BEFORE THE INDIAN CLAIMS COMMISSION

THE CHOCTAW NATION, Petitioner, v. THE UNITED STATES OF AMERICA, Defendant.	)	Docket No. 55

JUN 1 1 1951

FINDINGS OF FACT

The Commission makes the following Findings of Fact:

1. The Choctaw Nation, petitioner, is an Indian tribe residing within the territorial limits of the United States, and is now, and has been, recognized as such by the administrative officials of the United States at all times pertinent to this proceeding.

2. Petitioner seeks judgment against defendant for moneys disbursed by the defendant during the period from July 1, 1898 to June 30, 1929, from funds belonging to petitioner and held in the custody of the defendant, in the sum of $753,609.41. (Amended to $753,609.41. See Deft's. Requested Finding No. 9, as agreed to by petitioner, Suppl. Brief p. 6.)

3. It is the contention of the petitioner that the said moneys so charged to the defendant were items of expense that under the terms of what is known as the Atoka and Supplemental Agreements made between petitioner and defendant, as represented by defendant and understood by petitioner, should have been borne by the defendant and were not

properly chargeable to the petitioner.

4. Representatives of petitioner and defendant concluded what is known as the Atoka Agreement on April 23, 1897; same was ratified and confirmed by the General Council of the Choctaw Nation on November 4, 1897, and thereafter ratified by the members of the Choctaw Nation on August 24, 1898.

5. Representatives of petitioner and defendant concluded what is known as the Supplemental Agreement on March 21, 1902. This was ratified and confirmed by the Congress of the United States on July 1, 1902, and thereafter ratified by a majority of the members of petitioner tribe in strict compliance with the provisions of said Agreement.

6. The amount for which petitioner sues in the instant case in the total sum of $753,609.41 consists of various items as follows, to-wit:

1.	Expenses of sale of unallotted lands	$230,074.66
2.	Expenses of segregated coal and asphalt land	103,223.64
3.	Expenses of making per capita payments	126,805.31
4.	Expenses of appraising improvements	4,249.07
5.	Pay of miscellaneous employees	67,542.20
6.	Miscellaneous agency expenses	877.95
7.	Expenses for roads	9,202.35
8.	Investigating tribal warrants and claims	5,516.19
9.	Pay of Indian police	8,591.74
10.	Expenses of sale of tribal buildings	251.82
11.	Expenses of making equalization payments	201.56
12.	Expenses of medical attention	1,089.60
13.	Expenses of investigating coal and asphalt deposits	38,416.27
14.	Expenses of office of supervisor of mines	5,439.44
15.	Expenses of Choctaw-Chickasaw Sanatorium	3,931.04
	a. Pay of miscellaneous employees $ 297.25	
	b. Roads and grounds 3,633.79	

16. Expenses of appraising timber	$ 22,499.33
17. Expenses of sale of town lots	15,457.32
18. Expenses of collecting cattle tax	23,884.13
19. Expenses of collecting tribal revenue	86,355.79
	$ 753,609.41

7. In the instant case the petitioner alleged that the defendant, acting through the Dawes Commission, in order to induce and persuade petitioner to enter into the Atoka and Supplemental Agreements, represented that said Agreements contemplated and provided for the placing of each tribal member in possession of his individual allotment and for the liquidation of the entire tribal estate without cost to petitioner; and that had petitioner and its membership understood that said Agreements did not contain provisions placing each tribal member in possession of his entire interest in the tribal estate without cost to him, said Agreements would not have been voluntarily entered into by petitioner nor ratified by its tribal membership.

8. Congress, by Section 16 of the Act of March 3, 1893 (27 Stat. 612, 645) authorized the President to appoint a Commission to enter into negotiations with the five civilized tribes. The purpose was the extinguishment of the national or tribal title to lands then held by them, either by cession of same or some part thereof, to the United States for disposition for the benefit of the Indians, or by allotment and division of same in severalty among the Indians of such nations and tribes, respectively, as might be entitled to the same, or by such other method as might be agreed upon between the several

nations and tribes, or each of them, with the United States, with a view to such an adjustment upon the basis of justice and equity as might, with the consent of such nation or tribe so far as might be necessary, be requisite and suitable to enable the ultimate creation of a state or states of the Union to embrace the lands within the Indian Territory.

The primary purposes intended and designed to be accomplished by the making of the Atoka and Supplemental Agreements were for the United States to take over the management, control, and administration of the property, affairs and funds of the Choctaw Nation theretofore exercised by the tribal government; to continue the tribal government only for limited purposes, and to administer and dispose of the property from funds of the Choctaw Nation for their benefit.

The only provision with reference to expenses is the one found in the Atoka Agreement which provided

> "That no charge or claim shall be made against the Choctaw or Chickasaw tribes by the United States for the expenses of surveying and platting the lands and town sites, or for grading, appraising, and allotting the lands, or for appraising and disposing of the town lots as herein provided."

The Atoka Agreement provided for the allotment of "all the lands within the Indian Territory" and did not provide for the sale or disposition of unallotted lands; this latter was provided for in the Supplemental Agreement in which allotments of limited acreage to the members of the Nation were provided for which would result in a residue of unallotted lands. The Atoka Agreement did provide for the

sale of town lots therein specified and imposed the expense of their sale upon the government.

The Supplemental Agreement contained no provision as to who should bear expenses incident to the management, control and disposition of the property and funds of the Nation. Said Agreement, however, did provide for the sale of the residue of lands not allotted or otherwise disposed of, and that "so much of the proceeds as may be necessary to equalizing allotments shall be used for that purpose."

The Atoka Agreement provided "that the United States shall put each allottee in possession of his allotment and remove all persons therefrom objectionable to the allottee." The Supplemental Agreement contained a similar provision.

9. The petitioner in the instant litigation, to-wit, the Choctaw Nation, sued the defendant in the Court of Claims, in Case No. K-260 (91 C. Clms. 320) for reimbursement of the same items (together with others) for which reimbursement is sought in the instant case, as shown by its pleadings and by Findings of Fact made by that Court in its Findings Nos. 2, 3, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19, 20 and 21, and in the Court's opinion. (Defendant's Ex. No. 4, pp. 2 to 21 and 42). That the parties in the former case are the same, and the items sued for are the same as in the instant case are admitted by petitioner in its response to defendant's motion for summary judgment.

In said litigation in the Court of Claims petitioner sued for other items, among them one for $63,423.11, based on a claim for

improper reduction of interest allowed petitioner (Court's Finding No. 6) for which claim, and for which claim alone, the Court in its judgment allowed petitioner to recover; denying liability of defendant as to each and all other claims, including the items sued for in the instant case. (Defendant's Ex. No. 4, pp. 42 to 47, 50 to 54, 57, 58, 59, 74 to 77, 80).

Said judgment of the Court was made on April 1, 1940, and reads as follows:

> "Upon the foregoing Special Findings of Fact which are made a part of the judgment herein, the Court decides as a conclusion of law that plaintiff is entitled to recover $63,423.11.
>
> "The defendant on its counter-claim is entitled to an offset against the claim of plaintiff of gratuity disbursements amounting to $3,574,439.65.
>
> "The plaintiff is not entitled to a judgment against the United States, and the petition is therefore dismissed." (Deft's. Ex. no. 4, p. 33).

10. In the Court of Claims case the petitioner alleged that the defendant, by the representations and preliminary proposals made by the Dawes Commission, led the plaintiff Nation to believe that no administration expenses incident to the disposition of the common properties would be charged to the Nation, but had improperly charged the petitioner with administrative and other expenses, (the items hereinabove set forth in Finding No. 6) for which that suit was brought. (Deft's. Ex. No. 2, p. 11).

11. The Brief in the trial record in the Court of Claims case calls the Court's attention to the negotiations leading up to the

treaties in the following language, to-wit:

> "* * * The preliminary proposition submitted by the Dawes Commission and the two treaties that followed show that it was never contemplated that the Indians would be called upon to bear any administrative expense."

In the Motion for New Trial filed in the Court of Claims, the following argument is made:

> "We have, in one of our original briefs, quoted word for word from the proposition submitted by the Dawes Commission as a basis on which to write the Atoka Agreement. Can it be, in the light of these positive assurances from the United States, and the agreement that immediately followed, that it was contemplated that the Indians were to bear any of the expenses with which the Court is now concerned? Under all the rules of interpretation of contracts, the preliminary negotiations are competent evidence to show the situation of the parties, the general subjects to be dealt with, and the objectives toward which they were striving."

12. The Court of Claims, in its decision, held the petitioner obligated to bear the expenses in question, and used the following language explaining its interpretation of the written agreement:

> "It is the duty of the Court, in order to decide upon the meaning of a written instrument, to look not only to the language employed but to the subject-matter and the surrounding circumstances. (Cases cited). The intent of the contract must be deduced from the entire instrument, from its subject-matter, from the purpose of its execution, and the circumstances of the parties when they made it must prevail over any careless recitals therein, unless the intent so gathered runs counter to the plain sense of the binding words of the agreement." (Underscoring supplied). (Deft's. Ex. No. 4).

It is elsewhere stated in said opinion that

> "Nothing specifically was said in the agreement as to whether the term 'proceeds' as used therein meant

> gross proceeds or the proceeds less the cost of sale. Neither was anything said in the agreement with reference to who should bear the expense of administering the other provisions of such agreements. In the first place we think it is obvious that the term 'proceeds' as used in the agreements means, and was intended to mean, the amount of money produced, less the expenses of sale. This is the ordinary meaning usually applied to the term in agreements of this kind where there is nothing to clearly indicate a contrary intention."

Finally:

> "For these reasons we hold that the United States was not obligated under the agreements to bear the expenses incident to carrying out the provisions of the agreements and that the plaintiff is not entitled to recover the amounts herein claimed which were disbursed by the defendant from plaintiff's funds for such purposes."

13. Considering the entire record in the case, the evidence is not sufficient to establish that in the negotiations leading to the execution of the Atoka and Supplemental Agreements, representations were made to the effect that the defendant would assume the payment of any expenses other than those as set out in said Agreements, as construed by the Court of Claims in the Choctaw case herein previously mentioned.

14. Considering the entire record in the case as presented herein, the evidence is not sufficient (1) to establish duress or coercion on the part of the Commissioners who negotiated the Atoka and Supplemental Agreements, or (2) that there was any mutual mistake of law and fact between one party and the other, or (3) that there was a mutual mistake of law, or (4) that the Choctaw Indians did not understand the meaning and intent of the parties to the Agreements, or (5) that the language

used in said Agreements with reference to the expenses to be borne by the defendant was intended to include the expenses for which suit is brought, or (6) to justify the belief on the part of any of the members of the petitioner tribe that the defendant contemplated or intended to bear any of the expenses for which suit is brought.

15. The record discloses that the Choctaw delegates who met with members of the Commission in the negotiations resulting in the execution of the Atoka and Supplemental Agreements were highly educated and extremely capable men.

June 11, 1951