

BEFORE THE INDIAN CLAIMS COMMISSION

THE CHOCTAW NATION,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Docket No. 51
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Grady Lewis, with whom was W. F. Semple and H. L. Fitzgerald, Jr., Attorneys for Petitioner,

Ralph A. Barney and John F. Curran, with whom was Mr. Assistant Attorney General A. Devitt Vanech, Attorneys for Defendant.

MAR 2 1950

OPINION OF THE COMMISSION

Witt, Chief Commissioner, delivered the opinion of the Commission:

The facts involved will appear from the opinion of the Commission.

This suit was instituted by virtue of the authority obtained in act of Congress of August 13, 1946, known as the Indian Claims Commission Act.

The petition alleges in substance:

That what is known as the Atkoa Agreement entered into by the

- 2 -

petitioner with the United States on the 23rd day of April, 1897, which was ratified and confirmed by act of Congress approved June 23, 1898 (30 Stat. 495), and the supplemental agreement entered into by the petitioner with the United States on the 21st day of March, 1902, and approved by an act of Congress of July 1, 1902 (32 Stat. 641), provided for the compilation of rolls of members of the Choctaw and Chickasaw tribes of Indians and for the distribution of the lands, common property, and funds of the Choctaw and Chickasaw tribes to the persons found to be members of said tribes by the Dawes Commission, pursuant to the provisions of the two aforesaid agreements and the acts of Congress ratifying the same; that such rolls were complete when a list embracing the names of all those lawfully entitled to enrollment had been submitted by said Commission to and approved by the Secretary of the Interior; and thereupon said rolls and said enrollment became final and the persons whose names were found thereon alone constituted the membership of the tribes: that, notwithstanding the aforesaid agreements, the Congress of the United States by the act of Congress of August 1, 1914 (38 Stat. 632) authorized the Secretary of the Interior to enroll some forty-one persons on the Choctaw rolls, contrary to the provisions of the aforesaid agreements, and that such persons were paid \$41,000 in per capita payments over a period of years from 1916 to 1949; that said payments were made without the assent or agreement of petitioner; that, therefore, petitioner is entitled to recover the

- 3 -

principal sum of \$41,000, with interest thereon.

The defendant filed a motion to dismiss the petition on the ground that the allegations contained therein were insufficient to state a claim upon which relief could be granted.

Defendant contends:

(1) That the claim asserted is not in fact a tribal claim, but that of individual claimants, which the Commission does not have jurisdiction to entertain;

(2) That the act of Congress of August 1, 1914, adding forty-one names to the Choctaw rolls, was within the powers vested in Congress and no legal claim in favor of the petitioner resulted thereby.

The act of Congress approved June 28, 1898 (30 Stat. 495) ratifies and confirms and incorporates therein what is generally referred to as the Atoka Agreement, entered into between what was called the Dawes Commission and commissions representing the Choctaw and Chickasaw tribes. Section 21 of the act provides in detail the procedure to be followed by the Commission in making up the rolls of citizens of the several tribes and provides that:

The rolls so made, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon, with their descendants thereafter born to them, with such persons as may intermarry according to tribal laws, shall alone constitute the several tribes which they represent.

Thereafter, by an act of Congress of July 1, 1902 (32 Stat. 641),

- 4 -

a later agreement executed by the so-called Dawes Commission and commissions representing the Choctaw and Chickasaw tribes of Indians on the 21st day of March, 1902 (which is presumably the agreement to which petitioner refers as being ratified by it on September 25, 1902) was ratified and confirmed. This act of 1902 contains no legislation except the language of the agreement as ratified and confirmed, and does nothing but ratify and confirm said agreement. Section 73 of the act of Congress provides that same

\* \* \* shall be binding upon the United States, and upon the Choctaw and Chickasaw nations, and all Choctaws and Chickasaws, when ratified by Congress and by a majority of the whole number of votes cast by the legal voters of the Choctaw and Chickasaw tribes \* \* \*.

Section 30 of said act provides for the enrolling of Choctaw and Chickasaw citizens and details as to the preparation of lists; and that

Lists shall be made up and forwarded when contests of whatever character shall have been determined, and when there shall have been submitted to and approved by the Secretary of the Interior lists embracing names of all those lawfully entitled to enrollment, the rolls shall be deemed complete.

Sections 23 to 35, inclusive, all deal with enrolling procedures, section 35 providing as follows:

No person whose name does not appear upon the rolls prepared as herein provided shall be entitled to in any manner participate in the distribution of the common property of the Choctaw and Chickasaw tribes, and those whose names appear thereon shall participate in the manner set forth in this agreement \* \* \*.

- 5 -

Of the above-mentioned sections, sections 31 and 32 deal with citizenship matters and section 33 creates a "Choctaw and Chickasaw Citizenship Court," and section 32 provides "That paragraphs thirty-one, thirty-two and thirty-three hereof shall go into effect immediately after the passage of this Act by Congress." (Underscoring supplied)

The final act of Congress dealing with enrollment procedures, prior to the act of 1914 complained of, is that of April 26, 1906 and is entitled "An Act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes." (34 Stat. 137)

The act of July 1, 1902 (32 Stat. 641) was amended by act of March 3, 1905 (33 Stat. 1048), making same provide for the enrollment of "new-born" Indians who were born subsequent to September 25, 1902 and prior to March 4, 1905; and the time for enrollment of "new-born" Indians was further extended under the act of April, 1906 (34 Stat. 137) to children who were minors living on March 4, 1906; and this latter act further provided for an extension of time within which the rolls should be completed, and extended such time to March 4, 1907.

It would unnecessarily lengthen this opinion to quote in full the act of April 26, 1906 (34 Stat. 137), but it is sufficient to say that said act devotes many of its sections to the matter of enrollment of members of the Five Civilized Tribes (of course including the Choctaws and Chickasaws), and to other matters affecting

- 6 -

said tribes and tribal properties. No provision of said act of Congress refers to same as being enacted by reason of any agreement with said Indian tribes; and no allegation is made by the petitioner herein to the effect that any part of said legislation was based on any agreement with said tribes; however, the lack of consent, as will be seen later, would not have deprived the Congress of the power to add names to the final rolls of the two tribes.

Section 23 of said act provides that the tribal existence and present tribal governments of the Five Civilized Tribes shall be continued in full force and effect

\* \* \* Provided, That no act, ordinance, or resolution (except resolutions of adjournment) of the tribal council or legislature of any of said tribes or nations shall be of any validity until approved by the President of the United States: \* \* \*  
(Underscoring supplied.)

The act of Congress of August 1, 1914 (38 Stat. 582), adding names to the Choctaw rolls, which is the basis of petitioner's alleged cause of action, provides as follows:

The Secretary of the Interior is hereby authorized to enroll on the proper respective rolls of the Five Civilized Tribes, as indicated, the persons enumerated in Senate Document Numbered Four hundred and seventy-eight, Sixty-third Congress, second session: Provided, That when so enrolled there shall be paid to each and every such person out of the funds in the Treasury of the United States to the credit of the respective tribe with which such person is enrolled the following sums in lieu of an allotment of land: To each such person placed on the Creek rolls the sum of \$300; to each such person placed on the Choctaw, Chickasaw, Cherokee and Seminole rolls, a sum equal to twice the appraised value of the allotment of such tribe as fixed by the

- 7 -

Commission to the Five Civilized Tribes for allotment purposes: Provided further, That in cases where such enrolled members, or their heirs, are Indians who by reason of their degree of Indian blood belong to the restricted class, the Secretary of the Interior may, in his discretion, withhold such payments and use the same for the benefit of such restricted Indians:  
\* \* \* \*

It is the position of petitioner that under the provisions of the so-called Atoka Agreement, and the supplemental agreements as specifically set out in the petition in this case, that "when the rolls had been submitted by the Commission to and approved by the Secretary of the Interior, the persons whose names were found thereon alone constituted the membership of the tribe;" and that "any act of the Congress that gave any part of the tribal property to persons other than those that constituted the membership of the tribe as found by the Secretary himself, is a confiscation of the tribal domain and not a lawful exercise of the plenary and political power of the Congress." This Commission cannot agree with this contention.

The extensive quotations from the several acts of Congress dealing with the rolls which are to constitute the tribal membership are made for the purpose of showing that Congress made many changes in enrolling matters subsequent to the act of July 1, 1902 and at all times asserted its right to decide, or set up by its authority, commissions to decide, tribal membership. Additions to the rolls and extensions of time for completing the same were made by each of the acts subsequent to the act of July 1, 1902 (32 Stat. 641) relied

- 8 -

on by petitioner. While it is a fact that the agreements made between commissions representing the Government of the United States and commissions representing the Indian tribes, provided that they should become effective when ratified by the Congress of the United States and by the members of the Indian tribes, nevertheless the acts of Congress, as shown in the acts referred to, many times modified and changed the previously ratified agreements. And in 30 Stat. 495 it is specifically provided that Congress did not intend to abdicate its plenary power as to certain tribal matters which indicates the recognition by Congress that it had this power and could only lose the same by an absolute and positive surrender thereof; and in none of the so-called agreements relied upon by petitioner is there an affirmative provision for the surrender or abdication of the plenary power of Congress as to such matters.

We quote from the leading case on the power of Congress to determine the citizenship of any Indian tribe, Stevens v. Cherokee Nation, 174 U.S. 445:

We repeat that in view of the paramount authority of Congress over the Indian tribes, and of the duties imposed on the government by their condition of dependency, we cannot say that Congress could not empower the Dawes Commission to determine, in the manner provided, who were entitled to citizenship in each of the tribes and make out correct rolls of such citizens, an essential preliminary to effective action in promotion of the best interests of the tribes. It may be remarked that the legislation seems to recognize, especially the act of June 28, 1898 (30 Stat. 495), a distinction between admission to citizenship merely and the distribution of property



- 9 -

to be subsequently made, as if there might be circumstances under which the right to a share in the latter would not necessarily follow from the concession of the former. But in any aspect, we are of opinion that the constitutionality of these acts in respect of the determination of citizenship cannot be successfully assailed on the ground of the impairment or destruction of vested rights.

(Underscoring supplied)

In a later case, that of Wallace v. Adams, 204 U.S. 415, the contention was made that Congress did not have the power to amend prior laws governing the enrollment of members of the Five Civilized Tribes. In that case one Hill had been enrolled pursuant to a decree by an Indian Territory court, as provided by law at the time. Thereafter the act of Congress of July 1, 1902 created a Choctaw and Chickasaw Citizenship Court and granted it the power to annul previous enrollments. In upholding the power of the Choctaw and Chickasaw Citizenship Court to annul the enrollment of Hill, the Supreme Court referred to the case of Stevens v. Cherokee Nation, supra, and said:

This decision established that no such vested right was created by the proceedings of the Dawes Commission or the judgments of the courts of the Indian Territory on appeal from the findings of the Commission as prevented subsequent investigation. The power of Congress over the matter of citizenship in these Indian tribes was plenary, and it could adopt any reasonable means to ascertain who were entitled to its privileges. If the result of one measure was not satisfactory it could try another. The fact that the first provision was by an inquiry in a territorial court did not exhaust the power of Congress or preclude further investigation.

Petitioner contends that the only thing before the courts in

- 10 -

these two cases was "whether or not applicants for enrollment on the final rolls had a vested right in the procedure set up for the making of such rolls."

That is, in effect, the question involved in the case at bar in that the contention of petitioner is that the enrollment made by virtue of the Atoka Agreement, the act of Congress of June 28, 1898 (30 Stat. 495) ratifying the same, the supplemental agreement and the statute confirming the same (32 Stat. 641), gave to the members enrolled thereunder the sole right of ownership of the tribal property--in other words, that such members thereby acquired "a vested right in the procedure (previously) set up for the making of such rolls."

The authorized procedures in the acts of Congress providing for enrollment were the creatures of Congress; and surely if Congress as stated in Wallace v. Adams, 204 U. S. 415, can "adopt any reasonable means to ascertain who were entitled to its privileges" (referring to citizenship in the Indian tribes) and "if the result of one measure was not satisfactory it could try another," then Congress can do by direct legislative action what it had authority to create administrative agencies to do.

The case of Cherokee Nation v. Hitchcock, 157 U.S. 294, quotes with approval the opinion of the Stevens case and says that Congress, by the act of June 28, 1898, supra, "practically assumed the full control over the Cherokees as well as other nations constituting

- 11 -

the five civilized tribes, and took upon itself the determination of membership in the tribes for the purpose of adjusting their rights in the tribal property."

Petitioner contends that the case of Gritts v. Fisher, 224 U.S. 640, is not in point because that case was not prosecuted by the tribe but by three individual members in opposition to the views of the tribe. This fact would not seem to divest the language of the court of relevancy to the case at bar, such language being as follows:

\* \* \* the members of this tribe were wards of the United States, which was fully empowered, whenever it seemed wise to do so, to assume full control over them and their affairs, to determine who were such members, to allot and distribute the tribal lands and funds among them, \* \* \*

and with reference to the act of Congress of 1902, the opinion says same

was but an exercise of the administrative control of the government over the tribal property of tribal Indians, and was subject to change by Congress at any time before it was carried into effect and while the tribal relations continued.

Although the opinions in the Gritts case (224 U. S. 640) and in the Cherokee Intermarriage cases (203 U.S. 76), commenting on the act of 1902 (32 Stat. 716), involved in said cases, state that appellants in those cases contend that said act is a contract "when, it is only an act of Congress, and can have no greater effect," this is not a holding that if same had been a contract that it would preclude

- 12 -

Congress from changing enrollment procedures, or give tribal members vested rights and create liability of the United States in the event the United States Government should decide it was for the best interests of the tribes to change the "rules and regulations respecting said tribes."

Certainly tribal property and tribal relations existed in 1914 when, being dissatisfied with the action of agencies it had created to determine the citizenship of the Choctaw tribe, Congress adopted the procedure of placing names on the rolls by direct congressional act. It is impossible to find that such additions constituted any different invasion of the rights of the tribal membership, as previously constituted, than were the additions of "new-born" children from time to time invasions of the rights of previously enrolled members.

The act of Congress of August 1, 1914, authorizing the addition of forty-one members to the tribal rolls did not, in the opinion of this Commission, "take the property of the Indians without just compensation;" it was merely "an exercise of administrative control \* \* \* over the tribal property," political in its nature; and whether thought wise or unwise, beneficial or otherwise, the matter of its exercise was within the province of the legislative branch of the Government to determine; and gives the petitioner no legal claim to the redress sought herein.

- 13 -

In our view of the law governing the claim, as expressed above, it would make no difference whether the claim here asserted was individual or tribal for in neither case would the Government be liable, so it is unnecessary to decide the first contention of the defendant, namely, that the claim is individual and not tribal.

The contention of defendant that the act of Congress in adding forty-one names to the Choctaw rolls created no legal claim in favor of the petitioner against the defendant must be sustained.

It is so ordered.

Commissioners O'Marr and Holt concur in the above opinion.

March 2nd, 1950.