BEFORE THE INDIAN CLAIMS COMMISSION

THE CITIZEN BAND OF POTAWATOMI INDIANS OF OKLAHOMA,	)	
Plaintiff,	)	
v.	)	Docket No. 96
THE UNITED STATES,	)	
Defendant.	)	

Decided: August 27, 1968

Appearances:

Howard D. Moses, with whom were Giddings Howd and Louis L. Rochmes: Counsel for Plaintiff.

Keith Browne, with whom was Mr. Assistant Attorney General Clyde O. Martz: Counsel for Defendant.

OPINION OF THE COMMISSION

Yarborough, Commissioner, delivered the Opinion of the Commission.

Trials of three aspects of the instant suit have heretofore been conducted. Following the first trial and subject to a stipulation narrowing the issues then to be considered, this Commission determined that the Plaintiff had a compensable interest in 362,832.22 acres of land located in the now State of Oklahoma. Citizen Band of Potawatomi Indians v. United States, 6 Ind. Cl. Comm. 646 (1958). Following the second trial, this Commission determined that the acreage had an 1890 value of

$1,090,000.00, which works out to about $3.00 per acre, and that the entire consideration amounted to $160,000.00. The Commission concluded that the Plaintiff was entitled to recover the difference, $930,000.00, "less allowable offsets, gratuities, and counterclaims." Id., 14 Ind. Cl. Comm. 570 (1964). Trial of the "offsets, gratuities, and counterclaims" aspect was held in Washington, D. C., on June 8, 1966, and argued on February 7, 1968.

The issues now to be decided are whether to allow an offset of $119,790.75; whether to correct the record to the extent of eliminating an overcharge against the Defendant amounting to 640 acres; and whether to allow an offset of lands and/or interests in land conveyed to the Plaintiffs in the 1960's.

$119,790.75 is the amount which the Defendant paid for a reservation in Oklahoma for the Plaintiff. Under Article II of a Treaty of February 27, 1867, ratified July 25, 1868, (15 Stat. 531, 535, 536), the Plaintiff's lands in Kansas were to be sold to a railroad and the proceeds were to be used to repay the $119,790.75 to the Defendant. A lesser sum which the sale of the Kansas lands produced, $101,630.05, was disbursed to the Plaintiff in 1875 and no repayment to the Defendant was made.

In Article IV of an Agreement between the Plaintiff and Defendant dated June 25, 1890 (26 Stat. 989, 1018), the Defendant renounced its right to collect this outstanding debt. Hence, the forgiveness of the debt representing the cost of the Plaintiff's Oklahoma reservation becomes a gratuity.

As the claim of the United States for repayment of the cost of Plaintiff's reservation was converted to a gratuity by the Agreement of 1890, it falls to the Commission to determine whether that gratuity should be offset against the Plaintiff under paragraph 3 of Section 2 of our Act.

The Plaintiff's claim in this docket is concerned with the disposition of its Oklahoma reservation in 1891, and an award has been ordered to provide full compensation to the Plaintiff for its reservation over the unconscionable consideration received under the Agreement of 1890. Considering the nature of the claim, the Commission finds that it would be appropriate to allow the United States a deduction equivalent to the cost to it of this reservation furnished to the Plaintiff in 1867. Consideration of the entire course of dealings between the parties warrants us to reach this conclusion. The result reached appears in accord with that of Kickapoo Tribe of Kansas, et. al. v. United States, 178 Ct. Cls. 527.

The second matter, the correction of the record, is required because this Commission, in determining the gross acreage chargeable against the Defendant, included one section (640 acres) constituting the Order of St. Benedict's Sacred Heart Mission on the Potawatomi Reservation in Oklahoma. These Mission lands were specifically excluded from allotment or homestead entry by Article II of the 1890 Agreement (above). The section was patented to the Mission by the Defendant pursuant to a 1910 Act (35 Stat. 781, 807).

Although it may be that the 1890 Agreement and the subsequent patenting of the 640 acres to the Benedictine Fathers extinguished any interest of the Plaintiff in this land, we do not think it properly should be chargeable against the United States. Although this result may appear incongruous with decisions in similar situations, the Petitioner tribe is apparently content to seek no compensation. The land was devoted to the beneficial purposes of the Indians, as approved by them, and they suffered no detriment or loss by the 1890 transfer or the subsequent patent to the Sacred Heard Mission; the 640 acres was used the same before, during and after these transfers. This acreage should be excluded from the ceded average, and we accept the suggestion of the parties that for convenience an offset of $1,920.00 should be allowed.

By Acts of September 13, 1960 (74 Stat. 903), and August 11, 1964 (78 Stat. 392), the Secretary of the Interior was authorized to convey to the Plaintiff land aggregating 260.086 surface acres. In each Act, the Commission was directed to determine the extent to which the value of the title conveyed should or should not be offset against this award.

The lands thus returned to Petitioners' ownership were among those reserved from homestead entry or allotment under the 1890 Agreement as being reserved for school, school farm or religious purposes; apparently this land had been so used for some years before the 1890 Agreement. The tracts continued to be used for many years for Indian health and education purposes, and the Government's course of conduct over many years indicated a belief that the Indians had some interest, at the least, in these tracts.

We hold that under these circumstances the Petitioners retained a beneficial interest in the subject lands, without attempting to define that interest exactly or determine whether the Government could have extinguished it by other action that it did not take. With a still current beneficial interest in the Petitioners, what was returned to them by the 1960 and 1964 enactments was a bare legal title to the land, to which we can assign no more than a nominal value.

Holding that the beneficial interest to these parcels remained with the Plaintiff, it follows that the United States should not be charged with having failed to pay the full market value for them in 1890. Accordingly, the 260.086 acres of land will be excluded; i.e., for convenience we allow the Defendant the equivalent offset of $780.26 for the surface acres.

This result may be compared with that reached in Pawnee Tribe of Oklahoma v. United States, 124 Ct. Cls. 324, where the Government was held to be obligated to compensate the Indians for the transfer of legal title in lands such as these, at the purchase price for surplus lands established under that Treaty. Here the lands were held by the United States and used for the Indians for the entire intervening period before being returned to them by Act of Congress. Upon taking legal title to the land, the U. S. owed to the Indians something for taking the land beyond their power of control and disposition, as in Pawnee, but where the beneficial use remained in the Indians, and no damage to them is shown, eventual return of the legal title relieves the U. S. from the obligation of additional compensation for the original transaction.

It may also be noted that the award in this case is stated in terms of the 1890 dollar value, but the offset is sought by the Government in 1962 dollars. Under this theory, a timely present return of a few hundred acres to the Indians might offset entirely their claim for the original transfer of the 362,832 acres. The Court of Claims in Kickapoo Tribe of Kansas, et. al. v. United States, 178 Ct. Cls. 527, has rejected a theory which allows the Government to speculate in the appreciation of Government owned lands, taking its profits in reduction of the Indians' claim for the value of the land originally taken from them. The offset claimed here fails to meet the test of good conscience as required by our Act.

Improvements constructed on the tracts by the Government had a market value of $10,000 when conveyed to the Petitioners. The 1964 enactment placed no restrictions on the ability of the Petitioners to realize such an amount by sale. For this gratuity, the Defendant will be allowed an offset of $10,000.

The offsets and exclusion allowed total $132,491.01, so the net recovery will be $797,508.99.

Richard W. Yarborough, Commissioner

We Concur:

John T. Vance

Jerome K. Kuykendall