



their descendents now living, and who did not move West after the treaty of September 27, 1830, (7 Stat. 333), but who remained in Mississippi and became entitled to lands under Article 14 of said treaty, and elected to take advantage of the provisions of said article. That petitioners and those in whose behalf this amended petition is filed, are descendants of said Indians who resided in Mississippi on said date, and bring this suit to recover as successors to said group. That they bring this suit in behalf of themselves and all other Choctaw descendants similarly situated, and with like claims and demands."

Petitioners allege that their predecessors in interest are entitled to 1,404,640 acres of land with improvements under said Article 14 of said treaty as reservations for heads of families and their children who desired to remain east of the Mississippi River; that their predecessors in interest elected to and did remain east of the Mississippi River and continued so to remain, and complied with the provisions of said article and thereby became entitled to allotments aggregating the said 1,404,640 acres of land, which it is alleged the defendant failed and refused to deliver to them or to pay them the value thereof.

Petitioners allege acts of Congress appropriating \$872,000 as part payment to said group for lands not allotted to them and the act of Congress authorizing the bringing of a suit by the Choctaw Nation for the claims of said Nation and its members against the United States, and the bringing of said suit and the decision thereon by the Court of Claims and the Supreme Court (21 Ct. Cls. 59; 119 U. S. 1) — but that petitioners herein never received any part of said \$872,000 nor any part of the judgment rendered as a result of said lawsuit.

Petitioners pray for judgment against the defendant for the value of 1,404,640 acres of land, or in the alternative for judgment for the \$872,000 appropriated to pay for the scrip authorized, with interest, and/or, that judgment be rendered against the defendant in payment of the claims arising under said Article 14 in accordance with the obligations of the defendant under the Treaty of 1855 (which treaty provisions were the basis for the said lawsuit and judgment rendered as a result thereof) with interest at five percent per annum.

Article 14 of the Treaty of September 27, 1830, (7 Stat. 333), upon which petitioners' claim is based, reads as follows:

"Article XIV. Each Choctaw head of a family being desirous to remain and become a citizen of the States, shall be permitted to do so, by signifying his intention to the Agent within six months from the ratification of this Treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one half that quantity for each unmarried child which is living with him over ten years of age; and a quarter section to such child as may be under 10 years of age, to adjoin the location of the parent. If they reside upon said lands intending to become citizens of the States for five years after the ratification of this Treaty, in that case a grant in fee simple shall issue; said reservation shall include the present improvement of the head of the family, or a portion of it. Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity.

The main issues are by the defendant said to be "areas of disagreement on the law." These are stated in defendant's brief, p. 14, and such disagreements as exist as to facts are discussed by the defendant in the discussion of the issues of law.

The defenses seriously urged are: (1) That the claims of petitioners are individual claims and therefore not within the jurisdiction of the Indian Claims Commission; and (2) That the judgment recovered in the suit of Choctaw Nation vs. United States, 21 Ct. Cls. 59; 119 U. S. 1, is binding on petitioners and therefore res judicata of the claims asserted.

The first issue is as to the nature of the claims asserted — whether individual or common. These claims were unquestionably in their origin the individual claims of individual Choctaws and their families who decided to remain in Mississippi, and to take allotments for lands in Mississippi under the provisions of Article 14 of the 1830 treaty, and not go west. It is the opinion of the Commission, however, that the consideration over the years given to said claims as an entity warrants the assertion of same as a group claim by the petitioning group at this time. A similar situation was that of the Loyal Creeks which this Commission held assertable as an identifiable group claim and which holding was thereafter approved by the Court of Claims and the Supreme Court. (Vol. 1, I.C.C. p. 122).

In the Loyal Creek case the claims were individual in their origin but this Commission held that the Act of Congress made the claim a group or common claim by making an award in a lump sum in payment thereof. The opinion also held in that case that,

"the fact that any award which might be recovered might have to be distributed among the members, or their heirs, in proportion to the individual losses (which, according to enrollment, differ in amounts)" did not "change the common character of the claim in this case because the agreement of 1900 (providing for a lump sum award) established it as a group claim."

Likewise, in the Creek case we held that said claim was not presented for the enforcement of "individual claims but one for the enforcement of an alleged obligation of the Government," and that the "allegations in the petition which, if taken alone, would indicate a different theory, but considering the petition as a whole, as we must, we believe it can be considered as a common claim of the Loyal Creeks for the balance of the Senate's award." (Vol. 1, p. 132).

In this connection attention will be called to Articles 11 and 12 of the Treaty between the Choctaws and Chickasaws and the United States dated June 22, 1855, (11 Stat. 611) wherein provision is made for the submission of the claims of the Choctaws who remained in Mississippi (hereinafter referred to as the Mississippi Choctaws) to the United States Senate for determination. While these claims are referred to in the said articles of said treaty as being "individual," when the Senate thereafter reported on the same and made an award, said award was in a lump sum which did not state what portion of said sum was to be in satisfaction of the national claim, or what portion was to be in satisfaction of individual claims, though the award was in satisfaction of both national and individual claims then being asserted by the tribe.

By reason of the failure of the United States to pay said award, the Choctaw Nation was permitted under the provisions of a jurisdictional act approved March 3, 1881, (21 Stat. 504), to bring an action before the Court of Claims and suit brought thereunder by the Choctaw Nation asserted in behalf of the Mississippi Choctaws their

claims arising under Article 14 of the 1830 treaty. The Court of Claims in its decision (21 Ct. Cls. 107) found the beneficiaries of Article 14 to be entitled to 225,760 acres of land worth the sum of \$417,656, and made an award to the claimant, based in part on that finding in a lump sum without determining the respective amounts to which individual claimants were entitled. This case was appealed to the Supreme Court and there a judgment was rendered in satisfaction of the claims of the beneficiaries of Article 14 along with other claims without determining what proportion of said judgment should go to the satisfaction of claims based on said Article 14 and what to the other claims, or of determining the respective amounts individual claimants might be entitled to under Article 14, (119 U. S. 1; 22 Ct. Cls. 489). The consideration given these claims and the judgments rendered by reason thereof are very similar to the treatment accorded the claims of the Loyal Creeks.

Attention is also called to the suit of the Choctaw Nation vs. United States reported in 81 Ct. Cls. pp. 1, et seq. In the decision in this case the rights of the members of the Choctaw Tribe under Article 14 of the Treaty of 1830 who remained in Mississippi are discussed as the rights of a specific group, and in reference to their rights and the disregard thereof by the defendant, the following statement is made, to-wit:

\*The article (that is, XIV) is seemingly free from ambiguity. The rights conferred are positive

ones, defined with a degree of precision apparently incapable of misapprehension, and notwithstanding this fact the large number of Indians who remained in the State were subjected to a series of maladministration of the article by accredited representatives of the United States that in and of itself discloses an inexcusable, cruel, and unjust procedure never excelled, if equaled, in the history of Indian affairs. Not to exceed 143 heads of families, embracing 276 individual Indians, ever received an allotment under article XIV, and at least 1,155 heads of families embracing at least 3,800 individual Indians were by intimidation, false entries, and destroyed documents cheated out of and denied their rights."

Thereafter, as late as 1940, Congress gave consideration to, and the Committee of the House on Indian Affairs, recommended the passage of a bill conferring upon the Court of Claims jurisdiction to hear and determine the claims of the "Choctaw Indians of the State of Mississippi" as a group claim, which bill provided that the amount of any judgment that might be rendered by the Court of Claims in satisfaction of the claims of the Mississippi Choctaws should "be set aside as a special fund to be paid to the claimants subject to subsequent legislation of the Congress."

So, in the instant case, as in the hereinbefore referred to Loyal Creek case, the amount of any judgment should be set aside to be paid to individual claimants under the provisions of legislation of the Congress.

Another question to be decided prior to giving consideration to the merits of the claim of petitioners is whether or not petitioners have been bound by treaties made by the Choctaw Nation subsequent to 1830 and by the litigation to which reference has heretofore been made.

It is urged by the petitioners that they were not bound by the Treaty of June 22, 1855, nor by the award made by the United States Senate under the provisions of Articles 11 and 12 of said Treaty of June 22, 1855, nor by the jurisdictional act of March 3, 1881, and the decision of the Court of Claims (21 Ct. Cls. 59), and by the Supreme Court (119 U. S. 1), rendered in litigation brought under the said jurisdictional act. It is recognized that Congress has plenary powers in its dealings with Indians and with their status and rights, tribal and otherwise — therefore, when by an act of Congress of June 22, 1855, Congress approved the previous agreement entered into between the Choctaw Nation and the United States wherein it was provided by Articles 11, 12 and 13 of said act of Congress that all the claims of the Nation and of the individual members thereof against the United States should be submitted to the Senate of the United States for determination, the Choctaw Nation was thereby given the right by Congress to present the claims arising under Article 14 to the United States Senate for determination. Therefore, the subsequent submission by the Choctaw Nation of the claims of the Mississippi Choctaws to the United States Senate was authorized and the award of the Senate, if it had binding effect on anybody, had binding effect on the Mississippi Choctaws.

Thereafter, Congress by passing the jurisdictional act of March 3, 1881, authorizing the Choctaw Nation to bring the suit it did before the Court of Claims for itself and for the Mississippi Choctaws was an act of Congress decreeing that the Choctaw Nation



had the right to bring suit for those members who thought they had not received the benefits provided for them under Article 14 of the treaty of 1830. said litigation was therefore authorized by Congress, and said litigation and the results thereof were res judicata as to the claims of the Mississippi Choctaws therein asserted.

In the suit brought under the jurisdictional act of March 3, 1831, the claims as previously presented to the United States Senate for adjudication were pleaded substantially as they had been presented to the United States Senate and practically four-fifths of more than \$8,000,000 was claimed for the beneficiaries under Article 14 of the Treaty of 1830; however, as herein previously pointed out, the United States Senate refused to allow a large portion of these claims and the Court of Claims found that the beneficiaries of Article 14 were entitled to only \$417,656.

It is urged by petitioners that after the treaty of 1830, those who remained in Mississippi and who never moved west were no longer members of the Choctaw Nation, and therefore the provisions of the Treaty of 1855 providing for the submission of all claims by the Choctaw Nation in behalf of itself or its individual members to the United States Senate for determination did not submit to that body the claims of the beneficiaries of Article 14 of the Treaty of 1830 because at that time they were not members of the Choctaw Nation; and likewise for the same reason the jurisdictional act of March 3, 1831, did not authorize suit in behalf of the beneficiaries of

Article 14 of the Treaty of 1830 because they were not at that time members of the Choctaw Nation.

While it is true that subsequent to the Treaty of 1830 various legislation was passed requiring members of the Choctaw Nation to emigrate west before they were entitled to certain privileges and rights, nevertheless the provisions of Article 14 of the 1830 Treaty provided that those claiming under that article would not lose the privileges of the Choctaw citizens and therefore it is the opinion of this Commission that the determination of their claims was included under the provisions of Articles 11, 12 and 13 of the Treaty of 1855 and was included in the jurisdictional act of 1881, and the proceedings thereafter had under and by virtue of said Treaty of 1855 and said jurisdictional Act of 1881 were binding upon said Mississippi Choctaws and their descendants, petitioners herein.

Our viewpoint, therefore, is that the decisions of the Court of Claims in 21 Ct. Cls. 59 and 119 U. S. 1 were binding on the Mississippi Choctaws, limits the petitioners' rights, if any, at this time to those accruing under the decisions cited.

As hereinbefore stated, neither the decision of the Court of Claims (21 Ct. Cls. 59) nor that of the Supreme Court (119 U. S. 1) undertook to distribute the award made the petitioners, that is, between the Nation as a claimant in its own right and the individual claimants under Article 14 in whose behalf claims were asserted; however, as herein previously stated, the Court of Claims found the beneficiaries of Article 14 to be entitled to 225,760 acres of land

which they had not received, and found the same to be of the value of \$417,656.

The Court of Claims in arriving at the amount it found to be due the Mississippi Choctaws took into consideration the scrip transactions complained of by petitioners herein and found that claimants were not entitled to any award by reason thereof. The Supreme Court upon the appeal of the case reversed the Court below and directed it to enter a judgment for the sum of \$2,858,798.62, which the Court of Claims thereafter, on December 16, 1886, did. (Cl's. Ex. 166).

The Supreme Court decided that the Choctaw Nation was entitled to a judgment in the exact amount the United States Senate had found it to be entitled to, to-wit, \$2,981,247.30, less a deduction of \$250,000 paid thereon, plus unpaid annuities of \$59,449.32, and for lands taken from them in fixing the boundary between the State of Arkansas and the Choctaw Nation in the amount of \$68,102, (such deductions and additions being transactions subsequent to the Senate award). In determining that the award of the Senate should be made the basis of its judgment, the Supreme Court said that the matters in controversy having been submitted to the Senate for determination, that notwithstanding the jurisdictional act authorized the disregard of said award, it was the view of the Court that same furnished "the nearest approximation to the justice and right of the case that, after this lapse of time, it is practicable for a judicial tribunal to reach." The fact that the Supreme Court found that the Choctaw

Nation was entitled to a judgment against the United States for the exact amount of the award of the United States Senate makes it important in the instant case to know the basis of said award by the Senate insofar as same gave consideration to the claims then being asserted under Article 14. The basis of said award by the Senate is shown by Defendant's Exhibit 24. On page 3 of this exhibit is shown a credit to the Government in the amount of \$1,749,900 allowed by reason of "scrip allowed in lieu of reservations, viz, 1,399,928 acres at \$1.25 per acre." This item of credit is followed by other items allowed for expenses of Commissioners appointed to adjust claims and locate reservations under the 14th Article. These items of credit, taken into consideration and allowed by the United States, indicate a disallowance of all claims based on the scrip transactions urged in behalf of the beneficiaries of Article 14.

The Supreme Court's decision would reasonably seem, by reason of the accounting approved as a basis of the Senate's award, to be an adjudication that only those persons who failed to get the lands provided for them under Article 14 of the treaty, or scrip in lieu thereof, were entitled to be the beneficiaries of the Court's judgment; and as previously stated, this was also the holding of the Court of Claims.

The best evidence we have at this time of the number who failed to get land, and the amount thereof, and its value, is the finding of the Court of Claims in respect thereto. Therefore, we are of the opinion that the petitioners herein should have received as their part of the

Supreme Court's award not less than \$417,656. We think the two decisions to which we have referred are res judicata of petitioners' claims. It is undisputed that said judgment was by the defendant fully paid to the Choctaw Nation; however, petitioners contend that not one cent thereof was paid to their predecessors in interest, or to them. (Petitioners' Brief, p. 9).

That the effect of the decisions of the Court of Claims and the Supreme Court, to which reference is made, was to award the Mississippi Choctaws the amount of \$417,656 under the provisions of Article 14 of the 1830 Treaty, is admitted by the defendant in Par. 23 of its answer in said case, and to statement made by the defendant on page 22 of its brief to the effect that the claimants under Article 14 were given a judgment "for 191 heads of families of \$417,656."

Defendant contends that by reason of the aforesaid judgment and the payment thereof to the Choctaw Nation, its liability is discharged; that Article 12 of the Treaty of 1855 provided that payment should be made to the Choctaw Nation in full satisfaction of all claims, both national and personal, against the United States; and furthermore, that the Act of March 3, 1881, authorizing the Court of Claims to ascertain the amount of all claims based on the Treaty of 1830, including those under Article 14, designated the Choctaw Nation as the recognized representative of all Choctaw Indians and their claims, national or individual.

The Court of Claims in the case hereinbefore cited, in discussing the rights accruing under Article 14 of the Treaty of 1830 to the

Choctaws who remained in Mississippi, stated that the "14th section of the Treaty of 1830 gave to each Choctaw head of a family the right to a reservation upon complying with certain conditions; and upon such compliance his right to a reservation was complete," and that the conditions imposed thereafter by Congress before the right to a reservation accrued were not binding upon those entitled to such reservations under the terms of said Article 14.

The Treaty of 1830 ceded all the land belonging to the Choctaw Nation east of the Mississippi River to the United States, provided, however, (by Art. 14 thereof) that those members of the tribe who preferred to remain in Mississippi and not go west were entitled to reservations to be taken from the lands ceded. The right to reservations out of said ceded land under the terms of Article 14 was therefore provided for and guaranteed by the defendant to those who were entitled thereto under the provisions of said article. Under the decision of the Court of Claims and the Supreme Court to which we have referred, it was decided that the rights of petitioners' predecessors in interest had been denied, to their damage in the amount of \$417,656, at least. As previously stated, the defendant in its answer filed January 29, 1953, alleges that these decisions amount to an award to the Mississippi Choctaws as beneficiaries of Article 14 of the Treaty of 1830 in the amount of \$417,656. Said answer reads as follows:

"22. Defendant further alleges that in the case of Choctaw Nation v. United States, 21 C. Cls. 59, the Court of Claims pursuant to the special Jurisdictional Act of March 3, 1881, 21 Stat. 504, after considering all of the evidence, found and determined that 191 families had been deprived of

or failed to receive reservations under article 14 of the treaty of 1830 aggregating 225,760 acres, worth the sum of \$417,656; that judgment was rendered therefor and paid, with interest at 5% by the United States by the Act of June 29, 1888, 25 Stat. 239.

"23. Defendant further alleges that said Act of June 29, 1888, provided that said sum should be paid to the National Treasurer of the Choctaw Nation in accordance with article 12 of the Treaty of June 22, 1855, and "to be in full satisfaction of all claims against the United States arising under article 12 of said treaty.

"24. Defendant further alleges that by the provisions of article 12 of the treaty of 1855 the Choctaw Nation became liable and bound to pay all individual claims including the claims of the petitioners herein; that if the petitioners, or any of them, failed to receive the several amounts due them their recourse is against the Choctaw Nation and not against the defendant, the United States."

In the answer of the defendant previously filed on September 12, 1952, it had pleaded in Par. 9 thereof that "the Choctaw Nation for and on behalf of the reserves under article 14 of the treaty of 1830 fully litigated their claims and recovered a judgment in the sum of \$417,656.00, with interest, which has been paid."

Thereafter, in defendant's brief on page 22, it is stated that judgment was rendered in the Court of Claims "for 191 heads of families for \$417,656 as compensation for an election under Art. 14 of the Treaty of 1830."

Out of said final judgment rendered in said cases, it is our opinion that the predecessors in interest of petitioners should have been paid said amount by the defendant.

The question next to be determined, therefore, is whether or not the payment of said judgment to the Choctaw Nation discharged the defendant's liability, if as a matter of fact petitioners or their predecessors in interest received no part of same. Article 12 of the Act of June 25, 1855, provided that the payment of any award made by the Senate of the United States should be made to the "Choctaws." (While the language of said Act does not say "Choctaw Nation," presumably by "Choctaws" is meant said Nation), and that the Choctaws should thereupon become liable and bound to pay all individual claims -- (presumably referring to the claims of the Mississippi Choctaws) as might be judged by the proper authorities of the tribe to be equitable and just -- "the settlement and payment to be made with the advice and under the direction of the United States Agent for the tribe." (Emphasis supplied). Said Article further provides that if a gross sum should be allowed that same should be accepted by the Choctaws -- and that they should thereupon become liable for, and bound to pay, all the individual claims -- (presumably referring to the claims of the Mississippi Choctaws).

Thereafter, by Act of Congress of date June 29, 1888, (25 Stat. 239), by Section 9 thereof, appropriation was made to pay said judgment in the amount of \$2,858,798.62, together with interest thereon to the Choctaw Nation from time to time "and in such sums as requisition or requisitions therefor shall be made, by the proper authorities of the Choctaw Nation, to the National Treasurer of said Nation, or to such other person or persons as shall be named in said requisitions therefor,



in accordance with Article 12 of the Treaty between the United States and the Choctaw Nation, concluded June 22, 1855 \* \* \* same to be in full satisfaction of all claims against the United States arising under Article 12 of said Treaty."

We are of the opinion that by reason of the provisions of Article 14 of the Treaty of 1830, wherein those who remained in Mississippi were to be provided reservations by the defendant to be taken from the land by said treaty ceded to the defendant, that the defendant became obligated to those entitled to such reservations to provide same for them, or in lieu thereof to compensate them for the value of such reservations not provided them. We are further of the opinion that when judgment was rendered which included compensation for such reservations not provided them (which is admitted by the defendant), that in order to discharge defendant's liability to them it was its duty to see that whatever was due them out of said judgment was paid over to them.

In letter of the First Assistant Secretary of the Commissioner of Indian Affairs of date January 31, 1913, to the Commissioner of the Five Civilized Tribes, it is stated in reference to the disposition of the money paid in satisfaction of said judgment that,

"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." (Cls. Ex. 160).

In letter of the Commissioner of Indian Affairs dated February 18, 1913, to the Secretary of the Interior, it is stated as follows with

reference to the payment of the aforesaid judgment that,

"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." (Cls. Ex. 161).

In letter of the First Assistant Secretary of the Bureau of Indian Affairs to Hon. C. B. Miller of the House of Representatives, 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." (Cls. Ex. 162).

In letter of E. B. Merritt, Assistant Commissioner of Indian Affairs, to Hon. Claude Weaver of the House of Representatives, 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, 1888 (25 Stat. L 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).

The report of the General Accounting Office, page 370 of Defendant's Exhibit 17, shows that the disbursement made by the United States of the judgment involved was made "for the benefit of the Choctaw Nation of Indians west of the Mississippi River."

Counsel for the defendant in his argument orally stated that the defendant had been unable to show that any part of this judgment was paid to the Mississippi Choctaws -- that is, to the predecessors in interest of petitioners.

It therefore seems that the defendant undertook to discharge its liability to the Mississippi Choctaws, by payment of monies to which they were entitled, to the Choctaw Nation, and by depending upon the Nation and its tribal authorities to see that the Mississippi Choctaws got compensation for reservation lands to which they were entitled under Article 14 of the Treaty but did not receive. By reason of the obligations assumed by the defendant under the provisions of Article 14 of the Treaty of 1830, and of Article 12 of the Treaty of June 22, 1855, it is the opinion of this Commission that it was the duty of the defendant to see that the beneficiaries of Article 14 received the amount of said judgment to which they were entitled, to-wit, \$417,656, and that by reason of the failure of the defendant government to see that said group was paid said amount, that petitioners herein are entitled to an award against the defendant for the amount of \$417,656.

The petitioners do not directly assert a claim by reason of the provisions in 21 Ct. Cls. 59 and 119 U. S. 1, but contend that said litigation was not authorized by them and does not bind them, and they insist that their measure of damages is the value of the lands they should have received under the provisions of Article 14 of the Treaty of 1830; however, in the alternative, they allege liability by reason of the provisions of the Treaty of 1855, which liability we have found was discharged by the judgment in 21 Ct. Cls. 59 and 119 U.S. 1. Our holding is that said judgment binds the petitioners and determines their rights, but that not having been paid the amount of the judgment that was due them, that they are entitled to an award for the amount of same due them, to-wit, \$417,656, and it is so ordered.

Edgar E. Witt  
Chief Commissioner

Concurring in the result:

Louis J. O'Marr  
Associate Commissioner

Wm. M. Holt  
Associate Commissioner