

BEFORE THE INDIAN CLAIMS COMMISSION

| | | |
|--------------------------------------|---|----------------|
| THE CADDO TRIBE OF OKLAHOMA, ET AL., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Docket No. 226 |
| |) | |
| THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |

Decided: October 27, 1961

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to the findings numbered 1 through 36 made by the Commission.

37. Article II of the Treaty of July 1, 1835, provided as follows:

"The said chiefs, headmen and warriors of the said nation do voluntarily relinquish their possession to the territory of land aforesaid and promise to remove at their own expense out of the boundaries of the United States and the territories belonging and appertaining thereto within the period of one year from and after the signing of this treaty and never more return to live, settle, or establish themselves as a nation, tribe or community of people within the same."

Immediately thereafter the Caddos left Louisiana and moved into the adjoining territory of Mexico, which area in the year 1836 was to become a part of the Republic of Texas.

38. On December 29, 1845, Texas was admitted to the Union. Upon its admission the State of Texas was permitted to retain an exclusive proprietary interest and control over all public lands within its borders. The federal government has never owned or claimed to have owned public lands in the State of Texas.

While the Republic of Texas was in existence (1836-'45), its public

laws never accorded recognition to the Indians' right of occupancy. Indian tenure as such was therefore hazardous. Its duration resting solely on the tolerance of the neighboring whites, who, freed of the threat of legal or governmental action, could oust the Indians at their pleasure. The hostility of the white settlers did not abate with the advent of Texas statehood.

39. With Texas now in the Union, the United States in 1846 concluded a general peace treaty with the several tribes of Texas Indians, including the Caddos (Treaty of May 15, 1846, 9 Stat. 844). Among other things it was agreed that these tribes would hereafter acknowledge themselves to be under the protection of the United States, and that the United States would have the sole and exclusive right of regulating trade and intercourse with them. There were no land cessions involved, nor were any reservations granted. This treaty did not provide or attempt to provide for the recognition by the United States of Indian title or rights in or to any lands in Texas. The Wichita Indians, et al., v. United States, 89 C. Cls. 378.

40. In 1853, the Texas state legislature authorized the United States to locate upon a portion of its vacant lands the various Indian tribes. In 1854, a reservation was selected on the Brazos River near Waco, Texas. There the Caddos and several other tribes were induced to settle down under their newly appointed Indian Agent, Robert Neighbors.

In the face of a pending threat on part of the white settlers to massacre all of the Indians at the Brazos River Agency, a council meeting was held at Fort Arbuckle in 1859 which was attended by chiefs and headmen of the several tribes concerned. Agent Neighbors discussed the serious

situation with these Indians and it was agreed that the Indians would remove themselves in a body from Texas to new locations near the Washita River in the Indian Territory. Shortly thereafter Agent Neighbors led some three hundred Caddo Indians on a forced march to the Washita River in Oklahoma. When Neighbors later returned to Texas he was killed by the revengeful whites for permitting the Indians to escape.

41. In completing the accelerated removal of the Texas Indians to the Indian Territory, every effort was made to assist these Indians in bringing all of their moveable property with them. Immediately upon their relocation on the Wichita Reservation Congress appropriated for those Indians the needed funds to cover the expenses of colonizing, supporting, and furnishing agricultural instruments, stock, and other necessities. Beginning with the Appropriation Act of June 19, 1860, 12 Stat. 44, 56, the overall sum of \$121,260 was appropriated for the above purposes as well as for the specific purpose of "building houses for the Indians lately residing in Texas, in lieu of those abandoned in that State."

42. Earlier, in 1855, the United States had entered into an agreement with the Choctaws and Chickasaw Nations whereby these Indians leased to the United States a large area to be used for the permanent relocation and settlement of other Indian tribes. That portion of the "leased district" upon which the Caddos and the several Texas tribes were settled is known as the Wichita Reservation. It is officially designated as Royce Area 540-A (Map 3, Oklahoma 18th Annual Report, Bu. of Am. Ethnology, 1896-'97, Part III). It is located west of the 98° longitude between the Canadian and the Washita Rivers. By the Treaty of April 28, 1866,

14 Stat. 769, the Choctaw and Chickasaw Tribes ceded to the United States all their right, title and interest in the "leased district". The Choctaw Nation, et al., v. The United States, 174 U. S. 494, reversing 34 C. Cls. 17.

43. With the close of the Civil War, efforts were made to have the Washita River area turned into a reservation for these Texas Indians. On October 19, 1872, an agreement was entered into by the Wichita and affiliated bands and the Commissioner of Indian Affairs whereby it was sought to set aside the Wichita Reservation as a permanent home for these Indians. The purported consideration for such a grant was the cession by these tribes of all their right, title, and interest, to any lands in Texas, Louisiana, the Indiana Territory, or elsewhere within the limits of the United States. Although the Commissioner strongly recommended ratification of this agreement, no action was taken by Congress upon this recommendation. Accordingly, no new rights were accorded these Indians under this unratified agreement.

44. With the enactment of the General Allotment Act of February 8, 1887, Congress provided for the allotment of land in severalty to those members of Indian tribes who resided on reservations that had been created for their use "either by treaty, stipulation or by virtue of an act of Congress or executive order setting apart the same for their use." (24 Stat. 388) It was provided further that after all allotments had been completed, the Indian Tribes could sell to the United States all or a portion of their surplus lands. As of the effective date of the 1887 General Allotment Act the Caddos had no compensable interest under this Act in a reservation created by treaty, statute, or executive order.

45. On June 4, 1891, the United States and the "Wichita and Affiliated Bands of Indians" concluded an agreement whereby,

(Article 1): "The said Wichita and Affiliated bands of Indians in the Indian Territory hereby cede, convey, transfer, relinquish, forever and absolutely, without any reservation whatever, all their claim, title, and interest of every kind and character in and to the lands embraced in the following described tract of country in the Indian Territory, to wit:

"Commencing at a point in the middle of the main channel of the Washita River, where the ninety eighth meridian of west longitude crosses the same, thence up the middle of the main channel of said river to the line of $98^{\circ} 40'$ west longitude, thence on said line of $98^{\circ} 40'$ due north to the middle of the channel of the main Canadian River, thence down the middle of said main Canadian River to where it crosses the ninety-eighth meridian, thence due south to the place of beginning."

The described area defines the limits of the Wichita Reservation as situated within the "leased district," and comprises 743,257.19 acres.

In consideration of the above cession the United States agreed that,

(Article 2): ". . . out of said tract of country there shall be allotted to each and every member of said Wichita and Affiliated bands of Indians in the Indian Territory native and adopted, one hundred and sixty acres of land. . ."

Since the "Wichitas and Affiliated bands of Indians" were claiming additional compensation for all lands in excess of that necessary to satisfy the allotments it was agreed under Article 5,

". . . that the question as to what sum of money, if any shall be paid to said Indians for such surplus lands shall be submitted to the Congress of the United States, the decision of Congress thereon to be final and binding upon said Indians. . ."

46. The 1891 agreement was ratified by the Indian Appropriation Act of March 2, 1895, 28 Stat. 876. Among other things, the Act provided that any payment which had to be made to satisfy the Indian claims to the surplus lands in the Wichita Reservation could not exceed one

dollar and twenty-five cents per acre.

Despite the apparent cession of all their right, title, and interest to the "leased district" under the Treaty of April 28, 1866, 14 Stat. 769, the Choctaw and Chickasaw tribes were still asserting a residual trust interest in the Wichita reservation which had been ceded under the 1891 agreement. The Act therefore granted jurisdiction to the Court of Claims,

" . . . to hear and determine the said claim of the Choctaws and Chickasaws, and to render judgment thereon, it being the intention of this Act to allow said Court of Claims jurisdiction, so that the rights, legal and equitable, of the United States and the Choctaw and Chickasaw Nations and the Wichita and Affiliated Bands of Indians in the premises, shall be fully considered and determined, and to try and determine all questions that may arise on behalf of either party in the hearing of said claim; . . . and either of the parties to said action shall have the right of appeal to the Supreme Court of the United States. . ." (28 Stat. 876, 898)

47. Suit was filed in the Court of Claims by the Choctaw and Chickasaw Nations under the 1895 jurisdictional act. The Court of Claims agreed with the contentions of the Choctaw and Chickasaw Nations that they still maintain an interest in the Wichita lands, and entered judgment accordingly. In reversing the decision of the Court of Claims, the Supreme Court found (1) that the Choctaw and Chickasaw Nations had without qualification ceded all their right, title and interest in the "leased district" to the United States under the Treaty of April 28, 1866; and (2) "the Wichita and Affiliated Bands are entitled to compensation in money for such of the lands as are not needed to meet the requirements of the Act of March 2, 1895. . ." United States v. Choctaw Nation, et al., 179 U.S. 494, reversing 34 C. Cls. 17.

48 (a). Pursuant to the mandate of the Supreme Court dated January 12,

1901, the Court of Claims issued the following decree on January 31, 1901, which insofar as pertinent to the issues herein, reads as follows:

". . . .

"And it appearing to the court that by the treaty concluded April 28, 1866, between the United States and the Choctaw and Chickasaw nations of Indians, the lands above described (the Wichita Reservation) were acquired by the United States in absolute and unrestricted cession; and it further appearing to the court that the Wichita and affiliated bands of Indians were by the United States located within the boundaries of the lands hereinbefore described, and that they, the said Wichitas and affiliated bands, now number not more than one thousand and sixty persons; and it further appearing to the Court that the said location of said Wichitas and affiliated bands within said boundaries was for the purpose of affording them permanent settlement thereon; and it further appearing to the Court that the Act of March 2, 1895, section 1 (28 Stats. 897), provides that such of the lands in the reservation hereinbefore described as are neither required for the purpose of allotment under Article II of the agreement of June 4, 1891, recited in said section, nor are to be reserved for the use of schools or colleges or public buildings, are to be opened to settlement under the homestead and townsite laws of the United States and the laws relating to mineral lands and that cash payments, at the rate of one dollar and twenty-five cents per acre, are to be made by all entry men upon said land under said laws, . . .

". . . .
"And it is further adjudged and decreed that the numbers of said Wichitas and affiliated bands are entitled to one hundred sixty acres of land each out of the lands hereinbefore described. . . .

"And it is further adjudged and decreed that the said Wichita and affiliated bands of Indians are entitled to receive out of the moneys paid to the United States for such of said lands as are not required for allotment to the said Indians compensation for the said lands in the exact amount received therefor by the United States not exceeding the sum of one dollar and twenty five cents per acre. . . ." (parenthetical material supplied)

(b) By the year 1902 individual allotments of 160 acres per Indian had been completed among the Wichita and affiliated bands. As reported

by the Indian Agent at Anadarko, the individual allotments totaled 956 for which patents were issued. The members of the Caddo Tribe of Indians received a total of 83,060 acres in allotted lands. (H.R. 2503, 82nd Cong. 2nd Session)

Pursuant to acts of March 2, 1895, 28 Stat. 876, and March 3, 1901, 31 Stat. 1093, President McKinley issued his proclamation of July 4, 1901, declaring the surplus lands on the Wichita Reservation subject to entry on August 6, 1901. Net proceeds from the sale of the Wichita lands are shown in the 1956 G.A.O. Accounting Report (Pet. Ex. 92) as totaling \$575,857.35, from which sum the Caddo Tribe received per capita payments of \$319,307.97.

(c) Under the Deficiency Appropriation Act of July 1, 1902, Congress appropriated \$99,514.56 to compensate the Wichita and affiliated bands of Indians,

" . . . for seventy nine thousand six hundred and eleven and sixty five one-hundreds acres of land, ceded by said Indians to the United States by the first article of agreement with said Indians, concluded the fourth day of June, eighteen hundred ninety one, and reserved for the use of common schools, university, agricultural college, normal schools, and public buildings of the Territory of the future state of Oklahoma, at the rate of one dollar twenty five cents per acre, in accordance with the decree of the Court of Claims, passed January thirty-first, nineteen hundred one. . ." (32 Stat. 552, 582).

The withholding from sale of the above acreage within the Wichita Reservation, for which lands the United States agreed to compensate the Wichita and affiliated bands, was authorized and provided for under section 894 of the Act of March 2, 1895, which Act ratified the 1891 agreement. Of the total amount appropriated as set forth above, the

Caddo Tribe of Indians received the sum of \$45,274.56.

(d) Annual population figures from 1891 through 1895 for the Wichita and affiliated bands (including Caddo) show the following: 1891 - 1066 of which 545 were Caddo; 1892 - 996 of which 530 were Caddo; 1893, '94 - 969 of which 507 were Caddo; and 1895 - 951 of which 498 were Caddo.

49. Based upon the preceding findings of fact and all the evidence in the record, the Commission finds that by the Act of March 2, 1895, which ratified the agreement of June 4, 1891, the United States granted a compensable interest in the Wichita Reservation to the Wichita and affiliated bands residing thereon.

With respect to the Caddo Tribe of Indians, the Commission finds that said grant was a gratuity, an act accomplished without consideration and without benefit of treaty or other obligation. As such, it is a gift of property and falls within the offset provisions of section 2 of the Indian Claims Commission Act.

Having considered the nature of the present claim and the entire course of dealings between the United States and the Caddo Tribe of Indians, the Commission concludes that the defendant may in good conscience set off against the award of \$383,475.55 made herein, the fair market value of the Caddo interest in the Wichita Reservation as of March 2, 1895.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner