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Court of Claims of the United States.

No. 17324, CONGRESSIONAL.

(Decided December 6, 1920.)

THE PAWNEE TRIBE OF INDIANS v. THE UNITED STATES.

STATEMENT.

This is a claim consisting of a number of items set forth in the following statement:

On February 21, 1911, Senate bill No. 10830 of the Sixty-first Congress was referred to this court by resolution of the United States Senate, under provisions of law, for a finding of fact and report thereon. The section of the bill which relates to this case reads as follows:

"That the sum of three hundred thousand dollars is hereby appropriated to pay all claims, of whatsoever nature, which the Pawnee Tribe of Indians may have or claim to have against the United States for the amount due or claimed to be due said tribe from the United States under any treaties or laws of Congress, or for the misappropriation of any funds of the said tribe, or for the failure of the United States to pay the tribe any money due."

The claimant thereafter appeared in this court and filed a petition on the 3d day of October, 1913, in which it is alleged in substance that the Pawnee Tribe of Indians had treaty relations with the United States, and was then and still is under the control and guardianship of the United States; that the plaintiff tribe resides in the State of Oklahoma, and its members occupy lands in severalty; that it formerly held in common certain lands (a part of which they now hold in severalty) acquired from the Cherokee and Creek Tribes; that prior to this the plaintiff held by treaty with the United States certain land in the State of Nebraska; that a treaty was concluded between the United States and the Pawnee Tribe of Indians, dated October 9, 1833 (7 Stat., 448), under the provisions of which the petition sets forth several items of claim, as follows:

(1) For the balance of annuities under Article III of the treaty, \$311.87, alleged to be still due said tribe.

(2) For the sum of \$28,641.55, appropriated for the purchase of agricultural implements under Article IV, and diverted to other purposes.

(3) For the sum of \$5,810.18, appropriated for schools under Article V, and not so expended.

(4) For the sum of \$4,455.95, appropriated for the employment of blacksmiths and strikers and diverted to other purposes.

(5) For \$1,000 appropriated under Article VII, for horse mills, not expended, but covered into the surplus in the Treasury.

The facts as to these items are set out in Finding I.

That on September 24, 1857, the plaintiff entered into a treaty with the United States (11 Stat., 729) under which the following items of the claim are set forth in the petition:

(a) Claim for \$79,496.97, alleged to have been appropriated under Article III for manual labor schools, and not expended for that purpose. The facts as to this item are contained in Finding II.

(b) Claim for \$29,960, alleged to have been appropriated under Article IV for the employment of farmers, blacksmiths, apprentices, millers, and engineers, and the erection of a steam mill, and not so expended. The facts as to this item are contained in Finding III.

(c) Claim for \$53,750 as damages alleged for failure to protect the lives of members of the plaintiff tribe and their property, as required by Article IV of said treaty. The facts as to this item are contained in Finding IV.

(d) Claim for \$8,000 as damages alleged for frauds perpetrated on the plaintiff by their agent in furnishing supplies to the tribe. The facts as to this item are set out in Finding V.

(e) Claim for \$36,000 as the value of the Pawnee school, farm, and agency buildings on the reservation of tribe in Nebraska, reserved from sale when the said reservation was sold. The facts as to this item are set out in Finding VI.

(f) Claim for \$315,781.49 for surplus lands of the reservation in Oklahoma after allotment in severalty, ceded to the United States by the Jerome agreement, and interest at 5 per centum to July 1, 1920. The facts as to this item are set out in Finding VII.

The claimant having filed a petition setting forth the several items of claim in the statement, the case was brought to a hearing on merits on the 19th day of October, 1920. Messrs. Kappler & Merillat appeared for the claimant, and the Attorney General, by Geo. T. Stormont, esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

This case having been heard by the Court of Claims, the Court, upon the evidence, makes the following

FINDINGS OF FACT.

I.

By the treaty of October 9, 1833 (7 Stats., 448), with the four confederated bands constituting the Pawnee Tribe of Indians, the said tribe of Indians ceded to the United States all its right, interest, and title in and to all of the land lying south of the Platte River. In consideration of this cession the United States agreed—

By Article III, to pay to the said bands annually for 12 years the sum of \$4,600 in goods. Congress duly appropriated therefor the total sum of \$55,200. Of this amount \$54,888.13 was expended as provided by the treaty. The balance, \$311.87, was credited to the tribe on overpayments of annuities under the subsequent treaty of September 24, 1857.

THE PAWNEE TRIBE OF INDIANS.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS
TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN
THE CASE OF THE PAWNEE TRIBE OF INDIANS AGAINST THE
UNITED STATES.

DECEMBER 8, 1920.—Referred to the Committee on Claims and ordered to be
printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, December 8, 1920.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact and conclusion filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate, under the act of March 3, 1911, known as the Judicial Code.

I am, very respectfully, yours,

F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

The PRESIDENT OF THE SENATE.

[Court of Claims of the United States. No. 17324, Congressional. (Decided Dec. 6, 1920.) The Pawnee Tribe of Indians v. The United States.]

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priation of any funds of the said tribe, or for the failure of the United States to pay the tribe any money due."

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(d) Claim for \$8,000 as damages alleged for frauds perpetrated on the plaintiff by their agent in furnishing supplies to the tribe. The facts as to this item are set out in Finding V.

(e) Claim for \$36,000 as the value of the Pawnee school, farm, and agency buildings on the reservation of tribe in Nebraska, reserved from sale when the said reservation was sold. The facts as to this item are set out in Finding VI.

(f) Claim for \$315,781.49 for surplus lands of the reservation in Oklahoma after allotment in severalty, ceded to the United States by the Jerome agreement, and interest at 5 per centum to July 1, 1920. The facts as to this item are set out in Finding VII.

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By Article III, to pay to the said bands annually for 12 years the sum of \$4,600 in goods. Congress duly appropriated therefor the total sum of \$55,200. Of this amount \$54,888.13 was expended as provided by the treaty. The balance, \$311.87, was credited to the tribe on overpayments of annuities under the subsequent treaty of September 24, 1857.

By Article IV, to pay to each of said bands \$500 (in agricultural implements) annually for five years (a total of \$10,000), "to be continued longer if the President thinks proper." In fulfillment of this obligation Congress appropriated annually for five years the stipulated sum, in all, \$10,000; and, on the recommendation of the President, appropriated up to and including the year 1858 an additional \$32,000. Out of the total amount of these appropriations the sum of \$13,358.45 was expended for the benefit of the plaintiff tribe as stipulated in the treaty, being \$3,358.45 in excess of the actual obligation of the United States under said treaty. Acting under authority of the act of Congress of August 26, 1842 (5 Stats., 533), the President directed the transfer of \$8,902, of the total amount appropriated, to supply deficiencies in other items in the Indian Office; and under authority of the act of Congress of March 3, 1843 (id., 613), directed the transfer of \$3,176.27 to adjust accounts of disbursing officers. The sum of \$14,846.59 was covered into the surplus fund; and the balance of the total appropriation, to wit, \$1,716.69, was used under the treaty of September 24, 1857, for the purchase of agricultural implements for said Indians.

By Article V, to allow \$1,000 a year for 10 years "for schools to be established for the benefit of said four bands at the discretion of the President." Commencing with the year 1834 Congress appropriated annually for 10 years the stipulated sum, and in 1844 appropriated an additional \$500, making a total appropriation of \$10,500. The President directed no expenditures out of the sums appropriated until the year 1843, and from that date until the year 1853 a total of \$4,689.82 was expended upon the education of the Pawnee Tribe. Out of the balance remaining the President directed the transfer of \$3,000 under the act of March 3, 1843 (5 Stats., 613); and the balance, \$2,810.18, was covered into the surplus fund.

By Article VI, to furnish two blacksmiths and two strikers with shops, tools, and iron for 10 years at an expense not exceeding \$2,000

VII.

By the act of April 10, 1876 (10 Stat., 28), Congress provided for the sale of the Pawnee Reservation in Nebraska and for the removal of said Indians to a reservation set apart for them by the fourth section of the act between the Cimarron and Arkansas Rivers, in the Indian Territory, 230,014.04 acres of which formed part of the lands of the Cherokee Nation and 53,005.94 acres of which had been ceded to the United States by the Creek Nation by the treaty of June 14, 1866 (2 Kapp., 931).

"SECTION 13. That the lands acquired by the agreements specified be paid and distributed to said tribe as provided in said article four interest at the rate of five per centum per annum, said interest to of said tribe in the Treasury of the United States, and shall bear plus lands mentioned in said agreement shall be placed to the credit ratified, and confirmed. And the residue of the proceeds of the sur- of said agreement." * * * "Said agreement is hereby accepted, ment," to be paid and applied in the manner provided in article four- veys and relinquished to the United States" by the Jerome agree- that tract of country" (describing the Pawnee Reservation) "con-

THE PAWNEE TRIBE OF INDIANS.