

BEFORE THE INDIAN CLAIMS COMMISSION

PAWNEE INDIAN TRIBE OF OKLAHOMA,  
consisting of the four confeder-  
ated bands of Pawnee Indians,  
namely: Chaui or Grand Pawnee,  
Kitkehahki or Republican Pawnee,  
Pitahauerat or Tappage Pawnee,  
and Skidi, Loup or Wolf Pawnee,

Claimant,

v.

UNITED STATES,

Defendant.

Docket No. 10

INTERLOCUTORY ORDER AMENDING FINDINGS OF FACT  
AND THE THIRD INTERLOCUTORY ORDER OF JUNE 14, 1960

On June 24, 1960, petitioner filed its motion to reconsider the additional findings of fact and opinion entered on June 14, 1960. On September 19, 1960, the parties argued the motion and submitted the same to the Commission and it was taken under advisement. On January 23, 1961, the Commission granted defendant's motion to admit additional evidence, namely defendant's exhibits 186 through 191.

Upon consideration of the motion, together with the additional evidence, and in view of the recent decisions of the Court of Claims, the Commission concludes that the value of the consideration and the amount constituting the United States' payment on the claim should not be computed by totaling the payments made to the petitioner over a period of time, but rather by determining the present value, as of the respective dates of the cessions of the petitioner's lands, of the right to receive such payments in the future. The Miami Tribe of Oklahoma v. United States, Appeal No. 2-59, decided July 15, 1960; The Crow Tribe of Indians v. United States, Appeal No. 1-59, decided November 2, 1960; The United States of America v. The Absentee Shawnee Tribe of Oklahoma, et al., Appeal No. 9-59, decided November 2, 1960.

IT IS THEREFORE ORDERED with respect to the additional findings of fact entered on June 14, 1960, the following:

(1) That Finding of Fact No. 84 be stricken, and there shall be set forth in lieu thereof:

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84. The Commission finds that the following sums, disbursed to the petitioner pursuant to the agreement of the United States under the 1833 Treaty, are items to be considered in computing the value of the consideration for the cession of the Claims I and II area to the United States by the Pawnee Indians:

Art. III	\$55,200.00
Art. IV	42,000.00
Art. V	10,000.00
Art. VI	20,000.00
Art. VII	18,400.00
Art. VIII	1,000.00
Art. XIII	<u>1,600.00</u>
Total	\$148,200.00

The Commission finds that the sum of money which, if put at 5% simple interest on October 9, 1833, the date of the treaty, would have amounted to \$148,200.00 if disbursed in the amounts in which, and on the dates on which it was actually expended, would be \$115,095.73. .  
(The Crow Tribe of Indians v. United States, supra).

(2) That Finding of Fact No. 86 be stricken; and there shall be set forth in lieu thereof:

86. The treaty date value of the consideration for the cession of the Claims I and II area to the United States was \$115,095.73, and this amount constituted the United States' payment on the claim.

(3) That Finding of Fact No. 87 be stricken, and there shall be set forth in lieu thereof:

87. The payment of consideration worth \$115,095.73 under the terms of the Treaty of October 9, 1833, for the cession of the Claims I and II area to the United States by petitioner was so grossly inadequate an amount for lands having a value of \$4,575,900.00 as to make the consideration unconscionable.

(4) That Finding of Fact No. 137 be stricken, and there shall be set forth in lieu thereof:

137. (a) The \$1,000.00 appropriated under Article I of the treaty was for surveying the exterior boundaries of the reservation. There is nothing in the language

of Article I to indicate that this service was to be performed by the United States as part of the consideration for the cession. The Commission finds this sum was not a part of the consideration.

(b) The total sum of \$2,540,000.00 appropriated under Article II of the treaty included \$200,000.00 paid at the rate of \$40,000.00 per year for the first five years and the remainder of \$2,340,000.00 represented the perpetual annuity payments of \$30,000.00 per year thereafter.

The provision in this article for payment of \$40,000.00 per year for five years constituted a limited annuity. The treaty date value of this limited annuity, capitalized at 5% simple interest, was \$177,560.27, and this amount constituted the United States' payment on the claim.

The remaining provision of Article II created a perpetual annuity. Its capitalized or funded value represented the value of the consideration agreed to be paid under this proviso of the treaty. Using an interest rate of 5% per annum, the funded value of a \$30,000.00 per year perpetual annuity was \$600,000.00. The sum of \$600,000.00, therefore, represents the value of that portion of the consideration. However, since no portion of that principal sum was ever paid to the Pawnees, no amount will be deducted from the final judgment as payment on the claim under this provision of Article II.

(c) All items listed under Article III, in a total amount of \$728,732.84, were in fulfillment of agreements made under that article and are to be considered in computing the value of the consideration for the cession by the Pawnees.

(d) All of the items listed under Article IV of the treaty totaled \$531,958.56. Of this amount there were items totaling:

\$ 1,600.00 for "pay of shoemaker and carpenter"; and  
66,600.00 for "physician and medicine."  
\$68,200.00 Total

There was no provision in the 1857 treaty for providing any shoemakers, carpenters, physicians or medicine to the Pawnees. The Commission finds these items were not part of the consideration and they will not be deducted as payments on the claim. The remaining amount of \$463,758.56 is to be considered in computing the value of the consideration.

(e) The items under Article VII totaling \$9,000.00 are to be considered in computing the value of the consideration.

(f) The \$1,000.00 item under Article X is to be considered in computing the value of the consideration.

(g) The \$500.00 item under Article XI is to be considered in computing the value of the consideration.

(h) The \$10,000 item under Article XII is to be considered in computing the value of the consideration.

(i) The miscellaneous items of:

Transportation and insurance on annuities	\$11,000.00
Monies erroneously carried to Treasury and deposited as surplus	276.87
Care and support of Pawnees	15,000.00
Support of Pawnees	888.41

were not expenditures provided for in the treaty. We find these items were not part of the consideration and they will not be deducted as payments on the claim.

(j) The lump sum appropriations, totaling \$354,775.00, cover the fiscal years 1929 through 1935. The yearly amount of each lump sum appropriation up to \$50,000.00, is to be charged to the items listed in the 1928 appropriations in the same proportionate amount and for the same respective purposes. The 1928 items were:

Art. II		
Payment of annuity	\$30,000.00	60%
Art. III		
Manual labor		
Schools	11,000.00	22%
Art. IV		
Iron, steel, etc.	500.00	1.0%
Physician and medicine	1,200.00	2.4%
Pay of treaty employees	<u>7,300.00</u>	<u>14.6%</u>
	\$50,000.00	100.0%

As set forth in subparagraph (b) above the payments of the perpetual annuity under Article II were neither part of the consideration nor payments on the claim. As set forth in subparagraph (d) above payments for "physician and medicine" were not part of the consideration and will not be deducted as payments on the claim.

Of the lump sum appropriations for fiscal years 1929 through 1934, which in each year were \$50,000.00 or more, the allowable items for each year to be considered in valuing the consideration.

Art. III	\$11,000.00
Art. IV	<u>7,800.00</u>
Total	\$18,800.00

The total for those 6 years is \$112,800.00.

The appropriation for 1935 was \$49,175.00. The proportionate amounts constituting allowable items as part of the consideration and as payments on the claim are:

Art. III	\$10,818.50
Art. IV	<u>7,671.30</u>
Total	\$18,489.80

(5) That Finding of Fact No. 138 be stricken, and there shall be set forth in lieu thereof:

138. The items, other than the Article II payments, to be considered in computing the value of the consideration are:

Art. III	\$728,732.84
Art. IV	463,758.56
Art. VII	9,000.00
Art. X	1,000.00
Art. XI	500.00
Art. XII	10,000.00
Lump sum	
Appropriations	<u>131,289.80</u>
Total	\$1,344,281.20

The Commission finds that the sum of money which, if put at 5% simple interest on September 24, 1857, the date of the treaty, would have amounted to \$1,344,281.20 if disbursed in the amounts in which, and on the dates on which it was actually expended, would be \$568,235.54. To this amount is added the values of the Article II annuities:

Art. II	
Limited annuity	\$177,560.27
Perpetual annuity	600,000.00
All other payments	<u>568,235.54</u>
Total treaty date value	\$1,345,795.81

(6) That Finding of Fact No. 139 be stricken, and there shall be set forth in lieu thereof:

139. No deduction will be made as a payment on the claim for any payments made under the perpetual annuity provision of Article II (Finding of Fact 137(b)). All other items listed in Finding of Fact No. 138 were disbursed to the petitioner, and, therefore, the sum of \$745,795.81 constitutes the United States' payment on the claim.

(7) That Finding of Fact No. 140 be stricken, and there shall be set forth in lieu thereof:

140. The total consideration worth \$1,345,795.81 provided for under the terms of the Treaty of September 24, 1857, 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.

IT IS FURTHER ORDERED that the Commission's Third Interlocutory Order of June 14, 1960, be amended to substitute, with respect to Claims I and II, the figures "\$4,460,804.27" in place of the figures "\$4,427,700.00," and to substitute, with respect to Claim IV, the figures "\$4,193,204.19" in place of the figures "\$3,394,390.10."

IT IS FURTHER ORDERED that the petitioner's motion to reconsider insofar as it relates to the preliminary and ultimate findings concerning the value of the lands involved is hereby overruled and denied.

Dated at Washington, D. C., this 31st day of January, 1961.

Arthur V. Watkins  
Chief Commissioner

Wm. M. Holt  
Associate Commissioner

T. Harold Scott  
Associate Commissioner