

## BEFORE THE INDIAN CLAIMS COMMISSION

THE YUCHI (EUCHEE) TRIBE OF INDIANS, )  
 and S. W. BROWN, LEGUS BROWN, JACOB )  
 ROLLAND, WILLIE TIGER, FRED SKEETER, )  
 JOHN JAMES and JESSE JAMES, all )  
 members of said Tribe, band or group )  
 of Indians, for themselves and for )  
 the use and benefit of all other )  
 members of said YUCHI (EUCHEE) TRIBE, )  
 band or group of Indians, )

Claimants, )

v. )

Docket No. 172

THE UNITED STATES OF AMERICA, )

Defendant. )

Decided: May 16, 1955

Appearances:

Herbert S. French, with whom  
 were Lewis M. Dabney, Jr.,  
 and J. T. Smith,  
 Attorneys for Claimants.

Ralph A. Barney, with whom  
 was Mr. Assistant Attorney  
 General, Perry W. Morton,  
 Attorneys for Defendant.

OPINION OF THE COMMISSION

WITT, Chief Commissioner, delivered the opinion of the Commission.

This claim is asserted by the Yuchi (Euchee) Tribe of Indians, by its officials; and by the said officials as members of said tribe, band or group, for themselves and all other members of said tribe, band or group.

Said claimants assert that their predecessors in interest were the owners of more than 11,200,000 acres of land which were ceded to

the United States by the Treaty of August 9, 1814 (usually referred to as the Treaty of Fort Jackson); that said cession was without their voluntary consent, and that said tribe received no consideration then or afterwards for said lands. Claimants pray for judgment against the defendant for the sum of \$22,400,000 as the value of said 11,200,000 acres, with interest, from August 9, 1814.

Among other defenses urged by defendant are (1) that the claimant tribe was at all times referred to in the petition, a part of what was known as the Creek Confederacy -- that is, the Creek Nation; (2) that the lands for which compensation is sought are a part of and are included in the claim of the Creek Nation, Docket No. 21, now pending before this Commission.

It is unnecessary to state or discuss other defenses by reason of our decision as herein made as to the defenses stated.

The Findings of Fact upon which this decision is based clearly show that the Yuchi Tribe was incorporated and became a part of the Creek Nation at an early historic period (between 1733 and 1751); that after its incorporation into the Creek Nation, the said tribe became subject to the authority of said Nation and was bound by its laws; that the tribe lost whatever status it ever had as an independent tribe, and never regained it; that the Yuchi Indians are now a constituent part of the Creek Nation, are enrolled on official Creek rolls as Creek Indians; that they received allotments of Creek lands as Creek Indians, and are represented in the Creek Tribal Council and are under the authority of the principal chief of the Creek Nation.

While the record shows that the Creek Confederacy or Nation was composed of Creek towns, each of which had control of purely local matters -- the paramount governmental authority of the Creek Nation was the National Council which alone had authority as to national affairs. The National Council of the Creek Nation was composed of the head men of the several tribal towns which constituted the Creek Nation. These Councils met when occasion demanded, and at least once a year, wherein all matters were deliberated with freedom and when decisions were made, they were promulgated as the will of the Nation. The Creek National Council had exclusive control over all the lands of the Creek Nation, and alone had the power of the disposition of them.

The Yuchi admit that they were incorporated into the Creek Confederacy but contend that they were thereafter an entirely separate and distinct tribe not subject to the Creek government and laws. The record does not support this contention; same shows that from the time of their incorporation in the Creek Nation, the Yuchi were subject to the Creek government and its laws.

The Treaty of June 29, 1796 (7 Stat. 56) was a treaty executed by the United States with the Creek Nation. It was executed on behalf of the Creek Nation by its "Kings, Chiefs and Warriors." Yuchi town chiefs signed this treaty as a constituent part of the Creek Nation as a whole, along with the other chiefs of the Creek Nation. The treaty was signed at the meeting of the National Council of the Creek Nation, and Yuchi town chiefs must have attended said treaty council for their names appear on the treaty.

The Treaty of June 16, 1802 (7 Stat. 68) was a treaty between the Creek Nation and the United States. Timothy Barnard, who was closely connected with the Yuchi, signed this treaty as one of the interpreters.

The Treaty of August 9, 1814, the Fort Jackson Treaty, which ceded part of the lands involved herein, was signed by Yuchi chiefs, as members of the National Council of the Creek Nation; said Yuchi chiefs signed the protest as to said treaty which was made by Creek officials to accompany the same.

From the above matters of record and others, the Commission is of the opinion that the Yuchi are not an independent Indian Tribe, band or other identifiable group within the meaning of the Indian Claims Commission Act, entitled to prosecute a claim independent of the Creek Nation, for lands ceded the United States under the Fort Jackson treaty of August 9, 1814.

Regardless of the correctness of the conclusion we have reached as to the aforesaid issue, we think that the evidence fails to show that the Yuchi, if they were a tribe, band or other identifiable group entitled to prosecute a claim before the Indian Claims Commission, had as a tribal entity Indian title to any lands of which they were deprived by the treaty of Fort Jackson, or Indian title to any lands whatsoever.

The treaties to which we have already referred, which were joined in by so-called Yuchi chiefs, evidenced a recognition by said Yuchi that the land involved belonged to the Creek Nation as a Nation and that it was controlled by the Council of said Nation and could only be ceded by said National Council. We will refer to one other treaty, to-wit: the treaty

of Indian Springs, dated February 12, 1825 (7 Stat. 237) which was executed between the United States and only a few of the Creek towns purporting to represent the Creek Nation. This treaty was executed after the National Council of the Creek Nation in 1824 had declared that "on no account whatever will we consent to sell one foot of our land, neither by exchange or otherwise. \* \* \* that the land is to remain as it is, in common, and as it always has been." Because the Treaty of 1825 had been executed without the approval of the Creek National Council, Chief McIntosh, who had joined in the execution, was put to death and by treaty dated January 24, 1826 (7 Stat. 286) by the Creek National Council, the previous treaty of 1825 was declared null and void. It is significant that one of the Creek chiefs who signed this treaty of 1826 was Timpoohy Barnard, Chief of Yuchi town of the Creek Nation.

Therefore, it is clearly demonstrated that the title to all Creek lands was in the Creek Nation as a whole, and not in any individual Creek town or specific group which was a part of the Creek Nation.

By the Treaty of August 7, 1790 (7 Stat. 35) the Creek Nation as an entity relinquished land and agreed to come under the protection of the United States and the United States solemnly guaranteed to it as an entity certain lands. Thereafter the Treaty of June 29, 1796 (7 Stat. 56) called the Colerain Treaty was executed by the United States and the Creek Nation, under the terms of which provisions of the Treaty of August 7, 1790 were confirmed. Nothing in this 1796 treaty, in the opinion of the writer, can be construed as confirming lands in any entity except to the Creek Nation as a whole.

The ownership by claimants of land in their tribe, separate and apart from any common ownership that they might have as a part of the Creek Nation, is based on their contention that such ownership was guaranteed to them by the so-called Treaty of Colerain of June 29, 1796 (7 Stat. 56). This treaty was made with the Creek Nation, represented by the "Kings, Chiefs and Warriors of the Creek Nation of Indians." In their brief at page 29, claimants say that this treaty was signed by representatives of 35 tribes "including the Yuchi" and that by said treaty the United States "solemnly guarantee to the Creek Nation all the lands within the limits of the United States," as described in said treaty. The Yuchi contend that although the grant in said treaty was to the Creek "Nation" that because the Nation was a Confederacy that such grant was "to the particular tribe in that Nation or Confederacy, to-wit, the Yuchi, which, at the time of the Treaty of Colerain, occupied the lands for which the Yuchi now claim compensation." This Commission cannot agree with said construction of said treaty.

It is contended by the Yuchi that the holding of this Commission in the Ottawa cases (Dkts. 40-B to 40-F, inclusive, and Dkt. 133) wherein we say that "there was no recognized single entity as the Ottawa Nation, but that the so-called Nation consisted of separate entities in the nature of bands or groups of Ottawas" justifies a similar conclusion as to the Creek Nation. It is our opinion that the situation of the Ottawas is not analogous to that of the Creek Nation. Our holding as to the Ottawas was based on the conduct of the parties to the various treaties involved before and after their execution; likewise in the instant case, our holding that the ownership of the lands involved was in the Creek

Nation and not in any separate entity in the nature of a band or group of Creeks, is based on the conduct of the parties before and after the execution of the treaties, as well as the language of the treaties.

Moreover, the Yuchi have not established exclusive use or occupation of any described tract or tracts of land. As a matter of fact, they do not describe any such exclusively owned and occupied tract or tracts in their petition nor have they asked for any findings of fact describing definitely lands as being exclusively occupied and owned by them.

The requested findings Nos. 6 and 7 as to their lands read as follows:

6. From about 1750 up to and including the Creek War (1813-14) the Yuchi were settled in Southeastern Alabama (where their principal town was located) and throughout South and East Georgia. Specific places of residence were as follows:

(a) The principal town lay on the west bank of the Chattahoochee at the junction of Yuchi Creek in what is now Russell County, Alabama.

(b) The following subsidiary towns or villages were situated upon the Flint River and its tributaries, east of and within 30 to 50 miles of the principal town: In-tuch-cul-gau; Pad-gee-li-gau; Toc-co-gul-egau; and the settlement of Timothy Bernard, his Yuchi wife and children, lying on the right bank of the Flint River, together with the nearby farm settlements of some of his children.

(c) The following settlements upon the following rivers in Georgia flowing into the Atlantic: The head of Cannouchee, the head of the Satilla, the fork of the St. Mary's and the head of the St. John's.

7. The Uichi hunting grounds lay south of the Altamaha River, and centered around the Okefinokee Swamp. They guarded their hunting grounds with four permanent outpost settlements, or guard villages, which were connected with the four Yuchi tribal towns. They excluded other Indians.

Their requested Finding No. 16 is as follows:

16. The Yuchi did not claim or occupy any of the Oconee lands surrendered to the United States by the treaty of New York, which surrender was ratified by the treaty of Colerain. They did claim, and exclusively occupied, Royce 44 and that portion of Royce 75 which is East of the Flint River, which was granted to "the Creek Nation" by the treaty of Colerain.

Attention is called to the fact that no part of the territory in (a) or (b), (Req. Fdg. 6) was included in the cession made by the Jackson Treaty; and that in (c) only the portion of the territory described as the head of the "Satilla" (which is not defined) was included in the territory ceded by the Jackson Treaty.

Requested Finding 7 does not define the grounds mentioned.

Requested Finding 16 describes the lands claimed as Royce 44 (which land was not included in the Jackson Treaty) and "that portion of Royce 75 which is East of the Flint River."

No finding is requested giving the boundaries of lands alleged to belong to the Yuchi unless it be the description requested by Finding 16 of "that portion of Royce 75 which is East of the Flint River."

Elsewhere in the requested findings and in the brief the portion of Area 75 which is claimed as "hunting grounds" are described as being "centered around the Okefinokee Swamp."

Claimants later state the basis upon which they are entitled to an award in Requested Findings 32 and 33, which read as follows:

32. The Yuchi tribe is entitled to an award, based on their separate and exclusive possession and ownership, of that portion of Royce 75 which lies east of the Flint River and that portion of Royce 44 which adjoins it on the east.

33. The Yuchi tribe is entitled to an additional award based on their occupancy of a part of that portion of Royce 75 which lies in Georgia and Southeastern Alabama, between the Flint River and the division line between the Upper and the Lower Creeks as recognized by Commissioner Luke Lea in 1854. The evidence indicates that at the time of the Treaty of Fort Jackson the Yuchi constituted about 25% of the Lower Creeks.

The nearest to any definite description of lands which they claim they owned as a separate tribe is "that portion of Royce 75 which is East of the Flint River" by Requested Finding No. 16; however, no evidence is cited to support said finding of occupancy of the land described in Requested Finding No. 16, nor is any evidence cited to support any of the findings with reference to the lands claimed.

There is no proof of continued occupancy of any defined territory. Proof shows that the Yuchi wandered in small groups all over the southeastern area. They seem to have moved down into Georgia, Florida and Alabama in successive waves of migration from 1600 to 1750. They say that between 1733 and 1751 they abandoned their lands on the Savannah and Ogeechee and part of the Yuchi moved southwest to the Chattahoochee and established what later became the principal Yuchi town and a part of them moved more directly south, parallel with the Atlantic Coast, and established settlements on the various rivers flowing into the Atlantic, and around the Okefinokee Swamp. About that time (1733-1751) they voluntarily affiliated themselves with the Creek Confederacy.

Claimants say that from about 1750 up to and including the Creek War they were settled in southeastern Alabama (where their principal town was located) and throughout south and east Georgia and northern Florida.

They say in their brief (p. 27) as follows:

The Yuchi had exclusive possession of, and Indian title to, their hunting grounds which centered around the Okefinokee Swamp and lay south of the Fort Jackson Treaty line, east of the Flint River, and west of the line established by the treaty of New York and ratified by the Treaty of Colerain. They had exclusive possession of, and Indian title to, about one quarter of the land lying south of the Fort Jackson Treaty line, west of the Flint River and east of the division line between the upper and lower Creeks. Such Indian title was recognized and ratified by the Treaty of Colerain.

No definite description is given -- the description given could not enable a surveyor to locate the land intended to be included -- and that outside the Jackson Treaty in no event could be the basis of a recovery. The claimants sue only for lands embraced in the cession made by the Fort Jackson Treaty of August 9, 1814, and even if proof of Indian title to lands which are outside said cession is made (which, however, this Commission does not think has been done), claimants would not be entitled to compensation therefor.

Nowhere in the record is there evidence of exclusive occupancy by the Yuchi of any definite territory.

Assuming that they are an identifiable group, entitled to prosecute a separate claim, failure to establish exclusive occupancy of definable land within the cession of the Fort Jackson Treaty precludes a recovery.

It is undisputed that the Yuchi Indians are a part of the Creek Nation and that any award made to the claimants in Dkt. 21 will inure to the benefit of all descendants of the Creek Nation of 1814; and therefore the Yuchi Indians, who are descendants of ancestors who were members of the Creek Nation of 1814, will be protected by and be

beneficiaries of the litigation being prosecuted by the claimants  
in Dkt. 21.

For the reasons herein given, Dkt. 172 must be dismissed.

Edgar E. Witt  
Chief Commissioner

Concurring:

Louis J. O'Harr  
Associate Commissioner

Wm. M. Holt  
Associate Commissioner