

BEFORE THE INDIAN CLAIMS COMMISSION

THE CREEK NATION,)
)
 Plaintiff)
)
 vs.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 292

Decided: Feb. 18, 1959

Appearances:

Mr. Paul E. Niebell
Attorney for Plaintiff

Mr. Keith Browne, with whom
was Mr. Assistant Attorney
General, Perry W. Morton,
Attorneys for Defendant

OPINION OF THE COMMISSION

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

The plaintiff in its original petition asserts that it was the owner of trust and other funds, which said trust and other funds were held in trust by the defendant and paid and administered for the use and benefit of plaintiff, and that it was provided by the treaties between plaintiff and defendant that said trust and other funds were to be managed and invested and otherwise disposed of by defendant for the benefit of plaintiff, said treaties being specifically referred to in later allegations of said petition.

However, in the several claims thereafter in the petition specifically set out, no one of said claims in the opinion of this Commission, is shown to involve trust funds.

present law suit. The decision of the Supreme Court cited was rendered on May 11, 1942. Some of the funds involved in that case grew out of treaties and obligations of debt created thereby. Others were trust funds.

The language quoted by the plaintiff from that decision was with regard to a claim based on alleged liability for a trust fund, provided by Article VIII of a Treaty of 1856 (11 Stat. 699), which fund was to be invested and managed for the plaintiff by the Government. At a later date (Nov. 5, 1945) the Supreme Court held by refusing Writ of Certiorari that a mere indebtedness of the Government to an Indian Tribe was not a trust fund.

We refer to the case of the Chickasaw Indians against the United States (in which, by the way, Mr. Paul M. Mebell, who is counsel in this case, was counsel therein) reported in 103 C.Cls. 1-57, as to which the Supreme Court on November 5, 1945 denied certiorari as to the judgment on the merits. This case involves, among other claims, plain and simple treaty obligations of the United States to the plaintiff Indians, as to which the plaintiff claimed nonpayment and non-fulfillment. As in the case at bar the evidence upon which the plaintiff relied for the nonfulfillment of the obligations, and its right to recover therefor, was a failure of the defendant to prove compliance and fulfillment. In many instances there was a showing of merchandise due and owing by the defendant to the plaintiff, and by the defendant, merely a memorandum of purchase for the plaintiff, but no showing of actual

Delivery to the plaintiff. There being no proof on the part of the plaintiff that it did not get the goods and value. The plaintiff therein contended, as in the case at bar, that the burden was on the defendant to prove delivery to plaintiff, or payment to plaintiff. A statement of the Court as to same is applicable to many of the situations in the case at bar; "for the years 1798, 1799, and 1800 goods of the annuity values were forwarded from the War Department Storehouse in Philadelphia for the Chickasaw Nation. It must be presumed that they were received in due course. (underscoring supplied) To require defendant to prove affirmatively that the goods were received (the proof at this late date would have to be documentary) would place an impossible burden where it does not rightfully belong. The burden is upon the plaintiff to prove its case. While the jurisdictional act waives the lapse of time, it does not thereby shift the burden of proof to the defendant, nor does the jurisdictional act by its terms excuse the absence of proof by the plaintiff."

Other claims in the Chickasaw case were for deposits of Chickasaw money to other tribes. The Court says: "there is lack of proof that the deposits were erroneously made. The mere fact of deposit to other than a Chickasaw fund, without more, does not entitle plaintiff to recover * * *" "No judgment of recovery can be based on the showing made." (p. 42)

There were some items of claim allowed in the Chickasaw case, items in which the burden of proof was not involved. Offsets were allowed, however, which wiped out the entire amount of the annuity.

