

BEFORE THE INDIAN CLAIMS COMMISSION

THE POTTAWATOMIE TRIBE OF)
 INDIANS AND THE PRAIRIE)
 BAND OF THE POTTAWATOMIE)
 TRIBE OF INDIANS,)

Plaintiffs,)

v.)

Docket No. 15-A)

THE UNITED STATES OF AMERICA,)

Defendant.)

Decided: June 5, 1952

Appearances:

O. R. McGuire, with whom was
 Robert Stone,
 Attorneys for the Plaintiffs.

Sim T. Carman and Leon J. Moran,
 with whom was Mr. Assistant
 Attorney General Wm. Amory Underhill,
 Attorneys for the Defendant.

OPINION OF THE COMMISSION

Holt, Commissioner, delivered the opinion of the Commission:

The plaintiffs, the Pottawatomie Tribe of Indians and the Prairie Band of that tribe, present a claim against the Government for perpetual annuities, aggregating \$9037.90 a year, that were payable to the tribe under various treaties, alleged to have been unlawfully commuted by the defendant under an agreement concluded March 16, 1909 with a claimed majority of the individual adult members of the tribe pursuant to the Act of Congress of April 30, 1908 (35 Stat. 70) authorizing the making of commutation agree-

ments with tribes. The plaintiffs contend the agreement is void and not binding on them because it was not made with the tribal authority of the Pottawatomie Tribe; and because through fraud and misrepresentation it was made with individual members of the tribe who lacked the legal authority to agree to a disposition of tribal funds; also, that the United States as guardian of the Indians had no legal right to obtain such an agreement from living members of a tribe for the commutation of tribal annuities and pay them the capitalized amount, thereby depriving future generations of their right to perpetual tribal benefits provided in treaties. The defendant contends Congress acted within the scope of its plenary authority over Indian tribal affairs, property and funds, in capitalizing the annuities and paying in lieu thereof their full value at the time they were commuted; that the plaintiffs consented to the agreement by a majority of its members signing it under the procedure prescribed or approved by the Commissioner of Indian Affairs, and by the acceptance by all members of the tribe of the beneficial consideration provided thereby. The plaintiffs ask that the annuities be reinstated and seek to recover a judgment for the amount of their annuities of \$9037.90 a year for the period from 1908 down to the last anniversary payment date just prior to judgment, together with interest from date each annual payment became due. They appear willing to concede that the sum of \$180,758.00 paid by the Government as a capitalization of said annuities and later disbursed in per capita payments to the members of the Tribe may be deducted from the amount they now claim.

The facts described briefly show that the annuities involved represent the balance of the annuities payable to the Pottawatomie Tribe that remained after approximately two-thirds of its members were permitted under the

provisions of the treaty of November 15, 1861 (12 Stat. 1291) to become citizens of the United States and have their respective pro rata shares of the Tribe's annuities commuted and paid to them, whereupon they ceased to be members of the tribe. The remaining members of the tribe, who became known as the Prairie Band of the Pottawatomie Tribe, continued to receive the reduced annuities of \$9037.90 until March, 1909.

The Act of Congress approved April 30, 1908 (35 Stat. 70, 73) authorizing the making of agreements with Indian tribes for commutation of annuities provides as follows:

"that the Commissioner of Indian Affairs is hereby authorized to send a special Indian Agent, or other representative of his office, to visit any Indian tribe for the purpose of negotiating and entering into a written agreement with such tribe for a commutation of the perpetual annuities due under treaty stipulations, to be subject to the approval of Congress; and the Commissioner of Indian Affairs shall transmit to Congress said agreements with such recommendations as he may deem proper."

As the Act did not contain any provision or requirement relative to the manner in which the formal consent of a tribe was to be obtained, the Commissioner of Indian Affairs obviously considered the procedure in this regard was left to his determination, for he appointed one F. C. Campbell as a Special Agent and directed him to negotiate such an agreement with the Pottawatomie Tribe of Kansas and Wisconsin, instructing him he was to obtain the approval and signatures to the agreement of a majority of the adult members of the tribe, without regard to sex, with the minimum age of members entitled to sign being fixed at 18 years, and if married, they could sign regardless of age. The number of such members is shown to have been fixed by the Superintendent of the Kansas Pottawatomie Agency at 362, most of whom lived in Kansas and some 98 in Wisconsin.

Agent Campbell first presented the proposed commutation agreement to the Pottawatomie Indians in Kansas for approval, and later to those members residing in Wisconsin. The agreement was concluded by Campbell on March 16, 1909, and it had affixed thereto the names of 216 of the 362 Pottawatomie Indians constituting the voting population of the Tribe at that time, each of whom has either signed, or in separate signed statements had agreed thereto and authorized the attaching of their respective names to the agreement, wherein they agreed to accept the sum of \$180,758.00 in commutation of the permanent annuities payable to the Pottawatomie Tribe of \$9037.90 a year, said sum to be in lieu of the annuities and to be deposited in the Treasury of the United States there to draw interest at five per cent per annum; and to be withdrawn by the Secretary of the Interior for the use of the Indians or paid direct to them in his discretion. A copy of the agreement, except for the signatures and certificates, appears in Finding No. 7.

The completed agreement was transmitted by Campbell to the Commissioner of Indian Affairs in a letter on March 17, 1909, with the explanation that in securing some of the signatures thereto, Campbell had found the Indians much scattered and written authority to attach such members names to the agreement had been secured from them and their names attached, with the agreement having been presented to them in person where it had been possible to do so. The Commissioner of Indian Affairs accepted and approved the agreement as made, transmitting it to the Secretary of the Interior who also approved it and forwarded it to the President, who, in turn, on February 10, 1910 submitted the agreement to Congress for action.

Congress ratified and confirmed the agreement as a part of the Act of April 4, 1910 (36 Stat. 269, 289). A copy of the Act, insofar as it applies to this agreement is set forth in Finding No. 8; by the Act, Congress directed the \$180,758.00 paid in lieu of the annuities be placed in the Treasury to the credit of the Pottawatomie Tribe of Kansas and Wisconsin, and to draw five per cent interest per annum; authorizing the Secretary of the Interior to withdraw the funds for payment to the Indians or expenditures for their benefit at such times and in such manner as he deemed proper.

As required by the Act of 1910, two funds were set up on the books of the Treasury on July 1, 1910. One fund of \$180,758.00 was designated the "Pottawatomie of Kansas and Wisconsin Fund, Act of April 4, 1910." The other as the "Interest on Pottawatomie of Kansas and Wisconsin Fund, (act of April 4, 1910)" in which fund interest on the principal fund as it accrued was deposited, totaling \$35,304.18, and in the years 1912 through 1915 was disbursed by the defendant to the Pottawatomie Indians in per capita shares. In March of 1914 the Secretary of the Interior determined, as authorized by the Act of 1910, that it was essential for the economic welfare of the Indians to withdraw the \$180,758.00 for their use, with the result in May and June of 1914 the fund was disbursed to all of the 764 enrolled members of the Prairie Band of Pottawatomie Indians in per capita shares of \$236.60.

The plaintiffs challenge the right of Congress to commute perpetual annuities thereby depriving succeeding generations of such annuities. We believe that Congress does have that right, for it is a well established legal principle that Congress possesses the exclusive and

plenary authority to deal with tribal Indians, lands and funds in whatever way it deems to be for the best interests and welfare of the Indians, and even in conflict with some provision or stipulation contained in a prior treaty. *Lone Wolf v. Hitchcock*, 187 U. S. 553. As the plaintiff Indians in this action were tribal Indians, both before and after the commutation agreement of 1909, and the annuities were tribal funds, we believe they and their annuities were subject to the control of Congress, and such funds in the discretion of Congress could be commuted and used for the benefit of the Indians.

In the case of *Chippewa Indians of Minnesota v. United States*, 88 C. Cls. 1, a similar issue to the one in this case was raised. In that case the present members of the Chippewa Indians sought to recover as 'remaindermen' for interest on a trust fund, which fund and interest was provided for under an agreement between the Indians and the Government, but which fund was, before the expiration of the period stipulated in the agreement, expended and disbursed by an Act of Congress contrary to the provisions of the agreement that such fund would be held in trust at interest for fifty years. The Court dismissed the claim on the ground that Congress possessed the authority to do what it had done without rendering the Government liable for continued payments under the prior agreement. In denying relief the court said in the opinion (p. 41):

"Per capita distributions were made to the Indians from the funds in accord with the following acts of Congress: * * *. Manifestly it was essential to make them. Changing economic and social conditions obviously inspired the legislation which altered the provisions of the Act of 1889. The present generation of Indians, as well as many who have passed on, accepted these benefits and they were beneficial, and they did not then object that the so called trust fund was being unlawfully depleted. It was not until after all these benefits had been

fully realized by the tribe that solicitude was manifested for the designated remaindermen."

It is also true that annuities are usually created as payment for tribal lands formerly ceded to the Government. And we do not believe it can be disputed that Congress has legal authority to dispose of tribal lands for the benefit of a generation of Indians who need the proceeds, so we see no difference in the right of Congress to commute and use tribal annuities created from sale of such lands when needed by the Indians. In fact it is not unusual for Congress to capitalize annuities and pay the sum in per capita payments to individual members -- as was done with the Citizens Band of Pottawatomies.

The plaintiffs contend that the agreement is invalid because it was made with individual members of the Pottawatomie Tribe and was not the action of the tribe assembled in general council. We do not think the evidence actually bears out this contention. In the first place it is to be noted that, aside from providing that a written agreement be entered into with the tribe concerned, the Act of 1908 did not specify the method to be employed by the Commissioner of Indian Affairs in accomplishing this end. So it is entirely reasonable to assume that Congress left it to the Commissioner to determine how the consent of the Pottawatomie tribe was to be obtained, and to prescribe the rules and regulations needed to obtain such consent. This the Commissioner did by prescribing that the agreement should be signed by a majority of the adult Indians of the tribe, and no objection was thereafter made by Congress to this procedure. See *Chippewa Indians of Minnesota v. United States*, 90 C. Cls. 140.

While it is true that such agreements affecting tribal property have usually been made in a general council with the chiefs and headmen, or

elected representatives acting as representatives of the tribe, this method is not exclusive, for the consent of a tribe has been obtained, as in this case, by securing the approval and signatures of a majority of its voting members. See *Klamath and Moadoc Tribe v. United States*, 81 C. Cls. 79, affirmed 296 U.S. 244. The reason, as we view it, is that while the title to tribal property or funds is in the tribe, they are held for the common use and benefit of all its members; in fact, the members are usually treated by the Government as communal owners.

Cherokee Nation v. United States, 40 C. Cls. 252, 325; affirmed 202 U.S. 101. Therefore, when the individual members of a tribe are given an opportunity to consider a proposal and express their approval by a majority of them signing such an agreement affecting tribal property; we believe this majority should be considered, in effect, as acting on behalf of and representative of the tribe just as effectively as chiefs or an elected council who would but represent the will of the majority of the membership of the tribe in their approving and consenting to such agreement on its behalf.

While the record in this case discloses that the commutation agreement was not executed by the members of the Pottawatomie Tribe at one council meeting, but at several different meetings in Kansas and Wisconsin, with some members separately consenting in writing that their respective signatures be attached, nevertheless, we think the evidence is sufficiently convincing that this procedure was necessary under the circumstances in order to afford the scattered members of the tribe an opportunity to express approval or disapproval of the agreement, and when the majority of the tribe did approve the agreement they were in effect acting on behalf of the tribe in consenting to a commutation of its annuities.

Surely the officials of the government and Congress must have so construed their action when the agreement was approved and ratified as made.

But the plaintiffs charge that the signatures to the agreement were obtained by fraud and misrepresentation and have placed in evidence numerous affidavits made in 1936 and 1937 by Pottawatomie Indians and filed with a Senate Committee Report in 1939 on a proposed jurisdictional bill then pending in Congress. A number of aged Indians have also testified and some of these affiants and witnesses repudiated their signatures to the agreement while others say they signed but misunderstood what it was about, and a few thought it was to receive payment for a pledge to quit drinking liquor. We do not believe, however, that this evidence can be considered as sufficient to overcome what the contemporary documentary evidence discloses as to the explanation of the agreement to the Indians and the obtaining of their approval and signatures thereto. In the case of *Klamath and Moadoc Tribes v. United States*, supra, the validity of a release by the Tribe signed by a majority of its members was under consideration and the plaintiff Indians had made charges and submitted proof similar to that in the present case. The Court of Claims in evaluating such evidence and sustaining the release said in the opinion (p. 99):

"The burden of proof with respect to duress and misrepresentations proffered to invalidate an instrument under seal is upon the plaintiffs, and when signatures to such a document some nineteen or twenty years later testify with unanimity, and at a time when the prospects of a large judgment appear, that coercion and misrepresentation obtained to procure their signatures, the record thus loses much if not all of its probative force and falls far short of reaching that degree of proof essential to establish the charges made."

There is nothing in the record reflecting on the honesty or integrity of the representatives of the Government who conducted the negotiation of the agreement, nor that the disinterested witnesses or the interpreter who certified that the agreement was fully explained to the Indians, had any personal interest in the matter that would cause them to make false certificates to that effect. The agreement was under consideration by the Indians for at least two months before it was completed and it is in evidence that in 1906 fifty percent of the Pottawatomie Tribe spoke and understood English sufficiently well to conduct their own business affairs. So, while we recognize the fact that it is quite impossible to say that every member signing the agreement understood fully and completely the import of the agreement, it is quite evident that many of them did. This, we think, is shown by the activity of many of the members to have the sum representing the capitalized annuities of the tribe paid to the members in pro rata shares after it had been placed in the Treasury of the United States to the credit of the Tribe.

Furthermore, the entire \$180,758.00 representing the value of the tribe's permanent annuities in 1909, which sum Congress appropriated and deposited in the Treasury to the credit of the Tribe, was paid to and accepted by all enrolled members of the Tribe in per capita shares in 1914, and there does not appear to have been any protest made by the Indians respecting the commutation of the annuities until 1936. Such action, we think, shows an approval and acquiescence on the part of the Indians to the commutation and distribution of the annuities in question. As the Court of Claims said in the case of Chippewa Indians of Minnesota

v. United States, supra, in considering what amounts to consent by an Indian tribe:

"Moreover, the Chippewa Indians of Minnesota accepted the additional allotments made and no protest was made at the time. Every act with reference to the making of the allotments was under the direction of the Secretary of the Interior, and while the records of that Department do not disclose any vote or agreement prior to actual allotment, we think a complete consent to the amendatory act of 1891 was nevertheless given by the Chippewa Indians of Minnesota when they, without exception, accepted their allotments thereunder. The manner of giving consent is unimportant when the consent itself is shown to be actual."

It is argued that the agreement was submitted to Congress as having been made with the Pottawatomie Tribe when in fact it was with an alleged majority of the members of the Tribe. We do not see how Congress could have been misled and not be aware of the manner in which the consent of the Pottawatomie Tribe was obtained. The agreement with the attached certificates and signature authorizations were all before Congress and they plainly revealed that the agreement was made with "a majority of the adult members of the Pottawatomie Tribe," and that it had been signed by individual members at different council meetings in both Kansas and Wisconsin, as well as the fact that signatures of some members had been affixed to the agreement by the Superintendent upon the members' signed authorizations. Certainly if the agreement as made had been considered objectionable, Congress would have questioned it before ratification. This it did not do.

We are of the opinion from a study of the facts and circumstances of this case in the light of the established principles governing the power and authority of Congress in its dealings with tribal Indians and the management and control of their properties and affairs that, re-

ardless of the validity of the commutation agreement, Congress did not deal unjustly with the Pottawatomie Tribe of Indians in capitalizing and commuting their permanent annuities and substituting a sum equal to their value to the credit of the tribe. The action taken was done pursuant to a policy adopted by Congress, as is shown by the Act of 1908 authorizing commutation agreements with any tribe. Unquestionably Congress acted in good faith in the matter and intended to and did pay an adequate consideration for the discharge of the Government's obligation to the Tribe. In effect, it was but a change in the form of investment of tribal funds, and the capitalization of the \$9037.90 annuities upon a basis of five per cent, which is the rate of interest paid by the Government on tribal funds at that time (Alcea Band of Tillamooks v. U. S., 115 C. Cls. 463, 517), produced the principal sum of \$180,758.00. The plaintiffs suffered no loss by the capitalization, for this sum was placed in the Treasury of the United States to the credit of the Tribe where it continued to bear interest at five per cent per annum, as provided in the commutation agreement, and produced annually for plaintiffs a sum equal to their annuities before capitalization. This interest was paid to the plaintiff Indians until it was determined by the Government that the capital sum be disbursed for the economic welfare of all the members of the Tribe.

It is the conclusion of the Commission that the plaintiffs are not entitled to recover and the petition should be dismissed.

WM. M. HOLT
Associate Commissioner

We concur:

EDGAR E. WITT
Chief Commissioner

LOUIS J. O'MARR
Associate Commissioner