

BEFORE THE INDIAN CLAIMS COMMISSION

THE CREEK NATION,)	
)	
Plaintiff,)	
)	
THE CREEK NATION EAST,)	
)	
Intervenor,)	
)	
vs.)	Docket No. 21
)	
THE UNITED STATES,)	
)	
Defendant.)	

Decided: November 19, 1958

Appearances:

Paul M. Niebell, Attorney for the Creek Nation,
Plaintiff

C. LeNoir Thompson, Claude Pepper and Charles
Bragman, Attorneys for the Creek Nation East,
Intervenor

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

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

The issue before us is the value as of August 9, 1814, of a tract of land described in our Finding No. 58(a), of which 7,612,800 acres lie in southeastern Alabama. The Okefenokee Swamp covers 400,735 acres in the southeast corner of the Georgia land. On the valuation date the land involved was bordered by Spanish Florida on the south and Wayne County, Georgia, on the east; the Creek Nation owned all adjacent land on the north and on that day ceded to the United States a large tract between

the subject land and white settlements on the Alabama and Tombigbee rivers in southwest Alabama. It also granted the defendant free passage over its remaining land.

The petitioners and intervenors, who will hereafter be referred to jointly as petitioners, contend that the tract on August 8, 1814, had an average value per acre of \$2.50, or \$22,466,642.00. The defendant makes use of round figures, and considering the Okefenokee Swamp without value as of 1814, places a 2½¢ per acre value on 3,700,000 acres of pine land in the Coastal Terrace region of Georgia and 6¢ per acre value upon the balance of the tract, for a total value of \$385,000.00.

The evidence as detailed in our Findings of Fact discloses that the tract is all timbered land within the Coastal Plains region, with the exception of a small acreage in Alabama; that its elevation nowhere exceeds 400 feet and the topography is comparatively level. The soils are sandy and sandy loams, the lower and more sandy Coastal Terrace being much less fertile than the Upper and Middle Coastal lands in Alabama and west of the Flint River in Georgia. From west to east the tract is drained by the water systems of the Choctawatchee, Chattahoochee, Ocklocknee, Ocilla, Suwanne, St. Marys and Satilla river. All these rivers flow south into the Gulf of Mexico except the St. Marys and Satilla river which each flow east to the Atlantic Ocean.

The tract lies in the outer fringe of the Great Pine Belt. While it produces a variety of timber, pine predominates. The stand sometimes ran as much as 30,000 board feet per acre, but the average timber stand in Alabama in 1814 was 7,000 board feet per acre, 65% longleaf or yellow

pine and 35% mixed hardwoods, and the longleaf pine alone averaged 4,000 to 7,000 board feet per acre in Georgia. Swamps and stagnant water pools throughout the tract contained considerable cypress which was considered equal in value to yellow pine but was much more inaccessible. It is estimated that the area contained 2,000,000 acres of hardwoods, 218,000 acres of cypress and 5,000,000 acres of pine. A wire or pine grass and a saw-palmetto growth found particularly in the flatwoods of the Coastal Terrace region, and the cane brakes growing in the river bottoms in the northern sections, furnished food for hogs, cattle, sheep and horses. The entire tract abounded with an assortment of wild life, both animal, fish and fowl.

A few half-breeds or whites lived in the area under valuation in 1814. There were concentrations of settlements in northern Alabama along the Tennessee River and in southwestern Alabama between the Tombigbee and Alabama rivers. Wayne County, Georgia, adjoining the tract on the east, and the area known as Wilkinson and Baldwin County, between the Oconee and Ockmulgee rivers, approximately 18 miles north of the tract were sparsely settled. Florida was occupied by hostile Seminole Indians and by many of the rebellious Creeks who had fled there, and these continued to harrass the whites in the subject area until 1835, long after the United States had acquired Florida. There were no railroads; a wagon road ran east and west between Macon, Georgia and a point near Montgomery, Alabama, north of the subject area, and then turned southwest to Mobile, which was a town of 500 inhabitants when acquired of the Spanish in 1813. An emigrant trail from the Muscle Shoal of the Tennessee River ran south to the Tombigbee

Alabama settlements above Mobile, west of the tract. Several Indian traces or trails, which were mere horsepaths, ran through the area, up and down the Flint and Chattahoochee rivers, across the northeast corner of the tract and extended into settled Georgia both to the north and east. One trail crossed the southern section of the tract in Georgia, and a number of trails ran through central Alabama and Georgia to the north. Water transportation was by raft and flat boats propelled by manual labor. The Satilla River flowing into the Atlantic Ocean was navigable within this area as far as Waycross, Georgia; of those rivers flowing into the Gulf of Mexico navigation on the Choctawatchee extended to Newton, Alabama, throughout the entire tract on the Chattahoochee, and as far as Bainbridge, Georgia, on the Flint. There were no known minerals in the area.

The climate is mild, the growing season exceptionally long. The area now produces such diversified crops as tobacco, cotton, corn, vegetables, rice, and fruit, and a substantial amount of furs and hides, the latter being obtained principally in the Okefenokee Swamp area. Large numbers of cattle, hogs, sheep and horses are raised. The tract lies just south of the Great Cotton Belt.

The land under valuation was used by the Creek Indians and squatters in 1814 principally for hunting and fishing purposes, although they had a few villages within the area, principally along the Flint and Chattahoochee rivers. Yellow or longleaf pine and Georgia live oak was much in demand at that time for the construction of ships. The record does not disclose that live oak in any substantial

amount was grown in this area, or that pine was being cut there for commercial purposes in 1814.

The date of valuation in this instance is by far the most remote of any this Commission has been called upon to consider; the land is far removed from any tract previously valued, and the parties have met with difficulty in procuring appropriate evidences of value. There are in evidence references to large-tract transfers in Florida, occurring while that country belonged to Spain. Such factors as national loyalties and preferences, national economics and local policies bear upon land transactions in foreign countries and so affect the market values there that the information furnished can not possibly qualify those transactions as comparable sales. With few exceptions there were no transfers of large tracts in this region within the limits of the United States around the valuation date. These are referred to in our Finding of Fact No. 80. No attempt has been made to compare the tracts with that under valuation except as to acreage and date of transfer. Most were mere tenders; one transfer was for credit on a debt; another involved credit terms of 14 years, and occurred at a date when economic conditions were materially better than in 1814. The nature of these transactions and the scant data given is insufficient to form a basis for determination of the question before us and resort must be had to other data which a hypothetical purchaser and seller would have considered in evaluating this land in 1814. These several factors have been previously discussed by the Commission and the Court of Claims. Otoe and Missouri,

131 Ct. Cl. 593; Nocksack Tribe, 6 Ind. Cl. Comm. 596 and others.

They include as stated by the Court of Claims in the Otoe and

Missouria case, 131 Ct. Cl. 593, 633:

the natural resources of the land ceded, including its climate, vegetation, including timber, game and wildlife, mineral resources and whether they are of economic value at the time of cession, or merely of potential value, water power, its then or potential use, markets and transportation -- considering the ready markets at the time and the potential market.

The parties are agreed that in 1814 the land under valuation was most valuable for subsistence farming supplemented by grazing of livestock. The climate is mild, the growing season exceptionally long and permits the maturing of two crops per year in some instances. Farm-lands were easily cleared by girdling trees and planting among the deadened roots. The settler utilized the timber for houses, out-buildings and fences, and much stock grazed at large.

Access to the area was not particularly difficult from the east. Land lotteries in 1805 and 1809 had resulted in frontier settlements in Wayne County, which adjoined the tract on the east, and in Baldwin and Wilkinson counties in the branch of the Oconee and Okmulgee rivers, some 18 miles to the north. While the Creek Nation held the intervening strip, consent to cross their country was granted in the treaty of cession of August 9, 1814, and many Indian trails led from within the tract to the settlements along the coast. The Satilla River was navigable as far as Waycross, inside the tract, and navigation came up the St. Marys to within a few miles east of it. The nation was at peace with Spain, the acquisition of Florida considered a possibility, and

access to this tract by means of rivers flowing through Florida was reasonably predictable although fraught with Indian hazards. Settlements were located in Northern Alabama in the rich valley of the Tennessee River, where land was in great demand, and in the Alabama-Tombigbee river junction which country the Choctaws had ceded in 1802 and 1805 and which adjoined the Mobile Province which the United States had acquired in 1813. While some hundred miles removed from the present tract, the area between these latter settlements and the land under valuation was also ceded in 1814 and thus opened for settlement.

Petitioner's witnesses, James Stauffer, Alabama's State Forester, and W. H. McComb, division head of the Georgia Forestry Commission, each testified from personal knowledge of the land within his state and studies of pertinent data. Mr. Stauffer's method of discounting present day prices to arrive at an 1814 stumpage value was rejected by the Court of Claims in Warm Spring Tribe vs. United States 103 Ct. Cl. 741, 746. The Commission believes Mr. McComb's conclusion is without sufficient factual substantiation for acceptance as an equitable evaluation of timber as a component element of fair market value for the land. It may not be considered as a value apart from the land. Nooksack Tribe vs. United States, supra, p. 501. The data used by Mr. McComb may have applied to stumpage or to logs at the mill. That contained in Petitioner's and Intervenor's Exhibit No. 79 is said by the author of that article to be undependable.

Data presented by defendant's witness, Paul Starret, comprises a goodly portion of the factual evidence before the Commission. He rejected

all of it but the prices fixed by the state legislature in Georgia's first lottery act of 1803 and rested his valuation solely upon those statutory prices which have no relation to the fair market value of land. (*Shoshone Indians vs. United States*, 85 Ct. Cl. 331, 369, 374-9). The rate at which the Georgia land under valuation and other land nearby moved under the exceptionally low prices fixed by the state in an attempt to attract landowners, is indicative of the fact that there was little demand, not in 1814 but for a number of years thereafter, particularly for that land in the Lower Coastal region.

A more realistic valuation would appear to be that price set by Georgia's legislature in 1818 for fractional lots which were exempt from the lottery system. All such land in Early County, was priced at \$2 per acre as were water frontage lots in Irwin and Appling counties. Dry land in Irwin and Appling counties was priced at 50¢ per acre. It must be born in mind, however, that economic conditions in 1818 were vastly superior to those in 1814, and would necessarily be reflected in these prices.

We think that a prospective settler or purchaser in 1814 would have acquainted himself with the Indian trails leading into and through this land, which suggested future roads. Considering the recent acquisition of Mobile Province and friendly national relations with Spain, he would have looked with favor upon the rivers flowing through this tract offering an apparently easy means of transportation to coastal ports. He would have found the area possessed a present value for hunting and fishing purposes, both as a food source and for commercial usage, and that the presence of wild game was an attraction to the settler. He would

have considered, as the parties hereto agree, that the best use for the land was subsistence farming and cattle grazing.

A well informed prospective purchaser or seller in 1814 would have known the average stumpage on this tract. He would have acquainted himself with the prices paid for naval stores, cypress and other lumber, and the existing and potential demand for longleaf pine. He would have known of the slow one-long-at-a-time method of moving timber to the mill, and that similar timber extended for miles in all directions without any evidence of its pending exhaustion.

A prospective well informed purchaser or seller in 1814 would also have known that 1% of the land offered in the 1805 and 1807 lotteries in Baldwin County in 202-acre lots for \$12.25 per lot, were yet unpaid for; and that 40% of the \$12.25 lots in Wilkinson County were awaiting payment. He would have also ascertained that 37.8% of the 490-acre lots offered in those lotteries in Wayne County were not paid for. He would have known that Wayne County and the southern portion of Wilkinson County were similar to the eastern portion of the present tract, and that those counties were adjacent to settled Georgia. He would have considered the amount of other land in Georgia which the United States was committed to free from Indian title, and which would become available under Georgia's lottery system. He would also have known of the 16,900,000 acres in Alabama being ceded to the United States by the Creek Nation which could be expected to be available for settlement under the federal land policies.

A prospective purchaser would have given thought to the number of small subsistence-farm size sales necessary to absorb this large acreage.

and the length of time required for its disposition; he would have considered the population of adjoining Georgia, Tennessee and the Carolinas from whence he might expect to draw such purchasers, the expense attendant upon preparing the land for sale and that of the sales, managerial and promotional programs required; of the acreages necessarily dedicated to internal improvement and development within a frontier country, of financing expenses and of taxes accruing throughout the period of disposition, of the risk attendant upon a long term venture of such magnitude and the element of a fair return for his money.

A review of the record convinces us that the land was worth much more than defendant's valuation but we do not think the value contended for by petitioners finds support in the record. The source material of data concerning several small tract sales of Georgia land within this tract which occurred between individuals within the decade following the valuation date fails to indicate whether these were of improved tracts, but we think the presumption of small improvements exists. The average consideration in Early County was \$1.56 per acre, that in Decatur County was \$1.30 and in Irwin County it was but 61 cents per acre. The Alabama land was surveyed by 1824, and falls within 63 separate townships. No land sales occurred within 63 separate townships. No land sales occurred within 23 of those townships for 6 years although this land was available at the statutory minimum of \$1.25 per acre. Eight townships had no sales for 26 years. While there appears to have been a number of squatters within the area, they had no protective rights under the statutes. There is evidence that "scalpers" often pressured such people into paying for

the privilege of acquiring the land without competitive bidding, but this also implies that squatter improvements such as cleared and cultivated land, buildings and fences contributed to its actual value. These and other sales referred to in our findings are infinitesimal in size when compared to the tract under valuation, and any suggestion of value to be derived from them must be heavily discounted. Allowance must also be made for preferential locations, for increases in value due to such settlements as had occurred, the construction and development of roads, the use of the steamboat, the acquisition of Florida and subjugation of the Seminoles as well as the additional cessions of land within Georgia by various Indian tribes which freed the frontier from Indian hazards, improved interior transportation and gave better access to markets of the world. We think little consideration can be given to the timber on this land. Its potential commercial value was limited by the vast amount of similar timber extending through the settled areas of the country as far north as Chesapeake Bay and westward to Lake Ponchartrain, as well as the crude lumbering methods then in existence.

Considering all of the evidence before us, and giving consideration to the opinions expressed by the various witnesses, the present and potential value of the land and timber and all other elements going to make up fair market value, we are of the opinion that on August 9, 1814, the land described in our Finding of Fact No. 58(a) had a fair market value of \$3,573,810.10 which we arrive at by assigning a value of 20¢ per acre or \$80,147.00 to the 400,735 acres encompassed;

the Okefenokee Swamp, 35¢ per acre or \$1,295,000.00 to the 3,700,000 acres of pine land in the Lower Coastal Plain and 45¢ per acre or \$2,198,663.10 to the remaining and more productive 4,885,918 acres comprising the tract under valuation.

/s/ Edgar E. Witt
Chief Commissioner

/s/ Louis J. O'Marr
Associate Commissioner

/s/ Wm. M. Holt
Associate Commissioner