

BEFORE THE INDIAN CLAIMS COMMISSION

THE LOYAL CREEK BAND OR GROUP OF)
 CREEK INDIANS, AND THE LOYAL CREEK)
 CLAIMANTS' COMMITTEE, on the relation)
 of Joseph Bruner, S. W. Brown, Jesse)
 McDermott, Lasley Haynes, Ben Johnson,)
 Robert Severs, Rosa Holley, Noley Buck,)
 John H. Jones, Elmer Hill, Thompson)
 King, and Sebern Smith,)
)
 Plaintiffs,)
)
 vs.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 1

Appearances: Wilfred Hearn, with whom was George E. Norvell, Attorneys for Plaintiffs.

Ralph A. Barney, with whom was Mr. Assistant Attorney General A. Devitt Vanceh, Attorneys for Defendant.

JUL 14 1950

FINDINGS OF FACT

The Commission makes the following findings of fact in the above-entitled cause:

1. That the individuals whose names appear in the title, namely, Joseph Bruner, Jesse McDermott and S. W. Brown (see stipulation filed here- in March 17, 1950), are Creek Indians and are descendants and heirs at law of persons who were members of the group of Creek Indians and freedmen who remained loyal to the United States during the Civil War and who are historically known and have been recognized by the executive, legislative

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and judicial branches of our government as "Loyal Creeks" and "loyal refugee Indians and Freedmen." That the claim here involved is submitted and prosecuted by said named persons for and on behalf of all members, and the descendants of members, of such group.

2. At the beginning of the Civil War, and for long prior thereto, the Creek Nation of Indians was located in the Indian Territory in what is now the State of Oklahoma, and at the commencement of hostilities in said war the members of the Creek Nation were about evenly divided in their sentiments between the Confederacy and the United States. However, the governing authorities of the Creek Nation supported the Confederacy and many members of the Nation joined in hostilities against the United States, and in fact, on July 10, 1861 concluded a treaty with the Confederate States of America by which they agreed that there should be perpetual peace and friendship and an alliance, offensive and defensive, between themselves and the Confederate States of America. The members of the Creek Nation who remained loyal to the United States were, as stated above, known as the "Loyal Creeks" and were driven from their homes in the Creek Reservation. Their personal property, consisting of improvements upon their lands, machinery and livestock, was destroyed by enemy forces and the Loyal Creeks were required to seek refuge and protection behind the lines of the Federal forces. That as a result of enemy action, the losses sustained by the Loyal Creeks amounted to a large sum of money, as will hereinafter be shown. Many of the male members of the Loyal Creeks joined the Federal forces and served during the Civil War.

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3. Following the end of hostilities, the defendant and the Creek Nation of Indians concluded a treaty at the City of Washington on the 14th day of June, 1866 (14 Stat. 785), which was ratified on the 19th day of July, 1866, and proclaimed on the 11th day of August, 1866. In said treaty the United States recognized the sufferings and losses sustained by the Loyal Creeks, and by Article 3 of said treaty provided as follows:

"One hundred thousand dollars shall be paid in money and divided to soldiers that enlisted in the Federal Army and the loyal refugee Indians and freedmen who were driven from their homes by the rebel forces, to reimburse them in proportion to their respective losses."

And Article 4 of said treaty provided as follows:

"Immediately after the ratification of this treaty the United States agree to ascertain the amount due the respective soldiers who enlisted in the Federal Army, loyal refugee Indians and freedmen, in proportion to their several losses, and to pay the amount awarded each, in the following manner, to wit: A census of the Creeks shall be taken by the agent of the United States for said nation, under the direction of the Secretary of the Interior, and a roll of the names of all soldiers that enlisted in the Federal Army, loyal refugee Indians, and freedmen, be made by him. The superintendent of Indian Affairs for the Southern superintendency and the agent of the United States for the Creek Nation shall proceed to investigate and determine from said roll the amounts due the respective refugee Indians, and shall transmit to the Commissioner of Indian Affairs for his approval, and that of the Secretary of the Interior, their awards, together with the reasons therefor. In case the award so made shall be duly approved, said awards shall be paid from the proceeds of the sale of said lands within one year from the ratification of this treaty, or so soon as said amount of one hundred thousand (\$100,000) dollars can be raised from the sale of said land to other Indians."

4. That pursuant to the provisions of said Article 4, a roll of the names of the loyal refugee Indians and freedmen was made. Said roll listed the names of 1523 "Loyal Creek Indians and Freedmen," and pursuant to the

requirements of said Article 4, the Commission named therein investigated and determined the amounts due for losses sustained by the respective Indians and freedmen whose names appeared on said roll. That the claims submitted by such Indians and freedmen aggregated the sum of \$5,090,802.50, and said Commission allowed such claims in the aggregate sum of \$1,836,830.41, and as required by said Article 4 the sum of \$100,000 was paid to such claimants in proportion to their respective awards made by said Commission. (See Claimants' Ex. 3, pages 18 to 37, for names, amount of claims and amount of awards to the Loyal Creek Indians and freedmen).

5. By an agreement approved March 1, 1901 (31 Stat. 861) the Creek Nation of Indians and the defendant recognized the Loyal Creek claim, by Section 26 thereof, which provided as follows:

"All claims of whatsoever nature, including the 'Loyal Creek claim' under Article Four of the treaty of eighteen hundred and sixty-six, and the 'Self-emigration claim' under Article Twelve of the treaty of eighteen hundred and thirty-two, which the tribe or any individual thereof may have against the United States, or any other claim arising under the Treaty of eighteen hundred and sixty-six, or any claim which the United States may have against said tribe, shall be submitted to the Senate of the United States for determination; and within two years from the ratification of this agreement the Senate shall make final determination thereof; and in the event that any sums are awarded the said tribe, or any citizen thereof, provision shall be made for immediate payment of same.

"Of these claims the 'Loyal Creek claim,' for what they suffered because of their loyalty to the United States Government during the civil war, long delayed, is so urgent in its character that the parties to this agreement express the hope that it may receive consideration and be determined at the earliest practicable moment." (Claimants' Ex. No. 4).

6. Following the agreement of 1901 and pursuant to the provisions of said Section 26, the Senate of the United States considered said claim of the Loyal Creeks and referred the same, together with the Indian Appropriation Bill (H. R. 15804), hereafter referred to, to its Committee on Indian Affairs, with the result that on the 16th day of February, 1903 the

Committee made the following report:

"We consider the Creeks had strong equities and have deducted from the amount allowed by Commissioners Hazen and Field, the \$100,000 which had been paid them, and deducted a further sum of \$536,830.40 and recommend the payment of the balance amounting to \$1,200,000, to be distributed to the claimants or their heirs, in the proportion indicated by the original list of awards." (Claimants' Ex. No. 2, page 6).

The Committee on Indian Affairs also reported an amendment to be inserted in the Indian Appropriation Bill (Act of March 3, 1903) which amendment was as follows:

"In pursuance of the provisions of section 26 of an act to ratify and confirm an agreement with the Muscogee or Creek tribe of Indians, and for other purposes, approved March 1, 1901, there is hereby awarded as final determination thereof on the so-called 'loyal Creek claims,' named in said section 26, the sum of \$1,200,000, and the same is hereby appropriated out of any money in the Treasury not otherwise appropriated, and make immediately available. And the Secretary of the Treasury is hereby authorized to pay, under the direction of the Secretary of the Interior, to the loyal Creek Indians and freedmen named in articles 3 and 4 of the treaty with the Creek Nation of Indians of June 14, 1866, the said sum of \$1,200,000, to be paid to such Indians and freedmen only whose names appear on the list of awards made in their behalf by W. D. Hazen and F. A. Field, as commissioners on behalf of the United States to ascertain the losses of said Indians and freedmen as provided in said articles 3 and 4, and such payments shall be made in proportion of the awards as set out in said lists and shall be in full settlement and satisfaction of all claims under said articles 3 and 4; Provided, however, That if any of said loyal Creek Indians or freedmen whose names are on said list of awards shall have died, then the amount or amounts due such deceased person or persons, respectively, shall be paid to their heirs or legal representatives: And provided further, That the Secretary of the Treasury be, and he is hereby authorized and directed to first withhold from the amount herein appropriated and pay to S. W. Peel, of Bentonville, Ark., the attorney of said loyal Creeks and freedmen, a sum equal to 10 per cent of the amount herein appropriated, as provided by written contracts between the said S. W. Peel and the claimants herein, the same to be payment in full for

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all legal and other services rendered by him, or those employed by him, and for all disbursements and other expenditures had by him in behalf of said claimants in pursuance of said contract. And further, said Secretary is authorized and directed to pay to David M. Hodge, a Creek Indian, of Tulsa, in the Creek Nation, a sum equal to 5 per cent of the amount herein appropriated, which payment shall be in full for all claims of every kind made by said David M. Hodge, or by those claiming under him, by reason of any engagement, agreement, or understanding had between him and said loyal Creek Indians." (Vol. 36, Cong. Rec. 2252; Plaintiffs' Ex. No. 8). (Italics supplied).

That said amendment was agreed to by the Senate (Vol. 36, Cong. Rec. 2255).

That the Appropriation Bill which became the Act of March 3, 1903, as passed by the House, and which the Senate was considering (H. R. 15804), did not contain an appropriation for the payment of the Loyal Creeks' claim.

7. After the passage of said Appropriation Bill by the Senate, with the amendment referred to in Finding No. 6, the House refused to accept the amendment to the Bill made by the Senate, so that the disagreement between the House and Senate was referred to a conference committee, with the result that the committee agreed, among other things, to the following:

That the House recede from its disagreement to the amendment of the Senate number 27, and agree to the same with amendments as follows: In line 7 of said amendment strike out "one million two hundred thousand" and insert "six hundred thousand;" in line 22 of said amendment, after the word "list," strike out all down to and including the word "four," in line 24, and insert in lieu thereof the following: "Provided, That said sum shall be accepted by said Indians in full payment and satisfaction of all claim and demand growing out of said Loyal Creek claims, and the payment thereof shall be a full release of the Government from any such claim or claims;" and the Senate agree to the same.

That the report of the conference committee containing the above-quoted agreement was, on February 25, 1903, agreed to by the Senate. (Vol. 36, Cong. Rec. 2627).

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And the conference report was later, and on February 27, 1903, agreed to by the House (Vol. 36 Cong. Rec., 2770), and the Bill was enacted into law and contained the identical provisions of the amendment agreed to by the conference committee.

Before the House acted upon the conference report, the House conferees submitted a statement of the managers on the part of the House, which was separate from the conference report, and which contained the following reference to the loyal Creek claim:

"No. 27 the House recedes with an amendment, making the appropriation \$600,000 instead of \$1,200,000. The amendment provides for the payment of the so-called loyal Creek claim. It has been mooted for some time, and it is claimed that the Senate has heretofore been made arbiters by action of both bodies of Congress, and that, acting as such, they have determined that \$1,200,000 was just and due. The sum fixed herein is a compromise and provision is made in the amendment that it be accepted in full payment of all claims and demands and act as a general relief of such claim against the Government." (36 Cong. Rec. 2768).

And while the House was considering the conference report, the following discussion took place between Mr. Sherman and Mr. Curtis, two of the House conferees:

MR. SHERMAN. * * * I was about to say, Mr. Speaker, that the main item of appropriation added by this report is \$600,000 to pay the so-called Loyal Creek claims.

This is an item which the conferees on the part of the House believe to be a gratuity; that is, that it is a claim about which we believe there was no legal obligation on the part of the Government. The contention of the Senate conferees was the reverse. Their contention was that by the act of the two Houses in referring this claim to the Senate as arbitrators in the last Congress, and by the Senate appropriating in this bill, or inserting in this bill, a provision fixing the amount of the arbitration at \$1,200,000, that thereby the United States became bound to the payment of that claim of \$1,200,000.

It was the claim which kept us in conference longer by many hours—yes, by several days—than we would have been but for this. At the conclusion of a protracted conference the House conferees receded, with an amendment providing that the amount paid should be \$600,000, rather than \$1,200,000, and with a provision that the payment of this sum should be in full for all claims in satisfaction of the claims of these Indians, and the payment should be accepted as a discharge of the United States Government from those claims. The House conferees believed it wisdom under all the circumstances to dispose of this claim now by the payment of \$600,000, and believed by doing so that we would save to the Government money, because were it not paid now the Indians would surely present this claim to every succeeding Congress, and one of these days probably slip it through at \$1,200,000. So we believe---

MR. CURTIS. In view of the fact that the Senate had found in the arbitration for \$1,200,000.

MR. SHERMAN. So that we believe, in disposing of the claim as we have, we have saved to the Government \$600,000. (36 Cong. Rec. 2769).

8. The Appropriation Bill which was enacted into law (32 Stat. 982). contained this provision for the payment of the Loyal Creek claim, to-wit:

"In pursuance of the provisions of section twenty-six of an Act to ratify and confirm an agreement with the Muscogee or Creek tribe of Indians, and for other purposes, approved March first, nineteen hundred and one, there is hereby awarded, as a final determination thereof, on the so-called 'Loyal Creek claims' named in said section twenty-six, the sum of six hundred thousand dollars, and the same is hereby appropriated out of any money in the Treasury not otherwise appropriated, and made immediately available. And the Secretary of the Treasury is hereby authorized to pay, under the direction of the Secretary of the Interior, to the loyal Creek Indians and freedmen named in articles three and four of the treaty with the Creek Nation of Indians on June fourteenth, eighteen hundred and sixty-six, the said sum of six hundred thousand dollars, to be paid to such Indians and freedmen only whose names appear on the list of awards made in their behalf by W. B. Hazen and F. A. Field, as commissioners on behalf of the United States to ascertain the losses of said Indians and freedmen as provided in said articles three and four; and such payments shall be made in proportion of the awards as set out in said list; Provided, That said sum shall be accepted by said Indians in full payment and satisfaction of all claim and demand growing out of said

loyal Creek claims, and the payment thereof shall be in full release of the Government from any such claim or claims; Provided, however, That if any of said loyal Creek Indians or freedmen whose names are on said list of awards shall have died, then the amount or amounts due such deceased person or persons, respectively, shall be paid to their heirs or legal representatives; And provided further, That the Secretary of the Treasury be, and he is hereby, authorized and directed to first withhold from the amount herein appropriated and pay to S. W. Peel, of Bentonville, Arkansas, the attorney of said loyal Creeks and freedmen, a sum equal to ten per centum of the amount herein appropriated, as provided by written contracts between the said S. W. Peel and the claimants herein, the same to be payment in full for all legal and other services rendered by him, or those employed by him, and for all disbursements and other expenditures had by him in behalf of said claimants in pursuance of said contract. And further, said Secretary is authorized and directed to pay to David M. Hodge, a Creek Indian, of Tulsa, in the Creek Nation, a sum equal to five per centum of the amount herein appropriated, which payment shall be in full for all claims of every kind made by said David M. Hodge, or by those claiming under him, by reason of any engagement, agreement, or understanding had between him and said loyal Creek Indians." (Italics supplied).

9. Following the passage of the Appropriation Bill which included the provisions quoted in the next preceding finding of fact, the Acting Secretary of the Interior directed the U. S. Indian Inspector for the Indian Territory to obtain an acceptance of the terms of the Act before the Department would be authorized to direct the payment of the \$600,000 appropriated, and thereafter, and pursuant to the directions of the Secretary of the Interior, the National Council of the Creek Nation adopted the following resolution on the 22d day of May, 1903, and transmitted it to the Acting U. S. Indian Inspector of Indian Territory, who, in turn, transmitted it on June 1, 1903, to the Secretary of the Interior:

BE IT RESOLVED by the National Council of the Muskogee Creek Nation, as follows: That

WHEREAS the Congress of the United States in an Act entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for

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fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes", approved March 3, 1903, made provision for paying the so-called Loyal Creek claims, and appropriated the sum of Six Hundred Thousand Dollars for that purpose, and said appropriation being made on condition that the sum so appropriated should be accepted as payment in full of all said claims.

NOW, THEREFORE, be it resolved that the said sum of Six Hundred Thousand Dollars, appropriated as aforesaid, is hereby accepted in full payment and satisfaction of all claims and demands growing out of said Loyal Creek Claims, and that the payment thereof as directed by said act shall be a final release of the Government from all such claim or claims.

Adopted May 22nd, 1903.
Roley McIntosh
Pres. H. of Kings.

Lee McNeVins
Clerk

Concurred in May 23rd., 1903.
Amos McIntosh
Speaker House of Warriors
pro tem.

A. P. McKellop
Clerk.

Approved May 23, 1903.
P. Porter
Prin. Chief.

EXECUTIVE OFFICE.

Muskogee Nation.

Muskogee, I. T., May 26, 1903

I, P. Porter, Principal Chief of the Muskogee Nation, do hereby certify that the attached and foregoing is an act of the National Council of said Nation, passed at its extra session held May, 1903, and approved by me in my official character on May 23, 1903, and I do hereby certify and submit the same for the approval of the President of the United States under the provisions of Section 42 of the act of Congress approved March 1, 1901, (31 Stat. 861) entitled "An act to ratify and confirm an agreement with the Muskogee or Creek tribe of Indians, and for other purposes."

IN WITNESS WHEREOF I have hereunto signed my name as Principal Chief of the Muskogee Nation this the 26th day of May, 1903, and caused the great seal of the Nation to be affixed.

P. Porter
Principal Chief, Muskogee Nation.

Attest:
Virginia Westrope
Acting Private Secretary.

(Seal)

WHITE HOUSE, WASHINGTON, D. C.

Approved, June 6th, 1903.

T. Roosevelt

That thereafter, and pursuant to the provisions of the Act quoted in Finding 8 hereof, there was paid to S. W. Peel the sum of \$60,000 and to David M. Hodge the sum of \$30,000, both payments having been made out of the \$600,000 appropriation.

10. The payment of \$60,000 to S. W. Peel was made pursuant to an agreement between said Peel and the Loyal Creek Nation of Indians and by Isparhecher as Attorney in Fact for the Loyal Creek claimants, and said payment of \$30,000 to David M. Hodge was made with the consent of said Loyal Creek Indians and the Creek Nation of Indians.

11. And after the resolution of acceptance, referred to in Finding No. 9, the defendant caused to be distributed to the individual Loyal Creek Indians and Freedmen, or to the heirs or legal representatives of such thereof as may have died, the sum of \$510,000, being the remaining part of the appropriation after paying the amounts to Peel and Hodge; that at the time of the payment of the sums due the respective members of the Loyal Creek Indians and Freedmen, their heirs or legal representatives, each recipient thereof was required to and did sign a receipt therefor

in a record book with a heading reading as follows:

"We, the undersigned individual members of the Creek Tribe of Indians and Individual Freedmen, and the heirs or legal representatives of deceased Creek Indians and Freedmen, do hereby acknowledge receipt of Dollars, (\$.....) from J. BLAIR SHOMFELT, United States Indian Agent, in the sums set opposit our respective signatures, and the same is hereby accepted as a full and complete settlement of our claims against the United States for property taken or destroyed during the Civil War, as provided by the Act of Congress approved March 3rd, 1903, and Act of the Creek Council of May 3rd, 1903."

Upon the foregoing findings of fact which, with these conclusions of law, are hereby made a part of the judgment herein, the Commission concludes as a matter of law that the plaintiffs are not entitled to recover anything upon the cause of action set forth in the amended petition herein.

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