

## BEFORE THE INDIAN CLAIMS COMMISSION

THE PEORIA TRIBE OF INDIANS OF  
OKLAHOMA, and GUY FROMAN on behalf  
of the PEORIA NATION, FRED ENSWORTH  
on behalf of the KASKASKIA NATION,  
AMOS ROBINSON SKYE on behalf of the  
WEA NATION, and MABLE STATON PARKER,  
on behalf of the PIANKESHAW NATION,

Petitioners,

Docket No. 65

THE PEORIA TRIBE OF INDIANS OF  
OKLAHOMA, and FRED ENSWORTH on behalf  
of the KASKASKIA NATION,

Petitioners,

Docket No. 66

THE PEORIA TRIBE OF INDIANS OF  
OKLAHOMA, and MABLE STATON PARKER on  
behalf of the PIANKESHAW NATION,

Petitioners,

Docket No. 99

THE PEORIA TRIBE OF INDIANS OF  
OKLAHOMA, and MABEL STATON PARKER ON  
behalf of the PIANKESHAW NATION,

Petitioners,

Docket No. 289

THE PEORIA TRIBE OF INDIANS OF  
OKLAHOMA, GUY FROMAN on behalf of the  
PEORIA NATION, and FRED ENSWORTH on  
behalf of the KASKASKIA NATION,

Petitioners,

Docket No. 313

THE PEORIA TRIBE OF INDIANS OF  
OKLAHOMA, and AMOS ROBINSON SKYE on  
behalf of the WEA NATION,

Petitioners,

Docket No. 314

THE PEORIA TRIBE OF INDIANS OF  
OKLAHOMA: FRED ENSWORTH, as the  
representative of the KASKASKIA NATION;  
AMOS ROBINSON SKYE, as the represen-  
tative of the WEA NATION; MABEL STATON  
PARKER, as the representative of the  
PIANKESHAW NATION,

Petitioners,

Docket No. 338

v.

THE UNITED STATES OF AMERICA,

Defendant.

Decided: March 26, 1956

Appearances:

A. Abraham Ziedman, with  
whom were Jack Joseph and  
Arthur Lazarus, Jr.,  
Attorneys for Petitioners.

Francis J. Clary, 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.

The question presented for determination is whether, under the Indian Claims Commission Act, a corporation formed under the provisions of the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967), can maintain claims for or on behalf of the tribes -- Peoria, Wea, Kaskaskia and Piankeshaw -- growing out of dealings and treaties with defendant.

The name "Peoria Tribe" is referred to in this opinion in two ways. Where the tribal name is used in combination with the Wea, Kaskaskia and Piankeshaw, we are referring to the historic Peoria Tribe. The other references are, of course, to the corporate entity, Peoria Tribe of Indians of Oklahoma.

The Peoria Tribe of Indians of Oklahoma, a corporation, is a party petitioner in each of the above cases. In addition to the corporate petitioner, individual members of the respective tribes are joined as petitioners who sue "on behalf" of one or the other of the tribes mentioned

above. In each of the petitions in the dockets shown in the caption, except docket No. 338, it is alleged, with respect to the individual parties, that "they appear herein in a representative capacity on behalf of the petitioner nations regarding any and all of their claims in which the petitioner tribe may not be deemed a true and proper representative." But notwithstanding the naming of individual petitioners and the above allegations, no proof has been offered in any case as to the membership of any individual petitioner in the tribe or nation he purports to represent.

Because of the question common to the seven cases, the parties have stipulated (Finding 1) to submit it for determination before offering proof on the merits of the claims, but both parties have offered proof, all documentary, to sustain their positions as to questions covered by the stipulation.

Since the proof is set out in considerable detail in the findings, only a summary of the essential facts will be necessary here.

During the late 18th and early 19th centuries, the Peoria, Kaskaskia, Wea and Piankeshaw tribes were independent tribes but ethnically related, and at times some of these groups were politically allied and the defendant at times treated with each or with two or more together. The Miami were closely associated with part of these groups and at one time efforts were made to unite them with the Peoria, Wea, and Piankeshaw, but the Miami were not included in the consolidation of the other four tribes which was consummated in 1854.

Without going into the details (which are fully set out in the findings) that lead to the formal consolidation of the four tribes, the undisputed evidence shows that these tribes had met in convention and

united themselves into a single tribe. This action was formalized by a treaty between them and the defendant concluded on May 30, 1854 (10 Stat. 1082) and ratified on August 2, 1854.

Article 1 of this treaty recites that the Kaskaskia, Peoria, Piankeshaw and Wea Indians "united themselves into a single tribe, and having expressed a desire to be recognized and regarded as such, the United States hereby assent to the action of said joint council to this end, and now recognize the delegates who sign and seal this instrument as the authorized representatives of said consolidated tribe." Thus, it will be seen, these Indian tribes themselves not only formally consolidated and became a single tribe but the defendant officially recognized and approved the union. They were then in Kansas.

These tribes acquired lands in northeast Oklahoma (then Indian Territory) by virtue of the Treaty of February 23, 1867 (15 Stat. 513). In that treaty they were referred to as the "Confederated tribes of Peorias, Kaskaskias, Weas and Piankeshaws" and were living on the Oklahoma lands at the time of incorporating under the Oklahoma Welfare Act. That treaty did not specify a group name for the united tribes but they became known as the Peoria and were quite generally referred to as such in official references to them after 1854. By the Act of March 2, 1889 (25 Stat. 1013), the general allotment act was made applicable to the "Confederated Wea, Peoria, Kaskaskia and Piankeshaw tribes of Indians," and the allotments of their Oklahoma land were apparently authorized to be made without reference to tribal affiliations of the members making them. Then, in Section 2 of the act, the four tribes were referred to as "United Peoria Indians" and "United Peorias." This is but one of many instances showing that the

tribal names were dimmed by lapse of time and the 1854 consolidation, resulting in the shorter designation, Peoria. (See Pet. Exs. 21, 22 for the various ways the four tribes were referred to in official records and Congressional acts). So, it was perhaps inevitable that a shorter description of the groups would emerge.

The evidence is plain that it was the descendants of those four groups who incorporated in 1940. (Pet. Ex. 42).

We now reach the important question as to whether the corporation-petitioner may maintain the claims pleaded in the various dockets -- claims involving large land cessions, accounting, etc.

It will be noted that the Indian Claims Commission Act makes no express reference to the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967). This seems odd in view of the fact that the Welfare Act had been in operation ten years when the Indian Claims Commission Act was passed, and at least 13 Oklahoma tribes, including petitioner, had then taken advantage of it and were granted corporate charters. (See pamphlet 1 issued in 1947 by Indian Service, entitled: "Ten Years of Tribal Government under I.R.A.>").

Section 10 of the Indian Claims Commission Act provides:

"\* \* \* wherever any tribal organization exists, recognized by the Secretary of the Interior as having authority to represent such tribe, band or group, such organization shall be accorded the exclusive privilege of representing such Indians. \* \* \*"

The first query presented is whether the corporate entity here suing comes within the term "tribal organization" as that term is used in the quoted provisions of Section 10 above. We think it does. The Oklahoma

Indian Welfare Act of June 26, 1936 (49 Stat. 1967) expressly, by Section 3, provides for the incorporation of recognized tribes of Indians residing in Oklahoma. Its purpose was to provide orderly self-government. As we have stated above, that act was in existence long before the passage of the Indian Claims Commission Act and many Oklahoma tribes had taken advantage of its provisions and were granted corporate charters. It is inconceivable to think that the Congress did not intend by the use of the term "tribal organization" to include corporate entities which it had previously provided for, not only in the Welfare Act but by the Indian Reorganization Act of June 18, 1934 (48 Stat. 987), the main objectives and purposes of which were the same as those of the Welfare Act.

When the Peoria charter (Pet. Ex. 42) is examined it is found that Section 7 thereof provides that: "No property rights or claims of the Peoria Tribe existing prior to the ratification of this charter shall in any way be impaired by anything contained in this charter." Parenthetically, it may be stated, the substance of this language appears in Section 15 of the Indian Reorganization Act of June 18, 1934, (48 Stat. 987) which seems to be made applicable to the Welfare Act by Section 3 thereof. In view of the make-up of the Peoria Tribe, namely, the previously consolidated Peoria, Kaskaskia, Wea and Piankeshaw tribes, and their incorporation, the charter provision just quoted must be understood to recognize the then existence of the separate tribal claims of the united tribes. And the charter further provides that the corporation shall have the power: "To protect all rights guaranteed to the Peoria Tribe of Indians of Oklahoma by treaty." Now, it is obvious that this clause did not refer to treaty

rights it as a corporation had, for there were no treaties made with it, in fact, no treaties could be made after the Act of March 3, 1871 (16 Stat. 544, 566) which abolished treaty-making. To give the clause effect it must be considered as applying to treaties made with the four tribes, all of which were consummated prior to 1940, in fact, prior to 1871.

The defendant's argument seems to be that because the four groups did not function as tribes for a considerable period before the incorporation in 1940, they ceased to exist and, consequently, it would seem to follow, lost their right to assert their claim and that the claims cannot be reinstated by the creation of the corporation. Of course, the answer to this contention is obvious. In the first place, the Secretary of the Interior in 1940 officially determined, as he was required to do under the Welfare Act, that the Peoria Tribe was a recognized tribe. Such determination necessarily recognized that the so-called Peoria Tribe was composed of the four tribes which united in Kansas in 1854 and moved from there to Oklahoma following the 1867 treaty. The evidence adduced by both parties fairly shows that it was the united tribes who were recognized as a tribe by the Secretary and who were granted the charter in 1940. Such determination is binding on us. *United States v. Holliday*, 70 U. S. 407, 18 L. Ed. 183.

The defendant's contention that the acceptance of the charter nullified the individual tribes' capacity to sue on the claims here asserted has no support in the Welfare Act, nor in ours. The Indian Claims Commission Act, as we have shown, gives the recognized tribe, in this case the corporation, "the exclusive privilege of representing such Indians." These provisions do not terminate tribal rights, on the contrary, they

recognize such rights and provide an entity to assert them as the representative of the tribe. The fact that the entity, the tribal organization, is composed of four tribes does not prevent it from representing each in the prosecution of its separate claim.

Nor does such a corporation become the successor in interest of the respective claims of each tribe. The above-quoted provisions of the charter itself indicate the contrary. We find nothing in the Welfare Act vesting these tribal claims in the corporation, nor is there any proof showing a transfer or assignment of such tribal claims to the corporation. Nor is such a transfer of tribal rights necessary to the authority of the corporation to maintain them as the representative of the separate tribes. In fact, the language of the act seems to contemplate that the organization, whether incorporated or not, if it is recognized by the Secretary as having authority to represent a tribe, may do so for the benefit of a tribe and that a recovery would be for the benefit of the tribe whose claim is asserted and the award, if made, would enure to the benefit of the tribe for which the claim is prosecuted. See *Confederated Tribes of the Colville Reservation v. United States*, 4 Ind. C. C. 151.

Tribal groups are almost invariably political bodies and have been so considered and dealt with by our Government since the beginning of our contacts with those aboriginal inhabitants. So their organization under the Welfare Act was that of a political body, a recognized tribe, and not the formation of a business enterprise. Such groups could organize by the adoption of a constitution and by-laws under the act, as several did, and such organizations could also, if they wished, obtain a corporate charter. But, however, organized, such organizations were, according to



the Welfare Act, for their "common welfare," an expression usually associated with political bodies, which leads to the conviction that the corporate-petitioner here was essentially a political body authorized to maintain claims for each of the four tribes whose claims are presented here. That it was a political entity that was organized here, rather than a business enterprise, has basis in the fact that the Welfare Act, by Sections 4 and 5 thereof, expressly provides for the separate organization and chartering of the usual business associations needed for business activities of the tribe.

This brings us to the legal status of the Peoria Tribe of Indians of Oklahoma as respects its prosecution of the several claims pleaded here. That the Congress could authorize such a corporation to present such claims for each of the tribal groups seems not to be questioned, and we hold it could. But, as we have said, it is acting for and on behalf of each group, so it must follow that there must be members of each group, or descendants of members, living, who would benefit and could participate in an award, should one be made. The claims authorized by the Indian Claims Commission Act are, it seems to us, for tribal groups who have members, or descendants of members, living today. The fact that Section 10 of our own act mentions an existing tribal organization as having authority to represent "such Indians" shows the necessity of there being living members or descendants of members of the group for which claim is made. In other words, it was not intended that a tribe which has gone out of existence through lack of members, or descendants of members, would be entitled to recover.

Accordingly, we conclude that we have jurisdiction to entertain the claims presented by the Peoria Tribe of Indians of Oklahoma, the corporation, for and on behalf of the Peoria, Wea, Kaskaskia and Piankeshaw, upon proof that there are existing members, or descendants of members, of the tribes for which claims are so made.

After oral argument, petitioners in each of the above cases on February 14, 1956, filed a motion to correct the name of the corporate petitioner. In the pleadings, brief and stipulation the corporate petitioner was designated as "The Peoria Tribe of Oklahoma," while the proof offered (Pet. Exs. 41 and 42) shows that the correct corporate name is: "Peoria Tribe of Indians of Oklahoma." Throughout the hearings, arguments and briefing, the Commission, attorneys for the parties and the attorneys for defendant understood that one of the parties to each case was the corporation chartered under the provisions of the Oklahoma Indian Welfare Act. The fact that the corporation was not accurately named in the pleadings confused no one and was an error that can and should be corrected.

Louis J. O'Marr  
Associate Commissioner

We concur:

Edgar E. Witt -- in part, see opinion attached.  
Chief Commissioner

Wm. M. Holt  
Associate Commissioner

Docket Nos. 65, et al.

WITT, Chief Commissioner, Concurring in Part and Dissenting in Part.

I agree with the findings of fact in toto and the opinion and the order entered, except the conclusion as embodied in the opinion and possibly in the order, that the plaintiff corporation is not the successor in interest of the respective claims of the several tribes merged by the treaty mentioned, of date May 30, 1854. I think the findings, especially finding No. 5--support the conclusion that the plaintiff corporation is the successor in interest of the respective claims of the tribes which were merged by the treaty of 1854. Article 6 of the 1854 treaty stipulates that the permanent annuities of \$3,000 and \$800 due to the Wea and Piankeshaw Nation, respectively, be relinquished and released and that in lieu thereof the united tribes as an entity are given a consideration to belong equally to all its members; and that the cessions of land made by other of the merged tribes to the single entity into which they had been merged should thereafter belong to the members of the said merged tribes equally--all which provisions impel me to the conclusion that previously separated tribes no longer retained in their separate right any property or claim--but that all were thereafter to be the property of the united tribes of Peoria, Kaskaskia, Wea and Piankeshaw as a single entity. This conclusion, in my opinion, will require that any award made herein be made to the petitioning corporation. Therefore, I do not think proof of descendancy from any particular tribe necessary.

Edgar E. Witt  
Chief Commissioner