

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.

In 1855, the United States had entered into an agreement with the Choctaw and Chickasaw Nations in which these Indians leased to the Federal Government a large area to be used for permanent relocation and settlement of other Indian tribes. It was on a portion of this land, known as the Wichita Reservation, that the Caddos and the several other Texas tribes were settled. By the Treaty of April 28, 1866, the Choctaw and Chickasaw Tribes ceded to the United States all their right, title, and interest in the "leased district."

With the close of the Civil War, efforts were made to turn the Washita River area into a reservation for the Texas Indians. On October 19, 1872, an agreement was concluded between the Wichita, Caddo, and other tribes and the Commissioner of Indian Affairs. By the terms of the agreement the Wichita Reservation was set aside as a permanent home for the Texas Indians, in exchange for which the tribes ceded to the Government all of their right, title, and interest to any lands in Texas, Louisiana, the Indian Territory, or elsewhere in the United States. Although the Commissioner strongly urged ratification of this agreement, no action was ever taken by Congress upon his recommendation. The Caddo continued to occupy portions of the Wichita Reservation until and after the Act of 1895 mentioned above.

An examination of our previous decision shows that it is predicated on the assumption that the Caddo, as residents of Texas, had no right to any land there that need be considered by the United States -- that the

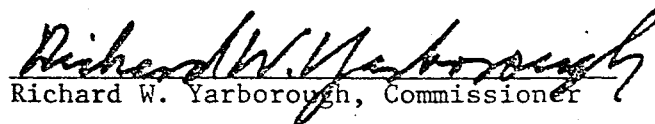
Republic of Texas did not acknowledge Indian title and the United States never acquired a greater obligation. The Lipan Apache case, supra, as applied to the Caddo, requires acceptance of the fact that the Republic of Texas did not necessarily extinguish whatever title the Caddo may have had in Texas, and that after annexation only the United States had power to extinguish any Indian right of occupancy the Caddo may have had. It is now clear that any obligation of the United States to the Indians cannot be negated solely because the United States had no public lands in Texas.

The issue before us involves no assertion of a claim by the Caddo; we are not asked to find that the Caddo acquired affirmative rights for which compensation is now due. The issue involves allowance of a gratuitous offset: "... the Commission may also inquire into and consider all money or property given to or funds expended gratuitously for the benefit of the claimant and if it finds that the nature of the claim and the entire course of dealings and accounts between the United States and the claimant in good conscience warrants such action, may set off all or part of such expenditures..." 25 U.S.C. §702. The Act requires us to affirmatively find, explicitly or implicitly, that the claimed offset (of real property) was (1) gratuitous and (2) in good conscience should be offset, on consideration of the entire course of dealings. The Commission cannot reach such an affirmative conclusion of this claimed offset in view of the history recited above.

By the 1846 Treaty, the Caddo placed themselves under the protection of the United States, but did not cede whatever rights to land they may have had. Subsequently, a reservation for the Caddo and other Indians was set aside by the State of Texas, and the United States assumed its obligation of protection of the Indians. The Caddo had a possessory right to the reservation so long as they chose to stay there. We assume that at the least the United States obligation of protection under the 1846 Treaty included defending the Caddo's peaceful possession of lands on which they were lawfully installed by action of the State and Federal Governments.

The turmoil and threats of 1859 gave the United States a difficult choice in discharging its obligation to the Indians. It could have defended their right to the land by military force, or it could have assisted in resettling them on lands in a place of greater safety, as was done. But the Caddo thus acquired their residency on the Wichita Reservation in discharge of an obligation of the United States to them, not as a gratuity.

In accordance with this Opinion, the Order and Opinion issued October 27, 1961, are withdrawn, and a new Order and revised Findings of Fact issued. Additional claims of offsets will be considered when pled and proved by the defendant.


Richard W. Yarborough, Commissioner

We concur:

