

SPECIAL FINDINGS OF FACTS

Case B-38

Court of Claims

I

Sets out jurisdictional bill on which action founded.

II

Sets out Treaty Sept. 29, 1865, under which lands in question were sold.

III

The chiefs signing the treaty were all full-blood blanket Indians, none of them understood or could read, write, or speak the English language, and all affixed their signatures by mark. The same is true of all the other Indians who affixed their signatures after those of the chiefs, and who were of lesser rank, with the exception of one brave at Fort Smith who understood and could speak English.

IV

The treaty negotiations were conducted at Fort Smith, Arkansas, with the Southern Osages, through an interpreter by the name of L. P. Chouteau, a half-breed Osage, and with the Northern Osage Indians at Canville trading post, Kansas, through an interpreter, one Alexander Beyett, also a half-breed Osage. The qualifications of these two men as interpreters of a treaty like the one here in dispute do not sufficiently appear. The time consumed at Fort Smith in council upon the provisions of the treaty can not be ascertained. At Canville trading post the treaty was negotiated and signed in three hours.

The record does not disclose any facts as to the negotiations preliminary to the signing of the treaty affecting the matter of price to be paid and of acreage and location of the property to be conveyed, nor who represented the Government in these preliminary matters, nor who represented the Indians.

V

At the time of making the treaty of 1865 the Osages were practically all full-blood blanket Indians, ~~who could not read, write, or understand the~~ English language, and had had little contact with the whites, and that principally as to the simple affairs of life, such as bartering skins for supplies. Some education of the younger generation was being undertaken in a mission school. There were very few mixed bloods among the Osages in 1865. The tribe was very poor. Its members lived mostly by the chase, and animals of the chase were rapidly disappearing. The affairs of the Osages were in the hands of the full-bloods, who held all positions of leadership, and it was



with the full-bloods the treaty negotiations were conducted.

VI

The Osage language comprises a very few root words, but which with derivations make upward of a thousand words. It does not have a word equivalent to "civilization" or one equivalent to "fund," but these words can be explained in Osage so that "civilization fund" can be fairly understood. To describe "Indian tribes," meaning other tribes as well as the Osage, it is necessary to enumerate the specific tribes known to the Osages, or else to designate the Osages and use a word signifying "other than," or foreign, which in the Osage language are words of insult.

At the time the treaty was negotiated the Osages were hostile to certain other tribes, among whom were the Pawnees, Cheyennes, and Cherokees. They would not knowingly have agreed to the application of any of their funds to the benefit of such hostile tribes or of any tribe other than their own. They interpreted the words "Indian tribes," as they appear in Article I of the said treaty of September 29, 1865, to mean the tribe of the Great and Little Osage Indians to the exclusion of all other Indian tribes, and used the said words therein with that exclusive meaning.

VII

The "civilization fund," created by Article I of the said treaty, did not come into existence until the year 1873, at which time the first moneys came into the Treasury of the United States from the sale of Osage lands. There is no other instance where the United States has applied the proceeds of sale of lands of one tribe to the benefit of another.

VIII

The Osage Nation as a body had been loyal to the United States in the Civil War and had furnished 244 warriors to the Union armies. Shortly before the treaty of 1865 was made with said nation, the treaty commissioners informed a large gathering of Indian tribes living in the Southwest that the Civil War having closed, the United States intended to make new treaties with the Indian tribes generally. That as to those who had sided with the Confederacy it would be lenient, but would require certain conditions of them; but as to those who had been loyal the United States intended to recognize their loyalty in a signal manner in the new treaties. The United States recognized the Osage Nation as a body as loyal, though a few bands had left the body of the nation and joined the Confederacy.

IX

Receipts of moneys from the sale of lands to settlers under the treaty of 1865 were slow in coming into the Treasury. The Osages at this time were in want, and official reports made in the seventies by their agents show that they all, full bloods and half-breeds, believed the United States would give them the proceeds of the "civilization fund" or interest on it, and waited looking forward to relief. There was great dissatisfaction among them when



they learned in 1876 that the "civilization fund" was being used for the benefit of Indians other than Osages. They protested to their agent, Cyrus Beede, who wrote the Government as follows:

"Dissatisfaction exists among the Osages on account of a provision in their treaty with the Government, made in 1865, wherein it was provided that certain proceeds of the sale of a part of their reservation be applied to the civilization of Indian tribes throughout the United States without distinction. Upon careful inquiry I find no member of the tribe who claims to have understood the interpretation as given in the treaty; all claim to have accepted this provision to apply exclusively to beneficial purposes for the Osages, and my knowledge of the nature, character, and wants of Indians, especially the Osages, their extreme poverty at the time, and absolute need of all their available means for their own support, leads me to conclude that they were overreached; that they did not understandingly make this large contribution, aggregating many thousand dollars, to the support of other wards of the Government."

From that time on the Osages have steadfastly complained and protested against the interpretation given the treaty and employed counsel to aid them. In a number of Congresses bills passed one House of Congress or were reported favorably by committees for their relief, but it was not until the present jurisdictional act that a measure was enacted into law. The jurisdictional act was passed after the claim had been fully investigated in committee, witnesses examined, and its nature and occasion fully made known.

X

The net amount realized from the sale of lands under Article I of the treaty of 1865 and turned into the "civilization fund" as therein provided was \$776,931.58. Of this sum the only amount expended for the benefit of Osage Indians was the sum of \$189.55 for seeds in 1880. The major portion, \$776,493.25, was used for the benefit of Indians scattered throughout the United States and not of any one tribe. The balance remaining in the fund after such expenditures was \$248.78, and this was covered into the surplus fund of the Treasury April 18, 1911, in compliance with the act of March 3, 1911, 36 Stat. 1062, and the account closed.