BEFORE THE INDIAN CLAIMS COMMISSION

THE CREEK NATION, )

v. ) Docket No. 274

THE UNITED STATES OF AMERICA, )

Decided: November 5, 1968

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Creek Nation, a tribal plaintiff herein, has the right and capacity under Section 2 of the Indian Claims Commission Act of 1946 (25 U.S.C. 70a) to bring suit against the defendant. The suit at bar was timely filed and has not heretofore been the subject of any decision by the Indian Claims Commission.

2. Prior to the Civil War, the plaintiff was a party to a number of treaties with the defendant, as a consequence of which the plaintiff was the beneficiary of annuities payable periodically.

On July 10, 1861, the plaintiff unilaterally abrogated each and every treaty which it then had with the defendant by entering into a treaty with "The Confederate States of America". During the Civil War the Creek Nation, as a political entity, remained and fought as an enemy of the defendant. During the same period, numerous individual Creek Indians
refrained from adhering to the treaty which their Nation concluded with the Confederacy.

3. Shortly before the plaintiff entered into its treaty with the Confederacy, the defendant withdrew its troops from the Indian Territory. Those Creek Indians, and other Indians, who declined to adhere to their respective Nations' treaties with the Confederacy, withdrew from the Indian Territory and became refugees. Many who were able-bodied became soldiers in the Union Army. Those who did not fight were subsisted by the defendant. The subsistence was funded by monies which would have been payable as Indian tribes' annuities, but for the fact that the tribes were at war with the United States in the cause of the Confederacy. Such funds, after individual appropriation, were commingled and expended for the subsistence of refugees on an "as needed" basis and no effort was made to assure that, for instance, Creek funds were used only to subsist Creek refugees. In fact, funds attributable to Creek treaties in pre-war days were spent on many Indians who were not Creeks. Accounts of expenditures were kept.

4. When the Civil War was over, negotiations were held at Fort Smith, Arkansas, between representatives of lately-hostile Indian tribes and the United States, with a view toward eventual restoration of treaty relationships. The representatives of the United States at those negotiations conducted themselves and the negotiations fairly and honorably without fraud or duress.

The Fort Smith negotiations did not result in a consummated treaty. Further negotiations were set for Washington, D. C., early in 1866.
The latter negotiations led to a treaty of settlement and cession dated June 14, 1866 (14 Stat. 785). In the preamble, the Creek Nation acknowledged its Civil War complicity with the Confederacy. In Article 3, the Creek Nation unwillingly agreed to contribute $100,000.00 toward indemnification of Creek refugees, Creeks who became soldiers on the Union side, and Creek freedmen. The United States subsequently contributed one million two hundred thousand dollars to the same indemnification fund, the Creek Nation contribution amounting to only 7.7% of the whole. The 11th Article of the 1866 treaty was a general release by the Creek Nation for, among other things, the diversion of Creek annuities to the war-time problem of subsisting refugees. For the limited purposes of this decision, the plaintiff's net figure for this diversion, $331,916.39, is taken as correct.

5. The concessions made by the United States and embodied in the treaty of 1866 amounted to substantial and adequate, though largely non-monetary, consideration supporting the concessions made by the Creek Nation.

Whatever the relationship between the parties may have been prior to July 10, 1861, there was no fiduciary relationship between the United States and the Creek Nation, both belligerents, during the Civil War.

Neither the 1865 negotiations antecedent to, nor the 1866 negotiations which led to, the 1866 treaty were tainted by any suggestion or fact of lack of fair and honorable dealings on the part of the negotiators for the United States.
6. The plaintiff has failed to prove either of the causes of action set out in the case at bar; the entire case merits no recovery and will be dismissed herewith.

John T. Vance, Chairman

Jerome K. Kuykendall, Commissioner

Richard W. Yarbrough, Commissioner