

BEFORE THE INDIAN CLAIMS COMMISSION

THE OSAGE NATION OF INDIANS,)

Petitioner,)

v.)

THE UNITED STATES OF AMERICA,)

Defendant.)

Docket No. 9

Decided: September 27, 1954

Appearances:

Wesley E. Disney, with whom
were Francis M. Goodwin and
Lawrence H. Gall,
Attorneys for Petitioner

Ralph A. Barney, with whom
was Mr. Assistant Attorney
General Perry W. Morton,
Attorneys for Defendant

OPINION OF THE COMMISSION

O'Marr, Commissioner, delivered the opinion of the Commission.

By our order of August 13, 1954, we made an interlocutory award to the Osage for \$939,210.45. In arriving at this figure we determined (Find. 11) that the area ceded by Article 1 of the Treaty of September 29, 1865, 14 Stat. 687, comprised 871,751.11 acres. From this total acreage we deducted 27,118.16 acres as non-compensable and made an award for 844,632.95 acres at \$1.50 per acre, the value of that acreage as of the date of the treaty, less deductions of \$327,738.97. (Find. 29).

The Osage by their motion filed herein on August 26, 1954, question our determination that the full 27,118.16 acres are not compensable but admit that of that acreage the selections for the Catholic Mission and the Mograin heirs, aggregating 1274.24 acres should not be included in the compensable acreage. So what they are objecting to is the deduction of 25,843.92 acres from the total acreage as not compensable. The motion requires us to review our former determination of non-compensable acreage, and we are glad to do so.

The crux of the Osage argument in support of their motion is set forth in the following statements contained in their brief:

"It is submitted that under the Treaty of 1865 the entire area so ceded by Article 1 was intended for sale thereunder, unless specifically otherwise donated by the treaty. To hold otherwise would in effect constitute a judicial revocation of treaty terms."

And --

"The interpretation of the Commission, therefore, as to the provisions of these subsequent articles (except to the two donated areas) is not in harmony with the intent of the treaty and such an interpretation would in effect simply take certain areas from the Osages without any compensation whatever."

In deciding the questions presented by the motion we must re-examine the provisions of the 1865 treaty bearing on such questions.

By Article 1 of the treaty the Osage granted and sold to the United States 871,751.11 acres of their lands (Find. 11) for \$300,000. The article also provides: "Said lands shall be surveyed and sold * * on the most advantageous terms, for cash, as public lands are surveyed and sold under existing laws * * but no pre-emption claim or homestead settlement shall be recognized." The article then provides that after reimbursing the United

