advice with respect to the likelihood of a result.

28 xQ. Suppose that the amount involved in the Sypher case was $50,000.00 rather than $219,000.00. What would you then say would be the reasonable fee?

A. Taking into consideration a $50,000.00 amount, the large element in the case, extending through the period, as it did, in detail, would be more affected by the amount of service rendered than would it be controlled by the amount involved. In other words, that while the amount involved is an element, especially where the amount involved is large, yet to the attorney necessarily the amount of service must figure greatly in fixing the value of the service to the client.

A. Had the service rendered extended through the period as detailed, resulting in success, and the amount involved been $50,000.00, I would have said that possibly from $10,000.00 to $15,000.00 would have been a fair fee.

30 xQ. So, then, the difference would be in the responsibility that is on the attorney's shoulders, occasioned by the large amount involved?

A. Exactly.

31xQ. So, then, after all, the likelihood of a recovery of a large amount has considerably to do with what their reasonable fee would be; is not that it?

A. Exactly.

32 xQ. So, then, if in this case competent attorneys knew that there was little likelihood of a recovery, then this responsibility of a large amount involved would not have existed?

A. I think, as I said before, that the question as to the likelihood of recovery, while that might have an element in lessening a fee, where counsel thought the amount recovered would be very great. On a percentage basis it can have no possible value in determining the fee, where the client is desirous of pressing the suit, and the time employed justifies the fee. I will make that plainer to you. If the likelihood of recovery was great and the amount involved was, say, $1,000,000.00, while the amount involved—the fact that that amount of money is involved is an element, and a large element in the responsibility of the attorney towards his client; nevertheless, the great amount involved and the likelihood of recovery would enter into the computation in determining the percentage that might be charged in the event of a successful outcome.

33 xQ. If you remember in the Sypher case the question put covered the service rendered when this matter was in the Congress, and also after it had been referred by Congress to the Court of Claims. What do you fix to be the reasonable compensation rendered for the services before the matter was referred to the Court of Claims?

Mr. Hoehling: I object to that question because it is not embraced in the direct examination of the witness, his opinion being

asked simply in respect to the service as an entirety embraced in the hypothetical question.

A. Now, were I to answer that question, separated and disconnected from the main question that was put, I would want more definite information with respect to the actual service performed before the Congress before the case was, by the Congress, referred to the court.

34 xQ. Then you have no answer to make to the question, or direct answer to the question, which I asked?

A. I would not think I was in receipt of sufficient information to enable me, in justice and fairness, to pass upon the value of the service disconnected, and when limited to the service performed before the Congress in that matter. In this connection, if I might go a little further in this connection, when the suit was filed under the reference from Congress it was, as I recall, for the full amount of $200,000.00 and odd dollars, and one in which judgment might have been rendered for that full amount.

35 xQ. You gave no weight in your answer, then, to that part of the hypothetical question setting out that a bill was before Congress for an appropriation of $50,000.00 to pay the claim of Sypher, which Congress would not pass?

Mr. Hoehling: That question is objected to because the hypothetical question included the fact that on several occasions an effort was being made to secure the direct appropriation to Sypher in the full amount of $220,000.00 and odd, and that that effort was later abandoned and an effort made to secure $50,000.00, all, however, prior to the reference of the matter to the Court of Claims?

A. With regard to the service before the Congress, in my own estimate, in passing upon the value of the service, I reckoned largely by the amount and period of service covered, both before the Congress and the Courts, under the later reference of the matter to the court.

36 xQ. In reference to the Ayres case, covered under the second hypothetical question put to you, wherein you state that the reasonable fee would be $25,000.00, and the amount involved in the Ayres case is $191,000.00, did the amount involved have anything to do with the amount you fixed as a reasonable fee?

A. Why, of course the amount involved in that case was figured as one of the elements in passing my judgment or in fixing my judgment as to the reasonableness of the fee which, together with the service rendered, seemed to me to fully justify the amount of the charge, which, as I understand, was $25,000.00.

37 xQ. If the case had been in your hands and you had formed the opinion, or were of the opinion that the recovery was not likely, or very unlikely, would that cause your opinion to have been different as to the amount of the reasonable fee?

A. I never allow my judgment with respect to whether the case will or will not be lost to control me in fixing the amount of fee. In the first place, I might state to you, if the case had been in my hands, it would not have been in my hands unless we had a good retainer with it, and an agreement with respect to the fee, before my services would have been entered upon.

38 xQ. I take it, then, that you are of the opinion that these services as rendered here were contingent upon defeating these cases?

A. Not exactly, but, as I understand, there was no definite arrangement with respect to the payment for the services.

39 xQ. And, for that reason, it would be in the nature of a contingent fee?

A. Somewhat akin to a contingent case.

40 xQ. And, for that reason, the fee would be a little higher charge than if there had been a retainer?

A. Well, that is an element, which, as I say to you, it seems to me that these cases smack largely of contingency.

41 xQ. And the fee you fix is upon that basis?

A. No; but the fact that no definite arrangement had been made with respect to the amount of compensation, and under the peculiar service rendered to the Nation, gives it a large flavoring of contingency.

Re-Direct Examination, by Mr. Hoehling.

42 rdQ. Mr. Clements, several questions have been asked you on cross examination having relation to an attorney fixing the amount of his compensation in any given case based upon his idea or opinion as to the likelihood, or otherwise, of a recovery. Now, while you were connected with the Department of the Interior for the years that you have stated, did you represent that Department in the trial of any of its cases in court?

A. I represented it in many cases.

43 rdQ. Since you have retired from the Department and have been engaged in private practice, have you tried cases in court?

A. A great number.

44 rdQ. Including both the lower courts and the Supreme Court of the United States?

A. I think I have.

45 rdQ. That was true, also, while you were in the Department of the Interior?

A. That was true.

46 rdQ. Now, has it ever happened to you during your career as a lawyer that your preconceived ideas or notions of the likelihood, or otherwise, of a recovery have not been followed by the court?

A. I never get frightened until I come to the conclusion that the other fellow has no case. It is usual to reckon that perhaps your best judgment may not meet with the approval of the court.

47 rdQ. In other words, your experience has been that courts do not always agree with your preconceived notions?

A. Not always.

The examination by counsel being concluded, the witness, in compliance with the rule of the court requiring him to state whether he knows of any other matter relative to the claim in question, and if he do to state it, says:

A. No.

.....

Subscribed before me this .... day of April, 1920.

.....

Commissioner.

Thereupon—

FRANK S. BRIGHT,

being first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposed and said that his name was Frank S. Bright; that his age was 56 years; that his occupation was that of attorney at law; that his place of residence was Washington, D. C.; that he had no interest, direct or indirect, in the claim which was the subject of inquiry in this case, and that he was not related to any one connected therewith.

And thereupon the said witness was examined by the counsel for the claimant, and, in answer to interrogatories, testified as follows:

Direct Examination, by Mr. Hoehling.

1 Q. Mr. Bright, you are a member of our local Bar?

A. Yes, sir.

2 Q. How long have you been engaged in the practice of your profession?

A. Since the 7th of June, 1887.

3 Q. In a general way, Mr. Bright, what lines of professional work have been included in your practice?

A. Everything except pensions and patents that happens in Washington. Departmental practice, Supreme Court of the United States, Court of Claims, and the local courts.

4 Q. Are you acquainted with Mr. J. F. McMurray, the plaintiff in this case?

A. Yes, sir, and I have been for about 20 years, I think; perhaps a little longer.

5 Q. During the course of your acquaintance with Mr. McMurray, I wish you would state whether you formed any opinion as to his ability as a lawyer, or otherwise, and if so state what that opinion is?

A. I have a very high regard for him, for his accomplishments, of which I have no personal knowledge; but I came to have a very high personal regard for him.

6 Q. Mr. Bright, you were present and heard this question that I have just propounded to General Michener with regard to the Sypher case?

A. I was.

7 Q. I will ask you to state your answer to the same question, if you please?

A. The fee charged is a very low one. I should say from $30,000.00 to $40,000.00 would be a reasonable fee.

8 Q. You were also present and heard the question I propounded to General Michener with respect to the Ayres matter, and I will ask you to state your answer to the same question?

A. I think the charge is a fair charge, and a reasonable one.

9 Q. You were also present and heard me propound to General Michener the question with respect to the Incompetent Fund?

A. I was.

10 Q. I will ask you to state your answer to the same question?

A. The services finally rendered could hardly have been in contemplation, I should think, at the time the agreement was made, or the amount agreed upon, or the compensation would not have been as small. It certainly was a very low compensation for the services indicated in the question, and the $12,500.00 is, undoubtedly, due these claimants as a reasonable fee, or the balance of $12,500.00.

11 Q. You were also present and heard the question that I propounded to General Michener in respect to the claim for compensation for services rendered in connection with the Tribal Taxes matter?

A. Yes, sir.

12 Q. I will ask you, please, to state your answer to the same question?

A. I would put it at not less than $120,000.00.

13 Q. And, you were likewise present and heard me propound the question to General Michener in relation to what I have described as the Bonaparte Opinion. I will ask you to please give your answer to the same question?

A. I would make it $300,000.00.

14 Q. And you were present and heard me propound the question to General Michener in relation to the charge made in connection with what I have described as Indian Agreements. I wish you would please give your answer to that same question?

A. I would say that a reasonable charge would be $100,000.-00.

Mr. Hoehling: That is all.

Mr. Hearn: The defendant objects to the questions propounded to the witness in each of the Counts Nos. 4, 5, 6, 7, 8 and 9 and the answers of the witness thereto, for the reason that the court has no jurisdiction of the subject matter involved in the same.

Cross Examination, by Mr. Hearn.

15 xQ. Mr. Bright, do you remember these cases so I can refer to them as the Sypher case?

A. I think so, yes, sir.

16 xQ. I believe you testified that the reasonable value in

the Sypher case could be between $30,000.00 and $40,000.00?

A. Yes, sir.

17 xQ. And in that you included service rendered not only when the matter was pending in Congress, but also after it was referred to the Court of Claims?

A. Yes, sir; that covered the whole service.

18 xQ. Now, what would be the reasonable fee for the service rendered before the matter was referred to the Court of Claims?

Mr. Hoehling: That question is objected to because the hypothetical question embraced the service as an entirety, covering both Congressional work and before the Court of Claims, and the opinion of the witness was not asked as to the separate items and elements of the service.

A. I was thinking of it as an entirety.

19 xQ. You are not in a position, then, to answer the question?

A. I should say not, no sir.

20 xQ. Do you know anything about the merits of the Sypher case?

A. No, sir, I knew old General Sypher, but I knew nothing about that.

21 xQ. Did the amount involved have anything to do with the amount that you fixed as the reasonable fee?

A. Yes, sir.

22 xQ. How much was involved in the Sypher case?

A. Well, there was always the possibility of the recovery of the entire amount claimed, $220,000.00.

23 xQ. Did you also consider that the fee which you have stated would be reasonable fixed at from $30,000.00 to $40,000.00, was contingent upon the success of the attorneys?

A. In some measure, yes, sir.

24 xQ. Successful in that they defeated the claimant's claim?

A. Yes, sir; they got the result.

25 xQ. It would have been otherwise if it was larger, the compensation for the service?

A. It would.

26 xQ. If there was to be compensation for the service whether they succeeded in defeating the claim or not, it would be otherwise, is not that true?

A. Yes, sir.

27 xQ. And that statement or answer applies both to the Sypher and to the Ayres cases?

A. Yes, sir.

Re-Direct Examination by Mr. Hoehling.

28 rdQ. To what extent, Mr. Bright, would your stated opinion as to the reasonableness of the fee in the Sypher case be subject to abatement upon the idea of contingent compensation?

A. As I remember, the hypothetical question, it involved several trips to Washington and representation before the Committees, the prevention of a direct appropriation at any time, and a great deal of service, so that the contingency is not much of a factor in that case as it would be in the others. But the fixing of fees, I have found in my practice, is a difficult thing to do; and I have come to the conclusion that the results arrived at are the best basis for fixing fees, and the results here were, after this long service, a payment of this minimum amount.

29 rdQ. In other words, in arriving at a conclusion as to a proper charge for a professional service, the result accomplished is an element quite proper to be taken into account by the attorney?

A. Yes, sir. I had one experience where I didn't begin to do as much work as there is involved in this case, a matter first in the State Department and afterwards before the Venezuelan Claims Commission, in which I secured a recovery of $61,000.00, and asked for a fee from the Chancery Court of New Jersey, into which the corporation I represented had gone in receivership proceedings, and the court allowed me the amount I asked, in substance, one fourth of the $60,000.00 I had another matter last summer where I saved some clients about $200,000.00 without having to go out of the Treasury Department and that it only involved services for two years, and not anything like the services that were rendered in either the Sypher or the Ayres cases, and my fee of $25,000.00 was paid without a question.

Re-Cross Examination by Mr. Hearn.

30 rxQ. Mr. Bright, that brings the question of responsibility in. Suppose, for instance, that in a personal injury case, on account of the loss of a finger a mechanic sues for $250,000.00, the suit should cover a year in preparation and trial, and you felt all along that if a recovery was had it would not be for more than $5,000.00 or $10,000.00; what would you consider to be a reasonable fee in that character of case?

A. Well, I don't think I would be justified in charging more than $500.00 for that service, because that is a case where there would never seem to me a possibility of a recovery of anything like $5,000.00.

31 rxQ. Is not it true, then, that the likelihood of recovering the amount that is sued for has considerable to do with the fixing of the fee?

A. Yes; the services rendered; the liability to have to pay this $200,000.00.

32 rxQ. I say the responsibility?

A. Yes.

33 rxQ. Suppose, for instance, in these cases the likelihood of recovery was very slight and the party would have known in their case, just as he would have known it in the personal injury case which I have just cited, do you still think that the amount involved,

being large, would increase the size of the fee, or on account of its being an added responsibility?

Mr. Hoehling: That question is objected to because neither in the record in this case nor in the hypothetical question propounded, is there the slightest foundation for the suggestion that the likelihood of a recovery was very slight, or was slight?

A. My experience has taught me that, in the first place, Congress is likely to do unexpected things. That is indicated in the hypothetical question. The Indian Nations were so concerned about the danger of this appropriation that they employed these men, and that then, in both cases, the claims were referred to the Court of Claims, with much more probability that there would be recovery of the full amounts than there ever could have been a possibility that the mechanic would even get $5,000.00 for his loss of finger.

34 rxQ. Still, Mr. Bright, you are not directing your answer to my question?

A. If I assume your hypothesis, I must answer your question yes. If I could assume that there was not ever a possibility of their recovering anything, there might be some reduction in the amount of a reasonable compensation which I have fixed. But, I say again, these men got the results.

35 rxQ. You notice that there was nothing in the hypothetical question advising you of the seriousness or the merits of the two cases?

A. No, sir.

36 rxQ. So, then, you have, in your answer, assumed that they were indeed serious cases?

A. I have assumed that they were serious enough to be seriously considered by Congress, and then go to the Court of Claims and be, one of them, twice argued in the Court of Claims.

37 rxQ. Suppose, for instance, that in one of the cases the claimants were willing to accept $50,000.00 in settlement and the case involved $219,000.00?

A. I think from the wording of the hypothetical question that the services rendered in Congress by the claimants here had brought General Sypher to that position, but the door was thrown open again when they went into the Court of Claims, and there was no limit set, as I understand it.

38 rxQ. What service do you remember was rendered before Congress?

A. Just that these people were employed by the Indians to come up here and that they appeared before the Committee and presented this question, and that the appropriation which the Governor of the Indian Nation thought was imminent went over for several different times, and was eventually reduced from $220,000.00 to $50,000.00, and then sent to the Court of Claims with no limit on it.

The examination by counsel being concluded, the witness, in compliance with the rule of the court requiring him to state whether he knows of any other matter relative to the claim in question, and if he do to state it, says:

A. No.

EXHIBIT "A."

18

No. 150

Office of
Auditor Public Accounts
Chickasaw Nation.

Tishomingo, I. T., Feb. 28,1906.

First Division

The National Treasurer of the Chickasaw Nation will pay to Mansfield, McMurray & Cornish or order the sum of Five Thousand Five Hundred and Eighty nine and no/100 Dollars for account of Services, Attorneys for Chickasaw Nation as per appropriation of the Chickasaw Legislature.

Approved Sept. 26, 1899.

$5589.00

Charley Colbert,
Auditor Public Accounts, Chickasaw Nation.

Endorsed on back Mansfield, McMurray & Cornish.

Office of
Auditor Public Accounts
Chickasaw Nation.

No. 59

First Division

Tishomingo, I. T., Dec. 6, 1907.

The National Treasurer of the Chickasaw Nation will pay to Mansfield, McMurray & Cornish the sum of Five Thousand and no/100 Dollars for account of Services as Attorneys for Chickasaw Nation from 3-4-06 to 3-4-07, as per appropriation of the Chickasaw Legislature.

Approved Sept. 20, 1899.

(Signed) Charley Colbert,
Auditor Public Accounts, Chickasaw Nation.

$5000.00

Endorsed on back Mansfield, McMurray & Cornish.

EXHIBIT "K."

Kinta, Indian Territory, November 9, 1904.

To Honorables Spencer B. Adams,
Walter L. Weaver and Henry S. Foote,
Judges of the Choctaw and Chickasaw Citizenship Court,
Tishomingo, Indian Territory.

Sirs:

I take the liberty of addressing you, as Principal Chief of the Choctaw Nation, relative to action by the Court under that portion of the Act of Congress approved March 3, 1903 in fixing the fee of the attorneys representing the Choctaw and Chickasaw Nations in the trial of "Court Claimant" citizenship cases.

In view of the interest of the Choctaw Nation in the matter and of my official position as the chief executive of the Choctaw Nation, I deem it not improper to lay before the Court such information as I have for its consideration in connection with the matter referred to.

From my first discovery of the terrible wrongs that have been done the Choctaw and Chickasaw Nations by the admission of thousands of "Court Claimants" under the Act of June 10, 1896, the entire power of my administrations, then and since has been exerted in securing relief for our people. I was Principal Chief at the time and up to the fall of 1900, and could serve no longer at that time for the reason that our Constitution prohibits continuous service on the part of the chief executive longer than two terms. I was succeeded by Gilbert W. Dukes and in 1902 I was re-elected and again in 1904 and will serve, barring death, to the end of our tribal existence.

As above stated the extent of the wrongs done our people by the admission of fraudulent citizenship claimants by the United States Court became apparent in 1898. Since these admissions to citizenship had been made by the United States Courts and their judgments became final, our people felt that there was absolutely no hope of securing relief. I took the advice of many whom I considered competent to advise me upon legal matters and were assured by them that the judgments of the United States Courts were final, and that there was no power anywhere vested to disturb them, and that there was nothing for our people to do but to witness the wrongful taking of millions of dollars in value of their tribal property by adventurers from Arkansas, Texas and the surrounding States. So thoroughly convinced was I that wrongs such as these should not and could not be permitted to stand, that I persevered in my efforts.

Mansfield, McMurray & Cornish, a firm of attorneys at South McAlester, Indian Territory, had been employed by me in some other matters affecting the rights and interests of the Nation; and I conferred with them relative to the defeat of the "Court Claimants."

They took the matter under advisement, made a thorough investigation into the facts and advised me as a result of such investigation that the admission of "Court Claimants" not only involved the perpetration of frauds and wrongs and the practice of perjury and wrong doing such as has never been known perhaps in the history of judicial proceedings in this or any other country, but in addition to that they advised me, as a result of their investigations that, according to their view the judgment rendered by the United States Courts were absolutely void for the reason that they were rendered against only one of the Nations, whereas both the Choctaw and Chickasaw Nations were necessary and interest parties, and furthermore that the United States Courts had tried the cases *de novo* upon appeal from the Commission to the Five Civilized Tribes whereas, under the Act of June 10, 1896 under

which they had been rendered, the action of the United States Courts should have been confined to a review of the decisions of the Commission to the Five Civilized Tribes.

This was the first substantial basis for relief that had been suggested, and I directed this firm of attorneys to proceed with their investigations and that the matter would be presented to our people and to the Council and if Council so directed, by an act I would employ them to defeat the "Court Claimants" and give them a contingent contract, agreeing to pay a proportion of the value of the allotments saved in the event of success.

As above stated my term of office as Principal Chief expired in the fall of 1900, and up to that time the matter had not progressed far enough to be presented to Council. Gilbert W. Dukes was my successor and in January, 1901, a special session of Council was called for the purpose of taking steps looking to the defeat of the "Court Claimants." I was elected President of the Senate and on March 7, 1901, an act was passed and approved authorizing and directing the Principal Chief of the Choctaw Nation to enter into a contract for the purposes stated.

Honorable Douglas H. Johnston was and had been, for more than two years the Governor of the Chickasaw Nation, and a like act had been passed by the Legislature of the Chickasaw Nation authorizing the same employment and for the same purpose.

On January 17, 1901 Gilbert W. Dukes, Principal Chief of the Choctaw Nation entered into a contract with Mansfield, McMurray & Cornish, a copy of which will be filed with the court and which provides that they shall be paid, in the event of success nine per centum of the value of the allotments of "Court Claimants" which they may have saved to the tribes.

The whole matter of the difficulties which confronted the Choctaw people, the terrible obstacles which had to be overcome and the improbability of success in the end, by reason of the powerful influences which would certainly be exercised against our efforts, were thoroughly understood by the Choctaw people prior to the assembling of the General Council and by the General Council as the representative of the Choctaw people at the time of the passage of the act of Council authorizing the employment.

Not only this, but in the campaigns which have followed this contract and its terms and the relation of Mansfield, McMurray & Cornish to the Choctaw Nation in protecting its interests from "Courts Claimants" have been made the subject of political discussion throughout the nation. As a substantial evidence of the fact that this contract and the right of Mansfield, McMurray & Cornish to the compensation which they have earned under it is not only thoroughly understood by the Choctaw people and approved by them, I have only to refer to the outcome of the elections, at which I was elected Principal Chief in 1902 and again in 1904.

The Choctaw Nation and people not only consider this contract a binding one, but think there rests upon them the deepest

obligation to urge, so far as may be in their power that it be observed in all respects. Too much cannot be said relative to the unswerving loyalty and devotion of Mansfield, McMurray & Cornish to the interests of the Choctaw Nation. They have stood alone in their fight against "Court Claimants" and for our protection and the most powerful and far reaching influences have been exerted toward breaking them down in the work they have undertaken. They have declined all other business and devoted themselves constantly and exclusively to the consummation of this great work which we have placed in their charge and the Choctaw Nation and people feel that if there ever existed a legal and binding obligation and one that should be observed in all respects, it is the contract which they have entered into with these attorneys, guaranteeing that they shall be paid a reasonable compensation for their services and to a reasonable portion of the property saved as a result of their efforts.

It would be impossible for me to lay before the court information in addition to what it already has as to the services rendered by these attorneys in the actual trial of the cases. The thorough and systematic manner in which the cases have been prepared for trial, the steps which have been taken by them to develop the truth or falsity of each claim, involving investigations extending throughout practically every state south of Mason and Dixon's line and the earnest and able manner in which they have presented each case is sufficient. I feel warranted in saying to challenge the admiration of all who are familiar with the facts and who feel interested in the triumph of right and the rebuke of wrong doing, but their services to the Choctaws and Chickasaws have extended further and beyond this. The actual trial of the cases is not the greatest service performed by these attorneys. From 1899 to 1902 they labored constantly, earnestly and with a persistence rarely equaled, before the Department of the Interior and the Congress of the United States, seeking to secure the creation of a tribunal vested with jurisdiction to try the cases. The first Supplementary Agreement was made in 1899, but it failed of ratification. The next was made in the early part of 1900. It also failed and still another was made in 1901. In all of these preliminary agreements, clauses were inserted looking to the retrial of "Court Claimant" citizenship cases, and these attorneys were the representatives of the tribes in the making of all of them. The final Supplementary Agreement was ratified by Congress on July 1, 1902 and by the Choctaws and Chickasaws on September 25, 1902 and was negotiated in the early spring and winter of 1902. There was not a single detail of any of these agreements which was not considered and passed upon by these attorneys as our representatives; and the agreements would never have been considered by the tribes but in the hope that there might be inserted in them provisions for the retrial of "Court Claimant" cases.

To the defeat of the "Court Claimants" the best efforts of all my administrations have been directed, and it is with much pride that I am now permitted to witness the consummation of the efforts beginning more than five years ago. To the efforts of Mansfield, McMurray & Cornish are due the protection of the Choctaw and Chickasaw Nations from the claims of "Court Claimants." But for the efforts which they have made, extending throughout a period beginning in the year 1899 and continuing at this time, the "Court Claimants" would have been placed upon the final rolls and received lands of the Choctaws and Chickasaws of the approximate value of twenty million dollars. I have not the exact figures before me, but the records of the court will show the number of citizenship claims involved. I understand the number to exceed four thousand and it is a matter well within the knowledge of those of us most vitally interested that the right of citizenship in the Choctaw and Chickasaw Nations including the lands which are included in allotment and the interested in the invested funds and other moneys, town site funds and the proceeds of the sale of surplus and coal and asphalt lands is of the value of from five thousand to six thousand dollars.

In conclusion I have to state that the rate of compensation fixed in the said contract with Mansfield, McMurray & Cornish is a reasonable one and that it is the wish of the Choctaw people that it be carried out.

I therefore have to respectfully request that the court, in fixing the fee of our attorneys under the said act of March 3, 1903 consider the suggestions herein contained and to fix such compensation in accordance with the rate contained in said contract.

Very respectfully,

(Signed.) Green McCurtain,
Principal Chief, Choctaw Nation.

Emet, Indian Territory, December 3, 1904.

To the Choctaw and Chickasaw Citizenship Court,

Sirs:

As Governor of the Chickasaw Nation I wish to state the facts and circumstances attending the execution, by the Chickasaw and Choctaw Nations of the contract with Messrs. Mansfield, McMurray & Cornish for the defeat of "Court Claimants", entered into on January 17, 1901; and my knowledge of the service rendered by these attorneys, under said contract, for the information of the Court in the exercise of the duties imposed upon it in fixing their compensation for such services under the Indian Appropriation Act of March 3, 1903.

I presume a copy of said contract will be filed with the Court and deem it unnecessary to refer in detail to its various provisions; the purpose of this communication being to respectfully urge upon the court that the Chickasaw people consider this contract, not only a binding one from a legal standpoint, but that they con-

sider that the moral obligations resting upon them to that end are of the deepest and most sacred character.

Under the Act of Congress approved June 10, 1896, several thousand adventurers from Texas, Arkansas and various other states made application to the Commission to the Five Civilized Tribes for citizenship in the Chickasaw and Choctaw Nations. Their claims were passed upon adversely by the Commission in most instances, and the cases were then appealed to the United States Courts for the Central and Southern Districts of the Indian Territory, under the act. By the use of false affidavits, perjured evidence and the practice of fraud, these applicants were in most instance admitted, these proceedings being consummated in 1897 and 1898.

The tribes urged upon Congress that provision for relief from these admissions should be made and in 1898, an Act was passed providing for an appeal to the Supreme Court of the United States; but such appeal was limited to the Constitutionality and validity of the original legislation. Attorneys were employed and the cases were appealed to the Supreme Court of the United States, but its holding was against the tribes and in favor of the Constitutionality and validity of the original legislation, and thus affirming the judgments and cutting off the tribes forever, as was then thought from any hope of relief. These "Court Claimants", thousands in number, at once scattered themselves over the public domain of the Chickasaw and Choctaw Nations, took possession of tribal lands and otherwise began the exercise of all the rights and privileges of citizens of the Chickasaw and Choctaw Nations, so far as tribal property was concerned.

Thus the matter stood when I became Governor of the Chickasaw Nation in the fall of 1898. I had observed the progress of the "Court Claimant" citizenship cases from 1896 to 1898, and was convinced that the government of the United States had become a party, unwittingly perhaps, to the perpetration of wrongs against the Chickasaws and Choctaws, by the admission of these fraudulent applicants, never before equaled perhaps in the history of the relations of the United States government with its wards. I conferred with various distinguished attorneys throughout the country and at Washington in the hope that some plan or procedure might be suggested whereby the tribes could be relieved from these citizenship claimants, but all with whom I conferred assured me that the decisions of the Courts were final and that nothing could be done.

Early in 1899, I became acquainted with the firm of Mansfield, McMurrray & Cornish of South McAlester, Indian Territory and being impressed with their ability and their devotion to matters of business intrusted to them, I employed them to represent the Chickasaw Nation in some matters affecting its interests then pending before the Commission to the Five Civilized Tribes and the Department. As our relations progressed, I conferred with them relative to the "Court Claimants" and directed them to consider

the situation fully and advise me if, in their judgment anything could be done to afford the tribes relief, assuring them that, so far as the Chickasaw Nation was concerned, if any plans could be devised for the defeat of these claimants and the protection of the tribes therefrom, ample provision could and would be made for their compensation.

They took the matter under advisement throughout the summer of 1899 and in the fall of that year reported to me, as a result of their investigations as follows: That in the first place the perpetration of frauds and wrongs in the trial of such cases was most appalling and in the second place the judgments of the United States Courts admitting the "Court Claimants" were void, for the reason that the property sought to be affected thereby belonged jointly to the two tribes, whereas only one had been served and made a party. They advised me further that in their judgment these conditions, both as to the fraud practiced in the trial of such cases and the invalidity of such judgments could be so thoroughly impressed upon the Department of the Interior and the Congress of the United States that provision could and would be made for the retrial of such cases.

This was the first substantial suggestion which I had ever received that the tribes might be relieved from these claimants; and I directed these gentlemen to proceed, which they accordingly did.

Their first effort was to go before the Commission to the Five Civilized Tribes in November, 1899 and urge that the Commission and the Secretary of the Interior disregard such judgments, by reason of their invalidity and decline to enroll the applicants named therein. After thus presenting the matter to the Commission it was transmitted to the Secretary of the Interior and there presented in January, 1900.

We of course realized from the first that the only effective means whereby relief might be afforded was through legislation, providing for the retrial of the cases, and to this end our efforts were constantly directed. It was early in 1900 that the Department of the Interior realized that the Atoka Agreement which was ratified in 1898 was inadequate for the closing of the affairs of the Chickasaws and Choctaws; and the tribes were urged to enter into a new and supplementary agreement. We impressed upon the representatives of the Government of the United States that no supplementary agreement would or could be ratified unless it contained a provision for the retrial of the "Court Claimant" citizenship cases.

A supplementary agreement was entered into in May, 1900. This failed of ratification and another one was entered into early in 1901. This also failed of ratification and in March, 1902, the Supplementary Agreement was entered into which was ratified by Congress on July 1, 1902, and by the Chickasaws and Choctaws on September 25, 1902, providing among other things, for the retrial of "Court Claimant" citizenship and the creation of the Choc-

taw and Chickasaw Citizenship Court therefor. During all of these years from 1899 to the present time these attorneys, Messrs. Mansfield, McMurray & Cornish, have represented the Chickasaw and Choctaw Nations in all matters relative to securing a provision for the retrial of "Court Claimant" citizenship cases; and the services which they have rendered are of more value to the tribes, if a distinction may be made, in securing provisions of law for the retrial of such cases, than their actual trial after such provision has been made.

It would be impossible to adequately and properly describe the devotion of these attorneys to the Chickasaw and Choctaw Nations and people during the progress of this great work and the terrible and seemingly insurmountable obstacles which they have overcome from time to time as it has been carried forward. Every influence which could be exerted was against them. Practically every attorney in the Chickasaw and Choctaw Nations were interested in "Court Claimant" citizenship cases. The "Court Claimants" themselves were scattered throughout the two Nations and by reason of their numbers, their interests were allied with practically every business interest in every community in the two Nations. With a courage rarely equaled and with that degree of energy and enthusiasm which only those knowing themselves in the right can command, they pushed their investigations everywhere, uncovering fraud, perjury and wrong doing in practically every case and in furnishing information thereof to the representatives of the Government of the United States both in the Department of the Interior and Congress; and I have no hesitancy in saying that the legislation contained in the Act of July 1, 1902, providing for the retrial of "Court Claimant" citizenship cases and the creation of the Choctaw and Chickasaw Citizenship Court therefor is directly the result of the efforts of our attorneys, Messrs. Mansfield, McMurray & Cornish, from 1899 to 1902, in furnishing it such information as convinced it that an obligation, impossible to avoid, rested upon it to provide the tribes a fair and speedy means of securing relief from the wrongs which had been done them.

With the institution of the "test suit"; and the institution and disposition of the various "Court Claimant" citizenship cases, aggregating more than two hundred and fifty and involving the citizenship claims of from three to four thousand persons, the court is more familiar than I. I can say and do know that the magnificent efforts of our attorneys put forth prior to the passage of the legislation have been redoubled in connection with the trial of the cases. The record of the court will show what has been accomplished and the manner in which it has been done.

I now refer briefly to the contract which the Chickasaws and Choctaws entered into with Messrs. Mansfield, McMurray & Cornish providing for their compensation. For nearly two years the efforts of these gentlemen were made upon my general assurance and that of Honorable Green McCurtain, who was Principal Chief of the Choctaw Nation, that if it appeared that there was

reasonable probability of success, that we would call together the legislative bodies of the two tribes and provide for entering into a contingent contract, agreeing to pay them a fair proportion of what they saved the Nations.

By the early part of 1901 such progress had been made in awakening the representatives of the Government of the United States to a realization of the wrongs that had been done us that it seemed reasonably probable that some provision would be made for retrying the "Court Claimant" cases, and accordingly our legislative bodies were called together for the purpose of considering the matter of taking such steps as would make adequate provision therefor. The General Council of the Choctaw Nation passed an act which was approved on January 7, 1901, and the Legislature of the Chickasaw Nation passed an act which was approved on January 10, 1901, authorizing and directing the chief executives of the two Nations to enter into a contract for the defeat of the "Court Claimants" and providing that the compensation to be paid thereunder should be a per centum of the value of the tribal property saved, and that no compensation should be paid except in the event of success. On January 17, 1901, Gilbert W. Dukes, Principal Chief of the Choctaw Nation and I, as Governor of the Chickasaw Nation entered into a contract with Messrs. Mansfield, McMurray & Cornish, by authority of the acts of the General Council and Legislature referred to, providing that they should be paid nine per cent of the value of the allotments saved by the defeat of "Court Claimants," and that such compensation should be contingent upon their success. This contract is, as above stated before the court, and I shall not in this connection refer further to its provisions.

Of all contracts which have ever been made with attorneys in connection with the business of the Chickasaws and Choctaws, I consider this contract the most reasonable one and that the services rendered under it have been of most value to the tribes. Its provisions were thoroughly understood at the time it was entered into and the necessity for making provision for the accomplishment of the work which these gentlemen have performed was made at the instance of the leading men of the two Nations. There are now and have always been in the two Nations factional differences and the action taken by the administrations and the legislative bodies have been criticized somewhat by the opposing factions; but as conclusive of the fact that the acts of the duly constituted tribal authorities in entering into this contract have the approval of our people, we have only to refer to the fact that the administrations by which the work was originally undertaken have been, throughout the whole time, continued in power, from time to time by the votes of our people at the polls.

An examination of the contract will show that it was agreed between the parties therein that the value of an allotment, for the purpose of arriving at the compensation due, should be considered [illegible] of four thousand eight hundred dollars. While

this sum is an estimate, I am firm in the belief that the value of the right of citizenship is equal to this amount or more. Each allottee is to receive land equal in value to three hundred and twenty acres of average land. After these allotments are made there will be a vast area of several millions of acres of unallotted lands or surplus lands, which will be either re-allotted or sold and the proceeds divided. In addition to this the vast coal and asphaltum fields of the Choctaw and Chickasaw Nations are to be sold and the proceeds divided among allottees. Besides this each allottee has his interest in the townsite funds, the invested moneys of the tribes in the hands of the United States Government, besides other items of tribal property.

It may be thought that the aggregate compensation to which Messrs. Mansfield, McMurray & Cornish are entitled under the contract is considerable, but the vast amount of tribal property involved and saved to the tribes and actually returned to our *bona fide* citizens must be taken into consideration.

It must also be considered that these attorneys have devoted themselves exclusively throughout the past years to the conduct of the business of the Chickasaws and Choctaws, not only refusing other business, but by their advocacy of our interests, rendering themselves unpopular in the minds of the interests opposed to us t othe extent of shutting in a very large measure the avenues of business open to others.

At the time the work was undertaken, there existed absolutely no hope in the minds of our people for regaining their tribal property. As a result of the efforts of these attorneys extending over a period of four years, it is restored to them; and they are not only grateful for what has been done, but are willing and anxious that reasonable compensation be made for the services rendered.

In view of these facts I have to respectfully urge, on behalf of the Chickasaw Nation that, in the exercise of the duty required of you in fixing the compensation of the attorneys representing the Chickasaw and Choctaw Nations in the trial of "Court Claimant" citizenship cases, that you take into consideration the rate of compensation fixed by the tribes themselves, through their duly constituted authorities; and that you hold that such rate of compensation is a reasonable one and should be paid.

Very respectfully,

(Signed) D. H. Johnston,
Governor Chickasaw Nation.

EXHIBIT K.

Account of expenses incurred by
Mansfield, McMurray & Cornish
Attorneys for the Choctaw & Chickasaw Nations,
In the month of April, 1903,

under the direction of the Principal Chief of the Choctaw Nation and the Governor of the Chickasaw Nation, in the proper conduct,

on behalf of said Nations, of the suits and proceedings provided for in Section 31, 32 and 33 of the act of Congress approved July 1, 1902, entitled:

> "An act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes."

by authority of that part of Section 33 of said act, as follows:

"* * * All expenses necessary to the proper conduct, on behalf of the Nations, of the suits and proceedings provided for in this and the two preceding sections shall be incurred under the direction of the executives of the two Nations, and the Secretary of the Interior is hereby authorized upon certificate of said executives, to pay such expenses as in his judgment are reasonable and necessary out of any of the joint funds of said Nations in the Treasury of the United States."

1903

April 1 George F. Lasher, 1 copy of U. S. Official postal guide in connection with "Court Claimant" citizenship work $2.50

Henry Cabell, For services as stenographer and typewriter during the month of March, 1903, in "Court Claimant" citizenship work $70.00.

The Capital, For printing letter heads and envelopes to be used in "Court Claimant" citizenship work $5.50.

D. A. Richardson, Traveling expenses of clerk in securing testimony and conducting investigation in "Court Claimant" citizenship case of Julia London et al., v. Choctaw and Chickasaw Nation $11.55.

S. W. Cross, Services rendered in copying records in "Court Claimant" citizenship cases, $7.67.

April 2 J. P. Bain, For services rendered in copying records in "Court Claimant" citizenship cases, $20.70.

E. Hastain, For services rendered in copying records and testimony of Dawes Commission in "Court Claimant" citizenship case of Malsie Butler v. Choctaw Nation, $5.00.

Jas. E. Gresham, For services rendered in copying records in "Court Claimant" citizenship cases, $37.30.

Simon E. Lewis, Traveling expenses of clerk especially employed to secure testimony and conduct examination of witnesses in the "Court Claimant" citizenship cases of Emma Botterhoff et al., and Jennie Brazell et al., v. Choctaw Nations, $5.95.

April 3 News Printing Co., Printing stationery used in connection with "Court Claimant" citizenship work, $6.25.

T. H. Dubois, For services rendered in copying records in "Court Claimant" citizenship cases, $23.00.

Simon E. Lewis, Traveling expenses of clerk especially employed to secure testimony and conduct investigation

in "Court Claimant" citizenship cases of Samuel C. Caldwell and Mary Goddard et al., v. Choctaw and Chickasaw Nations, $3.50.

W. H. Moore, Traveling expenses as clerk in locating witnesses in "Court Claimant" citizenship cases and securing the testimony of such witnesses, $48.87.

W. H. Moore, For services rendered as clerk in office and field to secure testimony of witnesses in "Court Claimant" citizenship cases, from Mch. 15 to April 1, 1903, $75.00.

April 4 S. W. Cross, For services rendered in copying records in "Court Claimant" citizenship cases, $9.00.

Jas. E. Gresham, For services rendered in copying records in "Court Claimant" citizenship cases, $43.60.

April 6 John F. Burnham, Jr., For services rendered in copying records in "Court Claimant" citizenship cases, $14.60.

Jas. E. Gresham, For services rendered in copying records in "Court Claimant" citizenship cases, $7.50.

A. B. Hamilton, Fee and expense of witness in "Court Claimant" citizenship case of Emma Botterhoff et al., v. Choctaw and Chickasaw Nations, $3.50.

April 7 Simon E. Lewis, Traveling expenses of clerk especially employed to examine certain records of Dawes Commission in connection with "Court Claimant" citizenship cases, $3.80.

Jas. E. Gresham, For services rendered in copying records in "Court Claimant" citizenship cases, $7.20.

April 8 W. E. Croom, For hire of horse and buggy furnished to Simon E. Lewis for the purpose of conferring with witnesses in "Court Claimant" citizenship case of Frances L. Stroud et al. v. Choctaw and Chickasaw Nations, $1.50.

April 9 Jas. E. Gresham, for services rendered in copying records in "Court Claimant" citizenship cases, $11.85.

D. A. Richardson, For services rendered during the month of March, 1903, as clerk in office and field to secure testimony of witnesses and conduct examinations in "Court Claimant" citizenship cases, $100.00.

April 10 W. A. McKiny, For witness fee in "Court Claimant" citizenship case of Frances L. Stroud et al., v. Choctaw and Chickasaw Nations, $2.50.

D. A. Richardson, Traveling expenses of clerk in securing testimony and conducting investigation in "Court Claimant" citizenship cases of M. M. Harvey and John McCarty et al., v. Choctaw and Chickasaw Nations, $21.69.

W. H. Moore, Traveling expenses of clerk in securing testimony and pursuing investigation in "Court Claimant" citizenship cases of William C. Mitchell et al. and A. F. Cowling et al., v. Choctaw and Chickasaw Nations, $28.20.

S. W. Cross, For services rendered in copying records in "Court Claimant" citizenship cases, $13.00.

April 11 Tandy C. Walker, Traveling expenses incurred under special appointment to take the testimony of Nelson and Lydia Colbert in "Court Claimant" citizenship case of C. M. Coppedge et al., v. Choctaw and Chickasaw Nations, $17.00.

April 13 John F. Burnham, Jr., For services rendered in copying "Court Claimant" citizenship records, $2.75.

April 14 J. F. McMurray, Traveling expenses to Sans Bois, Ind. Ter. to confer with Gov. McCurtain relative to "Court Claimant" citizenship cases, $4.60.

April 15 Simon E. Lewis, Traveling expenses of clerk especially employed to secure testimony of witnesses in "Court Claimant" citizenship case of E. E. McCarty et al., v. Choctaw and Chickasaw Nations, $3.95.

G. Rosenwinkel, Transportation of Stenographer and clerk to So. McAlester, I. T. engaged in "Court Claimant" citizenship work, $1.85.

G. Rosenwinkel, Traveling expenses of clerk and Stenographer in securing testimony and pursuing investigation in "Court Claimant" citizenship case of C. M. Coppedge et al., v. Choctaw and Chickasaw Nations, $8.55.

G. Rosenwinkel, For services as clerk and stenographer in office and field and reporting proceedings in Choctaw and Chickasaw Citizenship Court from March 15, to April 15, 1903, $125.00.

April 18 George A. Mansfield, Traveling expenses to Washington, D. C., and return to the matter of U. S. Joins, ex parte, before the Supreme Court of the United States, $105.90.

W. H. Moore, Traveling expenses incurred in securing testimony of witnesses in cases of Z. T. Bottoms, C. M. Coppedge, Sarah E. Kizer and John T. Hayes v. Choctaw and Chickasaw Nations, and pursuing general investigation in other "Court Claimant" citizenship cases, $45.90.

April 20 George A. Mansfield, Traveling expenses and other expenses incurred to and at Washington, D. C., in the matter of U. S. Joins ex parte, before the Supreme Court of the United States, $191.35.

G. Rosenwinkel, Expenses incurred as clerk in examination of records at National Capital of Choctaw Nation for the purpose of procuring such records as have bearing upon "Court Claimant" citizenship cases, $17.50.

Wells Fargo Express Co., Express charges on records from National Capital Choctaw Nation to So. McAlester, I. T. to be used in trial of "Court Claimant" citizenship cases, $4.00.

April 24 T. J. Phillips, For services as interpreter during trial of "Court Claimant" citizenship case of Glenn-Tucker et al., v. Choctaw and Chickasaw Nations, $5.00.
S. W. McClure, For services rendered as interpreter during the trial of "Court Claimant" citizenship case of Glenn-Tucker et al., v. Choctaw and Chickasaw Nations, $5.00.
J. A. Gillette, For services rendered in making investigation in the case of James A. McLelland et al., v. Choctaw and Chickasaw Nations, $15.00.

April 25 J. F. McMurray, Traveling expenses to Tishomingo, I. T. to confer with Gov. Mosely relative to "Court Claimant" citizenship cases, $9.00.
George A. Mansfield, Traveling expenses to Atoka, I. T. and return to confer with witnesses in "Court Claimant" citizenship case of John McCarty et al., v. Choctaw and Chickasaw Nations, $2.75.
D. C. McCurtain, For certified copies of certain patents to be used as evidence in the case of W. C. Mitchell et al., v. Choctaw and Chickasaw Nations, $1.30. Total, $1157.13.

Indian Territory, Central District.

The above is a correct statement of expenses incurred by Mansfield, McMurray & Cornish, in the month of April, 1903, under the direction of the Principal Chief of the Choctaw Nation and the Governor of the Chickasaw Nation, in the proper conduct, on behalf of said Nations, in the suits and proceedings provided for in Sections 31, 32 and 33 of the Act of Congress approved July 1, 1902, entitled:

"An Act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes."

Melven Cornish.

Subscribed and sworn to before me this 9th day of June, 1903.

G. Rosenwinkel,
Notary Public.

(Seal)

CERTIFICATE.

We, Green McCurtain, Principal Chief of the Choctaw Nation and Palmer S. Mosely, Governor of the Chickasaw Nation, do hereby certify that expenses, as shown by the above account, have been incurred by Mansfield, McMurray & Cornish, attorneys for the Choctaw and Chickasaw Nations, in the month of April, 1903, under our direction, in the proper conduct of the suits and proceedings provided for in Sections 31, 32 and 33 of the Act of Congress approved July 1, 1902, entitled:

"An act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes,"

and such account is hereby approved; and the Honorable Secretary of the Interior is hereby respectfully requested to pay such expenses "out of any of the joint funds of said Nations (Choctaw and Chickasaw) in the Treasury of the United States."

Sans Bois, Indian Territory, June 10th, 1903.

Green McCurtain,
Seal of The Choctaw Nation. Principal Chief, Choctaw Nation.

Wapanaucka, Indian Territory, June 11th, 1903.

Palmer S. Mosely,
Seal of The Chickasaw Nation. Governor, Chickasaw Nation.

The 27 expense accounts against the Choctaw and Chickasaw Nations and included in this litigation covering a period of time from October, 1902, to December, 1904, inclusive, are among the papers of this case. Each account in heading, certificate and general form is similar to the one included and printed herein, and has attached the vouchers covering each and every item therein. Each account has attached to it the Certificate of Approval of the Principal Chief of the Choctaw Nation, and the Governor of the Chickasaw Nation.

There are as follows, viz:

1902	October	$121.95
	November	526.69
	December	402.29
1903	January	340.29
	February	505.96
	March	486.33
	April	1157.13
	May	1704.79
	June	2100.06
	July	1236.31
	August	1394.96
	September	980.53
	October	1005.03
	November	628.11
	December	846.76
1904	January	1915.72
	February	2202.62
	March	1300.98
	April	545.38
	May	621.54
	June	1386.57
	July	810.69
	August	534.69
	September	554.00
	October	841.66
	November	336.82
	December	1056.21

EXHIBIT 6.

Plaintiff's Exhibit "5."

Data relative to warrants upon which certain moneys paid to Mansfield, McMurray & Cornish covering items set up in counterclaim of defendants. Choctaw Warrants.

I Citizenship

I A. Act October 19th, 1899

No.	Date	Quarter Ending	Amount
No.	Date	Quarter Ending	Amount
No.	Date	Quarter Ending	Amount
No.	Date	Quarter Ending	Amount
No.	Date	Quarter Ending	Amount
No.	Date	Quarter Ending	Amount
No.	Date	Quarter Ending	Amount
No.	Date	Quarter Ending	Amount
No.	Date	Quarter Ending	Amount
11-I	May 19, 1900	May 23, 1900	$937.50
12-I	May 19, 1900	May 23, 1900	312.50
30-I	Aug. 23, 1900	Aug. 23, 1900	937.50
33-I	Aug. 23, 1900	Aug. 23, 1900	312.50
24-I	Dec. 3, 1900	Nov. 23, 1900	937.50
25-I	Dec. 3, 1900	Nov. 23, 1900	312.50
61-I	Feb. 23, 1901	Feb. 23, 1901	937.50
62-I	Feb. 23, 1901	Feb. 23, 1901	312.50
84-I	June 10, 1901	May 23, 1901	937.50
85-I	June 10, 1901	May 23, 1901	312.50
108-I	Sept. 2, 1901	Aug. 23, 1901	937.50
109-I	Sept. 2, 1901	Aug. 23, 1901	312.50
9-I	Dec. 21, 1901	Nov. 23, 1901	937.50
10-I	Dec. 21, 1901	Nov. 23, 1901	312.50
34-I	May 14, 1902	Feb. 23, 1902	937.50
35-I	May 14, 1902	Feb. 23, 1902	312.50
46-I	May 29, 1902	Feb. 23, 1902 to Mch. 21, 1902	388.90
1-I	Oct. 23, 1902	Mch. 21, 1902 to May 23, 1902	215.27
2-I	Oct. 23, 1902	May 23, 1902	645.83
3-I	Oct. 23, 1902	Aug. 23, 1902	312.50
✓ 4-I	Oct. 23, 1902	Aug. 23, 1902	937.50
5-I	Oct. 23, 1902	Nov. 23, 1902	312.50
6-I	Oct. 23, 1902	Nov. 23, 1902	937.50
36-I	Feb. 23, 1903	Feb. 23, 1903	312.50
37-I	Feb. 23, 1903	Feb. 23, 1903	937.50
76-I	June 11, 1903	May 23, 1903	312.50
77-I	June 11, 1903	May 23, 1903	937.50
105-I	Aug. 23, 1903	Aug. 23, 1903	937.50
106-I	Aug. 23, 1903	Aug. 23, 1903	312.50
18-I	Dec. 8, 1903	Nov. 23, 1903	937.50

19-I	Dec. 8, 1903	Nov. 23, 1903	312.50
36-I	Mch. 12, 1904	Feb. 23, 1904	937.50
37-I	Mch. 12, 1904	Feb. 23, 1904	312.50
52-I	June 1, 1904	May 23, 1904	937.50
53-I	June 1, 1904	May 23, 1904	312.50
72-I	Sept. 12, 1904	Aug. 23, 1904	937.50
73-I	Sept. 17, 1904	Aug. 23, 1904	312.50
25-I	Dec. 23, 1904	Nov. 23, 1904	1250.00
33-I	Mch. 1, 1905	Feb. 23, 1905	1250.00
66-I	May 30, 1905	May 23, 1905	1250.00
	Total		

II General.

I A. Act October 29th, 1900

54-I	Feb. 13, 1901	Salary April 1, 1900 to Jan. 31, 1900	$520.83
		" " " "	520.83
55-I	Feb. 13, 1901	" " " "	520.83
56-I	Feb. 13, 1901	" " " "	520.83
57-I	Feb. 13, 1901	Expense April 1, 1900 to Oct. 29, 1900	1547.95
58-I			
77-I	April 19, 1901	Salary Feb. 1, 1901 to Mch. 31, 1901	104.17
		" " "	104.17
78-I	April 19, 1901	" " "	104.17
79-I	April 19, 1901	" " "	104.17
80-I	April 19, 1901	Expense Nov. 1, 1900 to Jan. 31, 1901	952.05
81-I			
102-I	Aug. 24, 1901	Salary Apr. May, Jun, July, 1901	200.00
		" " "	200.00
103-I	Aug. 24, 1901	" " "	200.00
104-I	Aug. 24, 1901	" " "	233.30
105-I	Aug. 24, 1901	Expense Apr. May, June, July 1901	1513.10
106-I		" " "	250.00
107-I	Aug. 24, 1901		$7596.40
	Total		

2 A. Act December 19th, 1902.

	Dec. 19, 1902	$6083.30
16-A	Dec. 19, 1902	1513.10
17-A	Dec. 19, 1902	2916.65
✓ 18-A	Dec. 19, 1902	2500.00
19-A	Dec. 19, 1902	3065.38
✓ 20-A		$16,078.45
	Total	

3 A. Act October 30th, 1903.

5-I	Oct. 30, 1903	$800.00
6-I	Oct. 30, 1903	1003.00
7-I	Oct. 30, 1903	1200.00
8-I	Oct. 30, 1903	2000.00
9-I	Oct. 30, 1903	2000.00
10-I	Oct. 30, 1903	2321.00
	Total	$9,324.00

4 A. Act November 5th, 1903.

44-I	April 8, 1904	$109.83
45-I	April 8, 1904	292.54
46-I	April 8, 1904	221.20
47-I	April 8, 1904	146.72
50-I	Jun. 1, 1904	717.58
51-I	Jun. 1, 1904	694.94
69-I	Sept. 17, 1904	714.61
70-I	Sept. 17, 1904	1742.32
71-I	Sept. 17, 1904	408.32
1-I	Nov. 2, 1904	529.00
2-I	Nov. 2, 1904	432.54
23-I	Dec. 23, 1904	639.88
34-I	Mch. 1, 1905	622.31
35-I	Mch. 1, 1905	377.54
67-I	May 30, 1905	1121.31
	Total	$8,824.64

5 A. Act November 1st, 1904.

Mississippi Cases.

3-I	Nov. 2, 1904	$5250.00
4-I	Nov. 2, 1904	5282.46
	Total	$10,532.46

Delivering Patents

24-I	Dec. 23, 1904	$474.22
36-I	Dec. 23, 1904	361.94
37-I	Dec. 23, 1904	156.15
48-I	May 30, 1905	333.72
	Total	$1,326.03
	Grand Total	$11,858.49

Notation on Warrants:

69-I Nov. 5, 1903 in the conduct of Mississippi Choctaw cases.

70-I Per Act Nov. 5, 1903, in the conduct of Miss. Choc, cases (In upper left-hand corner and just below number "June, 1904" is written.)

71-I Per Act Nov. 5, 1903, in the conduct of Miss. Choc. cases (In upper left-hand corner under number "July 1904" is written.)

72-I Citizenship Attorney's salary, quarter ending Aug. 23, 1904.

73-I Citizenship Attorney's salary, quarter ending Aug. 23, 1904.

1-I Per Act of General Council approved Nov. 5, 1903, in the conduct of Miss. Choctaw cases.

2-I Per Act approved Nov. 5, 1903, in the conduct of Miss. Choctaw cases.

3-I Per Act for payment of regular expenses necessary to protect the interest of the Choctaw Nation, Oct. 1, 1903, to Sept. 30, 1904.

4-I Per Act for payment of regular expenses necessary to protect the interest of the Choctaw Nation Oct. 1, 1903, to Sept. 30, 1904.

23-I Per Act approved Nov. 5, 1903, in the conduct of Miss. Choctaw cases.

24-I Per Act General Council October session 1904, approved Nov. 1, 1904, on account of delivery patents.

25-I Nations' Attorney, salary, quarter ending Nov. 23, 1904.

16-A Principal Chief Contingent Fund.

17-A Principal Chief Contingent.

18-A Principal's Chief's Contingent fund.

19-A Principal Chief's Contingent Fund.

20-A Principal Chief's Contingent fund.

11-I Attorneys for Choctaw Nation Citizenship cases.

12-I Attorneys for Choctaw Nation Citizenship cases.

30-I Citizenship Attorneys salary, quarter ending Aug. 3, 1900.

(33-I)

30-I Citizenship Attorneys salary, quarter ending Aug. 3, 1900.

24-I Citizenship Attorneys salary for quarter ending Nov. 2, 1900.

25-I Citizenship Attorneys salary for quarter ending Nov. 23, 1900.

54-I Salary Account from April 1st, 1900 to Jan. 31, 1901.

55-I Salary Account from April 1st, 1900 to Jan. 31, 1901.

56-I Salary account from Apr. 1, 1900 to Jan. 31, 1901.

57-I Salary account from April 1, 1900 to Jan. 31, 1901.

58-I Expense account from Apr. 1, 1900 to Oct. 29, 1900.

61-I Citizenship Attorneys salary, quarter ending Feb. 23, 1901.

62-I Citizenship Attorneys salary, quarter ending Feb. 23, 1901.

77-I Salary account from Feb. 1, 1901 to Mch. 31, 1901.

78-I Salary account from Feb. 1, 1901 to Mch. 31, 1901.

79-I Salary account from Feb. 1, 1901 to Mch. 31, 1901.

80-I Salary account from Feb. 1, 1901 to Mch. 31, 1901.

81-I Expense account from Nov. 1, 1900 to Jan. 31, 1901.

84-I Citizenship Attorneys salary, quarter ending May 23, 1901.

85-I Citizenship Attorneys salary, quarter ending May 23, 1901.

102-I Salary account for the month of April, May, Jun. & July, 1901.
103-I Salary account for the months of Apr. May, Jun. & July, 1901.
104-I Salary account for the months of Apr. May, Jun. & July, 1901.
105-I Salary account for the months of Apr. May, Jun. & July, 1901.
106-I Expense Account for the months of Apr. May, Jun. & July, 1901.
107-I Expense accounts for the months of Apr. May, Jun. & July, 1901.
108-I Citizenship Attorneys' salary quarter ending Aug. 23, 1901.
109-I Citizenship Attorneys' salary, quarter ending Aug. 23, 1901.
9-I Citizenship Attorneys' salary, quarter ending Nov. 23, 1901.
10-I Citizenship Attorneys' salary, quarter ending Nov. 23, 1901.
34-I Citizenship Attorneys' salary, quarter ending Nov. 23, 1902.
35-I Citizenship Attorneys' salary, quarter ending Nov. 23, 1902.
46-I Citizenship Attorneys' salary, from Feb. 23 to Mch. 21, 1902.
1- Balance, citizenship attorney, quarter ending May 23, 1902.
2-I Balance Citizenship Attorney, quarter ending May 23, 1902.
3-I Citizenship Attorneys' salary, quarter ending Aug. 23, 1902.
4-I Citizenship Attorneys' salary, quarter ending Aug. 23, 1902.
5-I Citizenship Attorney, salary, quarter ending Nov. 23, 1902.
6-I Citizenship Attorney salary, quarter ending Nov. 23, 1902.
36-I Citizenship Attorneys salary, quarter ending Nov. 23, 1903.
37-I Citizenship Attorney, salary, quarter ending Feb. 23, 1903.
76-I Citizenship Attorney, salary, quarter ending May 23, 1903.
77-I Citizenship Attorney, salary, quarter ending May 23, 1903.
105-I Citizenship Attorney, salary, quarter ending Aug. 23, 1903.
106-I Citizenship Attorney, salary, quarter ending Aug. 23, 1903.

5-I Account to provide for the payment of regular expenses necessary to protect the interest of the Choctaw Nation.
6-I Per account to provide for the payment of regular expenses necessary to protect the interest of Choctaw Nation approved Oct. 30, 1903.
7-I Per account to provide for the payment of regular expenses necessary to protect the interest of the Choctaw Nation approved Oct. 30, 1903.
8-I Per account to provide for payment of regular expenses necessary to protect the interest of the Choctaw Nation approved by Chief October 30, 1903.
9-I Per account to provide for the payment of regular expenses necessary to protect the interest of the Choctaw Nation approved October 30, 1903.
10-I Per account to provide for the payment of regular expenses necessary to protect the interest of the Choctaw Nation, approved by Chief, October 30, 1903.
18-I Citizenship Attorney's salary, quarter ending Nov. 23, 1903.
19-I Citizenship Attorney's salary, quarter ending Nov. 23, 1903.
36-I Citizenship Attorney's salary, quarter ending Feb. 23, 1904.
37-I Citizenship Attorney's salary, quarter ending 1904.
44-I Per act approved Nov. 5, 1903, in the conduct of the Mississippi Choctaw cases pending The Commission.
45-I Per Act, General Council of the Choctaw Nation, approved Nov. 5, 1903, in the conduct of Miss. Choctaw cases pending The Commission.
46-I Per Act of the General Council of the Choctaw Nation approved Nov. 5, 1903 in the conduct of the Miss. Choctaw cases.
47-I Per Act, General Council of the Choctaw Nation approved Nov. 5, 1903, in the conduct of Miss. Choctaw cases.
50-I Per Act, Nov. 5, 1903, in the conduct of Miss. Choctaw cases.
51-I Per Act Nov. 5, 1903, in the conduct of Miss. Choctaw cases.
52-I Citizenship Attorney's salary, quarter ending May 23, 1904.
53-I Citizenship Attorney's salary, quarter ending May 23, 1904.

PLAINTIFF'S EXHIBIT "6"

Chickasaw Warrants.

No.	Date	Amount
No.	Date	Amount
No.	Date	Amount
426	Feb. 21. 1900	$1500.00

427	Feb. 21, 1900		1000.00
669	Aug. 13, 1900		1000.00
670	Aug. 13, 1900		1000.00
671	Aug. 13, 1900	(split)	500.00
443	Feb. 26, 1901		1250.00
444	Feb. 26, 1901		1250.00
679	Aug. 28, 1901		1500.00
681	Aug. 28, 1901		1000.00
945	Feb. 4, 1902		2500.00
1026	Aug. 31, 1902		2500.00
946	Apr. 16, 1903		2500.00
1483	Feb. 3, 1904		2500.00
1484	Feb. 3, 1904		2500.00
2236	Jul. 28, 1904		2500.00
113	Feb. 14, 1905		2500.00
402	Feb. 9, 1900		2700.00
671	Aug. 13, 1900	(split)	500.00
672	Aug. 13, 1900		1000.00
673	Aug. 13, 1900		1200.00
17	Oct. 27, 1901		2700.00
801	Nov. 2, 1902		2700.00
1485	Feb. 3, 1904		2700.00
2237	Jul. 28, 1904		2700.00
553	Jun. 4, 1901		496.40
554	Jun. 4, 1901		1206.45
673	Jul. 10, 1901		500.00
875	Dec. 19, 1901		500.00
876	Dec. 19, 1901		1137.80
87	Dec. 19, 1901		480.85
971	Apr. 29, 1902		7500.00
972	Apr. 29, 1902		1557.60
973	Apr. 29, 1902		1148.51
974	Apr. 29, 1902		500.00
802	Nov. 26, 1900		2500.00
803	Nov. 8, 1902		2500.00
804	Nov. 12, 1902		1000.00
805	Nov. 12, 1902		250.00
806	Nov. 12, 1902		100.00
807	Nov. 12, 1902		515.00
941	Apr. 16, 1903		764.23
942	Apr. 16, 1903		5000.00
943	Apr. 16, 1903		396.05
944	Apr. 16, 1903		1628.75
945	Apr. 16, 1903		363.75
1476	Feb. 3, 1904		2000.00
1477	Feb. 3, 1904		1333.00
1478	Feb. 3, 1904		1667.00
1479	Feb. 3, 1904		1641.95
1480	Feb. 3, 1904		1000.00
2234	Jul. 28, 1904		2500.00

2235	Jul. 28, 1904	3879.45
112	Feb. 14, 1905	2500.00
16	Oct. 22, 1901	1800.00
555	Jun. 4, 1901	5000.00
448	Feb. 16, 1901	1100.00
449	Feb. 16, 1901	100.00
450	Feb. 16, 1901	555.00
878	Dec. 19, 1901	201.25
879	Dec. 19, 1901	1993.65
Cash	Dec. 7, 1900	1400.00

EXHIBIT 2.

Plaintiff's Exhibit "6."

Record of Prospect No. 6 G. W.

Prospect made with Diamond Drill.....

Work done for Great Western Coal and Coke Company.....

Near Baker, I. T.

Description of Location 1650' South of Slope opening Mine No. 9 Baker and on Center line of same (800' South of G. W.).

Date	Distance from surface From	To	Thickness of strata	Name and description of strata
1906				
Jan. 15	0	7	7	Clay & sandstone
Jan. 15	7'	8'	1	Coal — Coal
Jan. 17	8'	13'	5	Broken sandstone
Jan. 17	13'	29'	16	Gray shale
Jan. 18	29'	43'	14	Sandstone & sand shale
Jan. 18	43'	54'	11	Sandstone
Jan. 19	54'	64'	10	Sand shale
Jan. 19	64'	68'	4	Gray shale
Jan. 19	68'	69'	1	Fossils (oil bearing)
Jan. 19	69'	70'	1	Coal faulted — Coal
Jan. 19	70'	100'	30	Gray shale
Jan. 20	100'	121'	21	Dark shale
Jan. 20	121'	126'	5	Gray shale
Jan. 20	126'	131'	5	Sandstone
Jan. 20	131'	141'	10	Gray shale
Jan. 21	141'	150'	9	Dark shale
Jan. 22	150'	155'	5	Gray shale
Jan. 22	155'	165'	10	Dark broken shale
Jan. 23	165'	179'	14	Gray shale with sandstone bands
Jan. 24	179'	181'	2	Dark shale
Jan. 24	181'	185'	4	Sandstone
Jan. 24	185'	188'	3	Dark shale
Jan. 24	188'	191'	3	Gray sandstone

Date	Distance from surface From	To	Thickness of strata	Name and description of strata	
1906					
Jan. 25	191'	198'	7	Oil bearing sandstone	
Jan. 25	198'	203'	5	Gray sandstone (with a little oil bearing sandstone)	
Jan. 25	203'	206'	3	Gray sandstone	
Jan. 25	206'	210'	4	Dark shale	
Jan. 26	210'	221'	11	Dark shale with sandstone bands	
Jan. 27	221'	244'	23	Black shale	
Jan. 28	244'	271'	27	Black shale with hard bands	
Jan. 29	271'	287'	16	Dark shale	
Jan. 30	287'	301'	14	Black shale with hard bands	
Jan. 30	301'	308'	7	Dark shale	
Jan. 30	308'	309'	1	Shale with coal seams	Coal
Jan. 30	309'	316'	7	Light gray shale	
Jan. 31	316'	322'	6	Sandstone	
Jan. 31	322'	331'	9	Sand shale (nearly all sand)	
Jan. 31	331'	349'	18	Sandstone & sand shale mixed	
Feb. 1	349'	365'	16	Sand shale with a little sandstone	
Feb. 2	365'	370'	5	Sand shale	
Feb. 2	370'	375'	5	Sand shale & sandstone	
Feb. 2	375'	385'	10	Sand shale	
Feb. 3	385'	390'	5	Sand shale & sandstone	
Feb. 3	390'	406'	16	Black broken shale	
Feb. 5	406'	419'	13	Black shale	
Feb. 5	419'	420'	1	Coal	Coal
Feb. 5	420'	421'-6"	1-6"	Dark shale	
Feb. 5	421'-6"	422'-3"	-9"	Coal	Coal
Feb. 5	422'-3"	428'	5-9"	Dark shale	
Feb. 6	428'	456'	28	Sandy shale	
Feb. 7	456'	469'	13	Dark shale	
Feb. 8	469'	516'	47	Dark sandy shale	
Feb. 9 to 13	516'	597'	81	Dark shale	
Feb. 13 & 14	597'	647'	50	Dark sandy shale	
Feb. 15	647'	654'	7	Dark shale	
Feb. 15	654'	662'	8	Sand shale (nearly all sandstone)	
Feb. 15	662'	678'	16	Sandstone with small shale bands	

Feb. 16	678'	682'	4	Dark sand shale	
Feb. 16	682'	695'	13	Dark shale	
Feb. 17 to 20	695'	749'	54	Dark sand shale	
Feb. 20 to 23	749'	845'	96	Dark shale	
Feb. 24	845'	871'	26	Black shale and sand shale mixed	
Feb. 26	871'	885'	14	Black shale	
Feb. 26	885'	886'-8"	1-8"	Black shale and sandstone	
Feb. 26	886'-8"	887'-7"	-11"	Coal	Coal
Feb. 26	887'-7"	888'	-5"	Fire clay	
Feb. 27	888'	941'	53	Dark sandy shale with sandstone bands	
Feb. 28	941'	946'-1"	5-1"	Dark sandy shale	
Feb. 28	946'-1"	947'	-11"	Coal	Coal
Feb. 28	947'	948'	1	Fire clay	
Feb. 28	948'	954'	6	Dark sand shale	
Feb. 28	954'	971'-10"	17-10"	Dark shale	
Mch. 1	971'-10"	976'-8"	4-10"	Coal	McAlester Coal
Mch. 1	976'-8"	977'	-4"	Fire clay	

Expense

Cost for labor	530.96
Cost for material, coal & other supplies	105.75
Carbon loss	20.00
Interest & depreciation 10c per ft.	97.70
Total cost	754.40
Total depth	977.
Average cost per foot	.77./2

Roof over coal is cut with slips 4 or 5 inches.
See diagram page 32.

EXHIBIT 3.

Record of Prospect No. 7 G. W.
Prospect made with Diamond Drill.....
Work done for Great Western Coal & Coke Company .....
Near Baker, I. T.
Description of Location 485' South & 260' West from S. E. Cor. NE¼, SW¼, Section 5, Township 5, N. Range 14 E.
(Approx)

Date	Distance from surface From	To	Thickness of strata	Name and description of strata
1906				
Mch. 5	0	12	12	Sand & sandstone boulders

Date	Distance from surface From	To	Thickness of strata	Name and description of strata	
1906					
Jan. 25	191'	198'	7	Oil bearing sandstone	
Jan. 25	198'	203'	5	Gray sandstone (with a little oil bearing sandstone)	
Jan. 25	203'	206'	3	Gray sandstone	
Jan. 25	206'	210'	4	Dark shale	
Jan. 26	210'	221'	11	Dark shale with sandstone bands	
Jan. 27	221'	244'	23	Black shale	
Jan. 28	244'	271'	27	Black shale with hard bands	
Jan. 29	271'	287'	16	Dark shale	
Jan. 30	287'	301'	14	Black shale with hard bands	
Jan. 30	301'	308'	7	Dark shale	
Jan. 30	308'	309'	1	Shale with coal seams	Coal
Jan. 30	309'	316'	7	Light gray shale	
Jan. 31	316'	322'	6	Sandstone	
Jan. 31	322'	331'	9	Sand shale (nearly all sand)	
Jan. 31	331'	349'	18	Sandstone & sand shale mixed	
Feb. 1	349'	365'	16	Sand shale with a little sandstone	
Feb. 2	365'	370'	5	Sand shale	
Feb. 2	370'	375'	5	Sand shale & sandstone	
Feb. 2	375'	385'	10	Sand shale	
Feb. 3	385'	390'	5	Sand shale & sandstone	
Feb. 3	390'	406'	16	Black broken shale	
Feb. 5	406'	419'	13	Black shale	
Feb. 5	419'	420'	1	Coal	Coal
Feb. 5	420'	421'-6"	1-6"	Dark shale	
Feb. 5	421'-6"	422'-3"	-9"	Coal	Coal
Feb. 5	422'-3"	428'	5-9"	Dark shale	
Feb. 6	428'	456'	28	Sandy shale	
Feb. 7	456'	469'	13	Dark shale	
Feb. 8	469'	516'	47	Dark sandy shale	
Feb. 9 to 13	516'	597'	81	Dark shale	
Feb. 13 & 14	597'	647'	50	Dark sandy shale	
Feb. 15	647'	654'	7	Dark shale	
Feb. 15	654'	662'	8	Sand shale (nearly all sandstone)	
Feb. 15	662'	678'	16	Sandstone with small shale bands	

Feb. 16	678'	682'	4	Dark sand shale	
Feb. 16	682'	695'	13	Dark shale	
Feb. 17 to 20	695'	749'	54	Dark sand shale	
Feb. 20 to 23	749'	845'	96	Dark shale	
Feb. 24	845'	871'	26	Black shale and sand shale mixed	
Feb. 26	871'	885'	14	Black shale	
Feb. 26	885'	886'-8"	1-8"	Black shale and sandstone	
Feb. 26	886'-8"	887'-7"	-11"	Coal	Coal
Feb. 26	887'-7"	888'	-5"	Fire clay	
Feb. 27	888'	941'	53	Dark sandy shale with sandstone bands	
Feb. 28	941'	946'-1"	5-1"	Dark sandy shale	
Feb. 28	946'-1"	947'	-11"	Coal	Coal
Feb. 28	947'	948'	1	Fire clay	
Feb. 28	948'	954'	6	Dark sand shale	
Feb. 28	954'	971'-10"	17-10"	Dark shale	
Mch. 1	971'-10"	976'-8"	4-10"	Coal	McAlester Coal
Mch. 1	976'-8"	977'	-4"	Fire clay	

Expense

Cost for labor	530.96
Cost for material, coal & other supplies	105.75
Carbon loss	20.00
Interest & depreciation 10c per ft.	97.70
Total cost	754.40
Total depth	977.
Average cost per foot	.77./2

Roof over coal is cut with slips 4 or 5 inches.
See diagram page 32.

EXHIBIT 3.

Record of Prospect No. 7 G. W.
Prospect made with Diamond Drill.....
Work done for Great Western Coal & Coke Company .....
Near Baker, I. T.
Description of Location 485' South & 260' West from S. E. Cor. NE¼, SW¼, Section 5, Township 5, N. Range 14 E.
(Approx)

Date	Distance from surface From	To	Thickness of strata	Name and description of strata
1906				
Mch. 5	0	12	12	Sand & sandstone boulders

Date	Distance from surface From	To	Thickness of strata	Name and description of strata
1906				
Jan. 25	191'	198'	7	Oil bearing sandstone
Jan. 25	198'	203'	5	Gray sandstone (with a little oil bearing sandstone)
Jan. 25	203'	206'	3	Gray sandstone
Jan. 25	206'	210'	4	Dark shale
Jan. 26	210'	221'	11	Dark shale with sandstone bands
Jan. 27	221'	244'	23	Black shale
Jan. 28	244'	271'	27	Black shale with hard bands
Jan. 29	271'	287'	16	Dark shale
Jan. 30	287'	301'	14	Black shale with hard bands
Jan. 30	301'	308'	7	Dark shale
Jan. 30	308'	309'	1	Shale with coal seams Coal
Jan. 30	309'	316'	7	Light gray shale
Jan. 31	316'	322'	6	Sandstone
Jan. 31	322'	331'	9	Sand shale (nearly all sand)
Jan. 31	331'	349'	18	Sandstone & sand shale mixed
Feb. 1	349'	365'	16	Sand shale with a little sandstone
Feb. 2	365'	370'	5	Sand shale
Feb. 2	370'	375'	5	Sand shale & sandstone
Feb. 2	375'	385'	10	Sand shale
Feb. 3	385'	390'	5	Sand shale & sandstone
Feb. 3	390'	406'	16	Black broken shale
Feb. 5	406'	419'	13	Black shale
Feb. 5	419'	420'	1	Coal Coal
Feb. 5	420'	421'-6"	1-6"	Dark shale
Feb. 5	421'-6"	422'-3"	-9"	Coal Coal
Feb. 5	422'-3"	428'	5-9"	Dark shale
Feb. 6	428'	456'	28	Sandy shale
Feb. 7	456'	469'	13	Dark shale
Feb. 8	469'	516'	47	Dark sandy shale
Feb. 9 to 13	516'	597'	81	Dark shale
Feb. 13 & 14	597'	647'	50	Dark sandy shale
Feb. 15	647'	654'	7	Dark shale
Feb. 15	654'	662'	8	Sand shale (nearly all sandstone)
Feb. 15	662'	678'	16	Sandstone with small shale bands

Feb. 16	678'	682'	4	Dark sand shale
Feb. 16	682'	695'	13	Dark shale
Feb. 17 to 20	695'	749'	54	Dark sand shale
Feb. 20 to 23	749'	845'	96	Dark shale
Feb. 24	845'	871'	26	Black shale and sand shale mixed
Feb. 26	871'	885'	14	Black shale
Feb. 26	885'	886'-8"	1-8"	Black shale and sandstone
Feb. 26	886'-8"	887'-7"	-11"	Coal Coal
Feb. 26	887'-7"	888'	-5"	Fire clay
Feb. 27	888'	941'	53	Dark sandy shale with sandstone bands
Feb. 28	941'	946'-1"	5-1"	Dark sandy shale
Feb. 28	946'-1"	947'	-11"	Coal Coal
Feb. 28	947'	948'	1	Fire clay
Feb. 28	948'	954'	6	Dark sand shale
Feb. 28	954'	971'-10"	17-10"	Dark shale
Mch. 1	971'-10"	976'-8"	4-10"	Coal McAlester Coal
Mch. 1	976'-8"	977'	-4"	Fire clay

Expense

Cost for labor	530.96
Cost for material, coal & other supplies	105.75
Carbon loss	20.00
Interest & depreciation 10c per ft.	97.70
Total cost	754.40
Total depth	977.
Average cost per foot	.77./2

Roof over coal is cut with slips 4 or 5 inches.
See diagram page 32.

EXHIBIT 3.

Record of Prospect No. 7 G. W.
Prospect made with Diamond Drill.....
Work done for Great Western Coal & Coke Company .....
Near Baker, I. T.
Description of Location 485' South & 260' West from S. E. Cor. NE¼, SW¼, Section 5, Township 5, N. Range 14 E. (Approx)

Date	Distance from surface From	To	Thickness of strata	Name and description of strata
1906				
Mch. 5	0	12	12	Sand & sandstone boulders

Mch. 5	12	16	4	Quicksand	
Mch. 5	16	19	3	Decomposed shale	
Mch. 6	19	23	4	Decomposed shale	
Mch. 7	23	60	37	Dark shale	
Mch. 7	60	80	20	Dark & Black shale mixed	
Mch. 8	80	130	50	Dark shale	
Mch. 9	130	146	16	Black shale	
Mch. 10	146	164	18	Dark shale	
Mch. 10	164	179	15	Dark shale	
Mch. 10	179	183	4	Black shale	
Mch. 10	183	185	2	Black sandy shale	
Mch. 10	185	185'-6"	-6"	Coal	Coal
Mch. 10	185-6"	201	15-6"	Sandy shale	
Mch. 12	201	215	14	Dark sandy shale with sand bands	
Mch. 12	215	242	27	Sandy shale	
Mch. 13	242	247-6"	5-6"	Dark shale	
Mch. 13	247-6"	248-2"	-8"	Coal	Coal
Mch. 13	248-2"	250	1-10"	Fire clay	
Mch. 13	250	257	7	Dark shale	
Mch. 13	257	259	2	Dark shale with coal seams	
Mch. 14	259	286	27	Dark shale	
Mch. 14	286	293	7	Dark shale	
Mch. 14	293	294-10"	1-10"	Coal McAlester	Coal
Mch. 14	294-10"	296	1-2"	Fire clay	
Mch. 14	296	304	8	Soft sandy shale	

Expense

Cost for labor	134.88
Cost for material, coal & other supplies	20.21
Interest & depreciation 10c per ft.	28.60
Total cost	183.69
Total depth	304
Average cost per ft.	.60./4

Record of Prospect No. 8 G. W.

Prospect made with Diamond Drill.....

Work done for Great Western Coal & Coke Company .....

Near Baker, I. T.

Description of Location 460' N 14 W from 7 G. W. (Approx)

Date	Distance from surface From	To	Thickness of strata	Name and description of strata
1906				
Mch. 17	0	10	10	Sand and clay
Mch. 17	10	11	1	Quicksand

Mch. 17	11	11-6"	-6"	Coal	Coal
Mch. 18	11-6"	15	3-6"	Decomposed shale	
Mch. 19	15	24	9	Dark shale	
Mch. 19	24	60	36	Soft sandy shale	
Mch. 20	60	73'-3"	13-3"	Dark shale with sand bands	
Mch. 20	73-10"	73'-10"	-7"	Coal	Coal
Mch. 20	73-10"	75'	1-2"	Fire clay	
Mch. 20	75	82'	7	Dark shale	
Mch. 20	82	83	1	Shale & coal partings	
Mch. 20	83	110	27	Dark shale	
Mch. 21	110	114	4	Dark hard sand shale	
Mch. 21	114	115-11"	1-11"	Coal McAlester	Coal
Mch. 21	115-11"	118	2-1"	Fire clay	

EXHIBIT 3 A.

In the United States Circuit Court for the Eastern District of Oklahoma. The United States of America, Complainant, vs. George A. Mansfield, John F. McMurray and Melvin Cornish, partners doing business under the firm name and style of Mansfield, McMurray & Cornish, Defendants. No. 595.

Amended Complaint.

The United States of America, complainant in this suit, by William J. Gregg, United States District Attorney for the Eastern District of Oklahoma, complaining of the defendants, Mansfield, McMurray and Cornish, partner, says:

That at all times hereinafter mentioned the said defendants and each of them were citizens and residents of the City of McAlester, in the then Indian Territory, now the City of McAlester, in the County of Pittsburg, and State of Oklahoma, and within the Eastern District of Oklahoma, and were at all times hereinafter mentioned, partners engaged in the practice of law at the City of McAlester, under the firm name and style of Mansfield, McMurray and Cornish. That this cause was originally filed in the United States Court for the Central District of the Indian Territory, on the 16th day of Nov., 1907, and at the date of the issuance of the Proclamation by the President of the United States granting statehood to the State of Oklahoma, the same was still pending in said court; that afterwards, upon motion and application of the United States, this cause was transferred to the United States Circuit Court for the Eastern District of Oklahoma as provided by law and that prior to said transfer of such cause, due and legal personal service of summons had been made upon each of the above named defendants in the manner provided by law, and appearance entered by each of the said defendants by general demurrer to complaint of the complainant so filed in said United States Court in the Indian Territory.

That since the filing of this cause in this court, permission of the court has been obtained to recast the pleadings in this cause to conform to the practice in the United States Court and to make such amendment therein as complainant shall deem necessary, and in pursuance of said order this amended complaint is filed.

Complainant alleges as a cause of action against the said defendants and each of them that heretofore, and between the 1st day of January, 1900, and the 1st day of November, 1907, the defendants, George A. Mansfield, John F. McMurray and Melvin Cornish, then associated together and doing business as partners under the firm name and style of Mansfield, McMurray and Cornish, fraudulently and illegally entered into some sort of an arrangement, understanding and agreement between themselves and the members of the Council and Principal Chief of the Choctaw Nation or Tribe of Indians, which said arrangement, understanding or agreement was in violation of the laws of the United States governing the making of contracts with Indian Tribes and particularly with the Choctaw Nation or Tribe of Indians, whereby and by the terms of which said arrangement, understanding and agreement, the said defendants claimed and purported to represent the rights of the Choctaw Nation or Tribe of Indians against the rights of certain Indians claiming the rights of citizenship in said tribe in certain litigation relating to and affecting the members of said Nation or Tribe of Indians in the lands, moneys and tribal property of said Nation or Tribe of Indians, then pending before the Commission to the Five Civilized Tribes, the Secretary of the Interior, the Citizenship Court of the Choctaw and Chickasaw Nations of Indians, and other litigation pending in the United States Courts in the Indian Territory in the Southern and Central Districts thereof. That each and all of the said departments, boards, tribunals and courts were presided over by officers of the United States and were each charged with the due administration of the laws of the United States and the protection of the rights of the Choctaw Nation or Tribe of Indians and of the rights of the individual members thereof in their lands, moneys and other tribal property. That under and by virtue of and in pursuance of the said alleged arrangement, understanding and agreement so illegally obtained by defendants from the said Council and Principal Chief of the Choctaw Nation or Tribe of Indians, the defendants caused and procured to have paid to them by the officers of the Choctaw Nation or Tribe of Indians at divers and sundry times within said period above stated, large sums of money claimed to be due defendants on account of services rendered and expenses incurred under some arrangement, understanding and agreement, in the aggregate the sum of seventy-nine thousand, nine hundred and thirty-one dollars and sixty-six cents ($79,931.66) claimed to be due said defendants from the Choctaw Nation or Tribe of Indians on account of services rendered as attorneys for said Nation in pending litigation and on account of expenses incurred by them in connection therewith; that all of said several sums of money so secured by said defendants from the officers of the Choctaw Nation or Tribe of Indians, were by the officers of said Nation or Tribe of Indians taken and drawn out of the trust funds and moneys belonging to said Choctaw Nation or Tribe of Indians then in the hands of the Treasurer of the United States, which said moneys were drawn from the treasury of the United States by the officers of the Choctaw Nation or Tribe of Indians upon warrants duly issued therefor by such officers without the knowledge, consent or procurement of the United States or any of its officers or agents and were paid to the said defendants by the Treasurer of the Choctaw Nation or Tribe of Indians without the knowledge or consent of the complainant herein, the United States of America.

That at the time of making and entering into the said alleged illegal arrangement, understanding and agreement between the said defendants and the members of the Council, and the Principal Chief of the Choctaw Nation or Tribe of Indians, and long prior to the time any of the services for which compensation was claimed by the defendants were rendered, the laws of the United States relating to the making of contracts with Indian tribes or nations occupying the relation of the Choctaw Nation or Tribe of Indians, provided substantially as follows:

"Section 2103. No agreement shall be made by any person with any tribe of Indians, or individual Indians not citizens of the United States, for the payment or delivery of any money or other thing of value, in present or in prospective, or for the granting or procuring of any privilege to him, or to any other person in consideration of said services to said Indians relative to their land, or to any claim growing out of, or in reference to annuities, installments or other moneys, claims, demands or thing under laws or treaties with the United States or official acts of any officer thereof or in any way connected with or due from the United States unless such contract or agreement shall be executed and approved as follows:

First. Such agreement shall be in writing and a duplicate of it delivered to each party.

Second. It shall be executed before a judge of a court of record and bear the approval of the Secretary of the Interior and the Commissioner of Indian Affairs endorsed upon it.

Third. It shall contain the names of all parties in interest, their residence and occupation and if made with a tribe, by their tribal authority, the scope of authority and the reason for exercising that authority shall be given specifically.

Fourth. It shall state the time when and place where made, the particular purpose for which made, the special thing or things to be done under it, and if for the collection of money, the basis of the claim, the source from which it is to be collected, the disposition to be made of it when collected, the amount or rate percentum of the fee in all cases, and if any contingent matter or condition constitutes a part of the agreement, it shall be specifically set forth.

Fifth. It shall have a fixed limited time to run, which shall be distinctly stated.

The Judge before whom such contract or agreement is executed, shall certify officially the time when, the place where such contract or agreement was executed and that it was in his presence and who are the interested parties thereto as stated to him at the time; parties present making the same; the source and extent of the authority claimed at the time by the contracting parties to make the contract or agreement and whether made in person or by agent or attorney of either party or parties.

All contracts or agreements made in violation of this section shall be null and void and all moneys or other thing of value paid to any person by any Indian or tribe or any one else or in his or their behalf on account of such services, in excess of the amount approved by the Commissioner and Secretary for such services, may be recovered by suit in the name of the United States in any court of the United States regardless of the amount in controversy; * * *."

Complainant further alleges that prior to the rendition of any of the services for which said compensation was claimed under said illegal and void arrangement, understanding and agreement, and on to-wit: the 28th day of June, A. D., 1898, by the terms of an Act of Congress passed and approved on said date, entitled, "An Act for the protection of the people of the Indian Territory and other purposes," it was enacted that the provisions of the so-called Atoka Agreement, which was incorporated in, set out in full and made a part of the said Act of Congress, theretofore adopted by the Choctaw and Chickasaw Tribes or Nations of Indians, be ratified and confirmed by the Congress of the United States, and was so ratified and confirmed; that the said Atoka Agreement contained, among others, the following provision:

"It is further agreed that no act, ordinance or resolution of the Council of either the Choctaw or Chickasaw Tribes in any manner affecting the lands of the tribes or of the individuals after allotment or the moneys or other property of the tribes or citizens thereof, except appropriations for the regular and necessary expenses of the government of the respective tribes, or the rights of any person to employ any kind of labor, or the rights of any persons who have taken or may take the oath of allegiance to the United States, shall be of any validity until approved by the President of the United States. When such acts, ordinances or resolutions passed by the council of either of the said tribes shall be approved by the governor thereof then it shall be the duty of the National Secretary of said tribe to forward them to the President of the United States, duly certified and sealed, who shall, within thirty days after their reception, approve or disapprove the same. Said acts, ordinances or resolutions when so approved, shall be published in at least two newspapers having a bona fide circulation in the tribe to be affected thereby and when disapproved, shall be returned to the tribe enacting the same."

Complainant further says that each of the above quoted and set out acts of Congress were in full force and effect in and upon

the Choctaw Nation or Tribe of Indians at all times during the period of time when the defendants claimed to have performed the services for which they claim the right to receive and for which services they did receive the several sums of money paid to them under said alleged arrangement, understanding and agreement between the said defendants and the National Council and Principal Chief of the Choctaw Nation.

Complainant further alleges that no valid act, ordinance or resolution of the Council of the Choctaw Nation or Tribe of Indians was ever passed which received the sanction or approval of the President of the United States authorizing the said Choctaw Nation or Tribe of Indians or any of its officers to enter into any contract with the said defendants or either of them for the performance of the services claimed to have been performed by them and under which services they claimed and received the several sums of money herein alleged and stated. That no valid contract in writing was ever entered into between the Choctaw Nation or Tribe of Indians and the said defendants under any act, ordinance or resolution passed by the Choctaw National Council and approved by the President of the United States in the manner and form and in compliance with the requirements of Section 2103 of the Revised Statutes of the United States above set forth; that complainant is unable to set out in full in this complaint or state the substance of any of the said alleged claimed agreements, arrangements or understandings had or entered into between the Choctaw Nation or Tribe of Indians and the said defendants for the reason that such arrangements, agreements and understandings were not in writing; that complainant is not now and never was in possession of a copy of the same; that the contents of any such arrangement, agreement or understanding if one existed, are unknown to complainant and the same cannot be fully set forth in this complaint. That if in fact any arrangement or agreement existed between the said National Council, and Principal Chief of the Choctaw Nation and the defendants herein or either of them, the same was not in writing and was made without the knowledge or the approval of the Secretary of the Interior or of the United States Commissioner of Indian Affairs and was not executed in the presence of any judge of a court of record or in conformity with any of the requirements of Section 2103 of the Revised Statutes of the United States, and the same was made in violation of and in disregard of the laws of the United States, and is therefore null and void, and that any and all moneys received by the said defendants or either of them from the said Choctaw Nation or Tribe of Indians or any of its officers, was wrongfully and illegally paid by the Choctaw Nation or Tribe of Indians and its officers, and wrongfully and ilegally received by the said defendants, knowingly and in violation and disregard of the statutes and laws of the United States governing the making of contracts with said Tribes or Nations, particularly the Choctaw Tribe or Nation of Indians, and that all sums so received by said defendants from the said Choctaw Nation or Tribe of Indians, are

now due and payable to the United States of America under and by virtue of the laws of the United States as enacted and published in Section 2103 of the Revised Statutes of the United States.

Complainant further states that it is unable to set out and state in detail the dates of the payments of the several sums paid by the officers of the Choctaw Nation or Tribe of Indians to the said defendants for the services for which they were claimed by defendants, further than shown by the warrants issued by the officers of the Choctaw Nation and paid through the treasurer of the Choctaw Nation under and by virtue of several acts of the Choctaw Council authorizing their issuance, and payment, all of which several acts, ordinances, laws and resolutions of the Council of the Choctaw Nation were passed in violation of the terms of the said Act of Congress of June 28, 1898, above set out, and were each and all wholly void and insufficient in law to authorize the issuance of such warrants by the officers of said Nation for the service claimed by the said defendants, or to authorize the payment thereof by the treasurer of the Choctaw Nation or Tribe of Indians because the same were not approved by the President of the United States as required by law, and that the treasurer of the Choctaw Nation was not authorized to pay out any money on account of any warrants issued on account of any services rendered by the said defendants under the said alleged agreement, arrangement or understanding because the same was not executed in the manner and form required by the law of the United States, in conformity with Section 2103 of the Revised Statutes of the United States.

Complainant further says that under said alleged fraudulent, illegal and void arrangement, agreement and understanding so claimed to have been entered into between the said defendants and the Choctaw Nation or Tribe of Indians by and through its Council and Principal Chief, there was paid to the said defendants by the treasurer of the Choctaw Nation, upon warrants unlawfully issued by the officers of the Choctaw Nation, between the 1st day of January, 1900 and the 1st day of January, 1907, the total sum of $79,931.66, all of which warrants were issued under the several void and illegal acts, ordinances and resolutions of the Choctaw Council as shown by the following statement, giving the number, date and amount of the warrants issued under each act, to-wit:

Under and by virtue of an act of the Choctaw Council passed on the.....day of January, 1900, the following warrants were issued and paid:

No.	Date	Quarter ending	Amount
11	May 19, 1900	May 23, 1900	$937.50
12	May 19, 1900	May 23, 1900	312.50
30	Aug. 23, 1900	Aug. 23, 1900	937.50
33	Aug. 23, 1900	Aug. 23, 1900	312.50
24	Dec. 3, 1900	Nov. 23, 1900	937.50
25	Dec. 3, 1900	Nov. 23, 1900	312.50
54	Feb. 13, 1900	Apr. 1/00 to Jan. 31/01	520.83

No.	Date	Quarter ending	Amount
55	Feb. 13, 1900	do do	520.83
56	Feb. 13, 1900	do do	520.83
57	Feb. 13, 1900	do do	520.83
61	Feb. 23, 1901	Feb. 23, 1901	937.50
62	Feb. 23, 1901	Feb. 23, 1901	312.50
77	Apr. 19, 1901	Apr. 1/01 to Mar. 31/01	104.17
78	Apr. 19, 1901	do do	104.17
79	Apr. 19, 1901	do do	104.17
80	Apr. 19, 1901	do do	104.17
84	Jun. 10, 1901	May 23, 1901	937.50
85	Jun. 10, 1901	May 23, 1901	312.50
102	Aug. 24, 1901	Apr., May, June, July/01	200.00
103	Aug. 24, 1901	do	200.00
104	Aug. 24, 1901	do	200.00
105	Aug. 24, 1901	do	233.00
108	Sep. 2, 1901	Aug. 23, 1901	937.50
109	Sep. 2, 1901	Aug. 23, 1901	312.50
9	Dec. 21, 1901	Nov. 23, 1901	937.50
10	Dec. 21, 1901	Nov. 23, 1901	312.50
34	May 14, 1902	Feb. 23, 1902	937.50
35	May 14, 1902	Feb. 23, 1902	312.50
46	May 29, 1902	Feb. 23 to Mar. 21, 1902	388.90
1	Oct. 23, 1902	Mar. 21 to May 23, 1902	215.27
2	Oct. 23, 1902	Mar. 21 May 23, 1902	645.83
3	Oct. 23, 1902	Aug. 23, 1902	312.50
4	Oct. 23, 1902	Aug. 23, 1902	937.50
5	Oct. 23, 1902	Nov. 23, 1902	312.50
6	Oct. 23, 1902	Nov. 23, 1902	937.50
36	Feb. 23, 1903	Feb. 23, 1903	312.50
37	Feb. 23, 1903	Feb. 23, 1903	937.50
76	Jun. 11, 1903	May 23, 1903	312.50
77	Jun. 11, 1903	May 23, 1903	937.50
105	Aug. 23, 1903	Aug. 23, 1903	937.50
106	Aug. 23, 1903	Aug. 23. 1903	312.50
18	Dec. 8, 1903	Nov. 23, 1903	937.50
19	Dec. 8, 1903	Nov. 23, 1903	312.50
36	Mar. 12, 1904	Feb. 23, 1904	937.50
37	Mar. 12, 1904	Feb. 23, 1904	312.50
52	Jun. 1, 1904	May 23, 1904	937.50
53	Jun. 1, 1904	May 23, 1904	312.50
72	Sep. 17, 1904	Aug. 23, 1904	937.50
73	Sep. 17, 1904	Aug. 23, 1904	312.50
25	Dec. 23, 1904	Nov. 23, 1904	1250.00
33	Mar. 1, 1905	Feb. 23, 1905	1250.00
66	May 30, 1905	May 23, 1905	1250.00
		Total.....	$29583.50

That there was paid to the defendants by the treasurer of the Choctaw Nation upon warrants illegally issued by the officers of the Choctaw Nation upon the authority of an act of the Choctaw Council, of October 19th, 1902, which was not approved by the President of the United States, the following warrants:

No.	Date	Amount
16	Dec. 19, 1902	$6083.30
17	do	1513.10
18	do	2916.65
19	do	2500.00
20	do	3065.38
	Total	$16078.43

That there was paid to the defendants under void and illegal ordinances of the Choctaw Council passed on the 30th day of October, 1903, which was not approved by the President of the United States, the following amounts:

No.	Date	Amount
5	Oct. 30, 1903	$ 800.00
6	do	1003.00
7	do	1200.00
8	do	2000.00
10	do	2000.00
16	do	2321.00
	Total	$9324.00

That there was paid to the said defendants by the treasurer of the Choctaw Nation upon warrants illegally issued under an act of the Council of the Choctaw Nation passed November 1st, 1904 and not approved by the President of the United States, the following amounts:

No.	Date	Amoun
3	Nov. 2, 1904	$5250.0
4	Nov. 2, 1904	5282.4
24	Dec. 23, 1904	474.2
36	Dec. 23, 1904	361.9
37	Dec. 23, 1904	156.1
68	May 30, 1905	333.7
	Total	$11858.4

That there was paid to the said defendants by the treasurer of the Choctaw Nation upon warrants wrongfully and illegally issued by the officers of the Choctaw Nation under an ordinance passed by the council of the Choctaw Nation on the.....day of November, 1903, but upon which no valid or legal contract was based for the payment of the services for which said warrants were issued the following amounts:

No.	Date	Amount
44	Apr. 8, 1904	$109.83
45	Apr. 8, 1904	292.54
46	Apr. 8, 1904	221.20
47	Apr. 8, 1904	146.72
50	Jun. 1, 1904	717.58
51	Jun. 1, 1904	694.94
69	Sep. 17, 1904	714.61
70	Sep. 17, 1904	1742.32
71	Sep. 17, 1904	408.32
1	Nov. 2, 1904	529.00
2	Nov. 2, 1904	432.54
23	Dec. 23, 1904	693.88
34	Mar. 1, 1905	622.31
35	Mar. 1, 1905	377.54
67	May 30, 1905	1121.31
	Total	$8824.64

That there was paid to the defendants by the treasurer of the Choctaw Nation upon warrants illegally issued by the officers of the Choctaw Nation without any authority of any act of the Choctaw Council or any other authority of law, the following warrants:

No.	Date	Amount
58	Feb. 13, 1901	$1547.95
81	Apr. 19, 1901	952.05
106	Aug. 24, 1901	1513.10
107	Aug. 24, 1901	250.00
	Total	$4263.10

making the total amount of warrants wrongfully and illegally issued by the officers of the Choctaw Nation or Tribe of Indians to the said defendants and wrongfully and illegally paid by the treasurer of the Choctaw Nation to the said defendants out of money drawn by the said treasurer of the Choctaw Nation from the treasury of the United States out of the trust funds and moneys of the Choctaw Nation then in the hands of the Treasurer of the United States, upon the warrants of the said Treasurer of the Choctaw Nation drawn against said fund, the total sum of seventy-nine thousand, nine hundred and thirty-one dollars and sixty-six cents ($79,931.66), all of which said sum was wrongfully and illegally paid by the said Choctaw Nation or Tribe of Indians to the said defendants under and by virtue of the said fraudulent, wrongful, illegal and void contract, understanding, arrangement and agreement so as aforesaid made and entered into between the said defendants and the Choctaw Nation or Tribe of Indians, and all of said sum of $79,931.66 so paid by the Choctaw Nation to the said defendants was wilfully, knowingly and wrongfully received and retained by the said defendants and the said defendants now have said sum of $79,931.66 in their possession which belongs to

the trust funds of the said Choctaw Nation or Tribe of Indians and to the United States of America as trustee therefor, which said sum of $79,931.66 complainant, the United States of America, has the right to sue for and recover in this suit and which said sum it claims and demands from the said defendants, together with interest at the rate of 6% on said several sums from the date received by said defendants.

Wherefore, complainant prays judgment against the said defendants, George F. Mansfield, John F. McMurray and Melvin Cornish, and each of them, for the full sum of $79,931.66 with interest on said sum at the rate of 6 per cent per annum from the date of the receipt of the several sums as above set forth, and that it be rewarded a judgment for said sum, together with process of this court to enforce the collection thereof, and for its costs in this behalf expended.

WILLIAM J. GREGG,
United States District Attorney,
For Complainant.

Endorsed. Filed Sep. 8, 1909, L. G. Disney, Clerk U. S. Circuit Court, Eastern Dist. Okla. No. 595. In the United States Circuit Court for the Eastern District of Oklahoma. The United States of America, Complainant, vs. George F. Mansfield, John F. McMurray and Melvin Cornish, partners doing business under the firm name and style of Mansfield, McMurray and Cornish, Defendants. Amended Complaint. William J. Gregg, United States District Attorney for Complainant.

United States, ex rel, The Choctaw Nation vs. George A. Mansfield, J. F. McMurray and Melvin Cornish, under firm name of Mansfield, McMurray & Cornish. Equity No. 595.

Upon motion of plaintiff it is considered, ordered, adjudged and decreed that this cause be and the same is hereby dismissed without prejudice and that defendants have and recover of and from plaintiff all costs in and about this suit laid out and expended and that they have execution therefor."

Muskogee, Wednesday, September 8th, A. D. 1909.

United States of America, Eastern District of Oklahoma, ss.

I, R. P. Harrison, Clerk of the District Court of the United States of America for the Eastern District of Oklahoma, do hereby certify the within and foregoing to be a true, full and correct copy of Amended Bill of Complaint filed on Sep. 8, 1909, in Equity No. 595, United States of America vs. George A. Mansfield et al., and Order of Dismissal entered on Wednesday, September 8, 1909, in said cause, as the same appear from the records and files of this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Muskogee, in said District, this 12th day of March, 1920.

(Signed) R. P. Harrison, Clerk.
(Seal) By Pearl Julian, Deputy Clerk.

EXHIBIT L.

In the Choctaw and Chickasaw Citizenship Court, Sitting at Tishomingo, Indian Territory, December Term, 1904. *In the matter of the petition of Mansfield, McMurray & Cornish, the Attorneys employed by contract, dated January* 17, 1901, *with the Choctaw and Chickasaw Nations, to have the Court fix a reasonable compensation for services rendered in the trial of court claimant citizenship cases, under the Act of Congress approved March* 3, 1903. *No.* 135.

Opinion.

It seems from the evidence introduced in this proceeding, that on the 17th day of January, 1901, Gilbert W. Duke, Principal Chief of the Choctaw Nation, on the part of said Nation, and Douglas H. Johnston, Governor of the Chickasaw Nation, on the part of that Nation, entered into the following contract with the law firm of Mansfield, McMurray & Cornish, to-wit:

"This agreement witnesseth:

First. That the parties in interest to this contract are the Choctaw Nation, by Gilbert W. Duke, of Talihina, Choctaw Nation, Indian Territory, Principal Chief thereof; and the Chickasaw Nation, by Douglas H. Johnson, of Emet, Chickasaw Nation, Indian Territory, Governor thereof, parties of the first part; and Mansfield, McMurray & Cornish, a firm composed of George A. Mansfield, J. F. McMurray and Melvin Cornish, attorneys at law, residing at South McAlester, Indian Territory, parties of the second part;

Second. That the authority under which this contract is entered into, the scope of such authority, and the reason for exercising the same, will appear from certain acts of the General Council of the Choctaw Nation, and the Legislature of the Chickasaw Nation, as follows:

Act of Choctaw Council:

'"An act to provide for the protection of the Choctaws and Chickasaws from the citizenship claims of those persons known as "Court Claimants";

Whereas: Many persons who are not Choctaw or Chicasaw Indians have fraudulently procured judgments of the United States Court in Indian Territory, declaring them to be members of said tribes and entitled to allotments of tribal lands and property, and thereby the nations will lose several million of dollars in lands and tribal property, unless immediate and vigorous steps be taken to defeat the claims of said persons, jointly by the Choctaw and Chickasaw Nations; therefore,

Be it enacted by the General Council of the Choctaw Nation Assembled:

That the Principal Chief of the Choctaw Nation is hereby authorized to enter into a contract, jointly with the governor of the Chickasaw Nation, with some suitable person or persons to defeat the claims of said "court claimants" under the alleged judg-

ments, provided, however, that the compensation to be paid under said contract shall be upon the basis of a per centum of the value of the lands and property which said persons would, otherwise, receive under said alleged judgments, to be fixed in said contract by the Principal Chief of the Choctaw Nation and the governor of the Chickasaw Nation, who shall also, for the purposes of ascertaining the amount to be paid under said contract agree as to the value of the lands and property which each one of said persons would receive; and provided further, that such compensation shall be contingent upon the defeat of such persons and the protection of the tribes therefrom: and this act shall take effect and be in force from and after its passage and approval."

"Passed the House January 7, 1901.

Passed the Senate January 5, 1901.

Approved January 7, 1901: G. W. Dukes, Principal Chief, Choctaw Nation."

"Act of the Chickasaw Legislature":

'"An act to provide for the protection of the Choctaws and Chickasaws from the citizenship claims of those persons known as court claimants"':

"Whereas: Many persons who are not Choctaw and Chickasaw Indians have fraudulently procured what purport to be judgements of the United States Court in the Indian Territory, declaring them to be members of the tribes and entitled to enrollment and distribution of tribal property; and thereby said tribes will lose several millions of dollars in lands and tribal property, unless immediate steps be taken to defeat the claims of said persons, jointly with the Choctaws, therefore,

Be it enacted by the legislature of the Chickasaw Nation:

That the governor of the Chickasaw Nation is hereby authorized to enter into a contract, jointly with the Principal Chief of the Choctaw Nation, with some suitable person or persons, to defeat the claims of said "court claimants," under said alleged judgments; and before allotment and distribution of tribal property, as provided by treaty, the proper officer of the United States Government, having the same in charge, shall set apart so much of the funds of the Chickasaws as may be sufficient to pay the proper proportion of the Chickasaws, or one-fourth of the aggregate compensation which may be due under said contract authorized to be entered into under this act; and to pay the same as may be provided in said contract; provided, that the compensation to be paid under said contract shall be a per centum of the value of the lands and tribal property which said "court claimants" would have receive, in the event of allotment and distribution of tribal property to them, to be fixed in said contract by the governor of the Chickasaw Nation and the principal chief of the Choctaw Nation, who shall also, for the purpose of ascertaining the aggregate amount due under said contract, agree as to the value of the lands and tribal property which each of said "court claimants" would receive, in the event of allotment and distribution of tribal property

to them; and provided further, that such compensation shall be contingent upon the defeat of the claims of such persons and the protection of the tribes therefrom."

Passed the House January 10, 1901.

Passed the Senate January 10, 1901.

Approved January 10, 1901: D. H. Johnson, Governor, Chickasaw Nation.

Third. That the particular purpose for which this contract is entered into is to secure the services of the said Mansfield, McMurray & Cornish, parties of the second part in preventing allotment or distribution of tribal property to those persons who claim right thereto under alleged judgments of the United States Court in Indian Territory, rendered under Act of Congress approved June 10, 1896, and known as "court claimants";

Fourth. That the special thing to be done under this contract by the said Mansfield, McMurray & Cornish, parties of the second part, is to render their services, to the end, that allotment or distribution of tribal property may be refused such so-called "court claimants";

Fifth. That the basis for the services herein contracted for by the said Choctaw and Chickasaw Nations parties of the first part, and agreed to be performed by the said Mansfield, McMurray & Cornish, parties of the second part, is the claim to allotment or distribution of tribal property under said alleged judgments by said so-called "court claimants";

Sixth. (a) That the compensation of the said Mansfield, McMurray & Cornish, parties of the second part, under this contract, shall be nine per centum of the value of the shares of tribal property which such of said so-called "court claimants" as hereinafter defined, as may be refused allotment or distribution of tribal property, would have received in the event of allotment or distribution thereof to them, whether for past or future services to this end; and that, for the purposes of this contract it is agreed that the share of tribal property a "court claimant" would receive, in the event of allotment and distribution thereof to him, if of the value of four thousand, eight hundred dollars, and is hereby so fixed; and the term "court claimants," as herein used, shall include all persons whose names were embraced in what purported to be judgments of the United States Courts in Indian Territory, admitting them to Choctaw and Chickasaw Citizenship, under the said Act of Congress, approved June 10, 1896; and all persons who have been born to, or become intermarried with, them, and who are claiming rights thereby;

(b) That such compensation shall be due and payable by the Treasurer of the United States, at the Treasury, out of any funds of the Choctaws and Chickasaws in the hands of the government, in proportion of three-fourths out of Choctaw, and one-fourth out of Chickasaw funds, whenever the roll of those persons entitled to allotment and distribution of tribal property shall become final;

(c) That compensation shall be ascertained and paid in the following manner: That the said Mansfield, McMurray & Cornish, shall present to the Secretary of the Interior, a true and correct list of such so-called "court claimants" as herein defined, and he shall, by comparing said list with said final allotment roll ascertain the number of such "court claimants" refused allotment or distribution of tribal property, and also the aggregate value of the shares of tribal property, which such persons would have received in the event of allotment and distribution thereof to them, by applying to such number of persons the value of a share of tribal property, as herein fixed, of which aggregate sum the said Mansfield, McMurray & Cornish, parties of the second part, shall be entitled to nine per centum. The Secretary of the Interior shall certify the amount thus due the said Mansfield, McMurray & Cornish under this contract, and upon such certificate payment shall be made as herein provided.

Seventh. That the fixed time for which this contract is to run is five years from March 4, 1901.

In testimony whereof, we have hereunto set our hands at Sherman, Texas, on this January 17, 1901.

(Signed.) Gilbert W. Dukes,
Principal Chief, Choctaw Nation, on the part of Choctaw Nation.

(Signed.) Douglas H. Johnston,
Governor of the Chickasaw Nation on the part of Chickasaw Nation. Parties of first part.

(Signed.) Mansfield, McMurray & Cornish,
Parties of the second part.

On the 3rd day of March, 1903, and Act of Congress was approved entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes," in which it is provided "that upon the final determination of cases within the jurisdiction of said citizenship court may fix reasonable compensation to the attorneys employed by contract dated January seventeenth, nineteen hundred and one, with the Choctaw and Chickasaw Nations and such determination shall be made irrespective of the rate fixed in said contract between said attorneys and said nations, or either of them, unless the same have received the approval of the Secretary of the Interior. And upon the final determination of said cases by said citizenship court the Treasurer of the United States is hereby directed to pay to said attorneys on the warrant or warrants drawn by the Secretary of the Interior the amount of such compensation out of any funds in the Treasury belonging to said nations."

It will be seen by reference to the above contract that the Choctaw and Chickasaw Nations through their respective representatives agreed to pay to the attorneys mentioned in said contract "nine per centum as a compensation for their services of the value of the shares of tribal property which such persons whose names were embraced in what purported to be judgments of the United States Court in the Indian Territory admitting them to Choctaw and Chickasaw citizenship, under the act of Congress approved June 10, 1896, and known as 'court claimants' and all persons who have been born to or become intermarried with them and who are claiming rights thereby."

There were 263 cases transferred to this court involving the right of 3403 persons to citizenship in the Choctaw and Chickasaw Nations. Of this number 156 have been admitted to citizenship by this court and 2798 persons denied citizenship; and 449 persons whose cases were dismissed for want of jurisdiction. 2290 persons who had their cases transferred to this court are included in the list of 3403 persons mentioned heretofore had obtained judgments of the United States Courts for the Southern and Central Districts of the Indian Territory admitting them and each of them to citizenship under the Act of June 10, 1896; in addition to this number there are 211 persons who were in possession of judgments of said courts obtained under said Act of June 10, 1896 and whose judgments were declared void by this court in the "Test Suit" provided for in Section 31 of an Act of Congress approved July 1, 1902 and who did not have their cases transferred to this court. There are also 508 persons who had their cases transferred to this court under Section 32 of the Act of Congress approved July 1, 1902 who had been denied citizenship by the United States Courts for the Southern and Central Districts of the Indian Territory under the Act of Congress approved June 10, 1896. The attorneys mentioned in said contract have furnished a list of 669 persons who have been born to or become intermarried with persons who had favorable judgments of the United States Courts under the Act of Congress approved June 10, 1896 and who had been denied citizenship by the Commission to the Five Civilized Tribes by reason of the judgment of this court in declaring void the judgments held by those with whom they had intermarried or were born of.

The attorneys contend that they are entitled to compensation at nine per centum on the value of the shares of 2290 persons who had favorable judgments of the United States Court for the Indian Territory and who had their cases transferred to this court and were here denied citizenship, as well as a compensation of nine per centum on the value of the shares of 211 persons who had favorable judgments of the United States Court and those judgments were declared void by this court in the decision thereof in what is known as the "Test Suit" and who failed to have their cases transferred to this court; also a like per centum on the value of the shares of 669 persons who have been born to or become intermarried with the persons known as "Court Claimants."

In other words the attorneys mentioned in the contract claim and insist that this contract should be approved by this court and

that this court should allow them as a compensation for their services nine per centum of the value of three thousand one hundred and seventy shares in the tribal property of the Choctaw and Chickasaw Tribes of Indians as this is the correct number of persons who have been kept from participating in the distribution of the tribal property of these two tribes by reason of their efforts under the contract dated January 17, 1901. From the evidence in this proceeding a share in the tribal property belonging to the Choctaw and Chickasaw Nations is worth the sum of $5000.00 and at the time this contract was entered into on the 17th day of January, 1901 there were 2501 persons in possession of judgments of the United States Court in the Indian Territory declaring each of them members of the Choctaw and Chickasaw Nations, whose judgments have been by this court set aside and vacated and thereby their right to citizenship denied; that there are 669 persons who have been born to or become intermarried with persons who possessed favorable judgments known as "Court Claimants"; that all the services contracted for to be performed under the contract bearing date January 17, 1901 have been performed by the attorneys, Mansfield, McMurray & Cornish; that these services have been performed with intelligence, promptness and fidelity toward the Choctaw and Chickasaw Indians; that there has been a final determination of all the cases within the jurisdiction of this court; that said attorneys have completed their services under said contract; and at the time said contract was entered into the persons known as "Court Claimants" were in possession of judgments that then seemed to be absolute and that there was no provision in the law at that time to re-try the cases. The evidence shows there has been saved to the Choctaw and Chickasaw Nations in money and property amounting in the aggregate to the sum of $15,850,000.00, by reason of the efforts of said attorneys. The evidence further shows that it was this firm of lawyers who brought these matters to the attention of the law making powers and departments of the government and impressed upon Congress and the departments the great wrong which had been done the nations by placing the persons known as "Court Claimants" upon the rolls and thereby allowing a great number of persons to participate in the distribution of the property belonging to these tribes who were not entitled to such benefits. The evidence further shows that it was through the persistence of these attorneys that legislation was secured that gave the nations the right of retrial of these cases; and this was done at the personal expense of said firm, and that they have never been paid or do not claim any right to be reimbursed in the way of expenses for sums thus expended; that at each session of Congress, since this contract was entered into, up to the time of the passage of the Act of Congress approved July 1, 1902, that some member of this firm was in Washington endeavoring to impress upon the law making powers and the departments the justness of the claim of the Choctaw and Chickasaw Indians, and insisting that legislation be enacted that would allow the citizenship cases to be retried.

After the passage of the Act of Congress approved July 1, 1902, creating this court, and the organization of the court for the trial of these cases, the attorneys have tried them all in the most prompt manner in the face of the most bitter opposition, going into nearly all of the southern states seeking and securing testimony that proved beyond all doubt that many of the persons known as "Court Claimants" had no rights whatever as Indians but in a large measure were white people who had secured judgments by fraud and perjury.

If the per centum agreed on in the contract be adhered to the compensation to the attorneys would be $1,426,500.00.

A number of witnesses have testified in this matter before this court to the effect that the provisions of said contract should be carried out. And that the amount claimed by said attorneys was not excessive for the services performed, a number of them placing a reasonable compensation much higher than is designated in the contract.

It is true that at the time this contract was entered into the chances of recovery were exceedingly remote and if the attorneys had not succeeded they would not have received any compensation for their labors whatever.

As contained in this statement heretofore there were 508 persons whose cases were transferred to this court under Section 32. These cases were looked after with as much diligence as any case before the court, notwithstanding the fact the contract did not cover this class of cases. The Principal Chief of the Choctaw Nation and the Governor of the Chickasaw Nation have filed statements with this court insisting that the provisions of the contract be carried out and that the attorneys be allowed the compensation agreed upon.

So the question is what is a reasonable compensation for the services rendered. In our opinion the compensation fixed by the contract would be excessive, but the sum of $750,000.00 would be a reasonable compensation and should be allowed the firm of Mansfield, McMurray & Cornish for all services connected with citizenship matters under the contract dated January 17, 1901, and in lieu of all expenses save and except such as are provided for by law, as set out in section thirty-three of the Act of Congress approved July 1, 1902, and said amount is hereby fixed and allowed as a reasonable compensation to said attorneys in this behalf.

In stating that the sum of nine per cent as set out in the contract, is excessive, we do not mean to be understood as finding any bad faith upon the part of said attorneys in getting such a contract, but simply mean to say that such a per centum as applied to the services performed is above what we now think a reasonable fee for the services performed by said attorneys, and the great amount of benefits derived and the very large amount of money and property recovered, when if as a matter of fact a less amount had been

recovered, a greater per centum might have been proper for us to allow.

(Signed.) SPENCER B. ADAMS,
Chief Judge.
(Signed.) WALTER L. WEAVER,
Associate Judge.
(Signed.) HENRY S. FOOTE,
Associate Judge.

E. P. SELF, being first duly sworn, testified as follows on behalf of defendants:

Direct Examination by W. J. Turnbull.

Q. State your name.
A. E. P. Self.
Q. Where do you live, Mr. Self?
A. I live in McAlester.
Q. What is your business?
A. The contracting business.
Q. What particular work are you engaged in at this time?
A. Why at this point, we are on a contract with the McAlester Coal & Fuel Co. for stripping coal.
Q. What is the name of your Company?
A. Buchanan Company.
Q. What is your relation to the Company?
Q. Well, I am Secretary and Manager of this operation at this point.
Q. What particular work is your Company engaged in at this time, in this field?
A. Not engaged right now. We have been engaged in stripping and mining coal under contract. We have been under a contract to the McAlester Coal & Fuel Company, to strip coal and mine coal and put it on the railroad cars.
Q. At what place?
A. Well, at a point—I don't know exactly what you do call it. I think they call it "Coal Fields." There is no postoffice, but we get our mail on R. F. D. from McAlester; six miles southeast of the city.
Q. Are you removing the coal by stripping it, or by a shaft or a slope?
A. Stripping it, altogether.
Q. What coal seam or vein is that?
A. I don't know.
Q. Are you familiar with the different veins in the McAlester coal fields?
A. No, sir, I am not.
Q. Do you know whether the vein in which you are operating is called the Secor vein?

A. No, sir, I do not.
Q. Do you know what the name of the particular coal is, or that grade of coal that you are now removing is called?
A. Why, no, I do not. I don't handle that end of the work. I have nothing to do with the sale of the coal. I am not interested in that line of the coal business.
Q. Are those a part of what is sometimes called the Dawley mines?
A. Yes, sir, it has been termed that by the papers; I suppose that is what it is called.
Q. What kind of coal is that?
Objected to by plaintiff as incompetent, irrelevant and immaterial, and for the special reason witness has not been qualified to testify.
A. I am not familiar with that line of work.
Q. Do you use any of the coal which you remove, for operating purposes there?
A. I do; yes, sir.
Q. Is that good coal for that purpose?
Plaintiff objects, as witness is not qualified to answer.
A. Why, yes, this coal is all right for the purposes for which we use it. That is as far as my knowledge extends; that is for steam use in operating machinery used in the process of stripping and loading.
Q. How thick is the seam at that place?
A. Well, sir, it varies from three to .....; is very irregular—that is, not uniform—several bad breaks in our operation; two special breaks, but possibly there would be 2 ft. 6, or, I should say 3 ft. 8.
Q. What general direction does the crop or seam run at that place?
A. Well, from my knowledge of the directions, it would be kind o' west.
Q. Are there any other mines near there?
A. The only mines near there is the point called "High Hill" that is below there about three miles, on the same railroad spur off of the main line of the Rock Island.
Q. Is that a shaft or strip?
A. That's a slope.
Q. Is that in the same vein or seam that you are working?
Objected to by plaintiff, as witness is not qualified to answer.
A. I am not qualified to answer that.
Q. Why are you not operating at this time?
A. Well, on account of a nation-wide coal strike.
Q. Is it your intention to continue operations as soon as you can get the men to work?
A. To my knowledge now; yes, sir.

Cross Examination by E. E. McInnis.

Q. I understand your connection is simply that of a contractor removing the burden from this coal?

A. Yes, sir.

Q. You received your contract price, regardless of the quality of coal produced?

A. That is correct.

Q. You are not interested in whether the coal is good quality or a bad quality; I mean financially?

A. No, sir.

Q. You don't pretend to be a coal man?

A. No, not in that line. I have been in coal work some, but not in the capacity of the sales end of it.

Q. You are stripping that with steam shovels?

A. Yes, sir, with the steam drag line. We load with steam shovels, and strip with the steam drag line.

Q. What is the pitch of that vein there?

A. That is a question I could not accurately answer. It is supposed to pitch thirteen degrees in the 100, but for the first 100 feet it pitches even more, but I judge after the first hundred feet away from the crop, about eight degrees would be pretty accurate.

Q. The stripping operation, as I understand it, is an operation whereby you remove bodily the dirt, rock and other material which overlies the seam of coal, exposing the top of that seam, and then you remove the coal with steam shovels, as you would gravel or other material?

A. Yes, that's our operation. It isn't necessarily removed by steam shovels, though.

Q. How far from the crop of the coal are you able to remove this over burden, before it gets too great to remove?

A. Well, that depends on your equipment. You mean with our present equipment?

Q. Yes?

A. Well, forty feet.

Q. So that you expose the coal from the point where it crops at the surface, back forty feet?

A. Ys, sir, we are under contract to do that.

Q. Your statement a moment ago was, that according to your best estimate, the pitch of this coal is about eight degrees. Do you mean that a cross-section would show an angle of eight degrees between the line representing the coal measure, and a line representing the surface of the ground?

A. Why yes, that is what I mean.

Q. The 8 degrees to which you refer is not an angle between the coal measure and the line that would represent a horizontal?

A. I am not positive about the eight degrees. I say it pitches thirteen feet away from the crop line, at a distance of 100 feet—a line drawn perpendicular to the surface of the ground.

Q. If I understand you correctly, under the conditions that