

BEFORE THE INDIAN CLAIMS COMMISSION

THE CHEROKEE NATION OF INDIANS )  
 IN OKLAHOMA for and on behalf )  
 of THE WESTERN (OLD SETTLER) )  
 CHEROKEE INDIANS, and THE EASTERN )  
 (EMIGRANT) CHEROKEE INDIANS, )  
 Plaintiffs, )  
 v. )  
 THE UNITED STATES OF AMERICA, )  
 Defendant. )

Docket No. 2

Decided February 19, 1952

Appearances:

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

Ralph A. Barney and Joseph G.  
 Burke, with whom was Acting  
 Assistant Attorney General  
 J. Edward Williams,  
 Attorneys for Defendant.

FINDINGS OF FACT

The Commission makes the following findings of fact in the above-entitled cause:

1. The plaintiff, The Cherokee Nation, is an organized nation or tribe of Indians, recognized as such by the United States; and is, therefore, authorized to bring this action under Section 2 of said Indian Claims Commission Act.

2. The Eastern or Emigrant Cherokees are that part of the Cherokee Nation of Indians, or their successors, with whom the treaty of December 29, 1835 (7 Stat. 478), between the United States and the Cherokee Nation of Indians east of the Mississippi, was made; and they are further identified and described in Article 9 of the treaty of August 6, 1846 (9 Stat. 871), between the United States and the whole Cherokee Nation.

The Western or Old Settler Cherokees, are that part of the Cherokee Nation of Indians, or their successors, with whom the treaty of February 14, 1833 (7 Stat. 414), between the United States and the Cherokee Nation of Indians west of the Mississippi River, was made; and they are further identified and described in Article 4 of the treaty of August 6, 1846 (9 Stat. 871), between the United States and the whole Cherokee Nation.

Plaintiffs, the Eastern or Emigrant Cherokees and the Western or Old Settler Cherokees, together, are those Cherokees, or their successors, who were parties to said treaty of August 6, 1846, between the United States and the Cherokee Nation of Indians, and who are in Article 1 thereof referred to as the "whole Cherokee people."

3. In 1803 the United States acquired from France lands west of the Mississippi River commonly referred to as the Louisiana Purchase. The western boundary of this Purchase was in dispute between the United States and Spain, which country claimed the territory to the west of the Louisiana Purchase, from the time of its acquisition by the United States.

President Jefferson advised Congress on November 8, 1804 that

said western boundary of said Louisiana Purchase was "still to be settled between us"—that is, between the United States and Spain.

In 1805 President Jefferson appointed James Monroe to negotiate with Spain in the matter of determining the western boundary of the Louisiana Purchase territory, and in a special message to Congress on December 6, 1805, President Jefferson reported that after five months of fruitless endeavor no agreement had been reached.

President Monroe, in a message to Congress on December 2, 1817, reported that the negotiations with Spain for a settlement of the western boundaries of the United States had not at that time resulted in any agreement between the two nations.

The boundary of the Louisiana Purchase territory and the fixing definitely of the western boundary of the territory acquired by such purchase was not finally determined until the treaty of February 22, 1819 between the United States and Spain, which treaty was ratified February 22, 1821. Under this treaty with Spain the western boundary of the United States between the Red and Arkansas Rivers was fixed at the 100th degree of west longitude. This line was confirmed by the treaty of January 12, 1828 between the United States and the United Mexican States, and by the treaty between the United States and the Republic of Texas dated April 25, 1830.

4. In 1808 a deputation of Cherokees representing the Cherokee Nation visited the President of the United States at Washington, requesting that a division line be established between the Upper and Lower towns, and the delegates of the Upper towns expressed a desire to engage in the pursuits of agriculture and civilized life and remain

upon their lands east of the Mississippi; whereas, the delegates from the Lower towns expressed a desire to continue the hunter life, and because of the scarcity of game where they then lived, they desired to remove across the Mississippi River, on some vacant lands of the United States.

5. On January 9, 1809 the President replied to the petitions of the Upper and Lower Cherokees as follows:

"The United States, my children, are the friends of both parties, and, as far as can be reasonably asked, they are willing to satisfy the wishes of both. Those who remain may be assured of our patronage, our aid, and good neighborhood. Those who wish to remove, are permitted to send an exploring party to reconnoitre the country on the waters of the Arkansas and White rivers, and the higher up the better, as they will be the longer unapproached by our settlements, which will begin at the mouths of those rivers. The regular districts of the government of St. Louis are already laid off to the St. Francis.

"When this party shall have found a tract of country suiting the emigrants, and not claimed by other Indians, we will arrange with them and you the exchange of that for a just portion of the country they leave, and to a part of which, proportioned to their numbers they have a right. Every aid towards their removal, and what will be necessary for them there, will then be freely administered to them; and when established in their new settlements, we shall still consider them as our children, give them the benefit of exchanging their peltries for what they will want at our factories, and always hold them firmly by the hand."

6. The group of Lower Cherokees explored the country west of the Mississippi, and chose a country on the Arkansas and White rivers, and settled upon the land, and notified the President of their desire to negotiate a treaty relinquishing their title to the lands belonging to them and to those who were about to emigrate, proportioned to their numbers. To carry into effect the promises made to the Cherokees the United States entered into the treaty of July 8, 1817 (7 Stat. 156).

7. Said treaty of July 8, 1817, executed at Washington, D. C., provided for the cession of certain Cherokee lands described in Articles 1 and 2; and among other things the treaty further provided as follows:

"Art. 5. The United States bind themselves, in exchange for the lands ceded in the first and second articles hereof, to give to that part of the Cherokee nation on the Arkansas as much land on said river and White river as they have or may hereafter receive from the Cherokee nation east of the Mississippi, acre for acre, as the just proportion due that part of the nation on the Arkansas agreeably to their numbers; which is to commence on the north side of the Arkansas river, at the mouth of Point Remove or Budwell's Old Place; thence, by a straight line, northwardly, to strike Chataunga mountain, or the hill first above Shield's Ferry on White river, running up and between said rivers for complement, the banks of which rivers to be the lines; and to have the above line, from the point of beginning to the point on White river, run and marked, which shall be done soon after the ratification of this treaty; and all citizens of the United States, except Mrs. P. Lovely, who is to remain where she lives during life, removed from within the bounds as above named. \* \* \*"

8. In February, 1818 President James Monroe, in a talk to a delegation of Chiefs of the Cherokee Nation, in part said:

"\* \* \* I have not yet obtained the lands lying up that river (the Arkansas) to the west of your settlement. I will give instructions to Gov. Clark to hold a treaty with the Quapaws this summer, in order to purchase them; and when purchased, I will direct them to be laid off for you. It is my wish that you should have no limits to the west, so that you may have good mill-seats, plenty of game, and not be surrounded by the white people."

9. John C. Calhoun, Secretary of War, in a letter of date May 8, 1818 to General William Clark, stated in part as follows:

"The Cherokees are anxious to have an outlet to the west, to the game country; and it seems fair that the Osages, who hold the country west of their settlement, and have been beaten in the contest, should either make a concession of such portion of their country as might give the outlet, or, at least, to grant them an undisturbed passage to and from their hunting grounds. You

will, as far as is practicable, and consistent with justice, make the arrangement favorable to the Cherokees, as the President is anxious to hold out every inducement to the Cherokees, and the other southern nations of Indians, to emigrate to the west of the Mississippi."

And on July 29, 1818, John C. Calhoun, Secretary of War, wrote to Governor John McMinn, Murfreesboro, Tennessee, in part as follows:

"The President, in order to add as much as possible, to the permanent prosperity of the Cherokees on the Arkansaw, has given them an indefinite outlet to the west, which will continue their independence as long as is practicable."

10. In answer to a communication dated July 24, 1821, from the Chiefs of the Arkansas Cherokees, apparently complaining that the promise of the outlet to the west had not been performed (the letter is not in evidence), John C. Calhoun wrote said Chiefs in part as follows:

"Brothers: I have received your communication of the 24th of July last, complaining that the promises of the Government, in relation to intruders upon your lands, and to an outlet to the west, have not been performed. It has always been its intention to carry into effect, fully, every promise made to you; and which I was under the impression had been done, particularly upon the points complained of, as orders were issued, some time since, for the removal of the whites from your lands and from the tract of country to the west of your reservation, commonly called 'Lovely's Purchase,' by which you would obtain the outlet promised. Copies of these orders are herewith enclosed for your information.

"\* \* \* It is to be always understood that, in removing the white settlers from Lovely's Purchase, for the purpose of giving the outlet promised you to the west, you acquire thereby, no right to the soil, but merely to an outlet, of which you appear to be already apprised; and that the Government reserves to itself the right of making such disposition as it may think proper, with regard to the salt springs upon that tract of country."

11. On February 12, 1823 John C. Calhoun, Secretary of War, wrote to a delegation of Cherokee Chiefs of the Arkansas in part as follows:

"I have read your communication of the 7th ulto. with

attention and after consulting your father, the President, who is always willing to listen to the wants of Red Children, and to do them justice, have received his directions to make you the following answer.

"Agreeably to your request, immediate measures will be taken for the establishment of the western boundary according to the Treaty, of the country ceded to your nation between the Arkansas and White Rivers, so as to lay off for it a number of acres, equal to the number ceded to the U. States by the treaties of 1817 and 1819, which is ascertained to be about 3,285,710 acres and which is considered the full proportion of Territory, to which the Cherokees west of the Mississippi are entitled to from the old nation, according to their estimated numbers.

"As to the outlet to the west, promised you by the President, it is not deemed proper to make any decision in relation to it, until the western boundary is established; after which, the subject will receive due attention and be finally decided upon."

12. In October, 1825 John Jolly, Cherokee Chief west of the Arkansas, complained to Governor Izard that President Monroe's promise of an outlet to the west had not been fulfilled. In the letter of Colonel Thomas L. McKenney, Commissioner of Indian Affairs, to Governor Izard, dated October 8, 1825, it is stated in part as follows:

"The subjects complained of by Jolly, the Cherokee Chief, in his plain spoken letter to you, are presumed to be these: 1st, Mr. Monroe's promise, in a talk made to his people; and, 2d, the actual survey of the country in the States, ceded by them to the United States; and for which the Treaty stipulates they shall receive, in Arkansas, acre for acre.

"Mr. Monroe's talk upon the point referred to, is this: 'It is my wish that you should have no limits to the west, so that you may have good mill-seats, plenty of game, and not surrounded by white people.' This is esteemed by Jolly, it is presumed, to be as good as a treaty; certainly the faith of the Executive, thus pledged, should be respected. The question is, is the outlet to the west blocked up; or has a white settlement interposed between that and the Indians? You will state the nature and extent of the settlements made, if any; I mean their positions and numbers, and whether Mr. Monroe's object, as expressed above, is frustrated by them.

















