

Indian title; that no compensation at any time has been received by petitioner for said lands.

The defendant contends that a state of war had existed between the United States and the Creek Nation during the period 1812 to August 9, 1814, and that the treaty of August 9, 1814 was a treaty of capitulation, and that therefore the acreage acquired by the United States thereunder was the result of conquest and for which no liability for compensation was incurred to the petitioner. The defendant further contends that under the treaty of August 7, 1856, executed between the Creek Nation and the defendant, the Creek Nation released any claim against the United States by reason of the treaty of August 9, 1814, if any existed, and subsequently, by agreement of March 1, 1839 again released any claim it might have by reason of the treaty of August 9, 1814; that therefore, if any liability had ever existed by reason of the treaty of August 9, 1814, same was released and extinguished by reason of the treaties of August 7, 1856, and the agreement entered into between the parties of date March 1, 1839.

In no event could there be any consideration due the petitioner based on the treaty of August 9, 1814 (which we will hereafter refer to as the Jackson treaty) unless the lands described therein belonged to the Creek Nation; therefore, this question will first be discussed.

The record as to the extent of the territory ceded by the Jackson treaty is confusing, the treaty describing said land ceded as being "all the territory belonging to the Creek Nation within the territories of the United States lying west, south and eastwardly of a line," which line is made to begin "at a point on the eastern bank of the Coosa River" some distance north of Fort Williams, (Fort Williams is a short distance north of the 33rd parallel) and proceeds south

and southeastwardly along the lines of the Coosa River to the Tallapoosa River, and thence to the Chattahoochee, and thence in a straight east line toward the Atlantic coast, to the then western boundary of lands to which Indian title had been extinguished.

As to the northern, western and southern boundaries, there are differences of opinion, and these differences result in varying proofs of total acreage. The petitioner, by requested finding No. 54, claims the acreage of the cession to be a total of 25,936,901 acres -- 17,917,391 in Alabama; 406,710 in Mississippi; and 7,612,800 in Georgia. This acreage it claims to be established by claimant's Exhibits Nos. 1 and 40. The Indian Office finds the acreage to be 21,769,600 (Cl. Ex. 31).

There are some conflicting claims on the part of the Choctaws, Chickasaws and Cherokees as to the dividing line between their holdings and those of the Creeks to the north and west; however, it seems pretty generally agreed that the western line of the Creek territory was neither the Tombigbee River nor the Alabama River, nor the watershed between these two rivers. Royce substantially follows the watershed between these two rivers in fixing the western boundary of Plat 75 (which he determines the Jackson Treaty cession to be). The beginning of hostilities between the hostile Creeks and the loyal Creeks was in southwestern Alabama along the eastern banks of the Tombigbee River, which would indicate the Creeks to be in possession then of a large portion of what appears on Royce's Map to be Plats 61 and 82; however, the area of 61 had been ceded by the Chickasaws to the United States on November 16, 1805, and the area of Plat 82 was ceded by the Choctaws on November 24, 1816. The record indicates, however, that the cessions of the Choctaws of Plat 82 and of Plat 80 were more in the nature of quitclaims

than of recognized ownership, but granting the claims of the Choctaws, Chickasaws and Cherokees as good, the southern part of the western boundary of the Creeks would practically follow the watershed between the Alabama and Tombigbee Rivers, although there are evidences of occupancy by the Creeks further west. One of the first battles of this war was at Fort Mims, which is at or near the confluence of the Alabama and Tombigbee Rivers and on the west side of the Alabama River. The beginning of the hostilities, however, was known as the Battle of Burnt Corn shortly prior to the Fort Mims massacre, and the ending of hostilities in that section was by the battle known as that of Holy Ground, all in southwestern Alabama near the confluence of the Alabama and Tombigbee Rivers. Holy Ground was called the Creek capitol at the time and was located at a point on the east bank of the Alabama River about 35 miles north of Fort Mims, this territory being said by Governor Clay at the time to be the best of the enemy's country. (Rowland's Andrew Jackson, pp. 84-93; 167-182). In this history of these battles Rowland frequently refers to this territory as being the east boundary of the Choctaw and Chickasaw lands. For the protection of this territory some twenty-odd forts were constructed along the Tombigbee and Alabama Rivers. (Rowland, pp. 84-93).

As to the southern boundary, in a treaty between Governor Oglethorpe of Georgia and the Creeks, Cherokees and Chickasaws, on August 21, 1739, it was declared

"* * * the lands between the Savannah and St. John's Rivers, * * * and from the St. John's River to the Apalachie Bay, and thence to the mountains, do, by ancient right belong to the Creek Nation. * * *."

In his testimony, Dr. Jno. R. Swanton (a witness for the defendant).

stated that the Creeks occupied and controlled the lands all the way from the Tennessee River to Florida and to the Tombigbee River on the west.

As to the north boundary, it is fixed in Claimant's Exhibit No. 1 and Defendant's Exhibit No. 55 as that fixed by the treaty of the Cherokees on March 22, 1816, which is the south line of the Royce Plat No. 79. There seems no doubt that the Creeks occupied lands even further north, probably to the Tennessee River, however, no claim is now being made by the Creeks for the lands north of the south line of plat 79.

The difference in the acreage as shown by Royce (Plat 75) and that claimed by the petitioner, based on Claimant's Exhibit No. 1, is approximately 4, 337,000 acres.

The defendant in its brief (p. 114) refers to Dr. Swanton as being "beyond any doubt the leading authority, living or dead, on the Creek Indians, and we might add, his integrity is unimpeachable." Dr. Swanton testified that the Creeks occupied the territory from the Tennessee River on the north to Florida on the south, and to the Tombigbee River on the west. His answer to inquiry by the defendant as to whether or not they occupied the described territory (referring to Plat 75 of Royce) was "Yes, practically all that territory." He also testified that they occupied Plat No. 82 on the west of 75 and that he did not know of any Choctaw settlements east of the Tombigbee River. There was much other testimony in the record to the effect that the Creeks occupied territory to the Tombigbee.

While defendant, in its original answer, alleges "that at the time said treaty of August 9, 1814 was made, the lands involved were un-surveyed, the boundaries were indefinite, and the title, if any, of the

Creek Nation was doubtful," -- it made no request for a finding of fact that the petitioner did not own the lands involved in the claim. The only finding requested with reference to the ownership of said land is requested finding No. 14, as follows:

"The lands embraced in said cession were situated in the states of Alabama, Georgia and probably Mississippi, and contained an area of approximately from 21,284,800 to 25,936,901 acres. The Commission further finds that the lands used and occupied by the Creek Indians in 1814 to the exclusion of other Indian tribes, constituted communal property and belonged to the Creek Nation."

Defendant, in its brief, says

"Defendant does not dispute that the Creek Nation had Indian title to a large area of land in Alabama and Georgia but the exact location of the area and the acreage therein is a matter to be determined in the event that the Commission adjudges the defendant liable for the value of the lands ceded under the treaty of 1814.

"The acreage of the cession and the ownership of the lands can be determined with a high accuracy. * * *."

Dr. Swanton, the defendant's witness, gave the following testimony in response to the following question:

"Q. Doctor, I will ask you if the lands that were ceded under the Treaty of 1814 belonged to the Creek Nation, the Upper Creeks or the Lower Creeks?

"A. The Creek Nation. Of course, the lands, you understand, nearer the two divisions were considered to be of more particular interest to the division concerned, but the lands were recognized as Creek lands."

Supplementing the historical information as to the use and occupancy of the territory as hereinabove outlined, from the activities during the Creek hostilities in 1812, and the years following, it seems certain that at that time the Creeks were very numerous in southwestern Alabama to the Florida line -- in fact, south of the Florida line almost to Pensacola.

