BEFORE THE INDIAN CLAIMS COMMISSION

THE OMAHA TRIBE OF NEBRASKA, et al.,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 225-A

Decided: January 18, 1957

FINDINGS OF FACT

Preliminary Statement

The entire claim under consideration in this docket embraces an area ceded by the Treaty of March 16, 1854 (10 Stat. 1043) lying in the northeast corner of the State of Nebraska and consisting of 5,283,365 acres, less 300,000 selected by the Omaha, as hereinafter stated in the findings.

By Article 1 of said Treaty, the ceded area was in two sections, being 783,365 acres of land lying north of an east-west line referred to herein as the "Ayoway" (Iowa) river line fixed by said treaty, and 4,500,000 acres of land lying south of said line.

By Order of the Commission dated October 19, 1954, it determined that the plaintiffs had Indian title to the lands lying north of said line, describing them, and determined and fixed the boundaries of the lands lying south of said line, which were ceded by said treaty, but made no determination of the title thereto, leaving that question for later determination. So the following findings relate primarily to the Indian title of the plaintiffs to the ceded lands lying south of the Ayoway river line but shall also make a specific finding as to the ownership
of the lands lying north of said line as well as those south.

In the following findings the lands lying south of said line will be generally referred to as the "area in issue."

The Commission makes the following findings of fact:

Finding No. 1

The plaintiff, the Omaha Tribe of Nebraska, is a recognized Indian tribe organized under a constitution and by-laws ratified by the tribe on February 15, 1936, and approved by the Secretary of the Interior on March 30, 1936 pursuant to the Indian Reorganization Act. The membership of the Omaha Tribe of Nebraska is prescribed (1) by the official census roll of the Omaha Tribe of Nebraska as of April 1, 1934, with the supplement thereto of January 1, 1935, and (2) by Article II of its Constitution and By Laws, and (3) by such ordinance as shall be hereafter enacted by the Tribal Council, subject to review by the Secretary of the Interior. As of the latest count, completed in July 1955, there were 2,223 enrolled members of the Omaha Tribe of Nebraska. Each of these members is in part descended from one or more members of the aboriginal Omaha Tribe.

Finding No. 2

The plaintiffs, Amos Lamson, Charles J. Springer, John F. Turner, and Henry F. Freemont, are, each of them, Omaha Indians, enrolled members of the Omaha Tribe of Nebraska, and former members of the Tribal Council of the Omaha Tribe of Nebraska. Each has brought the claims asserted in the Petition as the representative of all the descendants of members of the aboriginal Omaha Tribe. Some of these descendants of members of the Omaha Tribe are not included among the 2,223 Omaha Indians presently
enrolled in the Omaha Tribe of Nebraska. How many are not so enrolled is not known.

Finding No. 3

(a) The members of the aboriginal Omaha Tribe as of 1854 had worked and lived together long enough to consider themselves a unit as against outsiders. These members of the Omaha Tribe spoke a language of their own, which belonged to the Dhegiha group of the Siouan languages. This Omaha language was not intelligible to any of the Indians who occupied the country bounding the Omaha Tribe, except the Ponca. The Ponca Indians, who lived to the northwest of the Omaha, spoke a closely related language in the same Dhegiha group.

(b) The Omaha Indians were hunters, farmers, and trappers. They engaged in two large tribal hunts each year directed at the buffalo, the one a summer hunt, the other a winter hunt. Their agriculture and hunting were probably equally important to them, and, after the advent of the white traders, fur trapping also became extremely important to the maintenance of their way of life.

(c) Prior to the movement of the Omaha Tribe onto the Omaha reservation in 1855, the tribe always had a single village, where the Omaha lived approximately five months out of each year, although individuals may have scattered themselves out at convenient spots around the village. The Omaha Tribe had a council of seven chiefs, which was the real governing body of the tribe, and two principal chiefs, those being the two members of the council of seven having the greatest number of honors important to the Omaha. The authority of the Omaha chiefs was very great, and greatly respected among the Omaha.
(d) Our documentation of the Omaha Tribe in historical records extends back to about 1670 and there are Omaha traditions which carry our knowledge of the Tribe back to an earlier time. As far back as this knowledge extends, the Omaha Tribe is continuously known as the "Maha" or Omaha Tribe, the words being the same, simply spelled differently. Since about 1875, a number of studies have been made and published about the Omaha Tribe so that today the Omaha are: a tribe of American Indians about whom we are relatively well informed.

(e) The Omaha Indians numbered about 2800 during the last two decades of the 18th century, were reduced by smallpox at the beginning of the 19th century to approximately 1500, or somewhat less, were reduced still further over the ensuing years until they numbered about 1000 in 1854. Since that time the Omaha population has increased to the present tabulation slightly in excess of 2200 people.

(f) In this case, the Commission has heard the testimony of Dr. John Champe, called by the plaintiffs, and Mr. Hubert Smith, called by the United States. Dr. Champe has done extensive archaeological work in northeast Nebraska and, in particular, has either participated in or directed the excavations of the Omaha sites in the area in issue. Mr. Smith prepared for this case an ethno-historical report on the question of Omaha use and occupancy of the area in issue.

Finding No. 4

(a) The area in issue was ceded by the Omaha Tribe to the United States in the Treaty of March 16, 1854, and has been determined by the Court of Claims to have been bounded as follows:
Commencing at a point in the center of the main channel of the Missouri River due east of where the Ayoway River disembogues out of the bluffs and extending on a line drawn due west from this point (herein referred to as the Ayoway river line) to a point where the west line of range 5 W. intersects said Ayoway river line, thence south along said west range line to where it crosses Shell Creek near the northern boundary line of T. 21 N., R. 5 West, thence down the meanders of the stream to its junction with the Platte River in T. 17 N., R. 4E., 6th P. M., thence along the Platte River to its junction with the Missouri River, thence northerly along the Missouri River to the place of beginning at the eastern point of the Ayoway River line.

This area has been found by the Court of Claims and this Commission to comprise 4,500,000 acres. It has been marked off by a heavy black line on Plaintiffs' Exhibit 238. This is the area in issue to which the Omaha Tribe is seeking to establish title, as of the treaty date, March 16, 1854.

(b) The land lying north of this area in issue, east of the west line of range 5 W., and south of the Missouri river has been determined by the Court of Claims and this Commission by its Order of October 19, 1954, to be land to which the Omaha Tribe had Indian title at the time of the Treaty of March 16, 1854, and to comprise 783,365 acres. It will be called hereinafter the "Omaha land north of the Ayoway river line." These two areas of land north and south of the Ayoway river line, less the reserved land hereafter described, constitutes the lands claimed by the plaintiffs, and when spoken of together will be called hereinafter the "Omaha land west of the Missouri river." This "Omaha land west of the Missouri River" seems to conform to the area of land mapped by Fletcher and LaFlesche in their ethnology of the Omaha Tribe as "the country occupied by the Omaha."
Finding No. 5

(a). The earliest historical reference to the Omaha Tribe is contained on the Marquette Map which appeared in 1671 and places the Omaha in the neighborhood of the Missouri River some distance from the Mississippi River to the west. The earliest journal reference to the Omaha is in Beaurain's "Memoire" wherein two Sioux Indians are reported to have told the French trader Le Sueur in 1700 that the Iowas and Otoes "had gone to establish themselves on the banks of the Missouri River, in the neighborhood of the Mahas, a nation which lived in those quarters."

In 1702 a map made by the French map maker Delisle, in part on information provided to Delisle by the French trader LeSueur, shows an Omaha village on a small river marked Rock River. This was the early French designation for the Big Sioux River. A later Delisle map made in 1718, generally accredited to be the most reliable of the very early French maps, again shows an Omaha village on the Rock, or Big Sioux River, and shows further to the west up the Missouri river the notation "The Maha, a wandering nation."

(b) These earliest historical records locating the Omaha Tribe are consistent with and corroborate the traditions of the Omaha Indians in respect to the migration of their tribe prior to its arrival in the Omaha lands west of the Missouri River. The Omaha traditions were gathered and recorded by Dorsey, and Fletcher and LaFlesche, during the latter part of the 19th century from Indians who were ignorant of historical documentation. According to these traditions, the migration of the Omaha Tribe commenced at a place near the present site of St. Louis, took the tribe northward to the neighborhood of Red Pipestone Quarry in Minnesota,
thence down the Big Sioux River, where the Omaha, Ponca, and Iowa remained for a time "making earth lodges and cultivating the fields."

Reading this tradition in conjunction with the historical documentation, it would seem that the Omaha had their village on the Big Sioux in 1702 and some years earlier. Next the Omaha tradition tells how the three tribes, the Omaha, Ponca, and Iowa, were pressed by the Dakota and resumed their wanderings, moving together westward up the Missouri, passing near Lake Andes; near Platte, South Dakota; and to the mouth of White River. The 1718 Delisle Map confirms this movement and dates it some time to 1718.

(c) At the mouth of White River, tradition reports that the Omaha suffered greatly, crossed the Missouri and, still together with the Ponca and Iowa, moved down the river on the south bank, making no stop or encampment until the Omaha established a village called the "Bad Village" between the mouth of the White River and Bow Creek, near the present town of Wynot, Nebraska. The location of this "Bad Village" has been confirmed by archaeological diggings. At the same time that the Omaha were at the "Bad Village," the Indian tradition separate the Ponca and Iowa from the Omaha, the Ponca making their village further up the Missouri River just west of the Niobrara River, the Iowa making their village at a site further down the Missouri River near the present town of Ponca. The Omaha tradition next tells how the Omaha left the "Bad Village" and moved further down the Missouri River, passing the Iowa at their village near Ponca, and making their next village within the area in issue at the site of South Sioux City, formerly Covington. According to tradition, the Iowa village remained at Ponca and the Omaha village
remained at Covington until a raid of Dakota Indians drove both the Iowa and Omaha away from their village at the same time. The tradition then tells how the Omaha moved their village to "Big Round Spring," still within the area in issue, where they made a new village known as "Zandebuta," only a short distance from the former Covington site, and about two miles northwest of the present site of Homer, Nebraska. At the same time, the Iowa passed the Omaha and moved further down the Missouri to a site on the outskirts of the present Omaha City, where is now located the suburban area called Florence.

(d) Here historical records again corroborate the Indian tradition. In a report made in the year 1758, Governor Kelerec located the village of the Iowa on the Missouri River ten leagues above the Platte River and in the same report placed the Omaha village eighty leagues further up the Missouri. This report, read in the light of the Indian tradition, places the Omaha Tribe at their "Big Round Spring" village some time prior to 1758. Dr. Champe gave to the location of the Omaha village at Covington an estimated date of 1755 and to the earlier "Bad Village" an estimated date of 1735. It is reasonable to conclude that the Omaha Tribe probably established its first village in the Omaha lands west of the Missouri River not later than 1735 and its first village in the area in issue not later than 1755.

Finding No. 6

When the Omaha Tribe established its village at Big Round Spring, the lands extending for about one hundred miles up and down the Missouri River and to the west were unused and unoccupied by any other Indian tribe so far as is known. Archaeological research in the area in issue has
failed to disclose any manifestation of occupancy from about 1400 A.D. until the Omaha Tribe came into the area. By the time that the Omaha were settled at Big Round Spring, the Ponca had made their village west of the Niobrara River extending their territorial interests still further west and north of the Niobrara. The Pawnee had for many generations their villages on the lower Loup River extending their territorial interests from that place westward and southward, and the Otoe had more recently established their village south of the Platte River extending their territorial interests southward along the Missouri River. The Iowa Tribe for a brief time remained at Florence, but in 1765 resumed its migration eastward and never thereafter returned to the area in issue. From the time of the "Bad Village" forward, the Omaha Tribe always maintained its village at some point within the Omaha lands west of the Missouri, its village location changing but again and again returning to the general vicinity of Homer, Nebraska. The Omaha Indians were the earliest Indians found by the white man in the area in issue. We conclude, therefore, that the migration of the Omaha Tribe probably ended early in the 18th century when the Omaha Tribe settled in the Omaha land west of the Missouri River, and that the Omaha Tribe was living in the area in issue when the white man first visited this area.

Finding No. 7

The record shows eleven locations of the Omaha tribal village within the area in issue. Dr. Champe testified that the Omaha village customarily would not remain at the same site longer than eight to fifteen years and that, on account of raids or other pressures, might be moved more often. He located the Omaha village sites in the vicinity of Homer, along the Elkhorn River from West Point to Stanton, on Logan and Bell Creeks, and on
the Papillion near Bellevue where the United States Indian Agency was established from about 1820 until years after the Treaty of March 16, 1854. The movements of the Omaha village were traced in the testimony of Dr. Champe, and are summarized in Plaintiffs' Exhibit 240, and have been generally confirmed by the testimony and report of Mr. Hubert Smith. The general area just north of Homer, where the so-called "large Village of the Omaha," Tomwonjinga, was excavated archaeologically in 1940 and 1941, was probably occupied by an Omaha village in 1777 and possibly earlier. It is known to have been occupied by an Omaha village in 1794 and 1795 when the fur traders Trudeau and McKay traded with the Omaha tribe, and was probably the site of the Omaha village in the summer of 1804 when the Lewis and Clark expedition reported this village deserted—the tribe probably being away on its summer hunt. It was certainly occupied by an Omaha village in 1811 and 1812 when the Omaha village was visited and described by the highly regarded group of travelers, Bradbury, Luttig, Brackenridge, and Irving, and was the Omaha village site in 1816 when Joseph LaFlesche was born there and in 1819 when Long's expedition traversed a part of the Omaha lands; it is reported by the Indian agents to have been the location of the Omaha village from 1834 through 1839, and again from 1843 through 1845, and at least for brief periods from 1845 to 1855, in which last year the Omaha Tribe moved on to the Omaha Reservation a few miles south of Homer, reserved in 1854 Treaty. There is evidence that for a period some time shortly before 1794, the Omaha village was situated on Bell Creek, that about 1813 the village was on the Elkhorn near West Point and remained there for about five years, and was moved from there to Shell Creek for at most a brief stay, and that
in 1820 was moved to the Elkhorn from the Missouri, and about 1823
the village was again on the Elkhorn, near Stanton, where archaeo-
logical digging has found a good manifestation of a considerable
Omaha occupation, principally near Stanton and to a less degree near
Pilger, where it is believed the village remained for about ten years,
1823-1833. In 1841 the village was near the mouth of Logan Creek. In
1845 the Omaha village was established on the Papillion, where the
village remained until the movement onto the reservation in 1855, except
that during this last ten years there was some changing of the village
back and forth from the vicinity of "Large Village" to the Papillion.
Throughout these years, no record has been found of any Omaha tribal
village outside the area in issue.

We conclude that for at probably one hundred years prior to 1855, and
certainly after 1794 or 1795 the Omaha Tribe maintained its tribal village
at all times within the area in issue and the village movements during
these years took the Omaha tribal village location back and forth over
most of the length and breadth of the area in issue.

Finding No. 8

The Omaha Tribe lived in their village only about five months of
each year, yet the village was never wholly deserted, even when most of
the tribe left for the annual buffalo hunt. The village consisted prin-
cipally of lodges made of poles covered with earth. These lodges were not
as easily heated as the smaller buffalo hide teepees used by the Omaha when
away from the village. About the first of November, after their crops had
been harvested, most of the Omaha who were able to do so left the village
to live in their hide teepees, moving either with the tribe on its long
winter hunt or else traveling in smaller groups or as individual families hunting meat and trapping furs. About the first of April, the Omaha would return to their village to prepare their farm patches for planting corn, squash, melons, pumpkins, and beans. Through April, May, and June most of the tribe lived in the village, the women, with some assistance from the men, tending to planting and cultivating their crops, the men for the most part hunting and trapping in the area surrounding the village. About the first of July, all except the sick, or infirm, or very poor, and a few to care for these, left their village on the annual summer buffalo hunt. This was an occasion of important ceremonies. The tribe did not return again to the village until late August when the harvest season began. At that time, the Omaha again gathered in the village to treat the hides and meats taken on the summer hunt and to harvest and cache their crops. In this manner, the tribal village served the Omaha as the home to which they always planned to return. Also the Omaha village was the site of the tribe's farming activities. However, the village and its environs comprised only a part of the area used and occupied by the Omaha Tribe over its annual cycle. (See subsequent findings).

Finding No. 9

The Omaha farms were located on the flat alluvial plains by the banks of creeks and streams in the neighborhood of the Omaha village. Ordinarily a man with his wife and family would farm from one to one and one half acres. Suitable land was abundant in the environs of each Omaha village location. As long as a patch was cultivated by one family, other Indians did not molest or intrude on the patch. If a patch was abandoned for a season, it was free to be used by any one. In this manner, the
tribe cultivated in the ordinary season an estimated five to seven
hundred acres stretched out along the streams in the neighborhood of
the village. They raised primarily corn, secondarily, squash, pumpkin,
watermelons, and beans. These products constituted an important part of
the tribe's food supply, being usually stored for winter use, and many
of the rituals of the tribe concerned the planting and harvesting of
the corn. We conclude that, for probably one hundred years prior to
1855, or in any event for at least 60 years, the Omaha Tribe had its
farms within the area in issue and that, as the Omaha village changes
its location, these village movements took the locations of the Omaha
farms back and forth over most of the length and breadth of the area
in issue.

Finding No. 10

(a) Each year the Omaha Tribe had two tribal hunts directed at the
buffalo herds that were usually found in the plains about the headwaters
of the Elkhorn River. The summer tribal hunt featured religious cere-
monies important to the Indians. All the Omaha, who were able to,
attended this hunt. The longer winter tribal hunt lacked religious con-
notations and accordingly was less fully attended. Otherwise, the winter
tribal hunt was a similar tribal undertaking, its object being to hunt
the buffalo herds. Buffalo meat, bones, and hides served many uses in-
dispensable to the Omaha life. On these tribal buffalo hunts, the Omaha
moved in a body, generally following where possible the banks of streams,
most of the tribe afoot, going first from the tribal village, wherever
located, to the Elkhorn and then up the Elkhorn westward until the buffalo
herds were found. At times the buffalo herds were found in the northwest
part of the area in issue. More frequently, according to Dr. Champe, the Omaha Tribe traveled on its buffalo hunts further to the west and outside the area in issue.

(b) In addition to these tribal buffalo hunts, all year around, to a greater or lesser degree, the Omaha Indians hunted in small groups and individually. When the tribe was in its village, this small group and individual hunting was concentrated in the area about the village. When on the tribal hunt, this small group and individual hunting scouted the area along the route of the tribe. But generally in the winter months, November to April, small groups and individual Omaha Indians spread far out across the Omaha land west of the Missouri River, hunting whatever meat or fur bearing animal could be obtained. In this manner, the Omaha Indians, hunting individually and in small groups, secured incidental buffalo that had departed from the great herds, secured elk, deer, bear, wildcat, racoon, badger, squirrel, otter, muskrat, and beaver, the last three being trapped almost exclusively for the fur.

(c) Commencing shortly before 1777, fur trapping for purpose of the white man's trade had become a most important factor in the Omaha economy. The Omaha country was rich in beaver streams. The records of the early fur traders show that the Omaha were a large contributor to the traffic in fur carried by white traders down the Missouri River. The trap lines were ordinarily run by an individual Indian and his family. While these Omaha trappers ran their trap lines, they hunted the area around for the meat on which their lives depended.

(d) Hunting and trapping, extending over a wide area of land, was beyond question a major occupation of the Omaha. Dr. Champe testified
that the Omaha Tribe in its tribal hunts and smaller group and individual hunting and trapping exploited fully the area in issue, and even beyond its western boundaries. He explained this conclusion thus: "They (the Omaha) could exploit any part of this area and even beyond it for whatever purpose they chose. That is, wherever the game might be they could go there and set their trap line if they liked, or go hunt the large animals that were not trapped." Mr. Smith testified that Dr. Champe's description of the hunting and trapping activities of the Omaha was generally confirmed by documents known to him. He confirmed that the Omaha "did hunt and trap within this area at different times." We conclude that in its hunting and trapping, the Omaha Tribe used and occupied the area in issue in accordance with its manner of life.

Finding No. 11

In addition to hunting, trapping, and farming, the Omaha used many other products of the land within the area in issue to support their way of life. The Omaha were well acquainted with the natural botanical resources of this area and exploited practically everything within their means. Important among these resources were various roots, in particular the Indian turnip and Indian potato, various nuts, in particular walnuts and hazelnuts, various berries, in particular blackberries, plums, chokeberries, raspberries, and, of course, the wood used for their fires and for building their lodges and teepees. The Omaha took fish from the rivers and streams, though this was a relatively unimportant part of the Omaha diet. The ethnographic studies made of the Omaha by Dorsey, Fletcher, La Flesche, and Gilmore show the tribe to have used a wide
range of products of the area in issue to feed, house, and clothe the people and to satisfy the rituals of their religious, social and medicinal customs. We conclude that in its quests for these products of the land and water, the Omaha Tribe used and occupied the area in issue in accordance with its manner of life.

**Finding No. 12**

(a) Dr. Champe testified that the area of land that was used and occupied by the Omaha Tribe in the foregoing manners from a date not later than 1755 not earlier than about 1715 and until the Treaty of March 16, 1854, included all the area in issue, together with lands to the west, and also together with the Omaha land north of the Ayoway river line. Dr. Champe testified that the movement of the village from place to place within the area changed the concentration of the tribe's use of the land from location to location and tended from time to time to deplete the resources in the neighborhood of the village, but that these changes did not change the tribe's general exploitation, in accordance with its manner of living, throughout the entire area. Mr. Smith agreed in general with Dr. Champe's description of the area of land used by the Omaha Tribe. Mr. Smith described the area in issue as the "habitat" of the Omaha, meaning the area in which they were usually or always found. Fletcher and LaFlesche defined the area "occupied" by the Omaha Tribe to be the area in issue together with the Omaha land north of the Ayoway River line. Dorsey, between 1877 and 1892, using in part information supplied to him by an Omaha Indian reputed to have been the tribal historian and born about 1800 in the Omaha "Large Village," made a map designating in the Omaha language the names of
places known and used by the Omaha. This map is persuasive evidence that the Omaha for years prior to 1854 used and occupied the entire area in issue together with other lands to the north and west.

(b) To the same effect are the reports of the United States Indian agents and officers having charge of our relations with the Omaha Tribe. The earliest agents, beginning shortly before 1820, were Benjamin O'Fallon and John Dougherty who were followed about 1820 by Henry Ellsworth. Each of these agents provided the United States with good descriptions of the Omaha Tribe and its manner of life. Each located the tribe in the area in issue but none of these agents attempted in their reports to define the precise boundaries of the Omaha land west of the Missouri River. This was first attempted in 1834 by a Committee of three Commissioners appointed by the Secretary of War to make recommendations on the matter of negotiating with tribes west of the Mississippi for the movement of eastern tribes into that area. Henry Ellsworth was one of these Commissioners. The report of these Commissioners, transmitted to the Secretary of War in 1834, bounded the Omaha country by the Platte River on the south, by the Niobrara on the north, and by the Pawnee country on the west, and, as to this west boundary, stated that the boundaries between the Pawnee and Omaha country "are not very definitely settled or known."

The earliest report that attempted to fix this west boundary is that of the Missionary, Reverend John Dunbar, then serving with the Pawnee Tribe. In 1839, after "performing an exploring tour in the Pawnee country," Reverend Dunbar reported to Major Hamilton of the United States Army, stationed at Leavenworth, that "Shell Creek bounds the Pawnee country on the east." The earliest Indian agent's report to fix the west
boundary of the Omaha country is that of Agent Daniel Miller in 1842. In that year Agent Miller in his annual report bounds the Omaha country "by the Missouri River on the east, by Shell Creek on the west, by the River Platte on the south, and on the north by the Poncas Country." No different report in respect to this west boundary was issued by any agent or officer of the United States until after the Treaty of March 16, 1854. At that time Commissioner Manypenny, who negotiated the Treaty for the United States, signified his approval of Eastman's Map in August of 1854 showing the Omaha country ceded by the Treaty. This map placed this west Omaha boundary somewhat to the west of Shell Creek and outside the area in issue.

(c) In addition to these agents' and officers' reports, the reports of early explorers, travellers, and missionaries, and the later studies and researches of ethno-historians and archaeologists, who have attempted to reconstruct the history of the Omaha Tribe, confirm and corroborate the conclusion that the Omaha Tribe used and occupied the entire area in issue. The earliest report that describes the boundaries of the Omaha land was written by the trader August Chouteau in 1816 and reports the entire area in issue within what Chouteau called "the country of the Mahas." The most recently published conclusion of a competent expert in this area is that of Dr. Waldo Wedel, who wrote in 1936: "* * * the Omaha controlled a large area north of the Platte from Shell Creek to the mouth of the Niobrara." No report or record has been found of any Indian settlement later than about 1400 A. D. until after 1855 by any tribe other than the Omaha within the area in issue, with the exceptions only of the brief stay of the migrating Iowa Tribe prior to 1765, described in Findings 5.
and 6 above, and a brief stay by the Otoe next to the Merrill Mission from 1835 to about 1845, described in later finding.

(d) We conclude that the area in issue, probably from 1755 and certainly from some date not later than 1796 until after March 16, 1854, was exclusively used and occupied by the Omaha Tribe as heretofore described.

Finding No. 13

During the entire period the Omaha Tribe used and occupied in the manner described the area in issue, the Ponca Tribe had its permanent villages in the area between the Niobrara and the Ponca Rivers not far from the Missouri River, the Pawnee had their permanent villages on the Loup River and to the south and west, the Otoe Tribe had their permanent villages just south of the Platte River; but none of these tribes had any permanent villages in the area involved herein during these years; and, the only tribes having any permanent villages during these years in lands neighboring the Omaha lands west of the Missouri River were the Ponca, Pawnee, and Otoe Tribes.

Finding No. 14

(a) Dr. Champe testified that the Ponca Tribe did not utilize any of the area in issue at any time, although individual Ponca, or small groups of Ponca, from time to time were known to have raided Omaha villages and to have joined the Dakotas in such raids. Such raids or attacks never resulted in any tribal war of any kind whatever. Mr. Smith testified that he found no record of any group of Poncas coming into the area in issue to hunt or to fish or to get roots or berries for any subsistence, but from his knowledge of the practices of the tribes he would presume they did.
(b) Dr. Champe testified that he knew of no time prior to 1856 when the Pawnee entered the area in issue, or made any settlements in that area, as a tribe, but that individual Pawnees would steal or raid for prestige against the Omaha from time to time, but there was never any Pawnee tribal movement into the area in issue, any permanent occupancy of any of the area or any claim by the Pawnee of any right of occupancy. Mr. Smith testified that the only known documentation of Pawnee and Omaha hunting together in the area in issue occurred in 1856 after the Treaty involved herein. The missionaries Dunbar and Allis, each of whom served with the Pawnee for many years before 1855, each reported that the Pawnee lands were bounded on the east by Shell Creek. In 1857, the United States negotiated a Treaty with the Pawnee Tribe, later ratified, by which the Pawnee Tribe ceded to the United States its land west of the Omaha land. Before negotiating this treaty, Commissioner Denver, on behalf of the United States, determined that the Pawnee Tribe "justly owned up to Shell Creek," but not further east.

(c) The record is barren of any historical documentation that the Ponca or Pawnee Tribes at any time prior to 1855 either occupied, claimed to occupy, or sought to occupy, any part of the area in issue. The exclusive use and occupancy by the Omaha Tribe in the manner of that Tribe to the entire area in issue was at no time prior to March 16, 1854, disturbed or defeated by the Ponca or Pawnee Tribes, or any other tribes.

Finding No. 15

Dr. Champe testified that, except for two brief periods of time, he found that the Otoe Tribe was not in the area in issue. For a brief period prior to 1765, while the Iowa village was located at Florence, Dr. Champe
testified that some Otoe Indians may have been residents at the Iowa village. Second, Dr. Champe found that in 1835 the Otoe were induced by the Missionary Merril to establish their village near the mission north of the Platte River. In 1841 or 1842, Dr. Champe testified, the Otoe burned the mission and moved their village nearer to the trading post and Indian Agency headquarters at Council Bluff. The Indian Agents' reports for this period show that this Otoe village, near the Council Bluff's Agency, was itself burned by the Otoe in February, 1841. After this, the Otoe returned their village to various sites south of the Platte River. Moreover, the Agents' reports show that even while the village was located north of the river, it appears that the Otoe continued to hunt in their country south of the Platte. Dr. Champe testified that the Platte River, below the town of Ashland, enters a rather narrow gorge, where the river is rapid, deep, and difficult to cross without a good boat. The Otoe reported difficulty in crossing the Platte to reach their hunting grounds when their village was located north of the Platte and in 1842 gave this as one reason for their being opposed to returning their village to a location north of the Platte. There is no report of any Otoe village located north of the Platte after the burning of the Otoe village in February, 1841. Mr. Smith testified that the earliest documentation that he had found of any Otoe residence in the Omaha lands is for the period beginning 1835. Mr. Smith corroborated Dr. Champe's testimony that the Otoe village in 1835 was moved north of the Platte River, attracted by the mission and more especially by the availability of trade and trade goods at Bellevue. Mr. Smith testified that the Otoe
Village remained north of the Platte River only until the middle of the 1840's and that the Otoe had no village north of the Platte River in 1854. Both Dr. Champe and Mr. Smith located the Omaha Village from 1845 until the Omaha Tribe moved upon the Reservation in 1855 to have been most of the time on Papillion Creek, close to Bellevue and only a few miles north of the Platte River. In the Commission's Docket No. 11, the United States and the Otoe and Missouria Tribe of Indians have stipulated that the Platte River marked the north boundary of lands claimed by the Otoe Tribe in 1854. Accordingly, we think, the exclusive use and occupancy by the Omaha Tribe of the area in issue was never defeated by the temporary incursion of the Otoe Tribe.
Finding No. 16

War parties of Dakota Indians, commonly called the Sioux, raided in the Omaha lands west of the Missouri River from time to time from some time before 1800 until after the Treaty of March 16, 1851. These were raids or attacks for prestige, horses, women, and scalps. In general, these war parties came down the Missouri River from southern South Dakota. These raids occurred where the Omaha were found, sometimes upon Omaha hunting parties, sometimes upon the Omaha village, sometimes upon an Omaha winter encampment. There are agents' reports of raids taking place in the years 1825 or earlier, 1829, 1835, 1842, 1843, 1845, 1846, and possibly 1848. Though no records have been found of Dakota raids in any of the intervening years, other raids may have occurred. In any event, the reports of the United States Indian Agents disclose that the Omaha Tribe for a time following the Dakota raids lived in fear of the next raid, from time to time moved their village to a new location as the result of a Dakota raid or for fear of a next raid, and at times may have restricted the areas of their food quests because of the dread of Dakota war parties. It is not disputed that the Omaha were largely without effective means of defense against these raids, and had become committed by Treaty with the United States not to retaliate with warfare. Also, they were in no position to retaliate against the Dakota, being as a people outnumbered and out-armed by the Dakotas and without the warlike traditions of the Dakotas. On the other hand, the Dakotas were in no way interested in territorial acquisition. Dr. Champe testified that the Dakota at no time moved into the Omaha
lands west of the Missouri and established any settlement or village there. He testified that at no time did the Dakota establish any farms or trap lines or anything of that kind in the Omaha lands. Dr. Champe testified that the Dakota war parties came into the Omaha lands from time to time, raided, robbed, scalped, murdered, and then left the next night as soon as the raid was completed. Mr. Smith differed with Dr. Champe in the degree of importance that he would give these raids, but agreed with Dr. Champe that these raids were not undertaken by the Dakota for the purpose of obtaining new lands in which to reside, that the Dakota did retreat after each raid, that these "attacks were in and out, without residence, or the attackers remaining in the area for long periods of time."

Finding No. 17

Accordingly, the exclusive use and occupancy by the Omaha Tribe, in the manner of that Tribe, of the entire area in issue, though from time to time disturbed by these Dakota raids, was not defeated or ended by the Dakota at any time prior to the Treaty of March 16, 1854.

Finding No. 18

The earliest treaty between the United States and the Omaha Tribe is a treaty of peace and friendship which was negotiated on July 15, 1815, between the Commissioners William Clark, Ninian Edwards, and Auguste Chouteau on behalf of the United States and eight Omaha Chiefs, including one of the Omaha principal Chiefs, the Big Elk. By this Treaty the Omaha Tribe acknowledged itself "to be under the protection of the United States" and agreed that "there shall be perpetual peace
and friendship" between the Omaha Tribe and the United States. This Treaty was ratified by President James Madison on December 26, 1815.

Finding No. 19

On September 23, 1820, the Omaha Tribe undertook by Treaty to cede to the United States "all right, title, interest and claim which they have" in a tract of land fifteen miles square "so located that the flag-staff in the area of the new cantonment on Council Bluff shall be the centre of the aforesaid tract." This tract is included within the area in issue. The treaty was negotiated on the part of the United States by Henry Atkinson, Brigadier General of the United States Army, and Benjamin O'Fallon, United States Indian Agent for the tribes on the Missouri River, each being specially authorized by the Secretary of War to make the purchase. The Treaty stated that "in consideration of the relinquishment of title by the Maha nation," the United States would pay to the Omaha Tribe a certain stated price in guns, kettles, blankets, and other articles of trade. The treaty was signed by chiefs and headmen of the Omaha Tribe and by Brigadier General Atkinson and Indian agent O'Fallon. The Treaty was never ratified and so far as the record shows no payment was made to the Tribe for the land, though the United States established Fort Atkinson on this land and maintained the fort until 1827.

Finding No. 20

On October 6, 1825, the United States by its Commissioners Brigadier General Atkinson and Indian Agent O'Fallon negotiated a third treaty with the Omaha Tribe. This Treaty was designed to perpetuate
"the friendship that has heretofore existed," to remove future causes of dissention, and in particular to regulate trade with the Tribe. By this Treaty, the Omaha Tribe acknowledged the supremacy and claimed the protection of the United States, agreed to admit only American citizens duly authorized by the United States to trade with the Tribe, and agreed in the event of any misconduct of individuals that "no private revenge or retaliation shall take place" and that instead complaint shall be made by the Omaha Tribe to the Indian Agent to the end that punishment may be had "agreeably to the laws of the United States." By Article 4 of the Treaty, the Omaha Tribe bound themselves to extend protection to traders authorized by the United States "whilst they remain within the limits of their (meaning the Tribe's) particular district of country," agreed "to give safe conduct" to persons authorized by the United States "to pass through their country," and, on the other hand, undertook to arrest and deliver to the Indian Agent any person not authorized by the United States who "shall come into their district of country." This Treaty was ratified by President John Quincy Adams under date of February 6, 1826. Though this Treaty did not define the boundaries of the Omaha lands, by this Treaty the United States did recognize that there existed at that time a district of the country which was used and occupied by the Omaha Tribe.

**Finding No. 21**

At Prairie du Chien in the territory of Michigan, on July 15, 1830, the United States made a Treaty with the Omaha Tribe and other tribes wherein the Omaha Tribe ceded to the United States all its right and
title to all the lands claimed by the Omaha Tribe east of the Missouri River, it being understood that the United States would assign this ceded land to the Omaha and other Indian tribes for hunting purposes. In respect to the lands of the Omaha Tribe "not embraced in the cession herein made," this Treaty expressly stated that such land "shall be occupied and held by them (the Omaha Tribe) as heretofore," and that nothing contained in the Treaty shall be construed to affect any claim of the Tribe to such land. The price provided to be paid by the United States to the Omaha Tribe included one blacksmith and "also instruments for agricultural purposes to the amount of five hundred dollars." Prior to the Treaty, the Omaha Chief, Big Elk, had sought from the United States tools with which "to suck nourishment from the soil," someone to instruct the tribe in agricultural pursuits, and had stated to the United States Indian Agent his anxiety that his people farm a part of the Omaha lands west of the Missouri River. This Prairie du Chien Treaty was ratified by President Andrew Jackson under date of February 24, 1831. By this Treaty, the United States recognized the use and occupancy by the Omaha Tribe of lands not embraced within the cession of all the Omaha lands east of the Missouri River and thereby recognized that there existed west of the Missouri River lands used and occupied by the Omaha Tribe.

Finding No. 22

The first determination of the boundaries of the Omaha lands by officers of the United States acting in the course of official duties was made in 1833-1834. At that time the Secretary of War appointed a
committee of three Commissioners to investigate, report, and make recommendations in respect to the negotiation of treaties with tribes west of the Mississippi. This Committee in its investigation and report determined the boundaries of the Omaha Tribe and its neighboring tribes. It determined that the Omaha land was bounded by the Missouri River on the east, the Niobrara on the north, the Platte on the south, and the Pawnee lands on the west. Thereafter, in 1842, the Indian agent for the Pawnee and Omaha Tribes reported that Shell Creek marked the west boundary of the Omaha lands. In this manner, prior to 1854, officers and agents of the United States recognized the boundaries of the land used and occupied by the Omaha Tribe and defined those boundaries to encompass the entire area in issue.

Finding No. 23

On October 15, 1836, at Bellevue, the United States by its agents John Dougherty and Joshua Pilcher made a Treaty with the Omaha Tribe and certain other Tribes wherein the Omaha Tribe ceded to the United States all its "right, title and interest of whatsoever nature" to a portion of the hunting lands provided under the Treaty of Prairie du Chien. Article 3 of this Treaty reads in part as follows: The Omahas "having also abandoned their former situation, and established at the place recommended to them on the Missouri River, and finding it difficult without the aid of ploughs to cultivate land near their village where they would be secure from their enemies, it is agreed as a further proof of the liberality of the Government and its disposition to advance such tribes in the cultivation of the soil as may manifest a
disposition to rely on it for the future means of subsistence; that they
shall have one hundred acres of ground broke up and put under a fence
near their village, so soon as it can be done after the ratification of
this convention." The said "former situation" of the Omaha village was
at a site near Bellevue. The Tribe had left this site to return again
to the neighborhood of the Omaha "Large Village" about 100 miles north
of Bellevue. Both these village sites were, of course, within the area
in issue. This Treaty was ratified by President Andrew Jackson on
February 15, 1837. By this Treaty the United States recognized that
the Omaha Tribe were using and occupying an undefined area of land
either encompassing or lying within the area in issue.

Finding No. 21

In November 1841, Mr. Mitchell, the Superintendent of Indian Affairs
at St. Louis, reported to the Commissioner of Indian Affairs that, since
the annuities owing to the Omaha Tribe under earlier treaties had now
expired, the Omaha "are exceedingly anxious to sell a portion of their
lands" to the United States. From this time forward, until the Omaha
lands west of the Missouri River were acquired by the United States in
the Treaty of March 16, 1854, the Indian agents for the Omaha Tribe, and
other officers of the United States, were concerned from time to time with
this matter of purchasing from the Omaha Tribe its lands west of the
Missouri River. In September of 1842, Daniel Miller, Indian agent for
the Omaha Tribe reported that the Omaha "are desirous of selling a portion
of their country to the Government, in order to obtain a small annuity and
assistance in their agricultural pursuits." In the same report Agent Miller
defined the Omaha lands in these words: The Omaha "claim the country bounded by the Missouri river on the east, by Shell Creek on the west, by the river Platte on the south, and on the north by the Poncas country." In February 1844, Agent Miller reported that the Omaha "now say they wish to sell all their country, reserving six miles front on the Missouri River (some 20 or 30 miles above this Agency) and running back to the Elkhorn River." In September 1845, Thomas Harvey, the Superintendent of Indian Affairs at St. Louis, recommended to the Commissioner of Indian Affairs that the United States "purchase from the Omaha their country." In 1847, Superintendent Harvey again pressed his recommendation upon the Commissioner of Indian Affairs, citing the Omaha's "distressed condition" as cause to expect "they would consent to any arrangement that the Government would propose." In 1848, the Commissioner of Indian Affairs, W. Medill, advocated in his annual report that the United States "purchase out" the Omahas. Of the Omahas he reported, "They are the original owners of the soil &c. Their country is estimated to contain from five to six million acres of valuable land, which could be obtained at this time at a very moderate price; and so tractable is their character, there would be no difficulty in making ample provision out of the purchase money for their civilization and improvement." In 1850, Indian Agent Barrow requested permission for a delegation of Omaha, Otoe, and Pawnee Chiefs to go to Washington "to treat in regard to the purchase of some of their lands." Agent Barrow's keenness for such a purchase is reflected in his report to Superintendent Mitchell in October 1851: "All the lands inhabited by the Otoes and Missouri and Omahas, extending from
the mouth of the 'Big Memahaw' up the Missouri, about two hundred and fifty miles, can be purchased for a very small annual payment in cash or goods. By the addition of a part of the Pawnee lands a territory could be formed, which, for agricultural purposes, would rival any of the rich lands of the Missouri and Iowa." The next year, in 1852, a delegation of Omaha chiefs was brought to Washington to present to the President the claims of the tribe under their Treaty of October 6, 1825. One of the motives of the agents of the United States who brought this delegation to Washington was, by giving reasonable consideration to these old grievances, to lay a foundation "for an amicable and satisfactory treaty for their lands." In Washington, the Omaha chiefs represented that "the country which they inhabit" had become a thoroughfare for travelers and had thereby been made almost destitute of game, that the tribe had often been wronged by Indians and "by whites passing over their country" but that they had always kept the peace and had not undertaken to avenge themselves, that now they were anxious to turn to agriculture but that they needed the assistance of the United States. Stating that he was satisfied of the correctness of these representations, the Commissioner of Indian Affairs recommended an appropriation of $25,000 and this appropriation was shortly thereafter enacted by the United States. Over this course of fourteen years of dealings with the Omaha Tribe in respect to this matter of purchasing, in whole or part, the lands used and occupied by the tribe, the officers and agents of the United States charged with these Indian affairs became well acquainted with the claim of the Omaha Tribe to lands west of the Missouri River and came to recognize and acknowledge that the Omaha tribe used and occupied a large body of land.
Finding No. 25

By an Act of March 3, 1853, Congress authorized the President "to enter into negotiations with the Indian tribes west of the states of Missouri and Iowa for the purpose of securing the assent of said tribes to the settlement of the citizens of the United States upon the lands claimed by said Indians, and for the purpose of extinguishing the title of said tribes in whole or in part to said lands." In August of 1853 the Commissioner of Indian Affairs, George W. Manypenny, was instructed by the Secretary of the Interior to visit with the Indians in the Indian country to obtain the information necessary to the making of such treaties. That fall, Commissioner Manypenny held a council with the Omaha Tribe at which time the Tribe determined to sell "the half or more" of their lands. Next spring, the Indian Office reported to Congress in respect to the treaties it proposed to make and the title to be extinguished by such treaties. For the Omaha Tribe, this report gave the "boundaries of present residence" of the Tribe as follows: "Bounded N. by Eau - qui - court river (Niobrara), E. by Missouri, S. by the Platte, and W. by longitude 98 degrees west." The report stated that the Omaha Tribe was "indigenous" to "their present country" and that it resided on its claimed lands. It is well established, therefore, that prior to the Treaty negotiations with the Omaha Tribe in 1854, the Indian Office and the House Committee on Indian Affairs were fully informed in respect to the claimed boundaries of the Omaha lands west of the Missouri River and their occupancy of same to the exclusion of other tribes, and had recognized that the Omaha Tribe claimed these lands by Indian title.
Finding No. 26

In December 1853 Commissioner Manypenny instructed Agent Gatewood to obtain from the Omaha Tribe a delegation of Chiefs "with plenary power to visit Washington to make a treaty with the United States for the surrender of their country in whole or in part to the Government."

In January, Agent Gatewood met in council with the Omaha Tribe and secured from the Tribe, in lieu of the delegation with plenary power, the terms of a treaty together with a delegation of Omaha Chiefs authorized "to fully ratify, and confirm and to slightly modify, alter, or amend any or all of the" provisions of this Treaty. When Agent Gatewood and the Omaha delegation arrived in Washington, Commissioner Manypenny disapproved of the provisions in the Gatewood Treaty. Accordingly, on March 16, 1854, Commissioner Manypenny negotiated a changed Treaty with the Omaha delegation in Washington. This Treaty was signed for the United States by Commissioner Manypenny and for the Omaha Tribe by the Chiefs who were members of the Omaha delegation. Thereafter, on June 21, 1854, this Treaty was ratified by President Franklin Pierce. By the terms of this Treaty of March 16, 1854, the Omaha Tribe undertook to, and did, "cede to the United States all their lands west of the Missouri River and south of" the Ayoway River line.

Finding No. 27

By Article 1 of the Treaty of March 16, 1854, the Omahas were given the option to take 300,000 acres of land "within or outside the ceded country" in lieu of the 783,365 acres lying north of the Ayoway river line "which is reserved by the Omahas for their future home."
The Indians elected to take a tract within the ceded area south of said line and the following described lands were assigned to the Omaha Indians for their future home:

Part of Tps. 5, 6, 7, 8, 9 and 10 N., R. 21, East, Prin. Meridian; Part of Tp. 5, all of Townships 6, 7, 8, 9 and part of Tp. 10, N., Range 25 E., P.M.; part of Tp. 5 and all of Tps. 6, 7, 8, 9, North, Range 26 E., P.M. and part of Tps. 5, 6, 7, 8 and 9, North, Range 27 E., P.M., comprising 330,000 acres as estimated and shown on Eastman's Map No. 5, shown opposite p. 174 (also the enlargement thereof) of Defendant's Exhibit 2 offered on Plaintiffs' motion of October 12, 1953 for interlocutory order. (See also Royce, Nebraska 1, Tracts 167, 570, 636, 637).

Finding No. 28

The Commission further finds that at the date of the Treaty of March 16, 1851, the plaintiffs had the exclusive use and possession of the lands situate in northeast Nebraska lying within the following boundaries:

Commencing at a point where the west line of Range 5 West of Principal Meridian, Nebraska, intersects the Nebraska-Dakota State line, thence south along said range line to where it intersects Shell Creek near the northern boundary line of Tp. 21, N., R. 5 West, thence along the meanders of said stream to its junction with the Platte River in Tp. 17 N., R. 4 E., 6th P.M., thence along the Platte River to its junction with the Missouri River, thence northerly along the Missouri River to the place of beginning, consisting of 5,283,365 acres from which is excluded the area described in Finding No. 27, supra, which was reserved as aforesaid for plaintiffs, consisting of 330,000 acres; leaving the acreage of the area claimed at 4,953,365.

Finding No. 29

The Commission also finds the Omaha received in payment for said cession of March 16, 1851, the sum of $881,000 for the land south of the Ayoway River line and by the judgment of the Court of Claims in
Case No. 31,002 (53 C. Cls. 549) they received $94,739.54 for the lands north of said line, or a total consideration of $975,739.54 for all the lands ceded and for which claim is herein made.

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner