BEFORE THE INDIAN CLAIMS COMMISSION

THE CREEK NATION,  
Plaintiff,  

v.  

THE UNITED STATES,  
Defendant.  

Docket No. 21

Decided April 22, 1952

Appearances:

Paul M. Niebell,  
Attorney for Plaintiff.

Ralph A. Barney and  
John F. Curran, with whom  
was Mr. Assistant Attorney  
General A. Devitt Vanech,  
Attorneys for Defendant.

FINDINGS OF FACT

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

1. The plaintiff, the Creek Nation of Indians, is a tribe of American Indians within the meaning of the Indian Claims Commission Act, and as such is authorized to bring this cause of action under Section 2 of the said Act.

2. The first treaty between the United States and the Creek Nation of Indians was executed on August 7, 1790 (7 Stat. 35, 2 Eliz. 25), at the earnest solicitation of President George Washington.

Article II of this treaty provides as follows:
"The undersigned Kings, Chiefs and Warriors, for themselves and all parts of the Creek Nation within the limits of the United States, do acknowledge themselves, and the said parts of the Creek Nation, to be under the protection of the United States of America, and of no other sovereign whosoever; and they also stipulate that the said Creek Nation will not hold any treaty with an individual State, or with individuals of any State."

After establishing the boundary between the United States and the Creek Nation (Article IV) this treaty further provided:

"Article V. The United States solemnly guarantee to the Creek Nation, all their lands within the limits of the United States to the westward and southward of the boundary described in the preceding article.

"Article VI. If any citizen of the United States, or other person, not being an Indian, shall attempt to settle on any of the Creek lands, such person shall forfeit the protection of the United States, and the Creeks may punish him or not, as they please.

"Article VII. No citizen or inhabitant of the United States shall attempt to hunt or destroy the game on the Creek lands; nor shall any such citizen or inhabitant go into the Creek country, without a passport first obtained from the Governor of some one of the United States, or the officer of the troops of the United States commanding at the nearest military post on the frontiers, or such other person as the President of the United States may, from time to time, authorize to grant the same."

3. In 1796 Colonel Benjamin Hawkins was appointed United States Agent to the Creek Nation. In 1799 he called a general council of the Upper Creek Chiefs at Tuckubatchee, and persuaded them to adopt a national form of government and law. Under this plan of government the Upper Towns were divided into eight groups, and one man (in some cases two men) was selected from each group to superintend the execution of the law in that division. The distinctive functions of Peace and War towns were abolished; "towns of the same fire" were
grouped together, but it was "unanimously agreed that the E-tall-wau, white towns, should be classed as warriors" in their relation to the Confederacy. Hawkins also persuaded the Lower Creeks to adopt the same plan. A general council was held once a year, and the Chiefs of each town were delegates. When occasion demanded the Lower and Upper divisions of the nation held their own councils and each division had speakers who held their office indefinitely. Coweta and Tuckabatchee, the two most important towns of the Lower and Upper Creeks, respectively, alternately as the occasion required, were appointed the permanent seats of their national councils where national affairs alone could be transacted. When the national council met at Coweta, Tustumuggee Epoole, the Speaker of the Lower Creeks, was the Speaker of the Nation; and when the council met at Tuckabatchee, Tustumuggee Talucco (Big Warrior), Speaker of the Upper Creeks, was the Speaker of the Nation. All matters were debated and when agreed upon were expressed by the Speaker as the will of the nation.

The individual town governments were still maintained under this new plan and each town still controlled its own local affairs as formerly.

4. In 1811 the United States and Great Britain were on the verge of war and British agents sought an alliance with the Spanish and Indians upon the then southwestern frontier of the United States. The Creeks, more powerful than any other Indian tribe in this area, were particularly urged to join the English. The Upper Creeks being greatly dissatisfied with the white intrusions on Creek lands, and the consequent cessions of Creek lands in treaties forced upon the Creek
Nation, in 1802 and 1805, seemed a fertile field for British intrigue. The English, therefore, sent the celebrated Tecumseh to enlist the Creeks in the British cause.

5. When Tecumseh left to return to Detroit he was accompanied by Little Warrior, a Creek Chief and a party of Creek warriors, who had been sent by the Creek Nation on a mission of peace and friendship to the Chickasaws. Instead of returning home after his mission was completed, Little Warrior had gone to Detroit with Tecumseh. On his return the Creek Council convened at Tuckabatchee to hear the report of Little Warrior, and the nature of the talks he carried from the Shawanese and British. On learning that the talks were to engage the Creeks in a war with the whites the Creek Council severely reprimanded Little Warrior, and ordered him immediately to leave the council house as a man unworthy to have a seat in it.

6. On his return from Detroit, Little Warrior and his party had murdered seven white families at the mouth of the Ohio. Upon being advised of these murders, Colonel Hawkins, on March 29, 1813, wrote to the Creek Chiefs demanding that they apprehend and deliver the murderers to him for punishment, stating that "The guilty must suffer for their crimes, or your nation will be involved in their guilt." The Creek National Council convened on April 9, 1813, at Tuckabatchee, and sent a party of warriors under Colonel William McIntosh, Speaker of the Lower Creeks, and Captain Isaacs, of the Upper Creeks, with instructions to put Little Warrior and his party to death. This order of the Creek Council was fully executed.
7. As the strength of the hostiles increased, in an effort to unite the Creek Nation against the Americans, the hostiles began a civil war against the Creek Chiefs, the friends of peace—the constituted authority of the Creek Nation—and the friendly part of the Creek Nation, destroying their houses, killing or driving off their cattle, and stealing whatever portable property the friendly Indians possessed. The hostiles stated that

** * * they would destroy Tuckabatchee and Coweta, with every person in them; then kill Mr. Cornells, Tus-tunmgee Thlucco, Mr. Hawkins, and the old chiefs who had taken his talks; after this war among themselves, they would be ready for the white people. They had power to destroy them by an earthquake, or rendering the ground soft and miry, and thunder.

** * *

** * * The prophets are enemies to the plan of civilization, and advocates for the wild Indian mode of living. * * *.

This plan of the Prophets had been kept secret from the Chiefs of the Nation, and was so guarded that even Colonel Hawkins was not apprised of it until it was disclosed by one of the hostile leaders to a friendly Indian.

8. On June 23, 1813, the Creek Chiefs at Tuckabatchee sent runners to Colonel Hawkins, stating:

"The prophets have put to death two more of our warriors; we have about 130 here, and expect more. We are of opinion, if the prophets cannot be crushed, they will bring ruin on us, and war against the white people. We have need of assistance, and we wish you, Colonel Hawkins, to assist us, by joining the white warriors with ours. Yours can come the post road opposite to us; we will then join them, go with our forces united, march on both sides of Alabama, and put an end to these hatchets of war and mischief. By
showing them they are both feeble and ignorant, they will be crushed; as neither thunder, quagmire, or the sun, will come to their aid. They can soon be conquered, and those who support them at the lakes, be disappointed in their hopes of war. If your troops are so situated you cannot send them, write to our friend the Governor of Georgia. We hope he will help us, and then we shall have peace. Making peace here in this way, is making peace for our white neighbors as well as for ourselves."

One of the Prophets was present when the above message was communicated to Colonel Hawkins, and believing from what he heard that the plan was discovered observed, with warmth:

"* * * the prophets of Alabama had begun prematurely. They were to go on with their magic until Tecumseh arrived, who was to put the plan in motion, and he would come when his friends the British were ready for him."

9. On June 28, 1813, Colonel Hawkins wrote the Secretary of War:

"The rising of all the Indians was not to have commenced at all sooner than the beginning of autumn, nor then unless the British were ready. But it is probable an order had come on, from Tecumseh, the Prophet of the lakes, to put to death the persons who executed the murderers, to prevent the party being dispirited. They were not to disturb the travellers on the road, as it might give alarm to the white people too soon. The Alabamas have a pretty good supply of powder; the other Indians badly armed and supplied with ammunition."

10. On July 5, 1813, a runner came from Tuckabatchee to Colonel Hawkins with the following message from the Creek Chiefs:

"The chiefs have sent me to state to you that their difficulties continue to increase. Their opponents have killed, in all, nine of their people, one of them a woman. Foscehanajo, of Auttossee, is missing, supposed to be murdered, as blood was seen in one of his houses. He was a good man, and opposed to mischief-makers. The chiefs sent two of their great men, Tuskeenohau of Cussetah, and Atchau Eaujo, of Coweta, to Hoboheiltale Micco,
of Tallassee, to induce him to have the war sticks and
projects thrown aside, and repeated their message. But
the old man rejected everything, declared his determi-
nation to persevere until he destroyed all who aided
and assisted to put the murderer's to death. He looked
on them as people of the United States. He would march
from Tuckumbatchee to Coweta, destroy all of them, and
move on for the white people, and would not stop till he
had marched to Ogeechee. There he would pause and rest,
then put off for the sea coast. All north of this line
of march would be destroyed by the British. He had been
plotting this secretly for some time, and now having
brought it to bear, he was determined not to stop. He
had his bows, his arrows, and war clubs, and, with the
magic powers he possessed, aided by the British and
Shawnees, who were now coming from the Northwest, and were
now more than half way to him, he was able to crush the
Americans, and would do it.

"The chiefs say that they have brought themselves
into their present embarrassments by their fidelity to
their treaty stipulations with Washington. In giving
satisfaction for the murders on the post road on Duck
and Ohio, which it was the duty of their nation to do,
they are placed in a war attitude by their opponents.
By doing justice to the white people, they are to be
punished with death. They have about 30 fit for war,
but badly armed, and without ammunition. They fear not
death, although they are in a dangerous situation, and
may expect it. The prophet's party have burned the
village of Hatchechebue and several detached settlements,
and destroyed cattle, hogs, horses, and corn. All who are
friends to the United States are doomed to destruction.
This is our true situation; We ask for aid from the white
people. If you, Colonel Hawkins, can not afford it from
troops of the United States, who we hear are towards the
seacoast, ask the Governor of Georgia to aid us. If they
could send from 500 to 600 mounted men in two divisions,
one on the old the other on the new post road, to unite
near the bridges, on Uchee Creek, and then along the mail
road, we would join them with 200 horsemen, point out and
attack our enemies. A number of well-disposed Indians
would join. We know, when this is done, we shall conquer
them. We are willing the lands on Alabama should go to
pay our white friends, who, although in aiding us, will
effectually aid themselves. We have sent to the Cherokees
for aid, but know not the success. If we are destroyed
before you aid us, you will have the work to do yourselves,
which will be bloody, and attended with difficulties, as
you do not know as well as us the swamps and hiding places
of those people. We can not find that the Spaniards have
any hand in this, but can clearly trace it to the British
on the Lakes."
11. In answer, Colonel Hawkins stated that he could procure "11 rifles, 30 pounds of powder, some lead and flints on the credit of their annuity, which is ready to their order." He also stated that he would write the fanatical chiefs demanding an explanation of their conduct, and did so.

12. While what is called the "Creek War" began as a civil war among the Creeks, it was in fact a branch of the War of 1812—the hostile portion of the Upper Creeks as the allies of Great Britain, and the friendly portion of the Upper Creeks, and most of the Lower Creeks as allies of the United States and none hostile.

13. In the beginning the British had been able to disaffect one town only, the Alabamas and had well supplied them with arms and ammunition. Through fear and the display of power, the Alabamas were fast bringing over some of the other Upper Creeks to them. The hostile Upper Creek warriors fell upon 23 of their old Chiefs, who were opposed to war, and destroyed them in quick succession, and then united under two leaders of the opposition, Peter McQueen and Hobohieithle Micco. The surviving Upper Creek Chiefs called upon Colonel Hawkins for the aid of the United States, to preserve their lives and possessions.

14. The Creek National Council fortified itself at Tuckaebatchee. By July 10, 1813, the strength of the hostiles had increased until they were threatening Tuckaebatchee. Its defenders were without powder, and had to wait until the war party charged and then countercharge without firearms. On July 10, 1813, the Chief of the Cussetahs, one of the largest and most influential Lower Creek Towns, informed Colonel
Hawkins of the plight of the Creek Chiefs at Tuckabatchee, as
follows:

"Dear Friend: I have arrived from the Tuckabatchee,
and they are in great distress. I have sent two hundred
and some odd warriors to their assistance. The talk you
sent on to the prophet man, I sent on with the warriors,
to take it to Tuckabatchee, and try to get it to them
from there. I heard that they were around Tuckabatchee,
and I sent on my men to get in and save them; and if the
enemy fired on them, to return the fire; and if they were
for peace, to return again. The prophet's men want the
Big Warrior, his son, and the Mad Dog's son, Tuskumgee
Hopoli; and if they only give them up, they would make
peace with the nation. The answer is, what is the reason
they are killing cattle and people when they want only
these three men? But they need not try to fool all of us,
for they say they will battle with all who take the white
people's talk.

"I learn again, that peace is not to be made, until
they destroy Tuckabatchee, Coveta, and Oussetah. The men
in Tuckabatchee are had off for powder, and, for that
reason, they can not turn out to fight, but keep it until
the war party charges on the fort, to defend it. The war
party have taken powder from two men that were carrying it
into the fort. The war party are strong in powder. If they
will not see the talk you sent them, I expect it will be the
worse for them. The Chattahoochee people have heard the Tame
king's talk. William Kinnard and the Wolf Warrior have done
all they can to get their people good, when they left them,
and these two are gone to Tuckabatchee.

"The war talk is gone to the Seminoles, but I expect
peace will be made with them and the white people. I have
received your talks, and sent them, and you must look for
an answer; and if you do not see or hear of an answer in a
few days you may think it is bad times. I hold you as my
father; I have not forgot the talks you gave me; we were
all friends, but it is not so now. I have given all the
ammunition out to go and assist my friends. If they don't
make peace, they will fight until all of it is gone, and one
party or the other will be conquered. You have sent them a
good and friendly talk, and we have done the same. I am
afraid it will do no good for them to save their country.
I have sent on yours; if they will not receive this talk,
we must look for protection.
"Before we lose the Big Warrior, we will all die for him, or get him from them. Perhaps, when the war party see all my men, it may put a fright on them, and, by that means, take your talk. A great many people, who took the prophet's talk, have since thrown it away. Kialijee, to a child, has come to the Big Warrior. The Hillabees took the talks, but the Cherokees turned them, by telling them, take care we do not frighten your children. And they are yet at peace I expect, for I have not heard from them since. This is the talk that I know, but in a few days I expect to get more. If they will not take the talks, news will come day and night."

Colonel Hawkins immediately sent a force of 200 Lower Creek warriors from Coweta and Cussetah to Tuckaubatchee which had been besieged eight days, and under the protection of this force of friendly warriors, the Creek Chiefs and the inhabitants abandoned Tuckaubatchee and fled to Coweta, among the Lower Creeks for protection. Soon after Tuckaubatchee was abandoned it was destroyed with all the property of these friendly Upper Creeks.

Thereafter Coweta, in the Lower Creek Nation, became the headquarters of the friendly Creeks, and all national affairs were carried on from this place throughout the war, and for some time thereafter.

15. The friendly Indians were almost totally unarmed, while the hostiles were well armed, and were being supplied with arms and ammunition by the British at Pensacola.

16. A little aid by the United States at this time, to the Creek National authorities, and the friendly Creeks, which they urgently requested, might have saved the entire Creek War, and cut short the activities of the British in this area. However, the United States gave little or no aid to the friendly Creek authorities. The difficulties of the friendly Creeks increased, and the friendly Chiefs continued to call for aid and assistance from the United
States. (Defendant admits that the United States refused to furnish arms and ammunition to the Creek National Government; that a large part of the Upper Creeks became an ally of Great Britain in the War of 1612; and that a group of Creek Indians made an attack upon the town of Tuckahatchee, the Creek capital).

17. On August 30, 1613 the hostiles, consisting of about 1000 warriors from thirteen Upper towns, attacked Fort Mims, and killed nearly all of the inhabitants who had sought refuge there.

18. Some of the Upper Creek towns did not retreat to the Lower Creek Nation, but remained within the Upper Creek country. In September, 1613, when the leaders of the hostile party invited thirteen of the Upper Creek towns to send their warriors against the whites, stating that their whole number would then be 3000, four Upper Towns—the Fish Ponds, Wewocau, Kialijee, and Hootchooe, answered: "They had one thousand one hundred warriors, but were not going to fight against the Americans. The prophets are liars."

19. Colonel Hawkins continued to ask the United States to come to the assistance of the friendly Creeks. On October 3, 1613, he wrote Captain Cook, Commanding Fort Hawkins, that

"If the friendly Indians are routed from Coweta, or, from necessity, constrained to come on terms with their enemy, the latter will certainly be on us, and attempt to verify their threats against the frontiers of Georgia."

On October 4, 1613, Colonel Hawkins wrote the Secretary of War as follows:
"The three enclosed letters will show you the hazardous situation of affairs among us. I can hear nothing from you. If our friendly Indians are overpowered at Coweta, and the uplifted tomahawk, with the war whoop, is to move the army near fort Hawkins, they will soon have it. * * *"

20. This was the situation when in October, 1813, General Andrew Jackson, with a large force, entered the Creek country. On November 3, 1813, General Coffee fought the battle of Tallassehatchie, in which he was assisted by a company of friendly Creeks.

On November 9, 1813, General Jackson fought the battle of Talladega, assisted by friendly Creeks, and relieved one hundred and sixty friendly Upper Creek warriors, with their wives and children there besieged by the hostiles.

On November 29, 1813, General Floyd, with 950 militia and friendly Creeks, fought the battle of Auttossee, where the Cowetas, under McIntosh, and the Tuckamubatchees, under Mad Dog's son, fought with great bravery.

On December 23, 1813, General Claiborne fought the battle of the Holy Ground, on the Alabama, and then fell back to Fort Claiborne.

On January 22, 1814, General Jackson, assisted by friendly Creeks, fought the battle of Emmickfau, where he was compelled to retreat.

On January 24, 1814, the battle of Enitachopco was fought in which the friendly Creek Indians again took a part.

On January 27, 1814, General Floyd fought the battle of Gelopee, and was assisted by 400 friendly Indians.

On March 27, 1814, General Jackson fought the decisive battle of the Horse Shoe against about one thousand hostiles. A large body of friendly Indians (600 warriors) took part in the action, forded the
river with Coffee, and took and burned the town, while Jackson
stormed the breastworks in front. This battle virtually concluded
the war within the Creek country.

In these battles many of the friendly Creeks were killed and
wounded. They fought with great bravery, and rendered important
service throughout the war. They were conspicuously brave at the
battles of Auttossee and Nuo Yancoau.

21. On April 20, 1814, Major General Thomas Pinckney arrived
at Fort Jackson, and, being the senior officer of the southern Army,
assumed command. General Pinckney had been instructed by the Secretary
of War to make a treaty with the hostile Indians. These instructions
were as follows:

"War Department, March 17, 1814.

"Sir: The policy dictated, as well by the unprovoked, and
unjustifiable conduct of the hostile Creeks, as by a due regard
to the future safety of the Southwestern frontier, may be
brought under the following heads, viz.

"1st. An indemnification (for expenses incurred by
the United States in prosecuting the war) by such cession
or cessions of land, as may be deemed an equivalent for
said expenses.

"2nd. A stipulation, on their part, that they will
cease all intercourse with any Spanish post, garrison, or
town, and that they will not admit among them, any agent
or trader, who does not derive his authority or license
from the United States.

"3rd. An acknowledgment of a right in the United
States to open roads through their territory; to navigate
all waters and streams within the same, and also to es-
ablish therein, such military posts and trading houses
as may be deemed necessary and proper. And,

"4th. A surrender of the prophets and other insti-
gators of the war, who will be held subject to the orders
of the President."
With these outlines as your guide, you are authorized, in conjunction with Colonel Hawkins, to open and conclude a treaty of peace with the hostile Creeks, so soon as they shall express a desire to put an end to the war.

"I have the honor to be, sir, very respectfully, your obedient servant,

John Armstrong."

Major General Pinckney.

On March 20, 1814, the Secretary of War wrote Major General Pinckney, as follows:

"Sir: Since the date of my last letter, it has occurred to me, that the proposed treaty with the Creeks should take a form altogether military, and be in the nature of a capitulation; in which case the whole authority of making and concluding the terms will rest with you, exclusively, as commanding General. In this transaction, should it take place, Colonel Hawkins, as agent, may be usefully employed."

22. In June, 1814, the friendly Lower and Upper Creeks were in a deplorable condition. Many friendly Upper Creek towns had been burned and the inhabitants were concentrated at Coweta and Cussetah, where they consumed all of the provisions of the Lower Creeks, they having escaped with only what was on their backs.

Of the Upper Creeks, the chiefs and warriors of Tuckaubatchee, about seven hundred, were most faithful to the United States, and the greatest sufferers; they were the first objects of resentment and attack from the hostiles; their town was besieged for eight days, and when removed to Coweta, it was destroyed, with all of their cattle, hogs, provisions and everything but what they could carry with them.
Because the friendly Creek warriors were always under orders of the military authorities of the United States, the whole of the Lower Creeks found themselves utterly destitute and facing famine. About 4000 of these friendly Indians were drawing provisions from the agency.

23. On April 23, 1814, General Pinckney wrote Colonel Hawkins as follows:

Sir: The complete success with which it has pleased the Almighty to bless the arms of the United States, in the present war with the hostile Creek Indians, having amply retaliated upon these infatuated people of the loss of blood sustained by the citizens of the United States, and by that part of the nation who remained faithful to them; and their insolence, ingratitude, and perfidy, having been severely chastised; the Government of the United States, willing to spare the dispersed remnant of these miserable people, who may be sincerely disposed to atone for their former misdeeds, by their future good conduct; you will be pleased to communicate to them the following terms, upon which peace will be granted to them:

The United States will retain so much of the conquered territory as may appear to the Government thereof to be a just indemnity for the expenses of the war, and as a restitution for the injuries sustained by its citizens, and the friendly Creek Indians. The United States will retain the right to establish military posts and trading houses, and to make and use such roads as they may think necessary, and freely to navigate all the rivers and water courses in the Creek territory. The enemy must, on their part, surrender their prophets, and such other instigators of the war, as may be designated by the Government of the United States; and they must agree to such restrictions upon their trade with foreign nations, as shall be established by the Government of the United States. You will please, sir, to communicate these terms to the friendly Indians, and to enjoin them in the prosecution of the war against such as may continue hostile, to abstain carefully from injuring those who may be returning, with the intention of making their submission. You may likewise inform them, that the United States will not forget their fidelity, but, in the arrangements which may be made of the lands to be retained as indemnity, their claims will be respected; and such of their chiefs as have distinguished themselves, by their exertion and valor in the common cause, will also receive such remuneration in the ceded lands, and in such manner as the Government may direct. You will please, sir, to take such measures as you may think expedient to communicate the above terms to the hostile party, and to point out
the roads whereby they may approach the poses of the United States to surrender themselves, which roads you will also please to designate to the friendly party. The calamities of the war having reduced many of the women and children of the nation to the utmost distress, for want of subsistence, the United States will furnish provisions for them at the posts to which it can be most conveniently conveyed."

24. On July 10, 1814, General Andrew Jackson succeeded General Pinckney in command. He was directed "to consummate the arrangements committed to General Pinckney," and was furnished with a copy of the instructions given the latter. He was to be governed by these instructions, and was given the same power as was given to General Pinckney.

25. General Jackson appointed August 1, 1814, for a general meeting of the chiefs of the Creeks at Fort Jackson. When the time came, 36 Creek Chiefs were present—35 friendly Chiefs of both the Upper and Lower Creeks who had actively aided the cause of the United States throughout the war, and one hostile Upper Creek Chief.

Jackson presented the draft of a treaty which he had prepared, and demanded that the Creek Chiefs sign it. Big Warrior, the speaker of the Creek Nation, thereafter refused to attend the council, but Jackson threatened to put him in irons if he did not come. Jackson also told the chiefs in council that if they did not agree to the terms of the treaty and the boundaries as prescribed by him, and sign it, he would furnish the tribe with provisions and ammunition, and they must go down to Florida and join their enemies, the hostiles and British, and he would come in a short time with troops and drive the whole of them into the sea.

The Chiefs asked Jackson that as his powers extended only to
retaining as much land conquered from the hostiles as would indemnify the United States for the expenses of the war, upon what principles he took the lands eastwardly to Georgia, belonging to the friendly Indians. Jackson replied that he did it for political motives — to prevent intercourse between the Indians and the Spaniards and English in Florida, to have a border to separate his enemies from his friends, which he said was as beneficial to the friendly Indians as to the United States. The Speaker asked where the hostiles were to be placed if Jackson took all their land. He replied, in substance, "You have room enough to take them among you."

26. On August 7, 1814, the Speaker of the Nation called upon Colonel Hawkins for advice stating:

"We are again in trouble and have need of your advice; the terms of peace offered by General Pinckney are disregarded by General Jackson, as we understand. He looks thro' our country and marks his line, disregards everything we say. He came to treat with the Hostiles and take as much of their country as would pay the expenses of the War; this is right, if the whole is necessary, and he leaves them to starve, it is a thing of their own seeking. The General's line takes the hunting grounds of us upper friendly Creeks between Cossum and Tombigbee and between this and Pensacola. It takes from the friendly Indians the lands between Konesau and Georgia, eastwardly. His treaty has but one side to it, and we got nothing. We are afraid of the Hostiles, we are alarmed at our situation. The General has done much for us and we wish to do something for him, he has saved our lives, and how can we refuse what he demands. This land of the Friendly Indians is more than enough to pay for our losses, we are not asking him for anything, we only want as pay for individuals, out of our own funds, and that on the offer of General Pinckney. One thing we do not understand, General Pinckney ranks Jackson, and yet the latter cannot fulfil the promises of the former; you know the friendly Indians did not half of them lose property. But some of us lost all."
Washington sent you here; he is dead and gone, but you our friend lives, we come to you. You know the Hostiles are not here, they are gone to Pensacola. How can the General settle with them, they are not ready for peace? You know Cussetau and Cowetaw are um-man-mau-yau (towns governing all the other towns) and they, and Tookubatchee and Ooseoochee are masters of the land. The Government of this nation are here, and have been friendly and mean to be so. We could settle matters with the General without the 'Redsticks', as if they were here, you know they were not masters of the land to dispose of it. They have their hunting grounds which every town has. The General says what he will have, and suppose he will take it."

Colonel Hawkins advised them to sign the treaty and submit their protest with it, if General Jackson did not accede to their requests.

27. On August 8, 1814, the Speaker of the Nation asked Jackson to give them back some lands west of the Coosau to accommodate Arbeka, a friendly Upper Creek town, but Jackson refused this request.

Thus the friendly Creek Chiefs, composing the Creek National Council — the Government of the Creek Nation — the allies of the United States throughout the war, could do nothing but submit to the demand of General Jackson, which they did under protest. The Chiefs asked Colonel Hawkins to embody in the protest the following points:

"* * * They say in the instrument to convey their intentions expressed this day, it must be plainly expressed which are the towns masters of the land; that they have been uniformly friendly to the United States, and faithful to their engagements in peace and war; that they consider the extending the line thro' their lands in the Lower Creeks, as taking from them more than the equivalent offered, and they have claims which should be attended to, but as the General has no powers about them they will sign the line with him, it being demanded by him and advised by their friend Col. Hawkins."

28. The formal protest as drawn, which, with the letter of General Pinckney to Colonel Hawkins dated April 23, 1814, and
Colonel Hawkins' reply of April 25, 1814, they asked to be forwarded to the President as their part of the treaty, is as follows:

"We the undersigned chiefs of the Creek Nation now assembled at the treaty held between the Friendly and Hostile Indians of the one part, and Major General Andrew Jackson for the United States of the other part make known to all whom it may concern, that Cussetau and Covetau are the head towns of the Creeks, and with Tookauatchie and Ooseooche the owners of the Creek lands, and call ourselves, as we are, masters of the land. We have adhered faithfully in peace and war to our treaty stipulations with the United States. Finding that General Jackson in drawing the lines around our country to retain as much of that conquered from the hostile Indians as he deemed just, found it necessary for political motives and purposes to run a line from Ofooshee through our lands which commences on the dividing ridge between the waters of the upper and lower Creeks to Chattahouchee and thence eastwardly to the boundary of Georgia, within which there is a great quantity of lands actually our property, for which he as an equivalent leaves to the conquered Indians lands between Coosa and Tallapoosa. We do not deem the exchange an equivalent. It shall not however interfere with the running the line, as we rely on the justice of the United States to cause justice to be done us, and on these conditions.

"We request, that Genl. Pinckney's letter of the 23d April to Col. Hawkins and the answer thereto of the 25th be sent on with the treaty, which we will sign after delivering this instrument.

"1st. Wishing to give a national mark of gratitude to Maj. Genl. Andrew Jackson for his distinguished services rendered at the head of the army from Tennessee — we give and grant to him and his heirs forever, three miles square of land, at such place as he may select, out of the retained lands.

"2d. Our nation feel under obligations to Col. Benjamin Hawkins our agent, and to Mrs. Levinia Hawkins his wife, for the unwearied pains they have taken both of them for a long time, to introduce the plan of civilization among us, and to be useful to us; and as their children are born in our land, we as a token of gratitude give and grant to Col. Hawkins for himself and his wife and children, three miles square of land to him and his heirs forever to be located in such part of the retained land as Col. Hawkins may select, in one tract, or surveys of one mile square each."
3d. We give and grant to George Mayfield, our interpreter, with Genl. Jackson, a whitman raised in our land one mile square of land to him and his heirs forever, where he may select, as a mark of our respect for his honesty and usefulness to us as interpreter.

4thly and lastly—We give and grant to Alexander Cornellis a half breed, our old and faithful interpreter who has long been in the public service, one mile square of land at his option in the retained land or lands of the Creeks, at his option to be located by him—we finally request, that the government of the United States, will ratify the foregoing acts of national gratitude, and by suitable deeds of conveyance to enable the parties to secure and hold the said lands agreeable to our intentions as herein expressed. Given under our hands and seals at the treaty ground Fort Jackson 9th August 1814.

(Signatures)

29. The following treaty was then executed;

Articles of agreement and capitulation, made and concluded this ninth day of August, one thousand eight hundred and fourteen, between major general Andrew Jackson, on behalf of the President of the United States of America, and the chiefs, deputies, and warriors of the Creek Nation.

Whereas an unprovoked, inhuman and sanguinary war, waged by the hostile Creeks against the United States, hath been repelled, prosecuted and determined, successfully, on the part of the said States in conformity with principles of national justice and honorable warfare — And whereas consideration is due to the rectitude of proceeding dictated by instructions relating to the re-establishment of peace; Be it remembered, that prior to the conquest of that part of the Creek Nation hostile to the United States, numberless aggressions had been committed against the peace, the property, and the lives of citizens of the United States, and those of the Creek Nation in amity with her, at the mouth of Duck river, Fort Mims, and elsewhere, contrary to national faith, and the regard due to an article of the treaty concluded at New York in the year seventeen hundred ninety, between the two nations; That the United States, previously to the perpetration of such outrages, did in order to ensure future amity and concord between the Creek Nation and the said states, in conformity with the stipulations of former treaties, fulfill, with punctuality and good faith, her engagements to the said nation; that more than two-thirds of the whole number of chiefs and warriors of the Creek Nation, disregarding the
genuine spirit of existing treaties, suffered themselves to be instigated to violations of their national honor, and the respect due to a part of their own nation faithful to the United States and the principles of humanity, by impostures (impostors,) denouncing themselves Prophets, and by the duplicity and misrepresentation of foreign emissaries, whose governments are at war, open or understood, with the United States. Wherefore,

Ist. The United States demand an equivalent for all expenses incurred in prosecuting the war to its termination, by a cession of all the territory belonging to the Creek Nation within the territories of the United States, lying west, south, and southeastwardly, of a line to be run and described by persons duly authorized and appointed by the President of the United States — Beginning at a point on the eastern bank of the Coosa river, where the south boundary line of the Cherokee Nation crosses the same; running from thence down the said Coosa river with its eastern bank according to its various meanders to a point one mile above the mouth of Cedar creek, at Fort Williams, then east two miles, thence south two miles, thence west to the eastern bank of the said Coosa river, thence down the eastern bank thereof according to its various meanders to a point opposite the upper end of the great falls, (called by the natives Wootumka,) thence east from a true meridian line to a point due north of the mouth of Ofucshee, thence south by a like meridian line to the mouth of Ofucshee on the south side of the Tallapoosa river, thence up the same, according to its various meanders, to a point where a direct course will cross the same at the distance of ten miles from the mouth thereof, thence a direct line to the mouth of Summochico creek, which empties into the Chatahouchie river on the east side thereof below the Eufaulan town, thence east from a true meridian line to a point which shall intersect the line now dividing the lands claimed by the said Creek Nation from those claimed and owned by the State of Georgia; Provided, nevertheless, that where any possession of any chief or warrior of the Creek Nation, who shall have been friendly to the United States during the war, and taken an active part therein, shall be within the territory ceded by these articles to the United States, every such person shall be entitled to a reservation of land within the said territory of one mile square, to include his improvements as near the center thereof as may be, which shall inure to the said chief or warrior, and his descendants, so long as he or they shall continue to occupy the same, who shall be protected by and subject to the laws of the United States; but upon voluntary abandonment thereof, by such possessor or his descendants, the right of occupancy or possession of said lands shall devolve to the United States, and be identified with the rights of property ceded hereby.
2nd. The United States will guarantee to the Creek Nation, the integrity of all their territory eastwardly and northwardly of the said line to be run and described as mentioned in the first article.

3d. The United States demand, that the Creek Nation abandon all communication, and cease to hold any intercourse with any British or Spanish post, garrison, or town; and that they shall not admit among them, any agent or trader, who shall not derive authority to hold commercial, or other intercourse with them, by license from the President or authorized agent of the United States.

4th. The United States demand an acknowledgment of the right to establish military posts and trading houses, and to open roads within the territory, guaranteed to the Creek Nation by the second article, and a right to the free navigation of all its waters.

5th. The United States demand, that a surrender be immediately made, of all the persons and property, taken from the citizens of the United States, the friendly part of the Creek Nation, the Cherokee, Chickasaw, and Choctaw Nations, to the respective owners; and the United States will cause to be immediately restored to the formerly hostile Creeks, all the property taken from them since their submission, either by the United States, or by any Indian Nation in amity with the United States, together with all the prisoners taken from them during the war.

6th. The United States demand the capture and surrender of all the prophets and instigators of the war, whether foreigners or natives, who have not submitted to the arms of the United States, and become parties to these articles of capitulation, if ever they shall be found within the territory guaranteed to the Creek Nation by the second article.

7th. The Creek Nation being reduced to extreme want, and not at present having the means of subsistence, the United States, from motives of humanity, will continue to furnish gratuitously the necessaries of life, until the crops of corn can be considered competent to yield the nation a supply, and will establish trading houses in the nation, at the discretion of the President of the United States, and at such places as he shall direct, to enable the nation, by industry and economy, to procure clothing.

8th. A permanent peace shall ensue from the date of these presents forever, between the Creek Nation and the United States, and between the Creek Nation and the Cherokee, Chickasaw, and Choctaw Nations.
9th. If in running east from the mouth of Summochico Creek, it shall so happen that the settlement of the Kennards, fall within the lines of the territory hereby ceded, then, and in that case, the line shall be run east on a true meridian to Kitchfoonee Creek, thence down the middle of said creek to its junction with Flint River, immediately below the Oakmulgee Town, thence up the middle of Flint River to a point due east of that at which the above line struck the Kitchfoonee Creek, thence east to the old line hereinbefore mentioned, to-wit: the line dividing the lands claimed by the Creek Nation, from those claimed and owned by the State of Georgia.

The parties to these presents, after due consideration, for themselves, and their constituents, agree to ratify and confirm the preceding articles, and constitute them the basis of a permanent peace between the two nations; and they do hereby solemnly bind themselves, and all the parties concerned and interested, to a faithful performance of every stipulation contained therein.

In testimony whereof, they have hereunto, interchangeably set their hands and affixed their seals, the day and date above written."

(Signatures)

30. The treaty of August 9, 1814, was signed under duress by 35 friendly Creek Chiefs, constituting the Creek National Council, the de jure Government of the Creek Nation, which had been the faithful ally of the United States during the entire war, and which had furnished warriors who had fought side by side with the American troops in every important battle of the war; and by one hostile chief, he being the only hostile chief present.

31. On August 10, 1814 General Jackson wrote the Secretary of War as follows:

"On yesterday evening my negotiations with the Creek nation were closed, by a cession to the United States of a territory, which will be considered an ample indemnification for all expenses incurred in prosecuting the war on this frontier. Considerations, interesting to the United States, relative to the
Spanish dominions immediately south of us, induced me to procure the cession of all the Creek lands of consequence, bounding on foreign claims of territory, in order to prevent future connexions, injurious to our tranquillity. The documents which are evidence of this cession, I do not think proper to trust to ordinary means of conveyance, and therefore transmit them by Mr. Cassidy, from whom every explanatory information can be had, who will, as soon as practicable, hand them to the War Department."

32. On August 10, 1814 Colonel Hawkins wrote the Secretary of War as follows:

"General Jackson having sent on his recent transactions with the Chiefs accompanied with documents appertaining to them, by his Secretary Mr. Cassidy, who was with him, well acquainted with what is done, and is worthy by his intelligence and correct deportment of the confidence reposed in him, I have but little to add in this communication. Had it not been for the friendly attention of the Chiefs, who call themselves the owners or masters of the land, and are so, and who have adhered faithfully to us in this Civil War, the Genl. would have found it difficult to execute his commission, as there was but one chief present of the hostile Indians, who had authority in the premises, those of the Red Clubs who would have had were fugitives in Florida. (Underscoring supplied).

"Fanaticism which commenced its baneful acts, by destroying the old chiefs and actually destroyed 23 in quick succession alarmed the survivors and threw them on me for the aid of the United States, to preserve their lives and possessions. The distinguished bravery of General Jackson the series of uninterrupted victories obtained by the army under his command, inspired the Chiefs with a confidence in the General, which they have endeavored to express by an act of national gratitude, as well as the emphatic declaration he had saved their lives. (Underscoring supplied). It is due to the occasion, and to truth, to add, that the manner in which the agency for Indian Affairs has been conducted for several years, has inspired a confidence in the justice of our Government not to be shaken by adverse fortune, and I have cooperated with the General with effect to further the views of Government. I have advised them and they have followed it, to accommodate us with the line through the lands of the Lower Creeks. If General Jackson had had authority it is not unlikely, a more convenient accommodation would have accrued to Georgia. I feel that the Chiefs by their confidence in the justice of the U. S. will not have to reproach
me for advising them to concede this line of accommodation. I shall from the agency in a post or two, address you on the distresses of the conquered Indians, and the probable necessity to secure their existence, to remove them beyond the Mississippi unless I can prevail on the friendly Chiefs to take them back again under the protection of the nation."

33. The domain ceded by the Creek Nation under the Treaty of Fort Jackson consists of lands in Georgia, Alabama and Mississippi. Different officials have given the acreage in varying amounts. The smallest acreage given is that by Indian Commissioner L. Lea in a report to the Chairman of the Committee on Indian Affairs of date January 17, 1853, as follows:

<table>
<thead>
<tr>
<th>Location</th>
<th>Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>In Alabama</td>
<td>14,284,800 acres</td>
</tr>
<tr>
<td>In Georgia</td>
<td>7,084,800 acres</td>
</tr>
<tr>
<td>In Mississippi</td>
<td>400,000 acres</td>
</tr>
</tbody>
</table>

"over 21-1/2 millions acres of land." Of these lands ceded he reports as being occupied exclusively by the friendly Lower Creeks in Georgia and southeastern Alabama 8,349,940 acres. No battles of the war were fought in the territory claimed as being occupied exclusively by the friendly Lower Creeks.

34. The lands ceded to the United States by the treaty of Fort Jackson greatly exceeded in value the total cost of the so-called Creek War to the United States.

35. The Treaty of Fort Jackson was ratified by the Senate of the United States and proclaimed by the President on February 16, 1815. No compensation has ever been provided to the Creek Nation for any lands ceded thereby.

In a Council of the Creek Chiefs at Tuckahatchee in September, 1815, the Fort Jackson Treaty was presented and read to the Chiefs,
as ratified and proclaimed. Tustumugge Thullico, Speaker of
the Creek Nation, again reviewed the causes of the war, and the
manner in which Jackson had forced the treaty upon the friendly
government of the Creek Nation, and bitterly protested against
the injustice of the treaty, and the action of the United States
in disregarding the protest of the Creek Nation, which the Chiefs
considered their part of the treaty. He further stated:

"It is well known we are a small nation. It
appears you would shove us off, and take what little
we have got. It appears this is the way you are to
treat us. It is not the way to treat friends. I have
told you to stop and you will not. It appears it must
be the orders of government, the President, to treat us
as you do, and take away what we have got. You tell us
it is the way for us to pick out men, to put on the line
with the commissioners. We cannot do it. It appears you
are taking it away from us. The Commissioners must go on
themselves. We were all raised on this land. If that is
the law you have made to rob us, if it is the law you
must go on with the line. I will sit still and hold down
my head. If that is the law it will be known among foreign
nations of the Whites. The treaty will be seen among the
foreign nations over the seas. As you white people have all
made peace."

36. The subject of this forced treaty was afterwards frequently
discussed in the Creek Nation, and the chiefs agreed that their only
remedy was to apply to the President for relief. In 1817 William
McIntosh, with other Creek chiefs, was sent to Washington for this
purpose but with no result.

37. In the year 1832, a delegation of the chiefs of the Creek
Nation, of which Opoteyoholo was one, went to Washington to hold an
interview with General Jackson, then President of the United States,
in an attempt to obtain compensation for the land taken under the
treaty of Fort Jackson in 1814. General Jackson told them that he
could make no arrangement in regard to their claims so long as their people remained east of the Mississippi; that they could not live peacefully, surrounded as they were by the white population, and under the jurisdiction of the laws of Alabama; that as soon as the tribe should, by treaty, cede the lands they then held, and move west, their grievances would be listened to, and all their claims, including this one, should be paid, but that nothing in the way of settlement could be made until this was done.

38. In the year 1842, and after they had emigrated to the west, Captain Hitchcock, United States Army, as an agent of the Government, visited the Creek Nation and called a council of the tribe for the purpose of ascertaining the nature and character of their claims. They told him of their claim for lands taken from them under the treaty of Fort Jackson, which had never been paid for and gave him a list of various other claims for property lost and destroyed in the War of 1812-1814. However, nothing was done in regard to the matter.

39. In 1853 the Creek Nation sent a delegation to Washington for the purpose of obtaining a settlement of this claim. A printed Memorial was submitted to Congress, and the Committees of Indian Affairs of the House of Representatives and the Senate made a thorough investigation of this claim, and reported favorably on it.

40. (1) The Treaty of August 7, 1856 (11 Stat. 699; 2 H. R. 756) provided in part as follows:

*Article 5. The Creek Indians do hereby absolutely and forever quit-claim and relinquish to the United States all their right, title, and interest in and to any lands heretofore owned or claimed by them, whether east or west*
of the Mississippi River, and any and all claim for or on account of any such lands, except those embraced within the boundaries described in the second article of this agreement; and it doth also, in like manner, release and fully discharge the United States from all other claims and demands whatsoever, which the Creek Nation or any individual thereof may now have against the United States, excepting only such as are particularly or in terms provided for and secured to them by the provisions of existing treaties and laws; * * *.

"Article 5. In consideration of the foregoing quit-claim, relinquishment, release, and discharge, and of the cession of a country for the Seminole Indians contained in the first article of this agreement, the United States do hereby agree and stipulate to allow and pay the Creek Nation the sum of one million of dollars, * * *.

(2) The above treaty was executed under the following circumstances:

Under treaty provisions the United States had moved the Seminole Nation from lands east of the Mississippi and located them on a part of the Creek domain in Indian Territory, where they were to become a constituent part of the Creek Nation subject to Creek laws. (Seminole Treaty of May 9, 1832, 7 Stat. 368, 2 Kapp. 342; Creek Treaty of January 4, 1845, 9 Stat. 821, 2 Kapp. 550). Disputes arose between the two nations, and in December, 1855, the Commissioner of Indian Affairs directed that both nations send delegates to Washington for the purpose of emancipating the Seminole Nation from the Creek Nation, and securing a cession of Creek lands for the Seminoles.

(3) Delegates from both Nations arrived in May, 1856, and submitted for settlement their claims against the United States. The claims of the Creeks totaled approximately $4,000,000, including claim for 8,249,940 acres of land located in Georgia and southeastern Alabama and claimed by the Creeks to have been exclusively occupied
by friendly Creeks, such claim for said acreage being in the amount of $1,769,940.

At first the Commissioner refused to consider any claims other than those having to do with the Seminole controversy. The Creek delegates advised the Commissioner that if they should make another treaty without attempting to settle all their claims, that such action would meet with great objection on the part of the tribe. For this and other reasons they insisted that the Commissioner reconsider his decision to consider the Seminole question alone and consider all their claims.

(4) The Commissioner then asked the Creek delegates what they would take for their claims. When the delegates submitted their views, the Commissioner vigorously attacked the validity of all the Creek claims, referring to them as "alleged claims" and "supposed wrongs," and further stated that the claims were wholly without merit. He particularly attacked the Fort Jackson Treaty claim, advising the delegates that there was no merit to it, although he had before him the report of his predecessor, Commissioner Luke Lea, and the opinions of the Committees of Indian Affairs of both Houses of Congress, and his own report of two years before, all favorable to this claim.

(5) While the Commissioner strongly disparaged their claims, he offered them $700,000 for a cession of Creek lands for the Seminoles and for nearly $4,000,000 worth of their claims. The Creek delegates rejected this offer as neither fair, nor just, and much less liberal. The Commissioner then secured an opinion
from the Secretary of the Interior stating that this offer was a very liberal one, and that he could not offer more. The Commissioner so advised the Creek delegates. While the Secretary adhered to this $700,000 offer, the Commissioner raised it to $800,000.

(6) The Creek delegates accepted $1,000,000 in settlement of all their claims, including the claim based on the Fort Jackson Treaty cession, and for a cession of 2,037,414.62 acres of Creek lands for the Seminoles, the delegates stating at the time, however, that they considered this settlement neither fair nor just, but that "we have submitted to take less, as men must ever submit to what they cannot resist."

(7) In submitting the executed treaty the Commissioner of Indian Affairs advised the Secretary of the Interior that the Creek claims exceeded in amount $3,700,000 and that in his opinion they were "generally not well founded" and that the Creek delegates finally acceded to the proposition he made them.

(8) The consideration of $1,000,000 was paid by the United States to the Creek Nation under the provisions of said Treaty of 1856.

(9) That by Article 1 of said Treaty of 1856 the Creek Nation ceded to the Seminole Nation an area of Creek domain then estimated at 2,169,080 acres (Seminole Treaty of March 21, 1866, 14 Stat. 755, 2 Kapp. 910), later ascertained by actual survey to contain 2,037,414.62 acres (Seminole Agreement, March 2, 1839, 25 Stat. 980, 1004, 2 Kapp. 540).

(10) These lands were valued by the Commissioner of Indian Affairs in 1856 at $1.25 per acre; by the President as of 1866 at
$1.25 per acre; by the Seminole delegates at $2.50 per acre as of 1866; and when opened to white settlement in 1891 were sold to homesteaders at $1.25 per acre. When first placed on the open market in 1892 these lands sold at public auction at from $5.52 to $8.22 per acre, or for the average of $7.50, and the fair market value was fixed by the Court of Claims at $7.00 an acre in 1892.

(11) At the time of the execution of the Treaty of 1856 the United States had sold 7,531,000 acres of land in Alabama, Georgia and Mississippi ceded by the Creek Nation in the Treaty of Fort Jackson of August 9, 1814, 7 Stat. 120; 2 Stat. 107, and had received $11,359,947 for it.

41. The Agreement of March 1, 1889, 25 Stat. 757, 1 Stat. 321, provided in part as follows:

"I. That said Muscogee (or Creek) Nation, in consideration of the sum of money hereinafter mentioned, hereby absolutely cedes and grants to the United States, without reservation or condition, full and complete title to the entire western half of the domain of the said Muscogee (or Creek) Nation lying west of the division line surveyed and established under the said treaty of eighteen hundred and sixty-six, and also grants and releases to the United States all and every claim, estate, right, or interest of any and every description in or to any and all land and territory whatever, except so much of the said former domain of the said Muscogee (or Creek) Nation as lies east of the said line of division, surveyed and established as aforesaid, and is now held and occupied as the home of said nation.

"II. In consideration whereof, and of the covenant herein otherwise contained, the United States agree to pay to the said Muscogee (or Creek) Nation the sum of two million two hundred and eighty thousand eight hundred and fifty-seven dollars and ten cents, * * ."

The consideration of $2,280,857.10 was paid by the United States to the Creek Nation under the provisions of said Agreement of 1889.
This consideration was intended by the parties to compensate the Creek Nation for its remaining interest in lands in Indian Territory conditionally ceded to the United States under the Creek Treaty of June 14, 1866, 14 Stat. 785, 2 Eapp. 931.

No part of the above consideration was paid or intended to be paid for the general release set forth in paragraph I of said Agreement of 1839, and no consideration was paid to the Creek Nation under this Agreement for lands ceded in the Fort Jackson Treaty of August 9, 1814, 7 Stat. 120; 2 Eapp. 107.

42. "Stricken by order of 12/29/55."

April 22, 1952.