

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.)	Docket Nos. 317 and 314-C
)	Consolidated
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: March 2, 1962

Appearances:

Allan Hull, Attorney of Record in Docket No. 317, Jack Joseph, Attorney of Record in Docket No. 314-C, and Louis L. Rochmes, Attorneys for Petitioners.

Bernard M. Newburg, 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.

The claims here presented for a determination are for additional compensation for two tracts of land ceded by treaties and a convention hereinafter described. For convenience we will generally refer to these cessions by the tract numbers used by Royce on his Indiana and Illinois maps of Indian Land Cessions published in the 18th Annual Report of the Bureau of American Ethnology for 1896-1897.

Each of the claimants in the two dockets shown above claimed rights to all of the lands ceded in Royce Areas 73 and 74; they were therefore consolidated for trial by Commission Order dated June 6, 1958.

The land involved in this suit is described 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.)

" . . . all that 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)

The treaties and convention involved and pertinent to the right of petitioners to the lands described above are now set forth in chronological order:

The Treaty of Greenville, dated August 3, 1795 (7 Stat. 49)
 The Treaty of Grouseland, August 21, 1805 (7 Stat. 90)
 The Treaty of Fort Wayne, September 30, 1809 (7 Stat. 113)
 The Convention of October 26, 1809 (7 Stat. 116)
 The Treaty of Vincennes, December 9, 1809 (7 Stat. 117)
 The Treaty of October 2, 1818 (7 Stat. 186)
 The Treaty of October 6, 1818 (7 Stat. 190)
 The Treaty of May 30, 1854 (10 Stat. 1082)

The terms of said treaties and convention and their effect on petitioners' right to institute and maintain a claim against the defendant herein are outlined in detail in the Commission's Findings of Fact herein, Finding 4 through Finding 11, and no use other than repetition would be served by setting out the provisions of said treaties and convention in this opinion.

It should be noted that all of said treaties and the convention were confirmed and ratified by the United States Senate.

As shown by the various treaties set forth above, the Vermillion and Prairie Bands of the Kickapoo Indians were treated as the Kickapoo Nation by the defendant. The movement of the Kickapoo Tribe to its present residence on the Kansas and Oklahoma reservation is set forth in Finding No. 2 herein and is established and explained by documentary evidence.

It was found in Peoria Tribe of Oklahoma, et al., v. United States of America, Docket No. 65, 4 Ind. Cl. Comm. 238, that the petitioner in 314-C "Peoria Tribe of Indians of Oklahoma, is duly incorporated under the Act of June 26, 1936 (49 Stat. 1967) and has been recognized by the Secretary of the Interior as having authority to represent the respective tribal groups which, prior to the incorporation of said petitioner, were known and recognized as the Peoria, Kaskaskia, Wea and Piankeshaw tribes or nations, in the prosecution of the claims set forth in said respective dockets."

As a result of the foregoing, we first conclude that the petitioners in Dockets 317 and 314-C have the right to bring and maintain suit against the defendant herein under Section 2 of the Act of Congress dated August 13, 1946 (60 Stat. 1049).

We find the remaining issue to be as follows: Whether or not the petitioners in the dockets herein have a right to the lands described in Royce's Areas 73 and 74 herein, by title recognized by the defendant through duly ratified treaties.

We discussed the general problem of tribal interests in lands in Grow Tribe v. United States (1954, Docket No. 54, 3 Ind. Cl. Comm. 155,

157) and stated that Indian tribes held lands in two ways:

(1) Aboriginal possession, which is the source of Indian title, is based upon exclusive use and occupancy. This interest is generally known as "original Indian title" or "unrecognized Indian title."

This type of Indian rights in land is not involved here, for, as we have said above, we are only to decide whether the petitioners ceded by said treaties their recognized title or rights. We mention original Indian title primarily to distinguish it from the kind of tribal interest the claimants here maintain they had when they ceded their lands to defendant.

(2) The other way in which Indians held land was by "recognized title", that is, where the Indians' right to permanently occupy and use land has been confirmed or recognized by Congressional action. This kind of tribal right is variously referred to in court decisions as "treaty" or "reservation" title, or "recognized" title.

To create such an interest in Indian tribes, direct Congressional action is necessary by ratified treaties and agreements, or by specific statutory enactment. In Hynas v. Grimes, 337 U. S. 86, 103, 93 L. Ed. 1231, 1247, the Supreme Court said:

Since Congress, under the Constitution, Sec. 3 of Art. 4, has power to dispose of the lands of the United States, it may convey to or recognize such rights in the Indians, even a title equal to fee simple, as in its judgment is just. Northwestern Band of Shoshone Indians v. United States, 324, U. S. 335, 339, 340, 89 L. Ed. 985, 990, 991. (Underscoring added)

And in Sioux v. United States, 316 U. S. 316, 326, the Supreme Court held that the disposal of public lands rests "exclusively in Congress."

Congressional recognition may be by direct legislative action or by

ratifying a treaty or agreement with an Indian tribe wherein such recognition is provided. In Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 278, the Court held:

There is no particular form for congressional recognition of Indian right of permanent occupancy. It may be established in a variety of ways but there must be the definite intention by Congressional action or authority to accord legal rights, not merely permissive occupation. (Citing Hynes v. Grimes Packing Co., supra)

The petitioners in these consolidated cases do not rely upon proof of "Indian Title" to sustain their position, but upon the proposition that by the Treaty of Greenville of August 3, 1795 (7 Stat. 49), between twelve Indian tribes, including the petitioners in these consolidated cases, the defendant recognized the title of these petitioners in the lands ceded in 1809, such lands being Tracts 73 and 74 which were within the boundaries of the lands relinquished (Art. IV) by the United States in the Greenville Treaty of 1795.

The relinquishment by the United States in the Treaty of Greenville heretofore referred to is in these words:

In consideration of the peace now established and of the cessions and relinquishments of lands made in the preceding article by the said tribes of Indians, and to manifest the liberality of the United States, as the great means of rendering this peace strong and perpetual; the United States relinquish their claims to all other Indian lands northward of the river Ohio, eastward of the Mississippi, and westward and southward of the Great Lakes and the waters uniting them, according to the boundary line agreed on by the United States and the king of Great Britain, in the treaty of peace made between them in the year 1783. . .

It also contained a provision against sale of any of the said lands by the Indian tribes to anyone other than the United States.

Article 5 of the Greenville Treaty provided in part as follows:

"The Indian tribes who have the right to those lands /the lands relinquished by the Government/ are quietly to enjoy them, hunting, planting, and dwelling thereon so long as they please, without any molestation from the United States; . . ."

In Miami Tribe of Oklahoma, et al., v. United States of America, 5 Ind.

Cl. Comm. 180, the Indian Claims Commission stated:

". . . when the defendant relinquished its claims to the tribal lands in the Northwest territory and solemnly agreed that the tribes having a right thereto might enjoy those lands as they pleased without molestation from the United States, it was granting each of the twelve signatory tribes the right of exclusive permanent occupancy of the lands each respectively possessed until they were disposed to sell them to the United States. The tribes were thus each granted a right they did not enjoy before Greenville, but one plainly within the judicial concept of 'recognized' title."

As the Commission also pointed out in Docket No. 253, Miami Tribe of Oklahoma (supra) in the Greenville Treaty no division of the territories of the respective tribes was made, but as the Commission stated, the failure of the treaty to specify the lands of the respective tribes did not militate against the Government's recognition of the right of each tribe to use and occupy its lands until it was disposed to sell them to the United States. The Commission noted the instructions to General Wayne; his statements to the assembled Indians; and the statements of the Indians at the Greenville Treaty; and concluded from these statements insofar as tribal lands were concerned the Government was dealing with each tribe independently of the others.

"In other words, it was understood by the Government's representatives and the Indians that each tribe had separate lands; that there was no community of interest in the lands of the Northwest territory. So the recognition accorded by

the Greenville Treaty was that of each tribe. To be sure, the separate tribal lands had to be identified whenever identification became necessary and that could be done by agreements between the tribes and the United States."

Agreements identifying the land in Royce Areas 73 and 74 were made by the petitioners and the defendant herein by the Treaties of September 30, 1809 (7 Stat. 113) and December 9, 1809, and convention of October 26, 1809 (7 Stat. 116) hereinbefore referred to.

The Treaty of August 3, 1795, recognized title in the Wea and Kickapoo Tribes to such lands as they each possessed within the general boundary lines as set forth in said 1795 treaty. The Treaty of September 30, 1809, agreed to by the Kickapoo Tribe on December 9, 1809, and by the Wea Tribe on October 26, 1809, identifies an area of land (Royce Area 73) in which possessory rights of said Kickapoo and Wea Tribes are confirmed, and the 1809 treaty with the Kickapoo Tribe cedes Royce Area 74, which was agreed to by the Wea Tribe by the Treaty of October 2, 1818, thus identifying an area of land in which said possessory rights are also confirmed.

It is our conclusion that the Kickapoo and Wea tribes had recognized title to those lands in Royce Areas 73 and 74 which each tribe possessed by virtue of the right of exclusive permanent occupancy granted each tribe by the treaty of 1795. In view of the record it will be necessary for further proceedings to determine the areas within Royce 73 and 74 which each tribe possessed. An order to that effect will be entered.

Arthur V. Watkins
Chief Commissioner

We concur:

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner