

BEFORE THE INDIAN CLAIMS COMMISSION

THE KICKAPOO TRIBE OF KANSAS, ET AL.,)
)
 THE PEORIA TRIBE OF INDIANS OF)
 OKLAHOMA, AND AMOS ROBINSON SKYE ON)
 BEHALF OF THE WEA NATION,)
)
 Petitioners,)
)
 v.)
)
 THE UNITED STATES OF AMERICA)
)
 Defendant.)

Docket Nos. 317 and 314-C
Consolidated

Decided: March 2, 1962

FINDINGS OF FACT

1. The petitioners in Docket 317 and 314-C are authorized by the Indian Claims Commission Act of August 13, 1946, to prosecute the claim set forth in their petition which arises out of the provisions of cession to defendant of lands by the petitioners in the Treaty of December 9, 1809 (7 Stat. 117).

2. The Vermillion and Prairie Bands of the Kickapoos were treated by the defendant as being consolidated as the Kickapoo Tribe of Nations as hereinafter shown by treaties entered into by the defendant with the said Kickapoo Tribe of Nations. The movement of the Vermillion and Prairie bands of the Kickapoo Tribe of Nations from Illinois and Indiana to the Kansas and Oklahoma reservations can be traced through the treaties between the Kickapoo Nation and the United States. The movement of the Peoria Tribe of Oklahoma, et al., can similarly be traced, but that question is not in issue here.

The Treaty of July 30, 1819 (7 Stat. 200) first gave the Kickapoo a reservation near the Osage River in Missouri. In August, 1829, four

Kickapoo chiefs were listed as residing on the Osage River (Pet. Ex. 62). One of them, La Farine, was a chief of the Vermillion band who signed the Treaty of August 30, 1819 (7 Stat. 202). Another, Kceshquokau, is listed as the Prairie Band Chief. The Osage River flowed through central Missouri and formed the northern boundary of the Missouri reservation. At Castor Hill on October 24, 1832, the Kickapoo relinquished their rights to that land in exchange for a reservation near Leavenowrth, Kansas (7 Stat. 391).

A large part of the Kansas reservation was ceded to the United States by the treaty of May 18, 1854 (10 Stat. 1078). Subsequently it was further reduced by the Treaty of June 28, 1862 (13 Stat. 623). The Kickapoo Indians who remained in Kansas are represented by the tribal organization of the Kickapoo Tribe of Kansas.

In the decade 1810 to 1820 some members of the tribe as individuals apparently migrated to the Mexican Territory (present day Texas). After 1832, groups of Kickapoo who disliked the agricultural life, left the Kansas reservation to hunt in Indian territory. They remained there; returned to Kansas only for their annuity payments. In 1863 and 1865 another group of Kickapoo Indians left the Kansas reservation, migrated to Mexico, and ten years later, returned to the United States and settled in Indian territory. The United States Government set aside a reservation in Oklahoma for these Kickapoo in the year 1883. These Indians are represented by the tribal organization of the Kickapoo Tribe of Oklahoma.

3. This cause concerns certain lands in Illinois and Indiana, more particularly described below. Said lands are known as Royce Areas 73 and 74. By order of this Commission, entered herein on the 26th day of June,

1958, the petitions in Dockets 314-C and 317 were consolidated for the purpose of determining whether the petitioners in said dockets, or their predecessors, had compensable interests in the said lands, at or about the time or times when said lands were ceded to the United States.

Royce Areas 73 and 74, the areas for which additional compensation is claimed in this action, are located in present day Illinois and Indiana just west of the Wabash River. Royce area 73 is described in Article 9 of the Treaty of Fort Wayne of September 30, 1809 (7 Stat. 113), as follows:

* * * the lands on the north-west side of the Wabash, from the Vincennes tract (Royce Area 26) to a northwardly extension of the line running from the mouth of the aforesaid Raccoon creek, and fifteen miles in width from the Wabash * * * (7 Stat. 113, 115).

Royce Area 74 is described in Article 2 of the treaty with the Kickapoos dated December 9, 1809 (7 Stat. 117), in the following manner:

* * * All that tract of land which lies between the tract above ceded (Royce Area 73), the Wabash, the Vermillion River, and a line to be drawn from the north corner of the ceded tract, as to strike the Vermillion (sic) river at the distance of twenty miles in a direct line from its mouth. (7 Stat. 117).

4. The Kickapoo Tribe and the Wea Tribe were parties to the Treaty of Greenville, August 3, 1795 (7 Stat. 49). The Indian Claims Commission in Docket 253 consolidated decided that the United States by the said Treaty of Greenville (Pet. Ex. 16) recognized the interests of various signatory Indian tribes, including the Wea and the Kickapoo, in the lands between the Mississippi River and the general boundary line agreed to by that treaty, but did not define the separate lands or interests of the

different tribes. The tracts involved in this case, Royce Areas 73 and 74 were located within the area so recognized; however, the Kickapoo Tribe was not a party to the consolidated action in Docket 253.

5. On December 9, 1809, the defendant by its duly authorized agent, Governor William Henry Harrison, concluded a treaty at Vincennes, Indiana, with the "Sachems and war chiefs of the Kickapoo Tribe." Said treaty (7 Stat. 117) was duly ratified and confirmed by the President by and with the advice and consent of the Senate, and was proclaimed on March 8, 1810. The treaty provided in Article II that,

"The ninth Article of the treaty concluded at Fort Wayne on September 30, 1809, and the cession it contains is hereby agreed to by the Kickapoos and a permanent additional annuity of four hundred dollars, and goods to the amount of eight hundred dollars, now delivered, is to be considered as a full compensation for the full cession."

Under the terms of said treaty, the Kickapoo Nation also agreed to sell, relinquish, and release to the defendant all right, title, and interest in the territory described in Article 9 of the Treaty of September 30, 1809 (7 Stat. 113) with certain other Indian tribes, as follows:

"The lands on the north-west side of the Wabash, from the Vincennes tract to a northwardly extension of the line running from the mouth of the aforesaid Raccoon creek, and fifteen miles in width from the Wabash. . ."
(Royce, 18th Annual Report of the Bureau of American Ethnology, Pt. II, Indiana Map 1, Area No. 73).

Under the terms of said treaty, the Kickapoo Nation further agreed to cede to the defendant,

". . . all the tract of land which lies between the tract above ceded, the Wabash, the Vermillion River, and a line to be drawn from the north corner of the said ceded tract, so as to strike the Vermillion River at the distance of twenty miles in a direct line from its mouth." (Royce Area No. 74).

6. Article 4 of the Treaty of Grouseland, dated August 21, 1805 (7 Stat. 90) provided that,

. . . as the tribes which are now called the Miamis, Eel River, and Weas, were formerly and still considered themselves as one nation, and as they have determined that neither of these tribes shall dispose of any part of the country which they hold in common; in order to quiet their minds on that head, the United States do hereby engage to consider them as joint owners of all the country on the Wabash and its waters, above the Vincennes tract, and which has not been ceded to the United States, by this or any former treaty; and they do farther engage that they will not purchase any part of the said country without the consent of each of the said tribes. Provided always, that nothing in this section contained, shall in any manner weaken or destroy any claim which the Kickapoos, who are not represented at this treaty, may have to the country they now occupy on the Vermillion River.

For many years prior to that treaty the Kickapoo had a village at the confluence of the Vermillion and Wabash Rivers.

7. The petitioners in Docket 314-C, the Peoria Tribe of Indians of Oklahoma and Amos Robinson Skye on Behalf of the Wea Nation are entitled to sue. The Wea Nation or Tribe, previously an independent entity, united in 1849 with the Piankeshaw, Peoria and Kaskaskia Tribes to form the group now known as The Peoria Tribe of Indians of Oklahoma. A formal consolidation of the four tribes was effected by the treaty of May 30, 1854, 10 Stat. 1082.

8. As heretofore decided in Docket 67 consolidated and 253 consolidated the United States by the 1805 treaty of Grouseland (Pet. Ex. 22) agreed to consider the Miami, Eel River and Wea Tribes as,

. . . joint owners of all the country on the Wabash and its waters, above the Vincennes tract,

and which has not been ceded to the United States, by this or any former treaty. . .

9. As heretofore found in Docket 67 (Finding 2), the Wea country was in the western part of Indiana, along the Wabash River, north of Vincennes. Subsequent to the Grouseland Treaty, the lands recognized as being within the joint ownership of the tribes constituting the Miami Nation underwent a process similar to that of a partition proceeding. By that process the Wea acquired separate title to the lands west of the dividing line shown on 314-C, Ex. 49, while the Miami, including the Eel River Miami, retained title to the lands east of that line (Docket 67, Finding 2; Docket 253, Finding 12). The areas involved in this case are on the west side of the line of partition.

10. The tribes which were parties to the Grouseland Treaty, with the exception of the Wea, agreed to cede Royce Area 73 to the United States by the treaty made at Fort Wayne September 30, 1809, with the special condition that "this article is to have no effect unless the Kickapoos will agree to it" (Pet. Ex. 32, Art. 9). In consideration of the cession, permanent annuities were provided amounting to \$400.00 payable to the Miami and \$100.00 each to the Wea and Eel River Tribes (Pet. Ex. 33). The Wea Tribe gave its consent to the Fort Wayne Treaty by a convention entered into October 26, 1809 (Pet. Ex. 45). With respect to Royce Area 73, this convention provided for the Wea a further permanent annuity of \$100.00 "as soon as the Kickapoos can be brought to give their consent to the ninth article of said (Fort Wayne) treaty." Fort Wayne Treaty was agreed to by the Kickapoo for the consideration of

a permanent annuity of \$400.00 and goods valued at \$800.00 (Pet. Ex. 37). By the same treaty the Kickapoo ceded to the United States Royce Area 74 subject to the following conditions:

For this cession a further annuity of one hundred dollars, and the sum of seven hundred dollars in goods now delivered, is considered as a full compensation. But if the Miamies should not be willing to sanction the latter cession, and the United States should not think proper to take possession of the land without their consent, they shall be released from the obligation to pay the additional annuity of one hundred dollars. (Pet. Ex. 37)

Consent of the Wea and Miami, including the Eel River Miami, to the Kickapoo cession was obtained by two treaties, the first dated October 2, 1818 (7 Stat. 186), and the second dated October 6, 1818 (7 Stat. 189).

11. By the Treaty of Greenville, August 3, 1795, the United States recognized title in the Wea and Kickapoo Tribes in and to such lands within the general boundary line agreed to by the terms of said treaty used and occupied by said tribes without specifically identifying the lands of each tribe. Said title in the Wea and Kickapoo Tribes was acknowledged or confirmed by the Treaty of Grouseland, August 21, 1805, without again identifying the separate areas owned by each of the said tribes. By the treaties of October 26, 1809, December 8, 1809, and October 2, 1818, the Wea and Kickapoo Tribes ceded to the United States Royce Areas 73 and 74, but the treaties of cession do not identify the specific lands within Royce Areas 73 and 74 separately held by each of the said tribes under recognized title. The evidence of record does not at this time permit

a determination of respective interests of the Wea and Kickapoo Tribes which must be shown by their respective use and occupancy of Areas 73 and 74.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner