

BEFORE THE INDIAN CLAIMS COMMISSION

JOSEPH CHITTO, ET AL., Members,)
 and as the Representatives of,)
 and on the Relation of, THE)
 CHOCTAW INDIANS EAST OF THE)
 MISSISSIPPI RIVER,)
)
 Petitioners,)
)
 vs.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 52.

Decided: August 16, 1954

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The individuals whose names appear in the title, namely Joseph Chitto, et al., are Choctaw Indians and are the descendents of members of the Choctaw Nation who were residing in the State of Mississippi on September 27, 1830, and who remained in Mississippi and became entitled to land under the provisions of Article 14 of said treaty; and those in whose behalf the second amended petition is filed are the successors in interest to those who remained in Mississippi and became entitled to the benefits of Article 14 of the Treaty of 1830.
2. Said petitioners constitute an identifiable group by reason of recognition of said group as an entity as hereinafter found and sue on a common claim and are entitled to maintain this action.

3. On September 27, 1830, all Choctaw Indians then living in Mississippi were citizens of the Choctaw Nation and under the provision of Article 14 of the Treaty of September 27, 1830, they did not lose citizenship in said Nation even though they remained in Mississippi when the main body of the Choctaw Nation moved west of the Mississippi river.

4. After 1845 the Choctaw Indians who remained east of the Mississippi river were called "Mississippi Choctaws" and were distinguished from those who removed west in keeping with the terms of the Treaty of 1830.

5. Article XIV of the Treaty of September 27, 1830 is made a finding of fact hereby by reference as if copied herein in haec verba.

6. Articles 11 and 12 of the Treaty of June 22, 1855 are by reference hereby made a finding of fact, the same as if copied herein in haec verba.

7. The report of the Committee on Indian Affairs in the United States Senate determining the liability of the United States to the Choctaw Nation under the submission of claims as provided by Articles 11 and 12 of the Treaty of June 22, 1855, being defendant's exhibit No. 23, is hereby made this finding of fact by reference, the same as if copied herein in haec verba.

8. The Statement of Account as filed with the Senate of the United States and upon which the adjudication of the claims by the said Senate were made, same being defendant's exhibit No. 24, is hereby made a finding of fact by reference, the same as if copied herein in haec verba.

9. The jurisdictional act of March 3, 1881 (21 Stat. 504) is hereby made a finding of fact by reference, the same as if copied herein in haec verba.

10. The opinion and findings of fact of the Court of Claims, as found in Choctaw Nation v. United States, 21 C. Cls. pp. 59 et seq. are hereby made a finding of fact by reference, the same as if copied herein in haec verba.

11. The opinion in Choctaw Nation v. United States found in 119 U. S. pp. 1 et seq., is hereby made a finding of fact by reference, the same as if copied herein in haec verba.

12. The opinion and findings of fact in Choctaw Nation v. United States found in 81 C. Cls. pp. 1 et seq., are hereby made a finding of fact by reference, the same as if copied herein in haec verba.

13. The Act of Congress of June 29, 1888 (25 Stat. 239) is hereby made a finding of fact by reference, the same as if copied herein in haec verba.

14. The First Assistant Secretary of the Commissioner of Indian Affairs by letter dated January 31, 1913, in reference to the disposition of money paid in satisfaction of the judgment rendered by the decisions of 21 C. Cls. 59, and 119 U. S. 1, states:

"It is indicated in the decision of the United States Court for the Central District of Indian Territory, rendered in the case of Jack Amos, et al., that absent Mississippi Choctaws never received any part of the money awarded the Choctaw Nation."

15. In a letter of the Commissioner of Indian Affairs dated February 18, 1913 it is stated with reference to the payment of the

aforesaid judgment that:

"Replying thereto you are advised from an examination of the tribal records pertaining to the Choctaw Court of Claims, the Choctaw net proceeds commission and other tribal papers concerning the disposition of the money appropriated by Congress to satisfy the judgment of the United States Court in the net proceeds case on file in this office, it does not appear that any absent Mississippi Choctaw Indians shared in the net proceeds fund awarded the Choctaw Nation, nor does it appear therefrom that any Indians who did not come to the Indian Territory ever received any money from this fund."

16. In a letter of the First Assistant Secretary of the Bureau of Indian Affairs dated March 4, 1913, he states that the record in his office "does not show that any absent Mississippi Choctaw Indians shared in the Net Proceeds Fund awarded the Choctaw Nation, or that any Indian who did not go to the Indian Territory ever received any money from that fund."

17. In a letter of E. B. Meritt, Assistant Commissioner of Indian Affairs dated February 19, 1914, he states among other things that:

"The claims of individual Choctaw heads of families who brought themselves within the requirements of the XIV article of the treaty, but who were deprived of their rights by the fraud or wrong of the agents of the United States, were among the claims included in the above mentioned case of the Choctaw Nation vs. the United States." (Referring to the claim decided by 21 Ct. Cls. 59 and 119 U. S. 1).

The letter further continues:

"An appropriation in favor of the Choctaw Nation was made by Section 9 of the act of Congress of June 29, 1838 (25 Stat. 1 217-239) in settlement of the claims of the Choctaw Nation and people against the United States, (that is, judgment resulting from decisions in 21 C. Cls. 59 and 119 U. S. 1) and was disbursed in accordance with various acts of the Choctaw Council, the distribution to the individual claimants being a tribal matter, the Choctaw Nation having assumed the liability to the individual claimants." (Cls. Ex. 163). (Emphasis supplied).

18. Page 370 of the Report of the General Accounting Office, being defendant's exhibit No. 17 is made a finding of fact by reference, the same as if copied herein in haec verba.

19. The defendant undertook to discharge its liability to the Mississippi Choctaws by payment of money to which they were entitled by reason of the aforesaid judgment to the Choctaw Nation. The Choctaw Nation, however, failed to pay the Mississippi Choctaws the amount of said judgment to which they were entitled, and therefore the defendant has failed to discharge this liability to the petitioners herein or their predecessors in interest and said defendant, therefore, at this time, owes the petitioners herein the amount of \$417,656.00.