

BEFORE THE INDIAN CLAIMS COMMISSION

THE IOWA TRIBE OF THE IOWA RESERVATION )  
IN KANSAS AND NEBRASKA, THE IOWA TRIBE )  
OF THE IOWA RESERVATION IN OKLAHOMA, et al.,)

Petitioners, )

v. )

Docket No. 79-A

THE UNITED STATES OF AMERICA, )

Defendant. )

Decided: February 17, 1969

Appearances:

Brian Sullivan, Attorney of Record  
for the Iowa Tribe of the Iowa Reser-  
vation in Kansas and Nebraska, et al.

Nicholas Conover English, Attorney of  
Record for The Iowa Tribe of the Iowa  
Reservation in Oklahoma, et al., with  
whom appeared Louis L. Rochmes, of Counsel,  
Attorneys for Petitioners.

W. Braxton Miller, with whom was Mr.  
Assistant Attorney General Clyde O. Martz,  
Attorneys for Defendant.

OPINION OF THE COMMISSION

Vance, Chairman, delivered the opinion of the Commission.

This claim is now before the Commission on two causes of action. The first is based on petitioners' allegation that the United States violated the Treaty of May 17, 1854, 10 Stat. 1069, involving the sales of the Iowa trust lands. The second cause of action concerns a shortage in the reservation

which had been created for the Iowa Nation pursuant to Article 2 of the Treaty of September 17, 1836, 7 Stat. 511.

Both of these causes of action were originally pleaded in Docket No. 79 but were later severed and are now for consideration under Docket No. 79-A. By stipulation of the parties as embodied in the Commission's order of February 28, 1966, 16 Ind. Cl. Comm. 368, which order was formally approved by counsel for both parties, the lands sold for the benefit of the Iowa Tribe pursuant to the 1854 Treaty comprised 94,451.25 acres. These lands have been referred to as the trust lands. Further, it was stipulated that the shortage area in the Iowa Reservation was 4,798 acres, which acreage was therefore not included in the lands sold for the benefit of the Iowas under the 1854 Treaty. For the purpose of valuing those lands it was agreed that they should be considered as being located immediately to the west of the western boundary of Royce Cession 427 and as having been ceded under the same provisions and at the same time as the 94,451.25 acres. And finally it was stipulated that the valuation date for the 94,451.25 and 4,798 acres should be June 1857.

The lands involved were owned (or in the case of the 4,798 acre shortage area, are considered as having been owned) by petitioners, having been granted to them as a reservation by the 1836 Treaty. By the terms of the 1854 Treaty the lands were ceded to the United States with provision for a certain reservation therefrom. The remaining lands were to be surveyed and sold at public auction, the net proceeds to be paid to the

Iowas. However, since the receipts from the auction sales could not be determined at the time of the treaty, it was further provided that the whole subject should be referred to the President who, from time to time, should prescribe how much of the proceeds should be paid to the Iowa people and how much should be invested in safe and profitable stocks, the principal to remain unimpaired and the interest to be applied annually for the benefit of the Iowas.

The following period until the trust land sales in June, 1857, was one of confusion and turmoil. In May, 1854, Kansas and Nebraska became Territories, and by the Act of July 22, 1854, 10 Stat. 308, the lands in the territories which had been ceded to the United States came under the provisions of the 1841 preemption laws. But lands ceded in trust were not so included. However, prospective settlers were clamoring for entry rights on lands in the area, and squatters were entering upon trust lands in the Kansas Territory. A question arose as to the effect of the Act of July 22, 1854 on the early Indian treaty provisions. The Attorney General of the United States rendered an opinion that the act extending pre-emption rights did not supersede any prior Indian treaties and that to grant pre-emptions of the lands ceded by the Delawares, Iowas and Weas upon trust, to be sold at public auction for their account and benefit, would be a violation of the treaties, a breach of trust, a fraud upon the Indians.

There were, however, delays in completing the surveys of the Iowa trust lands. There was no clearly defined line between the trust lands

and adjoining lands on which settlers were permitted by law to enter. There were objections to the manner of the land appraisals. When the government was finally ready for the public sales, there were many white squatters on the lands, and land speculators were present and active in the area. There was a tense atmosphere, and the government was faced with a real dilemma.

The special commissioner appointed to superintend the public sale was instructed that "bona fide" settlers who had made lasting and valuable improvements on the lands should be permitted to claim such lands at the appraised prices. As a result almost all the sales were made at the appraised prices, and there was, therefore, no public bidding on those parcels.

Defendant has argued in this case that the United States officials did all that they could do, short of military force, to prevent squatters and prospective purchasers from settling on Iowa trust lands. There is perhaps much truth in defendant's contention that in view of the surge of civilization and settlement against the Kansas frontier up to 1854, it was impossible to hold the public lands off the market and keep settlers off the trust lands until the public sale.

But as we stated in The Peoria Tribe of Oklahoma, et al., v. The United States, 15 Ind. Cl. Comm. 123 (1965), affirmed 177 Ct. Cl. 762 (1966), reversed on other grounds 390 U. S. 468 (1968), we are not really concerned with a detailed examination of the motives behind the actions taken or in an

attempt to balance the equities. Perhaps the United States had the best of intentions. But, as in the Peoria case the fact is that circumstances conspired to prevent the Indians from receiving that which had been promised them under the 1854 Treaty -- that is that the lands would be sold at public auction and the Indians would receive the net proceeds of the sales. There was in fact no auction -- no competitive bidding for the lands. The lands were, in most instances, sold to "settlers" at the appraised prices.

By the express terms of the 1854 Treaty the defendant assumed certain obligations. By its actions in not holding a true competitive auction the United States breached its obligations. Accordingly, we have held that the petitioners are entitled to recover from defendant the difference in the prices paid for the lands sold in 1857 and the fair market value which could have been obtained if each of the parcels had been sold at public auction.

We turn now to the issue of the fair market value of the trust lands and the shortage area. Upon this issue depends the measure of the damages, if any, suffered by petitioners.

The valuation date is June, 1857. The sales were actually held in a period from June 3, 1857, until June 16, 1857. The total acreage sold (94,451.25) brought a total of \$184,446.85. This figure is the amount stated by petitioners as having been actually realized from the trust sales. And it agrees with the total proceeds as shown on the sales

tabulation sheets, parcel by parcel, presented as defendant's exhibits 13, 13-A, and 13-B. Defendant has also presented another figure of \$184,639.47 based on a General Accounting Office report (Def. Ex. 5) which identifies this sum as "Proceeds, sale of land". However, we have determined that the \$184,446.85 figure should be used since it is supported by the original tract book sheets of the Bureau of Land Management. The GAO report has no supporting vouchers or other documentation, and it contains no explanation for the additional \$192.62.

The United States received an average of \$1.95 for the trust lands, virtually the same as the appraised prices, which averaged \$1.92 per acre. In our findings numbered 14 through 21 we have set forth the various factors upon which we have based our fair market value determinations. In summary we have found the subject lands were well suited for farming. The area along the Missouri River was considered the most productive in Kansas with the remaining area to the west rated as the second most productive. There was adequate rainfall, a favorable growing season, valuable areas of timber and limestone for local buildings, and good transportation. In June, 1857, land in the general area was in demand and there were many prospective buyers.

The best evidence of the 1857 market value is the sales data which was introduced by both parties. The resales in 1857, as listed by petitioners, involved a total of 16,455.11 acres. The arithmetic average of those resales was \$5.64 per acre, while the median average was \$5.00 per acre. As we

have noted in our findings the resales ranged from \$0.87 per acre to \$50.00 per acre. A number of the sales involved relatively small parcels (much smaller than would have been involved in the auction sales). For example, two of the sales which averaged \$50.00 per acre involved 20 acre tracts while the third at \$50.00 per acre was a 40 acre parcel. The sale which averaged \$44.69 per acre was a 22.38 acre parcel, and the two \$25.00 per acre transactions each involved 40 acres.

