

## BEFORE THE INDIAN CLAIMS COMMISSION

FELIX McCAULEY, A MEMBER OF THE  
 KAW TRIBE OF INDIANS, ON THE  
 RELATION OF ALL MEMBERS OF THE  
 KAW TRIBE OF INDIANS,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

Dockets Nos. 33, 34, 35.

Decided: June 24, 1954

The controversy herein decided is that between:

Claimants and Attorneys  
 Wilfred Hearn, George E.  
 Norvell, and Charles L.  
 Tyler, Denominated herein  
 as the "Hearn Group,"

and

Claimants and Attorneys  
 Arthur B. Honnold, O. R.  
 McGuire, John M. Wheeler,  
 and John M. Wheeler, Jr.,  
 Denominated herein as the  
 "Honnold Group."

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. On August 5, 1947, attorney Arthur B. Honnold filed a petition before the Indian Claims Commission on behalf of the Pawnee Tribe of Indians (Docket No. 10) wherein a claim was asserted based upon the allegation that the United States had acquired from said

tribe a large body of land a part of which was located within the present State of Kansas and West of the Big Blue and Smoky Hill Rivers. The eastern boundary of that part of said lands located within the present State of Kansas is stated in said petition to be "the Big Blue River to its mouth on the Kansas River, then following the Kansas River and the Smoky Hill River southwardly to the most southerly point, and then southwardly to the nearest northerly point on the Arkansas River, below Great Bend, Kansas, \* \* \*." (Pet. in Dkt. 10).

2. At the time the petition in the Pawnee case was filed, attorney Honnold knew that the Kansas or Kaw Tribe of Indians had ceded to the United States by treaty of June 3, 1825 (7 Stat. 270) approximately 26,000,000 acres of land and that a large part of the same was located in the present State of Kansas west of the Big Blue and Smoky Hill Rivers. Honnold also knew that by the said Treaty of 1825 a reservation was created for the use and occupancy of the Kaw Indians containing approximately 6,500,000 acres, and that at least 5,500,000 acres of said reservation was located west of the Big Blue River, and in the present State of Kansas.

3. A short time prior to October 25, 1947, attorney Honnold had a conversation with Mrs. Adele Dennison, a member of the Kaw Tribe of Indians, on which occasion he stated to her that "his interest was in getting some agreement as to the common boundary between the Pawnees and the Kaws, so as not to delay the trial of the Pawnee case which had already been filed and exhibited to her the Pawnee petition and maps."

On October 25, 1947 a meeting was arranged by Mrs. Dennison which was attended by attorney Honnold and about 30 members of the Kaw Tribe, including as many as three of the five members of the Kaw Council. Attorney Honnold has testified that he addressed the meeting and made the following statement: " \* \* \* I told the gathering in the course of my remarks that I was attorney for the Pawnees, as many of them knew, and that I wanted to see if an agreement could be reached as to a common boundary line between the Pawnees and the Kaws." (Honnold's testimony, Transcript p. 196). Honnold also testified that at that meeting the Kaw Council passed a resolution that he (Honnold) be employed to represent the Kaw Tribe, but that he stated that he could not accept such employment without the consent of the Pawnees. (Tr. p. 197).

4. On the 30th day of January, 1948, a contract was executed by Joseph L. Cross, "Chairman of Council of the Kaw Tribe" and Arthur B. Honnold, whereby the said Honnold was employed to represent the Kaw Indians in the prosecution of its claims against the United States before the Indian Claims Commission.

5. At a time prior to March 3, 1948 attorney Honnold prepared a petition to be filed with Indian Claims Commission on behalf of the Kaw Tribe. Copies of that petition reached the hands of a number of the members of the Kaw Tribe who discovered that the petition failed to assert certain claims of the Kaws, which claims were in conflict with claims which had been asserted by said Honnold on behalf of the Pawnees.

6. On September 6, 1948, at a general meeting of Kaw Indians it was decided that Dennis Bushyhead, an attorney at law, be employed to represent the Kaw Tribe of Indians to present and prosecute the claims of the Kaws against the United States before the Indian Claims Commission. Whereupon, two Kaw Indians, Nettie Cooper Glen and Felix McCauley, were chosen as a committee to enter into a contract on behalf of the Kaw Tribe with the said Dennis Bushyhead employing him to represent the Kaw Tribe in the prosecution of the claims of the Tribe. On the 22nd day of November, 1948, the contract so authorized was executed. (Bushyhead contract).

7. Docket No. 38 filed in behalf of the Kaw Tribe by attorney Honnold, which petition had been circulated among the members of the Kaw Tribe prior to its filing on September 29, 1948, by the said Honnold, asserted two claims, and only two claims, the first being that recited in Paragraph 9 of said petition and reading as follows:

"9. Plaintiffs allege that by the treaty made at St. Louis on June 3, 1825, the Kansas Nation of Indians (Kaws) ceded to the United States between 6,290,000, 8,550,000 and 12,800,000 acres of land in the best part of the present states of Missouri, Nebraska and Kansas, worth more than \$1.25 per acre, for an unconscionable and grossly inadequate consideration of about 1 cent an acre. The total consideration, which was payable in installments, livestock, supplies, by furnishing instructors, etc., was approximately \$65,000, considering the present worth of the installments. There was therefore due the Kaws from the United States, as of June 3, 1825, a sum between \$7,800,000, \$10,622,500 and \$15,935,000."

The second claim is set out in Paragraph 12 of said petition and reads as follows:

"12. By the said treaty made at the Methodist Mission in the Kansas Country on January 14, 1846, the Kansas Tribe of Indians ceded to the United States 2,000,000 acres of land in the present State of Kansas, worth more than \$1.25 per acre, for the unconscionable consideration of \$202,000, or about 10 cents an acre. Of the consideration, \$200,000 was to be funded at 5 per centum and the interest paid annually for 30 years, and thereafter to be diminished pro rata, should their numbers decrease, but not otherwise -- that is; the Government of the United States shall pay them the full interest for thirty years on the amount funded, and at the end of that time, should the Kansas tribe be less than at the first payment, they are to receive pro rata the sums paid them at the first annuity payment.' The remaining \$2,000 was to be expended (1st) to pay necessary expenses of negotiating the treaty, (3rd) \$600 to the Indians for a mill on the land ceded, (2nd) \$400 to a Missionary Society for their improvements on the land ceded, and (4th) the balance to buy provisions for the Indians during the current year. The United States was therefore indebted to the Kaws, as of January 14, 1846, in the sum of at least \$2,298,000."

The Treaty of June 3, 1825, provided for a reservation for the Kaws in the following language, to-wit:

"Article 2. 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 (referring to the area described in Article 1), 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. \* \* \*"

3. By Article 5 of the Treaty of January 14, 1846, it was provided that after the west line of the 2,000,000 acres ceded by Article 1 of the treaty had been determined, the President of the United States was authorized, if there was not a sufficiency of timber on the remaining

portion of the reservation, to cause to be selected and laid off for the tribe another body of land for the tribe, in which event the remainder of the reservation would thereby become the property of the United States. Under the authority of said provision, a reservation of lands known as the Council Grove reservation, consisting of 255,854.49 acres near the eastern boundary of the original reservation, was provided for said tribe, and thereby there was acquired by the United States the remaining portion of said original reservation, which said remaining portion comprised 4,559,040 acres.

9. The value of the 4,559,040 acres acquired by the United States under the terms of Article 5 of the Treaty of January 14, 1846, was found by the Indian Claims Commission to be of the value of 40 cents per acre at the time of its cession, or a total of \$1,823,616, and to have been the property of the Kaw Tribe, and for which compensation was sought by the Hearn Group of attorneys in Docket No. 33, and for which award was made by said Commission to the Kaws in Docket 33 for \$1,695,688.75.

10. No claim was asserted in Docket 38 in behalf of the Kaw Indians based on a claim of ownership of any part of the land for which said award in Docket 33 was made.

Neither the so-called Kaw Council nor Arthur B. Honnold, its attorney, has ever filed a claim before the Indian Claims Commission based on a claim of ownership of the land for which the Indian Claims Commission made an award in Docket 33, and as late as February 4, 1952, at a hearing before the Commission as to the offsets claimed, the said





















