

BEFORE THE INDIAN CLAIMS COMMISSION

THE CHICKASAW NATION OF INDIANS,)
)
 Petitioner,)
)
 vs.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 269

Decided: Jan. 23, 1959

Appearances:

Paul M. Niebell, Attorney for Claimant

Ralph A. Barney and Frederick G. Ward, Jr. with whom was Mr. Assistant Attorney General Perry W. Morton, Attorneys for Defendant.

W. F. Semple, Attorney for Intervenor

OPINION OF THE COMMISSION

Witt, Chief Commissioner, delivered the opinion of the Commission.

Petitioner, the Chickasaw Nation of Indians, present this claim for the value of one-fourth interest in so much of the common domain of the Choctaw and Chickasaw Nations as was allotted to the Choctaw freedmen after their adoption by the Choctaw Nation.

By order of this Commission dated March 12, 1956, the Choctaw Nation was permitted to intervene and file its answer in response to the petition of the Chickasaw Nation.

The recovery sought herein has been previously presented in the Court of Claims, and was decided December 1, 1941, in the case

The Chickasaw Nation vs. The United States and The Choctaw Nation, Cause No. K-336, 95 C.Cls. 192. Judge Madden delivered the unanimous opinion of the Court of Claims holding that the plaintiff (The Chickasaw Nation) is entitled to recover the claim filed as against the Choctaw Nation. Since the relief sought and granted therein to plaintiff was held to be the primary obligation due from the Choctaw Nation, the Court of Claims stated it would not determine the liability, if any, of the defendant, the United States.

The Supreme Court of the United States reviewed this judgment of the Court of Claims upon a writ of certiorari and in a unanimous opinion by Mr. Justice Murphy, dated March 8, 1943, reversed and remanded said judgment with instructions to dismiss petition Choctaw Nation of Indians vs. United States and the Chickasaw Nation of Indians, (318 U.S. 423-433).

Petitioner filed its petition with the Indian Claims Commission on August 9, 1951, alleging that under Clauses 3 and 5, Section 2 of the Indian Claims Commission Act, approved August 13, 1946 (60 Stat. 1049; 25 U.S.C. 70), grounds for relief upon facts stated in its petition were provided in said Act. Defendant, the United States, filed an Answer to the Petition and also a Motion for Summary Judgment on the grounds that the claim had been judicially determined by the Supreme Court of the United States in its above-mentioned opinion, and therefore this claim should be barred from consideration by this Commission, because it was res judicata. The Government's Motion to Dismiss the Petition as res judicata was

granted by this Commission (Chief Commissioner Witt dissenting) on November 17, 1954. (3 Ind. Cl. Com. 402) The Summary Judgment of this Commission was then taken on appeal to the Court of Claims.

The Court of Claims in Appeals Docket No. 1-55 on June 7, 1955, (132 C. Cl. 359), Judge Madden speaking for the Court, held that at least two matters were not presented to the Supreme Court of the United States in the decision which defendant urged as a bar to this petition, namely, whether there was a mistake in the interpretation and understanding, on the part of the Chickasaw Nation, of the effect of the Supplement Agreement of 1902; and whether the transactions as to which complaint is made were a departure from "fair and honorable dealings." The Court of Claims held that both of these contentions were alleged in the petition, and if either was proven, would constitute valid grounds for recovery under the Indian Claims Commission Act (60 Stat. 1049); and consequently the Court set aside the Commission's Order of Dismissal of this suit and reversed and remanded the cause to the Indian Claims Commission for trial on the merits. We now consider this claim upon its merits.

The Intervenor, the Choctaw Nation, has devoted a considerable part of its brief in this case to the proposition that the Chickasaw Nation did not, at any time, claim or demand compensation "for their share of the value of lands to be allotted to Choctaw Freedmen." (Intervenor's Requested Finding No. 5, et seq.) Intervenor sought to support this position with depositions of some length by custodians of the records of the Chickasaw Nation at the Oklahoma State Historical Society to the effect that no tribal records existed to show the

Chickasaws had ever sought recovery for the claim they now present in this suit. History of the controversy is to the contrary; but if contention of intervenor is correct, this would not affect the right of petitioner to assert this claim. Furthermore, we do not consider the question of liability of intervenor to petitioner, because this is not within the jurisdiction of this Commission.

The questions of liability in this case are stated by defendant at pages 49, et seq., of its brief as being whether or not defendant "assumed any liability" to compensate petitioner, the Chickasaw Nation, for one-fourth of the land allotted to adopted freedmen of the Choctaw Nation or whether defendant acted other than in a fair and honorable manner toward petitioner in the matters alleged.

The defendant further contends that neither pleadings nor evidence of petitioner raise any question (of mutual or unilateral mistake) under Clause (3), Section 2 of the Indian Claims Commission Act as to petitioner's right of compensation for its one-fourth interest in lands allotted Choctaw freedmen. (Dft's Br., pp. 50-57)

The question of whether defendant "assumed liability" by the express terms of the Supplemental Agreement of 1902, was answered negatively by the Supreme Court in 1943.

We quote from Paragraph 21 of the petition, in part, as follows:

Petitioners allege * * * 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 * * * the treaties of 1898 and 1902 were executed without any consideration whatsoever; and that the facts were entirely misrepresented to petitioner herein by reason of the language employed in the drafting of the treaty; the clear understanding both of them (Chickasaws) and the Choctaw Nation, was that the Chickasaws would be

adequately compensated for their 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. * * *

The sufficiency of this petition to state causes of action under Clauses (3) and (5) of Section 2 of the Indian Claims Commission Act seems obvious, and was upheld in the denial of defendant's Motion for Summary Judgment. (132 C. Cls. 359)

Mistakes are generally classified as unilateral or mutual, and as mistakes of fact or of law. (12Am. Jr., Contracts, 125) The petitioner has pleaded a unilateral mistake of fact in that petitioner was mistaken in its understanding of that portion of the Supplemental Agreement of 1902, as is quoted in Paragraph 17 of its petition.

In support of this contention petitioner traces a long legal history of consistently claiming this right in land, or compensation therefor, in all of its related negotiations with the Government prior to its alienation of such land by the terms of the Supplemental Agreement of 1902 (Findings 2 to 13, inclusive), and thereafter, that petitioner has always insisted upon compensation for its one-fourth interest in such allotments to Choctaw freedmen. (Findings 15 to 20, inclusive)

The petitioner strongly contends that Sections 36 to 40, inclusive, of the the Supplemental Agreement of 1902 (32 Stat. 641), which was captioned with a sub-heading "Chickasaw Freedmen", also applied to Choctaw freedmen. Petitioner bases this contention upon the insertion of the proviso at the end of Section 40, which reads:

That nothing in this paragraph shall be construed to affect or change the existing status or rights of the two tribes as between themselves respecting the lands taken for allotment to freedmen, or the money, if any, recovered as compensation therefor, as aforesaid.

The Supreme Court in its opinion reversing the Court of Claims (318 U.S. 423, 432, (1943)) held that the 1902 agreement must be construed according to its unambiguous language and that said language did not provide the protection of petitioner as petitioner alleged was the understanding of the parties as to same.

This Commission must consider the transactions involved under the statutory grounds as urged by petitioner under Clauses (3) and (5) of the Indian Claims Commission Act. (60 Stat. 1049)

We observe that counsel for the Choctaw Nation construed the agreement as providing that allotments in question were to be charged to the Choctaws; and the Chickasaws construed the agreement likewise. (Finding 16) The Court of Claims also interpreted the 1902 agreement to grant petitioner the relief here prayed for. (95 C. Cls. 192)

We have found that petitioner thought the proviso added to Section 40 of the 1902 "Supplemental" agreement preserved its substantive rights under the 1897 Atoka Agreement wherein the Choctaw freedmen allotments were to be deducted solely from Choctaw's interests in the undivided common domain. (Finding 20)

The conduct of the Choctaws in their "Application for Additional Decree" (Finding 15), the conduct of the Chickasaws in their request for separate counsel, (Finding 16) and the findings and opinion of the Court of Claims (1941), 95 C. Cls. 192, all uniformly support the petitioner's contentions of unilateral mistake (if not mutual mistake)

in interpreting the 1902 agreement. Neither the Atoka Agreement, nor the Curtis Act in any way purported to charge the Chickasaws with any obligation to furnish Choctaw freedmen with allotments. Nowhere in the 1902 agreement can it be said that it was expressly provided such allotments were to be charged one-fourth to the Chickasaws, but only that the 1902 agreement omitted to carry over the principle of aliquot allotments in favor of fixed acreage allotments to tribal members and therefore the Atoka Agreement became inconsistent with the 1902 agreement. The Atoka provision of "deduction" from Choctaws for Choctaw freedmen allotments was thus declared nullified. Such construction, however necessary to contract law, overlooks the fact that petitioner's property rights were alienated without any consideration passing to them. The sections 36 to 40, inclusive, in the 1902 agreement clearly and expressly laid down a means of adjustment for allotments granted to Chickasaw freedmen. The Government having therein enunciated a policy as to the Chickasaw freedmen, we conclude petitioner was thereby misled into believing the same principle applied as to the Choctaw freedmen.

Defendant urges that even if such mistake of construction were admitted, it would not grant petitioner anything but a chose-in-action and furnishes no basis upon which this Commission can grant to the petitioner the relief sought as against the United States. (Dft's Br. pp. 56-57)

The Court of Claims tried this claim of petitioner under the enabling act of Congress passed on June 7, 1924 (43 Stat. 537). The Court stated in its opinion (95 C. Cls. 192, 203):

It would have been strange for plaintiff to have, for no reason which has been suggested, yielded its position on the question 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 this 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 the Choctaws understood the proviso (added to section 40 of the 1902 agreement) as we have interpreted it.

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

Although the Supreme Court in its review of this decision reversed the case, the difference of opinion as to the proper construction of the 1902 agreement conclusively establishes the two different interpretations of the respective courts and therefore the reasonableness of petitioner's mistaken interpretation, and we find that petitioner did misapprehend and misinterpret the 1902 agreement. (Finding 20)

The defendant admits its responsibility for "the plan involved in the Atoka and Supplemental Agreements was for the Government to distribute the tribal estate of the two Indian tribes to those persons entitled thereto." (Def's Br., pp. 65-69) According to the decision of Hitchcock vs. Cherokee Nation, 137 U.S. 294, 306:

* * * the United States practically assumed the full control over the Cherokees as well as the other nations constituting the five civilized tribes, and took upon itself the determination of membership in the tribes for the purpose of adjusting their rights in tribal property * * *

This reference is made to the Curtis Act of which the Atoka Agreement formed a part. (30 Stat. 495) Thus, the United States had sole responsibility for failing to provide just compensation to petitioner for the loss of its property rights. We therefore conclude the United States is liable for the wrongful taking of petitioner's property, and allotting such interest to another without providing for compensation to petitioner.

In Sioux Tribe of Indians vs. United States, Ct. Cls. 146 F. Supp. 229, at page 237, (1956) involving^a question of relationship of the Government to the Sioux Tribe, where the Government had required a cession of certain reservation lands, Judge Laramore noted that the absence of an express guardianship-ward legal relationship between the parties did not leave a general presumption of "arm's length" negotiation, but expressed the jural principle, as follows:

* * *However, we do not find that the legal relationship of guardian and ward did exist between the United States and the Sioux. While it has often been said by this court and the Supreme Court that the relationship of the Government to the Indians of the United States is similar to that of a guardian and ward, it has never been held that such a general relationship amounts to a legal guardian-ward relationship in the absence of some specific language to that effect in a treaty, agreement, or act of Congress. In the absence of such specific language, the general relationship of the United States to the Indians has been that of a strong and powerful sovereign to a comparatively weak and defenseless people, and because of that fact, the courts have likened the relationship to that of guardian and ward and held that doubts in treaties and agreements should be resolved in favor of the weak and defenseless party to such agreements and treaties.

In the familiar case of Gila River Pima-Maricopa Indian Community v. United States, Ct. Cl. 140 F. Supp. 776, 780, the Court of Claims stated:

Whether or not the legal relationship of guardian and ward existed between a particular Indian tribe and the United States depends, we think, upon the express provisions of the particular treaty, agreement, executive order, or statute under which the claim presented arises. It is true that the word "fiduciary" and the expression "guardian-ward relationship" have been used by the courts to describe generally the nature of the relationship existing between the Indians and the Government. However, in the absence of some language in a treaty, agreement or statute spelling out such a relationship, the courts seem to have meant merely that the relationship between the Indians and the Government is "similar to" or "resembles" such a legal relationship and that the doubtful language in the treaty or statute under consideration should be interpreted in favor of the weak and dependent Indians. (Citing *Creek Nation v. United States*, 318, U.S. 629, 642)

This Commission commented upon the above-mentioned Gila River case in the Omaha Tribe, et al, v. United States (6 Ind. Cl. Com. 68, 73-74, as follows:

While the court recognized that a claim for breach of such fiduciary relationship may be brought under the provisions of the Indian Claims Commission Act, it in no way intimated that the act itself created or acknowledged the existence of such fiduciary relationship as a matter of law. An examination of the legislative history of the act shows that the United States is not to be considered in the role of an ordinary fiduciary whenever a legal claim is filed before the Commission, but whether the United States is or is not acting as a fiduciary must be determined under the facts in each particular case.

In an earlier case, similar in a number of respects to the case at bar, involving an 1867 treaty where the Government supervised the sale of certain surplus lands of the Pottawatomies for an adequate and conscionable consideration to a railroad, this Commission, after finding that the Government had in all respects assumed by treaty the administrative control and custody of the Indian property for purposes of sale, as in the case at bar, and that under such facts and circumstances the Government had a fiduciary duty to fairly and honorably deal with the petitioner's property, including provision for just and reasonable compensation for such Indian lands granted to the railroads. (Citing

question of fiduciary duty arising from such relationship established by treaty, this Commission stated, as follows:

The claimants seem to make no distinction between the fiduciary duties the Government owed the Pottawatomie Tribe and its failure to deal fairly and honorably with it as a ground for recovery. Whether there is a legalistic distinction between the two duties, or whether one is included in the other as a ground of recovery, we shall not stop to discuss because, we believe, that under the circumstances of this case, the Government did not fulfill its fiduciary duties to the Pottawatomie Tribe and did not deal fairly in inducing said tribe to sell its surplus lands to the Santa Fe Railroad at a price of one-half its value.

Defendant under the terms of the Atoka and Supplemental Agreement of 1902, took over complete management, control and custody of petitioner's property interest and awarded allotments in same to Choctaw freedmen without providing compensation therefor to petitioner tribe - (Finding 11 and 17).

The Government thereby assumed direct control over the property of the Indians, not for its own direct benefit, but for the benefit of the owners, to liquidate and otherwise distribute same. Defendant thereby assumed such powers and functions, and we think, duties and obligations over petitioner and its property as to become in the nature of a trustee for liquidation purposes. Such failure to arrange and provide compensation to petitioner, on the part of the United States, was not an instance merely of "unconscionable consideration", it was a taking of property without any compensation to petitioner. Whether the Government took petitioner's interest in the common land and awarded it to freedmen of

another tribe from neglect or oversight, or mistake, or for whatever the reason, or how worthy the purpose, the salient fact is that the Government did not provide for any compensation to be paid petitioner for its interest in same. (Finding No. 17) Petitioner has repeatedly complained about this since 1908.

We conclude that defendant, having undertaken such allotments of petitioner's one-fourth interest in lands owned in common with the Choctaw Nation and awarded them to Choctaw freedmen, has the moral obligation, as a matter of fair and honorable dealing, and the legal obligation, under the terms of clause 5 of Section 2 of the Indian Claims Commission Act, to provide for compensation to petitioner for such loss. This the Government refused to provide by deductions of same from the Choctaw Tribe's funds in its custody. The failure of the defendant to enforce the true intent and understanding of the parties to the proviso of Section 40 of the Supplemental Agreement (Finding 20) at a time when it had full control over the lands and funds of the Choctaw and Chickasaw Nations and when it could have adjusted the rights of the Chickasaws in these lands was unquestionably unfair and resulted in an injustice to the Chickasaw Nation.

Of course, if defendant had expressly "assumed liability" there would be nothing to decide here. The petitioner was a dependent Indian community under the protection of the United States (Finding 2) and its property and affairs were subject to the control and management of the Government. The United States gave it to others without arranging any obligation to pay compensation for it.

It follows from the foregoing opinion and findings of fact made by this Commission that the defendant became liable to petitioner for the value of petitioner's interest in the land allotted to the Choc-taw freedmen. It is undisputed that the value of same was \$190,934.78. (Finding 18) The facts constituting such liability therein are not such as to create liability for interest. (119 Ct. Cls. 592, 671).

The matter of credits and offsets will be considered at a subsequent hearing of this Commission.

Edgar E. Witt
Chief Commissioner

I concur:

Wm. M. Holt
Associate Commissioner

I dissent:

Louis J. O'Narr
Associate Commissioner