Further, all of those sales (those at \$50.00 per acre, \$44.69 per acre and \$25.00 per acre) were located in the more desirable Doniphan County portion. In fact about 60% of all the transactions included in the analysis were located in Doniphan County, which included the best lands and was bounded on the east by the Missouri River. Actually only about 40% of the trust lands were in Doniphan County, the remaining 60% was to the west in Brown County, which was not as desirable.

Obviously some of the transactions at figures up to ten times the overall average selling prices involved improvements. For example we note adjoining tracts selling for average prices of \$19.61 and \$4.88; for \$7.50 and \$1.50; and tracts along the Missouri River sold for \$50.00 and \$2.54. Although we do not believe that this factor was of too great importance, certainly not as significant as defendant has urged, we do consider that improvements were a factor to be weighed and some small adjustment is indicated in arriving at a fair market value for the trust lands.

Petitioners did not utilize an expert land appraiser in this case.

The sales data was prepared by abstracters and tabulated by counsel. Petitioners contend that the fair market value should be computed as follows:

Trust lands exclusive of townsites:	93,048.78 acres	at \$5.64/acre	\$524,795.12
Townsite lands:	1,402.47 acres	at \$100.00/acre	<u>140,247.00</u>
			\$665,042.12
Shortage area (Nebraska)	4,798 acres	at \$3.96/acre	<u>19,008.08</u>
		Total	\$684,050.20

We do not agree that some 1,402.47 acres of "townsite lands" should be valued at \$100.00 per acre. This figure was obtained from the Act of July 1, 1864 (13 Stat. 343) which provided for the sale of lots, not exceeding 4,200 square feet (i.e., a tenth of an acre), at a minimum of \$10.00 per lot. At this rate one acre could realize \$100.00. We do not consider this statute provides any basis for evaluating the June, 1857, fair market value of the subject trust lands.

Petitioners have also presented a detailed comparison of land values in previous Commission decisions involving neighboring lands. While we note that our decision in this case falls within the "range" of indicated values based upon such a comparison, we have not based our determination in any way on those previous cases. Our decision in this case is based solely on the record herein.

Defendant presented a detailed land appraisal report and the testimony of Richard B. Hall, a real estate consultant and appraiser. Mr. Hall considered



the various factors which would have affected the fair market value of the subject lands in 1857. He also tabulated re-sale data involving the trust lands. However, Mr. Hall eliminated from his computations sales of less than 40 acres and sales of fractional interests. He also eliminated sales at or below the prices paid at the trust sales which he felt did not reflect fair market values. His resulting tabulation resulted in an average price of \$5.75 per acre. However, Mr. Hall reduced this figure because of improvements and other factors to arrive at his estimated fair market value of \$2.50 per acre. We cannot agree that the facts in this case warrant such a reduction from the sales data computation.

Upon consideration of the entire record in this case and the findings which we have entered based on that record and for the reasons we have set forth, the Commission has concluded that trust lands would have brought a greater price if they had been sold at public auction without provisions permitting "settlers" to purchase tracts at fixed appraised figures. We have concluded that the "greater price" which could have been realized at public auction of all the separate parcels of trust lands in June, 1857, would have averaged \$4.00 per acre. That average per acre figure times the 94,451.25 acres involved would have amounted to \$377,805.10. The difference in that total and the sum actually realized at the public sales (\$184,446.85) is \$193,358.15.

The shortage area in Nebraska of 4,798 acres was located to the west of the trust lands. Those lands were not on the average as valuable as the

average value of the trust lands. The shortage area was not as favorably located with respect to transportation and did not contain the highly desirable soil type which was found in the Doniphan County portion of the trust lands. It was, however, comparable to the Brown County part of the trust lands.

We have concluded that the 4,798 acre shortage area, if it had been sold in 160 acre parcels at public auction in June, 1857, would have realized an average price of \$3.00 per acre, or a total of \$14,394.00.

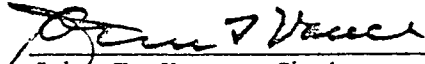
This, added to the net value for the trust lands, would result in a total of \$207,752.15. In addition to this amount petitioners are entitled to recover from defendant additional damages on account of its failure to invest these proceeds which would have been received had the United States not violated the Treaty of May 17, 1854. The law in this regard is now clear and the parties so agree. The case of The Peoria Tribe of Indians of Oklahoma, et al., v. The United States, 123 (1965), aff'd 177 Ct. Cl. 762 (1966), rev'd in part, 390 U. S. 468 (1968), 20 Ind. Cl. Comm. 62 (1968), involved a virtually identical treaty and the same situation as that involving the Iowa trust lands. In the Peoria treaty it was provided that certain proceeds be "invested in safe and profitable stocks, the interest to be annually paid to them, or expended for their benefit and improvement." As set forth in our Finding of Fact No. 5, the Iowa treaty provided for proceeds to "be invested in safe and profitable stocks, the principal of which to remain unimpaired and the interest to be

applied annually for the civilization . . ." In reversing the Court of Claims, which had affirmed the Commission's disallowance of interest on the Peoria award, the Supreme Court held that the United States was liable for its failure to invest the proceeds that would have been received had the United States not violated the treaty by selling most of the ceded lands not by public auction but by private sales at appraised prices lower than would have prevailed at public auction.

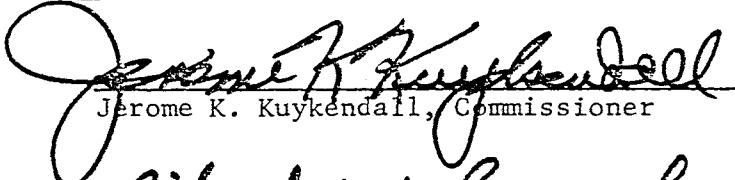
In our decision in the Peoria case on remand we determined that the damages resulting from defendant's liability should be measured by looking to a reasonable rate of interest to be applied to the principal sum. We concluded that the appropriate rate of interest to be thus applied, as a measure of damages, is 5% per annum, simple interest. The parties herein having raised no objection to our disposition of the issue of damages and the interest computation in the Peoria case, we do not feel compelled to reiterate in detail the reasons for our determination. We conclude the petitioners herein are entitled to an additional amount of damages, measured by simple interest at the rate of 5% per annum on the principal sum of \$207,752.15 from June 16, 1857 (when the trust land sales were completed).

We have so entered our findings and interlocutory order and this case will now proceed to a determination of the gratuitous offsets, if

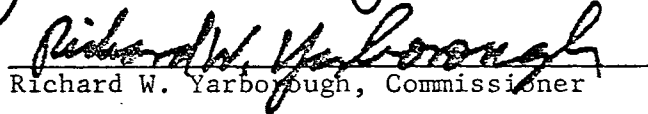
any, allowable against the award to be entered.

  
\_\_\_\_\_

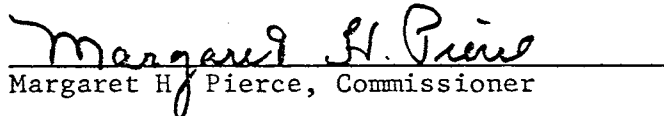
John T. Vance, Chairman

  
\_\_\_\_\_

Jerome K. Kuykendall, Commissioner

  
\_\_\_\_\_

Richard W. Yarborough, Commissioner

  
\_\_\_\_\_

Margaret H. Pierce, Commissioner

  
\_\_\_\_\_

Theodore R. McKeldin, Commissioner