

BEFORE THE INDIAN CLAIMS COMMISSION

THE OMAHA TRIBE OF NEBRASKA,
ET AL.,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

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Docket No. 225-A

Decided: October 19, 1954

FINDINGS OF FACT

Preliminary Statement

By the amended complaint filed herein, the Omaha Tribe seeks recovery for the value of a described area of land, located west of the Missouri River, in the northeastern part of what is now the State of Nebraska, less proper offsets. It is alleged in the amended complaint that the Omaha Tribe had original Indian title in said area and that by the Treaty of March 16, 1854 (10 Stat. 1043), as well as by other acts of the United States and its officials, the United States recognized the original Indian title of the Omahas to this area of land.

By the said Treaty of March 16, 1854, the Omahas ceded to the United States all their said land west of the Missouri River, except that by action taken pursuant to the treaty there was reserved to the Omahas out of said land, a tract for their future home.

There was a prior proceeding arising out of the same treaty which was instituted pursuant to the Act of June 22, 1910 (36 Stat. 580), by the Omaha Tribe against the United States in the Court of Claims and taken up on appeal to the Supreme Court. (In the Court of Claims No. 31002 - Def. Exs. 1, 2, 3, 4 herein, Omaha Tribe of Indians v. United States, 53 C. Cls. 549; and in the Supreme Court Nos. 243 and 244 - Def. Exs. 5, 6, 7, 8, 9, 10 herein, United States v. Omaha Tribe of Indians, 253 U. S. 275, 64 L. ed. 901).

In the amended complaint herein, the Omahas allege that in said prior proceeding, the Court of Claims made certain determinations on issues which are also involved in the instant case, including determinations as to the status of Indian title to the land ceded by said treaty and the actual extent of said land.

Before answer was filed to the amended complaint, the Omahas filed a motion for the purpose of having the Commission adjudge, by interlocutory order, whether the determinations made by the Court of Claims in the said prior proceeding are final and conclusive on the parties.

This procedure appeared desirable, because if, as alleged by the Omahas, the Court of Claims did determine in the prior proceeding that the Omahas had original Indian title to any part of the land in question here, such determination might reduce by a considerable extent investigations and research work by the parties, and make unnecessary the taking of voluminous evidence and otherwise facilitate this proceeding, and might leave to be determined by this Commission only the issue of the conscionability of the consideration paid for the cession of said land.

After receiving briefs and hearing oral arguments of counsel for the parties, and based on an examination of the record in the aforesaid prior proceeding, including pleadings, evidence submitted, respective contentions of the parties, findings, opinions and judgments, the Commission has made findings of fact on the issues posed by plaintiffs' motion for interlocutory order.

The Commission makes the following findings of fact:

1. The treaty between the United States and the Omaha Tribe of Indians of March 16, 1854 (10 Stat. 1043) provides, in part, as follows:

"ARTICLE 1. The Omaha Indians cede to the United States all their lands west of the Missouri River and south of a line drawn due west from a point in the center of the main channel of said Missouri River due east of where the Ayoway River disem- bogues out of the bluffs, to the western boundary of the Omaha country, and forever relinquish all right and title to the country south of the line. Provided, however, that if the country north of said due west line, which is reserved by the Omahas for their future home, should not, on exploration, prove to be a satisfactory and suitable location for said Indians, the President may, with the consent of said Indians, set apart and assign to them, within or outside of the ceded country, a residence suited for and acceptable to them. And for the purpose of determining at once and definitely, it is agreed that a delegation of said Indians, in company with their agent, shall, immediately after the ratification of this instrument, proceed to examine the country hereby reserved, and if it please the delegation, and the Indians in council express themselves satisfied, then it shall be deemed and taken for their future home; but if otherwise, on the fact being reported to the President, he is authorized to cause a new location, of suitable extent, to be made for the future home of said Indians, and which shall not be more in extent than three hundred thousand acres, and then and in that case, all of the country belonging to the Indians north of said due west line, shall be and is hereby ceded to the United States by the said Indians, they to receive the same rate per acre for it, less the number of acres assigned in lieu of it for a home, as now paid for the land south of said line.

* * *

"ARTICLE 4. In consideration of and payment for the country herein ceded, and the relinquishments herein made, the United States agree to pay to the Omaha Indians the several sums of money following, to wit:

"1st. Forty thousand dollars, per annum, for the term of three years, commencing on the first day of January, eighteen hundred and fifty-five.

"2d. Thirty thousand dollars per annum, for the term of ten years, next succeeding the three years.

"3d. Twenty thousand dollars per annum, for the term of fifteen years, next succeeding the ten years.

"4th. Ten thousand dollars per annum, for the term of twelve years, next succeeding the fifteen years.

"All which several sums of money shall be paid to the Omahas, or expended for their use and benefit, under the direction of the President of the United States, who may from time to time determine at his discretion, what proportion of the annual payments, in this article provided for, if any, shall be paid to them in money, and what proportion shall be applied to and expended, for their moral improvement and education; for such beneficial objects as in his judgment will be calculated to advance them in civilization; for buildings, opening farms, fencing, breaking land, providing stock, agricultural implements, seeds, &c.; for clothing, provisions, and merchandise; for iron, steel, arms, and ammunition; for mechanics, and tools; and for medical purposes.

"ARTICLE 5. In order to enable the said Indians to settle their affairs and to remove and subsist themselves for one year at their new home, and which they agree to do without further expense to the United States, and also to pay the expenses of the delegation who may be appointed to make the exploration provided for in article first, and to fence and break up two hundred acres of land at their new home, they shall receive from the United States, the further sum of forty-one thousand dollars, to be paid out and expended under the direction of the President, and in such manner as he shall approve.

* * *

"ARTICLE 8. The United States agree to erect for the Omahas at their new home, a grist and saw-mill, and keep the same in repair, and provide a miller for ten years; also to erect a good blacksmith shop, supply the same with tools, and keep it in repair for ten years; and provide a good blacksmith for a like period; and to employ an experienced farmer for the term of ten years, to instruct the Indians in agriculture."

Proceedings before the Court of Claims, No. 31002

2. As found by the Court of Claims in case No. 31002, the Omaha Indians were not satisfied with the country to the north of the due west line mentioned in Article 1 of the Treaty of March 16, 1854, and duly elected to take for their future home a tract of 300,000 acres south of said line. This fact was reported to the President and by his direction a tract of 300,000 acres south of said line was set apart for the Omaha Indians. (Finding No. III of Court of Claims in No. 31002; Def. Ex. 5 at p. 16).

3. Although the country belonging to the Omahas, north of the said due west Ayoway River line, contained in excess of 300,000 acres, no payment for such excess was made by the United States to the Omaha Tribe until after suit was instituted by the Omaha Tribe against the United States pursuant to the Act of June 22, 1910 (36 Stat. 580) and a judgment was entered by the Court of Claims. (Def. Ex. 5, p. 20).

4. The Act of June 22, 1910 (36 Stat. 580) provided, in part, as follows:

* * * * That all claims of whatsoever nature which the Omaha tribe of Indians may have or claim to have against the United States may be submitted to the Court of Claims with the right of appeal to the Supreme Court of the United States by either party for determination of the amount, if any, due said tribe from the United States under the treaty between the United States and the said tribe of Indians, ratified and affirmed March sixteenth, eighteen hundred and fifty-four, or under any other treaties or laws, or for the misappropriation of any funds of said tribe for purposes not for its material benefit, or for failure of the United States to pay said tribe any money due; and jurisdiction is hereby conferred upon the Court of Claims to hear and determine all legal and equitable claims, if any, of said Omaha tribe of Indians against the United States, and also any legal or equitable defense, set-off, or counterclaim which the United States may have against said tribe, and to

enter judgment thereon. The Court of Claims shall advance said cause upon the docket and shall have authority to settle the rights, both legal and equitable, of both the Omaha tribe of Indians and the United States, notwithstanding lapse of time or statutes of limitation, and the final judgment and satisfaction thereof shall be a full settlement of all claims of said Omaha Indians against the United States. * * *."

Pursuant to said act the Omaha Tribe instituted suit on June 19, 1911, in the Court of Claims, alleging in their petition that by the Treaty of March 16, 1854, they "ceded a large part of the lands recognized by the United States of America to belong to said tribe" and sought an accounting from the United States for the proceeds it received from the sale or other disposition of the ceded lands lying north of said Ayoway River line at a price of not less than \$1.25 per acre, less an amount received for 300,000 acres thereof, to compensate defendant for lands selected south of said Ayoway River line in lieu of the lands lying north of such lines which were reserved by said treaty for the future home of the Omaha should they elect to keep it. (Par. II of petition. Def. Ex. 1).

The Omaha tribe of Indians which is named in said Act and the Omaha Tribe which instituted said suit in the Court of Claims is the same as the Omaha Tribe which is plaintiff in the instant cause.

5. To the petition of the Omaha Tribe, a general traverse was entered on behalf of the United States. (Def. Ex. 5, p. 13). Then, on November 27, 1917, the United States filed a counterclaim against the Omaha Tribe, alleging that the tract of land north of the Ayoway River line was not the property of the Omahas but belonged to the Ponca Tribe at the time of the treaty of March 16, 1854, and that, accordingly,

the consideration for the grant to the Omahas of the 300,000-acre reservation south of the Ayoway River line totally failed. The United States alleged that the value of the 300,000-acre reservation was \$58,800 (300,000 acres times 19.6 cents an acre equals \$58,800) and claimed that the Omahas were justly indebted to the United States in said sum of \$58,800. (Def. Ex. 5, pp. 13-14).

6. The Omaha Tribe filed its replication to the counterclaim of the United States on April 4, 1918. Said replication, inter alia, stated that the tract north of the Ayoway River line did belong to the Omahas and that "their rights thereto were recognized and conceded to them by the United States, by its officials acting for it in the making of the treaty of cession of the same to the United States * * *. (Def. Ex. 5, p. 14).

7. There was also brought into issue in the prior proceeding the question of the extent of the land ceded by the Omahas south of said due west Ayoway River line. The treaty itself did not specify the geographical boundaries of the lands ceded. To determine the amount of the judgment to be awarded to the Omahas for the excess acreage in the northern tract, it was necessary for the Court of Claims to determine the treaty price per acre. To determine the treaty price per acre it was essential for the court to find the number of acres in the southern tract and the total price agreed by the United States under the treaty to be paid to the Omahas for the southern tract.

8. The record of the prior proceeding shows that voluminous evidence was submitted by both the United States and the Omahas with respect

