Before the

INDIAN CLAIMS COMMISSION

P. A. LEWIS, XENOPHON JONES, and EDDIE WARRIOR, on the relation of the Creek Freedmen Association, an organized group, Claimants,	)	
vs.	)	Docket No. 25
UNITED STATES OF AMERICA, Respondent.	)	

Mr. Cecil E. Robertson and
Horace O. Pollard for the Claimants.

Mr. Ralph A. Barney and
Mr. Leland L. Yost, with
whom was Mr. Assistant
Attorney General A. Devitt
Vanech, for the Respondent.

AUG 4 1949

OPINION OF THE COMMISSION.

Holt, Commissioner, delivered the opinion of the Commission:

This claim is presented by P. A. Lewis, Xenophon Jones and Eddie Warrior, on the relation of the Creek Freedmen Association. The petition alleges that the claim is brought on behalf of said Association which is an organized group of Creek Freedmen, consisting of a thousand registered members from three Freedmen towns, and for all other Creek Freedmen and their respective heirs. Attached to the petition, marked Exhibit "A", is a statement and resolution which recites in substance that the fullblood members of the Creek Tribe have met and named a Committee to act in pressing claims of the Creek Tribe for treaty violations against the Government

but that the Freedmen who are members of the Creek Tribe felt they were left out of that action and should have a committee of their own to act for the Creek Freedmen in presenting claims of the Freedmen against the Government. That in order to realize this a number of Creek Freedmen held a meeting and called themselves the Creek Freedmen Association, appointing the three above named Freedmen as a committee "to act for the Freedmen members of the Creek Tribe and represent them in all treaty violations and claims that Freedmen members of the Creek Tribe may have against the Government."

It is apparent from the allegations of the petition and the said exhibit that even though this claim is brought by the three members on behalf of the Association, it can be considered as being a class action on behalf of the three members and all other Freedmen and their descendants, as authorized by the Indian Claims Commission Act (60 Stat. 1049). Therefore for the purposes of the Respondent's motion to dismiss because of lack of jurisdiction we shall herein consider the claim as a class action by the three named members on behalf of themselves and all other Freedmen members of the Creek Tribe, and their respective descendants.

For convenience we will hereafter in the opinion refer to the claimants as the "Creek Freedmen."

The allegations of the petition are in substance as follows:

The claimants are Freedmen of African descent who are, or whose ancestors were, enrolled as members of the Creek Nation pursuant to Article 2 of the Treaty of June 14, 1866 (14 Stat. 785) and Section 21 of the

Curtis Act of June 28, 1898 (30 Stat. 495).

The original agreement with the Creek Tribe of 1901 (31 Stat. 861) provided in Section 3 thereof that all lands of the Creek Tribe, with some exceptions, were to be allotted to the citizens of the tribe so as to give each an equal share of the whole in value, as nearly as could be made, by allotting to each citizen 160 acres of land to be selected by him. The standard value of an allotment was $1,040.00 represented by 160 acres of land valued at $6.50 per acre. It further provided that any allottee receiving lands of less value than such standard value might select other lands, which, at their appraised value, was sufficient to make his allotment equal in value to the standard so fixed.

Section 3 of the same agreement further provided that when the allotment of 160 acres had been made to each citizen, the residue of the lands, not reserved or otherwise disposed of, and all funds arising under the agreement, were to be used for the purpose of equalizing allotments so they would all be made equal in value.

The claimants received their allotments but they were of less value than the standard value of $1,040.00 and it is alleged they have never been given the opportunity to select other tribal lands, nor received money out of other funds of the Creek Tribe, to equalize their deficient allotments.

It is further alleged that monies received from sale of unallotted lands have been used for purposes inconsistent with the aforesaid agreement and also that by various acts of Congress, subsequent to the above agreement, there have been added certain new-born children and minors,

which has further diverted the funds of the Creek Tribe, and that by the Act of March, 1909 (35 Stat. 781) Congress reduced the standard valuation from $1,040.00 to $800.00 per 160 acres and provided for equalization of allotments out of tribal funds on that basis.

The claimants request that the rolls be examined to ascertain the names of the Creek Freedmen whose lands were appraised at less than $6.50 per acre and they be paid such sums as to make their allotments equal in value the standard valuation of $1,040.00.

The respondent has filed its motion to dismiss the petition on the main ground that the Commission lacks jurisdiction in that none of the claims asserted in the petition are "claims against the United States on behalf of any Indian tribe, band, or other identifiable group of American Indians."

An examination of Section 2 of the Indian Claims Commission Act (60 Stat. 1049) shows that it is provided that this Commission shall hear and determine five specified types of claims against the United States, on behalf of an Indian tribe, band, or other identifiable group of American Indians. It will thus be seen by the language of the foregoing provision of the Act that jurisdiction is conferred upon the Commission to entertain claims of three classes of claimants, namely, "tribes," "bands" or "other identifiable groups" other than a tribe or band. There is obviously no jurisdiction granted to hear and determine claims on behalf of individual Indians.

We do not believe, judging from the legislative history of the

Act 1/ that it was the intention of Congress this Commission should have jurisdiction over individual claims. It is usual that when Congress does intend to include individuals as claimants in jurisdictional acts that it expressly designates individuals as distinct from tribes, bands or groups. cf. Blackfeather vs. United States, 190 U.S. 368, 378. This was not done by Congress in the Indian Claims Commission Act.

1/ Hearings on H.R. 1198 and H.R. 1341, p. 77, before Committee on Indian Affairs, House of Representatives, 79th Congress, 1st Session. This conversation in said hearing was between Mr. J. C. McCaskill, Assistant Commissioner of Indian Affairs, and Chairman Jackson of the House Committee:

> Mr. McCASKILL. Those were individual claims. I think they would not come within the purview of this bill at all. This bill, I think, if I am not mistaken, only relates to tribal claims or claims of bands.
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> Chairman JACKSON. That is the wording of both bills.
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> Mr. McCASKILL. It would not cover individual claims of Indians.
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> Chairman JACKSON. The language reads:
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> The Commission shall hear and determine all claims of any nature whatsoever against the United States on behalf of any Indian tribe, band, or other identifiable group of American Indians * * *.
>
> Mr. McCASKILL. I do not think we have regarded this as applying to individual claims.
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> Chairman JACKSON. No; I would not think it was the intention of Congress to do that. That is a good point.

We recognize the duty of this Commission to hear and determine all Indian Claims that are within the grant of jurisdiction in the Act, but that grant has its limitations and the Commission does not have the authority to extend its jurisdiction by implication to cover individual claims; the jurisdiction of the Commission is limited to tribal, band, or common group claims in which the members of the group have a common interest in the subject matter.

The question then is whether the claims asserted here are those of a group with common group rights, which rights have been violated, or are a number of separate and independent individual claims of Freedmen members of the Creek Tribe whose individual rights have been violated and have joined their claims in a common suit.

The respondent's position is that, under the allegations of the petition claimants at most are severally entitled to receive such sums as, when added to the appraised value of their respective allotments, will equal an amount of $1,040.00, which shows that the claims asserted are individual in character and in fact, and therefore not within the grant of jurisdiction to this Commission.

It is admitted by claimants that the Freedmen became members of the Creek Tribe by virtue of the 1866 Treaty and the Curtis Act of 1898, and as such members were entitled to share in the Creek lands.

It is apparent from the allegations of the petition that the claims here are on behalf of only those members of the Creek Tribe of African

descent who have received allotments of less value, in variant amounts, than the standard value of $1,040.00, and to whom there has never been allotted other lands, nor payment of tribal funds to equalize their respective allotments. The claimants would have the Commission arrive at the amounts due by ascertaining the names of said Creek Freedmen whose lands were appraised at less than $6.50 per acre and allow them such sums as may be due them to make their allotments equal in value to the standard value of $1,040.00. In other words, under the allegation of the petition, the Commission would have to determine the amount each individual claimant claims he is entitled to receive under the 1901 Creek agreement by adding to the appraised value of his respective allotment such sum as would bring the amount up to $1,040.00. This clearly concerns the rights of each individual Freedmen who was allegedly denied the full value allotment promised him and constitutes his own personal individual claim which is separate and distinct from the other Freedmen who may have also been denied full allotments. All that has been done here is to combine the several individual claims into one action. This is even admitted by claimants in their written response to the motion to dismiss. 2/

2/ Claimant's Response to motion to dismiss. Brief and Argument, page 4.

"Certainly, their rights (Freedmen) arise solely out of their enrollment and membership in the Creek Tribe. The Creek Freedmen Association is merely the agency created for the express purpose of presenting the individual claims of the several Freedmen, collectively; otherwise, each individual Freedman would have to file his separate claim and thereby create a very burdensome situation. The Creek Nation of Indians is and has been a permanent organization but there never has been a permanent organization of Freedmen. * *."

The Supreme Court in the case of Blackfeather vs. United States, 37 Ct. Cls. 233, 190 U.S. 368, was called upon to consider this question of independent individual claims being asserted in a common suit under a jurisdictional act which provided that claims of the tribe or band were to be entertained. The Court in substance held that claims for the destruction and loss of personal property of individual Shawnee Indians caused by the depredations of white settlers, were claims of individual members of the Shawnee Tribe of Indians and that jurisdiction over the claims of individual members of the Shawnee Tribe was not included in the grant of jurisdiction to the Court of Claims by the Act of 1890 (26 Stat. 636) to hear and determine the rights of Shawnee Indians to money, lands and rights which may be due to "the said Shawnees" under treaties and agreements, nor was such jurisdiction conferred by the second Act of 1892 which enlarged the scope of the earlier Act so as to include all claims of the Shawnee tribe, or band, of every description whatsoever arising out of treaty relations with the United States, rights growing out of such treaties, and from contracts, expressed or implied, under such treaties.

In a later case in 1936 before the Court of Claims in the Sioux Tribe of Indians vs. United States, 89 Ct. Cls. 31, 38 in an action by the tribe to recover for the alleged failure of the United States to fulfill its obligation to furnish seeds and agricultural instruments to heads of families, members of the tribe, which were promised them in a treaty, the Court said in its opinion:

> In addition to the fact that the evidence submitted is not sufficient to justify the conclusion that the United States has violated the provisions of Art. 8, we are of the opinion that the plaintiff tribe cannot maintain suit and recover on this character of claim for the reason that it is not a tribal claim but concerns the rights of and obligations to individual Indians, members of the Sioux Tribe. * * * Blackfeather v. United States 190 U.S. 368, 374, 375, 378. The Jurisdictional Act of June 3, 1920, 41 Stat. 738, authorizes plaintiff to institute suit in this court only for amounts claimed to be due such tribe or band, or bands thereof, as tribal claims. The jurisdictional act does not give the court jurisdiction to hear and determine the legal and equitable claims of individual Indians. Cherokee Nation vs. United States, 80 Ct. Cls. 1, 3, 4.
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> The petition is dismissed.

So we see that the Supreme Court and the Court of Claims, in construing such statutes permitting the Government to be sued for tribal or band claims, have refused to consider thereunder common actions for individual and independent claims.

Therefore, we do not believe that it makes any difference whether or not these claimants constitute an identifiable group as referred to in the Act, and even if we assume that they are such a group, the fact remains that the claims being asserted here are not common group claims but instead are independent individual claims and which this Commission does not have jurisdiction to entertain under the Indian Claims Commission Act.

The motion of the respondent to dismiss will be sustained.

Chief Commissioner Witt and Commissioner O'Marr concur in the above opinion.

August 4, 1949