

BEFORE THE INDIAN CLAIMS COMMISSION

THE CREEK NATION,

Plaintiff,

v.

Docket No. 292

THE UNITED STATES,

Defendant.

Decided: February 18, 1959

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Plaintiff, the Creek Nation of Indians, is a tribe of American Indians within the meaning of the Indian Claims Commission Act, and as such is authorized to bring this cause of action under Sec. 2 of said Act. This claim is not included in any suit pending in the Court of Claims or the Supreme Court of the United States, nor was it pending in the Court of Claims under any legislation in effect on the date of approval of said Indian Claims Commission Act (Pltf's Req. Find. No. 1 and Dft. Req. Find. No. 1)

2. Plaintiff asserts a claim in law under Clause (1), Sec. 2, Indian Claims Commission Act. The claim is in the nature of an action of debt asking payment for sums allegedly owing and unpaid and obligations unfulfilled, due plaintiff under Treaties of 1802, 1805, 1832, 1833, and 1856.

3. The relation of guardian and ward as between the plaintiff and the defendant has not been established by competent or relevant evidence.

4. Article II of the Treaty of June 16, 1802 between the Creek Nation and the United States, proclaimed January 11, 1803 (7 Stat. 68) provided in part as follows:

The commissioners of the United States, for and in consideration of the foregoing concession on the part of the Creek Nation, and in full satisfaction for the same do hereby covenant and agree with the said nation, in behalf of the United States, that the said states shall pay to the said nation, annually, and every year, the sum of three thousand dollars, and one thousand dollars of the term of ten years, to the chiefs who administer the government, agreeably to a certificate under the hands and seals of the commissioners of the United States, of this date, and also twenty-five thousand dollars in the manner and form following, viz. Ten thousand dollars in goods and merchandise, the receipt of which is hereby acknowledged; ten thousand dollars to satisfy certain debts due from Indians and white persons of the Creek country to the factory of the United States; the said debts, after the payment aforesaid, to become the right and property of the Creek Nation, and to be recovered for their use in such way and manner as the President of the United States may think proper to direct; five thousand dollars to satisfy claims for property taken by individuals of the said nation, from the citizens of the United States, subsequent to the treaty of Colorain, which has been or may be claimed and established agreeably to the provisions of the act for regulating trade and intercourse with the Indian tribes, and to preserve peace on the frontiers. \* \* \* \*

Article IV of said treaty provided:

The contracting parties to these presents, do agree that this treaty shall become obligatory and of full effect so soon as the same shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof.

This treaty became effective on January 11, 1803, the date of its proclamation by the President. Thereunder the United States was obligated by the above treaty stipulation to pay said perpetual annuity of \$3,000.00 per annum beginning with the year 1803 through the fiscal year 1902 (Cl. Ex. 1, pp. 111, 708), when this permanent annuity was funded under the Act of May 27, 1902

(32 Stat. 249)--a period of 100 years, less the Civil War period of six years (fiscal years 1862 through 1867),\* leaving a net obligation of the United States to pay said permanent annuity to the Creek Nation over a period of 94 years at \$3,000.00 per annum, or a total obligation of \$282,000.00, under the above Article II.

The total obligations of the United States under said Article II for which this claim is based are set forth as follows:

Permanent annuity of \$3,000.00 per annum for 94 years .....	\$282,000.00
Annuity to chiefs, \$1,000.00 per annum for 10 years .....	10,000.00
In goods and merchandise, receipt of which was acknowledged .....	10,000.00
To satisfy certain debts due from Indians and white persons of the Creek country to the factory of the United States.....	10,000.00
To satisfy claims for property taken by individuals of the Creek Nation, from citizens of the United States subsequent to the Treaty of Colerain.....	5,000.00
	<u>\$317,000.00</u>

The defendant agrees that the obligation of the United States under the provisions of the aforesaid treaty is the amount of \$317,000.00 as hereinabove stated.

Plaintiff admits the payment and disbursement by the United States to the Creek Nation on said treaty obligation and in the amount of \$254,690.25 (as itemized in its Req. Find. No. 4) and claims a balance due under said treaty obligation in the amount of \$62,309.75.

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\*The Creek Nation has eliminated any claim in this case for annuity payments due from the United States during the Civil War period, or for the fiscal years 1862-1867, 6 years, this period being covered by separate petition in Docket No. 274 (R. 3).

The General Accounting Office report shows that unallocated payments and goods of the value stated were paid and forwarded to the Creek Indians within the years stated as follows:

<u>Year</u>	<u>Value of Goods</u>	<u>Remarks</u>
1803	\$ 3,000.00	Annuities for Creeks
1803	1,008.08	Goods for Creek Chiefs
1804	4,150.84	Annuities for Creeks
1804	1,100.07	Goods for Creek Chiefs
1805	4,000.24	Annuities for Creeks
1805	500.16	Goods for Creek Chiefs
1805	4,000.00	Annuity for year 1805
1806	6,000.50	Annuity for year 1806
1806	6,673.85	Annuity for year 1806
1807	1,000.08	Goods for Upper Creek Chiefs
1807	499.05	Goods for Lower Creek Chiefs
1807	6,025.06	Annuity for Upper Creeks
1807	5,999.39	Annuity for Lower Creeks
1808	7,646.46	Annuity for Upper Creeks
1808	8,250.45	Annuity for Lower Creeks
1808	501.38	Goods for Lower Creek Chiefs
1808	499.90	Goods for Upper Creek Chiefs
1809	500.41	Goods for Upper Creek Chiefs
1809	348.98	Goods for Lower Creek Chiefs
1809	7,300.40	Annuity for Upper Creeks
1809	7,749.64	Annuity for Lower Creeks
1809	508.51	Annuity for year 1809

These unallocated goods forwarded amount to \$77,263.45 and consist of \$71,305.34 in annuities and \$5,958.11 to Chiefs for the period 1803-1809, inclusive (Dft. Ex. 142, p. 103)

These disbursements are disbursements which the General Accounting Office cannot definitely and clearly identify as having been disbursements in fulfillment of the obligations of the Treaty of 1802 or 1805.

In addition to the foregoing goods forwarded, which the General Accounting Office cannot allocate to any treaty stipulation due (Says General Accounting Office) to incompleteness of records, said report shows additional disbursements for the benefit of the Creek Indians for purposes stipulated in various treaties.

the Creeks, which the Accounting Office says cannot be identified as having been disbursed in fulfillment of any particular treaty and are, therefore, not allocated to any specific treaty as follows:

	<u>1811</u>	<u>1815</u>	<u>1817</u>	<u>1818</u>
Annuity, goods	\$3,350.00	\$4,300.00		
Annuity, cash				\$6,547.00
Claims (depredations)			\$2,000.00	5,801.00
Cash payments to Chiefs	200.00			

These disbursements amount to \$22,198.00 and consist of \$14,197.00 annuity disbursements, \$7,801.00 claims and \$200.00 payment to Chiefs. (Dft. Ex. 142, pp. 685-689)

5. Article III of the Treaty of November 14, 1805, between the Creek Nation and the United States, proclaimed June 2, 1806 (7 Stat. 96, 2 Kapp. 85), provided as follows:

"It is hereby stipulated and agreed, on the part of the United States, as a full consideration for the land ceded by the Creek nation in the first article as well as by permission granted for a horse path through their country, and the occupancy of the reserved tract, at the old Ocmulgee fields, that there shall be paid annually to the Creek nation, by the United States for the term of eight years, twelve thousand dollars in money or goods, and implements of husbandry, at the option of the Creek nation, seasonally signified from time to time, through the agent of the United States, residing with said nation, to the department of war; and eleven thousand dollars shall be paid in like manner, annually, for the terms of the ten succeeding years, making in the whole, eighteen payments in the course of eighteen years, without interest. The first payment is to be made as soon as practicable after the ratification of this convention by the government of the United States, and each payment shall be made at the reserved tract, on the old Ocmulgee fields."

Article V. of said treaty provided in part:

"\* \* \* and this convention shall be obligatory on the contracting parties as soon as the same shall have been ratified by the government of the United States."

Said treaty became effective on June 2, 1806, when proclaimed (2 Kapp. 85).

The total obligation of the United States to the Creek Nation under said Article III was as follows:

\$12,000.00 annually for 8 years in money, or goods, and implements of husbandry, at the option of the Creek Nation . . .	\$ 96,000.00
\$11,000.00 annually for 10 succeeding years, to be paid in like manner . . . . .	\$110,000.00
Total obligation. . .	\$206,000.00

The report of the Accounting Office shows annual appropriations to fulfill the above obligation, but disbursements definitely allocated to the fulfillment of the obligations of this treaty are in the amount of \$169,452.25.

The defendant admits the obligation under said treaty to be in the amount of \$206,000.00 as above stated. The unallocated disbursements by defendant, as stated in the preceding finding, in the total amount of \$99,461.45 is in excess of the amounts claimed by the plaintiffs as being due and unpaid under the obligations of both the Treaties of 1802 and 1805.

6. Under Article XIII of the Treaty of March 24, 1832 between the United States and the Creek Nation (7 Stat. 366), it was provided that \$3,000 should be expended, as the President might direct, for the term of twenty years for teaching plaintiffs' children. The total obligation of the United States to the Creek Nation under said Article XIII amounted to \$60,000.00. This is agreed to by defendant.

Article 4 of a Treaty of January 4, 1845 between the Creek Nation and the United States (9 Stat. 821) provided for an additional annual annuity by the United States for the purpose of education of the children of plaintiff in the amount of \$3,000.00 per year should be allowed for a term of twenty years and that the annuity of \$3,000 per year provided in the Treaty of 1832 should

be continued until the termination of the educational annuity provided in said 1845 treaty.

Article 5 of the Treaty of August 7, 1856 between the United States and the Creek Nation (11 Stat. 699) amended and continued Article 4 of the Treaty of 1845 (and the Treaty of 1832) by providing for an annuity of \$6,000 per annum for education for seven years.

The plaintiff approves fulfillment by the defendant of the obligations of the Treaty of 1832 in the amount of \$49,938.99 as itemized in its Requested Finding 6 and contends that there is a balance due from said obligation in the amount of \$10,661.01. This credit in the amount of \$49,938.99 is for disbursements up to and including the year 1851 only; however, there were disbursements for the period 1852 to 1861 in the amount of \$60,673.23 (Dft's Ex. 185, 186) in fulfillment of the obligations of the treaties of 1832 and 1845 that defendant contends is in full settlement of its obligation made by the Treaty of 1832 and renewed and enlarged by the Treaty of 1845.

7. Article V of the Treaty of February 14, 1833 between the United States and the Creek Nation (7 Stat. 417) provided in part as follows:

"As an evidence of the kind feeling of the United States towards the Muskogee Indians, and as a testimonial of the their gratification with the present amicable and satisfactory adjustment of their difficulties with the Cherokees, experienced by the commissioners, they agree on behalf of the United States, to furnish to the Creek Indians west of the Mississippi, one blacksmith and one wheelwright or wagonmaker, as soon as they may be required by the nation, in addition to those already employed -- also, to erect shops and furnish tools for the same, and supply the smith shops with one ton of iron and two hundred and fifty pounds of steel each; and allow the said Creek Indians, annually, for education purposes, the sum of one thousand dollars, to be expended under the direction of the President of the United States--the whole of the above grants to be continued so long as the President may consider

them conducive to the interest and welfare of the Creek Indians: And the United States will also cause to be erected, as soon as conveniently can be done, four patent rail way mills, for grinding corn; and will immediately purchase for them twenty-four cross-cut saws. \* \* \*

Article IX of said treaty provided:

"This agreement shall be binding and obligatory upon the contracting parties, as soon as the same shall be ratified and confirmed by the President and Senate of the United States."

This treaty became binding upon the parties on April 12, 1834, when proclaimed (2 Kapp. 388).

Petitioner contends that the obligation of the United States under said treaty was for a period of 39 years (omitting the Civil War years) at \$2,710.00 per annum or a total obligation of \$105,690.00; and that the report of the General Accounting Office showed expenditures in fulfillment of said treaty obligation by the United States in the amount of \$80,981.45 (items appearing in its Req. Find. No. 7) and that there is a balance due under said treaty obligation of \$24,708.55 (Pltf. in its reply brief claims a credit of \$4,696.00 was erroneously given defendant and that the balance due is \$29,404.55, Reply Brief pp. 32, 33)

There is no proof in the record as to any pecuniary loss suffered by the petitioner, nor as to the need of services of blacksmiths or other equipment which the treaty obligated the defendant to provide, nor is there any evidence of any demand having been made by petitioner for services or equipment to be supplied.

8. Article VI of the Treaty of August 7, 1856 between the United States and the Creek Nation (11 Stat. 699) provided in part as follows:

"In consideration of the foregoing quit-claim, relinquishment,



release, and discharge, and of the cession of a country for the Seminole Indians contained in the first article of this agreement, the United States do hereby agree and stipulate to allow and pay the Creek Nation the sum of one million of dollars, which shall be invested and paid as follows, viz: two hundred thousand dollars to be invested in some safe stocks, paying an interest of at least five per cent, per annum; which interest shall be regularly and faithfully applied to purposes of education among the Creeks; \* \* \*"

Plaintiff claims an obligation of defendant under the above provision to pay \$10,000 as interest to the plaintiff for the years 1857 to 1861, both inclusive -- a total of \$50,000 upon which obligation the plaintiff contends the defendant still owes \$29,000. (Pet. Req. Finding No. 8).

In a treaty dated July 10, 1861, between the plaintiff and the Confederate States of America, it was agreed that the Confederate States of America would pay said sum of \$29,000 due and owing by the United States. (Dft's Ex. 159, page 297)

The Confederate States paid the \$29,000 and plaintiff accepted the same. (Dft's Ex. 160, p. 232; Dft's Ex. 166 - 170, 173).

The United States Congress also approved the payment of the \$29,000 involved in this claim for the benefit of Indians remaining loyal to the United States during the Civil War, which expenditure the plaintiff Indians approved and ratified in the Treaty of June 14, 1866 (14 Stat. 785, 790).

9. The treaty of defendant with the Creek and Seminole Tribes of Indians of August 7, 1856 (11 Stat. 699) provided in Article V thereof that all claims and demands whatsoever which the Creek Nation might have against the United States, excepting only those continued as set out in said article, should be released and fully discharged.

Many of the claims asserted by the plaintiff herein are not among those specifically mentioned in said treaty provisions as being continued as liabilities of the defendant.

10. There is not sufficient evidence in the record to show that any of the indebtedness claimed by the plaintiff has not been discharged.

/s/ Edgar E. Witt  
Chief Commissioner

/s/ Louis J. O'Marr  
Associate Commissioner

/s/ Wm. M. Holt  
Associate Commissioner