BEFORE THE INDIAN CLAIMS COMMISSION

THE CHICKASAW NATION, Petitioner,	)	
v.	)	Docket No. 269
THE UNITED STATES, Defendant.	)	

Decided: November 17, 1954

Appearances:

Paul M. Niebell,
Attorney for Petitioner.

Frederick C. Ward, Jr., with
whom was Mr. Assistant Attorney
General Perry W. Morton,
Attorneys for Defendant.

OPINION OF THE COMMISSION

O'Marr, Commissioner, delivered the opinion of the Commission.

The Chickasaw are here suing for some $190,000, being the value of a one-fourth interest in 266,435.13 acres of land owned jointly by the Chickasaw and Choctaw Nations of Indians which were allotted to Choctaw Freedmen pursuant to treaties, thus taking one-fourth of such total acreage from the Chickasaw.

On August 11, 1954, the Government moved to dismiss upon the ground that the cause of action pleaded in the petition herein is the same cause of action pleaded in a former case between the same parties which was decided adversely to the Chickasaw and is therefore res judicata, citing Choctaw Nation v. United States and Chickasaw Nation, 318 U. S. 423, 87 L. Ed. 877 and 95 C. Cls. 192. This contention of the Government makes it necessary to examine the issues determined in the former case and compare them with the facts pleaded in the present case.

In the former case before the Court of Claims, 95 C. Cls. 192, the Chickasaw sought an interpretation of the Agreement of March 21, 1902, 32 Stat. 641, which would make the Choctaw or the Government liable for the value of the Chickasaw one-fourth interest in 266,435.13 acres of the land owned in common by the Chickasaw and Choctaw which had been allotted to Choctaw Freedmen. Much evidence was offered purporting to show that by the 1902 agreement it was intended by the parties thereto that the Chickasaw were to be paid for their one-fourth interest in the lands allotted to the Choctaw Freedmen. Perhaps, the strongest evidence of such intention was the application of the Choctaw to Court of Claims to have paid out of an award made by that court for lands allotted the Chickasaw Freedmen, the proportionate one-fourth interest of the Chickasaw in the common lands allotted to the Choctaw Freedmen. (95 C. Cls. 204-5).

But whatever the evidence was, the court understood it was interpreting the 1902 agreement and it decided that the previous agreement, being that of June 28, 1898, 30 Stat. 495, and known as the Atoka Agreement, by which the Choctaw Freedmen's allotments were to be taken from the Choctaw lands, was incorporated into the 1902 agreement and that the Chickasaw were entitled to recover from the Choctaw for one-fourth interest in the lands allotted the Choctaw Freedmen. That the Court of Claims was interpreting the 1902 agreement is conslusively shown by these excerpts from its opinion:

> It would have been strange for plaintiff to have, for no reason which has been suggested, yielded its position on the point of the Choctaw freedmen's allotments in 1902, after having maintained it consistently for so long. If it had so yielded in 1902, it is impossible that the Choctaws would have, in 1909, and before the litigation mentioned in the paragraph had been

completed, sought to present to the Chickasaws a large sum of money in compensation for the claim, at a time when the Chickasaws were not even represented by an attorney. We have no doubt that the Choctaws understood the proviso as we have interpreted it.

We conclude, therefore, that the arrangement of the Atoka agreement whereby the Choctaw freedmen were to be furnished their allotments at the expense of the Choctaws and not of plaintiff was incorporated into the supplemental agreement of 1902 as an obligation of the Choctaw Nation.

The Choctaw and United States, who were parties to the above case, appealed to the Supreme Court and that court reversed and ordered a dismissal of the Chickasaw petition, holding that the 1902 agreement was plain and unambiguous and constituted the understanding of the parties. Concerning the findings of the lower court, the Supreme Court said:

* * * Furthermore, if we were to find the ultimate fact, we seriously doubt whether we could discover from these evidentiary findings what the agreement among the two tribes and the United States was, if other than that expressed in the 1902 agreement. For the most part the findings are concerned with the assertions and claims of the Chickasaws. The only indication that the Choctaws ever shared those views at any time is their request for an "Additional Decree" upon which no action was ever taken.

Equitable considerations do not dictate a different result. By the Treaty of 1866 both tribes shared in the $200,000 advance payment for the adoption of their freedmen and the allotment of forty acres of land to them. Even though the Chickasaws never adopted their freedmen, they did receive a portion of their share of the balance of the original $300,000 treaty fund. When they contested the right of their freedmen to allotments the United States explicitly promised in the 1902 agreement to reimburse them if there were an adverse judicial decision. The agreement contained no promise to reimburse them for allotments to Choctaw freedmen, and in view of the specific promise with regard to their own freedmen, none should be implied.

We conclude that allotments from the common tribal lands were to be made under the 1902 agreement to Choctaw freedmen without deducting those allotments from the Choctaw Nation's share of the lands or otherwise compensating the Chickasaws for their interest in the lands so allotted.

Here again, it will be seen the Supreme Court was interpreting the 1902 agreement.

We come now to the allegations of the petition in the pending case. We have examined the petition in the former case and find the allegations substantially the same as those in the pending case, with one exception. In the pending case there are added these allegations, being paragraph 21 thereof:

> Petitioners allege that the taking of their lands for the settlement of Choctaw Freedmen thereon has been, from a LEGAL standpoint only, decided adversely to them in the case of Choctaw Nation of Indians vs. United States, 318, U. S. 672. They allege however that the Indian Claims Commission Act, above referred to, gives them a cause of action upon the facts stated in this petition under clauses three and five, section two of the Act and that the decision in the Choctaw Case, Supra, does not constitute res judicata, for the reason that the treaties of 1898 and 1902 were executed without any consideration whatsoever; and that the facts were entirely misrepresented to the petitioner herein by reason of the language employed in the drafting of the treaty; the clear understanding by both them and the Choctaw Nation, that the Chickasaws would be adequately compensated for ther interests in the Choctaw Indian lands. That there is also a unilateral mistake of fact and law, as to the meaning of the provisions of the Supplemental Agreement which the Court said in the Choctaw Case, Supra, foreclosed them from legal relief. Further such a denial on pure legislative construction violate the provisions of this Act regarding "fair and honorable dealings" between the parties.

Now what is the legal effect of these allegations? Obviously, there is an attempt to avoid the bar of the former decision of the Supreme Court and it is alleged it is not res judicata "for the reason that the treaties [agreements] of 1898 and 1902 were executed without any consideration whatsoever." Evidently, the pleader intends to state that those two contracts are void because without consideration, yet a reading of them shows mutual concessions and obligations of the parties, so those allegations may be given no serious consideration.

It is next alleged that the facts were misrepresented to the Chickasaw by reason of the language of the treaty, that the clear understanding of the Chickasaw and Choctaw was that the Chickasaw would be compensated for their interests in the "Choctaw Indian lands," (we assume the Choctaw lands allotted Choctaw Freedmen is intended) and that there was a unilateral mistake of fact and law "as to the meaning of the provisions of the Supplemental (1902) Agreement." Now it is plain that if we were to hear this case again we would have to hear evidence as to what was intended by the Atoka (1898) and the Supplemental (1902) agreements as to the Chickasaw's compensation for its interest in the common lands allotted the Choctaw Freedmen.

As has been shown above, the Court of Claims considered all the questions now presented by the pleadings here and decided that by the 1902 agreement the Chickasaws were entitled to compensation but the Supreme Court in passing upon the same facts as found by the Court of Claims reached a contrary decision and ordered the case dismissed. There, of course, can be no question but that the decisions above referred to were on the merits.

The Court of Claims in Choctaw Nation v. United States, decided May 4, 1954, 128 C.Cls. _____, is a case in point. That case was commenced before the Indian Claims Commission seeking recovery for certain expenses charged by the Government in carrying out the Atoka and Supplemental agreements, the Indians claiming that by said agreement, according to the understanding of the Indians, the Government was