

BEFORE THE INDIAN CLAIMS COMMISSION

THE ABSENTEE SHAWNEE TRIBE OF)
 OKLAHOMA and RILEY M. HOOD on)
 behalf of THE SHAWNEE NATION,)
)
 Petitioners,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket 334
Amended

Decided June 19, 1958

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The petitioner, the Absentee Shawnee Tribe of Indians of Oklahoma, an organization recognized by the Secretary of the Interior, has the authority and capacity to maintain this claim under the provisions of the Indian Claims Commission Act for and in behalf of the descendants of the Shawnee Tribe or Nation (as it existed in 1854) as may be entitled to participate in any recovery herein.

2. (a) The lands involved in this case were set apart for the Shawnee Indians by the United States pursuant to the Treaties of November 7, 1825, (7 Stat. 284), and August 8, 1831 (7 Stat. 355).

(b) The Shawnee tract, including the lands ceded and the lands reserved, is located in what is now the eastern part of the State of Kansas. The eastern boundary of the tract is the Missouri border. The tract extends westward for approximately 120 miles to a line extending southward from approximately the situs of Fort Riley, Kansas, then existing

a military post. The Kansas River forms the northern boundary of the tract westward from the Missouri border for a distance of about sixty miles. The tract includes the sites of Lawrence, Topeka and other towns which were established in 1854 following the negotiation of the Treaty of May 10, 1854 (10 Stat. 1053), ratified by the Senate on August 2, 1854, and proclaimed by the President on November 2, 1854. The lands are described in the treaty of cession as follows:

Beginning at a point in the western boundary of the State of Missouri, three miles south of where said boundary crosses the mouth of Kansas River, thence continuing south and coinciding with said boundary for twenty-five miles; thence due west one hundred and twenty miles; thence due north, until said line shall intersect the southern boundary of the Kansas reservation; thence due east, coinciding with the southern boundary of said reservation, to the termination thereof; thence due north, coinciding with the eastern boundary of said reservation, to the southern shore of the Kansas River; thence along said southern shore of said river, to where a line from the place of beginning drawn due west, shall intersect the same.

The aforesaid lands include all of present-day Johnson County and greater or lesser parts of Douglas, Shawnee, Osage, Miami, Franklin, Wabaunsee, Lyon, Morris, and Geary counties in Kansas.

(c) The Shawnee tract contained 1,604,956 acres all of which were technically ceded to the United States in the 1854 treaty. By the terms of said treaty, however, the United States re-ceded to the Shawnees an area which contained 200,166 acres, making a net cession to the United States of the 1,404,790 acres which are the subject of the controversy herein (Tr. 246). In connection with the 200,166 acres of land re-ceded hereinafter referred to as the "Shawnee Reservation"), with insignificant exceptions, the Shawnees were to choose parcels from that part of the

entire tract lying between the Missouri border and a line parallel there-
thirty miles west thereof (Article II).

3. (a) While the setting aside of lands in Kansas for the Shawnees and other tribes had been made in contemplation that the lands would remain their permanent homes, there developed by the 1850's a strong demand that Kansas be opened to white settlement. The rapid advance of settlement and the extension of the western boundary of the United States to the Pacific Coast as a result of the annexation of Texas in 1845, the establishing of title to the Oregon Territory in 1846 and the cession by Mexico in 1848 with the resulting passage of emigrants through the Indian lands were two main factors responsible for the demand that the title to the Indian lands in Kansas and Nebraska be extinguished in whole or in part.

(b) By a provision of the Act of Congress of March 3, 1853 (10 Stat. 226, 238), the President of the United States was authorized to negotiate with the Indian tribes west of the States of Missouri and Iowa for the purpose of "securing the assent of said tribes to the settlement of the citizens of the United States upon the lands claimed by said Indians, and for the purpose of extinguishing the title of said Indians in whole or in part to said lands; * * *." Pursuant to that act, the President designated the Commissioner of Indian Affairs to conduct the necessary negotiations with the Indians and in the summer of 1853, the Commissioner (Mr. Manypenny) paid a preliminary visit to the Indian country in question for the purpose of exploring it and obtaining the information necessary to prepare full and detailed instructions as to the terms and

conditions of the treaties he had been directed to negotiate. On this trip Commissioner Manypenny visited and held councils with most of the Indian tribes located immediately west of Missouri and Iowa, including the Shawnee Tribe, explaining to them the objects of his visit to their country. In his Report for 1853 to the Secretary of the Interior (November 9, 1853), in telling of his trip, Commissioner Manypenny stated that the Shawnee, "as their only reply, proposed to sell the United States one million of acres, reserving to themselves six hundred thousand (600,000) acres adjoining the State of Missouri. * * *." Mr. Manypenny further reported that he had found the tribes alarmed because whites had gone over into the Indian country to explore it with the intention to locate on it but that they had returned. The Commissioner stated with respect to the lands he had examined that:

The specific grants to different tribes west of Missouri and Iowa, (what is generally termed Nebraska,) are in tracts that come up to the western boundaries of those States, and run back west, a greater or less distance, for quantity. These grants embody, no doubt, the best lands in the Indian country. The quality of the soil, for the most part, is of a very superior character, but portions of the lands are entirely destitute of timber. A number of roads to New Mexico, to California, and Oregon, pass through this country over these lands, and are travelled by numerous bodies of emigrants every year.

Mr. Manypenny did not conclude any treaties on his trip to said Indian country in 1853 because those tribes willing to cede their lands desired to retain portions of their reservations.

4. In the spring of 1854 the Shawnee tribal delegation commenced negotiations with the Commissioner of Indian Affairs in Washington, D. C., involving the cession of the Shawnee tract. The negotiations lasted over

about a two-week period. The Commissioner at first wanted to have the Shawnee cede all their lands. The Shawnee offered to sell one million acres to the west, retaining 600,000 acres bordering the State of Missouri. The Commissioner countered with three distinct propositions (1) \$408,750.00 for 1,000,000 acres, (2) \$831,350.00 for 1,450,000 acres, leaving the Shawnee 150,000 acres, and (3) \$960,000.00 for all of their lands. The payments proposed all called for a certain amount to be invested at five percent and the balance paid over a number of years. The delegates thought the land, if they sold it themselves, would bring four million dollars. The Commissioner stated they could if they took the very best land and "made that a standard for the rest, worthless and indifferent, etc. * * *." The Commissioner stated he knew some of the lands were "worth a good price--some of it for little or nothing like lands in other countries. * * *." The delegates countered with an offer to sell 1,200,000 acres of "the upper part of their land" for \$1.25 per acre. The Commissioner next offered to sell their lands for them at public sale with the net proceeds going to the Indians. This proposal the Indians later rejected when again made by the Commissioner. The Commissioner next offered to meet the Indian's demand for a payment to be included for trespass damage caused by whites and to increase the area to be retained by the tribe to 200,000 acres. The delegates informed the Commissioner they were willing to cede 1,400,000 acres, retaining 200,000 acres, but that they wanted one million dollars as payment. This the Commissioner said he would not approve. Manypenny in distinguishing between his first two propositions stressed that he was offering about \$400,000 for the 1,000,000 acres on the west and

in the second proposition increased the offer \$400,000 more or a total of \$831,350 if the 400,00 acres on the east end were included in the cession. It was this second proposition that finally was accepted by the Indians with an additional \$25,000.00 to be paid for trespass damages except the Indians rejected the plan of payment over a long period of time and asked that payment be made in an eight-year period which was agreed to by the Commissioner (Pet. Ex. 290). In seeking the advice of the Secretary of the Interior during the course of the negotiations the Commissioner reported, "My proposition if reduced to a cash payment, would be upwards of 40 cents, and theirs upwards of 50 cents per acre." (Pet. Ex. 291).

5. The Shawnee tract was favorably located in relation to accessibility. The Kansas River was known by 1854 to be navigable in high water for steamboats of light draft. This river afforded a major highway along approximately the eastern half of the tract. Two major roads, the great Santa Fe Road and an important branch of the California Road, extended through the tract from the northeast corner. The California road left the tract near Topeka in Range 15 East and the Santa Fe Road extended southwest to Range 11 East where it dipped southward out of the tract. In addition, there were numerous connecting roads and trails throughout the eastern portion of the tract. In the western part there existed the Fort Riley-Council Grove Road and the Fort Riley-One Hundred and Ten Road as well as a branch of the Santa Fe Road leading northeastward toward Fort Lawrence. There were no railroads in Kansas at the time but there was every reason to believe a railroad would be built through the Shawnee tract along

the Kansas River or along the Santa Fe Trail or both but not for a few years after 1854.

6. Differences exist between the eastern two-thirds, more or less, and the western one-third, more or less, of the Shawnee tract. These differences relate to certain geographical, topological, and historical considerations, including the history of the sales subsequent to the treaty of cession. Petitioner estimates 932,138 acres in the East Shawnee lands and 472,652 acres in the West Shawnee lands. Defendant's appraiser figured the Western Shawnee lands at roughly 500,000 acres. The East Shawnee lands belong, according to the United States Soil Conservation study, to the subdivision called "the East Central Prairies Section" or the "East Prairies and Interspersed Woodlands Region." The western third of the Shawnee tract belonged to two different subdivisions of the "Residual Prairie and Interspersed Woodlands"--the "Bluestem Hills" and the "Central Kansas Prairie" regions. The Eastern Shawnee lands are moderately rolling country with rock outcrops on the occasional low hills and on the breaks and steep slopes along the drainage ways. Generally, the elevation ranges from 1200 to 1250 feet in the west to 800 feet in the east. The Kansas River and its tributaries drain the northern portion, the Osage River and its tributaries drain the central part of the Tract and the Neosho and its tributaries drain the southwestern section. The common bedrock consists of limestone, and shale, related to the lower Permian and Pennsylvania geological period. The average rainfall of the Eastern Shawnee lands ranges from 35 to 39 inches from west toward the east, the average growing season ranges from 180 to 190 days, and the average annual temperature ranges from fifty-five to fifty-seven degrees. The western third of the Shawnee tract is characterized by the "Limestone-Flint Hills"

section (which today is covered with Bluestem grass) predominantly in the north and northwest and the "Central Kansas Section" of the "Central Kansas Prairies Region." The terrain of the latter is smooth to gently rolling with strongly rolling to broken streambreaks. The elevation ranges from 1200 to 1500 feet, the average rainfall is from 20 to 33 inches, growing season averages 170 to 190 days, and annual average temperature ranges from 54 to 58 degrees. The "Bluestem" area had a more heavily rolling character with stream breaks; its predominant elevation, precipitation, growing days average, and temperature are about the same as the "Central Prairies Section."

7. (a) Several factors in valuing lands in the 1850's were uppermost in the consideration of those persons interested in dealing in lands including bona fide purchasers, sellers, appraisers and speculators. Among the more important items to be considered were location, fertility of the soil, timber and accessibility to transportation. In 1856, the Commissioner of Indian Affairs in his instructions to the Commissioners appointed to appraise the Indian Trust Lands in Kansas directed that:

In fixing a valuation you will regard the eligibility and quality of the lands, the proximity of the same to the Missouri or the Kansas River, or other water courses, to timber, to great leading roads, or other advantages, and their position with reference to eligible town or City sites, and those all will be taken into view and with any other causes which in your opinion will add value to these lands, will be made an element in fixing the price per acre at which you will appraise them. They will be appraised without any reference to the improvements which may have been upon them but while these are left out of view, the improvements which have been made upon adjacent lands other than trust lands within the Territory of Kansas, so far as the same may add value to the trust lands, you should give due weight thereto, and allow this element of value to have its fair influence on your judgment. * * * Pet. Ex. 28

(b) A study of the settlement pattern up to 1854 in adjoining eastern Missouri showed that location and timber were two important factors considered by the settlers on public lands. Timber and water-courses attracted the settler and large areas of open prairie were not sought after. (Def. Ex. 1, pp. 109-120; p. 141). This preference of the settler is set forth also in A. T. Andreas', History of the State of Kansas, 1883 (Pet. Ex. 114) wherein it is stated in regard to the early history of Morris County, which was partly within the Shawnee Tract on the extreme western end:

Each year brought its complement of settlers, and in those days of trouble and uncertainty, each sought a location as near to the center of population as possible, and as a consequence, the lands located along the Neosho River were eagerly sought and readily taken. Two causes, and, probably, a third, contributed to the desirability of these lands. The first, doubtless, was the heavy belt of timber on either side of the stream; the second, the choice and fertile soil of the valley; and the third, their proximity to Council Grove, which, by this time, was a point of considerable importance as regards trade, and, also, as considered, in point of population.

That some considered the scarcity of timber in Kansas as a drawback to settlement is pointed out in A Journey Through Kansas, by C. B. Boynton and T. B. Mason, published in 1855. Although the authors thought there was sufficient timber if there was judicious management and other materials such as limestone and coal to substitute for timber, they wrote (Pet. Ex. 122):

The general impression seems to be that the deficiency of timber is so great as to present a serious, if not insurmountable obstacle to the settlement of the country, and consequently each squatter has made it his first object to secure a tract of timber both indispensable for his own farm, and as a profitable investment, from the opinion that timber and fuel must be both scarce and dear.

