

BEFORE THE INDIAN CLAIMS COMMISSION

THE CREEK NATION OF INDIANS OF)	
THE STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 275
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: March 3, 1971

Appearances:

Paul M. Niebell, Attorney
for the Plaintiff

Lester Reynolds, with whom
was Mr. Assistant Attorney
General Ramsey Clark,
Attorneys for Defendant

OPINION ON MOTION FOR REHEARING

Pierce, Commissioner, delivered the opinion of the Commission.

On April 15, 1970, the Commission issued its decision herein, 23 Ind. Cl. Comm. 1, holding that the Creek Nation held aboriginal title to a portion of the lands in suit until, through a series of acts culminating with the ratification on April 8, 1816, of the Cherokee Treaty of March 22, 1816, 7 Stat. 139, the United States, without compensation, deprived the Creek Nation of said title.

The case is now before the Commission for decision on defendant's motion of June 15, 1970, for rehearing.

Defendant charges that in its decision of April 15, 1970, the Commission committed errors of fact and law relating to its interpretation of the Treaty of Fort Jackson of August 9, 1814, 7 Stat. 120. The defendant contends that by said treaty the Creek Nation ceded all of its lands west of the Coosa River including the lands in suit; that recovery had been sought for all of those lands in Docket No. 21; and that the Commission determined in Docket No. 21 that the Creek Nation was not entitled to compensation for the lands in suit and that the matter is thereby res judicata.

Specifically the defendant charges that the Commission erred through:

1. Failure to consider and find that the area in suit as described by plaintiff's petition was in fact an integral part of the area ceded to and acquired by the defendant in 1814 under the Treaty of Fort Jackson;
2. Failure to consider and find that the Treaty of March 22, 1816, 7 Stat. 139, between the Cherokee Nation and defendant merely located the boundary between the Cherokee Nation and Creek Nation west of the Coosa River, as contemplated by the cession in the Fort Jackson Treaty of August 9, 1814;
3. Finding that the plaintiff had aboriginal Indian title to the lands in suit at the date of the Treaty of September 14, 1816, 7 Stat. 148, between the defendant and the Cherokee Nation, for the reason that the Creek Nation had already ceded by the Treaty of August 9, 1814, whatever aboriginal title it possessed; and
4. Failure to consider and find that the Cherokee and Creek Nations enacted an intertribal treaty on December 11, 1820 [1821], defining the

boundary between the two nations east of the Coosa which confirmed and extended the Cherokee-Creek boundary determined in the "Cherokee Treaty of 1816."

In our opinion the defendant is mistaken in all of its contentions. The defendant has not pointed to any of the Commission's findings of fact which were not supported by substantial evidence. Rather, through its motion for rehearing defendant is seeking to reargue issues already decided by the Commission after careful consideration of all of the evidence.

The Treaty of Fort Jackson of August 9, 1814, in essence was a treaty of indemnification whereby the United States forced the Creek Nation, its ally during the preceding Creek Civil War, to cede to the United States a vast part of its domain in Alabama and Georgia as compensation to the United States for the acts of the hostile Creeks in the war. Finding 18, 23 Ind. Cl. Comm. at 26. At the time of the Treaty of Fort Jackson of August 9, 1814, the defendant did not know the northern limit of the Creek lands in Alabama although it was known that the Cherokees claimed lands in northern Alabama. The northern boundary of the Creek cession under the 1814 Treaty was left to be determined by the future location of the Cherokee south boundary west of the Coosa River in northern Alabama. The point where the Cherokee-Creek boundary line crossed the Coosa River was hotly contested at the time of the Fort Jackson Treaty of 1814 and in the ensuing years. On March 22, 1816, the United States and the Cherokee nation entered into a treaty, 7 Stat. 139, which established the Cherokee-Creek boundary as a straight line approximately thirty-five miles south of the Tennessee River and roughly parallel thereto. See Finding 20, 23 Ind. Cl. Comm. at 30.

The effect of the treaties of August 9, 1814, and March 22, 1816, was to limit the Creek cession under the Treaty of August 9, 1814, to the area shown as Royce Area 75 on Royce's maps of Alabama and Georgia in the 18th Annual Report of the Bureau of American Ethnology (Part II). Finding 18, 23 Ind. Cl. Comm. at 26, 27. The lands sued for herein lie north of Royce Area 75 and were not included in that 1814 cession. Royce Area 75 was the subject of Docket No. 21, Creek Nation v. United States, 2 Ind. Cl. Comm. 66 (1952). Therein we held that the northern boundary of the lands ceded to the United States under the Treaty of Fort Jackson of August 9, 1814, was fixed by the Cherokee Treaty of March 22, 1816, 2 Ind. Cl. Comm. at 102; and that north of that cession was unceded Creek territory, 6 Ind. Cl. Comm. at 692. In Docket No. 21 the Commission pointed out that the northern boundary of Royce Area 75 also constituted the southern boundary of Royce Area 79. With reference to this boundary the Commission stated:

There seems no doubt that the Creeks occupied lands even further north, probably to the Tennessee River, however, no claim is now being made by the Creeks for the lands north of the south line of plat 79. (2 Ind. Cl. Comm. at 102).

Defendant's res judicata argument is without merit. Our former decision in Docket No. 21 related only to the land ceded under the Treaty of Fort Jackson of August 9, 1814, which we held to be Royce Area 75. The lands in this suit (Docket 275) were not included in that cession nor in plaintiff's claim in Docket No. 21. Accordingly, the Commission's decision in Docket No. 21 is not a bar to plaintiff's claim in the instant case involving different subject matter. Yakima Tribe v. United States (Docket No. 47) 158 Ct. Cl. 672, 680, 682 (1962).

