

Opinion of the Court.

CHICKASAW NATION v. UNITED STATES.

PETITION FOR CERTIORARI TO THE COURT OF CLAIMS.

No. 170. Decided November 5, 1945.

In a suit in the Court of Claims by an Indian tribe against the Government, items of the Government's gratuitous expenditures for the benefit of the Indian tribe which, pursuant to the Act of August 12, 1935, are used to offset the Government's liability, should be specifically designated in the judgment. P. 218.

103 Ct. Cls. 1, reversed.

PETITION for a writ of certiorari, herein granted, to review a judgment dismissing a suit in the Court of Claims.

*Messrs. William A. Cornish and Paul M. Niebell* for petitioner.

*Acting Solicitor General Judson, Messrs. J. Edward Williams, Roger P. Marquis, John C. Harrington and Walter J. Cummings, Jr.* for the United States.

PER CURIAM.

The Chickasaw Nation asks certiorari to review a judgment of the Court of Claims, 103 Ct. Cls. 1, dismissing its suit for moneys allegedly owing to it by the United States. Some of petitioner's claims were denied below, but others, totalling \$22,858.78, were allowed. Against this amount the court below, applying § 2 of the Act of August 12, 1935, 49 Stat. 571, 596, offset a like amount which the court found to have been gratuitously expended by the United States for the benefit of the Nation. The findings listed various items of gratuity expenditures totalling \$69,920.39. But the judgment did not specify which of these items were being applied as offsets to the claims allowed. Instead, all of the offset items were treated as commingled in a single gratuity fund upon which the Government might draw for the discharge of its obligations, as upon a bank account.

In *Seminole Nation v. United States*, 316 U. S. 286, 308, we pointed out that the gratuity items which have been used as statutory offsets to Indian claims against the Government should be specifically designated in the judgment. When that course is not followed, Indian claimants desirous of challenging the allowed offsets on appeal must be prepared to attack all the items which make up the fund, however much it may exceed their claims. Moreover, such a judgment, by leaving unidentified the particular gratuities which have been applied as offsets, necessarily adjudicates the validity for that purpose of all, since it makes all proportionately applicable as offsets. There is no reason why Indian claimants should be required in some subsequent suit to meet the defense that gratuity items whose offset was not necessary to the result in an earlier case have nevertheless been there finally adjudicated to be valid offsets, or why this Court, in reviewing the earlier judgment, should be required to pass on the validity of such items as offsets. When specified items of gratuity are allocated as offsets, other items, included in the findings but not applied as offsets, do not affect the judgment, their validity as offsets need not be reviewed on appeal, and they create no estoppel for future cases.

The gratuity items included among the findings below as available for offset are there described as "incorporated by reference" from findings in a "companion case" decided by the Court of Claims on the same day (*Chickasaw Nation v. United States*, 103 Ct. Cls. 45, certiorari denied, 326 U. S. 751), in which none of the gratuities found were used, nothing having been found due from the United States on the claims there advanced. The petition before us makes no objection to this procedure, and in view of the failure to apply such items as offsets in the companion case, we assume that their validity as such was open to objection in the present suit. We only conclude that the

judgment here should be in such form as not to compel unnecessary adjudication of such objections on appeal, or unnecessarily to foreclose consideration of such objections to the use of these items as offsets in some future litigation.

The petition for writ of certiorari is granted, limited to the question whether the particular gratuity items necessarily used as offsets should be designated by the judgment. The judgment is reversed and the cause remanded to the Court of Claims for further proceedings in conformity to this opinion.

*So ordered.*

MR. JUSTICE JACKSON took no part in the consideration or decision of this case.

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LEVERS, ADMINISTRATOR, *v.* ANDERSON, DISTRICT SUPERVISOR, ALCOHOL TAX UNIT.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

No. 51. Argued October 16, 1945.—Decided November 5, 1945.

1. An application for a rehearing before a District Supervisor of the Alcohol Tax Unit of the Bureau of Internal Revenue, who had entered orders annulling a permit to operate a wholesale liquor business and denying applications for importer's and wholesaler's permits, is not a prerequisite to the judicial review specifically provided by § 4 (h) of the Federal Alcohol Administration Act. Pp. 220, 224.
2. Hearings were held and evidence was taken before a hearing commissioner, petitioner being represented by counsel. The hearing commissioner made findings of fact which were approved by the District Supervisor without affording petitioner an opportunity to except to them. On the basis of these findings, the District Supervisor entered orders annulling an existing permit and denying applications for others, without affording petitioner an opportunity to argue orally before him. The Treasury regulations authorize, but do not require, the District Supervisor to grant a rehearing. Nor do they require him to afford petitioner an op-