

BEFORE THE INDIAN CLAIMS COMMISSION

THE DELAWARE TRIBE OF INDIANS,)

Petitioner,)

v.)

Docket No. 27-A)

THE UNITED STATES OF AMERICA,)

Defendant.)

ABSENTEE DELAWARE TRIBE OF)
OKLAHOMA, DELAWARE NATION,)
ex rel. W. E. EXENDINE and)
MYRTLE HOLDER,)

Petitioners,)

v.)

Docket No. 241)

THE UNITED STATES OF AMERICA,)

Defendant.)

Decided: October 23, 1952

Appearances:

Wesley E. Disney and Charles B. Rogers,
with whom was Lawrence H. Gall, Attorneys
for Petitioner, Docket No. 27-A.

Stanford Clinton, with whom was Richard
Schifter, Attorneys for Petitioners,
Docket No. 241.

Ralph A. Barney, Fred B. Ugast and
L. L. Yost, with whom was Mr. Acting
Assistant Attorney General, Ralph J.
Luttrell, Attorneys for Defendant in
Dockets Nos. 27-A and 241.

FINDINGS OF FACT

1. In Docket No. 27-A the petitioner is THE DELAWARE TRIBE OF INDIANS. This group of Indians now resides in northeastern Oklahoma on land acquired from the Cherokee Indians under the terms of an agreement concluded between the Delawares and Cherokees on April 8, 1867. These were the Delawares who had resided on the reservation in Kansas from about 1830. The main body of Delawares who removed to the Kansas Reservation following the "Supplemental" treaty of 1829, was composed of bands or groups from Indiana, those few who had remained on the Spanish grant near Cape Girardeau, Missouri, and those who had been on the tract in southwest Missouri on the James Fork of White River, which had been assigned to them as a temporary reservation or place of residence by General William Clark, in accordance with the provisions of the treaty of St. Mary's, under date of October 3, 1818.

2. In Docket No. 241 the petitioners call themselves the ABSENTEE DELAWARE TRIBE OF OKLAHOMA, DELAWARE NATION, EX REL W. E. EXENDINE AND MYRTLE HOLDER. This group or band consists of Delaware Indians now residing among the Wichita and Caddo Indians at Anadarko, Oklahoma, on what was formerly known as the Wichita Reservation in western Oklahoma. The attorney's contract designates this group as "The Delaware Tribe of Indians (Lenii Lenape) under the jurisdiction of the Western Oklahoma Consolidated Agency, Anadarko, Okla." This group also belongs among the Indians designated as "Wichita and Affiliated bands of Indians."

3. The claim of each of said groups is based on the cession of the land which was granted to the Delaware Nation as an "outlet" from the main body of land which was conveyed to said Nation by the treaty of September 24, 1829, as a residence. Both petitions allege that the cession to the United States of May 6, 1854, of this outlet land was obtained by fraud, duress and for an unconscionable consideration. The claims are identical.

DELAWARE HISTORY

4. A short history follows of the origin of the Delaware Nation of Indians, of its various migrations and wanderings, of how it became divided into separate bands and groups, and of how these later became the two groups who are the petitioners in the above entitled and numbered claims:

The Delaware Indians, who called themselves Lenape or Leni-Lenape, were a tribe of considerable numbers, who were living in what is now New Jersey, Delaware, eastern Pennsylvania, and southeastern New York, when they were first contacted by the white man. After having ceded their lands east of the Delaware River to the colonies of New York, New Jersey and Delaware, they made their first treaty with William Penn in 1682, whereby they sold to him a large part of their lands west of the Delaware. About 1720 they came under the influence and control of the Iroquois or Six Nations, who at that time claimed, by right of conquest, all of western Pennsylvania, all of Ohio and Indiana, and lands south of the Ohio as far west as the mouth of the Tennessee River. By a treaty concluded at Fort Stanwix on November 5,

1763, between Sir William Johnson and the Six Nations, the latter conveyed to the Proprietaries of the Colony of Pennsylvania all their lands in the province.

A number of Delawares had removed to the Allegheny River as early as 1724, and in 1742 a large number of them settled in the Wyoming Valley on the Susquehanna River. About 1751 they began to form settlements in eastern Ohio at the invitation of the Hurons or Wyandots, who had been the original occupants of this area before its conquest by the Six Nations. By the treaty of October 22, 1784, the Six Nations relinquished to the United States all claims to lands west of the western boundary of Pennsylvania and confirmed said relinquishment by treaty of January 9, 1789 (2 Kappler, p. 23). By the treaties of January 21, 1785 (2 Kappler, p. 6), January 9, 1789 (2 Kappler, p. 18), and of August 3, 1795 (2 Kappler, p. 39), the Delawares and several other tribes relinquished all their claims to lands in eastern and southern Ohio and a tract in southeastern Indiana. (Area 11, Royce Maps Ohio and Indiana).

Prior to these treaties, about 1770, the Delawares had received permission from the Miami and Piankishaw Indians to occupy the country in southern Indiana between the White River and the Ohio. At one time they had six villages in this area. The Delawares relinquished whatever rights they had acquired in these lands by the treaties of June 7, 1803, August 18, 1804, and August 1, 1805 (2 Kappler, pp. 64, 70, 80).

The treaty of January 21, 1785, Article III, allotted to the Wyandot and Delaware Nations areas 53, 54, and 87, Royce Maps of

Ohio. Areas 53 and 54, with exception of 13 sections of land reserved for the Delawares, were ceded by the Delaware and other tribes by the treaty of July 4, 1805, and these 13 sections were ceded by the Delawares by Article 18 of the treaty of September 29, 1817 (2 Kappler, p. 150). This treaty granted a tract of 9 sections of land, to include Captain Pipe's Village, to the Delawares (Area 150, Royce, Ohio), who thereafter ceded it to the United States by the treaty of August 3, 1829, with the stipulation that they would remove and join their nation west of the Mississippi, on the land allotted to them, on or before January 1, 1830. This cession of the land at Captain Pipe's Village was only about seven weeks before the Supplemental Treaty of September 24, 1829, by which the United States granted to the Delaware Nation the lands in the forks of the Kansas and Missouri Rivers and the outlet "as their permanent residence." The name of Captain Pipe appears as a signer of both of said treaties.

5. The original promise by the United States to the Delawares of lands west of the Mississippi was made in the treaty of St. Mary's on October 3, 1818 (2 Kappler 170).

In compliance with this promise General William Clark first selected for them the area shown as 150-A in southwest Missouri, out of lands which had been ceded to the United States by the Osages by the treaty of November 10, 1808.

In a letter from John Johnston, Indian Agent, to John H. Eaton, Secretary of War, under date of March 12, 1829, he stated that he had, in the years 1821 and 1822, removed 2100 souls of the Delawares "to

the Territory of Arkansas."

What he called the "Territory of Arkansas" was evidently the lands shown as Area 150-A (Royce Map, Missouri 2). It adjoins the north line of Arkansas, and is located on the White River, which flows into the Arkansas River.

However, this tract proved to be unsuitable to the Delawares for several reasons, one of which was the hostility which developed between them and the Osages who were immediately to the west, and between them and the Cherokees who were south of them in Arkansas. Other reasons were the poor quality of the soil and the absence of game.

By the so-called Supplemental Treaty of September 24, 1829, the "Delaware Nation" relinquished "all claim whatever to the country now occupied by them in the State of Missouri."

By a treaty executed at Castor Hill in St. Louis County, on October 26, 1832, "The Delawares and Shawanoes late of Cape Girardeau" ceded and relinquished "all their lands within the State of Missouri." Reference was made in this treaty, as it was also in a treaty with the Shawnees dated November 7, 1825, to the lands which had been granted them by the Spaniards at Cape Girardeau in 1793.

From this time until 1843 the Delaware reservation in the fork of the Kansas and Missouri rivers remained as described in the Supplemental treaty of 1829, and was the only land recognized as belonging to the Delaware Indians from 1829 to 1866. On December 14, 1843, the Delawares ceded 39 sections of their reservation to the Wyandot Indians

(2 Kappler 1048).

The Delawares continued to occupy their diminished reserve after the sale to the Wyandots until, by the treaty of May 6, 1854, they ceded to the United States a large portion of their reservation, including the "Outlet."

On January 4, 1793, Baron Carondelet, the Spanish Governor at St. Louis, granted certain bands of Delaware and Shawnee Indians who wished to move beyond the Mississippi from Ohio and Indiana, a tract of land at Cape Girardeau in Missouri on the Mississippi River (Area 125, Royce, Missouri 2). A number of these two tribes removed to this grant, but during the years 1807 to 1815, the pressure from white settlements, and depredations by the Osage Indians, caused a number of the Delawares at Cape Girardeau to seek new places of abode, some going to Arkansas, some to Texas, which was then Spanish Territory, where, by 1820, the Delawares numbered some 700.

6. Many Delaware Indians moved onto the land assigned to them in Kansas. A portion of the members of the Delaware Tribe, however, remained in sections of Oklahoma and Texas. A group of Delaware Indians on its way from Texas to Kansas in 1853 obtained permission from the Choctaw Nation in Oklahoma to stay on its land as tenants at will, reserving the right to return to their own country in Kansas at any time, and the Choctaws reserving the right to expel them at any time. Some of them subsequently did move to Kansas where they were accepted as citizens with rights equal to those of the Delawares who had preceded them there.

7. Probably a majority of the Delaware Indians removed to the reservation provided for the Delawares in Kansas where they remained until 1867, when, by agreement dated April 8, 1867, entered into between them and the Cherokee Nation occupying land in Indian Territory, they acquired lands from the Cherokees and the right to become members of the Cherokee Nation. Said agreement referred to the lands to be acquired "in the aggregate equal to 160 acres of land for each individual of the Delaware tribe who has been enrolled upon a certain register made Feb'y. 18, 1867, by the Delaware Agent and on file in the office of Indian Affairs, being the list of the Delawares who elect to remove to the 'Indian Country,' to which list may be added, only with the consent of the Delaware Council, the names of such other Delawares as may, within one month after the signing of this Agreement, desire to be added thereto, * * *."

8. The Delaware Indians who removed to the Cherokee territory became members and citizens of the Cherokee Nation, but they and their descendants, who are the petitioner in Docket 27-A, maintained group identity, receiving annual payments from their own tribal funds, having tribal chiefs and groups and business committees continuously until the present time, and at this time.

9. Some of the Delawares living south of the Arkansas had gone to live with their compatriots in Kansas before removal to the Cherokee territory. Some of the so-called southern Delawares, together with some of the Kansas Delawares, and at a later period some of the Cherokee Delawares, came to live in the Anadarko, Oklahoma, area after the treaty

of 1829; these Delawares, and their descendants, maintained group identity, having chiefs and a tribal council up until and at the present time, and known as Absentee Delawares, and the Delaware Tribe of Indians, under the jurisdiction of the Western Oklahoma Consolidated Agency, Anadarko, Oklahoma. They are the petitioners in Docket No. 241.

10. So far as the treaties of 1829 and 1854 are concerned, neither the petitioner in Docket 27-A nor the petitioners in Docket 241 is shown to be the full successor to the Delaware Nation as it existed in 1829 or in 1854.