

BEFORE THE INDIAN CLAIMS COMMISSION

THE KICKAPOO TRIBE OF KANSAS,)	
THE KICKAPOO TRIBE OF OKLAHOMA, ET AL.)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 316-A
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: June 10, 1970

Appearances:
Allen Hull and Louis L. Rochmes
Attorneys for Plaintiffs.

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

OPINION OF THE COMMISSION

Chairman Kuykendall delivered the opinion for the Commission.

The claim of the Kickapoo Tribe of Kansas and the Kickapoo Tribe of Oklahoma involves the Kickapoo Tribe's reservation in northeastern Kansas, 123,832 acres of which it ceded to the United States by the Treaty of June 28, 1862, ratified March 13, 1863 (13 Stat. 623). The United States thereafter sold this land to Atchison and Pike's Peak Railroad (hereafter referred to as Atchison Railroad) for a consideration of \$1.25 per acre.

Plaintiffs seek additional compensation. Their claim is based on two grounds, unconscionable consideration and fraud and duress under section 2(3) of the Indian Claims Commission Act of 1946 (60 Stat. 1049).

The lands involved had been held by the plaintiffs under recognized or reservation title. That title was extinguished when, by Article 14 of the 1862 Treaty, all rights, title and interest of the Kickapoos in their reservation were ceded to and vested in the United States. By the terms of Article 16 of the treaty the ratification date, March 13, 1863, became the effective date and, therefore, the proper valuation date. Plaintiffs have argued that the surplus lands should be valued as of August 10, 1865, the date when the Atchison Railroad exercised its option to purchase the lands. We adhere to the Commission's 1964 order that March 13, 1863, is the proper date for evaluation purposes.

Plaintiffs contend that the fair market value of the surplus lands averaged \$8.21 an acre. The defendant maintains that the fair market value as of March 13, 1863, was \$1.55 per acre. In arriving at the \$8.21 figure plaintiffs rely on the resales of land in the tract during the years 1872-1880. They argue that \$8.21 per acre "was a reasonable approximation of the value of the Kickapoo lands as of August 10, 1865".

The 1872-1880 resale prices of lands in suit clearly are not significant in the light of the March 13, 1863, valuation date. In the years intervening between 1863 and 1872 many changes occurred in Kansas and in the ceded tract which necessarily increased its value. Consequently, any attempt to relate 1870's sales of land in the ceded tract to an 1863 fair market value would ignore the facts that the resales between the years 1872 and 1880 were made under substantially changed and unusually favorable conditions which did not prevail in 1863. Plaintiffs recognize this fact in their proposed Finding 10 wherein they say that the

"depressing factors" of the early 1860's should not be charged to the Indians.

The further argument that resale deeds probably represented the performance of earlier contracts to purchase land is speculative and carries no weight. There is no evidence in the record before us of the time of the actual resales.

Plaintiffs also argue that the net effect of the Atchison Railroad's acquisition of the lands under the 1862 Treaty for the construction of the railroad and its resale at higher prices of the lands which it did not need for that purpose, was the granting by the Indians of a subsidy to Atchison Railroad. For granting that subsidy plaintiffs feel they should be reimbursed in terms of the resale value of the land. Plaintiffs argue that if the United States had undertaken to sell the Indians' surplus lands in trust, as it did for many tribes, and if the sales had been handled diligently, it is probable that the same \$8.21 per acre price would have been received. Despite the appealing nature of plaintiffs' theory we are of the opinion that under this treaty the plaintiffs ceded the surplus lands to the United States on March 13, 1863, and that their right to recover on the ground of unconscionable consideration must be based on the fair market value of the land in 1863.

In arriving at a fair determination of the market value of tribal lands, factors which can be considered are the prices at which the land

was sold, the extent of the demand, the quality of the land and its use at the time. Osage Nation of Kansas v. United States, 119 Ct. Cl. 592 (1951), cert. denied 342 U. S. 896 (1951).

Plaintiffs did not introduce any testimony by an expert on land valuation. In addition to the 1872 to 1880 sales data, they introduced evidence of abstracted resales of the Iowa and Delaware trust lands. Those resales occurred in 1860, 1861 and 1862. The same abstracts had been introduced as defendant's exhibits before the Commission in the Iowa and Delaware cases, and the information had been used by defendant's expert appraiser, Richard B. Hall, in those cases. However, plaintiffs in this case have included sales which were rejected by Mr. Hall in his analysis in the Delaware and Iowa cases. We have enumerated in Finding of Fact No. 17 some of the erroneous and unreliable sales included in the computations. Many of the sales were of small tracts -- as low as 10 acres in Brown County. We have noted three sales in Jackson County of only 4 acres. There are erroneous acreage listings, duplicate transactions, as well as sheriff's deeds and family transactions. There are sales of land adjoining towns and others at high average per acre consideration figures. Not all the sales are first resales. Yet there has been no attempt by plaintiffs to adjust their mathematical calculations to allow for possible improvements or the size of the tracts.

In The Iowa Tribe, et al. v. The United States, 20 Ind. Cl. Comm. 308 (1969) the Commission, in discussing the first resales of the Iowa trust lands, stated at page 314:

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.

The Commission considers that the resales of the Iowa and Delaware trust lands provide an indication of the 1863 fair market value of the subject lands. Certainly the evidence is more helpful than 1872 to 1880 sales. We have examined the trust land resales and, with adjustments for their size, improvements, and other factors enumerated above, we have found the evidence of assistance in reaching our determination of value in this case.

The appraisals and sales of Indian reservation land in the State of Kansas in the 1860's also furnish some evidence of the value of the surplus lands. The Sac and Fox lands designated as Royce Area 419 (Kansas II), and located south of the ceded tract, were roughly similar to the lands in suit. They were appraised in 1861 at an average value of \$1.25 an acre. Due to the poor land market in 1861, the sale of these lands was delayed until 1864 and 1865. At that time, the Secretary of the Interior sold, at public sales, a total of 286,409 acres for an average price of 99 cents per acre. Dr. William G. Murray, defendant's valuation expert, considered the sale of the Sac and Fox lands "one of the best comparisons with" the ceded tract.

Delaware surplus lands (Royce Area 425, Kansas II) lying south-east of the ceded tract and partly on the Missouri River were appraised February 21, 1861, pursuant to the Treaty of May 30, 1860 (12 Stat. 1129), at \$1.28 per acre for 223,966.78 acres. They were sold at that price in 1861. See Delaware Tribe v. United States, 74 Ct. Cl. 368, 376-377 (1932).

The Delaware Diminished Reserve land (Royce Area 488) located on the Kansas and Missouri Rivers and totaling 92,598 acres was sold under the Treaty of July 4, 1866 (14 Stat. 793), for \$2.50 per acre. The evidence indicates that this land was improved.

Under Article 17 of the Treaty of July 19, 1866 (14 Stat. 799), the Cherokee Indians ceded approximately 800,000 acres of land to the United States in trust for later sale for the account of the Indians. The first contract under the treaty covered a long term sale to the American Emigrant Company for \$1.00 an acre. After the United States determined that the sale did not comply with the treaty, the land was resold to one James Joy for cash at the same price.

While we have considered the appraisals and sales of Indian reservation lands, we cannot in this case adopt as low a valuation figure as they might seem to indicate. The other evidence in this case convinces us that the 1863 fair market value of the Kickapoos' land was higher.

Dr. William G. Murray, defendant's expert, valued the surplus lands at \$1.55 per acre as of March 13, 1863, after considering the sale of

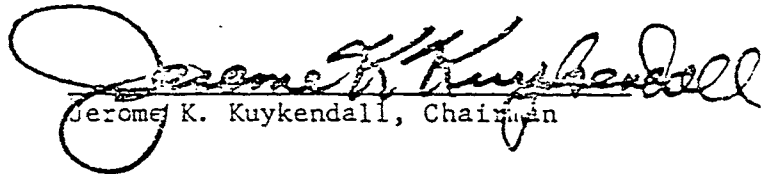
the Sac and Fox lands, the depressed condition of the market in the 1860's, the location of the ceded tract and pertinent physical factors which tended to influence land values at that time. We note that Dr. Murray considered the Kickapoo lands to have been worth substantially more than the 99 cent price received from the Sac and Fox sale.

In reaching our determination of the 1863 fair market value of the Kickapoo lands we have considered the evidence presented by the parties including the Delaware and Iowa trust land resales data, the Indian reservation land appraisals and sales, the opinion of defendant's expert appraiser, the physical factors of the ceded tract, its location, and the market conditions pertaining in the early 1860's. The Kickapoo tract was very favorably located with respect to the impending population movements in the United States. There were transportation facilities in the neighboring areas, and there was the prospect of a rail line through the area. In fact provisions for such railroad construction were in the 1862 Treaty. The land was well suited for agricultural pursuits and would have been attractive to a prospective 1863 buyer.

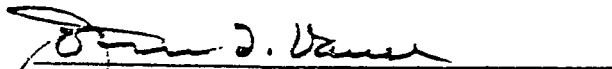
Upon consideration of the entire record in this case and the findings we have entered on that record and for the reasons we have set forth, the Commission has concluded that the fair market value of the area of 123,832.61 acres was \$280,000.00 as of March 13, 1863.


Since the consideration paid by the defendant was \$154,790.39, this would leave a difference of \$125,209.61 between the fair market

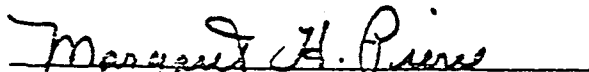
value of the tract and the amount paid for it. Therefore, plaintiffs received only 56 percent of the true value of the tract. The Commission concludes that the consideration paid the Kickapoo Tribe was so grossly inadequate as to be unconscionable. Accordingly, plaintiffs are entitled to recover under the provisions of clause (3), section 2 of the Indian Claims Commission Act. The amount of the recovery is \$125,209.61 less allowable offsets, if any.

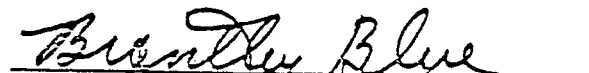

Jerome K. Kuykendall, Chairman

Concurring:


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner