

BEFORE THE INDIAN CLAIMS COMMISSION

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| THE OSAGE NATION OF INDIANS, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | Docket No. 9 |
| |) | |
| THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |

Wesley E. Disney and F. M. Goodwin,
with whom was L. H. Gall, for Petitioner.

Ralph A. Barney, with whom was
A. Devitt Vanech, Assistant Attorney
General, for Defendant.

DEC 30 1948

FINDINGS OF FACT

The Indian Claims Commission having heard the above entitled cause, upon the evidence submitted, makes the following findings of fact:

1. The petitioner herein, The Osage Nation of Indians, is an Indian tribe residing within the territorial limits of the United States and, as such, is authorized to maintain this action under Section 2 of the Act creating the Indian Claims Commission. (Act of August 13, 1946, 60 Stat. 1049). The petitioner is composed of two groups, known as the Great and Little Osage tribes, and its transactions with the United States, hereafter

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to be referred to, were in name of and in behalf of the Great and Little Osage Indians.

The petitioner herein seeks an award against the defendant for the market value of 865,930.31 acres of land, hereinafter described, which it ceded to defendant by a treaty dated September 29, 1865, less the amount paid by defendant as consideration for said land and less the cost of surveying and selling the same. It is the contention of petitioner that the market value of the land greatly exceeded the consideration paid by the Government and the cost of surveying and selling it.

2. (a) Long prior to the year 1862 the claimant occupied a large area of territory in the State of Kansas, which included the tracts hereafter described.

(b) Early in the year 1862 negotiations for the acquisition of parts of that area by the United States were started and resulted in a treaty dated August 29, 1863 (4 Kapp. 1129) between the petitioner and the defendant which contained, among others, the following provisions:

Article I. "The tribe of the Great and Little Osage Indians having now more lands than are necessary for their occupation, and all payments from the Government to them under former treaties having ceased, leaving them greatly impoverished, and being desirous of improving their condition by disposing of their surplus lands do hereby grant and sell to the United States, the lands contained within the following boundaries, that is to say, beginning at the South East corner of their present Reservation and running thence North with the Eastern boundary thereof fifty miles to the Northeast corner; thence West with the Northern line thirty miles; thence South fifty miles to the Southern boundary of said Reservation and thence East with said

"Southern boundary thirty miles, to the place of beginning; and in consideration of the grant and sale to them of the above described lands. The United States agree to pay the sum of three hundred thousand dollars, which sum shall be placed to the credit of said tribe of Indians in the Treasury of the United States, and interest thereon at the rate of five per centum per annum shall be paid to said tribe semi-annually in money, clothing, provisions or such articles of utility as the Secretary of the Interior may from time to time direct."

"Article 2. The said tribe of Indians also hereby cede to the United States a tract of land twenty miles in width from North to South off the North side of the remainder of their present Reservation and extending its entire length from East to West; which land is to be held in Trust for said Indians and to be sold for their benefit by the Secretary of the Interior under such rules and regulations as he may from time to time prescribe, the proceeds of such sales, as they accrue, after deducting all expenses incident to the proper execution of the Trust shall be placed in the Treasury of the United States to the credit of said tribe of Indians, and the interest thereon at the rate of five per centum per annum shall be expended annually for building houses, purchasing agricultural implements and stock animals, and for the employment of a physician and mechanic and for providing such other necessary aid as will enable said Indians to commence agricultural pursuits under favorable circumstances; provided, that twenty five per centum of the net proceeds arising from the sale of said Trust lands until said per centage shall amount to the sum of Eighty Thousand Dollars, shall be placed to the credit of the school fund of said Indians and the interest thereon at the rate of five per centum per annum shall be expended semi-annually for the boarding, clothing and education of the children of said tribe."

"ART. 16. Should the Senate reject or amend any of the above articles, such rejection or amendment shall not affect the other provisions of this Treaty but the same shall go into effect when ratified by the Senate and approved by the President."

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(c) This treaty was submitted to the Senate and on July 2, 1864, was ratified with certain amendments. Thereafter, the treaty with the Senate amendments was submitted to the Indians and the amendments were fully explained to the Chiefs and headmen, their representatives, who, on the 17th day of February, 1865, assented to part of the Senate amendments, rejected part, and proposed an amendment of their own. (Def. Ex. 7).

(d) Notwithstanding the provisions of Article 16 of the treaty, the then acting Commissioner of Indian Affairs considered the changes in the treaty by the amendments of the Senate and those of the Osages as of such a character as to make the treaty unfit for publication and he proposed the preparation of another treaty embodying the amendments of both parties. (Def. Ex. 8). This proposal was approved by the Secretary of the Interior and a substituted treaty embodying the changes made by the Senate and the Osage Indians was prepared, including the boundary alteration demanded by the Osages.

3. The new draft of the 1863 treaty (which, with slight amendments, became the treaty of September 29, 1865, hereafter referred to) was submitted to the representatives of the Great and Little Osage Indians at Fort Smith, Arkansas, at which place the proposed treaty, which had been prepared by the Secretary of the Interior, was interpreted and explained to the representatives of the Osages at Fort Smith by one Alexander Beyett, who is described in the treaty as 'Interpreter Osage Nation'. The treaty was, after some deletions and interlineations,

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signed by the representatives of the United States and the representatives of the Little Osage (Southern) group at Fort Smith shortly before the 29th day of September, 1865, but the representatives of the Great Osage (Northern) group did not sign at that place because they were not authorized to execute it. However, the treaty was later submitted to the Great Osages in council at Canville Trading Post in Kansas, and after the terms thereof were fully explained to them by an interpreter, one L. P. Chouteau, the Great Osage branch executed the treaty on the 29th day of September, 1865. Immediately preceding the signatures of the chiefs there appears in the treaty the following statement:

"We the undersigned chiefs and headmen of the Clarmont and Black Dog Band of the Great Osage Nation in council at Fort Smith, Ark., have had the foregoing treaty read and explained in full by our interpreter L. P. Chouteau and fully approve the provisions of said treaty made by our brothers the Osages, and by this signing make it our act and deed".

The following chiefs of the Osage Indians signed the unproclaimed treaty of 1863 and the treaty of 1865.

White Hair (described as Principal Chief of Osage Nation in 1865 treaty); Beaver (described as second chief of White Hair's Band in 1865 treaty); Clarmont (described as Chief of Clarmont Band in 1865 treaty) or Clarmore (as shown in 1863 treaty); and, perhaps, the witness to the treaty of 1865, Na-ta-ton-on-wa-ki, is the same warrior as Nagtagtankawake, who signed the 1863 treaty.

4. The treaty of September 29, 1865, contains the following among other, provisions:

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"Article 1. The tribe of the Great and Little Osage Indians, having now more lands than are necessary for their occupation, and all payments from the Government to them under former treaties having ceased, leaving them greatly impoverished, and being desirous of improving their condition by disposing of their surplus lands, do hereby grant and sell to the United States the lands contained within the following boundaries, that is to say: Beginning at the southeast corner of their present reservation, and running thence north with the eastern boundary thereof fifty miles to the northeast corner; thence west with the northern line thirty miles; thence south fifty miles, to the southern boundary of said reservation; and thence east with said southern boundary to the place of beginning: Provided, That the western boundary of said land herein ceded shall not extend further westward than upon a line commencing at a point on the southern boundary of said Osage country one mile east of the place where the Verdigris River crosses the southern boundary of the State of Kansas. And, in consideration of the great and sale to them of the above described lands, the United States agree to pay the sum of three hundred thousand dollars, which sum shall be placed to the credit of said tribe of Indians in the Treasury of the United States, and interest thereon at the rate of five per centum per annum shall be paid to said tribes semi-annually, in money, clothing, provisions, or such articles of utility as the Secretary of the Interior may, from time to time, direct. Said lands shall be surveyed and sold under the direction of the Secretary of the Interior, on the most advantageous terms, for cash, as public lands are surveyed and sold under existing laws, including any act granting lands to the State of Kansas in aid of the construction of a railroad through said lands; but no preemption claim or homestead settlement shall be recognized; and after reimbursing the United States the cost of said survey and sale, and the said sum of three hundred thousand dollars placed to the credit of said Indians, the remaining proceeds of sales shall be placed in the Treasury of the United States to the credit of the 'civilization fund', to be used, under the direction of the Secretary of the Interior, for the education and civilization of Indian tribes residing within the limits of the United States."

Note:-- Italics used to show the part of this article which is identical to Article 1 of the 1863 treaty, except that in the 1863 treaty the length of the southern boundary is stated but is omitted in the 1865 treaty).

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"Article 2. The said tribe of Indians also hereby cede to the United States a tract of land twenty miles in width from north to south, off the north side of the remainder of their present reservation, and extending its entire length from east to west; which land is to be held in trust for said Indians, and to be surveyed and sold for their benefit under the direction of the Commissioner of the General Land Office, at a price not less than one dollar and twenty-five cents per acre, as other lands are surveyed and sold, under such rules and regulations as the Secretary of the Interior shall from time to time prescribe. The proceeds of such sales, as they accrue, after deducting all expenses incident to the proper execution of the trust, shall be placed in the Treasury of the United States to the credit of said tribe of Indians; and the interest thereon, at the rate of five per centum per annum, shall be expended annually for building houses, purchasing agricultural implements, and stock animals, and for the employment of a physician and mechanics, and for providing such other necessary aid as will enable said Indians to commence agricultural pursuits under favorable circumstances: Provided, That twenty-five per centum of the net proceeds arising from the sale of said trust lands, until said percentage shall amount to the sum of eighty thousand dollars, shall be placed to the credit of the school fund of said Indians; and the interest thereon, at the rate of five per centum per annum, shall be expended semi-annually for the boarding, clothing, and education of the children of said tribe."

"Article 17. Should the Senate reject or amend any of the above articles, such rejection or amendment shall not affect the other provisions of this treaty, but the same shall go into effect when ratified by the Senate and approved by the President."

5. The treaty of 1865 was submitted to the Senate and on June 26, 1866, was ratified with amendments. Thereafter the treaty with the Senate amendments was again submitted to the Osage Indians and on the 21st day of September, 1866, their chiefs and headmen accepted and consented to the Senate amendments in these words:

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"Now, therefore, we, the undersigned chiefs and headmen of the said Great and Little Osage Indians, having heard the above amendments read, and fully explained to us, on this twenty first day of September one thousand eight hundred and sixty six, do hereby accept and consent to the aforesaid amendments.

White Hair
 Little Beaver
 Clarmont
 Ta-wah-she-he
 liet-so-shin-ca
 No-paw-ahla
 Black Dog

his x mark, Principal Chief Osage Nation
 his x mark, 2d Chief White Hair Band
 his x mark, Chief Clarmont Band
 his x mark, Chief Big Hill Band
 (Little Bear) his x mark, Chief Little Osages.
 his x mark, 2nd Chief Little Osages
 his x mark, Chief Black Dog Band

Attest

G.C. Snow, U. S. Neosho Ind. Agent
 Joseph Paw-Ne-No-Pash, E. Indian
 Alexander Beyett, Interpreter
 Moses Neal
 E. C. Arnsden
 George W. Douglass
 Fred Tibbetts,
 John Brinkley"

The chiefs and headmen whose names appear above are the same persons who, with others, signed the original treaty. (Defendant's Ex. No. 15).

The President accepted and confirmed the treaty on the 21st day of January 1867.

6. (a) The territory ceded to the United States by Article 1 of the treaty of 1865 (and described in Article 1 of the unproclaimed treaty of 1863) comprised 865,930.31 acres of land. This land was sold

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by the Government, pursuant to the provisions of said article one.

The land sales began in the calendar year 1868 and continued until as recent as the year 1901. The sales for the period from the calendar year 1868 to and including the fiscal year 1875 were as follows:

| | | <u>Acres</u> |
|---------------|------|--------------|
| Calendar Year | 1868 | 21,902.60 |
| " " | 1869 | 46,029.80 |
| " " | 1870 | 145,687.11 |
| " First Half | 1871 | 140,954.08 |
| Fiscal Year | 1872 | 2,667.10 |
| " " | 1873 | 240.58 |
| " " | 1874 | 320.00 |
| " " | 1875 | 240.00 |

The acreage so sold aggregated the total of 358,041.27 acres. No land was sold during the 1876 fiscal year.

On August 11, 1876 (19 Stat. 127), Congress passed an act providing for the sale of the ceded lands at \$1.25 per acre and giving purchasers the privilege of paying one fourth of the purchase price at time of entry and the balance spread over a period of three years. Following the passage of this act the sales for the four years ending with the 1880 fiscal year aggregated 454,652.48 acres, as follows:

| | | |
|-------------|------|------------|
| Fiscal year | 1877 | 267,377.54 |
| " " | 1878 | 164,785.62 |
| " " | 1879 | 15,939.00 |
| " " | 1880 | 6,550.32 |

During the next twenty years the acreage sold is not shown by the evidence, but the cash proceeds from sales is shown for this period and indicates the sale of the remaining land.

(b) The gross proceeds from sales of the land received by the Government amounted to the sum of \$1,101,303.78, out of which the Government retained the purchase price, \$300,000.00, the cost of surveying the ceded lands in the amount of \$24,372.20 (as provided by Article 1 of the 1865 treaty), and paid the remainder, \$776,931.58, to the credit of the "civilization fund", as provided by said Article 1, however, there was paid out of said "civilization fund" expenses for sale of Osage land the sum of \$3177.22, which left the net sum of \$773,754.34 available for the "education and civilization of Indian tribes residing within the limits of the United States." All of this fund was used for the benefit of tribes other than the Osages, except \$189.55, which was spent for the benefit of the Osages, and the sum of \$248.78, which was returned to the United States Treasury.

7. The purchase price for the "ceded lands", \$300,000, was set up in the Treasury Department on or about February 13, 1883, as a fund to the credit of the Osage Indians and was designated the "Osage Fund." Interest on this fund in the sum of \$15,000 per annum has been paid each year since 1867 and has aggregated more than \$1,200,000.00.

8. The value of the land ceded by said treaty did not exceed the sum of \$300,000 at the time the 1865 treaty was concluded.

9. That the terms of the treaty of September 29, 1865, were fully explained to and understood by the Indian representatives of the Osage Nation of Indians, who executed the same, at the time they signed it.

/s/

LOUIS J. O'MARR
Associate Commissioner

/s/

WM. M. HOLT
Associate Commissioner