

BEFORE THE INDIAN CLAIMS COMMISSION

PAWNEE INDIAN TRIBE OF OKLAHOMA,)	
consisting of the four con-)	
federated bands of Pawnee Indians,)	
namely: Chau or Grand Pawnee,)	
Kitkehahki or Republican Pawnee,)	
Pitahauerat or Tappage Pawnee,)	
and Skidi, Loup or Wolf Pawnee,)	
)	
Claimant,)	
)	
v.)	Docket No. 10
)	
UNITED STATES,)	
)	
Defendant.)	

Decided: June 14, 1960

Appearances:

John W. Wheeler, John Wheeler, Jr.,
and Robert L. Wheeler,
Attorneys for Claimant.

Ralph A. Barney, with whom was
Mr. Assistant Attorney General,
Perry W. Morton,
Attorneys for Defendant.

OPINION OF THE COMMISSION

Holt, Commissioner, delivered the opinion of the Commission.

This case is now before the Commission for a determination of:

- (1) The acreage of the tract of land referred to as the Claims I and II area, the value thereof as of October 9, 1833, the value of the consideration for the cession to the United States, and the amount constituting the United States' payment on the claim.

(2) The value of the tract referred to as the Claim III area as of August 6, 1848, and the amount of the consideration paid.

(3) The acreage of the tract described as the Claim IV area, the value thereof as of September 24, 1857, the value of the consideration for the cession to the United States, and the amount constituting the United States' payment on the claim.

(4) The value of the 4800 acres included in the Claim V area as of 1875.

Claims I and II Area

The Commission has hereinbefore determined that petitioner held the area referred to as the Claims I and II area (as described in Finding of Fact No. 30) under original Indian title and that this tract was ceded by the petitioner tribe to the United States by the Treaty of October 9, 1833. By a stipulation, filed with this Commission on October 20, 1958, the parties have agreed that the Claims I and II area contains 13,074,000 acres, which area is to be valued as of October 9, 1833.

Based upon all the evidence of record, as well as an examination of other pertinent documents, the Commission has entered detailed findings of fact concerning the various factors considered in arriving at an ultimate determination of value. As detailed in those findings of fact the Commission has found that the Claims I and II area was located in south-central Nebraska and north-central Kansas with the Platte River in Nebraska forming the northern boundary and the east boundary located about 50 miles west of the Missouri River. The tract is roughly rectangular extending about 200 miles from east to west and about 90 miles from north

to south. A total of 8,568,400 acres comes within the present State of Nebraska while the remaining 4,505,600 acres are in the present State of Kansas.

The eastern section of the tract is composed of undulating to gently rolling upland. The central area is generally a level plains region while the western portion is characterized by rough, broken lands. The area is watered by the Platte, the Republican, the Solomon, Big Blue, and Little Blue rivers. The average rainfall within the area is generally favorable for crop production except that the area, especially the western portion, is subject to periods of drought with hot, dry winds causing serious and extensive damage to crops. The temperature during the growing season is very favorable to crop growth.

There was no timber of any commercial value within the tract although there were scattered locations of timber along the rivers, creeks and other water courses. There was an adequate supply of water in most of the Kansas portion of the tract with poor water supply in the central and western portions of the Nebraska area. There was some limestone, mostly in the Kansas portion of the area, which was useful for building purposes. There were some salt springs within the tract, and while there was evidence of some minerals, none had any commercial value.

The area contained good bottom land along the river courses. There was first rate upland soil in the eastern and central parts of the area with the western portion consisting of poor, third-rate soil. The Commission has found that the eastern two-thirds of the subject tract had a highest and best use for cultivation while the western one-third had

a highest and best use for grazing. As detailed in our Finding of Fact No. 64, the conclusions of petitioner's experts to the effect that 75 percent of the area would have been suitable for cultivation are not supported by the descriptions of the area as contained in the original surveyors' notes. While the Commission has considered the evidence urged by the petitioners concerning the opinions of various government officials and explorers who had viewed portions of the area in 1833, and prior thereto, we find such evidence to be of a very general nature. We feel that the detailed reports of the original surveyors on the section by section surveys of each township in the tract are the best evidence upon which to base our conclusions as to the various types of land involved and their adaptability to the uses referred to above.

The portion suitable for cultivation would have been used for subsistence farming. In 1833 there were no markets to which agricultural products could have been profitably shipped from the Claims I and II area.

There is no evidence of any demand for the grazing lands for extensive ranch operations. Further, during this period in the United States the practice of the "free range" was recognized. The Supreme Court said in Buford v. Houtz (1890) 133 U. S. 320, 326, "We are of opinion that there is an implied license, growing out of the custom of nearly a hundred years, that the public lands of the United States, especially those in which the native grasses are adapted to the growth and fattening of domestic animals, shall be free to the people who seek to use them, where they are left open and uninclosed, and no act of

government forbids this use." The Court went on to point out that a large portion of the beef which had been consumed in this country was the meat of cattle thus raised, it being the custom for ranchers to raise and fatten their herds upon the uninclosed lands of the government. The Court went on to say on page 327, "Of course the instances became numerous in which persons purchasing land from the United States put only a small part of it in cultivation, and permitted the balance to remain uninclosed and in no way separated from the lands owned by the United States. All the neighbors who had settled near one of these prairies or on it, and all the people who had cattle that they wished to graze upon the public lands, permitted them to run at large over the whole region, fattening upon the public lands of the United States and upon the uninclosed lands of the private individual without let or hindrance."

The only means of transportation within the subject area in 1833 was by means of overland trails. As described in our Finding of Fact No. 61, the Oregon Trail had two branches which passed through the tract from the southeast extending northwest to Ft. Kearney on the Platte River. There were no navigable rivers within the area and railroads, in 1833, were in their infancy on the east coast and would have had no effect on the value of the subject area on the date in question.

In 1833 the Claims I and II area was far removed from the populated sections of the United States. On the valuation date the tract had been a part of the United States for only 30 years, having been acquired from France in 1803. Iowa did not exist at that time as a

territory or a state, and the only states west of the Mississippi River were Louisiana and Missouri. In 1830 the population of the State of Illinois was only 157,000 while Missouri had 140,000 persons and Arkansas only had 30,000 people. The year 1833 was one of prosperity until the fall when there was a recession. The United States population continued its steady increase during that year, commodity prices were generally stable, farm prices were good, and the cost of living was slightly less than in the preceding years. Government finances were unusually favorable for debt retirement, and the Commission has found that a reasonable interest rate to attract the capital required for the purchase of the Claims I and II area in 1833 would have been about 8 percent.

As detailed in our Finding of Fact No. 70, substantial areas of land had been placed on the market in northwest Missouri prior to 1833. Public land had sold at a very slow rate at the \$1.25 per acre price with only 34.7 percent of the area north of the Missouri River having been sold in a 13-year period prior to 1833 and only 20 percent of an area south of the Missouri River having been sold during a 6-year period prior to 1833. As of September 30, 1833, only 10.8 percent of the public lands exposed for sale in the states of Missouri, Arkansas and Illinois had been disposed of leaving a total on that date of 41,978,537 acres of public land in those three states available for purchase.

For some time prior to 1833 there had been agitation to reduce the statutory price of public lands and in 1828 the states of Missouri,

Arkansas and Illinois had reported to the Commissioner of the General Land Office that their states contained public lands ranging in value from 3.5¢ an acre to \$1.00 per acre.

The 1833 treaty of cession was not made for the purpose of acquiring additional public lands to supply the needs of settlers but rather was for the purpose of acquiring lands west of the Mississippi River upon which to relocate emigrant Indian tribes east of the Mississippi River. As specifically provided in the 1833 treaty the petitioner tribe was permitted to use the area as a common hunting ground together with any other friendly Indians which might be permitted by the President to hunt thereon. Accordingly, the tract was not available for purchase by white settlers immediately following its cession by the Pawnee. For this reason there is no evidence concerning the disposition of the public lands within the Claims I and II area or of any other adjoining lands during the period immediately following the 1833 cession. In this respect this case differs from most other claims involving the valuation of Indian lands. Generally the taking of Indian lands, whether by treaty of cession or otherwise, was occasioned by a growing demand for white settlement, and, upon the extinguishment of Indian title, there was no impediment to the development of the area. In such cases the evidence of the public land dispositions and the settlement and uses for the land was indicative of the intensity of the demand for the land about the valuation date and had an important bearing on the resultant market value.

In the instant case the absence of white settlement for about 25 years after the cession does not, in itself, indicate a lack of demand for the lands. In arriving at a market value for the Claims I and II area the Commission is forced to consider a situation in which it is assumed that the lands were available for settlement in 1833, disregarding the fact that the 1833 treaty provided for a continued use of the area by the Indians.

Accordingly, the Commission has set forth in detail its findings of fact concerning the subsequent settlement of the area and land dispositions, referred to by petitioner as "comparable sales." While we realize that none of this evidence relates to factors that could have been known and considered by a prospective buyer and seller on the valuation date, we find such evidence to be useful, in a confirmatory sense, in valuing this tract. In situations of this type, in particular, where there is such absence of evidence of comparable sales and no actual market for lands in the vicinity of the area to be valued, some weight must, of necessity, be given to evidence of the earliest sales of the lands involved and of other comparable lands.

Our findings of fact concerning these "comparable sales" have been set forth in greater detail than is perhaps warranted for purposes of arriving at an ultimate conclusion of the value of the Claims I and II area. But since such evidence has a more particular bearing on the valuations to follow it has been detailed initially to avoid unnecessary duplication in later findings.

While in 1833 there was no actual market for lands west of the Mississippi River, the Commission believes that if the lands west of the Mississippi River had been available for white settlement in 1833 there would have been a limited demand for such lands. Such demand would have existed for land in those areas possessing good farming land, with available water, some timber close to transportation facilities and as near to populated sections as possible.

The Commission's conclusions as to the extent of any demand for the Claims I and II lands are supported, we believe, by the evidence of the rate of increase of white population in the various sections of the subject tract, by the evidence of the sales of land within the area when it became available and by the evidence relating to land dispositions of other areas in the general vicinity.

The first census was taken in Nebraska in 1854, at which time there were 2,832 persons. The population in 1855 was 4,494. The early settlement was generally restricted to the southeast corner of Nebraska and for a short distance along the Platte River. By 1856 only the easternmost counties in Nebraska had been organized. The 1860 census figures by counties, as listed in Finding of Fact No. 65, indicate the limited extent of white settlement in the Nebraska portion of the Claims I and II area. Likewise the population figures for the Kansas counties in the subject tract reveal that the area was sparsely populated in 1860, and the western Kansas Counties in the area were not significantly populated until 1880.

Petitioner's evidence relating to "sales to emigrant Indian tribes" cannot be considered as evidence of the market value of the lands involved in those transfers. As we have stated the transactions were not in fact sales but rather represented reserves, west of the Mississippi, granted to eastern Indian tribes in exchange for or in partial consideration for the cessions of their lands east of the Mississippi. It is clear to the Commission that Henry R. Schoolcraft was making no attempt to place a market value on those lands but was merely stating a value which would be arrived at if the lands involved were assigned the government's minimum statutory price for public lands.

There was on December 14, 1843, an agreement with the Delawares and Wyandot Indians concerning what might be termed a sale by the Delawares to the Wyandot Nation of some 24,960 acres for a consideration amounting to \$1.84 per acre. This transaction has no comparability to the subject tract for the reason that it occurred 10 years after the valuation date for the Claims I and II area; it involved about 25,000 acres (approximately 0.2% of the size of the subject area); the tract was located 140 miles east of the southeast corner of the subject area at the confluence of the Kansas and Missouri Rivers, the present location of Kansas City, Kansas; it was on a navigable river close to an area which was becoming populated; and finally, the consideration was not to be paid in a lump sum but rather over a 10-year period with no provision for payment of interest thereon.

Petitioner's evidence relating to Indian trust land sales are detailed in our Finding of Fact No. 72(b). Those trust land sales involved

areas substantially smaller than the Claims I and II area and occurred some 23 years after the 1833 valuation date involved in this case. The areas involved were all to the east of the Claims I and II area and included lands bordering or close to a navigable river, providing far better transportation, and were near areas which had already been populated and for which there was an immediate and active demand. The tracts were each sold in small tracts, generally in quarter sections (160 acres). The Delaware trust lands sold at an average price of \$1.88 per acre, the Iowa trust lands at an average of \$2.35 per acre, and the Peoria trust lands at an average of \$1.67 per acre. While the Commission has considered the fact that the sales may not have been entirely indicative of the prices which some of the lands might have brought on a free and open market, we do consider that these prices are some indication of the value, 23 years after the instant valuation date, of lands sold in small tracts which were among the most favorably located with respect to transportation and population.

Evidence with respect to railroad sales is detailed in our Finding of Fact No. 72(c). Those sales are even farther removed in point of time from the Claims I and II tract. The evidence of railroad sales covers a period extending from 36 to 46 years after the valuation date for the subject tract. The evidence of sales indicates that buyers during that period were very selective buying only the choicest lands in small lots and paying for them only at very attractive terms.

The evidence of private sales as detailed in our Finding of Fact No. 72(d) covers a period commencing in 1857, 24 years after the date of valuation for the Claims I and II area and extending to 1884, fifty-one years after the valuation date. The sales include very small tracts, some amounting to no more than land the size of town lots, and there are no recorded sales of large acreages. The tabulations included multiple sales and sales of obviously improved land. The sales indicate that even in the period 25 to 50 years after 1833 the settlers were interested in the choicest land with virtually no demand existing for the vast areas of so-called grazing land.

Petitioner has introduced evidence of census value lands in Nebraska and Kansas and urged resort to a tabulation of various sets of census figures to formulate a trend to be extended backward to the 1833 cession date for the purpose of arriving at a "trend value of the lands within Claims I and II at the cession date." This method is that employed by petitioner's expert economist, Mr. John R. Houser, whose report was excluded from evidence in this case. What we said in our opinion of June 26, 1959, concerning Mr. Houser's theory applies equally to the method used by petitioner in arriving at this so-called "trend value." This method is merely a series of mathematical and statistical computations which have no judicially accepted basis for valuing land. It fails to take into consideration any of the recognized factors which bear on market value. The use of census value figures has previously been held to be an unsound basis for arriving at a determination of fair market value. The Kiowa, Comanche and Apache Tribes of Indians v. The

United States of America, 4 Ind. Cl. Comm. 95; Osage Nation of Indians v. The United States of America, 3 Ind. Cl. Comm. 217.

In 1854 the first land offices were established in the territories of Kansas and Nebraska. The first public sales of land in those territories resulted in a great number of settlers filing their preemption claims to 160 acres or less and acquiring their lands for \$1.25. The rate of land acquisition in Kansas ^{and} Nebraska is shown in Finding of Fact No. 76(c). Following the initial acquisitions the total acreages fell off considerably until the increase in 1864 resulting from homestead entries. In an eighteen year period from fiscal year 1858 through fiscal year 1875 the land offices in Nebraska recorded public land acquisitions totaling 6,686,705.4 acres with a total of 7,250,623.8 acres recorded by the Kansas land offices. This total of 13,937,329.2 acres included homestead entries after the year 1864. This is indicative of the slowness with which a tract such as the Claims I and II area, of 13,074,000 acres, could have been disposed of even during a period 25 to 43 years after the valuation date. Of course the almost 14 million acres of public land acquired in Kansas and Nebraska, whose combined total acreage is over 100 million acres, represented the best land available. Only a fraction of the subject tract had land comparable to that included in the 14 million acres of public lands acquired through fiscal year 1875. The average prices per acre were at or near the statutory minimum of \$1.25 per acre until 1864.

A great percentage of the public lands were purchased with land warrants. In Nebraska only 12.6 percent of the total land entries up

to July 1, 1859, were paid for with cash. The remaining lands were paid for with land warrants, which in 1852 had become assignable and were listed on the stock markets at prices below \$1.25 per acre. Therefore, in fact, the public lands were sold at a cost of less than \$1.25 per acre to most purchasers.

As the courts and this Commission have stated on numerous occasions, the land's value in cases of this kind is determined by its fair market value. Fair market value was defined in Sacramento v. Heilborn, 156 Cal. 408, as

"... the highest price estimated in terms of money which the land will bring if exposed for sale in the open market with a reasonable time allowed to find a purchaser buying with knowledge of all uses and purposes for which it is best adapted and for which it is capable of being used."

When, as in this case, there is an absence of evidence of actual market value, resort must be had to other data which would have been considered by a prospective buyer and seller in dealing with the land in question in 1833. Some of the principles and factors which are to be taken into consideration in such cases were summarized by the Court of Claims in Otoe and Missouri Tribe v. The United States, 131 C. Cls. 593, 633.

The court stated, at page 633 that, in the absence of a market at the time in question and therefore the absence of evidence of "market value" in the conventional sense, other factors to be considered in determining the value of lands ceded by Indians included,

"* * * the natural resources of the land ceded, including its climate, vegetation, including timber, game and wild-life, mineral resources and whether they are of economic value at the time of cession or merely of potential value, water power, its then or potential use, markets and transportation--considering the ready markets at that time and the potential market.

In this case the Commission cannot base its valuation on an "actual fair market value" for the lands. But we can find what the Court of Claims referred to in The Miami Tribe of Oklahoma, et al., v. The United States, Appeal No. 2-58, July 13, 1959, ___ C. Cls. ___ as "an estimated or imputed fair market value." The Commission has given consideration to all the various factors which would have been taken into consideration by a prospective buyer and seller in dealing with the Claims I and II area. In addition we have, as previously stated, considered certain evidence pertaining to events subsequent to the valuation date for the purpose of confirming our findings and opinion as to desirability of the area for early settlement and the demand for various types of land within the tract.

The Commission has rejected petitioner's argument that in the absence of any market value for the lands in 1833, the value of the Claims I and II area was fixed at the government's minimum statutory price of \$1.25. To find the value of this area to have been \$16,342,500 in 1833 would be completely unwarranted. This case is not like the case of the New York Indians v. The United States, 170 U. S. 614, relied upon by petitioner in support of its theory. In that case there was no evidence upon which to base any estimate of the fair market value. In this case there is evidence concerning all the factors which a prospective buyer and seller would have considered in reaching a fair price for the tract. The Commission has considered those factors and arrived at its ultimate finding of the fair market value for the lands involved.

The Commission has found from the evidence that any prospective purchaser of the Claims I and II area in 1833 would have considered the

tract's remoteness from the populated sections of the United States; the poor means of transportation through the area; the immense size of the tract; the fact that one-third of the area was only suitable for grazing land, a use for which there was virtually no demand in 1833; the fact that much of the remaining land, although suitable for farming was inferior in quality and location to thousands of acres of other available farming land; that the rate at which settlers would enter the area would be slow; that it would take many years to sell any substantial portion of the area; and that he would have large carrying costs to keep his money tied up in such an investment over the long period necessary to dispose of the land.

