

BEFORE THE INDIAN CLAIMS COMMISSION

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| THE CREEK NATION, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Docket No. 21 |
| |) | |
| THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |

Decided: December 29, 1955

Appearances:

Paul M. Niebell
Attorney for Petitioner

C. Lenoir Thompson, with whom
were Claude Pepper and Charles
Bragman,
Attorneys for Intervenor, The
Creek Nation East,

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

OPINION OF THE COMMISSION

Witt, Chief Commissioner delivered this opinion of the Commission:

LOCATION OF LOWER CREEKS

It is generally agreed that the Friendly or Lower Creeks occupied the lower or southern part of the Creek domain in Georgia and Alabama at the time of the Jackson treaty of August 9, 1814, which was guaranteed the Creek Nation by the Treaty of August 7, 1790, 7 Stat. 35. (Find. 2). Colonel Benjamin Hawkins, one of the first agents appointed to the Creek Nation, recognized the division between the two groups of that Nation and located them as follows: "By the expression 'Lower Creeks' is meant

those on the waters of Flint and Chattahoochie; and 'Upper Creeks,' those on the waters of Tallapoosa, Coosa and Alabama." (American State Papers, 2 Indian Affairs 848). This general location of the Lower Creeks conforms to that recognized by the Creeks in their Memorial to Congress in 1853 (Cl. Ex. 32, pp. 1-8) and that of the Indian Bureau. (Cl. Ex. 32, pp. 9-14). Thus, while the principal towns of the Lower Creeks, such as Coweta, Cussetta, etc., were considerably north of the treaty line in Georgia, it is plain lands south of that line were also those of the Lower Creeks.

AREA OF LOWER CREEK LANDS

Having determined that the Lower or Friendly Creeks occupied the lower or southern part of the Creek domain in Georgia and Alabama, it is necessary to fix the boundaries and acreage thereof. As to a more definite location of these lands it is stated in the letter of the Commissioner of Indian Affairs, dated January 17, 1853 (Claimant's Ex. 32, p. 11) that all the ceded lands in Georgia and a portion of those in the southeastern part of Alabama "belonged exclusively to the lower or friendly Creeks ***."

The Jackson treaty definitely fixed the Lower Creek boundaries of the ceded area in Georgia, for the Creeks ceded by that treaty all their lands in the state lying south of a line starting at a point on the Chatahouchie (Chatahoochee) river where the Summochoico Creek empties into the Chatahouchie, "thence east from a true meridian line to a point which shall intersect the line now dividing the lands claimed and owned by the state of Georgia." The eastern terminus of this line is no doubt the point where

it intersects the west boundary of the Creek cession of June 16, 1802, 7 Stat. 68. (Royce, southern tract 44 in Georgia). So the part of the 1814 cession in Georgia extends between the treaty line on the north to the southern boundary of the state and between the Chatahoochee river on the west and the west line of the 1802 cession on the east.

The acreage of this area was estimated by the General Land Office in 1854 to be 7,612,800 acres. (See letter of Commissioner of G.L.O. dated April 18, 1854. Part of Cl. Ex. 36). This figure is accepted since it was an estimate made by the agency best qualified to determine it.

As to the area of the Lower or Friendly Creek lands extending into southeast Alabama, determined by the Commissioner of Indian Affairs to be theirs, the Commissioner of the General Land Office, on March 30, 1854, determined that the part in Alabama comprised 1,373,853 acres. (See Cl. Ex. 36(c), and the map, Cl. Ex. 4, which apparently is the one referred to in Ex. 36 (c), a letter dated March 30, 1854). Adding this acreage to the 7,612,800 acres in Georgia, the total acreage of the Lower Creek lands is 8,986,653 acres. It will be seen by referring to the map, Ex. 4, that the Alabama part lies south of the northerly treaty line and extends south to the southern boundary of Alabama and west from the Chattahoochee river to the line shown on the map, Ex. 4, which is the township line between 23 and 24 East.

The total acreage of 8,986,653 is confused by the fact the Commissioner of Indian Affairs, Lea, in his two letters of January 17 and 21, 1853 (part of Cl. Ex. 32) uses the figure 8,849,940, and Commissioner Manypenny in his letter to the Secretary of the Interior on August 1, 1854, Cl. Ex. 40, mentions the difference between the Indian Bureau's

figure and that of the General Land Office. In discussing this difference and the method of determining the western boundary of the Lower Creek lands he said:

It has been a delicate duty to attempt to fix a line which does not appear to have been formally and specifically laid down. But upon the authority of the reports to the War Department, before, during and after the war, it appears that the "Friendly Creeks" were mainly those known as the Lower Creeks who resided on the waters of the Flint and Chattahoochee rivers, with a few of the Upper Creek towns residing on the Tallapoosa; and that the "Red Sticks" or those who became hostile were exclusively Upper Creeks and resided on the waters of the Tallapoosa, Coosa and Alabama. Taking this data in connection with the memorial of the Creek nation of Indians which accompanied the letter from Mr. Sebastian - as the claims therein named refers to the locality of the friendly Indians - and supported in some measure by the report of Col. Benjamin Hawkins, in August 1815, who stated the line of the capitulation included "nearly eight millions of acres" that belonged to the "friendly Indians, over and above all the hunting grounds of the friendly Upper Creeks" - as a basis, it has appeared to be a just assumption that the true point of separation between the parties would be the highlands which separate the respective waters on which they resided. Therefore, following the northern line of the territory acquired to the point where the waters of the Upper are separated from those of the Lower Creeks, to fix an initial, it has appeared necessary to draw an arbitrary line due south to the Southern boundary of the ceded territory as the nearest approximation to the true boundary of the respective parties that can now be arrived at. Upon this basis the number of acres of land lying east of the line and belonging to the friendly Creeks, would be according to the estimates of this office 8,849,940, and according to that of the Commissioner of the General Land Office as shown by his letter referred to and one written on the 30th to 8,986,653 acres.

It appears, therefore, that we must decide between the Bureau's figure and that computed by the General Land Office. As will be seen by reference to the letters from the General Land Office of February 3, 14, March 30, and April 18, all in 1854, (Cl. Exs. 36 (a), (b), (c), (d)) the G. L. O. was requested to compute the acreage of the Lower Creeks within the boundaries fixed by the Indian Bureau. This apparently was not done until 1854, (see Cl. Ex. 36 (c)), so prior to that time and at the

time of Commissioner Lea's 1853 letters, (Ex. 32) the estimate of acreage was made by the Indian Bureau. The fact that the matter of acreage was referred to the G. L. O. indicates that the Indian Bureau was not sure of its estimate and asked the G. L. O. to make the computation. We believe the latter agency was better equipped and qualified to determine the acreage and that its determination of 8,986,653 acres must be accepted as the most reliable figure for the Lower Creek area based upon the evidence now before the Commission.

Edgar E. Witt
Chief Commissioner

Approved:

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner