BEFORE THE INDIAN CLAIMS COMMISSION

THE KIOWA, COMANCHE, AND
APACHE TRIBES OF INDIANS,

Petitioners,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 32

APR 9 1851

FINDINGS OF FACT

The Commission makes the following findings of fact in the above-entitled cause:

1. The petitioners herein, the Kiowa, Comanche, and Apache Tribes of Indians, acquired the lands involved in this claim in the following manner:

On the 21st day of October, 1867, 15 Stat. 581, the Kiowa and Comanche Tribes of Indians entered into a treaty with the United States by which the United States ceded to said tribes, the Kiowa and Comanche, the following described territory located in what is now the State of Oklahoma, to-wit:

"commencing at a point where the Washita River crosses the 98th meridian, west from Greenwich; thence up the Washita River, in the middle of the main channel thereof, to a point thirty miles, by river, west of Fort Cobb, as now established; thence, due west to the north fork of Red River, provided said line strikes said river east of the one hundredth meridian of west longitude; if not, then only to said meridian-line, and thence south, on said meridian-line, to the said north fork of Red River; thence down said north fork, in the middle of the main channel thereof, from the point where it may be first intersected by the lines above described, to the main Red River;
thence down said river, in the middle of the main channel thereof to its intersection with the ninety-eighth meridian of longitude west from Greenwich; thence north, on said meridian-line, to the place of beginning, * * * *.

On the same day (15 Stat. 589) the United States and the Kiowa, Comanche, and Apache Tribes of Indians concluded a treaty by the terms of which the Apache Tribe united with the other two tribes and thereby acquired an interest in the above-described lands; so, thereafter the three tribes became the owners of said lands.

The above-mentioned treaties were duly ratified by the Senate of the United States, and said Indians occupied the territory ceded to them following the ratification of said treaties.

2. Pursuant to section 14 of the Act of March 2, 1889, 25 Stat. 980, the President of the United States appointed a Commission, comprised of David H. Jerome, Chairman, Warren G. Sayre and Alfred M. Wilson, to negotiate an agreement with petitioners for the cession of their lands described in Finding 1 hereof, and pursuant to said Act said Commissioners negotiated an agreement with said three tribes of Indians on the 6th day of October, 1892, which agreement became historically known as the Jerome Agreement, and is in words and figures as follows:

Articles of Agreement made and entered into at Fort Sill, in the Indian Territory, on the by and between David H. Jerome, Alfred M. Wilson and Warren G. Sayre, Commissioners on the part of the United States, and the Comanche, Kiowa and Apache Tribes of Indians, in the Indian Territory.
ARTICLE I

Subject to the allotment of land in severalty to the individual members of the Comanche, Kiowa and Apache Tribes of Indians in the Indian Territory, as hereinafter provided for, and subject to the conditions hereinafter imposed, and for the considerations hereinafter mentioned, the said Comanche, Kiowa and Apache Indians hereby cede, convey, transfer, relinquish and surrender, forever and absolutely, without any reservation whatever, express or implied, all their claim title and interest, of every kind and character, in and to the lands embraced in the following described tract of country in the Indian Territory; to wit, Commencing at a point where the Washita River crosses the ninety-eighth meridian west from Greenwich; thence up the Washita River, in the middle of the main channel thereof, to a point thirty miles, by river, west of Fort Cobb, as now established; thence due west to the north fork of Red River, provided said line strikes said river east of the one-hundredth meridian of west longitude; if not, then only to said meridian line, and thence due south, on said meridian line, to the said north fork of Red River; thence down said north fork, in the middle of the main channel thereof, from the point where it may be first intersected by the lines above described, to the main Red River; thence down said Red River, in the middle of the main channel thereof, to its intersection with the ninety-eighth meridian of longitude west from Greenwich; thence north, on said meridian line, to the place of beginning.

ARTICLE II.

Out of the lands ceded, conveyed, transferred, relinquished and surrendered by Article I. hereof, and in part consideration for the cession thereof, it is agreed by the United States that each member of said Comanche, Kiowa and Apache Tribes of Indians over the age of eighteen (18) years shall have the right to select for himself or herself one hundred and sixty (160) acres of land to be held and owned in severalty, to conform to the legal surveys in boundary; and that the father, or, if he be dead, the mother, if members of either of said tribes of Indians, shall have the right to select a like amount of land for each of his or her children under the age of eighteen (18) years; and that the Commissioner of Indian Affairs, or some one by him appointed for the purpose, shall select a like amount of land for each orphan child belonging to either of said tribes under the age of eighteen (18) years.
ARTICLE III.

It is further agreed that the land in said reservation shall be classed as grain-growing and grazing land; and in making selection of lands to be allotted in severalty as aforesaid, each and every Indian, herein provided for, shall be required to take at least one-half in area, of his or her allotments, of grazing land. It is hereby further expressly agreed that no person shall have the right to make his or her selection of land in any part of said reservation that is now used or occupied for military, agency, school, school-farm, religious or other public uses or in sections sixteen (16) and thirty-six (36) in each Congressional Township; except in cases where any Comanche, Kiowa or Apache Indian has heretofore made improvements upon, and now uses and occupies a part of said sections sixteen (16) and thirty-six (36), such Indian may make his or her selection within the boundaries so prescribed so as to include his or her improvements; it is further agreed that wherever in said reservation any Indian, entitled to take lands in severalty hereunder, has made improvements, and now uses and occupies the land embracing such improvements, such Indian shall have the undisputed right to make his or her selection within the area above provided for allotments, so as to include his or her said improvements.

It is further agreed that said sections sixteen (16) and thirty-six (36) in each Congressional Township in said reservation shall not become subject to homestead entry, but shall be held by the United States and finally sold for public school purposes. It is hereby further agreed that wherever in said reservation any religious society or other organization is now occupying any portion of said reservation for religious or educational work among the Indians the land so occupied may be allotted and confirmed to such society or organization, not however to exceed one hundred and sixty (160) acres of land to any one society or organization so long as the same shall be so occupied and used; and such land shall not be subject to homestead entry.

ARTICLE IV.

All allotments hereunder shall be selected within ninety days from the ratification of this agreement by the Congress of the United States—provided the Secretary of the Interior, in his discretion, may extend the time for making such selection; and should any Indian entitled to allotments hereunder fail or refuse to make his or her selection of land in that time, then
the allotting agent in charge of the work of making such allotments, shall within the next thirty (30) days after said time, make allotments to such Indians, which shall have the same force and effect as if the selection were made by the Indian.

ARTICLE V.

When said allotments of land shall have been selected and taken as aforesaid, and approved by the Secretary of the Interior, the titles thereto shall be held in trust for the allottees, respectively, for the period of twenty-five (25) years, in the time and manner and to the extent provided for in the Act of Congress entitled: "An Act to provide for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and Territories over the Indians and for other purposes." Approved February 2, 1887. And an Act amendatory thereof, approved February 28, 1891.

And at the expiration of the said period of twenty-five (25) years the titles thereto shall be conveyed in fee simple to the allottees, or their heirs, free from all incumbrances.

ARTICLE VI.

As a further and only additional consideration for the cession of territory and relinquishment of title, claim and interest in and to lands as aforesaid the United States agrees to pay to the Commanche, Kiowa and Apache Tribes of Indians, in the Indian Territory, the sum of two million ($2,000,000.00) dollars, as follows: two hundred thousand ($200,000.00) dollars in cash, to be distributed per capita, among the members of said tribes within one hundred and twenty (120) days after this agreement shall be ratified by the Congress of the United States; two hundred thousand ($200,000.00) dollars to be paid out to at least said Indians under the direction of the Secretary of the Interior in one year after said first payment and one hundred thousand ($100,000.00) dollars in the same manner in one year from date of said second payment and the remaining one million and five hundred thousand ($1,500,000.00) dollars to be retained in the Treasury of the United States, placed to the credit of said Indians, and while so retained, to draw interest at the rate of five per centum per annum, to be paid to the said Indians per capita annually.

Nothing herein contained shall be held to affect in any way any annuities due said Indians under existing laws, agreements
or treaties.

Article VIII.

It is further agreed that wherever in said reservation any member of any of the tribes of said Indians has, in pursuance of any laws or under any rules or regulations of the Interior Department taken an allotment, such allotment, at the option of the allottee shall be confirmed and governed by all the conditions attached to allotments taken under this agreement.

Article IX.

It is further agreed that any and all leases, made in pursuance of the laws of the United States, of any part of said reservation which may be in force at the time of the ratification, by Congress, of this agreement shall remain in force the same as if this agreement had not been made.

Article X.

It is further agreed that the following named persons—not members by blood of either of said tribes, but who have married into one of the tribes; to wit, Mabel R. Given, Thomas F. Woodward, William Wyatt, Kiowa Dutch, John Nestill, James N. Jones, Christian Ke-ch-tah, Edward L. Clark, George Conover, William Dietrick, Ben Roach, Lewis Bentz, Abilene, James Gard-lope, John Sanchez, the wife of Boone Chandler—whose given name is unknown, Emmet Cox and Horace F. Jones shall each be entitled to all the benefits of land and money conferred by this agreement, the same as if members by blood of one of said tribes; and that Emry S. Smith, David Grantham, Zonee Adams, John T. Hill, J. J. Methvin, H. L. Scott, and George D. Day, friends of said Indians who have rendered to said Indians valuable services, shall each be entitled to all the benefits in land only conferred under this agreement, the same as if members of said tribes.

Article XI.

This agreement shall be effective only when ratified by the Congress of the United States.

IN WITNESS WHEREOF, we have hereunto set our hands this sixth day of October, A. D. 1892.

Said Agreement was executed on behalf of the United States and a number
of the members of the petitioner tribes and duly transmitted to the
President, as required by said Act of 1889.

3. Shortly after the President received said Agreement he
transmitted the same to Congress for ratification, as required by the
last-mentioned Act. However, Congress neglected to ratify the same,
or take any action concerning it, until the 6th day of June, 1900, and
on that date passed an Act entitled "An Act to ratify an agreement with
the Indians of the Fort Hall Indian reservation in Idaho, and make ap-
propriations to carry the same into effect." Section 6 of this Act
(31 Stat. 672), which is the only part thereof concerning the Comanche,
Kiowa, and Apache Tribes, reads as follows:

SEC. 6. Whereas David H. Jerome, Alfred M. Wilson,
and Warren G. Sayre, duly appointed Commissioners on the
part of the United States, did, on the sixth day of Oc-
tober, eighteen hundred and ninety-two, conclude an a-
greement with the Comanche, Kiowa, and Apache tribes of
Indians in Oklahoma, formerly a part of the Indian Terri-
tory, which said agreement is in the words and figures as
follows:

"Articles of agreement made and entered into at Fort
Sill, in the Indian Territory, on the twenty-first day of
October, eighteen hundred and ninety-two, by and between
David H. Jerome, Alfred M. Wilson, and Warren G. Sayre,
Commissioners on the part of the United States, and the
Comanche, Kiowa, and Apache tribes of Indians in the Indian
Territory.

"ARTICLE I.

"Subject to the allotment of land, in severality to
the individual members of the Comanche, Kiowa, and Apache
tribes of Indians in the Indian Territory, as hereinafter
provided for, and subject to the setting apart as grazing
lands for said Indians, four hundred and eighty thousand
acres of land as hereinafter provided for, and subject to
the conditions hereinafter imposed, and for the considerations
hereinafter mentioned, the said Comanche, Kiowa, and Apache Indians hereby cede, convey, transfer, relinquish, and surrender, forever and absolutely, without any reservation whatever, express or implied, all their claim, title, and interest, of every kind and character, in and to the lands embraced in the following-described tract of country in the Indian Territory to wit: Commencing at a point where the Washita River crosses the ninety-eighth meridian west from Greenwich; thence up the Washita River, in the middle of the main channel thereof, to a point thirty miles, by river, west of Fort Cobb, as now established; thence due west to the north fork of Red River, provided said line strikes said river east of the one-hundredth meridian of west longitude; if not, then only to said meridian line, and thence due south, on said meridian line, to the said north fork of Red River; thence down said north fork, in the middle of the main channel thereof, from the point where it may be first intersected by the lines above described, to the main Red River; thence down said Red River, in the middle of the main channel thereof, to its intersection with the ninety-eighth meridian of longitude west from Greenwich; thence north, on said meridian line, to the place of beginning.

**ARTICLE II.**

"Out of the lands ceded, conveyed, transferred, relinquished and surrendered by Article I hereof, and in part consideration for the cession thereof, it is agreed by the United States that each member of said Comanche, Kiowa, and Apache tribes of Indians over the age of eighteen (18) years shall have the right to select for himself or herself one hundred and sixty (160) acres of land to be held and owned in severalty, to conform to the legal surveys in boundary; and that the father, or, if he be dead, the mother, if members of either of said tribe of Indians, shall have the right to select a like amount of land for each of his or her children under the age of eighteen (18) years; and that the Commissioner of Indian Affairs, or some one by him appointed for the purpose, shall select a like amount of land for each orphan child belonging to either of said tribes under the age of eighteen (18) years.

**ARTICLE III.**

"That in addition to the allotment of lands to said Indians as provided for in this agreement, the Secretary of the Interior shall set aside for the use in common for said Indian tribes four hundred and eighty thousand acres of grazing lands, to be selected by the Secretary of the Interior, either in one
or more tracts as will best subserve the interest of said Indians. It is hereby further expressly agreed that no person shall have the right to make his or her selection of land in any part of said reservation that is now used or occupied for military, agency, school, school-farm, religious, or other public uses, or in sections sixteen (16) and thirty-six (36) in each Congressional township, except in cases where any Comanche, Kiowa, or Apache Indian has heretofore made improvements upon and now uses and occupies a part of said sections sixteen (16) and thirty-six (36), such Indian may make his or her selection within the boundaries so prescribed so as to include his or her improvements. It is further agreed that wherever in said reservation any Indian, entitled to take lands in severalty hereunder, has made improvements, and now uses and occupies the land embracing such improvements, such Indian shall have the undisputed right to make his or her selection within the area above provided for allotments, so as to include his or her said improvements.

"It is further agreed that said sections sixteen (16) and thirty-six (36) in each Congressional township in said reservation shall not become subject to homestead entry but shall be held by the United States and finally sold for public school purposes. It is hereby further agreed that wherever in said reservation any religious society or other organization is now occupying any portion of said reservation for religious or educational work among the Indians, the land so occupied may be allotted and confirmed to such society or organization, but, however, to exceed one hundred and sixty (160) acres of land to any one society or organization so long as the same shall be so occupied and used; and such land shall not be subject to homestead entry.

"ARTICLE IV."

"All allotments hereunder shall be selected within ninety days from the ratification of this agreement by the Congress of the United States: Provided, The Secretary of the Interior, in his discretion, may extend the time for making such selection; and should any Indian entitled to allotments hereunder fail or refuse to make his or her selection of land in that time, then the allotting agent in charge of the work of making such allotments shall within the next thirty (30) days after said time make allotments to such Indians, which shall have the same force and effect as if the selection were made by the Indian."
"ARTICLE V.

When said allotments of land shall have been selected and taken as aforesaid, and approved by the Secretary of the Interior, the titles thereto shall be held in trust for the allottees, respectively, for the period of twenty-five (25) years, in the time and manner and to the extent provided for in the act of Congress entitled 'An act to provide for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and Territories over the Indians, and for other purposes,' approved February 8, 1887, and an act amendatory thereof, approved February 28, 1891.

And at the expiration of the said period of twenty-five (25) years the titles thereto shall be conveyed in fee simple to the allottees or their heirs, free from all incumbrances.

"ARTICLE VI.

As a further and only additional consideration for the cession of territory and relinquishment of title, claim, and interest in and to the lands as aforesaid, the United States agrees to pay to the Comanche, Kiowa, and Apache tribes of Indians, in the Indian Territory, the sum of two million (2,000,000) dollars, as follows: Five hundred thousand ($500,000) dollars to be distributed per capita to the members of said tribes at such times and in such manner as the Secretary of the Interior shall deem to be for the best interests of said Indians, which sum is hereby appropriated out of any funds in the Treasury not otherwise appropriated; and any part of the same remaining unpaid shall draw interest at the rate of five per centum while remaining in the Treasury, which interest shall be paid to the Indians annually per capita; and the remaining one million five hundred thousand ($1,500,000) dollars to be retained in the Treasury of the United States, placed to the credit of said Indians, and while so retained to draw interest at the rate of five per centum per annum, to be paid to the said Indians per capita annually.

Nothing herein contained shall be held to affect in any way annuities due said Indians under existing laws, agreements, or treaties.

"ARTICLE VIII.

It is further agreed that wherever in said reservation
any member of any of the tribes of said Indians, has in
pursuance of any laws or under any rules or regulations
of the Interior Department taken an allotment, such all-
lotment, at the option of the allottee, shall be confirmed
and governed by all the conditions attached to allotments
taken under this agreement.

"ARTICLE IX.

"It is further agreed that any and all leases made in
pursuance of the laws of the United States of any part of
said reservation which may be in force at the time of the
ratification by Congress of this agreement shall remain in
force the same as if this agreement had not been made.

"ARTICLE X.

"It is further agreed that the following named persons,
not members by blood of either of said tribes, but who have
married into one of the tribes, to wit, Mabel R. Given, Thomas
F. Woodward, William Wyatt, Kiowa Dutch, John Nestill, James
N. Jones, Christian Ke oh-tah, Edward L. Clark, George Conover,
William Deitrick, Ben Roach, Lewis Bentz, Abilene, James Gard-
 loupe, John Sanchez, the wife of Boone Chandler, whose given
name is unknown, Emmit Cox, and Horace P. Jones, shall each
be entitled to all the benefits of land and money conferred
by this agreement, the same as if members by blood of one of
said tribes, and that Easy S. Smith, David Grantham, Zonoe
Adams, John T. Hill, and J. J. Methvin, friends of said Indi-
ans, who have rendered to said Indians valuable services,
shall each be entitled to all the benefits, in land only,
conferred under this agreement, the same as if members of
said tribes.

"ARTICLE XI.

"This agreement shall be effective only when ratified by
the Congress of the United States."

(a) Said agreement be, and the same hereby is, accepted,
ratified, and confirmed as herein amended.

(b) That the Secretary of the Interior is hereby author-
ized and directed to cause the allotments of said lands, pro-
vided for in said treaty among said Indians, to be made by any
Indian inspector or special agent.

(c) That all allotments of said land shall be made under
the direction of the Secretary of the Interior to said Indians within ninety days from the passage of this Act, subject to the exceptions contained in article four of said treaty: Provided, That the time for making allotments shall in no event be extended beyond six months from the passage of this Act.

(d) That the lands acquired by this agreement shall be opened to settlement by proclamation of the President within six months after allotments are made and be disposed of under the general provisions of the homestead and town-site laws of the United States: Provided, That in addition to the land-office fees prescribed by statute for such entries the entryman shall pay one dollar and twenty-five cents per acre for the land entered at the time of submitting his final proof: And provided further, That in all homestead entries where the entryman has resided upon and improved the land entered in good faith for the period of fourteen months he may commute his entry to cash upon the payment of one dollar and twenty-five cents per acre; And provided further, That the rights of honorably discharged Union soldiers and sailors of the late civil war, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes shall not be abridged: And provided further, That any person who, having attempted to but for any cause failed to secure a title in fee to a homestead under existing laws, or who made entry under what is known as the commuted provision of the homestead law, shall be qualified to make a homestead entry upon said lands: And provided further, That any qualified entryman having lands adjoining the lands herein ceded, whose original entry embraced less than one hundred and sixty acres in all, shall have the right to enter so much of the lands by this agreement ceded lying contiguous to his said entry as shall, with the land already entered, make in the aggregate one hundred and sixty acres, said land to be taken upon the same conditions as are required of other entries: And provided further, That the settlers who located on that part of said lands called and known as the "neutral strip" shall have preference right for thirty days on the lands upon which they have located and improved.

(c) That sections sixteen and thirty-six, thirteen and thirty-three, of the lands hereby acquired in each township shall not be subject to entry, but shall be reserved, sections sixteen and thirty-six for the use of the common schools, and sections thirteen and thirty-three for university, agricultural colleges, normal schools, and public buildings of the Territory and future State of Oklahoma; and in case either of said sections,
or part thereof, is lost to said Territory by reason of allotment under this Act or otherwise, the governor thereof is hereby authorized to locate other lands not occupied in quantity equal to the loss.

(f) That none of the money or interest thereon which is, by the terms of the said agreement, to be paid to said Indians shall be applied to the payment of any judgment that has been or may hereafter be rendered under the provisions of the Act of Congress approved March third, eighteen hundred and ninety-one, entitled "An Act to provide for the adjudication and payment of claims arising from Indian depredations."

(g) That should any of said lands allotted to said Indians, or opened to settlement under this Act, contain valuable mineral deposits, such mineral deposits shall be open to location and entry, under the existing mining laws of the United States, upon the passage of this Act, and the mineral laws of the United States are hereby extended over said lands.

(h) That as the Choctaw and Chickasaw nations claim to have some right, title, and interest in and to the lands ceded by the foregoing treaty as soon as the same are abandoned by said Comanche, Kiowa, and Apache tribes of Indians, jurisdiction be, and is hereby conferred upon the United States Court of Claims to hear and determine the said claim of the Chickasaws and the Choctaws, and to render a judgment thereon, it being the intention of this Act to allow said Court of Claims jurisdiction, so that the rights, legal and equitable, of the United States and the Choctaw and Chickasaw nations, and the Comanche, Kiowa, and Apache tribes of Indians in the premises shall be fully considered and determined, and to try and determine all questions that may arise on behalf of either party in the hearing of said claim; and the Attorney-General is hereby directed to appear in behalf of the Government of the United States; and either of the parties to said action shall have the right to appeal to the Supreme Court of the United States: Provided, That such appeal shall be taken within sixty days after the rendition of the judgment objected to, and that the said courts shall give such causes precedence: And provided further, That nothing in this Act shall be accepted or construed as a confession that the United States admit that the Choctaw and Chickasaw nations have any claim to or interest in said lands or any part thereof.

(i) That said action shall be presented by a single
petition making the United States party defendant, and shall set forth all the facts on which the said Choctaw and Chickasaw nations claim title to said land; and said petition may be verified by the authorized delegates, agents, or attorneys of said Indians upon their information and belief as to the existence of such facts, and no other statement or verification shall be necessary; Provided, That if said Choctaw and Chickasaw nations do not bring their action within ninety days from the approval of this Act, or should they dismiss said suit, and the same shall not be reinstated, their claim shall be forever barred; And provided further, That, in the event it shall be adjudged in the final judgment or decree rendered in said action that said Choctaw and Chickasaw Nations have any right, title, or interest in or to said lands for which they should be compensated by the United States, then said sum of one million five hundred thousand ($1,500,000) dollars, shall be subject to such legislation as Congress may deem proper.

Approved, June 6, 1900.

The lettering of the paragraphs shown above does not appear in the original Act but is added as a convenience for reference in these findings and in the opinion of the Commission.

4. By the Act of June 6, 1900, the defendant acquired 2,968,593 acres of land, out of which, and in accordance with the provisions of said Act, it set apart as grazing lands for said Indians 480,000 acres (100,000 acres of these pasture lands were later allotted to individual members of said tribes). The defendant also allotted, in severalty, to the individual members of said tribes 445,000 acres out of lands other than the pasture lands referred to above; so, there were actually allotted in severalty to said Indians 545,000 acres of the lands acquired by the defendant under said Act. In addition, the defendant set aside 10,310 acres for agency, school, religious, and
other purposes. After the disposition of the lands acquired as above set forth, the balance of the area acquired by the defendant comprised 2,033,583 acres, for which balance the defendant eventually paid the petitioners the sum of $2,000,000, which sum was either distributed to or placed to the credit of petitioners in the Treasury of the United States.

5. So what defendant actually acquired under the Act of 1900 was 2,033,583 acres of land free of Indian title, and of this area the defendant granted 225,953 acres to Oklahoma for educational purposes and sold the remaining 1,807,630 acres to entrymen under the Public Land Laws of the United States. No part of the proceeds derived from the sales of this land were paid to or credited to petitioners.