The Commission has considered the fact that the area did have choice locations on fine bottom lands, principally along the water courses, with adequate timber, also generally along the water courses, to supply the needs of the early settlers. Such areas, the Commission believes, would have attracted settlers in 1833, or in the period immediately following, and could have been sold in 1833 for good prices. However, the pattern and rate of population growth in the west would have indicated to a prospective buyer that he could anticipate selling only a small portion of his large holding within the immediate future, and he would have to await a much greater population increase and disposition of vast areas of other public lands before he could liquidate any substantial portion of his investment.

In view of all these factors and considering the risks involved in such a large undertaking and the profit which would be expected with

such risks, we have found that the 13,074,000 acres in the Claims I and II area on October 8, 1833, had a fair market value of \$4,575,900.00 or an average per acre price of 35 cents.

Consideration for the Claims I and II Area.

As detailed in our Finding of Fact No. 82, Congress appropriated various sums under the articles of the 1833 Treaty which amounts totaled \$149,622.00. By stipulation the parties have agreed that the sums so appropriated were disbursed to the Pawnee Indians for the purposes itemized in the General Accounting Office report.

The Commission has found that the appropriation of \$1,422.00 under Article 12 of the treaty did not constitute an item of consideration for the cession of lands involved in that treaty but rather was made as consideration for the separate agreement by the Pawnee to remain at home during the year and give protection to the teachers, the farmers, stock and mill.

We have found that the remaining items, totaling \$148,200.00 were paid to the petitioner pursuant to the terms of the 1833 treaty as consideration for the cession of the Claims I and II area to the United States by the Pawnee Indians.

Petitioner has argued that certain articles of the treaty gave the President discretionary power concerning payments and that, therefore, such provisions did not bind the United States to make such discretionary payments and any sums disbursed in excess of the stated obligations of the United States should not be included as consideration for the cession.

We do not agree with petitioner's position in this regard. As consideration for the cession the United States agreed to provide the Pawnees with various goods, implements, services, etc. To a certain extent some of the articles of the treaty had conditional or restrictive provisions. The President had discretionary power concerning the payments of certain sums and he had the power to continue certain payments for longer than the stipulated period. We do not believe that such conditional provisions should remove payments made by the United States acting in good faith from the category of consideration for the cession or payments made on the claim. Of course the Congress had the power to abrogate any of the provisions of the 1833 treaty whether or not the language had been placed in any of the articles concerning a discretionary power of the President to continue payments for a longer period or to cease payments under certain provisions. As the Supreme Court stated in Lone Wolf v. Hitchcock, 187 U.S. 553,

* * * Until the year 1871 the policy was pursued of dealing with the Indian tribes by means of treaties, and, of course, a moral obligation rested upon Congress to act in good faith in performing the stipulations entered into on its behalf. * * *

* * *

The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the government in disregarding the stipulations of the treaty, but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties were entered into between the United States and a tribe of Indians it was never doubted that the power to abrogate existed in Congress, and that in a contingency such power might be availed of from consideration of governmental policy,

particularly if consistent with perfect good faith toward the Indians.

Certainly those provisions in the treaty providing that the President might continue payments for a longer period were an added inducement for the Pawnee's agreeing to the treaty of cession. They could rely on the good faith of the President and the Congress to make the discretionary payments if the President deemed it proper under all the circumstances respecting the condition of the Indians. While the obligations of the United States were greater under certain articles of the treaty, there were, nevertheless, obligations under the discretionary authority of the President to make the payments if he found it proper to do so. The United States acted in good faith and performed its obligations arising from commitments made under the various provisions of the 1833 Treaty. We have found all such disbursements, as detailed in Finding of Fact No. 84, to have constituted payments in consideration for the cession.

Petitioner has also argued that the value of the consideration provided for under the 1833 Treaty should not exceed \$91,005.40, which represents the funded or capitalized value of all payments made by the United States under the treaty. Only perpetual annuities are valued on a capitalized basis. None of the payments made under this treaty were pursuant to any perpetual annuity provision. All payments made over a period of years were in the nature of installments of a stated purchase price. The petitioners cannot give a capitalized or funded value to such payments. Crow Tribe v. The United States, 6 Ind. Cl.

Comm. 98; Miami Tribe of Oklahoma, et al., v. The United States, Appeal No. 2-58, July 13, 1959, ___ C. Cls. _____.

The total sum of \$148,200.00 was the consideration for the cession for the Claims I and II area, and that amount constituted the United States' payment on the claim. The total consideration of \$148,200.00 for the cession of the Claims I and II area to the United States by the petitioner was so grossly inadequate an amount for lands having a value of \$4,575,900.00 as to make the consideration unconscionable. Accordingly, the Commission concludes that the petitioner is entitled, under the provisions of Clause 3, Article 2 of the Indian Claims Commission Act, to an award in the amount of \$4,575,900.00, less the sum of \$148,200.00, constituting the United States' payment on the claim, or a net amount of \$4,427,700.00.

Claim III Area

The Commission has hereinbefore determined that petitioner held the area referred to as the Claim III area (as described in Finding of Fact No. 34) under original Indian title and that this tract was ceded by the petitioner tribe to the United States by the Treaty of August 6, 1848. The Commission has found that the Claim III area contains 110,419 acres, which area is to be valued as of August 6, 1848.

The parties have disagreed as to the meaning of the Commission's finding of acreage within the Claim III area. Petitioner has contended that the acreage included only the land within the tract while defendant has maintained that the acreage included the river bed of the Platte

River, which defendant has estimated to be 15% of the total area. There was submitted in evidence a planimeter computation of the area of the islands in the Platte River within the Claim III area. That computation found the area of the islands to be 76,540 acres, which area defendant's expert said was slightly more in acreage than the land area north of the Platte River within the Claim III area. If the 110,419 acres were to be reduced by 15% to compensate for the area covered by the Platte River, the resulting dry land acreage would be far from that indicated by defendant's own expert witness. The Commission's original finding with respect to acreage was:

"The area ceded by the Pawnee Tribe in the treaty of August 6, 1848, comprised 110,419 acres of land, for which they received goods of the value of \$2,000." 5 Ind. Cl. Comm. 224, 256

By this the Commission meant 110,419 acres of land area exclusive of the Platte River bed.

The Claim III area is located in the Platte River valley and consists of a rectangular area 3 to 4 miles wide and about 50 miles long from east to west. It extends from the present city of Kearney, Nebraska, on the east, to a point about 120 miles west of the Missouri River. The tract constitutes a desirable area of land with generally level topography, adequate amounts of timber for use by the early settlers, and an adequate supply of water. The average rainfall and growing season was favorable for crop production. The bottom lands and terrace north of the Platte River were mostly of excellent quality and well suited for cultivation. The island portions in the Platte River

contained first and second rate soils and were partly adapted to cultivation with the remainder best suited for grazing. The Platte River was not navigable but its broad valley provided a good wagon route with the Mormon Trail passing along its north bank. The Oregon Trail joined the Platte River at Ft. Kearney on the west edge of the tract. Railroads were still too far removed from the west in 1848 to have been given much consideration by a prospective buyer considering the probability of rail transportation within or near the Claim III area in the foreseeable future.

By 1848 the population of the United States had moved rapidly westward with the population of the State of Iowa growing about 346% during the 10 year period from 1840-1850. The population of Missouri increased from 383,702 in 1840 to 682,044 in 1850. The general route of population expansion from the east was across the Appalachian barrier down the Ohio River, up the Mississippi River, and westward along the Missouri River. A prospective buyer and seller in 1848 would have foreseen that the population expansion would likely extend along the Platte River into the interior of Nebraska. However, they would have realized that it would still be a number of years before any substantial settlement could be expected within the Claim III area, which lay some 120 to 170 miles west of the Missouri River.

In 1848 the country experienced a mild recession and interest rates were high.

Any prospective buyer considering purchase of the Claim III area would have been aware of the large area of public land available in other sections, particularly in Illinois, Missouri, and Iowa. On

January 1, 1849, there were 15,000,000 acres of public land remaining unsold in the State of Illinois, there were 29.4 million acres in Missouri, and there were 28.4 million acres remaining unsold in Iowa. There was in 1848 continuing agitation to reduce the price of unsold public lands.

On December 14, 1843, the Delaware and Wyandot Indians had entered into an agreement whereby the Delawares ceded, granted and quitclaimed to the Wyandot Nation 24,960 acres of land located at the confluence of the Kansas and Missouri Rivers, the present location of Kansas City, Kansas. The stated consideration was \$46,080.00, which was to be paid at the rate of \$6,080.00 in 1844 and \$4,000.00 annually for the next ten years. While this amount resulted in a per acre price of \$1.84, it is obvious that a cash transaction would have brought substantially less. Even at a 6% interest rate, interest on the unpaid balance over the ten year period would have been \$13,200.00. If this were deducted from the \$46,080.00, the resulting \$22,880.00 was a per acre average of \$0.92. As we have previously mentioned the Delaware-Wyandot area was more favorably located on a navigable river and close to an area which was rapidly becoming populated.

The Commission has considered the evidence of Indian trust land sales, as set forth in our Finding of Fact No. 72(b). As previously mentioned in this opinion relating to the Claims I and II area, those sales occurred in an area which was close to or bordering a navigable river, which was near populated areas and which included lands for which there was an active demand. The sales, which occurred 8 to 9 years after the valuation date, involved small tracts of 160 acres or less,

which resulted in a higher per acre price than could have been realized from a sale of the 110,419 acre Claim III area as a unit. As this Commission stated in Miami Tribe of Oklahoma v. The United States (Docket No. 251) 6 Ind. Cl. Comm. 513, 573, 574:

" * * * It is the 1854 value of the entire Miami tract that we must ascertain and not the total of the values of the unnumerable smaller units into which it may be divided. A 160-acre tract, as the trust lands were offered for sale, is usually purchased for a home, but a 254,000-acre purchase becomes a speculation, with the purchaser confronted with the expenses of financing, surveying, advertising, carrying expenses, the sure knowledge that the land will be picked over and culled by the first of his purchasers, and that an indefinite time will pass before he will realize a return or profit from his investment, whereas a quicker and more certain return and profit could be derived from negotiable paper or other investments."

The trust lands referred to in that case included the same Peoria, Iowa and Delaware trust lands referred to in the instant case.

For the reasons previously discussed, the average per acre price paid for railroad land and private sales cannot be related to the fair market value of the Claim III area. However, the evidence of those sales, which occurred 18 to 27 years after the valuation date in this case, indicates the high degree of selectivity exercised by the early settlers in choosing lands in this area. Almost all the tabulated sales were concentrated about the most desirable locations. The period covered by the sales, from 1866 to 1875, found this area of Nebraska in a far different condition from that existing in 1848. The Union Pacific Railroad had been constructed along the Platte River. The railroad, together with the Fort Kearney and Omaha Road and the telegraph line along the bank of the Platte River, greatly enhanced the land values in the period covered by the tabulated sales.

Defendant's expert, Dr. Murray, concluded from all the evidence outlined in his report that the Claim III area had a market value in 1848 of \$55,210.00, or an average of 50 cents per acre. In arriving at this conclusion, Dr. Murray considered that 15% of the 110,419 acres was riverbed. Since we have found that the acreage of the Claim III area, 110,419 acres, was land area exclusive of the Platte River bed, Dr. Murray's conclusion was based on misinterpretation. If the 16,419 acres (15% of the total 110,419 acres) were eliminated, the resulting valuation figure would have brought his average per acre valuation to 58.7 cents.

The Commission has found from the evidence that any prospective purchaser of the Claim III area in 1848 would have considered the size of the tract which would have been more attractive as a large land purchase than tracts of an immense size, such as the Claims I and II area; the fact that financing a purchase of the tract would have presented less of a problem; the desirability of the land; its location on a traveled wagon route; the adequate water and timber available; the prospect of continuing white settlement along the Platte River; and the prospect that substantially all of the tract could be disposed of within a relatively short period.

Taking into consideration all of the factors relating to the market value of the area the Commission has found that the fair market value for the 110,419 acres in the Claim III area as of August 6, 1848, was \$99,380.00, or an average per acre price of 90 cents.

Consideration for the Claim III Area

Pursuant to the Treaty of August 6, 1848, the defendant paid \$2,000.00 as consideration for the cession of the Claim III area. The consideration of \$2,000.00 for the cession of the Claim III area to the United States by the petitioner was so grossly inadequate an amount for lands having a value of \$99,380.00 as to make the consideration unconscionable. Accordingly, the Commission concludes that the petitioner is entitled, under the provisions of Clause 3, Article 2 of the Indian Claims Commission Act, to an award in the amount of \$99,380.00, less the sum of \$2,000.00, constituting the United States' payment on the claim, or a net amount of \$97,380.00.

Claim IV Area

The Commission has hereinbefore determined that petitioner held the area referred to as the Claim IV area (as described in Finding of Fact No. 46) under original Indian title and that this tract was ceded to the United States by the Treaty of September 24, 1857. By stipulation the parties have agreed that the Claim IV area contains 9,878,000 acres, which area is to be valued as of September 24, 1857.

The tract is located in central Nebraska north of the Platte River and extends approximately 200 miles from east to west and about 140 miles from north to south. The Claim IV area contains generally level land along the Platte River's southern boundary with rolling plains in the eastern and northeastern portions. The central and eastern part of the area is mostly broken land. The southern portion of the area is drained

by the Platte River and its tributaries with the Loup River system draining the central portion. The northeastern portion of the tract is watered by the Elkhorn River. The temperature and growing season is favorable to crop production. The average rainfall is generally adequate with a greater amount falling on the eastern portion, but the entire area is subject to periods of drought when hot, dry winds cause serious and extensive damage to crops. Timber for use by the early settlers was generally limited to areas along the water courses and on the islands in the Platte River. Water sufficient for settlement was present in approximately two-thirds of the townships. The area contained relatively small amounts of first class bottom land found principally along the Platte, Elkhorn and Loup Rivers and their tributaries. Approximately 25% of the area was made up of upland soils of second rate quality with approximately 60% of the area comprising poor third rate soil including a vast region in the northwestern and north central portions made up of sandhills.

The Commission has found that approximately one-half of the Claim IV area had a highest and best use for cultivation with the remaining half having a highest and best use for grazing. Based upon the comments of the original surveyors the Commission has found that portions of the land classified as grazing land had practically no value even for that use.

There were no navigable rivers in the area and transportation in 1857 was limited to overland routes. As we have previously noted the principal route through the State of Nebraska was along the Platte

River, which formed the southern boundary of the Claim IV area. However, by 1857 railroads were pushing westward, and a prospective purchaser of the area in 1857 would have considered that the Platte River valley would be an excellent rail route across the State. However, railroads had not yet crossed the Missouri River, and a prospective buyer would have realized that it would be a number of years before rail construction could be expected along the southern boundary of the tract.

In 1857 settlement had begun in the southeast portion of Nebraska, extending along the Missouri River and, for a short distance, along the Platte River. The population of Nebraska had increased from 2,832 persons in 1854 to 4,494 in 1855 and was to reach 28,841 in 1860. In 1856 the eastern counties in Nebraska had been formed, and by 1860 four counties along the Platte River, which included part of the Claim IV area, had been formed.

The year 1856 had been one of general activity with revival of railroad construction. However, 1857 brought a depression with tight money and runs on banks. Interest rates rose sharply in the fall of the year. A reasonable interest rate to attract the capital required for a purchase of the Claim IV area in 1857 would have been about 8%.

In 1857 vast acreages of public land were available in both Kansas and Nebraska. Just east of the Claim IV area was the "Omaha tract" of 4,982,098 acres which had been ceded to the United States in 1854. By the close of 1858, 80% of the Omaha tract had been surveyed and there were settlers within that area in 1857. In 1854 there had also been cessions of some eight other Indian tracts in Kansas and Nebraska

ranging in size from 78,000 to 1,400,000 acres. The Omaha tract and many of the other Indian tracts were more favorably located in comparison with the Claim IV area. Several of the tracts bordered the navigable rivers, were closer to more populated areas and possessed better land.

The Graduation Act had been passed in 1854 and public lands were available in the east at reduced prices. In the 12 months ending June 30, 1857, graduated land sales in Missouri totaled 957,000 acres at an average price of 51 cents per acre.

In 1857 the Indian trust lands referred to in Finding of Fact No. 72(b) were being sold in small tracts in the general area southeast of the Claim IV area. These sales would have been considered by a prospective buyer as an indication of the price which could be attained for sales of small acreages located in an area which was close to good transportation on the navigable rivers with rail connections to the east and an area relatively high in population.

In 1857 the only lands which would have been in demand for settlement would have been in those areas with the best land for farming, with some timber, water, and as close to other populated sections as possible. Within the Claim IV area such land was principally along the Platte River, along the eastern edge of the tract, and along Elkhorn River on the north.

The sales data introduced by petitioner clearly indicates that the demand for land in the area was very restricted. As detailed in our Finding of Fact No. 127(b) the tabulated sales were almost exclusively limited to the choicest locations. The Commission examined in detail

the sales listed for Holt County, which is located in the north-central part of Nebraska with approximately half of the county within the Claim IV area and the remaining half extending north to the Niobrara River. The sales, which covered a period 17 to 23 years after the 1857 valuation date, totaled about 5,009.8 acres in a county of 1,531,520 acres. Of the sales tabulated only 1,894.4 acres (38%) were within the Claim IV area. The remaining sales were to the north of the area about the Niobrara River. As indicated in our findings concerning the Holt County sales within the subject tract, all were in the Elkhorn River area on the choicest lands. There was a total lack of any sales data in the vast regions away from the river. This pattern of sales is repeated in all of the counties listed. In Hall County, which is on the Platte River and includes the present day city of Grand Island, 70% of all tabulated sales occurred in one township, the township in which Grand Island is located.

The railroad sales also indicated that demand for lands was restricted to the best farming land areas. The Union Pacific's land grants covered a strip 20 miles on each side of the Platte River. No railroad grants extended into the central and northern portions of the Claim IV area. The tabulation of sales to December 31, 1879, for the Burlington and Missouri River Railroad showed that North Platte lands within 20 miles of the Union Pacific Railroad sold for an average of \$7.15 per acre while lands 20 to 50 miles from the railroad sold for only \$1.14 per acre.

The subsequent development of this portion of Nebraska is revealed in the census data covering the period up to 1900, set forth in our

Findings of Fact No. 122. The north-central and northwestern portions of the Claim IV area were very sparsely populated. The figures for land area in farms and improved land in farms in 1900 reveals that the northwestern counties were far behind those in the east in percentage of total area which was being farmed.

We have previously discussed our opinion as to the census value approach of petitioner, the history of public land sales in Nebraska and the use of land sales in small parcels to arrive at valuation of a large tract as a unit. What we have already stated earlier in this opinion applies equally well to our consideration of the evidence and the arguments of counsel in evaluating the Claim IV area.

The Commission has found from all the evidence that any well informed prospective buyer would have considered the Claim IV area as one of vastly dissimilar regions. Included within this immense area of just under 10 million acres were some areas of choice farming land, well located as to water, timber, fairly good transportation, and growing population. There was a larger area of land classified as having a highest and best use for agriculture but which was, nevertheless, inferior in quality and location to other thousands of acres of available farming land. Finally, there was about half of the tract suitable only for grazing, a use for which there was little demand in 1857, and substantial portions of that land was more or less worthless sandhill country.

The eastern and southern portion of the area did possess land for which there was a demand in 1857 and which could be resold at attractive prices for the 1857 period. Of course, 110,419 acres of the better lands along the Platte River are cut out of the Claim IV

area and that tract has been valued as the Claim III area. Any prospective purchaser could also have resold some of the less desirable cultivable land at lower prices. However, he would have realized that at least half the area had lands not in demand in 1857 and which he could only hope to sell at very nominal prices even many years after 1857.

In view of all these factors and considering the risks involved in such a large undertaking and the profit which would be expected with such risks, the Commission has found that the land in the Claim IV area had a fair market value on September 24, 1857, of \$4,939,000.00, or an average per acre value of fifty cents.

Consideration for the Claim IV Area

As detailed in our Finding of Fact No. 135, Congress appropriated various sums pursuant to the 1857 Treaty, which amounts totaled \$4,204,131.68. By stipulation the parties have agreed that the sums shown in the General Accounting Office report were disbursed to the Pawnee Indians for the purposes itemized in said report up to and including fiscal year 1928. It was further agreed that as to the lump sum appropriations for the fiscal years 1929 through 1935, the Commission shall consider that the amounts appropriated for each of those fiscal years in the sum of not to exceed \$50,000.00 were disbursed to the Pawnee Indians for the same purposes and in the same amounts as itemized for fiscal year 1928 and further that any amount appropriated in excess of the \$50,000.00 for any of those fiscal years shall be considered administrative expense.

The Commission has found that the \$1,000.00 appropriated under Article 1 of the treaty, for surveying the exterior boundaries of the reservation, was not part of the consideration for the cession. The Commission has also found that a total amount of \$68,200.00 was appropriated under Article 4 for "pay of shoemaker and carpenter" and for "physician and medicine." Since there were no provisions in the 1857 Treaty for providing any shoemakers, carpenters, physician or medicine to the Pawnees, we have found that those items were not part of the consideration for the cession.

Under Article 2 of the treaty appropriations in a total amount of \$2,140,000.00 represented perpetual annuity payments of \$30,000.00 per year. The value of the provision in Article 2 creating a perpetual annuity is its capitalized or funded value. Using an interest rate of 5% per annum, the funded value of a \$30,000.00 per year perpetual annuity was \$600,000.00. Therefore, this amount represents the value of that portion of the consideration. Miami Tribe of Oklahoma, et al., v. U. S., Appeal No. 2-58, July 13, 1959, ___ C. Cls. ___. Since no portion of the principal sum was ever paid to the Pawnee, no amount will be deducted from the final judgment as payment on the claim under the perpetual annuity provision of Article 2.

As detailed in Finding of Fact No. 137(i) the miscellaneous items of "transportation and insurance on annuities"; "monies erroneously carried to treasury and deposited as surplus"; "care and support of Pawnees"; and "support of Pawnees" were not expenditures provided for in the treaty. These items have not been included as part of the consideration and will not be deducted as payments on the claims.

In Finding of Fact No. 137(j) we have detailed the amounts of the lump sum appropriations covering the fiscal years 1929 through 1935. The payments on the perpetual annuity under Article 2 have been excluded for the reasons set forth above and the payments for physician and medicine have likewise been excluded.

The resulting value of the consideration for the 1857 Treaty of cession is \$2,144,609.90 and the amount constituting the United States' payment on the claim is \$1,544,609.90.

Petitioner has argued, as in the case of the 1833 Treaty, that certain articles of the 1857 Treaty gave the President discretionary power concerning certain payments and that, therefore, sums disbursed pursuant to such discretionary power should not be included as part of the consideration. Our position in this respect is the same as that previously set forth in our discussion of the 1833 Treaty. We have found that all items set forth in Finding of Fact No. 138 constitute the value of the consideration for the 1857 cession.

Petitioner has also argued that all payments made pursuant to the 1857 treaty should be given their capitalized or funded value for the purpose of determining the value of the consideration. We have given a funded or capitalized value to the perpetual annuity provision. All other payments made over a period of years were in the nature of installments of a stated purchase price and have not been capitalized or funded to arrive at the value of such payments.

The total consideration of \$2,144,609.90 for the cession of the Claim IV area to the United States by the petitioner was so grossly inadequate an amount for lands having a value of \$4,939,000.00 as to make

the consideration unconscionable. See Miami Tribe of Oklahoma, et al., v. The United States (Docket No. 251) 6 Ind. Cl. Comm. 513, 575, 576, and cases cited therein. Accordingly, the Commission concludes that the petitioner is entitled under the provisions of Clause 3, Article 2 of the Indian Claims Commission Act to an award in the amount of \$4,939,000.00, less the sum of \$1,514,609.90, constituting the United States' payment on the claim, or a net amount of \$3,324,390.10.

Claim V. Area

The Claim V area is a rectangular tract one-half mile wide, east and west, and 15 miles long, north and south, which was excluded from the western boundary of the Pawnee reservation in Nebraska by an error in the original survey. The parties have stipulated its acreage to be 1800 acres, and this Commission has previously determined that it is to be valued as of March 3, 1875.

The southern portion of the tract is level in the Loup River valley but becomes broken upland just north of the valley and undulating, rolling upland farther north. The southern area is drained by the Loup River, and the south branch of Timber Creek flows across the north boundary of the tract. There was timber in the south one-third of the tract.

There was good bottom land soil in about 10% of the area, in the Loup River valley. The remaining 90%, to the north, was second and third rate upland soil. The Commission has found that about 85% of the area had a highest and best use for cultivation with the remaining

15% best suited for grazing.

While the chief transportation to and from the Claim V area was by wagon roads, the area was readily accessible from the Platte River valley, about 20 miles to the southeast, where the Union Pacific Railroad provided excellent rail connections both to the east and west.

During the 1870's the population in Nebraska increased greatly with settlers leaving the river areas and entering the interior regions. Settlements of the Claim V area began in the early 1870's. In 1873 the United States suffered a depression which continued through 1875.

The Commission has detailed in Finding of Fact No.150 the evidence of the appraisal made in 1876 of the Pawnee reservation lands and in Finding of Fact No.151 the evidence of sales of that reservation. This evidence we have found very helpful in determining the market value of the Claim V area and great weight has been given to that evidence.

By the Act of April 10, 1876, the Secretary of the Interior was authorized to appraise and sell the Pawnee reservation in Nebraska. The appraisals of the land were to be made at their actual cash value, excluding the value of any improvements, and they were valued in tracts of 160 acres. The total acreage of the reservation was 278,837.20 acres and the average of the appraisals for the land alone was \$2.6898 per acre.

It is significant to note that the area immediately adjoining the subject tract to the east was appraised at the following average amounts:

	<u>Acreage</u>	<u>Value/acre</u>
T 17 N; R 8 W	4,083.25	\$1.53
T 16 N; R 8 W	4,763.88	1.87
T 15 N; R 8 W	<u>2,124.44</u>	<u>2.73</u>
Total	11,046.57	\$1.91 average/acre

The sale of the reservation lands began on July 15, 1878. The lands were sold in separate tracts of 160 acres at either not less than their appraised value or for less than \$2.50 an acre. The lands could be bought on terms, 1/3 cash within the balance in two annual installments drawing 6% interest from the date of sale. During the first 3 years there was only one sale of 132 acres out of the 11,046 acres adjoining the Claim V tract and that one sale was in the desirable Loup River valley. During the first three years 28% of the entire reservation was sold while only 1% of the 11,046 acres adjoining the Claim V area to the east was sold. It therefore appears that it was not until 1881 that there was any substantial demand for purchase of lands similar to those in the Claim V area at \$2.50 an acre, even when such sales were in small 160-acre tracts and under provisions for making payment over a three year period at a favorable 6% rate of interest.

The private sales data indicates the settlers' interest in lands along the water courses where there was well-watered bottom land. There was little demand for lands away from the rivers and streams.

Petitioner urges a finding of fact that the Burlington Railroad "sold its lands for an average of \$6.15 per acre in the period 1870 to 1879. In the period 1871 to 1873 its sales averaged \$8.00 per acre" (Petitioner's Requested Supplemental Findings as to Value and Brief in Support, filed July 19, 1959, p.136). In support of this finding petitioner cites the testimony of T. C. Hildebrand (Tr. 666), who in turn cites a study entitled "Burlington West" by Richard C. Overton, which study is not in evidence. However, Pratt's Manual of the Railroads

of the United States for 1880 reveals the following figures which are contrary to Mr. Hitchings' testimony.

Total sales to December 31, 1879, were 1,574,392 acres for a consideration of \$8,556,782.42 or \$5.43 per acre. Also listed in Poor's are the sales for 1879 as follows: (Pet. Ex. 197, p. 923)

	<u>Acres</u>	<u>Price/acre</u>
North Platte lands lying within 20 miles of road	177,095	\$7.15
North Platte lands lying 20-50 miles from U.P.R.R.	192,337	\$1.14

The Commission has found that any prospective purchaser of the Claim V area in 1875 would have considered the attractive size of the tract of only 4800 acres, which could easily have been sold in smaller tracts. There was settlement in the area and a demand for the land in 1875. It was near good rail transportation. Most of the area was suited for farming with the southern portion well watered and possessing highly desirable bottom land. The appraisal prices for the adjoining land and evidence of sales of that land within a few years of the valuation date give a good indication of the true market value of the land. We consider that defendant's expert appraiser has very fairly appraised the tract with his conclusion that the area had a fair market value in 1875 of \$12,000.00.

In view of all the factors which any well informed prospective buyer and seller would have considered in dealing with the Claim V area, we have found the fair market value to have been \$12,000.00 on March 3, 1875, an average of \$2.50 per acre.

When the error in survey was discovered, the Indian Superintendent

at Omaha, Nebraska, wrote the Commissioner of Indian Affairs that the Indians already had an excess of land and that there appeared to be no occasion for interfering with the white settlement on the strip of land. He asked "on behalf of said Pawnee Indians, that proper steps be taken to obtain from the United States Government a full and just consideration for the deficiency of land mentioned." (Letter of June 11, 1873; from Superintendent White to the Commissioner of Indian Affairs, Edward P. Smith).

The Commission concludes that there was an implied agreement between the United States and the Pawnees that the Claim V area should be taken by the United States with payment of compensation to the Pawnees for the area taken. By the Act of March 3, 1857, the sum of \$6,000.00 was appropriated and that amount was paid to the Pawnees as full compensation for the area taken.

The consideration paid by the defendant was exactly 50% of the lands valued on the date of taking. Considering the circumstances surrounding the taking of this area from the reservation granted to the Pawnees by the 1857 Treaty, with payment of compensation of but half the value of the lands, we believe the United States took unfair advantage of the petitioner Indians. We find the consideration paid under these circumstances to be so grossly inadequate that it constituted an unconscionable consideration. Accordingly, the Commission concludes that the petitioner is entitled, under the provisions of Clause 3, Article 2, of the Indian Claims Commission Act to an award in the amount of \$6,000.00.

The petitioner seeks recovery of interest on this amount. This claim is not one arising from an uncompensated taking by the United States under its eminent domain power. Compensation was in fact paid in this case. Our finding that the payment made was unconscionable and that petitioner is entitled to recover the difference between the true value and the amount paid is based on the petitioner's right of recovery under Clause 3, Article 2 of the Act. No interest is allowable for judgments under this Clause. Osage Tribe v. U. S. 119 C. Cls. 592. Petitioner's claim for interest will be disallowed.

By interlocutory order, dated July 14, 1950, this Commission found petitioner entitled to recover on its sixth cause of action for interest on \$110.55 at the rate of 5% per annum from March 3, 1893 to March 17, 1921, or an amount of \$155.00. Petitioner was also entitled under its seventh cause of action to recover the principal sum of \$31.90 with interest thereon at 5% per annum from March 3, 1893. These determinations of Claims 6 and 7 have been affirmed by the Court of Claims. Pawnee Tribe of Oklahoma v. The United States, 124 C. Cls. 324.

We have incorporated in our findings of fact, entered this day, the original findings respecting Claims 6 and 7. Those findings were numbers 17, 18, and 19, entered July 14, 1950, and are findings numbers 160, 161, and 162 in the Findings of Fact entered this day.

In summary petitioner is entitled to recover:

Claims I and II	\$4,427,700.00
Claim III	97,380.00
Claim IV	3,394,390.10
Claim V	6,000.00

Claim VI	155.00	
Claim VII	31.90	plus interest at 5% per annum from March 3, 1893
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	\$7,925,657.00	plus interest on \$31.90

This amount is subject, however, to deductions for such offsets as may be allowable under the Indian Claims Commission Act.

s/ WM. M. HOLT
Associate Commissioner

I concur:

s/ EDGAR E. WITT
Chief Commissioner

Commissioner Watkins took no part in the consideration and decision of this case.