

BEFORE THE INDIAN CLAIMS COMMISSION

THE CREEK NATION, Plaintiff,

v.

THE UNITED STATES, Defendant.

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Docket No. 166

ORDER OF DISMISSAL

On January 29, 1968, the Creek Nation of the State of Oklahoma, plaintiff, by its attorney of record, filed a motion herein to dismiss the petition in the above entitled cause, and on February 9, 1968, the defendant filed a response thereto and joined with plaintiff in requesting that the Commission enter an order dismissing the above entitled proceeding.

The Commission finds that the claim herein presented by the plaintiff is for revision of the Creek Treaty of June 14, 1866, 14 Stat. 785, which provided that former Creek slaves (the so called Creek Freedmen) should have all the rights of native Creeks. The petition alleges that the Creek Nation agreed to this portion of the treaty as a result of duress on the part of the defendant, that no proper consideration was provided by the defendant for the tribal property which was distributed to the freedmen, as a result of the treaty, and that the dealings of the United States with the Creek Nation with respect to this matter were not fair and honorable. Recovery is sought for the value of that portion of the tribal funds and lands which were distributed to the freedmen as members of the Creek Nation.

The claim of the plaintiff was tried on the merits before the Commission on December 12, 1966, and at the end of said trial it was agreed by all parties that since a similar claim of the Cherokee Nation in Docket No. 190 had been denied by the Commission and was pending on appeal before the Court of Claims, the briefing of the claim in this Docket No. 166 should await the decision of the Court of Claims.

Whereas, the plaintiff concedes in its motion to dismiss that its claim is similar to the claims filed with the Commission by the Seminole and Cherokee Nations in Docket Nos. 152 and 190, respectively, and that in both of those cases the Commission denied recovery, 10 Ind. Cl. Comm. 450; 12 Ind. Cl. Comm. 570; that the Cherokee Case was appealed to the United States Court of Claims, and that Court affirmed the Commission's

decision denying recovery (Appeal No. 5-66, decided May 12, 1967). Plaintiff further concedes that in view of the decisions of the Commission and the Court of Claims in the Seminole and Cherokee cases, and the further holding of the Court of Claims in Creek Nation v. United States, 168 C. Clms. 512, that claimants are bound by facts found by the Court in prior litigation under the doctrine of collateral estoppel, and whereas, on July 29, 1967, the Creek Council, with the approval of the Principal Chief of the Creek Nation, authorized the dismissal of this case, and thereafter, by letter dated January 16, 1968, addressed to the attorney of record for plaintiff, the Acting Deputy Assistant Commissioner of Indian Affairs, Department of the Interior, approved the said dismissal and authorized said attorney to proceed to have this Docket No. 166 dismissed by the Commission, and

Whereas, after considering the pleadings and the evidence submitted, it appears to the Commission that plaintiff's motion to dismiss should be sustained,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the petition in this Docket No. 166 be, and the same is hereby dismissed.

Dated at Washington, D.C. this 13th day of February, 1968.

/s/ Wm. M. Holt  
Wm. M. Holt, Commissioner

/s/ T. Harold Scott  
T. Harold Scott, Commissioner

/s/ Jerome K. Kuykendall  
Jerome K. Kuykendall, Commissioner

/s/ John T. Vance  
John T. Vance, Commissioner

/s/ Richard W. Yarborough  
Richard W. Yarborough, Commissioner