

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: January 21, 1954

PRELIMINARY STATEMENT

Separate petitions were filed in these cases, the first by the Delaware Tribe of Indians, Docket No. 27-A, and the other by the Absentee Delaware Tribe of Oklahoma, Delaware Nation, ex rel. W. E. Exendine and Myrtle Holder, Docket No. 241. Both claimants base their claims on a strip of land ten miles wide and extending west from a north and south line (Def. Ex. 46.(a) (1)) about 45 miles west of Leavenworth, Kansas. This strip is provided for in the treaty of September 24, 1829, hereafter referred to as the "outlet", and it is so referred to by the parties in their pleadings and briefs. East of the east end

of the "outlet" was a large area ceded to petitioners referred to in the briefs as "residence lands," but this area is not included in these claims since the claims are only for the "outlet." The claimants are not in agreement as to the western boundary of the outlet, the Absentee Delawares claiming the western terminus to be much farther west than the claimant in Docket No. 27-A.

Because the two groups, who represent all groups of the Delaware Tribe or Nation of Indians, are asserting the same claim, the Commission on January 22, 1953, entered its order in the two Dockets, 27-A and 241, consolidating them "for the purposes of trial on the merits." Thereafter, and on April 15, 1953, evidence was concluded by all parties and the claims were submitted to the Commission on the question of the Government's liability in accordance with the rule of the Commission, leaving for later determination the amount of damages should it be determined that the claimants were entitled to recover. (Sec. 22 (f), Rules of Procedure.)

The petitioners have presented separate proposed findings of fact and briefs but we have considered the case as though the two groups of petitioners had been joined in a single petition.

Accordingly, the Commission makes the following findings of fact as applicable to both claimants:

FINDINGS OF FACT

1. The petitioners in Docket No. 27-A and Docket No. 241 represent the entire Delaware Nation of Indians and are authorized by the Indian Claims Commission Act to present and prosecute the claim of said Nation.

2. On October 3, 1818, 7 Stat. 188, by treaty of that date, the Delaware Nation of Indians ceded to the United States all their claim to land in the State of Indiana. As part payment for their Indiana land the United States by Article 2 of said treaty agreed:

"In consideration of the aforesaid cession, the United States agree to provide for the Delawares a country to reside in, upon the west side of the Mississippi, and to guaranty to them the peaceable possession of the same."

After the conclusion of this treaty the Indiana Delawares joined other Delawares then located in southwest Missouri on the James Fork of the White River.

3. Considerable time elapsed after the 1818 treaty was concluded in obtaining a satisfactory location west of the Mississippi River for the Delawares but they finally selected an area at the forks of the Kansas and Missouri rivers and on September 24, 1829, 7 Stat. 327, concluded a treaty with defendant which contained the following provisions:

Whereas the foregoing Treaty stipulates that the United States shall provide for the Delaware Nation, a country to reside in, west of the Mississippi as the permanent residence of their nation; and whereas the said Delaware Nation are now willing to remove on the following conditions from the country on James' Fork of the White River in the State of Missouri to the Country selected in the fork of the Kansas and Missouri Rivers, as recommended by the Government for the permanent residence of the whole Delaware Nation; it is hereby agreed upon by the parties that the country in the fork of the Kansas and Missouri Rivers extending up the Kansas River to the Kansas line and up the Missouri River to Camp Leavenworth and thence by a line drawn westwardly, leaving a space ten miles wide north of the Kansas boundary line for an outlet; shall be conveyed and forever secured by the United States to the said Delaware Nation as their permanent residence: and the United States hereby pledges the faith of the Government to guarantee to the said

Delaware Nation forever the quiet and peaceable possession and undisturbed enjoyment of the same against the claims and assaults of all and every other people whatever.

This treaty was in fulfillment of the obligation of the defendant under the treaty of 1818, in fact, was supplementary to that treaty.

4. The Treaty of September 24, 1829, was ratified by the Senate of the United States in a resolution dated May 29, 1830, as follows:

Resolved (two-thirds of the Senators present concurring), that the Senate do advise and consent to the ratification of the supplementary article concluded at Council Camp on James' Fork of White River in the State of Missouri, the 24th day of September, 1829, to a Treaty between the United States and the Delaware Indians made the third day of October, 1818: Provided, that the President of the United States with all convenient dispatch, employ a surveyor at the usual rate of compensation for like services, to run the lines of the country by the foregoing Treaty granted to the said Delaware Nation of Indians, to establish certain and notorious landmarks, accurately and permanently to distinguish the boundaries of the said granted country and of the said outlet reserved in this Treaty; that the said surveyor run the lines and fix and establish the boundaries of the said granted country and the said outlet in the presence of an agent to be designated by the Delaware Nation; and that it shall be the duty of the said surveyor to report to the President of the United States his proceedings in the premises, together with a map or draft of the said granted country and the said outlet; and that when the President shall be satisfied that the said proceedings have been concurred in and approved of by the agent of the said Delaware Nation, he shall also approve of the same by his signature and seal of office and cause one copy of the same to be filed among the archives of the Government and one copy to be delivered to the agent of the Delaware Nation, for the use of the said Nation, and which shall be thereafter binding and conclusive upon the respective parties to the foregoing Treaty. (Emphasis added). (Def. Ex. 43).

5. Pursuant to the Senate resolution (Finding 4), Isaac McCoy was appointed to make the survey required by the resolution (Def. Ex. 44). McCoy had with him John Quick who had been appointed by the chiefs and

warriors of the Delaware Nation to represent said Nation in surveying and marking the lands assigned to it by the treaty of September 24, 1829. (Def. Ex. 46(d)).

In locating the "outlet" McCoy started on the Kansas River where the eastern boundary of the Kansas Reservation crosses that river and from there he ran north along the east line of the Kansas Reservation to the northeast corner thereof. From this corner he ran a line due north 10 miles to a point he designated as the "N. W. corner of the Delaware Lands and commencement of the Northern line of the Delaware outlet * *." (See Def. Exs. 46(a) 1, and 46(b) 1). This north and south line formed the eastern boundary of the outlet and the western boundary of the ceded lands lying east of that line and which McCoy referred to as "the lands designed for the residence of the Delawares." From this so-called boundary line McCoy surveyed the outlet west for a distance of "210 miles west of the State of Missouri" as it was then (1830) bounded. (The western boundary line of Missouri was not changed from a line due north of the confluence of the Kansas and Missouri rivers to the Missouri River until June 7, 1836, 5 Stat. 34).

In his report of the survey of the Delaware lands (filed in Indian Office on April 20, 1831) he said, concerning the survey of the "outlet," at pages 18-19 thereof:

"After completing our survey of the lands designed for the residence of the Delawares, we extended our survey of the Delaware outlet (so called) to a point two hundred and ten miles west of the State of Missouri. The termination of the line was on Solomon river, about one hundred and forty miles west of the western village at present occupied by the Kansas on the south and about forty miles west of the Republican Pawnee villages on the north. The latter is the most westwardly Indian settlement towards the Rocky Mountains, from Red river six hundred miles north. We stopped about forth miles within the region abounding with Buffaloes, Elks, Antelopes, etc. We saw many and killed what we needed for use." (Pat. Ex. 109, pp. 17-19).

