

BEFORE THE INDIAN CLAIMS COMMISSION

THE PONCA TRIBE OF INDIANS OF)
 OKLAHOMA,)
)
 and)
)
 WILLIAM OVERLAND, METHA COLLINS,)
 and JOHN WILLIAMS, as represen-)
 tatives of the PONCA TRIBE and)
 all the members thereof,)
)
 Petitioners,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 322

Decided: July 26, 1963

Appearances:

Edwin A. Rothschild, with whom
 was 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

Scott, Associate Commissioner, delivered the opinion of the Commission.

The petitioners herein assert a claim for the value of certain lands located in Nebraska and South Dakota and damages under the provisions of all of the sub-sections of Section two of the Act of August 13, 1946.

The extent of the petitioners' claim is set out in Findings 2 and 3 of the findings of fact accompanying this opinion.

The petitioner tribe was signatory to a treaty entered into at Washington, D. C. by delegates of the Ponca Tribe and a United States Commissioner, said treaty being dated March 12, 1858, confirmed and proclaimed on April 11, 1859 (12 Stat. 997). By the terms of this Treaty, the Ponca Tribe ceded to the United States "all lands now owned or claimed by them, wherever situate," except a reservation located on the Niobrara River and consisting of approximately 60,000 acres.

Petitioners claim that under the provisions of the 1858 Treaty, the Ponca Tribe relinquished to the United States all right, title and interest to all the lands which it had held "during the first half of the 19th century" for an unconscionable consideration, that the cession of such lands was obtained through duress, fraud and other improper means, that the duties of the United States as guardian and trustee of the Ponca Tribe were disregarded and violated, and that as a result of the acquisition of such lands from the Ponca Tribe, the United States wrongfully profited. Petitioners also claim that lands belonging to them were ceded to the United States by the Sioux Tribe under the Treaty of September 17, 1851, known as the Fort Laramie Treaty (11 Stat. 749), by the Treaty with the Omahas, dated March 16, 1854 (10 Stat. 1043) and by the Treaty with the Pawnees dated September 24, 1857 (11 Stat. 729).

The petitioners are the Ponca Tribe of Indians of Oklahoma and William Overland, Metha Collins and John Williams. The Ponca Tribe, consisting of the portion of the Ponca Indians now living in Oklahoma, was incorporated under the Oklahoma Indian Welfare Act of June 26, 1936, (49 Stat. 1967); its counsel had been approved by the Secretary of the

Interior, and petitioners are authorized to prosecute this claim in a representative capacity on behalf of the Ponca Tribe of Indians as it existed when its lands were alleged to have been taken by defendant.

The matters now before this Commission for determination are whether the Ponca Tribe of Indians held Indian title to the area of land in Nebraska and South Dakota to which petitioners allege it held title at the date of the Treaty of 1858 and for which petitioners claim they are entitled to compensation under the Indian Claims Commission Act, as representatives of the Ponca Tribe, and if the Commission should find the Ponca Tribe did hold Indian title to any lands, the area of such lands.

Defendant has contended that the petitioners have no claim because they have not established that the Ponca Tribe held aboriginal title or that it exclusively occupied or possessed any part of the lands in question, or title to any land in 1851, 1854, 1857 or 1858 because there was no area to which it could prove continuous and exclusive possession between 1803, the date in which the territory was purchased from France by the United States and the dates of alleged takings.

The further question before this Commission at this time is whether the petitioners have established that the Ponca Tribe of Indians had original Indian title to all or any part of the lands involved at the times such lands were taken by or ceded to the United States by other tribes.

As to the territory west of the Fort Laramie line, petitioners in allegation 10, alleged that prior to March 12, 1858, portions of the Ponca lands lying west of a line known as the Fort Laramie Boundary "were invaded by the Sioux. The remainder of the Ponca country, however, including all

of the tract described in Paragraph 9 lying east of the Fort Laramie boundary, continued to be owned and occupied by the Ponca Tribe until the execution of the Treaty of March 12, 1858 . . ."

Defendant admits execution of the Fort Laramie Treaty dated September 17, 1851, but contends that the Ponca could not establish Indian title to the lands claimed in light of history, and that the petitioners have admitted invasion and occupancy of the portions lying west of the Fort Laramie boundary line by the Sioux prior to the Treaty of 1858. Further, petitioners have introduced testimony of an expert witness concerning occupation and invasion by the Sioux on the west, and supplemented that evidence by a map indicating the extent of the Ponca claim in the west. The area west of the Fort Laramie line is not included within the found area.

In addition, the evidence presented by both petitioners and defendant establishes that the area west of the Laramie line was occupied by the Sioux as early as 1796, and that while the Poncas may have hunted in the area from time to time when they were associated with the Sioux, they had no proprietary claim or right thereto. Both petitioners' and defendant's witnesses and evidence indicated Poncas did not hunt at times far to the west of this line because of fear of the Sioux; that they actually ranged regularly only as far west as Long Pine, which is located approximately at the Fort Laramie boundary line.

As to the southern boundary of the Ponca claim, the petitioners in their allegation 9 identify it with the Elkhorn River and an old Omaha village, proceeding from there directly west to the Black Hills. The area between the Niobrara River and this line has been claimed by the Pawnees, the Omaha, Cheyenne, Dakota and Ponca. By stipulation in Docket

No. 10, Pawnee Indian Tribe of Oklahoma v. The United States of America, in which the Ponca Tribe, petitioner herein, intervened, it was agreed that the Ponca Tribe "disclaim as against the petitioner any right to recovery by reason of the cession to the United States by any Indian tribe, including the Ponca tribe, of any land lying south of said dividing line," the dividing line being a meandering line following generally the divide between the waters of the Niobrara to the north and Elkhorn to the south. The dividing line so delineated was stipulated to by the petitioner and defendant in the instant case.

As to the lands lying east of the Niobrara River, the petitioners allege that the eastern boundary of their lands is described as "beginning at a point where the Ayoway River flows into the Missouri River, thence southwesterly up along Elk Creek to the Old Omaha Village on the Elkhorn River, thence west to the Black Hills . . ." They further allege that by treaty dated March 16, 1854 (10 Stat. 1043), the United States obtained from the Omaha tribe cession to Ponca lands lying both north and south of an east-west line terminating at the mouth of the Ayoway River. The issue of ownership of lands to the north of the east-west line was determined by the Court of Claims in Omaha Tribe v. United States, 53 C. Cls. 549, and it was held to be within the area to which the Omaha Indians held aboriginal title.

Subsequently, on August 8, 1951, the Omaha Tribe filed suit before the Indian Claims Commission, to obtain additional compensation for lands lying both north and south of the Ayoway River line. The Commission with respect to that land stated:

So it is plain beyond question that the ownership, and this includes the boundaries and acreage, of the Omaha to the lands north of the Ayoway river line was a material issue before the Court of Claims in the former case and one that was vigorously litigated the determination of which was essential to the judgment rendered in that case. Therefore, under the authorities cited and quoted from above, the question of the ownership of the Omaha to the northern tract as of the date of the 1854 treaty is foreclosed by the judgment of the Court of Claims and cannot now be relitigated either as to Indian title or as to the boundaries of that area.

As to other lands ceded by the Omaha lying south of that line, this Commission found:

(c) The record is barren of any historical documentation that the Ponca or Pawnee Tribes at any time prior to 1855 either occupied, claimed to occupy, or sought to occupy, any part of the area in issue. The exclusive use and occupancy by the Omaha Tribe in the manner of that Tribe to the entire area in issue was at no time prior to March 16, 1854, disturbed or defeated by the Ponca or Pawnee Tribes, or any other tribes. (4 Ind. Cl. Comm. 627-646)

The Commission further found that at the date of the Treaty of March 16, 1854, the plaintiff Omaha Tribe had the exclusive use and possession of the lands situate in northeast Nebraska lying within the following boundaries:

Commencing at a point where the west line of Range 5 West of Principal Meridian, Nebraska, intersects the Nebraska-Dakota State line, thence south along said range line to where it intersects Shell Creek near the northern boundary line of Tp. 21, N., R. 5 West, thence along the meanders of said stream to its junction with the Platte River in Tp. 17 N., R. 4 E, 6th P.M., thence along the Platte River to its junction with the Missouri River, thence northerly along the Missouri River to the place of beginning, consisting of 5,283,365 acres from which is excluded the area described in Finding No. 27, supra, which was reserved as aforesaid for plaintiffs, consisting of 301,267.13 acres; leaving the acreage of the area claimed at 4,982,097.87.

The issue remaining to be determined is whether or not the petitioners have established that the Ponca Indians held undisputed title over the area lying between the meandering line to the south of the Niobrara and Ponca Creek on the north, the Omaha cession line on the east and the Fort Laramie line on the west.

The pattern of life followed by the Poncas was to plant near the villages in the early spring, go out into the plains en masse to hunt buffalo in the summer, return to the village acres in the early fall, and in the winter to go out in small groups to hunt and trap. This pattern was varied from time to time, according to reports, because of disease and pressure of stronger and larger tribes but evidence establishes that the Poncas always returned to that pattern. As the years went by and the buffalo herds became more and more depleted, the Poncas were forced to travel farther and through enemy territory to hunt.

However, from the first reference to the Poncas in recorded history until immediately prior to the treaty of cession, the Poncas were consistently referred to as maintaining villages on the west bank of the Missouri River, on the Niobrara River, and at other times on Ponca Creek and Bazile Creek. The territory through which they habitually hunted and which was historically considered as Ponca Country was between the Niobrara River and its tributaries on the south and Ponca Creek and its tributaries on the north. From recorded accounts, the Poncas did not cross the Missouri River to establish any proprietary rights during historic eras. The records show that from time to time they were encountered farther to the west, north and south, but these were isolated

incidents. The consistent impression to be gathered from historic accounts, maps and conclusions to be drawn from population charts are that the area lying between the Ponca Creek and its tributaries and the Niobrara River and its tributaries was Ponca territory and that such territory was used by the Poncas in such a manner as to come within the concept of aboriginal or Indian title subscribed to by the Commission.

An order determinative of the rights of representation, identity of the land-owning entity, and the boundaries of the area held by aboriginal title will be entered, and this case will now proceed to trial on the consideration paid the Ponca Indians, the acreage acquired of them and its fair market value at the date of taking, i.e., March 12, 1858.

T. Harold Scott
Associate Commissioner

We concur:

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner