

BEFORE THE INDIAN CLAIMS COMMISSION

THE EASTERN BAND OF CHEROKEE INDIANS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 282
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER

2-20-54

Petitioner filed its complaint herein on August 10, 1951. Defendant answered said petition on January 25, 1956. On March 19, 1958, defendant filed a "Motion for Summary Judgment". On September 11, 1958, the petitioner filed its "Statement of Opposing Points and Authorities To The Motion of the Defendant for Summary Judgment". On February 10, 1959, the Commission heard argument on said motion and opposition there-to; and, having taken under advisement, and duly considered the same, the Commission in accordance with its opinion filed this day concludes as a matter of law:

1) That, as to those claims set out in paragraphs 5 through 16 of the petition herein and designated as "Claim 282(a) to 282(1) inclusive" in defendant's "Motion for Summary Judgment" in which the petitioner seeks to revise some twelve treaties on grounds of fraud, duress, and unconscionable considerations, each and all of them state a cause of action under Clause (3) of Section 2 of the Indian Claims Commission Act (52, 60 Stat. 1050), and defendant's motion as directed thereto should be denied.

2) That, as to the claims set out in paragraph 17 of the petition and designated as "Claim 282(n)" in defendant's "Motion For Summary Judgment", in which petitioner seeks (a) to recover a pro rata share of the \$214,000 commuted annuity fund under the 1835 New Echota Treaty (7 Stat. 478) and in addition, (b) a pro rata share of the \$5,000,000 consideration which passed for the Cherokee lands ceded hereunder, said claim (a) is barred by the judgment rendered in the case of Eastern Band of Cherokee Indians v. United States and the Cherokee Nation, 30 C. Cls. 449, aff'd 117 U.S. 208 (1886), and said claim (b) fails to state a claim under the Indian Claims Commission Act upon which relief should be granted, and therefore defendant's motion as directed thereto should be granted.

3) That, as to that claim set out on paragraph 18 of the petition and designated as "Claim 202(n)" in Defendant's "Motion for Summary Judgment", in which petitioner seeks under the aforementioned New Echota Treaty a pro rata share of the \$500,000 used by the Cherokee Nation to purchase certain lands in Kansas, petitioner fails to state a claim under the Act upon which relief can be granted, and defendant's motion as

directed thereto should be granted.

4) That as to that claim set out in paragraph 19 of the petition and designated as "Claim 282(o)" in defendant's "Motion For Summary Judgment", in which petitioner seeks a pro rata share of the sum total of the awards allowed in the judgments rendered in the cases of United States v. The Old Settlers, et al., 148 U.S. 484 (1893) and United States v. Cherokee Nation, 202 U.S. 101 (1906), petitioner fails to state a claim under the Act upon which relief can be granted, and defendant's motion as directed thereto should be granted.

5) That, as to that claim set out in paragraph 20 of the petition herein and designated as "Claim 282(p)" in defendant's "Motion For Summary Judgment", in which petitioner seeks to recover a pro rata share of the total amount awarded as costs and attorney fees in the case of United States v. Cherokee Nation, et al., 202 U.S. 101 (1906), petitioner has failed to state a claim under the Act for which relief can be granted, and defendant's motion as directed thereto should be granted.

IT IS THEREFORE ORDERED:

1. - That defendant's motion for summary judgment as directed to those claims set out in paragraphs 5 through 16 is hereby denied; and petitioner, within 60 days from the date of this order, to those claims contained in paragraphs 5 through 16 of the petition, shall file separate petitions for each claim; and said petitions shall be assigned docket numbers 282 (A) through (L); and each separated claim shall be maintained only under paragraph 3 of Section 2 of the Act (E 2, 60 Stat. 1050).

2. - That defendant's motion for summary judgment as directed to the claims contained in paragraphs 17 through 20 of the petition is hereby granted and said claims are dismissed.

3. - Upon filing of the separate petitions as directed above, the petition in Docket 282 shall be dismissed.

Dated at Washington, D.C., this 20th day of February, 1959.

Edgar E. Witt
Chief Commissioner

Louis J. O'Maŕr
Associate Commissioner

Wm. H. Holt
Associate Commissioner