

BEFORE THE INDIAN CLAIMS COMMISSION

THE DELAWARE TRIBE OF INDIANS,)
)
 Petitioner,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 27-A

ABSENTEE DELAWARE TRIBE OF)
)
 OKLAHOMA, DELAWARE NATION,)
)
 ex rel. W. E. EXENDINE and)
)
 MYRTLE HOLDER,)
)
 Petitioners,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 241

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.

OPINION OF THE COMMISSION

PER CURIAM. The cause of action asserted in Docket No. 27-A is on behalf of the "Delaware Tribe of Indians," also referred to as the "Delaware Nation." The claim asserted is based on the alleged ownership of lands in Kansas, known as the "Outlet"; which lands are alleged to have been guaranteed to the Delaware Nation by treaty of September 24, 1829 (7 Stat. 329); and by a treaty of May 6, 1854 (10 Stat. 1048) to have been ceded to the defendant Government for an unconscionable consideration, by reason whereof petitioner is entitled to recover.

Subsequent to the filing of the petition in Docket No. 27-A there was filed as Docket No. 241 by the Absentee Delaware Tribe of Oklahoma, et al, in behalf of the Delaware Nation, a claim for the value of the same lands and by reason of the same facts.

The petitioners in both cases claim to be successors to, and assert claim on behalf of, the Delaware Nation.

In view of the conflicts by reason of the aforesaid, the defendant filed on September 14, 1951, a motion requesting the Commission to hold a preliminary hearing in the two docket numbers on the questions: (a) whether the respective petitioners, or either of them, are entitled to maintain the aforesaid claim or claims; and (b) whether either of the petitioners is an identifiable tribe, band, or group within the meaning of Section 2 of the Indian Claims Commission Act, and entitled to maintain the action asserted. The defendant filed motions to dismiss in both Dockets Nos. 27-A and 241. The petitioners in both 27-A and 241 filed a written consent to defendant's motion for preliminary hearing. A hearing was held upon the questions

thus raised on October 19, 1951, at which time the petitioners in 27-A introduced their evidence. On March 31, 1952, a single hearing was held in the two cases. At this time, with the consent of all parties, the Commission ordered that the record show that "the evidence taken in either case may be considered as evidence in the other case;" and, on the defendant's motion, further ordered that the "record in Docket No. 27-A is to be considered a part of the record in No. 241." Thereupon, the petitioners in No. 241 and the defendant presented their evidence. At the close of the hearing the Commission requested the parties in both cases to file requests for findings of fact and briefs. These requests for findings of fact and briefs were thereafter filed, and the questions raised were presented to the Commission in oral argument by attorneys for both parties plaintiff and defendant.

Questions Presented

1. Whether the petitioner in either case has the capacity to maintain the present claim as a "tribe, band, or other identifiable group" within the meaning of the Indian Claims Commission Act.

2. Whether or not the petitioner in either case is entitled to maintain the claim asserted to the exclusion of the petitioner in the other.

The petitioner in Docket No. 27-A claims to be the successor to and the descendant of those Delawares who, following the treaty of September 24, 1829 — whereby the United States conveyed to the said Delaware Nation a tract of land in Kansas — removed to said reservation so provided for them in Kansas and remained there until 1867; and who, following the agreement

of April 8, 1867, between the Cherokee Nation and the Delaware Tribe of Indians, removed to the lands acquired under said agreement from the Cherokees in Indian Territory, where those so removing and their descendants continued to live and where they are at the present time.

The petitioners in Docket 241 claim to be an identifiable and organized group of Indians and the descendants of those who refused to join those who became merged with the Cherokee Nation but who have continued to maintain a tribal existence, some of whom lived with the Wichitas and Caddos and became attached ultimately to the Wichita Agency around 1859 and now reside among the Wichitas and Caddo Indians in western Oklahoma, and to have been recognized by the Department of Interior as an existing and functioning Band of Delaware Indians and to have been variously known as the Absentee Delawares, Southern Delawares, Delawares of Indian Territory, and Absentee Delaware Tribe of Oklahoma.

Finding No. 8 of the Findings of Fact herein is to the effect that petitioner in Docket 27-A has at all times maintained identity as a group and constitutes an identifiable group within the meaning of the Indian Claims Commission Act.

Finding No. 9 is to the effect that petitioners in Docket 241 have maintained group identity and constitute an identifiable group of Delaware Indians within the meaning of the Indian Claims Commission Act.

It is undisputed that the main body of the Delawares and the group with whom the defendant dealt as representing the Delaware Nation following the treaty of September 24, 1829, removed to the reservation ceded to the Delawares in Kansas, and that following the agreement of April 8, 1867, this group removed to the Cherokee Territory and its

