

But the plaintiff's brief declares that the sole question before the Court is whether section 3 of the contract is a settlement or waiver of the claim in suit. And more specifically: "It is not alleged nor now claimed that the contract was wholly and absolutely void because of total lack of consideration, or because the same was executed under forceable and legal duress." Any claim based on a lack of authority in the Director General is clearly unfounded.

There is in the brief a suggestion that the lower court erred in giving effect to section 3 because "the contract was set out as an exhibit to the petition not as a part thereof, but merely for the purpose of showing to the court that the cause of action set out in the petition . . . [was] entirely independent of and arose outside of the contract itself." The suggestion is unsubstantial. Ordinarily the defense of release or accord and satisfaction must be pleaded in bar. But where the fact appears either in the body of the petition, or from an exhibit annexed, the defense may be availed of on demurrer. Compare *Randall v. Howard*, 2 Black, 585, 589; *McClure v. Township of Oxford*, 94 U. S. 429, 433; *Speidel v. Henrici*, 120 U. S. 377, 387.

*Affirmed.*

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CAIRO, TRUMAN & SOUTHERN RAILROAD COMPANY *v.* UNITED STATES ET AL.

APPEAL FROM THE COURT OF CLAIMS.

No. 230. Argued January 23, 1925.—Decided March 2, 1925.

1. An agreement between a railroad company and the Director General of Railroads for settlement and release of claims like the agreement in *St. Louis, etc. R. R. Co. v. United States*, ante, 346, considered and held within the authority of the Director General; and binding on the railroad, even if without consideration, it being under seal, and operative on the claim in question. P. 351.
2. Allegations held not sufficient to charge duress. P. 352.  
58 Ct. Clms. 336 affirmed.

APPEAL from a judgment of the Court of Claims dismissing the petition on demurrer.

*Mr. S. S. Ashbaugh*, with whom *Mr. G. B. Webster* was on the brief, for appellant.

*Mr. A. A. McLaughlin*, with whom *Mr. Solicitor General Beck* and *Mr. Sidney F. Andrews* were on the brief, for the United States.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

This is an appeal from the judgment of the Court of Claims which dismissed the petition on demurrer. Plaintiff's claim is in character the same as that sued on in *St. Louis, Kennett & Southeastern R. R. Co. v. United States*, decided this day, *ante*, p. 346. It is presented in the same manner; and the Government makes the same defense. The provision for settlement and release of claims here relied upon is substantially the same as in that case. But, in other respects, the contract is entirely different. It is in the form, known as the *per diem* contract, which contains no operative provision other than that providing for settlement and release of claims. The rest of the document consists of recitals and the testimonium clause. The consideration for the settlement and release is therein stated to be "obtaining the advantages of the two days' free time or reclaim allowance and such other co-operation as is accorded to it by the Director General of Railroads."

The petition alleges that the Director General gave no more than he would have been obliged by law to give had no agreement been made. This is not true. But it is, in any event, without legal significance. The plaintiff's agreement embodying the release was under seal. Hence, it is binding even if without a consideration. The petition alleges, also, that the agreement "was accepted by the

officers of the plaintiff for the purpose of saving for themselves such rights, privileges, and conveniences as were indicated by the Director General, and was signed for this purpose only and not otherwise, and for the supposed concessions set out in the contract itself." The allegation does not charge facts constituting legal duress. *United States v. Child & Co.*, 12 Wall. 232, 244. Nor is it claimed that the agreement is void because of duress.

As in the *St. Louis Company case*, the Director General clearly had authority to enter into the agreement in question.

*Affirmed.*

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GRAYSON ET AL. *v.* HARRIS ET AL.

ERROR AND CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

No. 187. Argued January 16, 1925.—Decided March 2, 1925.

1. Judgment held reviewable by certiorari and not by writ of error. P. 353.
2. Paragraph 6 of the Supplemental Creek Agreement, confirmed by Act of June 30, 1902, c. 1323, 32 Stat. 500, declares that descent and distribution of land and money provided by Act of March 1, 1901, c. 676, 31 Stat. 861, shall be in accordance with c. 49 of Mansfield's Digest of the Statutes of Arkansas, in force in the Indian Territory, but contains provisos, (a) that only citizens of the Creek Nation and their Creek descendants shall inherit lands of the Creek Nation, but (b) that, if there be no person of Creek citizenship to take descent, then the inheritance shall go to non-citizen heirs in the order named in said chapter 49. *Held*,

That the preferred right of Creek citizens to inherit Creek allotted lands applies not only to inheritance immediately from the original allottee but also in subsequent stages of devolution, so that where an allotment made originally in the names of deceased Creek freedmen was inherited from them by an heir who was a Creek citizen, upon her death it descended to her more remote kindred, who were Creek citizens, in preference to her next of kin who was neither a Creek citizen nor a descendant of a Creek citizen. P. 355.