BEFORE THE INDIAN CLAIMS COMMISSION.

THE CREEK NATION,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 272

Decided: December 8, 1971

FINDINGS OF FACT

1. Plaintiff's Capacity to Bring Claim. Plaintiff is a tribe, band, or other identifiable group of American Indians entitled to maintain an action under Section 2 of the Indian Claims Commission Act.

2. Title. The Creek Nation had a compensable interest in a 5,200,000 acre tract in the State of Alabama. The defendant has admitted such interest (Defendant's Answer, Second Defense, paragraph 10), and therefore the question of title is not at issue in this docket.

3. Extension of State Jurisdiction Over Indian Lands. In 1829 the State of Alabama extended its jurisdiction over the Creek country, and divided the Creek country into counties. In 1831 the Alabama Legislature incorporated a town within the Creek country. In January 1832, the civil and criminal jurisdiction of Alabama was extended over
all the Indian territory within the limits of that state. Thus the chiefs of the Creek Nation were rendered powerless to control their people under tribal laws.

4. Federal Policy of Removal. The assertion by the State of Alabama of jurisdiction over the Creek country was contrary to Federal law. However, the Federal Government as early as 1829 determined that it would not oppose Alabama's actions. In his address to the Creeks on March 23, 1829, President Jackson said:

My white children in Alabama have extended their law over your country. If you remain in it, you must be subject to that law. (Pl. Ex. 1, p. 20; Indian Office Letter Book No. 5, Series 2, p. 375)

The Federal Government had determined that the Creeks should be moved from their lands in Alabama to the western part of the United States. By Act of May 28, 1830, 4 Stat. 411, Congress formally announced the policy of removing the Indian tribes from their ancestral homes in the East to lands west of the Mississippi River by seeking agreement of tribes for the exchange of their eastern lands for lands in the West. Thus the Federal Government's policy of removal of Indians to the West was stated by the legislative as well as by the executive branch.

Secretary of War John H. Eaton on May 30, 1829, wrote as follows to General William Carroll:

A crisis in our Indian affairs has arrived. Strong indications are seen of this in the circumstances of the legislatures of Georgia and Alabama extending their laws over the Indians within their respective limits. These acts, it is reasonable to presume,
will be followed by the other States interested in those portions of their soil now in the occupancy of the Indians. In the right to exercise such jurisdiction, the Executive of the United States fully concurs; and this has been officially announced to the Cherokee Indians. The President is of the opinion that the only mode left for the Indians to escape the effects of such enactments, and consequences more destructive, and which are consequent on their contiguity to the whites, is for them to emigrate. . . It is the wish of the President, . . that you would undertake to enlighten the Cherokees and Creeks on the great subject of their best interests. . . .

Nothing is more certain than that if the chiefs and influential men could be brought into the measure, the rest would implicitly follow. It becomes, therefore, a matter of necessity, if the General Government would benefit these people, that it move upon them in the line of their own prejudices and by the adoption of any proper means break the power that is warring with their best interests. The question is, how can this be best done? Not, it is believed for the reasons suggested, by the means of a general council. There they would be awakened to all the intimations which those who are opposed to their exchange of country might throw out; and the consequence would be what it has been -- a firm refusal to acquiesce. The best resort is believed to be that which is embraced in an appeal to the chiefs and influential men, not together, but apart, at their own houses; and by a proper exposition of their real condition rouse them to think upon that; whilst offers to them of extensive reservations in fee simple and other rewards would, it is hoped, result in obtaining their acquiescence. This had, their people, as a body, it is believed, would gladly go.

The President views the Indians as the children of the Government. He sees what is best for them, and that a perseverance in their refusal to fly the dangers that surround them must result in misery and final destruction. He would, if appeals to reason fail, induce them, by rewards, to avoid the threatened calamity. . . . It is certain upon whom, as pivots, the will of the Cherokees and Creeks turns. . . . Open to each a view
of his danger and the danger that threatens his people. This may be made up of references to their present state, as to numbers, when compared with the past; the causes that have produced this thinning of their numbers; and here you might enlarge on their degradation as a people and the total impossibility of their ever attaining to higher privileges while they retain their present relations to a people who seek to get rid of them -- to the inefficiency of their own laws for their advancement; and, finally, to the fact that these will be superseded and trodden under foot by the exercise over them of the laws of the States. ...

You might then enlarge upon the advantages of their condition in the West. ... There the General Government could and would [emphasis in original] protect them fully in the possession of the soil and the right to self government...

To this you might superadd the readiness of the General Government to make such as choose to remain and come under our laws comfortable, by giving them fee simple titles to estates and otherwise honoring them. ... (Pl. Ex. 1, pp. 21-23: Indian Office Letter Book No. 5, Series 2, pp. 456-59)

5. **Negotiations with the Creeks.** In order to induce the Creeks to cede their lands, the Federal Government misrepresented to the Creeks the authority of Alabama to extend its laws over them. On November 1, 1831, Secretary of War Cass wrote as follows to the Creek chiefs:

> Your great father, the President, has not unlimited powers. He is bound by the Constitution and laws, and after examining these, he is satisfied, that he can not prevent the States from this exercise of their authority. So long, however, as they refrained from doing this, the General Government took charge of your whole concerns. But the State of Alabama having now included you in the great mass of her citizens, I trust you will yield cheerful obedience to her laws. (Pl. Ex. 1, p. 26: Indian Office Letter Book No. 7, Series 2, p. 447)

The Creeks however were still determined not to move west of the Mississippi. In December 1831 they sent a delegation to Washington
to request that white intruders be removed and that the laws of Alabama
not operate over them. They found Congress so opposed to their requests
that they sent to their nation for new instructions and for additional chiefs
to join them in Washington. In the meantime, Agent John Crowell in Alabama
was attempting to negotiate with the Creeks for a cession of their lands.

On January 25, 1832, he wrote the following to Secretary of War Lewis Cass:

Sir: I had an interview with the two head chiefs of this
nation yesterday and explained to them fully (as I have frequently
done) their situation; and as they still seemed determined not
to come into any arrangement with the Government, which had for
its object their removal west of the Mississippi, I advised them
to make a proposition to the Government for reservations of land
to be granted to the heads of each family in fee, as the only
mode by which they could be protected where they now are; and,
at my suggestion, they ordered a national council to be convened
in thirty days for the purpose of ascertaining the sense of the
nation in relation to the subject. (Pl. Ex. 1: Creek Nation v.
United States, Ct. Cl. No. L-168, Call Papers, p. 27)

In March 1832, augmented by their new delegation, the Creek chiefs in
Washington called upon the President, along with the Secretary of War and
their agent. A few days later, on March 19, 1832, they wrote as follows
to Secretary of War Louis Cass:

Whereas, it has been the practice, from time immemorial, to
conduct our business through an agent, and having not arrived
at that state of civilization to do without, beg for that officer
to be continued among us. The agent is the only person we can
look to with confidence and certainty, when we get in difficulties
with the white man. The agent is the only organ whereby we can
make communications to our great father, when our true situation
may require it. And there is no man we have knowledge of at
this time that we could look to with more confidence than our
present agent, Colonel Crowell. He is well acquainted with the
character of the red people. He is their personal friend. He
is their choice. (Pl. Ex. 3: S. Doc. No. 512, 23d Cong., 2d
Sess., Vol. III, 267 (1835))

John Crowell has apparently already come from the Creek Agency to
Washington, for on the next day, March 20, 1832, he wrote the following
to the Secretary of War from Brown's Hotel in Washington:

I have been in council with the delegation, and explained
your basis of an arrangement in relation to reservations,
and at one time had lost all hope of getting them to
agree to any thing like your propositions; but they have finally come to the conclusion that they will agree to your basis in relation to reserves, provided the head of each family is allowed half a section, without regard to the number of children; each woman and warrior not having a family be entitled to the same; also orphan children;...

They also require that all intruders shall be immediately expelled from the nation. If you are disposed to comply with those stipulations, I flatter myself that there will be no difficulty in an arrangement. This will leave a surplus of at least three million acres. (Pl. Ex. 3: S. Doc. No. 512, 23d Cong., 2d Sess., Vol. III, 269-70 (1835))

Whatever trust the Creeks placed in Agent John Crowell to represent them, in fact he was conducting negotiations as an agent of the Government.

6. Treaty of March 24, 1832 (7 Stat. 366). Finally a treaty was concluded on March 24, 1832, 7 Stat. 366, which provided in part as follows:

ARTICLE I. The Creek Tribe of Indians cede to the United States all of their land, east of the Mississippi River.

ARTICLE II. The United States engage to survey the said land as soon as the same can be conveniently done, after the ratification of this treaty, and when the same is surveyed to allow ninety principal chiefs of the Creek Tribe to select one section each, and every other head of a Creek family to select one half section each, which tracts shall be reserved from sale for their use for the term of five years, unless sooner disposed of by them. A census of these persons shall be taken under the direction of the President and the selections shall be made so as to include the improvements of each person within his selection, if the same can be so made, and if not, then all the persons belonging to the same town, entitled to selections, and who cannot make the same, so as to include their improvements, shall take them in one body in a proper form....
ARTICLE III. These tracts may be conveyed by the persons selecting the same, to any other persons for a fair consideration, in such manner as the President may direct. The contract shall be certified by some person appointed for that purpose by the President, but shall not be valid 'till the President approves the same. A title shall be given by the United States on the completion of the payment.

ARTICLE IV. At the end of five years all the Creeks entitled to these selections and desirous of remaining shall receive patents therefor in fee simple from the United States.

ARTICLE V. All intruders upon the country hereby ceded shall be removed therefrom in the same manner as intruders may be removed by law from other public land until the country is surveyed and the selections made; excepting, however, from this provision those white persons who have made their own improvements, and not expelled the Creeks from theirs. Such persons may remain 'till their crops are gathered. After the country is surveyed and the selections made, this article shall not operate upon that part of it not included in such selections. But intruders shall, in the manner before described, be removed from these selections for the term of five years from the ratification of this treaty, or until the same are conveyed to white persons.

* * * *

ARTICLE XII. The United States are desirous that the Creeks should remove to the country west of the Mississippi, and join their counymen there; and for this purpose it is agreed, that as fast as the Creeks are prepared to emigrate, they shall be removed at the expense of the United States, and shall receive subsistence while upon the journey, and for one year after their arrival at their new homes; Provided, however, that this article shall not be construed so as to compel any Creek Indian to emigrate, but they shall be free to go or stay, as they please.

The treaty also provided for various monetary considerations apparently totaling $350,680.00, plus three lifetime annuities totaling $400.00 annually.

This treaty was ratified and proclaimed on April 4, 1832, and became effective from that date.
7. **Creek Opposition to Removal.** A principal reason that the Creeks resisted any removal to the West was the religious significance of land in Alabama. In April 1831 the Creek chiefs wrote to the Secretary of War as follows:

> With considerable reluctance, we have been compelled to refuse a compliance with his [the President's] wishes towards removing to the west; our aged fathers and mothers beseech us to remain upon the land that gave us birth, where the bones of their kindred are buried, so that when they die they may mingle their ashes together. They view a removal as the worst evil that can befall them. (Pl. Ex. 2: S. Doc. No. 512, 23d Cong., 2d Sess., Vol. II, 424 (1835))

The Government recognized that this attachment to the lands in which their ancestors were buried was perhaps the most important reason for the Creeks' resistance to removal. In his letter of November 1, 1831, to the Creek chiefs, Secretary of War Cass wrote:

> I know it is hard to leave your native district, the place where your fathers' bones are laid. But I have done the same. And large numbers of our citizens are every year doing so. Passing from one part of this great island to the other and there fixing themselves for life. We all naturally respect our ancestors. But our duty to the living is greater than that to the dead, and your attachments should be directed rather to places of subsistence than to those of sepulchre. (Pl. Ex. 2: S. Doc. No. 512, 23d Cong., 2d Sess., Vol. II, 365 (1835))

The Creek Nation finally agreed to a treaty of cession only because it anticipated that the provisions for individual reservations would allow tribal members to remain on land which they held sacred.

8. **Intruders on Creek Lands.** With the extension of Alabama law over the Creek Nation, white intruders flocked into Creek territory.
They drove the Creeks from their homes and fields and burned or removed their houses. The Creeks were dispersed in the woods and the intruders gathered their crops.

On April 5, 1832, the United States Marshall was ordered to remove white intruders. He met opposition and resistance from the intruders and from Alabama state authorities. His force of one lieutenant and thirty men was inadequate to accomplish the removal. Those removed would soon return armed and with reinforcements. The lives of the marshall and his men were threatened and the deputy marshall was indicted under Alabama law in connection with the killing of one of the intruders who was resisting removal. In December 1832, it was agreed that removals would be suspended, and that those not entitled to remain would be removed after the reserves were all allocated.

9. Census of Creeks. The taking of the census of the Creek Nation began in May of 1832 and was completed in May of 1833. The rolls listed 6,557 heads of families entitled to one-half section of land. This number when added to the 139 sections allotted to groups made a total of 6,696 reservations totaling 2,187,200 acres in area.

Complaints were made of inaccuracies in the census rolls, that some had been added without any right to be listed while others were omitted improperly. The allotting agents, Bright and Abert, were directed to investigate the complaints and make corrections accordingly. They reported that the rolls were substantially correct, and
that omissions from the rolls included about 100 which should be referred to Congress. The Act of March 3, 1837, 5 Stat. 186, supplementing the Treaty of 1832, provided for the payment of money to those entitled who had not been enrolled.

10. Survey of Creek Country and Allocation of Reserves. On May 2, 1832, orders were issued for the surveying of the Creek country. The work was begun immediately thereafter, and was completed in December 1833.

Immediately upon completion of the surveying the task of locating the individual reservations provided in Article II of the Treaty was begun. A commission was appointed for that purpose in October 1833, and the work was completed in January 1834. The allotted agent visited each town separately, called upon the chiefs of that town and requested their attendance, and assigned, in the first instance, the lands to those who had improvements at the time of the treaty. All those without improvements at that time were called floaters and their sections were assigned to them by lot, within the limits prescribed for the body of their people. Such Indians as chose to abandon their improvements and become floaters were allowed to do so, and those who had recent and temporary improvements within the limits prescribed for the body of the town were allowed to retain them if they chose. The assignment of half-sections was carried out by designating each lot on maps without the agent's having examined the country.
The ninety principal chiefs were satisfied with their reservations. The locations of the individual reservations to the heads of families, however, were the subject of some complaint from the Indians, settlers and speculators. In many cases, two or more Indians claimed improvements on the same tract. Improvements made by an Indian were frequently found to be upon lands upon which some settler had also made improvements. In addition to this, speculators had bought the rights of many Indians before locations were made, and in many instances these speculators complained when the Indian with whom he had contracted did not get the particular tract anticipated. In all cases where there were improvements the agents attempted to determine priority, and, where this could not be done, the question as to which claimant was entitled to the particular reservation was decided by lot.

It was charged that some of the United States deputy locating agents were the secret partners of speculators. In order to insure that speculators could obtain land they would float Indians from their reserves and improvements to reserves in remote parts of the ceded territory, or would erase from the books the names of the first Indians located on a reserve and insert the name of other Indians from whom speculators could purchase the land.

However, Colonel Abert, in a communication to the Secretary of War dated October 15, 1834 stated that the records did not show fifty cases of complaints, and that of these every one well founded
had been corrected. In *Creek Nation v. United States*, 77 Ct. Cl. 226, 252, the Court concluded:

> While there was much loose talk from speculators and others that certain Indians had not been properly located, the record of the case justifies the conclusion that Colonel Abert's statement was substantially correct.

11. **Purchases by Speculators.** Following the negotiations of the Treaty of 1832, speculators formed companies and entered the Creek country with a view to purchasing individual Indian reservations. Many schemes were used to obtain these reserves. They coerced Indians into selling through establishing stores which sold goods and whiskey on credit, thereby acquiring demands against the Indians. The two methods most usually resorted to were (1) buying the land from the real Indian owner, paying him the purchase price and then subsequently taking it away from him through false promises or force, and (2) hiring an Indian other than the rightful owner of a reserve to impersonate the genuine owner in the sale of a particular tract of land.

In June and July of 1833, the Government proposed to negotiate a new treaty with the Creeks that would cede the area of the individual reserves to the Government for sale on behalf of the Indians. This would be followed by emigration to the West. The Creeks rejected these proposals.

12. **Certification of Sales.** Offices for the certification of sales were set up in October 1833 in order that those Indians who
wanted to sell their reservations under the provisions of Article III of the Treaty could do so. On November 28, 1833, the Secretary of War promulgated the following regulations covering such sales:

1st. All applications for certifying contracts under the above treaty, in order to procure the assent of the President to the conveyance, shall be made in writing, and shall be accompanied with the written contract itself.

2d. If the payments are all made to the satisfaction of the Indian, and the fact is clearly established in the opinion of the approving agent, then an absolute deed from the Indian to the white person may be certified.

3d. But if the payments are not all made at the time the parties appear before the approving agent, then the contract must distinctly state the time and mode of payment, and the amount actually received.

4th. As a general rule, no contract will be approved unless a consideration equal at least to $1.25 per acre is paid or secured to the owner.

5th. In all cases the agent will make such inquiry as may be in his power into the actual value of the tract; and if he believes that such value is not paid or secured, he will not certify the contract.

6th. As, from representations recently received from one of the commissioners appointed to make the locations, it appears that many of the tracts are not so valuable as has been heretofore supposed, nor probably worth the minimum price fixed for the public lands, the President does not think it just that that sum should be actually paid in every case. When, therefore, a less sum is agreed upon between the parties, the approving agent will endeavor to ascertain the actual value of the tract; and if he believes the amount agreed upon is a fair price, he will so certify; and his certificate will also contain a general description of the tract, agreeable to the best information he procures. In all cases arising
under this section, the circumstances will be particularly examined by the President, whose decision will be made as may appear to be just.

7th. The agent shall in every case, where it is practicable, have an interview with the Indian, explain to him the transaction, and ascertain whether he understands and approves it, on a full consideration of the matter.

8th. When, however, the Indian cannot appear before the approving agent, in such a case the clearest proof must be adduced of the nature of the transaction; and the return must show the proof, and must also state why the Indian was not present.

9th. No patent will be granted until the whole payments are completed.

10th. Copies of the contracts, to be furnished by the parties themselves, will be retained by the approving agent, and the originals will be transmitted to this department for the consideration of the President.

11th. The approval of the agent will in no case be final, nor will the title of the grantee be valid until the President approves the same. Possession may, however, be taken of the tract as soon as the agent certifies the contract; but, in such a case, the party will be liable to removal if the President should decline to approve the same.

12th. A contract for any tract may be certified as soon as a proper locating agent shall assign it to an individual Indian; still, however, it is to be observed, that if the President should not confirm such location, the whole proceeding, with relation to it, will be void.

13th. The ceded territory must be so divided by the approving agents among themselves, that each may be confined in his operations within a given district, so that applications rejected by one agent may not be acted upon by another. (Pl. Ex. 3: S. Doc. No. 512, 23d Cong., 2d Sess., Vol. III, 832-33 (1835))

On December 18, 1833, the Secretary of War promulgated the following additional regulations:
1st. The payments required by the 2d article of the above regulations must be made in the presence of the approving agent, except in the very few cases where the Indian may be prevented by illness or inability from appearing before the agent. But such cases must be proved by the most unexceptionable evidence, as well as the payments made under them; and the circumstances must be distinctly stated for the consideration of the President.

2d. The contract described in the 2d article of the above regulations must be entered into subsequent to the location of the reservation. (Pl. Ex. 3: S. Doc. No. 512, 23d Cong., 2d Sess., Vol. III, 834 (1835))

13. Meigs' Investigation. Certifying agents began certifying contracts as soon as the locations were completed in 1834. Soon after they began their work, complaints were made that gross frauds were being practiced upon the Indians by speculators.

As the result of these complaints, in April 1834, R. J. Meigs, of Tennessee, was appointed by the direction of the President, to make a general investigation of the frauds in the sale of the Creek reserves. Meigs' investigation confirmed the former reports of citizens and Government officials within the Creek country, that great frauds had been perpetrated against the Indians in the sale of their lands. In his final report to the Secretary of War, dated November 12, 1834, Meigs stated:

[T]he frauds complained of, admit of the following classifications:

1. The reservees have sold, in some instances, without ever having seen their lands, believing that they never would be shown them, and fearing that none had been assigned them.

2. Some have been persuaded to sign a paper to enable a pretender friend to guard them against being cheated,
which paper was nothing less than a deed. They have been induced to have these papers certified by the representation, that they would not answer the avowed purpose without the agent's certificate. And they have been persuaded, when the agent should put the question--'Have you sold your land?'--to answer affirmatively, as this was a mere formal question, which the agent must ask.

3. In many cases, the reservee's signature has been procured, while he was drunk, a few dollars in cash or goods being given him to bind the bargain, and when sober, he has been made believe, that when an Indian puts his hand to paper, he is obliged to have it certified.

Note.--In Dr. McHenry's office, if the person, who procures a signature, enters his name on the books as a purchaser, the Indian is not permitted to sell to any other, nor are others permitted to bid. This is the main engine, by which the purchaser is enabled to convince the Indian that he is bound to consummate a contract when his signature has been once procured. And that it is a most powerful engine of fraud, a man must be excessively blind not to perceive.

4. Some reservees have been allured by all those means usually resorted to, to contract debts in the stores, and then frightened by threats of imprisonment, etc., to sign deeds for the sale of their lands, for insufficient prices.

5. Some have sold for inadequate prices, on promises that they should have what the land should be valued to; and then the purchaser procures a valuation to be made by his own tools.

6. The money delivered to the Indian in the presence of the agent has been taken back, by the purchaser, by violence or fraud, and always secretly. (Pl. Ex. 1: Creek Nation v. United States, Ct. Cl. No. L-168, Call Papers, pp.-128-29).

Meigs made certain recommendations as to methods whereby errors made in the locations of reserves, and frauds in the sale of locations could be corrected. These recommendations were rejected on the ground
that it was too late to remedy errors in locations, and that all
having been done which could have been reasonably required from the
vigilance of the Government to prevent impositions in the sale of
reservations, the redress of these frauds must be left to the ordinary
tribunals of the country.

14. Investigation of Certification Frauds. The complaints as to
the impersonation frauds became rife early in the spring of 1835. The
Secretary of War on April 28, 1835, notified the certifying agents:

Under the present circumstances, you will suspend the
certifying of all contracts until you receive directions
to renew it from this department, and you will give
public notice of this instruction. None of the con-
tracts, now before the President, will be approved
until necessary investigations are made to ascertain
their fairness. They will be retained here, and the
abstracts of them, containing the necessary facts, will
be transmitted to you as soon as they can be prepared.
When these abstracts are received, you will publicly
notify the parties of the suspension, and the investi-
gations which have been ordered. Those contracts which
you have certified and not forwarded, you will retain
for subsequent disposition. If there are any of those
which the President has approved, yet in your possession,
you will not deliver them to the parties without further
instructions. (Def. Ex. 8: H. R. Doc. No. 26, 24th Cong.,
1st Sess. 33 (1836))

The certifying agents instituted investigations in all cases
where complaints were made. The plan pursued by the agents in the
investigation was to visit each town in their respective districts
and request the chiefs to call their people together. The chiefs were
then informed at what date the agent would again visit the town for
the purpose of hearing complaints as to fraudulent practices
perpetrated by purchasers in procuring contracts of sale. Purchasers
were notified of the time and place of the investigation and were requested to bring forward the Indian from whom they made the purchases. The investigation disclosed a large number of fraudulent sales. In one district 19 out of every 20 of the cases investigated were found to be fraudulent, and were reversed and cancelled by the consent of both parties, or by the nonattendance of the purchaser.

On September 9, 1835, the Secretary of War commissioned Col. John B. Hogan to investigate the alleged frauds in connection with these contracts of sale. Col. Hogan's instructions in part read:

It is exceedingly desirable that all frauds in the execution of the Creek treaty should be prevented, and that those frauds which have been committed should, so far as possible, be detected and punished. ***

You will proceed to the various towns where you have reason to believe frauds have been committed, and where proper information respecting them can be procured. You will request General Sanford, Mr. Tarrant, who are or have been certifying agents, to proceed with you to the district which is assigned to them, respectively, and with their aid you will endeavor to make a thorough investigation into the subject, and as far as possible, do justice and satisfy the Indians. *** But the great object, as you will perceive, is to right the wrongs which may have been committed and to prevent their recurrence. *** (Creek Nation v. United States, 77 Ct. Cl. 226, 242 (1933))

Subsequently Colonel G. D. Anderson and J. W. Burney were appointed to assist Colonel Hogan. These gentlemen continued the investigations already instituted by the certifying agents and then in progress, and cooperated with them in an earnest endeavor to uncover and correct fraudulent contracts of sale, until May 28, 1836, when their work was terminated by the War Department because
of the open hostilities of the Indians. Colonel Hogan and those associated with him prosecuted the investigations with vigor and uncovered wholesale frauds. In many cases purchasers consented to the cancellation of contracts. In many others purchasers of contracts about which complaints were made failed to appear before the agents when notified to do so, in which case the contracts were cancelled. The investigating agents were hampered in their investigations by the activities of purchasers who exerted every possible influence among the Indians to prevent them from making complaints to the agents and of appearing before the agents and prosecuting claims when made.

In a report to the War Department, March 11, 1836, Colonel Hogan recommended the cancellation of 656 contracts of sale. These sales were practically all in the district where Dr. R. W. McHenry was certifying agent. Of the number recommended for cancellation 369 represented cases in which (1) the purchaser did not appear in response to the notice given, and (2) those in which the purchaser appeared but failed to bring the Indian of whom he purchased or adduce sufficient evidence to support the validity of his contract; 205 represented cases where purchasers had appeared before the agents in person and agreed to surrender their contracts; 43 represented cases in which the grounds for reversal were not stated; 37 represented cases supported by special reports and affidavits; and 2 were cases from another district. These cases, except the 205
voluntarily given up of pretended purchasers, were returned to Colonel Hogan for investigation and more specific statements assigned for the reason for reversal. Hostilities on the part of the Indians breaking out shortly thereafter, Colonel Hogan's work was terminated without his having made the supplemental report requested.

15. Resumption of Certification. The certification of sales which was suspended on April 28, 1835, pending the investigation as to frauds, was resumed by order of the War Department on September 18, 1835. Subsequent to that date Mr. Leonard Tarrant, and other agents designated by the War Department, certified contracts of sale from time to time and continued to do so until May 20, 1836, when the work of investigating frauds in connection with the sales of reservations and the certification of sales were discontinued because of the outbreak of Creek hostilities.

16. Removal of the Creeks. During the spring of 1836 Indian depredations became prevalent throughout a large part of the territory ceded to the United States in the treaty of 1832. The Governors of Alabama and Georgia called out the State militia, and the President sent General Thomas Jesup with a contingent of Federal troops to suppress the Indian hostilities. A majority of the Creeks remained friendly and took no part in the hostilities against the whites, and indeed aided in capturing the hostiles, but the depredations committed by those unfriendly were so extensive and the difficulty of restoring and maintaining law and order so great, that the Federal Government
decided it was necessary to remove the whole Nation to its country west of the Mississippi River, and with the exception of about 700 Creek warriors who had enlisted in the Federal service against the Seminoles, and the families of such warriors, the whole tribe, under a military escort, was removed during the summer and fall of 1836. The removal caused great suffering and the death of many Creeks.

While the 700 Creek warriors were serving the United States in Florida, several hundred of them were being "personated" in the sales of their reserves, and attempts were being made to transfer their claims on the books of the certifying agents. The warriors had been assured by the United States that their families would be permitted to remain in the emigrating camps where they were then located, and would be subsisted and protected by the United States until the warriors returned to Alabama. However, the white settlers became alarmed over the detention of so large a number of Indians among them and demanded their immediate removal. A company of whites surrounded the camps where the families of these warriors were located, attacked them, stole their provisions and property, murdered an old man and assaulted women. The officers in charge of these families had no means to defend them adequately. In order to protect them, they finally removed them to Pass Christian, Mississippi, where they remained until 1837 when the warriors and their families were removed to the West after the termination of Seminole hostilities. The warriors, who were retained in service until September 1837, were
not given an opportunity to return to Alabama to dispose of their reserves before they were removed to the West.

17. Report of Crawford and Balch. Immediately after hostilities in the Creek country had subsided, Thomas H. Crawford and Alfred Balch were commissioned under a House resolution to investigate "the causes of hostilities" and "any other transactions connected with the contracts for the sale of Creek lands," and to make "the inquiries necessary to do justice to the Indians and to the parties claiming to have purchased their lands." Pl. Ex. 4: H. R. Exec. Doc. No. 452, 25th Cong., 2d Sess. 2 (1838). These commissioners began their duties in September 1836, about the time that the Indians departed for Arkansas. They made reports in January 1837 and in May 1838. Commissioners Crawford and Balch were instructed "to include in their report only the cases in which they have instituted inquiries into unapproved contracts, on representations, or their belief of fraud in the original contracts," and that they take cognizance in approved contracts "only when specific allegations of fraud in a particular contract are made to them by respectable persons."

Creek Nation v. United States, 77 Ct. Cl. 226, 244 (1933).

A great number of memorials, countermemorials, and answers were filed from time to time before the commissioners urging purchases to have been fair or fraudulent, according to the interests and opinions of the parties. All these matters were taken up, investigated, and considered by the commissioners. The great body of Indians having already emigrated, Commissioners Crawford and Balch were largely limited in their inquiries to the testimony of white men
residing in the country who were acquainted with the general facts
and circumstances under which sales were made in the winter of 1835,
when the impersonation frauds reached their height. The testimony
heard by them was as a rule more general in its character than directed
to specific cases. They investigated and adjudicated more than 1,000
cases and made recommendations in respect to each of them. Their
reports confirmed the findings previously made by certifying agents,
by Colonel Hogan, and other investigators, that glaring frauds had
been perpetrated on the Indians in the sale of their reserves.

of the Creek Indians to the West, and their consequent inability to
sell their reserves, and the reserves of deceased Creek Indians, the
Act of March 3, 1837, 5 Stat. 186, was passed. This Act provided:

That the President of the United States may, and he
is hereby, authorized to cause all the reserves be-
longing to the Creek Indians, by virtue of the pro-
visions of the treaty of March twenty-fourth, eighteen
hundred and thirty-two, which shall remain unsold on
the fourth day of April next, to be sold at public
auction in the Creek country, after giving at least
sixty days' notice of the time, place, and terms of
sale in the public prints, and to cause patents to
be issued to the purchasers of said reserves.

Sec. 2. And be it further enacted, That the President
of the United States may, and he is hereby, authorized
to confirm the sales of the widow, the widow and
children, the children, or the lawful administrator
of Creek Indians who have died, or who may die prior
to the fourth day of April next, without having
legally disposed of said reserves, and to receive
the purchase money, or such portions of it as may not
have been paid to the persons entitled to it, and to
cause patents to be issued therefor to the purchasers:
Provided, That sales made by lawful administrators shall be entitled to a preference over sales made by widows and children.

Sec. 3. And be it further enacted, That the President may, and he is hereby authorized to, pay the person entitled thereto, the money which may be received from the purchasers of reserves under the authority given in the two preceding sections, at such times and in such amounts as he shall deem best for the parties concerned; or, if he thinks proper, to invest the whole or any part of said purchase money in stocks, and pay the interest to the persons entitled, in such amounts, and in such manner, as, in his opinion, will be most advantageous for them: Provided, That he may cause the principal of the sum or sums so invested to be paid to the persons entitled thereto, whenever he may think proper; And provided further, That the provisions of this act shall be executed under such regulations and restrictions as the President may prescribe.

Sec. 4. And be it further enacted, That it may be lawful for the President of the United States to cause the sum of one dollar and twenty-five cents per acre to be paid to the Creek Indians, whose names were omitted to be entered on the census roll taken under the treaty of eighteen hundred and thirty-two, and to those whose names appear on said roll, but for whom no locations have been made, who shall appear, from proper evidence, to be justly entitled to reservations under the provisions of said treaty: Provided, That the sums thus payable under this section may be invested in stocks upon the same terms and conditions, and under the same regulations and restrictions as are hereinbefore prescribed in respect to moneys payable under the first and second sections of this act: Provided, further, That no transfer by the person entitled under this section shall be valid.

*  *  *  *

Certain Creek reservations were disposed of at public auction under the terms of this act. The sum of $54,366.06 was realized, of which $54,109.06 was paid to 228 individual Creeks.
Pursuant to Section 4 of the Act of March 3, 1837, the amount of $86,800 was appropriated and set up on the books of the United States Treasury under the heading, "Payment for reservations to certain Creek Indians, designated in the 4th section, Act of March 3, 1837," the entire amount of which was paid to individuals of the Creek Nation in 1853.

19. Reserves of Widows and Heirs. Certain of the reserves belonged to widows, orphans, and heirs of deceased Creek Indians. The Treaty of 1832 made no provision for the sale of lands reserved for Creek Indians dying intestate. The Secretary of War in a letter to a member of the Committee on Indian Affairs of the House of Representatives, dated May 9, 1836, stated that it was the opinion of the President, the Attorney General, and the Secretary of War that "the rights of land secured to the Creek Indians under the 2nd article of the treaty with them ... are descendible interests, and that the rules of inheritance by which they may be regulated must be prescribed by the laws of the State of Alabama." Pl. Ex. 10: G. Harmon, *Sixty Years of Indian Affairs*, 219 (1941). Administrators appointed under the laws of Alabama had authority to petition the court to sell the real estate of a decedent if the personal estate was not sufficient for the payment of the just debts of the intestate, or in cases where the real estate could not be equally divided among the heirs. In many cases the reserves of deceased Creek Indians were thus sold.

The Act of March 3, 1837, was passed to legalize such contracts which were honest and fair but irregular. Before the passage
of the 1837 act many Indians did not receive the money due them from the sales. The cases were numerous in which it was represented that the money raised by sales was paid to administrators, who in turn said they had paid the heirs, and the latter claimed that they had not received the money. Furthermore, in the sales of lands of the widows and heirs the consideration was settled by individual speculators concerned, who agreed to pay only when the Federal Government confirmed or approved the purchase; and often an appraisement or valuation was filed by two citizens, which was not the true worth of the land, for the valuation was made by individuals of the purchaser's own choice, and under his direction. In this manner, and by other means the Indians were cheated, and gross frauds were perpetrated upon the widows and heirs of the deceased Indians.

20. Unsold Reservations. The Commissioner of the General Land Office, pursuant to a resolution of the House of Representatives, made a report to the War Department on May 30, 1848, in which he gave a list of all Creek reservations under the treaty of 1832 which remained unsold at that time. This list included the names of 67 Indian reservees who had not sold their lands, and 118 reservations certified as sold, the contracts of which had not been finally acted upon.

Of the 118 certified and unapproved contracts, the commissioners had recommended the cancellation of 25. The approval of 19 of the remaining contracts had been recommended by the Secretary of War,
upon the payment by purchasers of the amounts still due thereon, and
several other contracts had been recommended by the commissioners
for approval, but no action in respect to them had been taken by the
Secretary of War.

treaty made and entered into between the United States and the Creek
Nation, August 7, 1856, 11 Stat. 699, provides:

The Creek Indians do hereby, absolutely and forever,
quitclaim and relinquish to the United States all
their right, title, and interest in and to any lands
heretofore owned or claimed by them, whether east
or west of the Mississippi River, and any and all
claims for or on account of any such lands, except
those embraced within the boundaries described in
the second article of this agreement; and it doth
also, in like manner, release and fully discharge
the United States from all other claims and demands
whatsoever, which the Creek Nation or any individual
thereof may now have against the United States, ex-
cepting only such as are particularly or in terms
provided for and secured to them by the provisions
of existing treaties and laws; and which are as
follows, viz: [The relevant exceptions follow:]

The following shall also be excepted from the fore-
going quitclaim, relinquishment, release, and dis-
charge, viz: ***; the right of such individuals
among the Creeks as have not received it, to the
compensation in money provided for by the act of
Congress of March three, eighteen hundred thirty-
seven, in lieu of reservations of land to which
they were entitled, but which were not secured to
them, under the said treaty of eighteen hundred
thirty-two; the right of the reservees under the
same treaty, who did not dispose of their reserva-
tions to the amounts for which they have been or
may be sold by the United States; ***.
22. **Act of June 4, 1912 (37 Stat. 122).** By the Act of June 4, 1912, 37 Stat. 122, the United States abandoned all its interest in the reserve lands in order to quiet title to the lands. Representatives of the Land and Indian Offices had informed Congress that there were about 990 cases in which purchases had been made in good faith and the money paid but patents were for some reason not issued. They further stated that out of these, only 14 purchasers did not appear to have a perfect contract right under the law, and that, even in those cases a further investigation would probably disclose that the original purchaser had bought in good faith.

23. **Creek Jurisdictional Act of 1924.** A special jurisdictional act was approved May 24th, 1924, 43 Stat. 139, and modified, 44 Stat. 568 (1926), and 45 Stat. 122 (1929), which read in part as follows:

That jurisdiction be, and is hereby, conferred upon the Court of Claims notwithstanding the lapse of time or statutes of limitations, to hear, examine, and adjudicate and render judgment in any and all legal and equitable claims arising under or growing out of any treaty or agreement between the United States and the Creek Indian Nation or Tribe, or arising under or growing out of any act of Congress in relation to Indian affairs, which said Creek Nation or Tribe may have against the United States, which claims have not heretofore been determined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States: . . .

Sec. 2. Any and all claims against the United States within the purview of this act shall be forever barred unless suit be instituted or petition filed as herein provided in the Court of Claims within five years from the date of approval of this act, and such suit shall make the Creek Nation party plaintiff and the United States party defendant. ***
Under this jurisdictional act the Creek Nation brought suit in the United States Court of Claims seeking to recover the 1837 value of the 2,137,200 acres of reserve lands in the state of Alabama. The claim was based on the alleged failure of the United States to fulfill its obligations under the treaty of March 24, 1832, 7 Stat. 366. In its decision of March 13, 1933, the Court of Claims dismissed the petition on the merits. Its opinion in part read as follows:

The plaintiff is not seeking to recover the compensation in money, provided in section 4 of the act of 1837, in lieu of reservations individual members of the tribe were entitled to receive but which were not secured to them. Under the reservations of article V of the treaty of 1856, its right of recovery comes down to 'the right of such members of the tribe as did not dispose of their reservations, to the amounts for which such reservations may have been sold by the United States.' The details of these sales are not a matter of record. There is no evidence from which it can be ascertained whose lands were sold, or the amounts received from the sales of individual reservations, or the names of the individuals to whom the proceeds of the sales were distributed. There is no proof upon which a finding can be based that any particular reservee received a less amount from the Government from the proceeds of the sale of his lands than the United States received for the same. The burden of proof is upon the plaintiff, as upon every other phase of the case. It has failed to establish that the proceeds of the sales of unsold lands under the provisions of section 1 of the act of March 3, 1837, have not been accounted for to the persons entitled to receive the same.

The Creek Nation as a tribe expressly waived all tribal claims and demands against the United States in the treaty of 1856. It has no legal or equitable claim of any kind or character against the United States growing out of the treaty of 1832. It also, in the treaty of 1856, released and discharged the
United States from all claims and demands whatsoever that any individuals of the tribe then had against the United States, except those claims heretofore mentioned, upon which, as we have seen, no legal liability against the United States has been established.

The plaintiff, therefore, is not entitled to recover either for itself as a nation or tribe, or for the use and benefit of any individual members of the tribe.

The defendant challenges the right of the plaintiff to maintain its suit on the ground (1) that the matters and things alleged in the petition constitute claims of individual Indians, and in no way relate to or bear upon any claim which the Creek Nation or tribe may have against the United States, and, (2) that the jurisdictional act of May 24, 1924, under which the suit is brought, does not confer jurisdiction upon this court to adjudicate the rights of individual members of the Creek Nation.

This defense was raised by demurrer at the inception of the suit, at which time it was overruled without prejudice. We have considered the question but do not deem its determination necessary to the decision of the case. The suit grows out of a treaty one hundred years old. For almost a century the Creek Nation, generation after generation, has persisted in the belief that the United States did not fulfill its treaty obligations to the individual members of the tribe entitled to reservations under the treaty of 1832, and it has persistently throughout the years pressed the Government for an adjudication of its claims. The record of the case is voluminous and contains all the available testimony obtainable bearing upon the facts involved. Both the plaintiff and the defendant have gone to great expense and devoted much time and labor to the preparation of the case. We think both the plaintiff and the Government are entitled to a decision upon the merits. It is apprehended that if the present jurisdictional act be held not broad enough to authorize the plaintiff to maintain suit for the use and benefit of individuals of the tribe, an amendment to the jurisdictional act could, and would, be
easily obtained. We have, therefore, assumed in our discussion of the case that the jurisdictional act authorized the plaintiff to bring and maintain suit for the use and benefit of individual members of the tribe, although we do not now decide that question. 77 Ct. Cl. 226, 262-64 (1933).

24. Conclusion. The plaintiffs as representative of the Creek Nation entering into the Treaty of 1832 have the capacity to bring this claim. The Creek Nation had compensable title to the 5,200,000 acres ceded by the Treaty of 1832. The primary consideration for the Creek Nation for the Treaty cession was the individual reserve provisions. The United States knew that those provisions would not be effective to allow those Creeks who desired to remain in their homeland. Under these circumstances, the individual reserve provisions constituted unconscionable consideration. The Treaty will be deemed revised to eliminate the individual reserve provisions and treated as a cession of the entire tract under Article I of the Treaty. The Commission also finds that the defendant's lack of fair and honorable dealings damaged plaintiff by the value of the land ceded, less consideration. The claim will proceed to a determination of the fair market value of the area ceded as of April 4, 1832, the consideration received, whether the consideration received was unconscionable, and any other relevant matters.

Margaret H. Pierce, Commissioner
John T. Vance, Commissioner
Brantley Blue, Commissioner
Richard W. Yarborough, Commissioner