

BEFORE THE INDIAN CLAIMS COMMISSION

THE TEXAS-CHEROKEES, and ASSOCIATE)
BANDS, on the relation of W.W. Keeler,)
Homer L. Smith, Frank M. Carr, Paul)
Johnson and Joe Rogers, members of its)
Executive Committee,)

Plaintiffs,)

v.)

THE UNITED STATES OF AMERICA,)

Defendant.)

Docket No. 26

Decided: December 28, 1953

FINDINGS OF FACT

The Commission makes the following findings of fact upon the issues of fact raised by the petition and the answer of defendant filed herein on the 27th day of February, 1952, and pursuant to the order made and entered herein on the 22nd day of August, 1952:

1. The Cherokee Nation of Indians was originally located east of the Mississippi river, and long prior to the year 1811, a small group of Cherokee Indians, under the leadership of John Bowles, an Indian Chief, migrated to the St. Francis river country in southeast Missouri. About the winter of 1811-12, this group of Cherokee Indians moved to the Arkansas territory and located in the vicinity of Petit Jean Creek on the south side of the Arkansas river and south of the territory ceded to the Cherokee Nation by the treaty of July 8, 1817, 7 Stat. 156. They declined settling in this territory. (Def. Ex. 3).

2. In the winter of 1819-20, the Bowles group of Indians, consisting of some 60 families, moved to the Sabine river country in what was then Spanish territory and known as the Province of Texas. The original group was joined from time to time after its location in Texas by other Cherokees and by members of about a dozen different tribes located in the United States. The Cherokee Indians, however, formed the largest part of the group, and Bowles was the Chief of them all. There were perhaps some negotiations with the Spanish authorities after the Bowles group located in Spanish territory, but the Mexican revolution started soon thereafter and the Indians were, or thought they had been, granted or promised the land described in the petition. This group was not thereafter considered part of the Cherokee Nation nor did they claim of receive any part of the Cherokee annuities. (Def. Ex. 3). They became and were permanent inhabitants of the Texas territory and there is evidence to the effect that they were citizens thereof.

3. In 1835, the Texas people became dissatisfied with Mexican rule and called a meeting of representatives from all sections of the Texas Province, and on the 7th of November, 1835, declared their independence of Mexico and set up the Provisional Government of Texas. The plan of government included a governor, lieutenant-governor, and other state officers, and a council, and on the 13th day of November, 1835, the Convention, which was known as The General Consultation, at which there were 54 delegates, unanimously adopted and signed the following declaration:

"Be it Solemnly Decreed, That we, the chosen delegates of the Consultation of the people of all Texas, in general convention assembled, solemnly declare that the Cherokee Indians,

and their associate bands, twelve tribes in number, agreeable to their last general council in Texas, have derived their just claims to lands included within the bounds hereinafter mentioned from the government of Mexico, from whom we have also derived our rights to the soil by grant and occupancy.

"We solemnly declare that the boundaries of the claims of the said Indians to the land is as follows, to-wit: Lying north of the San Antonio road and the Neches, and west of the Angelina and Sabine Rivers. We solemnly declare that the Governor and General Council, immediately on its organization, shall appoint Commissioners to treat with the said Indians; to establish the definite boundaries of their territory, and secure their confidence and friendship.

"We solemnly declare that we will guarantee to them the peaceful enjoyment of their rights to the lands, as we do our own; we solemnly declare that all grants, surveys and locations of lands, hereinbefore mentioned, made after the settlements of said Indians, are, and of right ought to be, utterly null and void, and that the Commissioners issuing the same, be and are hereby ordered, immediately to recall and cancel the same, as having been made upon lands already appropriated by the Mexican government.

"We solemnly declare that it is our sincere desire that the Cherokee Indians, and their associate bands, should remain our friends in peace and war, and if they do so, we pledge the public faith for the support of the foregoing declarations.

"We solemnly declare that they are entitled to our commiseration and protection, as the just owners of the soil, as an unfortunate race of people that we wish to hold as friends and treat with justice. Deeply and solemnly impressed with these sentiments as a mark of sincerity, your committee would respectfully recommend the adoption of the following resolution:

"Resolved that the members of this convention, now present, sign this Declaration, and pledge the public faith, on the part of the people of Texas.

"Done in Convention at San Felipe de Austin, this 13th day of November, A.D. 1835." (Pl. Ex. 1, pp. 73-74).

4. Pursuant to said declaration, Commissioners were appointed and instructed (Pl. Ex. 1, pp. 75-79), and on the 23rd day of February, 1836, they concluded a treaty between the Provisional Government of Texas "and the Cherokees and their associate bands now residing in Texas, on the other part, to-wit: Shawnees, Delawares, Kickapoos, Quopaws, Choctaws, Bolupies, Jawanies, Alabomas, Chochaties, Caddoes of the Noches, Tahov-cattokes, and Unatuquouous, by the head chiefs and head men and warriors

of the Cherokees, as elder brothers and representatives of all other bands, agreeable to their last council." (Pl. Ex. 1, pp. 80-84).

Article 2 of said treaty reads as follows:

"It is agreed and declared that the before-mentioned tribes or bands shall form one community and that they shall have and possess the lands within the following bounds, to-wit: Lying west of the San Antonio road and beginning on the west at the point where the road crosses the river Angelina and running up said river until it reaches the first large creek below the great Shawnee Village emptying into said river from the northwest; thence running with said creek to its main source, and from thence a due northwest course to the Sabine river, and with said river west, then starting where the San Antonio road cross the Angelina river, and with the said road to a point where it crosses the Neches River, and thence running up to the east side of said river in a northwest direction."

5. After the conclusion of the treaty referred to in the last preceding paragraph hereof, the Texans formed a permanent government known as the Republic of Texas, and said treaty was submitted to the Senate thereof, and on the 16th day of December, 1837, said body acted thereon and declared the same null and void. (Def. Ex. 1, p. 4).

6. Following the rejection of the treaty of February 23, 1836, agitation for the removal of the Indians, who became known as the Texas-Cherokee Indians, and the associated bands, became widespread, with the result that the military forces of the Republic of Texas expelled all of said Indians from Texas and they returned to their respective tribes in the United States and became members thereof, although part of said Indians fled to Mexico and remained therein. All the plaintiffs' ancestors were removed from Texas by the end of the year 1840.

7. While in Texas, the Indians had formed a loose confederacy, and in their dealings with the Mexican government and the Provisional Government of Texas they acted through representatives selected by a

General Council of the Indians. (Def. Ex. 2).

8. During the period, 1839-40, in which the Indians were being expelled from the Republic of Texas by the military forces of that Republic, the United States did not, and has not since recognized any responsibility to the ancestors of the plaintiffs in this action and they returned to the United States at the request of the Cherokees in this country (Def. Ex. 6), who transmitted such request through General Arbuckle, U.S.A., then located at Fort Gibson.

9. After their expulsion from Texas and their return to the United States, certain members of the plaintiffs called meetings of the descendants of the original groups, and some meetings were held for the sole purpose of considering a claim against the United States, and for the purpose of presenting and prosecuting such a claim. An Executive Committee was selected and has functioned as such since about the year 1925. That the United States has never had any dealings with the plaintiffs and has never recognized them as a tribe, band, or identifiable group of American Indians; that the ancestors of the plaintiffs emigrated to the Province of Texas with the intention of remaining there permanently, and remained there for about 20 years, and until their expulsion by the Republic of Texas in 1839-40.

10. After the formation of the government of the Republic of Texas and its recognition by the United States, a movement was started for the admission of the Republic of Texas into the United States and the Congress on March 1, 1845 (5 Stat. 797) adopted a Joint Resolution containing the following provisions:

"That Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said republic, by deputies in convention assembled, with the consent of the existing government, in order that the same may be admitted as one of the States of this Union.

"* * * First, said State to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments; and the constitution thereof, with the proper evidence of its adoption by the people of said Republic of Texas, shall be transmitted to the President of the United States, to be laid before Congress for its final action, on or before the first day of January, one thousand eight hundred and forty-six. Second, Said State, when admitted into the Union, after ceding to the United States, all public edifices, fortifications, barracks, ports and harbors, navy and navy-yards, docks, magazines, arms, armaments, and all other property and means pertaining to the public defence belonging to said Republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind, which may belong to or be due and owing said republic; and shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge upon the Government of the United States. * * *"

11. And on December 29, 1845 (9 Stat. 108) the Congress adopted a joint resolution reading in part:

"That the State of Texas shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever."

The adoption of this resolution completed the annexation of Texas to the United States

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner