

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.

16. 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.

* * *

It is agreed upon by the parties that this supplementary article shall be concluded in part only, at this time, and that a deputation of a Chief, or Warrior, from each town with their Interpreter shall proceed with the Agent to explore the country more fully, and if they approve of said country, to sign their names under ours, which shall be considered as finally concluded on our part; and after the same shall be ratified by the President and Senate of the United States, shall be binding on the contracting parties.

Six chiefs and warriors were deputed to examine the country, approved it and signed their names to said treaty at Council Camp in the fork of the Kansas and Missouri rivers on October 19, 1829.

This treaty was in fulfillment of the obligation of the defendant under the treaty of 1818 and was, in fact, supplementary thereto.

17. 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. (Def. Ex. 43).

18. Pursuant to the Senate resolution (Finding 17), Isaac McCoy was appointed to make the survey required by the resolution (Def. Ex. 44). He was instructed by the Secretary of War to be governed in every particular by the Treaty and the resolution and that no detailed

instructions were necessary (Def. Ex. 44a). 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 lands lying east of that line 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 forty miles within the region abounding with Buffaloes, Elks, Antelopes, etc. We saw many and killed what we needed for use." (Pet. Ex. 109, pp. 17-19).

McCoy also forwarded to the Secretary of War, among other papers, a plat of the survey made by him (Def. Ex. 46(a)) which he described as a plat "of the whole of the Delaware lands" (Def. Ex. 46), and the field notes of the survey (Def. Ex. 46(b)). He reported that he had furnished Col. Anderson, the principal Delaware chief, with a plat of their country. (Pet. Ex. 109, p. 36).

19. In approving the survey referred to in Finding 13, John Quick certified as follows:

I John Quick, 2nd Chief of the Delaware nation of Indians having been duly appointed by the Chiefs and Warriors of my nation to attend to the surveying and marking of the lands assigned to my nation in the forks of the Kansas and Missouri Rivers, by the treaty with the United States of September the 24th 1829, having performed the duties required of me by my nation, do certify:

That, I have accompanied Mr. McCoy from near the mouth of Kansas River across our tract of land to Cantonment Leavenworth, thence across it again in another direction to the Kansas Agency, thence to our western limit on the Kansas River;- Thence I accompanied him in his actual survey and measurement of our land, 24 miles to the northeast corner of the Kansas lands, where a large mound was repaired in my presence, thence ten miles to the northern limit of our land, where another large mound was made - these two mounds being at the commencement of the outlet,-thence on the trial line to Cantonment Leavenworth on Missouri River. I have seen the inlet of about two miles on Missouri River and four miles back, for the use of the military post now called Cantonment Leavenworth. I have not only seen the limits of the land, but most of the land itself.

With the country I am well pleased. It is good. With its boundaries as shown to me, and as exhibited on a map, both agreeing, I am perfectly satisfied knowing them to be precisely as required by the treaty by which, we obtained a claim to this land.

The measuring and marking of our lines, are not yet completed. Mr. McCoy has from my first joining his party insisted that I should continue with him until the surveying of the land for

settlement and the outlet should be completed, but my nation have instructed me to remain no longer than to see the limits of the land assigned us for settlement. My nation wish to remove to this country immediately, before the commencement of cold weather, and they wish me to return to aid them in removing. Moreover the removal of my own family requires my presence, and my age and infirmities forbid me to remain longer on this surveying tour. Nor, is there any necessity for me to remain longer, since I am perfectly satisfied that the terms of the treaty are complied with and my nation have instructed me to return, they being anxious to remove on to the land immediately.

Cantonment Leavenworth
September 28th 1831

his
John x Quick
mark
2nd Chief of Delawares
and Special Agent.

Signed in presence of
* * * *

And thereafter, John Campbell, Sub-Indian Agent of the Shawnee Agency (Def. Ex. 46-D), also certified as follows:

Shawnee Agency November 1st 1830

I hereby certify that I have examined, alone, Capt John Quick, the agent chosen by the Dellawares to attend the surveying and marking of the Dellawares lands north of Kansis river on his return to his people from said service, and find that Mr. McCoy wished said Quick to continue with him untill the marking of their lands was completed, and that said Quick returned to his tribe sooner than had been desired in compliance with the instructions of his nation.

I have further ascertained that the said Quick is perfectly satisfied with the surveying and marking of their land, and their outlet and deeming it unnecessary for him to remain longer with the surveying party he left it.

I further say that since said John Quicks return to his nation, their first Chief William Anderson, with many others, have moved on to their lands, said Anderson declares himself well pleased with their new country, and entirely satisfied with the report of their agent John Quick, relative to the surveying and marking of their lands and the outlet.

20. On February 11, 1831, President Jackson approved the survey as follows:

Whereas in pursuance of a resolution of the Senate of the United States, of the 29th May, 1830, conditionally ratifying 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 (a copy of which is annexed), Isaac McCoy was duly appointed surveyor, to run and mark the lines referred to in said resolution; and whereas the said McCoy having performed the duty required of him by said resolution, and made report thereof to the Department of War, accompanied by satisfactory evidence that these proceedings have been concurred in and approved by the agent of the Delaware Nation.

Now therefore I, Andrew Jackson, President of the United States, do also, in pursuance of the further requirements of said resolution, approve of the proceedings of said surveyor, and order that one copy hereof be filed with the original treaty and resolution of the Senate hereinbefore referred to, in the Department of State, and that one copy be delivered, for the use of the Delaware Nation.

The treaty of September 24, 1829 was proclaimed on March 24, 1831.

21. In a letter to the Secretary of War, dated January 29, 1829, Isaac McCoy summarized the meaning and purpose of an outlet as follows:

By outlet, is understood a slip of land extending from that more particularly stipulated in the treaty as being designed for settlement, west, into the uninhabitable regions of the desert and the mountains. * * * The object of these outlets is that each [tribe] may have an access to hunting lands in the West.

In the same letter McCoy advised the Secretary that the western boundary of what he considered "habitable land" was marked by a straight line running due north and south about 200 miles west of the State of Missouri.

22. The Delawares began occupying the "residence lands" (that is, the lands lying east of the "outlet") in 1829 and 1830, but at no time during over 24 years of use of the "outlet" did the Delawares establish any permanent settlements or villages on the "outlet."

The fact that there was "no game on the land" designed for the residence of the Delaware Indians and that they were going "a great distance to hunt" establishes the necessity and the purpose of the assignment of an "outlet" to the Delawares. (Def. Ex. 5).

23. Upon the approval of the official survey of Isaac McCoy by the Delaware Indians and the President of the United States in accordance with the Senate Resolution and upon the proclamation of the 1829 treaty, Isaac McCoy believed that his 150 mile terminus established the western limit of the outlet. The two maps in evidence drawn by McCoy (Def. Ex. 46A and 46(a)1) show the end of the survey at 150 miles but have no western boundary to the outlet. However, there is some indication that McCoy gives the outlet a definite size and acreage, although the figures vary. In the map, Def. Ex. 46(a)1, said to be dated 1837 or 1839, there appears under "Delaware Lands" the acreage "Acres 1,759,361.77". In the 1837 Annual Register of Indian Affairs (27-A, Ex. 21) McCoy describes "the land of the Delawares" as follows:

The land of the Delawares lies north of the Shawnees, and in the forks of the Kansan and Missouri rivers, extending up the former to the Kansan lands; thence north 24 miles to the N. E. corner of the Kansan Survey. It extends up the Missouri river to Cantonment Leavenworth, a distance of about 23 miles on a direct course; thence with a line westward to a point 10 miles north of the N. E. corner of the Kansas lands, and then in a slip only 10 miles wide, it extends west along the northern boundary of the Kansans, to the distance of 206 miles from the state of Missouri.

Commissioner Manypenny, in a May 20, 1854 letter to the Secretary of Interior (Pet. Ex. 129), states that the Delaware "residence" contains according to the estimate of Isaac McCoy 924,160 acres of land and the "Out Let" therefrom about 1,318,000 acres.

Most mapmakers of the period show the outlet as extending 150 miles west or approximately that distance (See Pet. Exs. 120, 130, 134, 135; Def. Exs. 50B, 50D, 50E, 50G).

Secretary of War, Lewis Cass, in a February 16, 1832 report to the President of the United States (Pet. Ex. 110, p. 768) estimates that there has been granted "in round numbers" to the Delawares 2,000,000 acres.

Pawnee Indian Agent, John Dougherty, by letter of March 30, 1832 to Superintendent of Indian Affairs, William Clark, (Pet. Ex. 116), wrote that the outlet extends "perhaps 150 miles in length by 10 in width."

24. By the Act of March 3, 1853, 10 Stat. 226, 238, the President was authorized to negotiate with the western tribes for extinguishment of Indian title to their lands and Commissioner Manypenny conducted the negotiations on the part of the Government. Preparatory to such negotiations the Delaware Tribe or Nation of Indians, through its Council, appointed several of its members to represent the Nation at such negotiations and gave them full power to make a treaty with defendant. (Def. Ex. 57, dated April 3, 1854).

25. On May 6, 1854, 10 Stat. 1048, the authorized representatives of the Delaware concluded a treaty with the defendant containing the following provisions:

Article 1. The Delaware Tribe of Indians hereby cede, relinquish and quitclaim to the United States, all their right, title and interest in and to their country lying west of the State of Missouri, and situate in the fork of the Missouri and Kansas Rivers, which is described in the article supplementary to the Treaty of October 3, 1818, concluded in part on the 24th September 1829, at Council Camp on James' Fork of the White River in the State of Missouri; and finally concluded at Council Camp in the fork of the Kansas and Missouri Rivers on the 19th October 1829; and also their right, title and interest in and to the

"outlet" mentioned and described in said supplementary article; excepting that portion of said country sold to the Wyandotte tribe of Indians by instruments sanctioned by Act of Congress approved July 25, 1848, and also excepting that part of said country lying east and south of a line beginning at a point on the line between the land of the Delawares and the half-breed Kansas forty miles in a direct line west of the boundary between the Delawares and Wyandottes, thence north 10 miles, thence in an easterly course to the point on the south bank of the Big Iron Creek which shall also be on the bank of the Missouri River where the usual high water line of said creek intersects the high water line of said river.

Article 3. The United States agree to pay to the Delaware Tribe of Indians the sum of \$10,000.00; and in consideration thereof the Delaware Tribe of Indians hereby cede, release and quitclaim to the United States the said tract of country hereinbefore described as the 'outlet'. * * * * *

26. In a letter dated May 20, 1854 (Pet. Ex. 129), transmitting the May 6, 1854 treaty to the Secretary of Interior, together with "a map exhibiting the country ceded" (Pet. Ex. 130), Commissioner Manypenny estimated that the outlet contained "about one million of acres".

The treaty was ratified July 11, 1854 and proclaimed July 17, 1854.

Petitioners' Exhibit 132, which petitioner in Docket 241 calls an "official tabulation" included in the report of the Commissioner of Indian Affairs for 1856, lists under the heading "No. of acres to which Indian title has been extinguished or re-acq'd" 1,538,000 acres from the Delawares by treaty of May 6, 1854. Under "Remarks", this is shown to consist of 538,000 acres of residence lands (275,000 acres having been reserved) and 1,000,000 acres of outlet.

27. By the Act of July 1, 1902, Congress conferred "jurisdiction upon the Court of Claims to examine, consider and adjudicate with the right of appeal to the Supreme Court of the United States by any party

in interest feeling aggrieved at the decision of the Court of Claims, any claim which the Cherokee Tribe, or any band thereof, arising under Treaty stipulations may have against the United States, upon which suit shall be instituted within two years after the approval of this Act; and also to examine, consider and adjudicate any claim which the United States may have against said tribe or any band thereof."

Under the provisions of this Act the Delaware Tribe filed twelve petitions in the Court of Claims, namely, Nos. 23104, 23162, 24067, 24645, 24926, 24927, 24928, 24929, 24930, 24931, 24932, and 24933.

28. Petition No. 24928 contained the following allegation in paragraph 10:

* * * * * That the outlet referred to in said Treaty of September 24, 1829, was found to contain about 1,000,000 acres, but that the said Delawares were not the owners thereof and merely had an easement or right of way therein, and that subsequently the rights of said Delawares in said outlet were purchased by the defendant under a certain Treaty of May 6, 1854 (10 Stat. 1048), for the sum of \$10,000.00 only and that at the time of the negotiation of said Treaty of September 24, 1829, the value of the rights in said outlet granted to said Delawares did not exceed the sum of \$5,000.00.

At the end of the above petition was a verification by Richard C. Adams, who was a Delaware Indian and an attorney in fact of the Delaware Indians, plaintiffs in said action, who swore upon oath: "that the foregoing petition and all matter therein stated are true to the best of his knowledge, information and belief." (Def. Ex. 62)

29. When the 1829 treaty and the official survey in connection therewith were approved by the President of the United States and when the 1854 treaty was negotiated and became effective, it was the understanding of the Delaware Indians making those treaties and of the

officials and representatives of the United States that the width of the outlet was 10 miles and the length 150 miles.

30. The outlet, when acquired and when ceded by the Delaware Nation, was 10 miles in width and 150 miles in length, consisting of 960,000 acres.

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner