

BEFORE THE INDIAN CLAIMS COMMISSION

THE CADDO TRIBE OF OKLAHOMA, ET AL.,)
)
 Plaintiffs,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 226

Decided: January 22, 1960

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. Norton,
 Attorneys for Defendant.

OPINION OF THE COMMISSION

Witt, Chief Commissioner, delivered the opinion of the Commission.

PRELIMINARY STATEMENT

Analysis of Plaintiffs' Exhibits MC 1-96 and MCFE 1-14
Excluded by Order of the Commission 12/9/58

Since the Commission by its decision and finding of March 3, 1956, rejected the Caddo claim to that portion of Royce Cession 202 above the Sulphur River in Arkansas, plaintiffs have sought repeatedly to have the Commission reverse its finding in regard to said land. Plaintiffs' counsel in the heat of partisanship has labeled the finding of this Commission arbitrary and capricious, and it is because of this that reference is here made to the claims of plaintiffs to lands above the Sulphur River in Arkansas, and especially to the documentary evidence offered by plaintiffs in Exhibits

MC-1 to MC-96 and MCFP-1 to MCFP-14, the admission of which was denied by the Commission.

The Commission found, and of course thought and still thinks, that the evidence including that found in the Exhibits, the admission of which was denied, that it is established by the great weight of the evidence that in the late 1700's the Caddo Indians living in the Big Bend region of the Red River north of the Sulphur River abandoned said land and never attempted to return thereto. The Commission thinks that the Caddo Indians living in that region at said time became embroiled in open warfare with the Osage Tribe from the north; that the Osage superiority forced the Caddos to withdraw from such village sites as they had at the time in said territory to new locations on the south side of the Red River; that the continuing Osage pressure coupled with the serious Caddo reduced population, principally through the ravages of disease, necessitated additional abandonment of territory and that they in their entirety receded below the Sulphur River and by 1800 all Caddos were located down near Caddo Lake in Caddo Parish, Louisiana, and at the time of the Treaty Cession in 1835 the Caddos used and occupied only land situated to the south of the Sulphur River. The land involved in the Caddo Parish in 1835 was a part of what was called the Louisiana Purchase and the Sovereignty of the United States became attached thereto at the time of this purchase in 1803, and therefore only whatever lands belonging to the Caddos in 1803 could be passed by cession of the Caddos to the United States. There is no record of the Caddos ever attempting to return to these lands north of the Sulphur River after 1800.

Early accounts of Caddo difficulties with the Osage Indians and the desertion of their northern village sites are reflected in the Spanish

reports of the 1790's. ^{1/} In 1805 John Sibley, who became the first Indian Agent to serve the Caddo nation, told of the Caddo movement to the Soda Lake region in Louisiana, which is well below the Sulphur River. ^{2/} The 1806 Freeman-Gustis expedition up the Red River also recorded the abandoned Caddo village sites above the Sulphur River. ^{3/} Such authorities as Dr. Swanton

1/ Letter of March 27, 1790, from Louis De Blanc, the Spanish Commandant at Natchitoches to Governor Miro:

The Great Caddo tribe of Indians found itself obliged two years ago to change the location of its village on account of the continual war being waged upon them by the Osage tribe. Being persecuted incessantly by their enemies, these Indians were obliged last month to take refuge in the village of the Little Caddo (P. 37, Pl. Ex. 78).

2/ John Sibley, Natchitoches, April 5, 1805:

Caddoques - Live about thirty-five miles west of the main branch of Red River, on a bayou or creek, called by them, Soda, which is navigable for piroques only, within about six miles of their village, and that only in the rainy season. They are distant from Natchitoches about 120 miles, the nearest route by land, and in nearly a northwest position. They have lived where they now do, only five years. The first year they moved there, the small pox got amongst them, and destroyed nearly one half of them; They formerly lived on the south bank of the river, by the course of the river 375 miles higher up which had been the residence of their ancestors from time immemorial" (P. 721, American State Papers, Vol. IV).

3/ Freeman-Gustis Expedition, 1806:

The Caddos reside 50 miles from the Coashuta village, on a small creek, which empties into a lake that communicates with the river a little above the raft. It is now eleven years since they fixed on that place for their residence. They formerly lived on the river, in a large prairie, said to be 150 leagues higher up; from which the Osages drove them (P. 61, Pl. Ex. 78).

NOTE - The "Coashuta" village is about 30 miles below the agency house at Sulphur fork.

agree generally with the Caddo abandonment of the Big Bend region of the Red River above the Sulphur River prior to 1800.

Indicative of the growing concentration of Caddo activity within Royce Cession 202 south of the Sulphur River during the pre-treaty years was the successive movements of the agency house from its location at Sulphur Fork to new positions farther south in Caddo Parish, Louisiana. The various reports of the Indian Agents during these pre-treaty years do not picture any Caddo use and occupancy north of the Sulphur River within Royce Cession 202.

Turning now to the testimony of plaintiffs' expert, Dr. Lange, with respect to Caddo use and occupancy within Royce Cession 202, we find his testimony is perfectly consistent with the documentary evidence in support of the Commission's findings in this regard. In his extensive reports on behalf of Caddo claims, Dr. Lange has set out the following:

By the end of the eighteenth century the Caddo appear to have been pushed from the Ouachita by both European and American settlers as well as by Indian tribes moving westward from east of the Mississippi. Similarly, due primarily to pressure from the Osage moving south from the Arkansas drainage, the Caddo continued to hunt in the prairies of southeastern Oklahoma and adjacent Texas. 4/ Such trips could be made only at the risk of attacks from the Osage and other enemy peoples, but the Caddo did continue to make them. The pull back was essentially of the permanent villages; if left in their former locations they were exposed to raiders, especially during periods when their own warriors were away on hunting trips. There is no evidence that the Caddo claims to this portion of the country were renounced. 5/

4/ Caddo hunting activity was therefore west and outside of Royce Cession 202.

5/ P. 42, Pl. Ex. 78.

Dr. Lange attempted to explain away the facts of Caddo abandonment as reported in the Freeman-Custis expedition in the following manner:

Due primarily to pressure from the Osage, a number of former encampments then abandoned, we observed in the vicinity of the big bend of the Red River. While these camping sites were no longer safe to occupy as permanent village sites, it is quite clear that the Caddo, and others, continued to look upon the area as belonging to them. The combination of their own diminishing numbers and the mounting pressure of the Osages war parties made occupancy no longer feasible. 6/

On December 9, 1958, the valuation hearing on the Caddo award was begun and at that time counsel for the plaintiffs again moved the Commission to reconsider the entire question of Caddo aboriginal claims north of the Sulphur River within Royce Cession 202. In support of motion and under the label of new discovered evidence, some 96 documents were tendered for the Commission's consideration as new evidence establishing Caddo title to this area. 7/ The Commission after brief argument and an examination of the

6/ P. 61, 62, Pl. Ex. 78. See also Tr. 545-553.

7/ Tr. 995 - Docket 226 - 12/9/58.

After discussing the character of the proposed new documentary evidence MC-1 to 96, plaintiffs' counsel was asked the following question:

Chief Commissioner Witt: Why didn't you offer that evidence when this issue was before this Commission?

Mr. McGuire: We didn't know that it existed.

Thereafter formal tender of proof was made in the following manner by plaintiffs' counsel (Tr. 998):

Mr. McGuire:.....

The plaintiffs also make proffer of further proof consisting of documents numbered MC-1 to 96, with a table of contents, and say that said documents are for the most part from the Archives of the United States, and further say that many of said documents have been discovered and collected since the last hearing of this case before the Indian Claims Commission. By means of said public documents the plaintiffs offer to prove that the plaintiff's ancestors used and continued to use in Indian manner the territory north of Sulphur Fork River and south of Red River within the present limits of Miller County and within the boundaries of the treaty of July 1835

proffered evidence, denied plaintiffs' motion and excluded the exhibits. ^{8/}

These exhibits which plaintiffs' counsel has gathered in one volume and identified as MC 1-96 and MCFE 1-14 have been examined and analyzed. Of the exhibits, approximately forty-five had already been admitted into evidence and considered by the Commission. Another thirteen or so come from the same source from which plaintiffs have produced other documents and reports which he placed in the record, but to the extent applicable to the issue are merely cumulative. In addition there are twenty-five documents which are photostats of selected cash entries in the records of the United States Land Office in Washington, Arkansas, covering the period from 1840 to 1843. These exhibits purport to show that in the post treaty years some twenty-five individuals sought to perfect their titles under applicable preemption statutes to certain tracts on public lands, which tracts averaged about one hundred sixty acres and were located for the most part on the south side of the Red River within Royce Cession 202. No showing is made as to how these post treaty preemption sales are material to the question of establishing Caddo Indian title to any portion of the ceded area.

Of the remaining exhibits, plaintiffs' counsel has placed a great deal of emphasis upon a continuing article by Dr. Rex W. Strickland appearing in the March 1940 and March 1941 editions of the Chronicles of Oklahoma. In his documented work Dr. Strickland treats in great detail the development and early history of Miller County, Arkansas. Quite apart from supporting Caddo aboriginal claims to that portion of Royce Cession 202 north of the Sulphur River, Dr. Strickland's treatise spotlights the glaring weakness in a great deal of plaintiffs' evidence and proposed evidence. Dr. Strickland

clearly points out that the "Miller County" of the pre-treaty days is not the same Miller County, Arkansas, of today. Before the 1835 Caddo treaty Miller County was entirely west and northwest of the western boundary of Royce Cession 202. ^{9/} Consequently, plaintiffs' many references in the evidence to events and occurrences taking place at "Jonesborough," "Pecan Point," "Ft. Smith," "Ft. Towson," "Kiamichi River," "Shawnee Town," "Buffalo Crossing," etc., while located within the boundaries of the then "Miller County," are nevertheless references to places perhaps fifty or even a hundred miles west and northwest of the Caddo cession. Miller County, as we know it today, was not established by the Arkansas legislature until ^{10/} 1874.

In summation it can be said that in our opinion none of the 96 exhibits proffered by the plaintiffs controvert in any degree the Commission's findings on Caddo title to Royce Cession 202. Collectively the exhibits do not qualify as newly discovered evidence even under a most liberal interpretation of the

9/ P. 43; MC-3.

Thus after October 20, 1828, Miller County, Arkansas, territory lay entirely within the limits of the present state of Texas, as indeed did a good half of Sevier County. The boundaries of the county were not immediately delimited but it is safe to say that the population of the amorphous area lived along Red River between Pecan Point and Upper Pine Creek.

10/ A map prepared under the direction of Dr. Strickland and captioned "Map of Miller County, 1820" shows that at no time prior to 1874 was any portion of Royce Cession 202 within "Miller County," Arkansas.

governing rules. Such relevancy as it has would not produce a different result if the Commission granted a rehearing to admit such as not already in evidence. ^{11/} In fact this Commission thinks plaintiffs' MC 1-96 gives additional support to the Commission's previous holding. One need only to look again at the aforementioned article by Dr. Strickland to find the following statement which sums up quite appropriately the overall Caddo situation in 1815 within the Big Bend region of the Red River north of Sulphur Fork:

But the land itself was entirely devoid of white inhabitants and few if any Indians resided in the area. The Caddos, who since the time when the memory of man ran not to the contrary had lived along the banks of Red River above the Great Raft, had deserted their ancient habitat two decades before to escape the vengeance of their inveterate enemies, the Osages, who (in 1795) had massacred the greater part of the inhabitants of the villages on Long Prairie. Consequently with the removal of their customers the French traders from Natchitoches ceased to visit the land for the purpose of barter. Thus the fertile valley of the Red was left open for the coming of the American frontiersmen bent upon finding suitable hunting and trapping grounds and farm lands. ^{12/}

11/ Rule §503.33. Motions for rehearing and for amendment of findings

b. A motion for hearing shall be founded upon one or more of the following grounds: and third, newly discovered evidence

(3) A motion by either plaintiff or defendant upon newly discovered evidence shall not be entertained unless it appears therein that the newly discovered evidence came to the knowledge of such party, its attorneys of record, or counsel after hearing and before the motion was made; that it was not for want of due diligence that it did not sooner come to its knowledge; that it is so material that it would probably produce a different determination if the rehearing were granted; and that it is not cumulative. (21 Fed. Reg. 8484).

12/ P. 13; MC-2.

OPINION ON VALUE

On March 8, 1956, the Commission determined that, as of the effective date of the 1835 Caddo Treaty, the plaintiffs herein, the Caddo Tribe of Oklahoma, were the aboriginal owners of a specific tract of land within Royce Cession 202. The area awarded to the plaintiff tribe is situated east of the Red River in Caddo Parish, Louisiana, and extends as far north as the Sulphur River in Arkansas. A more accurate description is set out in the Commission's Finding 12 as amended by the Commission's order of January 2, 1957. For the sake of convenience we shall have occasion in the course of this opinion to refer to the area in question as either the subject lands, Caddo lands, or Caddo tract as the case may be.

The issue to be resolved at this state is the acreage and the fair market value of the Caddo lands as of the effective date of the 1835 Caddo Treaty. We find this date to be January 26, 1836, the day Congress ratified the treaty provisions. We shall then determine whether the \$80,000 paid for the Caddo lands under the terms of the 1835 treaty is in fact an unconscionable consideration within the meaning of the Indian Claims Commission Act.

Both sides have introduced evidence as to value and have briefed the question. Nevertheless, they are poles apart on their ultimate evaluations of the entire tract. The plaintiffs contend that as of 1835 the subject lands had an estimated fair market value of \$1,476,357.00 while the defendant argues that \$207,650.00 is a more accurate figure. In like manner both sides disagree as to the total acreage involved, although their differences are relatively slight.

The Caddo tract is a sizeable piece of land of a little in excess of six hundred thousand acres. The Commission finds that the defendant's acreage computations, which are derived from the township surveys in Caddo Parish, Louisiana, and in Miller County, Arkansas, are the more accurate. The Commission therefore finds that the Caddo tract contains 636,321 acres of both land and watered areas. From this gross average it is necessary to subtract the two tracts reserved under the 1835 treaty for the benefit of Francois Grappe and Larkin Edwards, amounting to 18,353.6 (Fdg. 16). This leaves a net acreage of 617,967.4 to be valued as of the effective date of the 1835 Caddo treaty.

For the most part the evidence shows a general topographical continuity spread out over the entire tract. Many lakes, bayous, rivers, and streams lace the area, and all eventually find their way to the Red River. This latter river is a meandering and slow moving body of water that flows in a general north and south direction, and forms the eastern boundary of the Caddo tract. It affords the principal means of drainage and the main artery of water travel in this region. The average elevation above sea level within Caddo Parish is 180 feet, while in that part of Miller County, south of the Sulphur River, the elevation varies between 200 and 370 feet.

Within the Caddo tract the uplands are gently rolling and are separated from the bottom lands and lake region by a low bluff line. Although the early settlers preferred the uplands due to the better timber and water facilities, the more fertile acreage proved to be in the lowlands where the rich topsoil had been washed down from above. The

upland soil is mostly of a sandy alluvial deposit.

Climatically this entire area experiences cool winters and relatively warm summers with the growing season averaging about 254 days. The first killing frost may begin around the second week in November, and could be felt as late as the first week in March. Annual rainfall averages just over 45 inches, but is heavy enough at times to cause periodic inundation in the bottom sections particularly when the Red River and its tributaries would overflow. There was no levee protection for the lowlands within the Caddo tract until many years after the 1835 treaty.

Because of the numerous bayous, lakes, and small streams, water travel predominated. Overland trails were few and far between, and the location of Indian village sites on river banks and lake shores demonstrates the Indian's reliance on the canoe as the principal means of transportation.

In the years just prior to the Caddo cession the Red River was largely obstructed by the "Great Raft," a rare phenomena which grew into one of the largest natural log jams to be found in any river. Navigation to the upper regions of the Red River was accomplished by circumventing the Raft through the connecting bayous, streams and lakes. Besides being a navigational obstruction the Raft impaired drainage throughout the entire area. Heavy rainfall caused a backing up and diverting of huge quantities of water into the tributaries and connecting waters of the Red River. Periodic flooding of the lowlands was the result of the river being unable to move off the water in any sizeable volume. Its fragile banks would then give way causing more timber to fall into the slow moving water, and thus the raft continued to grow as log was piled up against log.

In 1833 the legendary Henry Miller Shreve, who was one of the founders of Shreveport, undertook the task of removing the Great Raft. At that time the foot of the raft was located near the mouth of Loggy Bayou which is about 80 miles below the future site of Shreveport. In his first year Shreve cleared 71 miles of the river ending up just opposite the site of Caddo Agency. It took him an additional five years to remove the remaining 70 miles. Despite his magnificent effort in clearing the Red River, its success was only temporary and soon thereafter the Raft began to re-form. It was not until 1878 that the U. S. Army Engineers finally arrested the causes of its regrowth and left open the Red River free of obstruction.

Henry Shreve nevertheless envisioned the possibilities that lay in developing the rich alluvial lands that would be reclaimed upon final removal of the Great Raft. The city of Shreveport was to be no accident but a carefully planned city situated on one of the choicest spots along the entire river. In 1834, he wrote to the Commissioner of Indian Affairs that this land, when finally reclaimed, would contain about seventy thousand acres and sell for an average price of near \$4.00 per acre.

In 1837 Shreveport was founded by the Shrevetown Company, and apart from rapid sale of townsites and neighboring property, there was no unusual demand for other lands within the Caddo tract during the early post treaty years. The Caddo parish township surveys were completed during the late 1830's. That portion situated in Miller County, Arkansas, was not surveyed until the early 1840's. The adjacent lands on the east

side of the Red River had been surveyed and open for settlement several years before the Caddo cession. The former Quapaw lands in particular had been surveyed as early as 1818 and the job completed by 1823.

Population figures for Caddo parish were first recorded in the 1840 U. S. Census report, which is three years after the founding of Shreveport. At that time the total white population stood at 2,414 while the slave population was 2,837. The total population of the whole state of Louisiana in 1840 was 352,000.

At the time of the Caddo cession, the Arkansas Territory was sparsely settled. The total population in 1820 was barely over 14,000. In 1830 it reached 30,000, and the 1840 census figures show a total population of 97,574.

Since mineral development was unknown at the time of the Caddo cession, timber must be regarded as the prime natural resource in the area. There was pine timber in the uplands and hardwoods along the bayous and lakes. In the swamp areas there could be found cypress, cottonwoods, and willows. Timber, however, was not a merchantable or commercial item in the early post treaty years, it being economically inaccessible. Transportation was the chief problem. The great Raft had practically closed the Red River above Shreveport. There were no railroads nor immediate prospects of any being built. Overland trails were few and far between. The value of timber thus depended for the most part on the individual requirements of the homesteader. If needed for fencing or construction it was a blessing, but if fields had to be cleared for planting it was a burden. The Commission therefore views the value of the standing timber on the Caddo tract as dependent on

individual needs and of a purely local demand, and as such it is just one factor to be considered in the overall valuation of the land.

As of the date of valuation the principal agricultural activities had been carried on by the Caddo Indians. They were good farmers and able to cultivate extensive fields of crops near their village sites. Corn, maize and pumpkins were the Indian staples. White squatters who went upon the Caddo lands in the pre-treaty days were reported to have cultivated fields of cotton besides raising vegetables. After the cession and when settlers had lawfully moved into the area, cotton did become the staple, marketable crop.

Cotton was grown under a "one crop system" whereby the land was utilized until exhausted and then new fields developed. As late as 1907 this early Civil War method of cotton raising was still in vogue, with the lands being worked principally by negro tenant farmers. At that time approximately two thirds of Caddo parish was still uncleared land.

Considering all factors, the topographical, soil, and climatic conditions, the transportation problems both by water and overland and the inadequate means of flood control, the Commission is of the opinion that as of the date 1835, the highest and best use which could be made of the Caddo lands by a hypothetical purchaser was for agricultural purposes incident to subsistence homesteading.

In placing an 1835 dollars and cents value on the Caddo lands the plaintiffs have introduced several exhibits consisting of abstracts of purported comparable sales of land within Caddo parish, Louisiana, and

