

BEFORE THE INDIAN CLAIMS COMMISSION

CHEYENNE-ARAPAHOE TRIBES OF INDIANS, ETC., ET AL.)	
)	
Petitioners,)	
)	
vs.)	Docket No. 329
)	
THE UNITED STATES OF AMERICA)	
)	
Defendant.)	
)	
THE CHEYENNE AND ARAPAHOE TRIBES OF INDIANS, ETC.,)	
)	
vs.)	Docket No. 348
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Filed: November 1, 1955

FINDINGS OF FACT

Certain documentary exhibits were received in support of petitioners' motion for summary judgment respecting the proper construction and effect of the Treaty of Fort Laramie, September 17, 1851 (10 Stat. 749). There is no substantial dispute as to the facts contained in these documents, the same having been stipulated to by the defendant in the case of the Crow Tribe of Indians v. The United States, Docket No. 54, 3 Ind. Cls. Comm. 147, and the defendant having opposed the consideration of the same in this case. The only question is as to the ultimate interpretation of the undisputed facts as respects the proper construction and effect of the Treaty of Fort Laramie. Accordingly, the Commission makes the following findings of fact in support of its order granting petitioners' motion for partial summary judgment.

1. On September 17, 1851, defendant and several Indian Tribes or nations, including the Cheyennes and Arapahoes, concluded a treaty by which a certain tract of land was therein designated as the "territory of the Cheyennes and Arapahoes". The said treaty, insofar as applicable here, reads:

TREATY OF FORT LARAMIE WITH SIOUX, ETC., 1851

"Articles of a treaty made and concluded at Fort Laramie, in the Indian Territory, between D. D. Mitchell, superintendent of Indian affairs, and Thomas Fitzpatrick, Indian agent, commissioners specially appointed and authorized by the President of the United States, of the first part, and the chiefs, headmen, and braves of the following Indian nations, residing south of the Missouri River, east of the Rocky Mountains, and north of the lines of Texas and New Mexico, viz, the Sioux or Dahcotahs, Cheyennes, Arrapahoes, Crows, Assinaboines, Gros-Ventre Mandans, and Arrickaras, parties of the second part, on the seventeenth day of September, A.D. one thousand eight hundred and fifty-one.

"ARTICLE 1. The aforesaid nations, parties to this treaty, having assembled for the purpose of establishing and confirming peaceful relations amongst themselves, do hereby covenant and agree to abstain in future from all hostilities whatever against each other, to maintain good faith and friendship in all their mutual intercourse, and to make an effective and lasting peace.

"ARTICLE 2. The aforesaid nations do hereby recognize the right of the United States Government to establish roads, military and other posts, within their respective territories.

"ARTICLE 3. In consideration of the rights and privileges acknowledged in the preceding article, the United States bind themselves to protect the aforesaid Indian nations against the commission of all depredations by the people of the said United States after the ratification of this treaty.

"ARTICLE 4. The aforesaid Indian nations do hereby agree and bind themselves to make restitution or satisfaction for any wrongs committed, after the ratification of this treaty, by any band or individual of their people, on the people of the United States, whilst lawfully residing in or passing through their respective territories.

"ARTICLE 5. The aforesaid Indian nations do hereby recognize and acknowledge the following tracts of country, included within metes and boundaries hereinafter designated, as their respective territories, viz:

* * * *

"The territory of the Cheyennes and Arrapahoes, commencing at the Red Butte, or the place where the road leaves the north fork of the Platte River; thence up the north fork of the Platte River to its source; thence along the main range of the Rocky Mountains to the head-waters of the Arkansas River; thence down the Arkansas River to the crossing of the Santa Fe road; thence in a northwesterly direction to the forks of the Platte River, and thence up the Platte River to the place of beginning.

"It is, however, understood that, in making this recognition and acknowledgement, the aforesaid Indian nations do not hereby abandon or prejudice any rights or claims they may have to other lands; and further, that they do not surrender the privilege of hunting, fishing, or passing over any of the tracts of country heretofore described.

"ARTICLE 6. The parties to the second part of this treaty having selected principals or head-chiefs for their respective nations, through whom all national business will hereafter be conducted, do hereby bind themselves to sustain said chiefs and their successors during good behavior.

"ARTICLE 7. In consideration of the treaty stipulations, and for the damages which have or may occur by reason thereof to the Indian nations, parties hereto, and for their maintenance and the improvement of their moral and social customs, the United States bind themselves to deliver to the said Indian nations the sum of fifty thousand dollars per annum for the term of ten years, with the right to continue the same at the discretion of the President of the United States for a period not exceeding five years thereafter, in provisions, merchandise, domestic animals, and agricultural implements, in such proportions as may be deemed best adapted to their condition by the President of the United States, to be distributed in proportion to the population of the aforesaid Indian nations.

"ARTICLE 8. It is understood and agreed that should any of the Indian nations, parties to this treaty, violate any of the provisions thereof, the United States may withhold the whole or a portion of the annuities mentioned in the preceding article from the nation so offending, until, in the opinion of the President of the United States, proper satisfaction shall have been made.

"In testimony whereof the said D. D. Mitchell and Thomas Fitzpatrick commissioners as aforesaid, and the chiefs, headmen, and braves, parties hereto, have set their hands and affixed their marks, on the day and at the place first above written."

2. At the time that the Treaty of 1851 was negotiated and entered into all of the lands involved in and described in the Treaty were by the United States recognized generally to be lands held and occupied by Indians from time immemorial, held by them by aboriginal Indian title.

3. Immediately and for some years preceding the Treaty of Fort Laramie, because of the discovery of gold on the Pacific Coast, gold-seekers, emigrants and troops found it necessary to pass through this Indian country, the Indians bitterly resented their invasion and intrusion because the whites destroyed and depleted buffalo and game, the native grasses and forests, and threatened the livelihood and traditional means of subsistence of the Indians, bringing disease among them and causing starvation, suffering and great loss of life among the Indians. The hostility thus aroused manifested itself in the killing and massacre of the whites passing through the country, serving as a constant threat and hazard to any white people passing into or through said country. The Indian tribes or nations involved also fought among themselves, mostly on account of boundary disputes, the more warlike particularly preying upon and invading the territories of other tribes; these said internecine wars imperiling the whites who entered the country. (Ex. 3-A and 30).

4. The Indian nations and tribes, parties to said treaty considered themselves entitled to compensation for the right-of-way of white travelers through their country and for the resulting destruction of game, grass and timber committed by troops and emigrants. (Ex. 39).

5. The purpose and intent of the United States Government is seeking a treaty with the Indian nations and tribes here involved was to bring about peaceful relations among the Indian tribes themselves and stop internecine wars and to have the tribes agree among themselves, with respect to the vast territory

recognized as generally held by all of them by Indian title, to an exact definition of the national domain of each tribe and the establishment of fixed boundaries to that end, and to obtain from each tribe affected a right-of-way through their country for the peaceful passage of emigrants and troops; and otherwise to placate the Indians, satisfy their complaints and obtain agreement to avoid future depredations. (Ex. 3A, 30, 40).

6. The Government agents who negotiated the treaty with the Indians and who signed it for the United States as Commissioners understood the purpose and intent of the Government, as outlined in the previous finding, and in their extended negotiations with the Indian tribes at Fort Laramie, leading up to the execution of the treaty, so represented to the Indians, and the Indians so understood. (Exs. 25a, b, c, d and f).

7. By the treaty of Fort Laramie, the United States Government accomplished the purpose for which the appropriation of Congress was made and to which it desired the assent of the Indian tribes affected, whereby, for the consideration named, the United States obtained the right of passage through the territory and the promise from the Indians that they would keep the peace. The recognition that these lands were the lands of the Indian tribes affected, theretofore held in exclusive occupancy (except as invaded by whites) by these Indian tribes, was implicit throughout treaty and was understood by all of the negotiating parties. (Exs. 6, 41).

8. The Treaty of Fort Laramie is not merely a treaty of amity and an agreement between the Indian tribes themselves, but by said treaty and the manner of its negotiation and the acts and conduct of the defendant, the United States of America, immediately before and after the execution and ratification of said treaty, defendant accepted, acknowledged, ratified and confirmed petitioners'

aboriginal Indian title and right of occupancy, possession and use of the territory described in Finding 1.

9. That by order made and entered on May 5, 1952, the above cases were consolidated for trial, so the foregoing findings of fact are intended to apply to each insofar as either involves an interpretation of the Fort Laramie Treaty of September, 1851.

/s/ EDGAR E. WITT
Chief Commissioner

/s/ LOUIS J. O'MARR
Associate Commissioner

/s/ WM. M. HOLT
Associate Commissioner