

BEFORE THE INDIAN CLAIMS COMMISSION

THE CADDO TRIBE OF OKLAHOMA, ET. AL.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket No. 226
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: August 30, 1968

Appearances:

O. R. McGuire, with whom was Jay H. Hoag, Attorneys for Plaintiffs.

Clifford R. Stearns, with whom was Mr. Assistant Attorney General Clyde O. Martz, Attorneys for Defendant.

OPINION OF THE COMMISSION

Yarborough, Commissioner, delivered the Opinion of the Commission.

In this case, previous actions of the Indian Claims Commission have resulted in a finding of aboriginal title in the petitioner to a tract of land in Arkansas and Louisiana, The Caddo Tribe of Oklahoma v. United States, 4 Ind. Cl. Comm. 201 (1956), and have fixed the value of the tract and the amount the Caddos should have received for its cession under an 1835 Treaty, 8 Ind. Cl. Comm. 354 (1960). A subsequent decision allowed as an offset against the award the value of the petitioners' Oklahoma

reservation. It was there held that the Caddo acquired no compensable interest in the Oklahoma reservation until the Act of March 2, 1895 gratuitously vested title in them, and that the amount of the offset should be the 1895 value of the Caddo reservation, 9 Ind. Cl. Comm. 557 (1961). Proceedings to determine that value are pending.

On motion of the plaintiff, the Commission is urged to reconsider its decision and decline to allow the offset of the Oklahoma reservation. No new evidence is offered, but new delcarations of law by the appellate courts are brought to the Commission's attention.

Although under our Rules of Procedure, the time for formal reconsideration of our decision has long since passed, the judgment in the case is not fixed. The 1961 decision complained of it but one of the several interlocutory determinations looking to a final striking of the balance of any sums owed by the United States to the Caddo under our Act. It cannot be expected that the Commission will look with favor on reconsideration of issues fully tried before it, but the Commission recognizes its responsibility that the final judgment in a case should be free from reversible error. If the Commission finds error in a case still under its jurisdiction, it must act to correct it. It is not to be expected, however, that the Commission will re-weigh the evidence in concluded proceedings, with or without the offer of cumulative evidence.

In this case, the 1961 decision was based on the theory that the measure of the offset should be its value at the time the gift was made.

Since that time, there has been a clear holding by the Court of Claims that such an offset of land should be valued no greater than its cost to the Government. The Kickapoo Tribe of Kansas, et. al. v. United States, 178 Ct. Cl. 527 (1967). Our prior decision must be revised at least to this extent. Further, the Court of Claims, in Lipan Apache, et. al. v. United States,

Ct. Cl. (1967) has clarified the legal principles regarding aboriginal title in Texas and the Federal Government responsibilities to the Indian inhabitants of Texas such as the Caddo. It is our view that the facts of the troubled history of the Caddo Nation must be re-examined in the light of this decision now binding on this Commission.

On July 1, 1835, the United States entered into a treaty with the Caddo Tribe. Under the terms of the agreement, the Caddos voluntarily relinquished their possession of all lands east of the Mexican border and promised to remove themselves, at their own expense, from the United States territory. The consideration to the Caddos was \$80,000 in money and goods. This treaty was ratified by the Senate and signed by President Andrew Jackson on February 2, 1836. This cession is the basis of the award in this docket.

The Caddos left Louisiana and moved into the adjoining territory of Mexico, arriving there only a few months before the Battle of San Jacinto made Texas independence a reality. During the years of the Republic (1836-45), the Caddos remained in Texas, although the public laws adopted by the Texas Congress never accorded recognition to the Indians' right of occupancy.

On December 29, 1845, Texas was admitted to the Union by a joint resolution of Congress, which stipulated that the new state was to retain an exclusive proprietary interest and control over all public lands within its borders. The Federal Government thus never owned any public land in the State of Texas.

With Texas in the Union, the United States on May 15, 1846 concluded a general peace treaty with the several tribes of Texas Indians, including the Caddos. It was agreed that the tribes would thereafter acknowledge themselves to be under the protection of the United States, and that the United States would have the sole and exclusive right to regulate trade and intercourse with them. The treaty made no land cessions and granted no reservations.

On February 6, 1854, the Texas State Legislature authorized the United States to locate the various Indian tribes on a large tract of state public land. The legislation provided that the state should relinquish its jurisdiction over all Indians residing on such land, although jurisdiction as to all other persons was retained. In 1854, the Federal Government selected two reservation sites on the Brazos River above Waco, Texas, and on one persuaded the Caddos and other Indians to settle under the protection and supervision of the national Government. In further recognition of the Federal Government's responsibilities to the Indians settled on the reserve, the Commissioner of Indian Affairs in the same year appointed Robert S. Neighbors to the newly created post of

Supervising Agent of Texas Indians, with Special Agent S. P. Ross as his assistant.

With the establishment of the reservation, the hostility of the frontier citizens to the Indians became more pronounced. In December 1858, after some five years of constant trouble, matters reached a head with the massacre of seven Indian men, women and children, by a band of twenty white settlers. Great unrest along the entire Texas frontier resulted. As the Indians prepared to defend themselves against future attacks, many white settlers began arming themselves to move against the reservation. The men responsible for the massacre issued a statement in local newspapers attempting to justify their actions, and citizens' committees in several surrounding counties rallied to their support.

In desperation, Agent Neighbors appealed to the Governor for military assistance in bringing the murderers to justice and in preserving order in the area of the reserve, but no arrest of the men responsible for the massacre was made. Moreover, state troops appeared to support the community leaders who were organizing the movement against the Indians.

In January 1859, Agent Ross advised Neighbors that a large Federal military force would be required to give the Indians the protection promised them by the United States. A few days later, the War Department announced the closing of Fort Belknap, the military post that had insured the protection of the reservation. Acting on this information, Agent

Neighbors recommended to Indian Commissioner J. W. Denver that all of the Texas Indians be removed north of the Red River. In March 1859, new hostilities erupted in the area of the reserve, and on March 31, the new Commissioner of Indian Affairs, Charles E. Mix, ordered the relocation of the Texas Indians in the "leased district" of the Indian territory. Even as plans were being made for the move, however, the white settlers in the area of the Brazos River Agency opened hostilities against the reservation.

During the Spring of 1859 many of the Caddo men were away from the reservation, assisting United States troops in the fight against the Comanches in the north. Taking advantage of this situation, some 250 white settlers, under the leadership of Captain John Baylor, attacked the reservation on May 23. A serious incident was averted only by the intervention of a small force of federal troops. Realizing the new urgency of the situation, Agent Neighbors called a council meeting at Fort Arbuckle in July which was attended by chiefs and headmen of the several tribes involved. It was decided that immediate removal from Texas was essential to insure the safety of the Indian tribes on the Brazos Reserve. Accordingly, on August 1, Agent Neighbors led some 300 Caddo Indians on a forced march to the Washita River in Oklahoma, arriving there sixteen days later. Upon his return to Texas to collect the Indians' livestock, Neighbors was murdered, apparently by angry white settlers.









