

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

Appearances:

O. R. McGuire, with whom was
Jay H. Hoag,
Attorneys for Plaintiffs.

Clifford R. Stearns, with whom was
Mr. Assistant Attorney General
Ramsey Clark
Attorneys for Defendant.

OPINION OF THE COMMISSION

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

On October 21, 1960, the parties entered into a stipulation whereby it was agreed that at this stage of the proceedings the Commission should determine the following:

"The trial of the issues in paragraphs 32, 33, and 34 of Defendant's Amended Answer filed May 20, 1960, shall be first determined as to the right of the defendant to offset as gratuitous the value of the lands allotted to the Caddo Indians on the Wichita Reservation and to offset as gratuitous any proceeds paid to the Caddo Indians as the result of the later sale of the surplus lands of the Wichita Reservation."

The Commission is well aware of the singular importance of this issue, since a favorable decision for defendant would certainly jeopardize, if not entirely defeat, recovery for the plaintiffs. What the defendant is seeking to offset against the Commission's interlocutory award of

\$383,475.55 is the value of the Caddo interest, if any, in the Wichita Reservation. The Wichita tract contains 743,257.19 acres and is located in the present state of Oklahoma between the Washita and Canadian Rivers west of the 98^o west longitude. It is officially designated as Royce Area 540-A on Oklahoma Map 3, Bureau of American Ethnology (1896-'97) part II.

A history and the movement of the Caddo Tribe of Indians after the 1835 Caddo Treaty of cession has been set out in considerable detail in the accompanying findings. We shall recap only briefly.

The Commission has found that, when the Caddos removed from their ceded lands in Louisiana, they journeyed into the adjacent territory that was then Mexico. It was shortly after their arrival that Texas struck for its independence, and by 1836 the Republic of Texas was a reality. Under the public laws of the Republic of Texas the Indians residing within its territorial limits were not accorded possessory rights to lands upon which they resided. Since there was no respect from any alleged Indian title, the white settlers took full advantage of the situation to the detriment of the Indians. When Texas attained statehood, the United States conceded the right of Texas to an exclusive proprietary interest in all its public lands. During the years that followed, the United States never owned or claimed to have owned any public lands in Texas.

Although Texas was now in the Union, there was no lessening of the whiteman's hostility toward the Indian. In 1846 the United States concluded a treaty with the several tribes of Texas Indians, among them the Caddo, whereby these tribes acknowledged the sovereignty and protection of the United States. No Indian rights to land were granted or confirmed under this treaty. The Wichita Indians et al., v. United States,

89 C. Cls. 378.

In 1853 the Texas legislature authorized the United States to locate Indians upon a part of its vacant public lands along the Brazos River. Shortly thereafter the Caddos settled down on a tract near Waco, Texas, under the supervision of their new agent, Robert Neighbors.

Threatened with an impending massacre from the white settlers, the United States was appealed to by the Indians, and under the direction and guidance of Agent Neighbors, the Caddo quickly abandoned the Brazos River Reservation and journeyed north to a new location on the Washita River in the Indian Territory. There they and the several other Texas tribes were allowed to settle with the Wichitas upon the Wichita Reservation, which at that time was a part of a large area that had been leased in 1855 from the Choctaw and Chickasaw Nations by the United States for the purpose of locating thereon various Indian tribes. It is commonly referred to as the "leased district."

In the years that followed serious efforts were made by responsible government officials to confirm a reservation interest in those tribes living on the Wichita tract. In 1866, the Choctaw and Chickasaw Nations by treaty released to the United States any and all interests they retained in the "leased district". In 1872, the Commissioner of Indian Affairs concluded an agreement with the Wichita and affiliated bands, which if ratified by the Senate, would confirm a reservation to these Indians. Nothing ever came of it. In 1887 the General Allotment Act was passed which permitted the taking of separate allotments by members of tribes who lived upon reservations created either by statute, treaty, or executive order. As of the date of enactment of this statute, the tribes on the Wichita tract had no interest in a reservation that had been created by statute, treaty, or

executive order.

In 1891, the Jerome Commission concluded an agreement with the Wichita and affiliated bands, including the Caddo, whereby these Indians, in return for an outright cession of their reservation, would be permitted to take individual allotments of 160 acres, plus the proceeds from the sale of the surplus lands within the reservation. The Act of March 2, 1895, formally ratified the 1891 Jerome agreement, and in so doing confirmed unto the Wichita and affiliated bands including the Caddo, a compensatory interest in the Wichita Reservation. United States v. Choctaw Nation, et al., 179 U. S. 494.

By 1902 all the eligible Indians had received their individual allotments of 160 acres. Altogether 956 patents were issued. The Caddo allotments totaled 83,060 acres. Subsequently the surplus lands were put on the market for \$1.25 per acre. The net proceeds realized by the Caddo Indians from the sale of the Wichita lands amounted to \$319,307.97. In addition the Caddos received \$45,274.56 from the United States for those lands reserved for schools and buildings.

It seems abundantly clear to the Commission from all the facts in this case that from the time they ceded all vestige of tribal lands in the United States in 1835, the Caddo Indians never again achieved the status of land owners until the United States granted them a compensable interest in the Wichita reservation under the Act of March 2, 1895. What is more important, however, the Commission believes that this grant was a gratuitous effort by the Government, an act done without the benefit of treaty or other obligation.

The Caddo Tribe's tenure in Mexico, later the State of Texas, was at the sufferance of the respective territorial and state governments. They never acquired rights in one acre of Texas lands. When in 1895 the Caddos and the other Texas tribes were compelled to flee for their lives into the Indian territory, they neither abandoned nor lost possessory rights to lands in Texas. Indeed the only property they actually possessed was what they could carry on their backs. As their acknowledged protector, the United States located them and the other Texas Indians upon lands then under lease from the Choctaw and Chickasaw Nations. Immediately thereafter the Government took steps to provide these Indians with the necessary tools, implements, and stocks upon which they might fashion a new tribal life.

The Commission cannot accept the Caddo claim that the 1895 grant of a Caddo interest in the Wichita Reservation was an act founded on consideration. The documentary evidence in the record, the actions of the Government as reflected in the statutes and the language in several relevant court decisions does not support this viewpoint. The 1895 Caddo interest in the Wichita Reservation is a gift of property, and falls squarely within the offset provisions of section 2 of the Indian Claims Commission Act.

We conclude further, that there is nothing involved in the nature of the claim now before us, or reflected in the entire course of dealings between the Caddo Tribe and the United States, which would cause the Commission to deny to the defendant the right under our Act to offset the value of the Caddo grant. The Commission will therefore allow the defendant to

credit against the award made herein the value of the gratuitous Caddo interest in the Wichita Reservation, and said valuation shall be based upon a determination of the fair market value of the Wichita Reservation as of March 2, 1895.

We do not agree with the defendant that it may set off the net proceeds realized by the Caddo Tribe from the public sale of the reservation surplus lands. Besides the fact that the money received by the Indians was not a payment made gratuitously by the Government, the fixed statutory price of \$1.25 per acre, in the absence of other evidence, does not necessarily reflect the 1895 fair market value. This latter proposition also holds true for the \$45,274.56 paid by the United States to the Caddo Tribe for lands withheld from public sale and reserved for schools and other buildings.

It seems apparent then that this matter of determining the 1895 fair market value of the Wichita Reservation will require the reception of further evidence in another proceeding before the Commission. In this regard the Commission is reminded of the fact that in the case of The Choctaw Nation et al., v. United States, 1 Ind. Cl. Comm. 241 (Dkts 16 and 23) we determined that, as of the effective date of the Treaty of April 26, 1866, 14 Stat. 769, the lands comprising the "leased district," upon which tract the Wichita Reservation is situated, had a fair market value of \$1.00 per acre. This was, of course, some 29 years before the date of the Caddo grant, and some 35 years before the entire section was thrown open for public sale.

We concur:

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

F. Harold Scott
Associate Commissioner