

BEFORE THE INDIAN CLAIMS COMMISSION

PAWNEE INDIAN TRIBE OF OKLAHOMA,)	
consisting of the four confeder-)	
ated bands of Pawnee Indians,)	
namely: Chaui or Grand Pawnee)	
Kitkehahki or Republican Pawnee,)	
Pitahauerat or Tappage Pawnee,)	
and Skidi, Loup or Wolf Pawnee,)	
)	
Claimant,)	
)	
vs.)	Docket No. 10
)	
UNITED STATES,)	
)	
Defendant.)	

Mr. Arthur B. Hennold,
Attorney for Claimant.

Messrs. Ralph A. Barney,
and John F. Curran, with
whom was Mr. Assistant
Attorney General A. Devitt
Vanech.

JUL 14 1950

FINDINGS OF FACT

In this case the Pawnee Indian Tribe of Oklahoma seeks an award against the United States on eight separate claims. The first five claims grow out of the alleged acquisition by the United States of a tract of land containing some 33 million acres of land in what is now central Nebraska and Kansas, and extending from the Niobrara River in northern Nebraska to the Arkansas River in southern Kansas. The claimant tribe base their claimed right to recover upon (1) immemorial

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possession and occupation; (2) the alleged recognition of their right to the claimed territory by the three treaties of October 9, 1833 (7 Stat. 448), August 6, 1848 (9 Stat. 949) and September 24, 1857 (11 Stat. 729) between them and the United States. The remaining three claims are for the value of three small separate tracts of Pawnee reservation land in Oklahoma alleged to have been sold by the United States without the consent of claimant.

The Commission having made the foregoing introductory statement, makes the following findings of fact;

1. The claimant herein, the Pawnee Indian Tribe of Oklahoma, is a tribe of American Indians residing within the territorial limits of the United States and has the right to prosecute this case. The Pawnee tribe is composed of the four confederated bands of Pawnee Indians, namely: Chaui or Grand Pawnee, Kitkehahki or Republican Pawnee, Pitahauerat or Tappage Pawnee, and the Skidi, Loup or Wolf Pawnee.

2. The Pawnee Tribe of Indians claims that prior to 1829 it held original Indian title to a large tract of land in present States of Kansas and Nebraska, located within the following boundaries:

Beginning at the junction of the North and South Platte Rivers in Nebraska and extending northeasterly along the eastern boundary of the Fort Laramie Treaty of 1851 (11 Stat. 749) to the Niobrara River in northern Nebraska; thence east along the Niobrara River to a point some eight miles west of its mouth; thence south and across the headwaters of Shell Creek and down Shell Creek to its mouth where it enters the

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Platte River; thence west along the Platte River about twelve miles, thence south along Range 2 East to approximately Township Line North 9, and then extending from that point southwest into Kansas to a point 25 or 30 miles east of the Great Bend of the Arkansas River in southern Kansas. Thence westwardly following the Arkansas River to the Colorado State line; thence north 18 miles along the Colorado line and then bowing eastwardly and north to the place of beginning.

3. The Pawnee Tribe of Indians appears to have originated in the far south or southwest, and in prehistoric times to have migrated northward until they reached the Platte River valley in the present State of Nebraska. They were first contacted by the white man in 1541 when the Coronado expedition reached the province he called "Quivira" in what is now central Kansas. Coronado reported the Pawnees living in a province called Harahey, located to the north of Quivira. In 1673 Marquette located the Pawnees in the Platte River valley in Nebraska. During the 18th century the Republican Band of Pawnees lived on the Republican River near the present Nebraska-Kansas line and the remainder of the Pawnee bands were in the Platte-Loup River area in Nebraska. By 1809 the Pawnees on the Republican River had moved up and joined the others on the Platte River, and thereafter all Pawnees were located along the lower courses of the Platte and Loup Rivers in villages which extended from near the present town of St. Paul, Nebraska, on the west to a point near the town of Fremont, Nebraska, on the east, a distance of approxi-

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mately one hundred miles.

4. (a) On September 24, 1829, a treaty (7 Stat. 327) was entered into by the United States and the Delaware Nation of Indians, which provided in part as follows:

Whereas the foregoing Treaty stipulates that the United States shall provide for the Delaware Nation, a country to reside in, West of the Mississippi, as the permanent residence of their Nation; and whereas the said Delaware Nation, are now willing to remove, on the following conditions, from the country on James' fork of White river in the State of Missouri, to the Country selected in the fork of the Kansas and Missouri Rivers, as recommended by the Government, for the permanent residence of the whole Delaware Nation; it is hereby agreed upon by the parties, that the country in the fork of the Kansas and Missouri Rivers, extending up the Kansas River, to the Kansas Line, and up the Missouri River to Camp Leavenworth, and thence by a line drawn Westwardly, leaving a space ten miles wide, north of the Kansas boundary line, for an outlet; shall be conveyed and forever secured by the United States, to the said Delaware Nation, as their permanent residence: And the United States hereby pledges the faith of the Government to guarantee to the said Delaware Nation forever, the quiet and peaceable possession and undisturbed enjoyment of the same, against the claims and assaults of all and every other people whatever.

(b) The "outlet" strip of land granted to the Delaware Nation under the foregoing treaty, and here claimed by the Pawnees, was within the territory ceded to the United States in 1825 by the Kansas Indians by treaty entered into on June 3, 1825 (7 Stat. 244), which provided in part as follows:

The Kansas do hereby cede to the United States all the lands lying within the State of Missouri, to which the said nation have title or claim; and do further cede and relinquish, to the said United States, all other lands which they now occupy, or to which they have title or claim, lying West of the said State of Missouri, and within the following boundaries: beginning at the entrance of the Kansas river into the Missouri

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river; from thence North to the North-West corner of the State of Missouri; from thence Westwardly to the Nodewa river, thirty miles from its entrance into the Missouri; from thence to the entrance of the big Nemahaw river into the Missouri, and with that river to its source; from thence to the source of the Kansas river, leaving the old village of the Pania Republic to the West; from thence, on the ridge dividing the waters of the Kansas river from those of the Arkansas, to the Western boundary of the State line of Missouri, and with that line, thirty miles, to the place of beginning.

From the cession aforesaid, the following reservation for the use of the Kansas nation of Indians shall be made, of a tract of land, to begin twenty leagues up the Kansas river, and to include their village on that river; extending West thirty miles in width, through the lands ceded in the first Article, to be surveyed and marked under the direction of the President, and to such extent as he may deem necessary, and at the expense of the United States. The agents for the Kansas, and the Persons attached to the agency, and such teachers and instructors as the President shall authorize to reside near the Kansas, shall occupy, during his pleasure, such lands as may be necessary for them within this reservation.

(c) The United States claimed full and complete title to the land included in this "outlet" strip after the treaty of 1825 with the Kansas Indians.

5. (a) The "outlet" strip of land granted the Delaware Nation by the treaty of September 24, 1829, was located in and a part of a territory that had been hunted upon and roamed over by a number of Indian tribes that were hostile to one another, and said land had not been exclusively used and possessed by any one tribe or tribes for many years prior to September 24, 1829.

(b) That at the time of the treaty of September 24, 1829, the claimant tribe of Indians was living in permanent villages along the

Platte and Loup Rivers in what is now the State of Nebraska, and the claimant tribe did not on September 24, 1829, actually occupy, use and possess, to the exclusion of other Indian tribes, any part of the said "outlet" strip of land that was granted by the defendant to the Delaware Nation.

6. (a) In 1833, and for several years prior thereto, there had been fighting among the Indians in the area south of the Platte River. The United States desired to restore order and peace among the Indians in that area, as well as to persuade them to give up the chase and change to agriculture, because of the increasing scarcity of game.

(b) On October 9, 1833, a treaty (7 Stat. 448) was concluded between the United States and the four confederated bands of Pawnee Indians, which provided in part as follows:

ART. I. The confederated bands of Pawnees aforesaid hereby cede and relinquish to the United States all their right, interest, and title in and to all the land lying south of the Platte River.

ART. II. The land ceded and relinquished hereby, so far as the same is not and shall not be assigned to any tribe or tribes, shall remain a common hunting ground, during the pleasure of the President, for the Pawnees and other friendly Indians, who shall be permitted by the President to hunt on the same.

ART. III. The United States, in consideration of said cession and for the purpose of advancing the welfare of the said Pawnees, agrees to pay said bands annually, for the term of twelve years, the sum of forty-six hundred dollars in goods, at not exceeding St. Louis prices, as follows: to the Grand Pawnees and Republican villages, each thirteen hundred dollars, and to the Pawnee Loups and Tappage Pawnee villages each one thousand dollars, and said annuity to said Grand Pawnees is in full remuneration for removal from the south to the north side of the Platte, and building again.

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(c) The area of land ceded and relinquished to the United States by Article I of the foregoing treaty was unsurveyed and its boundaries were not described in the treaty.

7. (a) On October 9, 1833, when the treaty was concluded between the United States and the claimant, one band of Pawnees occupied a permanent village on the south bank of the Platte River in Nebraska, and the remaining bands of Pawnees occupied permanent villages on the Loup River north of the Platte.

(b) It has not been established by the record in this case that claimant tribe actually occupied, used or possessed, to the exclusion of other Indian tribes, any part of the lands lying south of the Platte River, except the undefined area of land included within their one village site on the south bank of the Platte.

8. The United States paid the claimant tribe the sum of \$149,622 under the provisions of the treaty of October 9, 1833.

9. There were certain members of the Pawnee Tribe who remained south of the Platte River after the 1833 treaty was concluded. By 1847 these Pawnees had become restless and were attacking other Indian tribes and committing depredations on White emigrant trains passing through the area. This situation was brought to the attention of United States authorities in Washington and as a result, Lt. Colonel Ludwell E. Powell, as Commanding Officer of the Battalion of Missouri Volunteers, was ordered to visit the Pawnees on his way west and compel their removal north of the Platte River.

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10. On August 6, 1848, Lt. Colonel Powell, on behalf of the United States, concluded a treaty (9 Stat. 949) between the United States and the confederated bands of Pawnee Indians, which provided in part as follows:

Article 1. The confederated bands of the Pawnees hereby cede and relinquish to the United States all their right, title and interest in and to all that tract of land described as follows: viz: Commencing on the south side of the Platte, five miles west of this post, 'Fort Childs'; thence due north to the crest of the bluffs north of said Platte River, thence east and along the crest of said bluffs to the termination of Grand Island, supposed to be about sixty miles distant, thence south to the southern shore of said Platte River, and thence west and along the southern shore of the said Platte River to the place of beginning.

Article 2. In consideration of the land hereby ceded and relinquished, the United States has this day paid, through Captain Stewart Van Liet, Assistant Quartermaster, United States Army, under an order from Lieutenant-Colonel Ludwell E. Powell, commanding battalion, Missouri Mounted Volunteers, to the said four bands collectively, on the execution of this treaty, the amount of \$2,000.00 in goods and merchandise, the receipt of which is hereby acknowledged.

11. (a) That at the time the treaty of August 6, 1848, was concluded, the Pawnee Tribe of Indians did not actually occupy, possess, and use, to the exclusion of other Indian tribes, any part of the land ceded under Article 1, of the treaty of August 6, 1848.

(b) The United States delivered to the Pawnee Tribe supplies of a value of \$2,000.00 as provided under the terms of the treaty of August 6, 1848.

12. (a) In 1857, the United States Government entered into negotiations with Indian tribes west of the States of Missouri and Iowa,

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for the purpose of securing the assent of the tribes to the settlement of citizens of the United States upon the lands claimed by said Indians, and on September 24, 1857, a treaty (11 Stat. 729) was concluded between the United States and the Pawnee Tribe of Indians, which provided in part as follows:

ARTICLE 1. The confederate bands of the Pawnees aforesaid, hereby cede and relinquish to the United States all their right, title, and interest in and to all the lands now owned or claimed by them, except as hereinafter reserved, and which are bounded as follows, VIZ: On the east by the lands lately purchased by the United States from the Omahas; on the south by the lands heretofore ceded by the Pawnees to the United States; on the west by a line running due north from the junction of the North with the South Fork of the Platte River, to the Keha-Paha River; and on the north by the Keha-Paha River to its junction with the Niobrara, L'eauqi Court, or Running-Water river, and thence, by that river, to the western boundary of the late Omaha cession. Out of this cession the Pawnees reserve a tract of country thirty miles long from east to west, by fifteen miles wide from north to south, including both banks of the Loup Fork of the Platte River; the east line of which shall be at a point not further east than the mouth of Beaver Creek. If, however, the Pawnees, in conjunction with the United States agent, shall be able to find a more suitable locality for their future homes, within said cession, then, they are to have the privilege of selecting an equal quantity of land there, in lieu of the reservation herein designated, all of which shall be done as soon as practicable; and the Pawnees agree to remove to their new homes, thus reserved for them, without cost to the United States, within one year from the date of the ratification of this treaty by the Senate of the United States, and until that time, they shall be permitted to remain where they are now residing, without molestation.

ARTICLE 2. In consideration of the foregoing cession, the United States agree to pay to the Pawnees the sum of forty thousand dollars per annum, for five years, commencing on the first day of January, A. D. eighteen hundred and fifty-eight; and, after the end of five years, thirty thousand dollars per annum, as a perpetual annuity, at least one-half of which annual payments shall be made in goods, and such articles as may be deemed necessary for them.

And it is further agreed that the President may, at any time, in his discretion, discontinue said perpetuity, by causing the value of a fair commutation thereof to be paid to, or expended for the benefit of, said Indians, in such manner as to him shall seem proper.

(b) There are certain cessions made by the Sioux Indians on the West, the Poncas on the North and the Omahas on the East, which overlapped the boundaries of the land ceded under Article 1 of the foregoing treaty of 1857. In the trial record and its requested findings of fact, the claimant has reduced its fourth claim herein for lands ceded under Article 1 of the 1857 treaty to those lands bounded on the North by the Niobrara River, on the East by the western boundary of the Omaha Tribe cession of March 16, 1854 (10 Stat. 1043), as fixed by the United States Supreme Court in the case of the Omaha Tribe vs. The United States (253 U. S. 275; 64 L. Ed. 901), on the West by the eastern boundary of the Fort Laramie Treaty of September 17, 1851 (11 Stat. 749), and on the South by the lands theretofore ceded by the Pawnee Tribe to the United States (exclusive of the area reserved in said treaty), and which the claimant now claims contains some 10,500,000 acres.

13. That at the time the treaty of September 24, 1857, was concluded, and for a number of years prior, the only part of the ceded territory occupied and possessed by the Pawnees was a comparatively small undefined area located along the Platte and Loup Rivers in the eastern part of the cession, with a considerable portion of the area so occupied lying within the tract reserved for their use under the treaty, and the balance of the ceded area was wandered over and hunted upon by the Pawnee Tribe and other Indian tribes, and no one tribe

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had the exclusive possession thereof.

14. During the period from June 12, 1858 to July 25, 1947 a total sum of \$4,204,131.68 was appropriated by the Congress of the United States for the benefit of the claimant tribe under the provisions of the treaty of September 24, 1857.

15. In negotiating and making the three treaties that are set forth in the 6th, 10th and 12th findings of fact, the United States did not recognize, nor did it intend to recognize or acknowledge the exclusive use and occupancy right or title of the claimant tribe in any of the lands ceded under said treaties, other than the land contained in the area reserved for their exclusive use and occupancy in the treaty of September 24, 1857.

Fifth Claim

16. (a) Under the first Article of the treaty of September 24, 1857 (11 Stat. 729) between the United States and the Pawnee Indians, there was reserved by the Pawnees out of the cession made by them, "a tract of country thirty miles long from east to west, by fifteen miles wide from north to south * * *." When a resurvey was made of the boundary lines of this reservation it was discovered that through an error in the original survey the east and west boundary lines were but twenty-nine and a half miles apart instead of thirty miles, thus leaving a deficiency of 4,800 acres in the area of the reservation, as described in the treaty. The Acting Commissioner of Indian Affairs brought these facts to the attention of the Secretary of the Interior in a letter dated December 20, 1873, and reported in his letter that

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the lands were then thickly settled by White settlers.

(b) Under the Act of March 3, 1875 (18 Stat. 420, 448) Congress appropriated the sum of \$6,000 to indemnify the Pawnee Indians for the 4,800 acres of land erroneously excluded from their reservation in Nebraska by the survey of the boundary lines thereof.

(c) There is no evidence of the time when the land in question was taken by the defendant, and consequently there is no evidence of its value at the time it was taken.

Sixth Claim

17. On November 23, 1892, the United States and the Pawnee Tribe entered into an agreement (I Kapp. 498) by the terms of which the Pawnee Tribe ceded to the United States all of its reservation land in Oklahoma. In consideration of this cession the members of the tribe were to receive allotments in severalty in the reservation, and by Article IV "as an additional and only further consideration for such cession and conveyance, the United States agrees to pay to said tribe the sum of one dollar and twenty-five cents per acre for all the surplus land in said reservation, after the allotments herein provided for shall have been taken and approved by the Secretary of the Interior, payable as follows: Eighty thousand dollars in coin, to be distributed among them per capita at the subagency on said reservation upon the ratification of this agreement by Congress, and the residue of the proceeds of said surplus lands shall be placed to the credit of said

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tribe in the Treasury of the United States and bear interest at the rate of five per centum per annum, there to remain at the discretion of the United States, the interest to be paid annually and be distributed to said tribe per capita on said reservation." This agreement was to become effective when ratified by Congress.

On March 3, 1893 Congress passed an act (27 Stat. 612, 644) ratifying and confirming said agreement and appropriated the \$80,000.00 to pay the Pawnee Tribe, and Section 12 of the act reading in part as follows:

Said agreement is hereby accepted, ratified and confirmed. And the residue of the proceeds of the surplus lands mentioned in said agreement shall be placed to the credit of said tribe in the Treasury of the United States, and shall bear interest at the rate of five per centum per annum, said interest to be paid and distributed to said tribe as provided in said Article four.

By resolution of the United States Senate, Senate Bill No. 10830 of the 61st Congress was referred to the U. S. Court of Claims on February 21, 1911, for a finding of fact and report thereon of claims which the Pawnee Tribe might have or claim to have against the United States, or for the failure of the United States to pay the tribe any money due. One of the claims presented by the Pawnee Tribe to the Court of Claims, Pawnee Tribe of Indians vs. The United States, 54 Ct. Cls. 1, was for surplus lands of the reservation in Oklahoma after allotment in severalty, ceded to the United States by the agreement of November 23, 1892. The Court of Claims found that the \$80,000 had been paid, "and allotments were made to each member, aggregating

111,931.61 acres, leaving 171,088.37 acres of surplus lands, of which 755 acres were reserved for school and agency purposes, and continues as tribal property, and the balance, 170,333.37 acres was disposed of by the United States * * *." The court concluded a just claim was presented under the terms of the agreement for \$1.25 per acre for 170,333.37 acres, with interest thereon at 5% per annum from March 3, 1893, the date of the agreement ratified by Congress. The 755 acres were a part of the surplus land conveyed to the United States under the agreement of November 23, 1892.

18. Under the act of March 1, 1907 (34 Stat. 1015, 1044), the United States issued a patent to the town of Pawnee, Oklahoma for 88.43 acres of land, in consideration of the sum of \$110.55, or \$1.25 per acre. The 88.43 acres were located within the 755-acre tract of Pawnee reservation land mentioned in the preceding finding. This sum of \$110.55 appears from the evidence to have been credited to the account of the Pawnee Tribe on or about March 17, 1921, but no interest was ever paid the Indians on the \$110.55, although the agreement of November 23, 1892 and the act of March 3, 1893 provided that the proceeds of the surplus lands should bear interest at 5% per annum. The interest on the \$110.55 from March 3, 1893 to March 17, 1921 has not been paid to claimant.

Seventh Claim

19. Under and by virtue of the act of March 3, 1909 (35 Stat. 781), 814) the United States on June 3, 1920 issued a patent to the Home

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Mission Board of the Southern Baptist Convention, conveying 25.54 acres of land, which was also located within the 755-acre tract of Pawnee reservation land mentioned in the 17th finding. The Home Mission Board, and its predecessors, had been doing missionary work among the Pawnees since 1830, and this land had been previously set aside by the Department of the Interior for use in connection with this missionary work. The claimant tribe received no payment for this 25.54 acres of land.

Eighth Claim

20. On May 18, 1937, Charles West, Acting Secretary of the Interior, wrote to Will Rogers, Chairman of the Committee on Indian Affairs, House of Representatives, reporting on proposed legislation to reimburse the Pawnees for a claim of \$79.50 for certain rights of way. The letter was in part as follows:

Concerning the claim for \$79.50, the record indicates that a right of way across the agency and school reserve was granted to the Eastern Oklahoma Railway Company by approval of a map of definite location on January 27, 1900. Later, on February 7, 1903, the Arkansas Valley and Western Railway Company filed a map of definite location across these reservations under the act of February 8, 1902 (32 Stat. p. 43). No record is found of any damages having been paid in either case. At the customary rate of \$50 a mile, the total damages for rights of way would be \$79.50

The "agency and school reserve" mentioned in the above letter was the 755-acre tract referred to in the 17th finding.

There was no evidence introduced as to the amount of land taken for the two railroad rights of way.

/s/ Edgar E. Witt,
Chief Commissioner

/s/ Louis J. O'Marr
Associate Commissioner

/s/ Wm. M. Holt
Associate Commissioner