

BEFORE THE INDIAN CLAIMS COMMISSION

THE CREEK NATION,

Petitioner

v.

THE UNITED STATES,

Defendant

Docket No. 21

Decided: May 5, 1955

ADDITIONAL FINDINGS OF FACT

The findings made on April 22, 1952 in the above cause are reaffirmed except as herein modified, and additional findings in said cause are hereby made.

43. The Treaty of Ft. Jackson as set out in full in previous Finding 29 was concluded on August 29, 1814, and became effective as of that date, and was proclaimed on February 16, 1815.

44. The Treaty of Ghent was concluded on December 24, 1814, and ratification of same by the respective nations involved was exchanged on February 17, 1815, and it was proclaimed by the President on February 18, 1815. The Treaty provides that it shall become effective and binding when the ratifications of same have been exchanged.

Article IX of the Treaty of Ghent provides as follows:

"The United States of America engage to put an end, immediately after the ratification of the present treaty, to hostilities with all the tribes or nations of Indians with whom they may be at war at the time of such ratifications; and forthwith to restore to such tribes or nations, respectively, all the possessions, rights and privileges which they may have enjoyed or been entitled to in one thousand eight hundred and eleven, previous to such hostilities: Provided always, That such tribes or nations

shall agree to desist from all hostilities against the United States of America, their citizens and subjects upon the ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly."

45. On October 13, 1814, the American Commissioners negotiating said treaty wrote to British Commissioners and said with reference to the Indian tribes who had been allies with the British in the War of 1812 as follows:

"The article proposed by the British Plenipotentiaries, in their last note, not including the Indian tribes as parties in the Peace, and leaving the United States free to effect its object in the mode consonant with the relations which they have constantly maintained with those tribes, partaking also of the nature of an amnesty, and being at the same time reciprocal, is not liable to that objection; and accords with the views uniformly professed by the undersigned, of placing those tribes precisely, and in every respect, in the same situation as that in which they stood before the commencement of hostilities. This article, thus proposing only what the undersigned have so often assured the British Plenipotentiaries would necessarily follow, if, indeed, it has not already, as is highly probable, preceded, a peace between Great Britain and the United States, the undersigned agree to admit it in substance as a provisional article, subject in the manner originally proposed by the British Government, to the approbation or rejection of the Government of the United States, which, having given no instructions to the undersigned on this point, cannot be bound by any article they may admit on the subject."

46. The British Commissioners in a letter dated October 21, 1814, used the following language in reference to the Indians:

"The undersigned have had the honor of receiving the note of the American Plenipotentiaries of the 13th instant, communicating their acceptance of the Article which the undersigned had proposed on the subject of the pacification and rights of the Indian nations."

47. In the letter of October 13, 1814, of the American Plenipotentiaries to the British Ministers it was agreed that under Article IX that the United States was "free to effect its object in the mode consonant with the relations they have constantly maintained with these tribes,

partaking also of the nature of an amnesty, and being at the same time reciprocal."

48. In the instructions given to Generals Harrison and McArthur, Secretary of War John Graham, advised them:

"When the treaty with Great Britain was ratified at Washington, the United States were at war with some of the Indian tribes, and at peace with others. By the ninth article of the treaty the parties reciprocally engaged to put an end to hostilities with all the tribes or nations with whom they were respectively at war; * * * But the United States were at that time in a state of peace and friendship with the tribes inhabiting the State of Ohio and the Territories of Michigan and Indiana; and had, in particular, concluded a treaty at Greenville, on the 22d July, 1814, with the Wyandots, Delawares, Shawnees, Senecas, and Miamies."

As a result of these instructions the United States negotiated and concluded many treaties of peace with the Indians of Mississippi and the Northwest, among them the following:

Ioway Tribe or Nation (7 Stat. 136)
 Sioux of the Lakes Tribe (7 Stat. 126)
 Sioux of the River St. Peters Tribe (7 Stat. 127)
 Great and Little Osage Tribes or Nations (7 Stat. 133)
 Yancton Tribe (7 Stat. 128)
 Mahas Tribe or Nation (7 Stat. 129)
 Teeton Tribe (7 Stat. 125)
 Kansas (Kansas) Tribe (7 Stat. 137)
 Kickapoos Tribe or Nation (7 Stat. 130)
 Pottawatomie Tribe (7 Stat. 123)
 Piankashaw Tribe or Nation (7 Stat. 124)
 Fox Tribe or Nation (7 Stat. 135)
 Portion of Sac Tribe residing on the Missouri River
 (7 Stat. 134)
 Sacs of Rock River (7 Stat. 141)
 Sioux of the Leaf, Broad Leaf, and Pine Tribes
 (7 Stat. 123)
 Part of the Winnebago Tribe or Nation on
 Wisconsin River (7 Stat. 144)
 Menominee Tribe or Nation (7 Stat. 153)
 Oto Tribe (7 Stat. 154)
 Ponca Tribe (7 Stat. 155)

49. On July 10, 1815, Secretary of State James Monroe advised the British that the Article had no bearing on the Creek Nation; as likewise

did the Secretary of War on October 3, 1817; and likewise John Q. Adams on November 28, 1818; and also did Secretary Adams on November 30, 1818, and Richard Rush, on behalf of the United States, on January 11, 1819.

50. The Congress of the United States by Act of March 3, 1815, (3 Stat. 228) provided for the surveying of the lands ceded by the Ft. Jackson Treaty and for the sale of same as public lands.

51. On April 28, 1815, Lt. Colonel Nicolls wrote to Colonel Benjamin Hawkins, in which he enclosed a copy of the part of the 9th Article of the Treaty signed by mark by three Indian Chiefs - Hepoaeth Meico, Cappachimico, Hopoy Meico, - "As an independent people, solemnly promising to suspend all hostilities against the people of the United States."

Nicolls also said:

"The chiefs here have requested me further to declare to you that, in order to prevent any disagreeable circumstances from happening in future, they have come to a determination not to permit the least intercourse between their people and those of the United States. They have, in consequence, ordered them to cease all communication, directly or indirectly, with the territory or citizens of the United States; and they do take this public mode of warning the citizens of the United States from entering their territory, or communicating directly or indirectly with the Creek people. They also request that you will understand their territories to be as they stood in the year 1811. In my absence, I have directed First Lieutenant William Hambly, the head interpreter, to communicate with you on any point relative to the Creeks; and I have given him my most positive orders that he shall at all times do his best to keep peace and good neighborhood between the Creeks and your citizens."

The part of the 9th Article and the acceptance by the Creek chiefs was as follows:

"The United States of America engage to put an end, immediately after the ratification of the present treaty, to hostilities with all the tribes or nations of Indians with whom they may be at war at the time of such ratification,

and forthwith restore to such tribes or nations, respectively, all possessions, rights, and privileges which they may have enjoyed or been entitled to in 1811, previous to such hostilities: Provided always, That such tribes or nations shall agree to desist from all hostilities against the United States of America, their citizens and subjects, upon the ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly.

"We, the undersigned, chiefs of the Muscogee nation, declared by His Britannic Majesty to be a free and independent people, do, in the name of said nation, agree to the ninth article of the treaty of peace between His Britannic Majesty and the United States: and we do further declare that we have given most strict and positive orders to all our people that they desist from hostilities of every kind against the citizens of the United States."

52. The purpose of the British in securing the adoption of Article IX of the Treaty of Ghent was to protect their Indian allies in the War of 1812 against the United States from being punished or made to suffer loss by the United States for being allies of the British. This is evident from the statement of Lord Castlereagh in communication of July 28, 1814, to the British Commissioners that they should see to "the protection which the Indians, as allies, are entitled to claim at our hands." A protocol of conference between British and American Commissioners of August 8, 1814, showed as a subject of discussion "that the peace be extended to the Indian allies of Great Britain." Other references made in said discussions referred to the intention of the British Government to take care of the Indians "who have acted with them as allies during the war."

53. Henry Golbourn, one of the British Commissioners, in letter dated August 21, 1814, to Lord Bathurst, stated that it was of "very great importance" that he acquaint the American Commissioners "that Great Britain does not prohibit their acquisition of territory by conquest."

54. The so-called Creek War, although promoted and assisted by the Spanish and the British, was a civil war between factions of the Creek Nation.

In none of the engagements stated in Finding 20 did any British troops or officers participate, and not until December 1814, long after the Treaty of Ft. Jackson, did the British carry its war against the United States to the southern states, sending troops to New Orleans where they were vanquished by Andrew Jackson and his troops. None of said engagements was directed by the British as a part of the War of 1812.

55. The hostilities of the Creeks against the United States did not end with the Treaty of Ft. Jackson or with the ratification of the Treaty of Ghent. The Hostile Creeks and the Seminoles continued a border warfare against the Americans, and particularly against the people of Georgia.

The Hostile Creeks, first under the leadership of Col. Nicolls of the British Marines, and later under the leadership of Alexander Arbuthnot, a British subject, and A. Ambrister, an agent of Capt. Woodbine, a British officer, continued their attacks on Americans. On April 28, 1815, Nicolls wrote to Hawkins, the American agent for the Creeks, enclosing a copy of a part of the 9th Article of the Treaty of Ghent which he says the Creeks have signed "as an independent people," and that the chiefs have ordered the Indians "to cease all communication, directly or indirectly, with the territory of the United States; and they do take this public mode of warning the citizens of the United States from entering their

territory, or communicating directly or indirectly with the Creek people. They also request that you will understand their territories to be as they stood in the year 1811."

The chiefs signing said so-called acceptance to the 9th Article signed as chiefs of the Muscogee Nation and declared by his British Majesty to be a free and independent people.

On March 10, 1815, the Hostile Creeks in Florida addressed a communication to "our good Father, King George," in which they request that British officers should be constantly kept among them; and the Indians offered to enter into an offensive and defensive treaty with Great Britain.

In May of 1815 Gen. Gaines reported to the Secretary of War that there were at Apalachicola nearly 800 Indian warriors.

In 1816 the Indians captured soldiers and murdered civilians and engaged in fighting with American soldiers.

On November 8, 1816, seven so-called chiefs of the Creek Nation signed a petition to the British in which they asked for help against the Americans.

On March 15, 1817, the commanding officers at Ft. Gaines, Georgia, advised that McQueen was at that time one of the heads of the hostiles who were anxious for war.

On June 17, 1817, the so-called chiefs of the Creek Nation in Florida executed a power of attorney to the Englishman, A. Arbuthnot, in which they asked him to act for them in all affairs relating to their nation.

In 1818 the Hostile Creeks in Florida petitioned Governor Cameron of the Bahamas for assistance in the way of troops and ammunition and declared they were at war with the Americans and had been at war with them for some time.

56. Strike previously made Finding 12 and substitute therefor the following:

12. The so-called "Creek War" began and continued as a civil war between factions of the Creek Nation; the United States coming to the aid of that portion of the Creeks who were friendly to the United States and who had been attacked by the so-called Hostile Creeks which were not friendly to the United States. The British and the Spanish made contributions of arms and ammunition to the Hostile Creeks — but said hostilities were no part of the War of 1812 between the United States and Great Britain.

57. Amend previously made Finding 16 by striking therefrom all of the last sentence which is in parenthesis in said Finding.

EDGAR E. WITT
Chief Commissioner

LOUIS J. O'MARR
Associate Commissioner

WM. M. HOLT
Associate Commissioner