

BEFORE THE INDIAN CLAIMS COMMISSION

THE WESTERN (OLD SETTLER)  
 CHEROKEE INDIANS, on the  
 relation of Dorothea Owen,  
 John B. Sixkiller, Alice  
 Flourney-Smith, William B.  
 Keeler, Charles C. Victory  
 and O. H. P. Brewer,

Plaintiffs,

v.

UNITED STATES OF AMERICA,  
 Defendant.

Docket No. 41

Appearances:

Wilfred Hearn, with whom were  
 George E. Norvell, Earl Boyd Pierce,  
 Dennis Bushyhead and Houston B. Tehee,  
 Attorneys for Plaintiffs.

Jules H. Sigal and Ralph A. Barney,  
 with whom was Mr. Assistant Attorney  
 General A. Devitt Vanech,  
 Attorneys for Defendant.

DEC 28 1950

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Prior to the treaties hereinafter specifically referred to, the Cherokee Nation of Indians lived east of the Mississippi river in parts of Georgia, Alabama and Tennessee. A part of the Nation known as those Cherokee Indians living in the lower towns became dissatisfied

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because of the encroachment of the whites and the scarcity of game upon which they mainly depended for food, and desired to move west of the Mississippi river and continue their hunter life. Complying with the desires of this part of the Nation, the United States located them in what is now the State of Arkansas in a territory lying between the Arkansas and White rivers. See treaties of July 8, 1817, 7 Stat. 156; and February 27, 1819, 7 Stat. 195. That part of the Cherokees who lived in Arkansas and later in the Indian Territory (being now the State of Oklahoma) became known as the Western, or Old Settler, Cherokees.

2. The Arkansas territory, selected by the Western Cherokees, proved unfavorable, and by a treaty dated May 6, 1828, 7 Stat. 311, the Western Cherokees ceded to the United States their Arkansas lands, and the United States ceded to the Western Cherokees an area of land located in what is now the State of Oklahoma. The part of the Cherokee Nation which remained east of the Mississippi river became known as "The Eastern Cherokees."

3. After the Western Cherokees moved to Oklahoma, the Eastern Cherokees decided to move west of the Mississippi river and join the western group, so by a treaty between the Cherokee Nation or Tribe of Indians and the United States, dated December 29, 1835, 7 Stat. 478, which treaty was agreed to by the Western Cherokees, the Cherokee Nation or Tribe of Indians ceded to the United States for a consideration of five million dollars all of their remaining lands east of the Mississippi river. This consideration was increased by \$600,000 by the supplementary treaty of March 1, 1836, 7 Stat. 488. By the treaty of

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1835 the United States ceded to the Cherokee Tribe of Indians 800,000 acres of land for a consideration of \$500,000. The Eastern Cherokees settled upon the Oklahoma lands formerly occupied by the Western Cherokees and the 800,000 acres acquired as aforesaid, and following the 1835 treaty dissension arose between the two factions of Indians in that the Western Cherokees claimed that they had been deprived of two-thirds of their Oklahoma lands by the settlement of the Eastern Cherokees thereon, for which they had received no compensation although the Eastern Cherokees had received \$5,600,000 under the treaties of 1835 and 1836.

4. In an effort to settle the dispute between the Western and the Eastern Cherokees, a treaty was concluded on August 6, 1846, 9 Stat. 871, between the United States, the Cherokee Nation, and the Western Cherokees, and it was agreed that the 800,000 acres acquired by the treaty of 1835 should become the property of all the Cherokee people, those east as well as those west, and in order to settle the claim of the Western Cherokees for their land occupied by the Eastern Cherokees, they were given one-third of the \$5,600,000 remaining after certain deductions provided for in the treaty were made. The treaty also provided a formula for determining what part of the \$5,600,000 treaty fund should be paid the Western Cherokees. The treaty fund was at all times in the custody of the United States and was distributed by it. The Western Cherokees soon objected to certain deductions from the fund made by the United States and for many years vigorously protested certain of the deductions which they had declared to be illegal and not in accordance

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with the stipulations of the treaty.

5. This dispute was finally referred to the Court of Claims by the Act of February 25, 1889, 25 Stat. 694, by which the Court of Claims was given jurisdiction to determine what sums of money, if any, were due from the United States to the Western Cherokee Indians, resulting or growing out of treaty stipulations and Acts of Congress relating thereto, and pursuant to this jurisdictional act a suit was instituted and tried resulting in a judgment in favor of the Western Cherokees, in the sum of \$800,386.31. (See *Western Cherokee Indians v. United States*, 21 Ct. Cls. 1, as modified by the Supreme Court, 148 U. S. 426, 37 L. ed. 509).

6. For the purpose of presenting and prosecuting their claim against the United States in the Court of Claims, the Western or Old Settler Cherokees employed attorneys to represent them, and agreed to pay such attorneys out of any sum that might be recovered in the suit a certain percentage thereof, and pursuant to such agreement and at the request of the plaintiffs, the defendant deducted from the amount of the judgment the sum of \$142,446.60 and paid, or caused to be paid, said amount to the attorneys who represented the Western Cherokees in said litigation. The contract for legal services was voluntarily made by the plaintiffs and the defendant had nothing whatever to do with the making thereof, and the payment of said sum out of the judgment fund was with the consent and at the express direction of the plaintiffs.

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7. The jurisdictional act referred to in the preceding finding No. 6 made no provision for the payment of attorneys' fees by the defendant.

Dated this 28th day of December, 1950