The main thrust of defendant's argument is that the Creek Nation intended by the Treaty of Fort Jackson of August 9, 1814, to convey all of its lands west of the Coosa River, including the lands in suit, and that it is this intent, rather than the cession boundary established by the United States, excluding the lands in suit (by the Cherokee Treaty of March 22, 1816), which controls the extent of the 1814 cession. It is our opinion that in this the defendant is mistaken both as to fact and law.

The Creek Nation acceded to the Treaty of Fort Jackson of August 9, 1814, only under protest and duress. Finding 18, 23 Ind. Cl. Comm. at 26; Docket No. 21, 2 Ind. Cl. Comm. 66, 83, 88 (1952). See Creek Nation East of the Mississippi v. United States, 165 Ct. Cl. 479, cert. denied, 379 U. S. 846 (1964). In their formal written protest, which they asked to be forwarded to the President of the United States as their part of the treaty, the Creeks expressed dissatisfaction with the proposed lower boundary line of the treaty as taking more from them than the equivalent offered, but stated that they would not interfere with running the line as they relied on the justice of the United States to cause justice to be done them. Docket No. 21, supra, 2 Ind. Cl. Comm. at 83, 84. The Creek Nation also protested the northern boundary relating to the lands in suit as noted in our Finding of Fact 19, 23 Ind. Cl. Comm. at 29.

It is obvious that the cession provisions of the 1814 Treaty did not reflect the wishes or the intent of the Creeks but rather the non-negotiable demands of the defendant.

In Docket No. 21, the Commission held that the land ceded under the Treaty of Fort Jackson of August 9, 1814, viz., Royce Area 75, comprised between 20,000,000 and 25,000,000 acres which greatly exceeded in actual value the total cost to the United States of the Creek Civil War. In that case the Commission held that the United States was not legally entitled to indemnification from the Creek Nation, because the latter had been its ally rather than its enemy during the Creek Civil War. The Commission stated that in consequence, there might be some doubt as to whether the 1814 Treaty was a complete nullity or whether it should be revised because of duress. The Commission concluded that the portion of Royce Area 75 (between 15 and 19 million acres) not occupied exclusively by friendly Creeks would seem to be proper indemnification for the cost of the war if the defendant were entitled to any indemnification. It is apparent that the defendant's actions in dealing with the Creek Nation following the Creek Civil War were somewhat less than fair and honorable. To hold, as the defendant would have us, that the lands in suit should also be deemed to have been lost by the Creek Nation as additional indemnity to the defendant, under the 1814 Treaty, would be devoid of factual or legal basis.

In its memorandum in support of its motion for rehearing the defendant seeks to establish that Creek aboriginal or Indian title to the lands in suit had been extinguished by Cherokee conquest prior to 1814. Defendant cites the partisan statements of the Cherokee Indian Agent, Mr. Meigs, that in the past the Cherokees had repeatedly driven the Creeks south of the area in suit. This is but one bit of conflicting evidence

carefully considered by the Commission in reaching its decision of April 15, 1970, that the weight of the evidence compels a contrary conclusion. Findings 10 and 25, 23 Ind. Cl. Comm. at 20, 21, 35.

The defendant's third charge of error is incorrect in asserting that the Commission found that the plaintiff had aboriginal Indian title to the lands in suit at the date of the Treaty of September 14, 1816. Our decision, in fact, held that the plaintiff had Indian title to a portion of the area in suit as of the April 8, 1816, ratification of the Treaty of March 22, 1816, which treaty constituted the final event of taking. 23 Ind. Cl. Comm. at 12, 13, 34, 35.

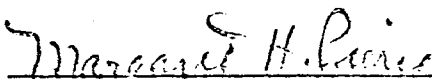
The defendant's fourth charge of error relates to the Cherokee-Creek intertribal treaty of December 11, 1821. By this treaty, which was ratified by the two Indian nations on October 30, 1822, the following inter-tribal boundary line was established:

. . . from the Buzzard roost, on the Chattahoochee river, a direct line so as to strike the Coosa river opposite the mouth of Wills Creek, thence down the bank of said opposite to Fort Strother, on said river; all North of said line is the Cherokee lands, all south of said line is the Creeks lands.

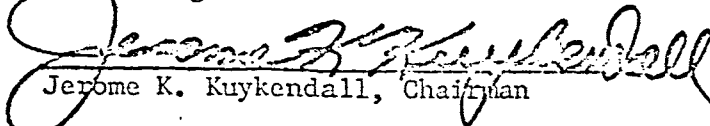
The record sheds no light on the reasoning or consideration involved in this treaty. It may be that the treaty constituted no more than an understanding by the defeated Creek Nation that the defendant, by recognizing Cherokee claims under the Treaty of March 22, 1816, had deprived the Creek Nation of title to said lands. As plaintiff has pointed out in its objections to defendant's motion herein, the evidence of the 1821 Treaty was obtained from the "unratified Treaties 1821-1826"

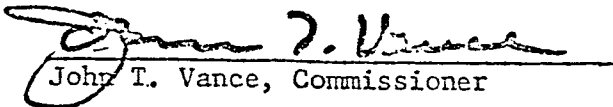
file of the Indian Office Records, National Archives, and there is no evidence in the record that this treaty ever received official recognition. At any rate, the negotiation of this intertribal agreement five and one-half years after the date of the 1816 taking in no way absolves the defendant from obligation to compensate plaintiff for that taking.

For the reasons stated herein the defendant's motion for rehearing will be denied and an appropriate order entered.


Margaret H. Pierce, Commissioner

Concurring:


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner

Richard W. Yarborough, Commissioner


Brantley Blue, Commissioner