

BEFORE THE INDIAN CLAIMS COMMISSION

THE ABSENTEE SHAWNEE TRIBE OF)
 OKLAHOMA, THE EASTERN SHAWNEE)
 TRIBE OF OKLAHOMA, DAVIS)
 TYNER AND WOODROW SPYBUCK, ON)
 BEHALF OF THE BLACK BOB BAND,)
)
 Petitioners,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 334-A

Decided: March 22, 1963

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The claims by the petitioners allegedly arise under the provisions of Section 2 of the Indian Claims Commission Act of 1946 (60 Stat. 1049), hereinafter referred to as the "Act"; such claims accrued prior to August 13, 1946, the effective date of that Act; no suit is pending in the Court of Claims or the Supreme Court of the United States with respect to such claims, nor have such claims been filed in the Court of Claims under legislation existing at the date of approval of that Act.

2. Both the Absentee Shawnee Tribe of Oklahoma and the Eastern Shawnee Tribe of Oklahoma are tribal organizations recognized by the Secretary of Interior as having authority to represent those members of Black Bob's Settlement referred to in the Treaty of 1854.

3. At the time of the Treaty of 1854, the Shawnee Indians of Kansas were divided into two groups, the Absentee Shawnees which had removed to Indian Territory, and those remaining in Kansas.

4. The Black Bob Band of Shawnees, as identified in the Treaty of 1854 consisted of Shawnee Indians residing in what was known as Black Bob's Settlement in eastern Kansas, and who, prior to the Treaty of 1854, had expressed their desire to hold their lands in common, rather than to select individual allotments.

5. Article 1 of the Treaty of May 10, 1854 (10 Stat. 1053), provided that the Shawnee Indians ceded to the United States their Kansas reservations consisting of 1,604,956 acres.

Article 2 provided that the United States receded to the Shawnees 200,000 acres to be chosen from the eastern 30 miles of the reservation selections to consist of 200 acres for each individual Indian including those non-Indians adopted by the tribe.

Article 2 further provided as follows:

* * * In the settlement known as Black Bob's Settlement in which he has an improvement, whereon he resides; and in that known as Long Tail's Settlement, in which he has an improvement whereon he resides, there are a number of Shawnees who desire to hold the lands in common; it is, therefore, agreed that all Shawnees * * * who reside in said settlements respectively, and all who shall, within 60 days after the approval of the surveys hereinafter provided for, signify to the United States Agent their election to join either of said communities and reside with them, shall have a quantity of land assigned and set off to them, in a compact body, at each of the settlements aforesaid, equal to 200 acres to every individual in each of said communities.

Article 4 of the treaty provided:

Those of the Shawnees who may elect to live in common, shall hereafter be permitted, if they so desire, to make separate selections within the bounds of the tract which

may have been assigned to them in common; and such selections shall be made in all respects in conformity with the rule herein provided to govern those who shall, in the first instance, make separate selections.

Article 9 of the treaty provided:

Congress may hereafter provide for the issuing, to such of the Shawnees as may make separate selections, patents, for the same; with such guards and restrictions as may seem advisable for their protection therein.

6. In accordance with the provisions of the Treaty of 1854, a census was taken under which 167 Shawnees elected to take their lands in common, and 33,392.87 acres were set aside and approved on November 2, 1857. The area so set aside was located on the eastern boundary of Kansas, lying about 18 miles south of Kansas City, and designated as Royce Area 320.

7. Congress, by Act of March 3, 1859 (11 Stat. 430), provided for the issuance of patents to certain Indians residing in Kansas Territory, as follows:

That in all cases where, by the terms of any Indian treaty in Kansas Territory, said Indians are entitled to separate selections of land, and to a patent therefor, under guards, restrictions, or conditions for their benefit, the Secretary of the Interior is hereby authorized to cause patents therefor to issue to such Indian or Indians and their heirs, upon such conditions and limitation, and under such guards or restrictions, as may be prescribed by said Secretary. * * *

8. During the early part of the Civil War, the members of the Black Bob Band were driven from their lands and such improvements as they had made were destroyed, and their stock stolen. Some members of the band were killed and many of them fled the area for safety. When they returned after cessation of hostilities, they found their lands taken over to a great extent by white settlers.

In 1866, the Department of the Interior expressed its determination to protect the Black Bobs and other Indians in their possession of the land, advising the Indian agent to enforce the laws against trespassers. However, during early 1866, negotiations were conducted by the Government with the Black Bobs and other Shawnees as to disposal of their lands so that they might remove to live with the Cherokees. The settlers were desirous of obtaining the lands; and they were given reason to believe by the Commissioner of Indian Affairs that their interests would be protected under the treaty then being negotiated between the United States and the Shawnees, and that they would be able to purchase the lands on which they had settled.

The proposed treaty was never ratified and the lands continued to be subject to the treaties and laws then in existence.

9. In September 1866, sixty-nine members of the Black Bob Band made separate selections of land, and a list of the names and areas selected was submitted to the Department of the Interior. Upon recommendation of the Bureau of Indian Affairs, the General Land Office issued patents to the selectees on June 10, 1867, and they were recorded on the patent record as having been issued, although the record indicates they probably, in many cases, were not immediately delivered to the patentees.

In November 1866, the Shawnee delegates requested, in writing, that the selections of Black Bob lands not be approved or patents issued because ex-agent Abbott was taking advantage of the Indians, and that they did not construe the treaty as contemplating that such selections should be made.

There followed numerous inquiries by the settlers as to the status of the Indians, their right to take head rights, and the status of the settlers on those lands.

In November of 1867, a movement was begun to have the patents cancelled and withdrawn. Allegations of fraud, coercion and duress were made against Abbott and others involved. Finally, on December 13, 1867, a telegram was sent by the Office of Indian Affairs to Indian Agent Taylor, ordering suspension of delivery of the sixty-nine patents until further notice; and acknowledgement was finally made on December 28, 1867 by Taylor, who advised that the order suspending delivery of the patents would be obeyed.

After being instructed by the Commissioner of Indian Affairs to return the patents, Taylor advised on September 19, 1868, that the patents had been delivered and that the Black Bobs had refused to deliver the patents to him.

10. On October 13, 1868, certain Black Bobs requested through the Commissioner of Indian Affairs that the patents be recalled, alleging fraud on the part of Agent Taylor and Abbott. This, together with objections from members of Congress, caused the Commissioner to advise the Superintendent of Indian Affairs that no further action would be taken until completion of an investigation, and that the Indians should be advised that no sale of lands so patented would be recognized or approved by the Department of Interior until differences had been settled.

However, on December 2, 1868, the agent for the Shawnees, transmitted to the Commissioner of Indian Affairs a letter from the "Grand

Council of the Black Bob Reservation," dated October 28, 1868, disbanding issuance of patents for their selections of land, and repudiating anyone purporting to act for them to obtain return of their patents to the land office.

11. There then followed a series of communications from the various persons interested in the sale, including a memorial to the President of the United States from one Slaughter claiming to represent the settlers, as to the predicament in which the settlers then found themselves because they had relied upon the assurances of the Office of Indian Affairs. Request was made that patents be withdrawn and cancelled so that settlers might retain the lands on which they had settled, and in due course, purchase them from the government.

On February 18, 1869, the Commissioner of Indian Affairs wrote at length to the Secretary of the Interior, outlining the history of the case, and requested the Secretary of the Interior to decide as to approval of sales already made, and whether any other members would be permitted to make selections in severalty.

12. On March 1, 1869, the Commissioner of Indian Affairs recommended approval of sixty-nine sales by Indians who had already received patents, and that the second group of sixty-five selections be approved and patents issued, provided that any subsequent sales thereof conform to existing rules and regulations.

On October 6, 1869, the Department of the Interior directed the Commissioner of the General Land Office to issue the patents to these lands. On January 10, 1870, these additional patents were issued, subject to the same conditions, that the lands covered thereby should

not be sold or alienated in any way without the approval and consent of the Secretary of the Interior.

13. During this period, there was voluminous correspondence from both settlers who had occupied the lands adversely, and from persons who had purchased lands from the Indians, asking approval of their deeds. One T. S. Slaughter, purportedly acting on behalf of both the Indians and the settlers, denounced Abbott and branded the selections and issuance of patents illegal and procured by duress. He further advocated refusal of sales to speculators and protection of the rights of settlers who purportedly were encouraged in settlement by the government.

In May 1869, Guthrie denied the charges placed against him at length. Abbott, on the other hand, charged Guthrie with bribery and disloyalty in attempted coercion of Agent Taylor and Abbott, and that the purported signatures of Black Bobs on charges against Abbott were, with one exception, forgeries.

On September 17, 1869, one Hoag, Superintendent of Indian Affairs, reported to the Commissioner of Indian Affairs that he had investigated the situation in accordance with the letter of instructions from the Bureau of Indian Affairs, and that he had found some degree of undue influence, but not generally; that adequate compensation had not been paid in some cases, but prices paid by speculators were near that paid for lands belonging to whites in the area; that the discrepancy between the consideration specified in deeds and that received by grantors varied, and was claimed to have been expenses of various kinds; that the obstacle to a settlement of differences was "self-constituted

councilors" who, under the guise of protectors and friends, sought to enrich themselves; and that the Shawnees, with the exceptions of some Black Bobs were anxious to remove to Cherokee country. He recommended approval of 69 patents issued on June 10, 1867, upon proof that patentees had received full consideration set out in subsequent deeds, their patents be issued for 65 selections presently in the hands of the Bureau of Indian Affairs, and delivery of the patents to patentees who had not already sold lands, and to grantees in deeds from patentees.

14. By resolution passed December 13, 1869, the United States Senate directed the Department of the Interior to provide for its information copies of all documents and correspondence on file relating to the disposition of Black Bob lands and requested suspension of all proceedings until Congress could determine what action should be taken. After consideration of the problems presented, Congress, by provisions of Section 14, Act of July 15, 1870 (16 Stat. 310), directed the Department of the Interior "to withhold patents for any portion of the lands known as the Black Bob Indian Lands in Kansas," and likewise to withhold approval "of all transfers of said lands and to permit peaceable occupancy by all settlers or Indians now residing thereon, until further action of Congress, in relation thereto, without prejudice to existing rights."

The enactment of this legislation was brought about by the claims of settlers that they had settled on these lands in good faith, relying upon assurances of the Commissioner of Indian Affairs that their rights would be protected upon payment of a fair price for the lands they

occupied by provisions in a treaty made with the Black Bob Band of Shawnees. However, the treaty was never ratified.

In January 1870, the Shawnee council protested to the Commissioner of Indian Affairs the stopping of sales of lands owned by Black Bobs. They stated this prevented them from removing to Cherokee lands to live with their adopted tribe.

15. From 1870 until 1879, no official action was taken as to undelivered patents or unapproved deeds. However, charges of fraud, forgery, duress and various degrees of perfidy were made by all involved, publicly and in official realms. The citizens of Johnson County were joined by the Kansas state officials in requesting prompt settlement of the controversy.

16. In accordance with a joint resolution of Congress approved on March 3, 1879 (20 Stat. 488), suit was brought in the United States Circuit Court for the District of Kansas, and a decree was rendered on March 29, 1884, affirming the validity of the 134 patents issued, including the original list of sixty-nine and second list of sixty-five. At the same time, many of the conveyances which had been made by the Indians and which had remained unapproved in the office of the Secretary of the Interior were also confirmed by the court, and later approved by the Secretary of the Interior.

In addition, thirteen selections which had been made by Black Bobs prior to suit, but which had not been approved by the Department of the Interior were held to be valid, and the court held the grantees were entitled to patents. Such patents were granted (with one exception)

making a total of 146 patents covering 29,043.77 acres confirmed and issued. The remaining 4,349.10 acres continued to be held in common by 21 Black Bob Indians.

17. John Hutchings, who had acted as Special Counsel for the Black Bob Band in the suit to quiet title, continued to act for the Indians. In that capacity, he sent to the Department of the Interior on October 27, 1884, a list of selections made by Black Bob Indians out of the remaining lands, and requested that the selections be approved. The Bureau of Indian Affairs reported to the Department of the Interior that since the question of the status of unallotted lands was not raised in the original suit, the Congressional resolution of March 3, 1879, did not apply to such unallotted lands and their allotment could be made under an agent of the Department of the Interior. The Department of the Interior concurred and authorized allotments in that manner.

The Office of Indian Affairs on December 16, 1884, instructed W. H. Robb, United States Special Indian Agent, to ascertain whether the 13 selections submitted by John Hutchings, and 10 other selections transmitted by W. J. Buchan were properly made; to make a valuation of the lands and the improvements thereon, separately; and to indicate such on the schedule of allotments to be sent to the Department.

The report submitted by Robb, dated February 9, 1885, stated that these particular lands had been occupied by various settlers, and presently had a value of from \$2 to \$15 per acre; that improvements ranging in value from \$25 to \$2,000 had been made on the lands; and that he recommended an average value of \$3 per acre which sum would be divided in proportion to the value of the lands patented to each Indian.

This schedule of allotments was approved by the Office of Indian Affairs, and transmitted to the Department of the Interior with recommendation that 22 patents be issued. On February 27, 1885, the Department of the Interior approved the schedule and authorized issuance of patents by the General Land Office. The 22 patents were subsequently forwarded to Buchan for delivery to the patentees.

18. At a later date, 25 separate deeds from various members of Black Bob Band, or their descendants, in which Thomas Carney appeared as grantee, were filed with the Office of Indian Affairs for approval.

Immediately, a flood of letters was sent to the Office of Indian Affairs claiming fraud on the part of Carney, Hutchings, Buchan, Slaughter and others. The accusations included inadequate consideration, payment to persons not entitled to receive payment, and coercion.

In order that the Department might have all the facts concerning these conveyances, and to adjudge them before bringing quiet title action in these lands as required under Joint Resolution of Congress, dated March 3, 1879, the Office of Indian Affairs commissioned Special Indian Agent White to make a thorough examination and investigation into the sufficiency of consideration set forth in each deed, whether money was actually paid to the grantor or secured by deposit in a bank, whether it was paid to the persons actually entitled to receive it, and whether the methods used to secure such deeds were proper and ethical.

Further, the Department of the Interior requested the Attorney General on January 20, 1886, to prevent a final decree in the case to quiet title to all Black Bob lands, until such time as White could

complete his investigation. Assurances were given by the Circuit and District judges, and by Buchan, representing the United States, that no action would be taken toward a decree until conclusion of the investigation.

19. A report was filed by White on April 8, 1886, concerning the methods by which the 25 deeds were procured and the value of the land involved.

White concluded and reported that there had been a conspiracy between Buchan, Hutchings, Carney and others which had precluded competition and allowed purchase for an inadequate price of \$3.00; and that Buchan and Hutchings had used their official relationship with both the United States and the Indians to secure an advantage which enabled them to cheat and defraud certain Indians.

As to the value of the land, it was White's opinion that, exclusive of improvements it was worth from \$10 to \$35 per acre; that Carney's deeds covered 4,823 acres and the stated consideration was, in the aggregate, \$14,469, a small percentage of the value of the land alone. However, there was also credible evidence showing absence of fraud, and that the consideration paid by Carney was approved by the Shawnees in council.

20. Because of the conflicting evidence, Congress again enacted legislation to provide for the settlement of title to the lands claimed by the Black Bob Band, or by non-Indians as their grantees, or as adverse claimants, approved March 1, 1889 (25 Stat. 768), authorizing the Attorney General to bring suit to quiet title in the remaining

tracts. Suit was brought in the Circuit Court of the United States for the District of Kansas, with right of appeal to the Supreme Court; and, on September 7, 1895, the court held that the 26 conveyances, covering the 5,089.66 acres were valid. In due time, these deeds were delivered to the grantees.

21. The Commission finds that the claims of the Black Bob Band, along with those of other Shawnees, for trespass and depredations by white citizens against Shawnee property during the period of the Civil War--1861-1866--were disposed of in the case of Blackfeather v. United States, 37 C. Cls. 233, as a class action for individual lands. To compensate the Shawnees, together with others having similar claims, Congress appropriated certain sums in several sessions of Congress, thereby discharging its obligations to the Indians therefor.

22. The claims made by petitioners herein are individual in nature, each with facts differing from the others and each arising at a different time. Accordingly, the Commission finds that the claims of the petitioners herein are individual claims and are not within the jurisdiction of the Commission under the provisions of the Indian Claims Commission Act.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner