

- 2 -

The petition of intervention also states that enrollment in the Perdido Band is limited to those Indians who are descendants of members of the original Creek Nation, and this allegation is not questioned.

The Perdido Band is not asking for an award independently of that sought in the above case; on the contrary, they are supporting the pending claim. What they are demanding is that they and all other descendants of members of the original Creek Nation be recognized as having the right to participate in any award that might be made in the above case even though they are not enrolled as members of the petitioner, Creek Nation, as now constituted.

Without going into the history of the Creek Nation in much detail, it may be stated that this tribe was one of the larger Indian tribes and originally occupied a large territory in Georgia, Alabama and Florida. On January 24, 1826, 7 Stat. 286, the Creek Nation concluded a treaty with the United States by which it ceded an area of its domain located in Georgia and lying on the east side of the Chatahoochee river. A portion of the tribe wished to move west of the Mississippi river and the treaty provided (Art. 6) for a "deputation of five persons" to select a country west of the river as a home for that part of the Creek Nation desiring to move west. The country was selected and the selection confirmed by treaty, as will be shown later. Treaty of Febr. 14, 1833, 7 Stat. 417.

- 3 -

On March 24, 1832, 7 Stat. 366, by treaty of that date, the Creeks ceded "all their land, East of the Mississippi river" to the United States. This treaty contained this provision (Art. XII):

"The United States are desirous that the Creeks should remove to the country west of the Mississippi, and join their countrymen there; and for this purpose it is agreed, that as fast as the Creeks are prepared to emigrate, they shall be removed at the expense of the United States, and shall receive subsistence while upon the journey, and for one year after their arrival at their new homes—Provided however, that this article shall not be construed so as to compel any Creek Indian to emigrate, but they shall be free to go or stay, as they please." (Italics added).

Article II thereof required the United States to survey the ceded area and allowed "ninety principal chiefs of the Creek tribe to select one section each, and every other head of a Creek family to select one half section each, which tracts shall be reserved from sale for their use for a term of five years, unless sooner disposed of by them." Provisions were also made for taking a census of the persons making selections and for making selection of twenty sections for the benefit of orphan children of the Creeks. Article III authorized the sale of the selections, and Article IV provided:

"At the end of five years, all the Creeks entitled to these selections, and desirous of remaining, shall receive patents therefor in fee simple, from the United States."

Article XII of this treaty quoted above discloses the desire of the United States to move all Creeks west of the Mississippi river, and

- 4 -

as an inducement to move, agreed to pay the expenses of removal, provide subsistence during removal and for a year after their arrival west. However, such removal was not compulsory as to individual Creeks, for the article, as shown above, contained the proviso "that this article shall not be construed so as to compel any Creek Indian to emigrate, but they shall be free to go or stay, as they please."

The treaty of Febr. 14, 1833, 7 stat. 417: confirmed the selection of land authorized by the 1826 treaty (Art. VIII), and Article III thereof provided for a patent in fee simple to be issued to the "Creek Nation." Article IV made it unmistakably clear that the land ceded under this treaty in what is now Oklahoma was for the benefit and use of the entire Creek people, for it provided:

"It is hereby mutually understood and agreed between the parties to this treaty, that the land assigned to the Muskogee Indians, by the second article thereof, shall be taken and considered the property of the whole Muskogee or Creek nation, as well of those now residing upon the land, as the great body of said nation who still remain on the east side of the Mississippi; and it is also understood and agreed that the Seminole Indians of Florida, whose removal to this country is provided for by their treaty with the U. S. dated May 9th, 1832, shall also have a permanent and comfortable home on the lands hereby set apart as the country of the Creek nation; and they (the Seminoles) will hereafter be considered a constituent part of said nation, but are to be located on some part of the Creek country by themselves--which location will be selected for them by the commissioners who have signed these articles of agreement or convention." (II Kapp. 390).

The 1826 treaty did not, at least by its terms, contemplate a removal of the entire tribe west, but the 1832 treaty discloses a

- 5 -

purpose to recognize those who migrated to the west as the main governing body of the tribe since provision was made for enabling individual chiefs and heads of families wishing to do so to remain east and select tracts in their aboriginal land which was reserved for that purpose in said treaty of 1832. This purpose was confirmed by the treaty of 1833, which was made with the Creek Nation at Fort Gibson in Indian Territory, and in which the territory ceded by the United States was assigned to the whole Muskogee or Creek Nation — those residing east and those residing west of the Mississippi. Thereafter, all dealings of the Federal Government were made with the Creeks in Oklahoma, and we find no treaties, contracts or other transactions with those members of the tribe who remained east, or that defendant ever recognized those remaining east as the Creek Nation.

There are other instances by which the United States recognized the tribal government of the Creeks in Oklahoma, notably the Act of April 26, 1906, 34 Stat. 137, section 28 of which "continued in full force and effect for all purposes, authorized by law" the Creek tribal government. We are of the opinion the petitioner in this case has the exclusive right to prosecute the claim here asserted. In fact, the Perdido Band does not really question the right of petitioner to maintain the action, for, as before stated, it asked that the members of the Creek Nation be awarded the amount prayed for, insisting, however, that the award be for the benefit of all Creek

- 6 -

descendants and not confined to those enrolled under the various agreements with the Creek Nation, confirmed by Acts of Congress.

This Commission decided in the Loyal Creek case, Docket No. 1, and the Western Cherokee case, Docket No. 24, that an "identifiable group," under the Indian Claims Commission Act, must have a common claim, and that a common suit for individual claims does not create an identifiable group. It is plain from the statements in the amended motion and the allegations of the petition accompanying it that the Perdido Band has no common claim, and is therefore not an "identifiable group" under said Act.

Furthermore, the Perdido Band is in reality asking us to determine the individual Indians who may participate in any award that may be made. They pray in their petition that the members of the Perdido Band be declared entitled to share in the recovery or that a Commission be created to make a roll of the living descendants of the original Creek Nation in order to determine who shall be entitled to share in any recovery. Counsel for applicants mistake the powers of the Indian Claims Commission. The Act authorizes us to determine claims of Indian tribes, bands or identifiable groups. We have no power to determine the membership of the groups who may successfully prosecute their claims, for that is an administrative function over which we have no control.

- 7 -

For the reasons stated above, the amended motion of the Perdido Band must be denied.

The Commission now has under advisement for decision only the issue of fact and law relating to the petitioner's right to recover. (Sec. 22() of Rules of Procedure). Ordinarily, we would postpone the determination of the amended motion of the Perdido Band until after we had determined that issue, but for fear longer delay might cause embarrassment to the Band because of the expiration of the time for filing claims on August 13, 1951, we concluded an earlier determination of the amended motion proper.

Dated this 4th day of June, 1951.