

BEFORE THE INDIAN CLAIMS COMMISSION

THE CADDO TRIBE OF OKLAHOMA, ET AL.,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 226
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: March 8, 1956

Appearances:

O. R. McGuire, with whom was
Jay H. Hoag,
Attorneys for Plaintiffs,.

Clifford R. Stearns, with whom
was Mr. Assistant Attorney General,
Perry W. Morton,
Attorneys for Defendant.

OPINION OF THE COMMISSION

Witt, Commissioner, delivered the opinion of the Commission.

Plaintiffs herein, The Caddo Tribe of Oklahoma, et al., sue for the value, less proper credits and offsets, of approximately 1,000,000 acres of land located in northwestern Louisiana and southwestern Arkansas which they allege was ceded to the United States by the Caddo Indians by treaty entered into between said Caddo Indians and the United States through its Commissioner, Jehiel Brooks, on July 1, 1835.

The petition of the plaintiffs contained, among others, counts for lands in the State of Texas and the State of Oklahoma. These counts were dismissed on the merits because of failure of proof by

order of this Commission entered on March 1, 1955. The issue for determination by this Commission was confined to the area described in Article I of the treaty of July 1, 1835, as set out in Finding 2 submitted herewith.

The Caddo Indians who bring this suit are the remnants of three once powerful confederacies whose people occupied the area of what is now eastern Texas, southeastern Oklahoma, southwestern Arkansas, and northwestern Louisiana at one time. When they were first contacted by De Soto's expedition in 1542 they were found in the above general area. From that time on, as indicated by the findings, there was periodic contact by the Spanish and then the French until about 1700 when the contacts became more or less continuous with the French on one side and the Spanish on the other and finally with the United States after the Louisiana purchase in 1803.

The three confederacies referred to above were the Kadohadacho, Natchitoches and Hasinai. The Kadohadacho, or Caddo Confederacy was composed originally of four principal tribes who resided around the area of the big bend of the Red River in what is now Arkansas and extending along the river where it borders Texas and Arkansas. There was one village beyond the Arkansas border below present day Idabel, Oklahoma, on the Texas side of the river. These villages were occupied by the Nanatsoho, Upper Natchitoches, Upper Nasoni, and Kadohadacho. Dr. Swanton, who is one of the foremost authorities on the Caddo, includes the Petit Caddo who lived on Sodo (Caddo) Lake in Louisiana as a part of the Kadohadacho Confederacy. At a later date the Cahinno Caddo from the Ouachita River in Arkansas and the Upper Yatasi joined the Kadohadacho Confederacy.

The Natchitoches Confederacy was composed of the Doustioni, Ouachita and Natchitoches tribes and these were joined later by the Lower Yatasi.

The third Confederation was that of the Hasinai and was located in what is now eastern Texas. This group can be disregarded since they never occupied any of the territory involved in this suit and their principal contact with the Caddo came after the treaty was signed and the Caddo finally moved over into Texas.

Around 1777, while the Spanish owned Louisiana, and the Caddo Confederacy still occupied its aboriginal area around and above the great bend of the Red River, there came an epidemic which killed large numbers of the Indians. At about the same time the Osage Indians commenced a state of serious warfare against the Caddo and caused the Caddo to consider the advisability of moving southward to escape them. This move evidently took place about 1788 according to contemporary correspondence. They moved some miles below their ancient village, but after about two years the attacks of the Osage forced them to move again. They moved southward and joined the Petit Caddo around Caddo Lake about 1790 or 1800, which is within the area ceded in 1835. This move took the Caddo from the big bend country all the way down to Caddo Lake.

In 1803 when the United States purchased the Louisiana Territory from France the Caddo were all living within the area ceded by the treaty of July 1, 1835, with the exception of the lower Natchitoches and Adai. One of the first accounts of these Indians after American occupation of the area was given by Dr. John Sibley in 1805. He reported the location of the Caddo as being within the area which was

later ceded. The Freeman-Custis expedition up the Red River furnishes further corroboration of the location of the Caddo in 1806. The Nicholas King map made on this expedition shows the deserted villages to the north and northwest. During this period the lower Natchitoches and Adai lived below the cession area, but appear to have moved up to join the other groups sometime before 1835. There seems to be no question but that the remainder of the members of the Caddo and Natchitoches Confederacies had merged into a single group prior to the treaty of 1835. The increasing settlement of the area and the decreasing number of Indians made it feasible and necessary that there be such a merger as a matter of self-interest. According to Swanton there is no record of any other tribes than the Caddo in the entire region in spite of later shiftings.

The absence of any archeological deposits within the immediate area of the cession does not indicate a failure of the Caddo and Natchitoches Confederacies to have used and occupied the area to the extent that they controlled it. Certainly the Yatasi, Adai, and Natchitoches had occupied their lands from first contact and there is no indication from the evidence that the same was not true of the Petit Caddo. When the principal tribes of the Caddo decided to move southward there was no doubt about their right to do so nor any question of their friendly reception so far as is known. The evidence indicates that the Caddo proper had considerable influence throughout the whole area and were looked up to by all the other tribes as being the original stock from which all had sprung.

Accepting then the ownership of the land generally by the Caddo Confederacy, it becomes a question of the area actually used and occupied by the group. There is evidence to the effect that the Caddo continued to assert a claim to a large area, including their former homes above the big bend of the Red River and on over to the buffalo crossing at Pecan Point. The fact remains, however, that this land was not used and occupied by them in the usual Indian manner. They very probably crossed the area in going up into Oklahoma to hunt buffalo, as they continued to do at least as late as 1825. As stated in the Quapaw case, 128 C. Cls. 45:

* * * Indian tribes, in the absence of a treaty reservation, have only an occupancy and use title, or right, the fee being in the United States, and when an Indian tribe ceases for any reason, by reduction of population or otherwise, to actually and exclusively occupy and use an area of land clearly established by clear and adequate proof, such land becomes the exclusive property of the United States as public lands, and the Indians lose their right to claim and assert full beneficial interest and ownership to such land; and the United States cannot be required to pay therefor on the same basis as if it were a recognized treaty reservation.

This same problem is presented with regard to the area between Sulphur Fork and the Red River to the north. This area was included within the treaty description, but there has been no "clear and adequate proof" as to its use and occupancy by the Caddo Indians. Admittedly the treaty boundaries, as set out by the Indians, were accepted by Brooks. The fact remains, however, that the setting of boundaries by treaty does not create a prima facie case of ownership. There must still be a showing of use and occupancy by the claimants, or a recognition by the United States of ownership, before they can be held to have been the beneficial owners of any described area. (See Klamath and Modoc

Tribes and Yahooskin Band of Snake Indians v. The United States of America, I.C.C. Dkt. No. 100). As stated in 1825 by George Gray, the agent, the boundaries of the Caddo were between Cypress Creek on the south and Sulphur Fork on the north. He says that these boundaries were generally recognized by everyone within the area. Upon being instructed to investigate the matter and report, he confirmed the boundaries as he had previously stated them. As contrary to this definite statement of Gray's there is no proof that the Caddo used the area above Sulphur Fork as of the time of the cession in 1835, nor apparently did they use it for years previously. We may speculate that hunting parties went into the area from time to time and certainly the hunting parties which went into Oklahoma on periodic buffalo hunts may possibly have gone through it. On the other hand, it is equally possible that such parties went up through present Cass and Bowie counties in Texas in order to reach Oklahoma. This route would seem more practical. Another circumstance which would indicate that the Caddo did not use and occupy this area is the comparatively high degree of agriculture practiced by these Indians. It is stated in contemporary reports that the original Caddo villages had extensive fields surrounding them and it appears also that nearly, if not all, of the other Indians throughout this general area practiced agriculture extensively. Swanton states that when the Caddo first moved from their original location late in the eighteenth century they moved some miles below their ancient village, but were forced by the Osage to move on down to Caddo Lake where they joined the Petit Caddo. This failure to locate above Sulphur Fork on the second move may be

significant, or it may not, but it certainly adds nothing to the claim of use and occupancy by the Caddo. Perhaps some hunting was done in the area of Miller County, but there is no adequate proof of it. The preponderance of the evidence in the record indicates that the Caddo were not using and occupying the area of what is present day Miller County, Arkansas, during the period prior to and at the time of the cession in 1835.

With reference to the claim of recognition through the treaty involving the Louisiana Purchase, it seems obvious that Article III referred to the white inhabitants and not to the Indians. Article VI says only that the United States will honor any prior agreements made between Spain and the Indians until such agreements are superseded by agreements between the United States and the Indians. There is no evidence in the record of any agreement between Spain and the Caddo which would tend to support plaintiffs' contention. On the contrary, the Caddo agreed to cede to the King of Spain "--all proprietorship in the land which they inhabit--." Certainly if a treaty made with the Indians by the United States in which land boundaries are set forth does not constitute recognition of Indian title, then it cannot be inferred from a treaty in which the Indians were but third party beneficiaries.

Plaintiffs' contention that the case of the United States v. Brooks, et al., (10 Howard 442, 13 L. Ed. 489) is res judicata as to the issue of recognition by the United States of plaintiffs' ownership of the ceded area does not seem to this Commission to be tenable. The facts involved in the Brooks litigation are fully set out in the Courts' Opinions.

It is our opinion that this litigation merely decides that the Indians had passed to the Grappes and their assigns whatever title they had to the land involved in that litigation, and that the United States had also relinquished its interest in said land and, therefore, that neither the Indians nor the United States had at the time of that litigation any title to the land involved.

In addition to this question of res judicata being inapplicable because of these facts—it would also seem to be inapplicable because of a lack of privity between the Indians and the Grappes, Brooks, et al. It is undisputed that the Indians were not parties to that litigation—they were not privies to the judgment—how then can they or the United States be bound thereby as to the instant case, because of no mutuality of estoppel? Unquestionably, had the decision been in favor of the United States, such decision could not, under the law, be res judicata as against the Indians.

From the evidence it seems clear that the Caddo by the end of the eighteenth century were no longer able to use, occupy and control in the usual Indian manner their aboriginal claimed holdings. The combination of epidemics and the warfare by the Osage Indians had forced them to move twice prior to 1835, and had reduced the combined numbers of the Caddo and Natchitoches Confederacies to something in the neighborhood of five or six hundred people.

In accordance with the findings of fact, it is the opinion of this Commission that the predecessors in interest of plaintiffs herein did use, occupy and control the area of land as set out in finding No. 12 from aboriginal times until the treaty cession of July 1, 1835, and that

the plaintiffs are entitled to an award for the value of the same, as of July 1, 1835, if the consideration paid by defendant was unconscionable or inadequate, less proper credits and offsets, if any, to which defendant may be entitled.

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner