

## BEFORE THE INDIAN CLAIMS COMMISSION

THE SEMINOLE INDIANS OF THE STATE	)	
OF FLORIDA,	)	
and	)	
THE SEMINOLE NATION OF OKLAHOMA,	)	
	)	
Plaintiffs,	)	
v.	)	Docket Nos. 73 and 151
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	
	)	
C. W. McGHEE, et al., (CREEK NATION,	)	
EAST),	)	
Plaintiffs,	)	
v.	)	Docket No. 280
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

ORDER DISMISSING CLAIMS UNDER DOCKET NO. 280 AND  
SEVERING DOCKET NO. 280 FROM DOCKET NOS. 73 AND 151

On August 14, 1950, and July 23, 1951, the Seminole Indians of the State of Florida and the Seminole Nation of Oklahoma, respectively, filed wholly overlapping claims for compensation for aboriginal lands relinquished to the United States under the Treaty of Camp Moultrie, September 18, 1823, 7 Stat. 224. These lands were approximately identified as all of the present State of Florida. The Seminole claims were assigned Docket Nos. 73 and 151 and the aboriginal land claims were consolidated and tried as a consolidated case.

The petition of the Creek Nation East of the Mississippi was filed on August 9, 1951, and assigned Docket No. 280. It asserts a claim for lands in northern Florida, alleged to have been lost to the Creeks by the Treaty of August 9, 1814, 7 Stat. 120, or by the Camp Moultrie Treaty, supra.

Although there was an apparent overlap between the Seminole claim and the claim of the Creek Nation East, no motion was filed by any party for consolidation of the claims to resolve overlap issues until after the Seminole case, which came to trial first, was in an advanced stage of litigation.

On May 8, 1964, the Commission entered an interlocutory decision in Docket Nos. 73 and 151 determining, inter alia, that at the time of the 1823 Camp Moultrie Treaty, the Seminoles had, except for certain designated areas, aboriginal title to all of the present State of Florida lying south and east of the Old Spanish Road which connected St. Augustine at the Atlantic Ocean with Pensacola at the Alabama-Florida border. See 13 Ind. Cl. Comm. 326 (1964), aff'd 180 Ct. Cl. 375 (1967).

On November 26, 1968, the defendant moved that the petition in Docket No. 280 be dismissed on the ground that the Commission's findings of fact in the aforementioned decision of May 8, 1964, in Docket Nos. 73 and 151 precluded recovery upon the claims stated in the petition. On March 26, 1969, the Commission denied said motion on the basis that the Creek plaintiffs were not at that time barred as a matter of law from presenting evidence in support of the claim set forth in their petition.

On July 16, 1969, the Creek Nation East filed a motion for leave to amend their petition in Docket No. 280. The essential ground of that motion was that prior to and during 1823, the year of the Camp Moultrie Treaty, the Seminoles were a constituent part of the Creek Nation, that only the Creeks could have alienated these lands and that the Creeks, therefore, were entitled to compensation for most of Florida. On July 31, 1969, the defendant filed objections to the proposed amendment and a motion that the Commission either dismiss that portion of the Creek claim in Docket No. 280 that overlapped the area awarded to the Seminoles or consolidate such portion of the Creek claim with the Seminole claim in Docket Nos. 73 and 151. On November 13, 1969, the Commission, by order and accompanying opinion, denied the Creek motion to amend the petition on the ground that the amendment constituted a new cause of action which the Commission was without jurisdiction to consider. At the same time, the Commission granted the defendant's alternative motion to dismiss the overlapping portion of Docket No. 280. See 22 Ind. Cl. Comm. 10 (1969).

In February 1970, the Creek Nation East appealed to the Court of Claims from the aforementioned Commission opinion and order of November 13, 1969. While this appeal was still pending, the Commission entered a final award in Docket Nos. 73 and 151 in favor of the Seminole plaintiffs in the net amount of \$12,262,780.63 in full satisfaction of the claims in those consolidated dockets. See 24 Ind. Cl. Comm. 1 (1970).

On December 16, 1970, the Seminole plaintiffs appealed to the Court of Claims from the final award and certain interlocutory determinations by the Commission in Docket Nos. 73 and 151. On January 22, 1971, the defendant also appealed to the Court of Claims from the final award to the Seminoles.

On February 19, 1971, the decision of the Court of Claims in Docket No. 280 was handed down. In this decision the Court reversed the

Commission's aforesaid order of November 13, 1969, in Docket No. 280 insofar as it dismissed or diminished the Creeks' original petition to the extent of any overlap between the lands claimed in the petition and the lands awarded in the Seminole case, affirmed the Commission's order in all other respects, and returned the case to the Commission for further proceedings. See 194 Ct. Cl. 86 (1971). One year later, on February 18, 1972, the Court of Claims decided the Seminole appeal. The court directed that the Creek and Seminole claims be consolidated for the purpose of resolving the overlapping claims. See 197 Ct. Cl. 350 (1972).

On March 15, 1972, the Commission ordered the consolidation of the three dockets for trial on the issue of aboriginal title to the overlap area. At the trial on June 15, 1972, the Creek Nation East reasserted their claim that the Seminoles in 1823 were a constituent part of the Creek Nation. The Creeks made an offer of proof in support of their contention but upon objection said offer was rejected. Six months after trial, after having been granted three extensions of time the Creeks, on December 15, 1972, finally filed their brief and proposed findings of fact based, in part, upon their documents which were offered and rejected at trial. At the same time the Creeks filed a motion for permission to amend their petition to conform to the evidence which they asserted again showed that in 1823 the Seminoles were a constituent part of the Creek Nation and that the Creek Nation then owned all areas under Seminole occupancy. The Seminoles answered this motion on January 18, 1973, and at the same time moved to dismiss the Creek petition in Docket No. 280 and for summary judgment, on the basis of res judicata and collateral estoppel as to the area claimed by the Creeks south and east of the Old Spanish Road.

By opinion and order dated July 5, 1973, the Commission denied the Creek motion to amend the petition on the basis that it was an attempt to introduce a new claim. At the same time the Seminole motion for summary judgment was ordered held in abeyance and the Creek Nation East was given an additional sixty days to rebrief the case for the purpose of demonstrating any Creek (as opposed to Seminole) occupancy. See 31 Ind. Cl. Comm. 1 (1973). One month later, on August 13, 1973, the Creek Nation East filed a notice of appeal of the Commission's order of July 5, 1973. In a memorandum decision, the Court of Claims dismissed the appeal. (Ct. Cl. App. No. 5-73, Feb. 11, 1974).

Then, on February 28, 1974, the Seminoles moved to renew their motion of January 18, 1974, to dismiss Docket No. 280 and for summary judgment. They also moved to sever Docket No. 280 from Docket Nos. 73 and 151. The defendant, responding on March 19, 1974, joined in the Seminole motion to dismiss Docket No. 280.

The Creek Nation East failed to file a timely response to the Seminole motion of February 28, 1974. However, on April 16, 1974, the Creek Nation East filed a late response together with a motion to permit late filing of the response. They also asked for a 90-day extension within which to file a recasting of their proposed findings of fact and a rebriefing of their claim in accordance with the instructions set forth in the Commission's decision of July 5, 1973, supra.

On May 1, 1974, the Commission entered an order permitting the Creek Nation East to file a late response and granting them until July 30, 1974, to file proposed findings of fact and brief.

Upon failure of the Creek Nation East to file said proposed findings of fact and brief by July 30, 1974, as they were required to do by the Commission's May 1, 1974, order, the Seminoles, on August 7, 1974, moved the Commission to bring up for consideration their motions of January 18, 1973, and February 28, 1974, both of which are described, supra. As of the date of this order, said proposed findings of fact and brief have still not been filed. In addition, as of the date of this order no response showing any reason why the Seminole motion of August 7, 1974, should not be granted, has been filed.

THE COMMISSION has carefully reviewed the entire record of proceedings under consolidated Docket Nos. 73, 151 and 280, which record we have recited, supra. Upon our review of said record, we are of the opinion that the Creek Nation East, plaintiffs in Docket 280, have failed to comply with Commission orders directed to them in connection with the filing of materials relative to their claims. Said failures on the part of the Creek Nation East have substantially hindered the orderly progress of the litigation of the claims in Docket Nos. 73, 151 and 280, and have also substantially prejudiced the rights of the Seminole plaintiffs to an expeditious final determination of their claims in Dockets 73 and 151. The Commission is, further, of the opinion that, on the basis of the above, the immediate dismissal of the claims of the Creek Nation East in Docket No. 280 is warranted.

IT IS THEREFORE ORDERED that all claims of the Creek Nation East under Docket No. 280 be, and the same are hereby, dismissed with prejudice, and, further, that said Docket No. 280 be, and the same is hereby, severed from Docket Nos. 73 and 151.

Dated at Washington, D. C., this 13th day of September 1974.

Jerome K. Kuykendall  
Jerome K. Kuykendall, Chairman

Margaret H. Pierce  
Margaret H. Pierce, Commissioner

John T. Vance  
John T. Vance, Commissioner

Brantley Blue  
Brantley Blue, Commissioner

Richard W. Yarborough  
Richard W. Yarborough, Commissioner