

BEFORE THE INDIAN CLAIMS COMMISSION

THE EASTERN (EMIGRANT))	
CHEROKEE INDIANS, on the)	
relation of Jesse B. Milam,)	
James Pickup, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Docket No. 42
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

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 in the above-entitled cause:

1. The Cherokee Nation or Tribe of Indians were originally located in parts of the States of Georgia, Alabama, Tennessee and The Carolinas, and early in the nineteenth century a part of this tribe, which became known as the Western or Old Settler Cherokees, moved west of the Mississippi river and were finally located in an area in what

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is now the State of Oklahoma. Some time after the settlement of the Western Cherokees in Oklahoma, a large part of the Cherokees who remained east of the Mississippi river decided to move west of that river and join the Western Cherokees. These Cherokees became known as the Eastern or Emigrant Cherokees.

2. The so-called Eastern Cherokees, about the time of their emigrations to the west, ceded all of their lands east of the Mississippi to the United States for a consideration of \$5,600,000 (treaties of December 29, 1835, 7 Stat. 478, and March 1, 1836, 7 Stat. 488). In the treaty of 1835, the United States ceded to the Cherokee Nation 800,000 acres of land and the Eastern Cherokees located on this land and in the territory of the Western Cherokees.

3. The consideration paid the Cherokee Nation for the cession of the lands lying east of the Mississippi river, namely, the sum of \$5,600,000, was handled by the United States, and after those Indians, that is that part of the Cherokee Nation known as the Eastern Cherokees, located in the west, a dispute arose between the Eastern Cherokees, or the Cherokee Nation, and the United States as to the administration of the treaty funds by the United States. This dispute lasted for many years, and finally by the Act of July 1, 1902, 32 Stat. 726, the Indians were permitted to bring suit in the Court of Claims against the United States. The pertinent part of this Act reads as follows:

"Jurisdiction is hereby conferred upon the Court of Claims to examine, consider, and adjudicate, with a right of appeal to the Supreme Court of the United States by any party in interest feeling aggrieved at the

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decision of the Court of Claims, any claim which the Cherokee tribe, or any band thereof, arising under treaty stipulations, may have against the United States, upon which suit shall be instituted within two years after the approval of this act; and also to examine, consider, and adjudicate any claim which the United States may have against said tribe, or any band thereof. The institution, prosecution, or defense, as the case may be, on the part of the tribe or any band, of any such suit, shall be through attorneys employed and to be compensated in the manner prescribed in sections twenty-one hundred and three to twenty-one hundred and six, both inclusive, of the Revised Statutes of the United States, the tribe acting through its principal chief in the employment of such attorneys, and the band acting through a committee recognized by the Secretary of the Interior."

Said Act was amended by the Act of March 3, 1903, 32 Stat. 996, the amendment reading as follows:

"Section sixty-eight of the act of Congress entitled 'An act to provide for the allotment of the lands of the Cherokee Nation, for the disposition of town sites therein and for other purposes,' approved July first, nineteen hundred and two, shall be so construed as to give the Eastern Cherokees, so called, including those in the Cherokee Nation and those who remained east of the Mississippi River, acting together or as two bodies, as they may be advised, the status of a band or bands, as the case may be, for all the purposes of said section: Provided, That the prosecution of such suit on the part of the Eastern Cherokees shall be through attorneys employed by their proper authorities, their compensation for expenses and services rendered in relation to such claim to be fixed by the Court of Claims upon the termination of such suit; and said section shall be further so construed as to require that both the Cherokee Nation and said Eastern Cherokees, so called, shall be made parties to any suit which may be instituted against the United States under said section upon the claim mentioned in House of Representatives Executive Document Numbered Three hundred and nine of the second session of the Fifty-seventh Congress; and if said claim shall be sustained in whole or in part, the Court of Claims, subject to the right of appeal named in said section, shall be authorized to render a judgment in

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favor of the rightful claimant, and also to determine, as between the different claimants, to whom the judgment so rendered equitably belongs, either wholly or in part, and shall be required to determine whether, for the purpose of participating in said claim, the Cherokee Indians who remained east of the Mississippi River constitute a part of the Cherokee Nation or of the Eastern Cherokees, so called, as the case may be."

4. Pursuant to the jurisdictional acts set forth in the last preceding finding, The Cherokee Nation, in Case No. 23,199, The Eastern Cherokees, in Case No. 23,214 and The Eastern or Emigrant Cherokees, in Case No. 23,212, brought separate actions against the United States. These cases were consolidated and tried, with the result that on May 18, 1905, the Court of Claims made and entered its decree, which, among other things, awarded the Cherokee Nation, for the benefit of the Eastern Cherokees, the sum of \$1,111,284.70; with interest thereon from June 12, 1838, amounting in all to the sum of \$5,098,361.08 (40 Ct. Cls. 363-365). This decree provided that from the amount awarded there should be deducted the attorneys' fees fixed by the court, of the attorneys representing the Indians, and the costs and expenses incident to ascertaining and identifying the persons entitled to the judgment. It was also decreed that said judgment be distributed directly to the Eastern Cherokees. By the Act of June 30, 1906, 34 Stat. 634, 664, and March 4, 1909, 35 Stat. 907, 938, the Congress appropriated the money with which to pay said award of the court, including the interest thereon to the date of payment of the sum.

5. The decree of May 18, 1905, was modified by a decree of said court, dated May 28, 1906 (Def. Ex. 1), by which the court fixed the

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amount of attorneys' fees to be paid to counsel for the Eastern Cherokees, and directed that the Secretary of the Interior prepare a list or roll of the Eastern Cherokees entitled to share in the distribution of the judgment fund.

6. Pursuant to the decree of May 28, 1906, the court awarded the attorneys for the Eastern Cherokees the sum of \$740,555.42 as compensation for their services, and this amount was deducted from the judgment fund, and on November 3, 1906, the officers of the Treasury Department of the United States paid to the attorneys for the Cherokee Nation, out of the judgment fund, for their services in said cause, the sum of \$148,245.15.

7. In a proceeding in said cause No. 23,214, the Eastern Cherokees asked the Court of Claims to construe its decree respecting the right and authority of the Secretary of the Interior, or of the Treasury Department, to apply a part of the award made by the decree of May 18, 1905, to the payment of fees for the attorneys of the Cherokee Nation, and that court, on January 17, 1910, held that said payment to the attorneys for the Cherokee Nation was proper, and dismissed said proceedings; that at the hearing on the question so raised by the Eastern Cherokees, there were represented the United States, the Cherokee Nation, and the Eastern Cherokees. (See *The Eastern Cherokees v. The United States*, 45 Ct. Cls. 104).

8. In the year 1907, a petition in behalf of certain named members of the Eastern Cherokee group, and in behalf of all other

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Cherokees who may desire to join with them, was filed in said cause No. 23,214, in which petition they asked the Court of Claims to modify its decrees by directing that the judgment fund be distributed by and under the supervision of the court rather than the Secretary of the Interior. This arrangement was approved by the Secretary of the Interior and the Commissioner of Indian Affairs, and on April 29, 1907, the court entered its order vacating the part of the previous orders requiring the Secretary of the Interior to make distribution of the judgment fund, and retained jurisdiction of the distribution of the fund, and appointed one Gaion Miller, Special Commissioner to prepare a roll of the persons entitled under conditions of the decrees and orders of said court to share as Eastern Cherokees in said fund. That said Special Commissioner, in the performance of his duties, expended the sum of \$103,749.74, which sum was deducted from the judgment fund, with the approval of the Court of Claims. That said sum was expended for the costs and expenses of determining the persons entitled to share in the per capita distribution of the judgment fund.

9. That after deducting the attorneys' fees and the expenses of distributing said fund, there was available for per capita distribution to the Eastern Cherokees the sum of \$4,105,810.77, which sum was distributed in accordance with the orders of said Court of Claims. The Court of Claims decided that the Eastern Cherokees were communal owners of said fund, (See 40 Ct. Cls. 327), and by its order of April 29, 1907, directed the per capita distribution thereof.

Dated this 28th day of December, 1950.