

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.)	Docket No. 10
)	
UNITED STATES,)	
)	
Defendant.)	

Decided: February 7, 1961

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.

SUPPLEMENTAL OPINION

Holt, Associate Commissioner, delivered the opinion of the Commission.

In computing the value of the consideration with respect to the Claim IV area cession, the Commission has used the cummuted value of the perpetual annuity provision of Article II of the 1857 Treaty. In determining the amount constituting the United States' payment on the claim, however, no sum was credited since there had been no payment of any of the principal amount of the annuity. As the Court of Claims

stated in The Miami Tribe of Oklahoma v. United States, Appeal No. 2-58, decided July 13, 1959, with respect to a permanent annuity, "only the principal amount is the consideration and that consideration is not paid nor is there any payment on the claim until that principal sum is given to the Indians." However, in this case, where the perpetual annuity provision remains a continuing obligation of the United States, we have, by not allowing any credit for the continuing fulfillment of this obligation, in effect, attempted to abrogate a valid and continuing provision of the 1857 Treaty by requiring the defendant to pay, as part of the award in this case, the principal sum (\$600,000.00) of the perpetual annuity.

Defendant has requested a clarification of our final award to indicate that payment of the award as ordered by this Commission would discharge in full any and all obligations under the 1857 Treaty including in particular the perpetual annuity provision. In this respect, of course, defendant is correct since our final award was computed to provide for payment of the principal sum representing the commutation of a \$30,000.00 per year perpetual annuity.

However, upon further consideration of this matter, the Commission has concluded that it should not make any award which would in any way seem to require abrogation of an outstanding treaty provision. Therefore, we amend our findings and the final award to recognize the continuing obligation of the United States to pay the petitioner \$30,000 per year as a perpetual annuity. The defendant has met and is continuing

to meet this obligation. We therefore credit the defendant with the value of this continuing obligation and the perpetual annuity provision of the 1857 Treaty will thus remain in full force as an, as yet, undischarged obligation.

Of course, should Congress determine that this perpetual annuity should now be commuted in making an appropriation to satisfy the award in this case, then the \$600,000.00 commuted value of the annuity would have to be added to the judgment, in which event the United States would be under no further obligation to make the yearly \$30,000.00 payments to petitioner.

This supplemental opinion embodies our final opinion concerning the perpetual annuity aspect relating to the Claim IV area. To the extent that our opinion of June 14, 1960, as modified by our opinion of January 31, 1961, is inconsistent with this supplemental opinion, the latter prevails.

Accordingly, we again summarize the claims upon which petitioner is entitled to recover to reflect the amendment this day made with respect to Claim IV:

Claims I and II	\$4,460,804.27
Claim III	97,380.00
Claim IV	3,593,204.19
Claim V	6,000.00
Claim VI	155.00
Claim VII	31.90 plus
	interest at 5% per annum
	<u>from March 3, 1893</u>
sub-total	\$8,157,575.36
	plus interest on \$31.90
Less Offsets	<u>10,000.00</u>
Total	\$8,147,575.36 plus
	interest on \$31.90 at 5%
	per annum from March 3, 1893.

Wm. M. Holt
Associate Commissioner

We concur:

Arthur V. Watkins
Chief Commissioner

T. Harold Scott
Associate Commissioner