

Pursuant to the provisions of this article, 634.13 acres of the ceded tract were selected and patented for the Catholic Mission and 1263.65 acres of the ceded tract were selected, paid for at the rate of \$1.25 per acre, and patented for said Mission. (Pet. Ex. A-6).

13. Article 4 of said treaty reads as follows:

All loyal persons, being heads of families and citizens of the United States, or members of any tribe at peace with the United States, having made settlements and improvements as provided by the pre-emption laws of the United States, and now residing on the lands provided to be sold by the United States, in trust for said tribe, as well as upon the said lands herein granted and sold to the United States, shall have the privilege, at any time within one year after the ratification of this treaty, of buying a quarter section each, at one dollar and twenty-five cents per acre; such quarter section to be selected according to the legal subdivisions of surveys, and to include, as far as practicable, the improvements of the settler.

Pursuant to the provisions of this article, squatters resident on the ceded tract at the time the treaty was negotiated acquired 22,208.24 acres thereof. (Pet. Ex. A-8).

14. Article 6 of said treaty reads as follows:

In consideration of the long and faithful services rendered by Charles Mognain, one of the principal chiefs of the Great Osages, to the people, and in consideration of improvements made and owned by him on the land by this treaty sold to the United States, and in lieu of the provision made in article fourteen for the half-breed Indians, the heirs of the said Charles Mognain, dec[ease]/d, may select one section of land, including his improvements, from the north half of said land, subject to the approval of the Secretary of the Interior, and upon his approval of such selection it shall be patented to the heirs of the said Mognain, dec[ease]/d, in fee-simple.

Pursuant to the provisions of this article, the heirs of Charles Mognain selected and had patented to them 640.11 acres of the ceded tract. (Pet. Ex. A-5).

15. Article 14 of said treaty reads as follows:

The half-breeds of the Osage tribe of Indians, not to exceed twenty-five in number, who have improvements on the north half of the lands sold to the United States, shall have a patent issued to them, in fee simple, for eighty acres each, to include, as far as practicable, their improvements, said half-breeds to be designated by the chiefs and head-men of the tribe; and the heirs of Joseph Swiss, a half-breed, and a former interpreter of said tribe, shall, in lieu of the above provision, receive a title, in fee-simple, to a half section of land, including his house and improvements, if practicable, and also to a half section of the trust lands; all of said lands to be selected by the parties, subject to the approval of the Secretary of the Interior.

Pursuant to the provisions of this article the heirs of Joseph Swiss selected and had patented to them 320 acres of the ceded tract and 25 Osage Half-Breeds acquired in the aggregate 2052.03 acres of the ceded tract. (Pet. Exs. A-4 and A-7).

16. The area ceded by the Osage Nation under Article 1 of the Treaty of September 29, 1865, 14 Stat. 687, (Finding 4), is located in the southeastern part of the State of Kansas. The eastern boundary is located approximately 25 miles west of the boundary line between Missouri and Kansas. The south line runs parallel with the Oklahoma-Kansas state line approximately 2 miles north thereof. The western boundary runs north and south through Montgomery and Wilson counties in Kansas on a line approximately two and three quarters miles west of the boundaries of Labette and Neosho counties. The north line runs east and west, approximately one and three quarters miles north of the north line of Neosho County. The bulk of the area is therefore contained within Neosho and Labette counties.

17. The ceded tract was land adaptable to agricultural use. It is drained by two rivers, the Neosho River flows through the tract from the

northwest to the southeast. The western portion of these lands is within the drainage system of the Verdigris River, which runs from north to south a short distance west of the western boundary of the tract. The ceded area consisted of approximately 10% bottom lands, 83% uplands, and 7% shallow gravelly or stony soils. The topography of the lands is undulating and gently rolling prairie.

The elevation of the tract ranges from 800 to 100 feet; the growing season is long, Neosho County having a growing season of 194 days and in Labette County it is about 198 days. The average annual precipitation in the area is from 39 inches to 41 inches. The climate permits the growing of diversified agricultural crops such as nearly all small grains and many types of feed crops. As early as 1868 the valley of the Neosho was considered as the most fertile in the state.

The highest and best use of the tract as of the time of the treaty of 1865 was for subdivision into subsistence homesteads. There was no substantial market for surplus crops until the area received adequate transportation facilities in the way of railroads. Prior to the advent of the railroads the principal cities were in the northeastern part of the State over a hundred miles north of the tract. The nearest town was Humboldt, fifteen miles north of the north boundary of the tract and the township in which it was located had a population of 768 in 1865. The nearest sizeable town was Fort Scott, approximately 70 miles northeast from the center of the tract, which town had a population of about 1372 in 1865.

18. In 1860 the State of Kansas had a population of 107,206. According to a census taken by the State in May of 1865, the population totaled

140,079. As of 1865 the concentration of settlement was in northeastern Kansas. Following the Civil War there was a great surge of settlement in Kansas, and by 1870 the Census reported a population of 364,399 in Kansas. The following figures show the population density in the vicinity of the ceded tract:

<u>County</u>	<u>1860</u>	<u>1865</u>	<u>1870</u>
Allen	3082	2737	7022
Bourbon	6101	7961	15076
Wilson	27		6694
Woodson	1488	1307	3827
Montgomery			7564
Labette			9973
Neosho		777	10206
Cherokee			11038
Crawford			8160

19. The mineral resources within the Osage ceded tract were not of sufficient economic importance in 1865 due to lack of demand for the sub-surface products and the relatively poor state of their development at that time to have any effect upon the fair market value of the tract.

20. Prior to the Treaty of September 29, 1865, a large number of settlers were reported to be upon the ceded tract along the northern boundary. In 1862 the Surveyor General's Office reported numerous settlements on these lands and urged a treaty be made to open the Osage lands to settlement and cultivation.

21. Prior to the building of the railroads the early settlers in Kansas depended upon river transportation and wagon roads to obtain their supplies and to transport their products to market. In 1865, the railroads generally were in the organizational phase in Kansas. No navigable streams were within or close enough to the ceded tract to provide transportation for products. The railroads were not to serve the area

until 1870. The wagon roads over which provisions were hauled were frequently obstructed by swollen streams.

22. It was not until the end of 1867 that the survey of the ceded tract was completed. Following the close of the Civil War, however, the State of Kansas had phenomenal growth in population and this growth in population extended to the ceded tract upon which lands hundreds of settlers entered following the Treaty of September 29, 1865, in anticipation of their being opened for settlement. On January 20, 1868, the President issued an order directing the sale of these lands at public auction. Congressional action developed however to obtain a preference in favor of the settlers already on the lands with respect to the sale of the lands. On April 16, 1868, the House of Representatives adopted a resolution requesting the Secretary of the Interior to immediately suspend the projected sale. On April 18, 1868, the order directing the sale was "indefinitely postponed" by direction of the President. Due to the indefinite postponement of the public sale offering of the ceded lands, no authority existed in the local land office to dispose of any of these lands except such as were specifically directed by the provisions of the Treaty of September 29, 1865. The several grants made by the Treaty of 1865 totaled 27,118.16 acres. No further disposals of the ceded lands were made until the passage of the Joint Resolution of April 10, 1869, and under the provisions of this act, 44,466.99 acres were selected by and patented to the State of Kansas for school purposes, and 333,936.05 acres were quickly disposed of to settlers at \$1.25 an acre, who had completed their proofs and made payments therefor and had final certificates, the equivalent of title, issued to them.

There remained, after these disposals, pending contests by the claimants in 144 cases aggregating 6,255.98 acres. In the meantime the two railroads to whom grants were made under the acts of 1863 and 1866 listed and had approved selections totaling 458,893.35 acres. Out of a total acreage of 871,751.11, these disposals and grants left undisposed of or included in townsites or other applications not located or enumerated, 1,180.68 acres. Following the opinion of the Supreme Court of the United States invalidating the railroad grants, there were restored for disposal 458,893.35 acres, to which might be added the 1,180.68 acres not accounted for prior to that time, making a total of 460,073.93 acres available for final disposal. No authority existed at this time to dispose of these lands until the enactment of the Act of August 11, 1876, and under that act 454,652.48 acres were finally disposed of leaving unaccounted for approximately 5,461.45 acres out of the total area ceded by Article 1 of the Osage Treaty of 1865. The report of the General Land Office to the Court of Claims shows that during 1881 to 1884 cash was received from the sale of Osage ceded lands in the sum of \$22,432, part of this cash without doubt being deferred partial payments on lands disposed of prior to 1881 and part of it no doubt for lands included in the area unaccounted for. That the Osage ceded lands were finally disposed of is shown by the fact that in January 1901, the civilization fund was eliminated as an account in the Treasury Department, and \$248.78, the balance therein, deposited in the general funds of the Treasury of the United States. Out of the civilization fund the defendant repaid itself the \$300,000 advanced to the Osages, \$24,372.20 as the expense of surveying and \$3,151.53 as expenses of sales.

23. By the Act of March 3, 1863, 12 Stat. 772, a grant was made to the State of Kansas of all odd-numbered sections of land for 10 miles in width on each side of a line for two railroads. One was to run from Leavenworth via Lawrence to the south line of the State. The legislature of Kansas in 1864 passed an act accepting the grant under this Act of Congress and designated the Leavenworth, Lawrence and Galveston Railroad to build the route and to receive the land on the prescribed terms. Its authorized route passed through the Osage lands and the map of definite location of the route was filed in the General Land Office on January 2, 1869. Previously, on November 15, 1866, the railroad, which had been incorporated in 1858, had filed a map showing its route to the northern boundary of the ceded tract.

Under the Act of March 3, 1863, the Santa Fe Railroad was designated to build a line down the Neosho Valley to connect with the Leavenworth, Lawrence and Galveston Railroad at the point where the Leavenworth, Lawrence and Galveston entered the Neosho Valley. By the Act of July 26, 1866, 14 Stat. 289, the Union Pacific Southern Branch, to which this right was assigned by the Santa Fe Railroad, was granted the further right to construct a line down the Neosho Valley through the Osage ceded tract to the southern line of the State and to receive the same acreage per mile as was extended to the Leavenworth, Lawrence and Galveston Railroad.

Under these acts of Congress, the Leavenworth, Lawrence and Galveston selected 176,052.49 acres of land within the ceded tract and the "Katy" (successor to the Union Pacific) selected 282,840.86 acres within the ceded tract. The Leavenworth, Lawrence and Galveston began to sell the lands granted to it on October 10, 1871. From that date through 1873

it sold 13,400 acres of these lands. Of these, 87 tracts, or 12,040 acres, sold for \$83,129 at an average price of \$6.90 per acre. Only 6%, or \$4,970 of the purchase price, was collected on these term sales, and 5 tracts, or 1360 acres, sold for \$7190 cash, or \$5.29 per acre. Two of these cash sales were made at discounts of 25% and 20%, respectively.

The "Katy" Railroad, up to February 28, 1874, sold 29,263.71 acres of the ceded lands, consisting of 208 tracts for \$176,696 on terms at an average of \$6.04 per acre and had collected \$47,197 on the purchase price.

These railroad grants made under the acts of 1863 and 1866 were held invalid by the Supreme Court of the United States in 1876 and the land so selected by the railroads became available for disposal by the United States.

By the Treaty of October 5, 1859, 12 Stat. 111, the Kansas Tribe agreed to sell their surplus lands after allotments were made. By Article 4 thereof these lands were to be sold by the Secretary of the Interior, in parcels not exceeding 160 acres each, to the highest bidder for cash, the sale to be made upon sealed proposals invited by public advertisements. Settlers who had gone on these lands prior to the survey in 1856 were to be permitted to purchase their claims at \$1.75 per acre in cash. The sale of these lands was delayed, apparently due to the Civil War according to Witness Brady, defendant's appraiser, and it was not until 1864, 1865 and 1866 that they were advertised for sale. On June 30, 1865, the Commissioner of Indian Affairs reported that only 35,491.32 acres of these lands, totaling 169,268.43 acres had been sold for an average per acre of \$1.44. Sales were suspended in 1867, in consideration of a new treaty executed on February 13, 1867 by which it was proposed that the

United States would assume the liabilities of the Indians and pay them for the land. As of November 1, 1868 there were still 128,853.31 acres unsold. Only \$27.30 in cash had been received for the sale of 35,491.32 acres, the rest of the consideration being in the form of certificates of indebtedness issued by the tribe.

This tract is identified as Royce Area 421 near Council Grove, Kansas, located in the corners of what became Morris, Lyon and Wabaunsee counties. Brady, defendant's appraiser, says the soil of the Kansas tract is comparable to that of the Osage ceded tract and had the additional advantage of being along the westward wagon trails. According to Exhibit II. in Brady's Report, Defendant's Exhibit 36, showing population density by counties in 1865, the settlement of surrounding areas would be somewhat similar although the Kansas tract would be slightly closer to the center of population in northeastern Kansas at that time. The Kansas lands were about 90 miles north and west of the Osage ceded tract.

24. By the Treaty of October 1, 1859, 15 Stat. 467, II. Kapp. 796, the surplus lands of the Sac and Fox Indians of the Mississippi were to be sold under Article 4 of said treaty under the direction of the Secretary of the Interior, in parcels not exceeding 160 acres each to the highest bidder for cash, the sale to be under sealed proposals, and to be publicly advertised. Sales were delayed until 1864. The sales were advertised in newspapers requesting sealed bids to be made on or prior to October 15, 1864. The bids were open on that date and only those equal or greater than the value of the land, which the Department of the Interior had caused to be classified and appraised at prices from 80 cents to \$2.75 (average of \$1.25), were considered and awards were made to the highest

bidder. The amount awarded at that time was 30,997.15 acres which sold for \$53,765.19 or an average of about \$1.73 per acre. The total available for sale was 263,339 acres which sold for an average of 91 cents per acre.

These lands are shown as Area 419 on Royce's Maps of Kansas. They are just west of Lyndon, Kansas, about 75 miles north and slightly west of the Osage ceded tract and therefore closer to the centers of population in northeast Kansas in the 1860's.

25. By the Treaty of May 30, 1860, 12 Stat. 1129, II Kapp. 803, the Delaware Indians agreed to take allotments on their lands. In the belief that the value of their lands would be enhanced by having a railroad passing through their reservation they agreed in Article 3 that the Leavenworth, Pawnee and Western Railroad Company should have the preference of purchasing on payment of gold or silver coin the remainder of their lands after allotments in severalty at a value to be ascertained by three commissioners to be appointed by the Secretary of the Interior to appraise said lands. On February 2, 1861, these appraisers reported their findings as to value, having valued each quarter section separately in three price ranges, \$1.50, \$1.05 and 80 cents with a general average for the whole at \$1.28 per acre. The three commissioners appraising the lands were instructed that they were confined to the present value of the land and that they were not expected to be influenced by any prospective advantage that might accrue to the lands in consequence of any future enhancement of their value from contemplated improvements thereon.

By the Treaty of July 1, 1861, 12 Stat. 1177, II Kapp. 814, the agreement with the Leavenworth, Pawnee and Western Railroad was executed

