BEFORE THE INDIAN CLAIMS COMMISSION

THE CHICKASAW NATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 270
	)	
THE UNITED STATES,	)	
	)	
Defendant.	)	

Decided: January 16, 1969

Appearances:

Paul M. Niebell and James G. Welch, Attorneys for Plaintiff.

Frederick C. Ward, Jr., and Keith Browne, with whom was Mr. Assistant Attorney General Clyde O. Martz, Attorneys for Defendant.

OPINION OF THE COMMISSION

Pierce, Commissioner, delivered the opinion of the Commission.

The above-captioned suit arose out of Civil War events. During that conflict, the Chickasaw Nation as a political entity was in actual hostility to the United States. Consequently, payment of annuities to the Chickasaw Nation as a political entity was suspended, and sums equivalent to the aggregate of the annuities were expended for the Civil War subsistence of refugee Indians. Some, but not all, of the beneficiaries were Chickasaws. In Count I herein, the plaintiff seeks the recovery of not more than $237,384.09 which is the total so suspended and expended.

When peace was restored and treaty relationships between the United States and the lately hostile Indian tribes were reinstated, the Chickasaw Nation as a political entity was obligated to expend a sum out of Chickasaw funds to individual Chickasaws who suffered damages during the Civil War as a consequence of their adherence to the cause of the Union. Recovery of this sum is the object of Count II herein.

No trial of Docket No. 270 has been conducted by this Commission. However, Count I was considered - and rejected - by the Court of Claims under a special jurisdictional act, 43 Stat. 537 (1924), along with a number of other Chickasaw claims not here relevant. Count II has never been subject to judicial scrutiny. See Chickasaw Nation of Indians v. United States, 103 Ct. Cl. 1 (1945), reversed on other grounds, 326 U. S. 217 (1945).

On February 18, 1963, the defendant filed a motion for summary judgment as to Count I (the not-more-than-$237,384.09) only. The defendant contended that Count I ought to be dismissed on the ground of res judicata because of the Court of Claims decisions cited above. On December 19, 1963, the defendant renewed its motion for summary judgment as to Count I, on the ground stated, and asserted a motion for summary judgment as to Count II because "It is now settled, Seminole Nation v. United States, 12 Ind. Cl. Com. 798 (1963), that the United States is not liable to one of the Five Civilized Tribes for tribal funds expended for its 'loyal' members pursuant to treaty." The plaintiff contested both motions by answer.

In rejection of a cause of action identical to Count I herein, the Court of Claims remarked (103 Ct. Cl. 1, 37):

> . . . The appropriations were of Government monies, not of tribal funds, and the self-evident purpose of the Act of July 5, 1862 [12 Stat. 512], was to suspend the payment of annual treaty obligations, the money thus set free to be available for refugees, who might in the very nature of the situation be scattered and impractical of segregation into tribes for the purpose of general and immediate relief, and individual accounting. . .

In so ruling the Court of Claims followed its decision in Cherokee Nation v. United States, 102 Ct. Cl. 720, 758 (1945). This decision, too, included among its many causes of action one for the recovery of Cherokee monies spent during the Civil War for the subsistence of some Indians who were Cherokees and others who were not. The Court observed (id., at 759):

> We think that the expenditure of a part of the Cherokees' funds for the relief of destitute loyal Indians of other tribes, while the Cherokees were in a state of hostility to the United States, did not, under the relevant acts of Congress and the Treaty of July 19, 1866 [14 Stat. 799], create any liability on the part of the United States to restore the amounts so expended to the Cherokees' funds.

Again, the Cherokees' theory of recovery as to the diversion-of-funds item, is substantially indistinguishable from Count I of the case at bar.

The Chickasaw decision and the Cherokee decision followed the earlier Seminole decision (Seminole Nation v. United States, 93 Ct. Cl. 500 (1941)) which also included rejection of a claim for compensation for treaty funds diverted to subsistence of refugees. However, rejection in the Seminole case was in part based upon expenditures by the defendant in excess of the sums due the Seminole Nation by the defendant.

The Seminole Nation also filed a claim before this Commission, asserting that it was entitled to recompense for sums expended for the subsistence of refugee Indians who were not Seminoles (indistinguishable from Count I

of the case at bar), and that it was entitled to recompense for tribal funds which, as a lump sum, were paid out to individual Seminoles who suffered damages during the Civil War as a consequence of their adherence to the cause of the Union (indistinguishable from Count II of the case at bar). Both claims were considered by this Commission, both claims were rejected by this Commission, and the Court of Claims affirmed. Seminole Nation v. United States, 12 Ind. Cl. Com. 809 (1963), aff'd 171 Ct. Cl. 477 (1965).

More recently, the Creek Nation in Docket No. 274 asserted a pair of claims also indistinguishable from Counts I and II of the case at bar. This Commission considered both claims on the merits, and rejected both. Creek Nation v. United States, 20 Ind. Cl. Com. 44, 48 (1968).

There is no precedent for the proposition that one of the Five Civilized Tribes can recover, before the Indian Claims Commission, sums diverted during the Civil War for the subsistence of refugee Indians regardless of whether the subsisted refugees were of the tribe from which the funds were diverted. Equally, there is no precedent for the proposition that one of the Five Civilized Tribes can recover, before the Indian Claims Commission, sums which that tribe was required to pay as a post-war indemnity to members of the tribe who suffered because of their unwavering allegiance to the cause of the Union.

In view of the foregoing discussion, it is apparent that both of the defendant's motions for summary judgment must be, and they hereby are, granted. The case at bar is dismissed, in its entirety, with prejudice.

Margaret H. Pierce
Margaret H. Pierce, Commissioner

We concur:

John T. Vance
John T. Vance, Chairman

Jerome K. Kuykendall
Jerome K. Kuykendall, Commissioner

Richard W. Yarborough
Richard W. Yarborough, Commissioner

Theodore R. McKeldin
Theodore R. McKeldin, Commissioner

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