BEFORE THE INDIAN CLAIMS COMMISSION

THE SAC AND FOX TRIBE OF INDIANS
OF OKLAHOMA, THE SAC AND FOX TRIBE
OF MISSOURI, SAC AND FOX TRIBE OF
THE MISSISSIPPI IN IOWA, et al., THE
IOWA TRIBE OF THE IOWA RESERVATION
IN KANSAS AND NEBRASKA, THE IOWA
TRIBE OF THE IOWA RESERVATION IN
OKLAHOMA, et al.,

Petitioners,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 158

Date: August 2, 1957

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. At the times of various treaties referred to in this proceeding, the Sac and Fox Nation was an Indian tribe or nation residing within the territorial limits of the United States and was recognized by the United States as a legal and political entity.

2. The Sac and Fox Nation is now divided into, and is comprised of, three bands, each of which are Petitioners in this proceeding. Such bands are: (1) The Sac and Fox Tribe of Indians of Oklahoma, (2) The Sac and Fox Tribe of Missouri and (3) Sac and Fox Tribe of the Mississippi in Iowa, each of which has been recognized by the Secretary of the Interior as having authority to represent its members. Said three bands have instituted this proceeding as successors in interest to the rights of the Sac and Fox Nation.
3. Individual Petitioners Edward Mack, Pauline Lewis and William
Newashe are members of The Sac and Fox Tribe of Indians of Oklahoma;
Charles W. Robidoux, John Connell, Dorothy Gilfillian, Thomas Green and
Thomas Herrick are members of the Missouri Sac and Fox; and Kenneth
Youngbear, Charles Davenport, Harry Lincoln, Albert Davenport, Edward
Davenport, Percy Bear, and Columbus Keahna are members of the Sac and
Fox Tribe of the Mississippi in Iowa. All of said individual petitioners
are members of the Sac and Fox Nation (referred to in the Petition as the
"Confederated Sac and Fox") and have brought this proceeding as representa-
tives and on behalf of the Sac and Fox Nation and all of its members, and
are entitled under Section 10 of the Act known as the Indian Claims Com-
mission Act (60 Stat. 1049, for convenience hereinafter referred to in
these Findings as the "Act") to maintain the action in such capacity.
The individual Petitioners, members of The Sac and Fox Tribe of Indians of
Oklahoma and the Sac and Fox Tribe of the Mississippi in Iowa are also
members of the Sac and Fox of the Mississippi and all of its members, and
are entitled under Section 10 of the Act to maintain this action in such
capacity.

4. Petitioners, (1) the Iowa Tribe of the Iowa Reservation in Kansas
and Nebraska and the (2) Iowa Tribe of the Iowa Reservation in Oklahoma,
are Indian Tribes residing within the territorial limits of the United
States and are sole successors in interest to the Iowa Nation of Indians of
which each Petitioner Tribe is a part and the two said Petitioner Tribes
now constitute the whole of the present Iowa Nation of Indians and as such
are entitled to present claims against the United States for and on behalf
of the Iowa Nation of Indians and all of its members under the terms and provisions of the Indian Claims Commission Act, being Public Law 726 of the 79th Congress (60 Stat. 359; 25 U.S.C. 70) and the claims of such petitioners as to the title and ownership of lands described in paragraph 21 of the petition filed in this case are within the jurisdiction of the Indian Claim Commission.

5. The lands involved in this proceeding are located in the eastern part of the present State of Iowa and are described in Article I of the Treaty concluded on September 21, 1832, between the United States and the "confederated tribes of Sac and Fox Indians (7 Stat. 374, for convenience hereinafter in these findings referred to as the 'Treaty of 1832')" as follows:

Article I. Accordingly, the confederated tribes of Sacs and Foxes hereby cede to the United States forever, all the lands to which the said tribes have title, or claim, (which the exception of the reservation hereinafter made) included within the following bounds, to wit: Beginning on the Mississippi river, at the point where the Sac and Fox northern boundary line, as established by the second article of the treaty of Prairie du Chien, of the fifteenth of July, one thousand eight hundred and thirty, strikes said river; thence, up said boundary line to a point fifty miles from the Mississippi, measured on said line; thence, in a right line to the nearest point on the Red Cedar of the Ioway, forty miles from the Mississippi river; thence in a right line to a point in the northern boundary line of the State of Missouri, fifty miles, measured on said boundary, from the Mississippi river; thence, by the last mentioned boundary to the Mississippi river, and by the western shore of said river to the place of beginning. * * * * *

Less the reservation provided for by Article II of the Treaty:

Article II. Out of the cession made in the preceding article, the United States agree to a reservation for the use of the said confederated tribes, of a tract of land containing four hundred square miles, to be laid off under the direction of the President of the United States, from the boundary line crossing the Ioway river, in such manner that nearly an equal portion of the reservation may be
on both sides of said river, and extending downwards, so as to include Koo-kuck's principal village on its right bank, which village is about twelve miles from the Mississippi river.

The lands ceded by the Treaty of 1832 are designated as Cession 175 on the map designated Iowa 1 in the 19th Annual Report of the Bureau of American Ethnology, 1896-97, Part II, "Indian Land Cessions in the United States," compiled by Charles C. Foyce. The reservation provided by Article II of the Treaty is designated by Force (and for convenience is hereinafter so referred to in these Findings) as Cession 226.

6. In the Act of Congress known as the Northwest Ordinance (originally adopted in 1787) which was re-enacted and confirmed on August 7, 1798 (1 Stat. 50) for the government of the Northwest Territory, the United States recognized and undertook to protect the rights of Indian tribes to their land and property:

The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights and liberty they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

The Northwest Ordinance was in effect extended to the Louisiana Territory which included the lands involved in this proceeding by an Act of Congress adopted on March 26, 1804 (2 Stat. 253) to provide for the government of the Territory.

7. During the latter part of the seventeenth century, the Fox Tribe of Indians became the dominant Indian tribe in the Wisconsin country. The Fox acquired about this time and asserted until the 1730's, control over
the trade routes and portages along the Fox and Wisconsin Rivers. Following defeats inflicted upon tribes of the Illinois Confederacy, the Fox also asserted at various times control over the trade routes and portages along the Chicago and Illinois Rivers. In 1712 a war commenced between France and the Fox Tribe largely over the control of these trade routes which lasted until 1751.

8. After sustaining several defeats from the French in the early 1730's, the remainder of the Fox sought and received the aid of the Sac tribe. Thereafter, the two tribes usually acted in concert and became known as the Confederated or United Tribes. In 1734, the combined tribes to avoid the French moved west of the Mississippi and entered Cession 175. The Fox and Sac Tribes together, as the Sac and Fox Nation, continued with the Sioux to be the dominant Indian nations along the Mississippi River between the Illinois and Missouri Rivers and the Wisconsin River. While a majority of the members of the Sac and Fox Nation apparently returned in the latter 1730's and early 1740's to their summer villages along the Wisconsin River and in the vicinity of Green Bay, it is probable that a small number of the Nation remained behind in permanent settlements along both sides of the Mississippi River.

9. The members of the Sacs and Fox Nation who then lived along the Wisconsin River and in the vicinity of Green Bay commenced in the 1760's to return to the Mississippi River. Auguste Chouteau, writing in 1816, gives the following account of this movement:

* * * * The Sacs and Foxes finding these Indians (the Illinois Indians) compelled to leave their country and in no situation to prosecute the war, left their village on the Wisconsin gradually descended the Mississippi, 2 in 1764 settled on Rock river, twenty one years after the Potowatomies & their allies had settled on the Illinois River.
The Foxes, or rather a band of them, also removed, in the same time, to a place called the Spanish Limes (Dubuque's) and no other Tribe having opposed them they have for a long time continued in the uninterrupted possession of that tract of country which is bounded on the East by the Mississippi river, on the South by the Country of the Illinois Nation; on the West by the dividing ridge that separated the waters of the Missouri & Mississippi rivers, and on the North by the country of the Sioux. (The area described includes Cession 175)

10. In the 1760's and throughout the period involved in this proceeding, the economy of the Sac and Fox Nation was based on agriculture carried on at its summer villages, hunting and trapping. Guns, ammunition, traps, metal equipment, clothing, and other essential supplies were obtained by members of the Sac and Fox Nation principally through barter of furs.

11. Extensive use of Cession 175 was made by the Sac and Fox Nation in the period between the 1760's and 1832. In addition to other smaller villages and hunting encampments there were at least six important Sac and Fox summer villages located in Cession 175, along or near the Mississippi River and extending from the north to the south boundaries of the Cession. Agriculture and subsistence hunting were conducted in the neighborhood of the summer village sites and winter hunting and trapping took place along the streams flowing into the Mississippi River. Some lead mining operations were in the north part of the Cession.

12. The principal hunting country of the Sac and Fox Nation is reported by Meriwether Lewis in 1806 to be:

On both sides of the Mississippi, from the mouth of the Wisconsin to the mouth of the Illinois river.

The major hunting areas in Cession 175 were along the Iowa, Turkey and Wapsipinicon Rivers and their branches. As game and fur-bearing animals
in the area declined, members of the Sac and Fox Nation who had horses would travel through Cession 175 to reach their hunting country further west. Other members of the Nation who had no horses and old people would ascend the Iowa, Skunk and other rivers in canoes to reach the winter hunting grounds. Subsistence hunting, fishing, some trapping and agriculture were carried on continuously in the neighborhood of the summer villages in Cession 175.

13. Sometime after 1800 an increasing number of the Sac and Fox depended at least in part on lead mining for their living. A ready market existed for the lead which they produced. In 1822, Sac and Fox Agent Forsyth reported to Secretary of War Calhoun:

* * * * * indeed I cannot see how the major part of the Foxes and some of the Sioux could exist without those mines. The Fox Indians always have been (and continue more so to be) very jealous of the lead mines. They will not allow any white persons to work any of them and it is my opinion if white persons would insist to work those mines, some accidents would happen.

14. The Sac and Fox Nation was constantly concerned that the United States or its citizens would seize the lead mines. With the exception of Julien Dubuque, no white person was allowed to mine lead in Cession 175 or even to enter the lead mining area for trading purposes. In response to one of many Sac and Fox protests concerning trespasses at their lead mines, Commissioner of Indian Affairs McKenny informed Sac and Fox Agent Forsyth that the Fox Indians:

* * * * * were apprehensive that they should be very much harassed by trespassers on their lead mines on the west side of the Mississippi * * * They must be protected from encroachments of every kind and left quiet to work their mines in their own way; and to the enjoyment of all the profits they may derive from their labours.
Nevertheless, trespassers in the lead mining area were permitted to increase after the lead mines east of the Mississippi River were first leased by the United States to white persons in 1822. In addition, the United States would take timber and other property of the Nation without permission or payment of compensation.

15. A Fox village was located in the northern part of Cession 175 near the mouth of Turkey River from at least 1783 until 1819. The existence of the village was noted by Perrault (1783), Howard (1797), Pike (1805), Edwards (1812) and Tanner (1819). After 1819, the village may have moved to the opposite side of the Mississippi River.

16. Another Fox village was located near the present city of Dubuque, Iowa, a short distance south of the village on Turkey River from about 1764 until 1833. This village was near the lead mines operated by Julian Dubuque and was sometimes known as the "Fox Village at the lead mines" or at "Dubuque's." According to Auguste Chouteau, this village was settled by the Fox Indians in about 1764. It is thereafter referred to by Dubuque (1785), Pike (1806), Boilvin (1811, 1815), Governor Edwards (1812) and Forsyth (1822-1832), among others.

17. A few miles south of the Dubuque Village and within the lead mining region was the Fox village on the Grand Maquoketa River. The village was near the present village of Bellevue, Iowa. Although this village had probably been in existence for a number of years previously, specific reference is first made to it by Governor Edwards in 1812. The village is subsequently described on a number of occasions by Sac and Fox Agent Forsyth and it continued in existence until after 1832.
18. The Fox village located near the present City of Davenport, Iowa, and opposite the Sac village of Saukenuk in Illinois on the Rock River was for a time the principal village of the Fox Tribe. The first specific mention of this village (sometimes known as Musquakenuk) is made by Lt. Pike in 1805, although the village had undoubtedly been occupied by members of the Sac and Fox Nation for a number of years prior to 1805 and possibly as early as the 1730's. The village, which was continuously occupied until 1832, is reported by Forsyth (1817), by Tanner (1819) and by Major Harston (1820).

19. In 1829 the Fox Indians moved their village located east of the Mississippi River near the mouth of Rock River to the west side of that river near the present town of Muscatine, Iowa. This village, which was sometimes referred to as Capello's village, was the principal Fox village from 1829 until 1832.

20. A large Sac village was established on the Iowa River in or near Cession 175, some time during the 1770's. This village is subsequently identified by Howard (1797), Lt. Pike (1805), and Blondeau (1813). This particular village may have ceased to exist for a few years commencing about 1818. However, when the Sac were forced to abandon their principal village of Saukenuk on the Rock River in 1829, a new village was established a short distance up the Iowa River outside the boundaries of Cession 175 but within the reservation created by the Treaty of 1832, known as Kekukuk's reserve, and described as Royce's Cession 226.

21. The southernmost summer village of the Sac and Fox Nation in Cession 175 was located at a place then known as Flint Creek or Flint
Hills, near the present city of Burlington, Iowa. This village was in existence from approximately 1803-1804 to 1832. It is identified by Schermerhorn (1812) as a place for trade, by Forsyth (1824) by Atwater (1829) and again by Forsyth (1830).

22. At various times in the period 1765-1832, there were also a number of other smaller villages of the Sac and Fox Nation located in Cession 175.

23. Other villages of the Sac and Fox Nation in this period located outside but near the boundaries of Cession 175 include a small Fox village located in 1817 north of Cession 175 near the mouth of the upper Iowa River; a Fox village on the east side of the Mississippi River opposite the mouth of Turkey River; the famous Sac village of Saukenuk and the Fox village both near the mouth of the Rock River at Rock Island, Illinois; a Sac village on the east side of the Mississippi River near Gouaska, Illinois; the village opposite the mouth of the Des Moines River at Fort Edwards near Warsaw, Illinois; and the village on the west side of the Mississippi River near the mouth of the Des Moines River and the south boundary line of Cession 175.

24. The Sac and Fox Nation claims ownership of all and use of all of Cession 175 from at least 1765 until the Treaty of 1832. In interest in and joint use with the Sac and Fox of the part of Cession 175 southwest of a line drawn from a point where the western boundary line of the Cession crosses the Red Cedar River to a point on the Mississippi River about five miles northeast of the present town of Muscatine, Iowa, is claimed by the Iowa.
25. The Iowa Nation commenced to use the south part of Cession 175 after moving from the Missouri River to the Des Moines and Mississippi Rivers about 1765 in order to be more convenient to St. Louis traders. The principal hunting country of the Iowa Nation continued to be outside of Cession 175 to the south and west of a major Iowa village located on the Des Moines River approximately 120 miles from its mouth. The south part of Cession 175 was used by members of the Iowa Nation to reach the traders located along the Mississippi River. For a time, Iowa villages were located in or near that area and subsistence hunting and agriculture were conducted in the neighborhood of these village locations.

26. After moving to the Des Moines and Mississippi Rivers, the Iowa Nation soon became allied with the larger and stronger Sac and Fox Nation and joined it in wars against the tribes living along or near the lower Missouri River. The population ratio between the Sac and Fox Nation and the Iowa Nation in the period involved in this proceeding would appear to be in the order of from 6 1/2 or 7 to one at the maximum, to 5 to 4 1/2 to one at the minimum. Lt. Pike described the wars and alliances of the Iowa Nation:

* * * * the same as those of the Sauks and Menards, under whose special protection they conceive themselves to be.

27. After 1803-04, the use of lands in Cession 175 by the Iowa Nation declined and by the end of the War of 1812 largely ceased. About 1818 a period of bad feeling developed between the Sac and Fox and Iowa Nations, which resulted in the Iowa Nation leaving its major village on the Des Moines River 120 miles from its mouth. Subsequently the Iowa Nation was induced to return to this village but the nation remained there only a short time and in 1823 moved this village further west to the Grand River.
After 1823 or 1824, members of the Iowa Nation no longer used or occupied any part of the lands in Cession 175.

28. In the seventeenth and early eighteenth centuries, there were several observations by French explorers of Iowa Indians on or near the Mississippi River. About 1765 the Iowa Nation moved their main villages from the Missouri River to the Des Moines, Iowa and Mississippi Rivers at the request of French traders Chouteau and Laclede, who were associated in the fur trade above St. Louis. The Iowa Nation continued to hunt in all of the area south of the Des Moines River and west to the Missouri River in hunting areas they had traditionally used for several years.

29. From about 1762 to 1812 a large part of the Iowa Nation was located in three villages on the Mississippi River. One village was established on the west side of the Mississippi River at the mouth of the Iowa River. Another village was located near the mouth of the Iowa River on the east side of the Mississippi River. A third village was situated opposite the Des Moines River on the east bank of the Mississippi River.

30. The Iowa Nation remained in the southern part of Cession 175 as late as 1822-1823 in the neighborhood of Ft. Edwards which was located on the Mississippi River at the mouth of the Des Moines River.

31. The Iowas were in the habit of making continuous usage of the land in Cession 175 in a belt eastward from their major village on the Des Moines River about 125 miles up from its mouth. The Iowas used the environs of their summer villages for crops, food hunting, travel to their hunting grounds and the rivers were used as trade routes.
32. During the period from approximately 1765 to 1812, the Iowa Nation hunted for furs in their traditional hunting grounds to the southwest of Cession 175 and these traditional hunting grounds were bounded as follows:

On the east by the watershed between the Grand and Chariton Rivers; on the south by the Missouri River; on the west by the Missouri River up to the western watershed of the Nodoway River and then by the watershed between the Nodoway and Kishnabotna Rivers; and on the north by the Des Moines River.

33. As of 1803-1804 the Iowa and Sac and Fox jointly used to an equal extent the portion of Cession 175 lying southwest of a line drawn from a point where the western boundary of Cession 175 crosses the Red Cedar River to a point on the Mississippi River about five miles northeast of Muscatine, Iowa.

34. During the period between 1814 and the conclusion of the War of 1812, the Iowa Nation largely withdrew from the aforementioned portion of Cession 175, partly as a result of actions by the defendant. In 1812, the United States required the Indians including the Iowa Nation to remove themselves from the Mississippi River area and move to the mouth of the Grand River on the Missouri River to avoid their being involved in the events of the war of 1812. After the conclusion of the War of 1812, a portion of the Iowa Nation returned to the Mississippi River area and to a village on the Des Moines River.

35. After the War of 1812, the Iowas continued to use and occupy to some degree part of Cession 175. There were Iowas in the southern part of Cession 175 as late as 1822 and 1823 and some Iowa usage continued until 1824.

36. Prior to the Treaty of 1838 (7 Stat. 568) the Iowa Nation had requested of the United States that it be paid for its interest in
all of the lands between the Mississippi and Missouri Rivers north of
the State of Missouri and east of Cession 151, but its requests were
until 1838 entirely ignored by the defendant.

37. The United States never made any division of the lands in
Cession 175 as between the Iowa Nation and the Sac and Fox.

38. The interest of the Iowa Nation, if any, in Cession 175 was
not extinguished until the Treaty dated October 19, 1838 (7 Stat. 568).

39. The Iowa Nation did not participate in and had no connection
with the so-called Black Hawk War or with Black Hawk's Band and was not
a party to the Treaty of 1832 dated September 21, 1832 (7 Stat. 374).

40. Prior to and during the 1830's, the defendant permitted its
citizens to trespass upon and exploit the mines and lands in Cession 175.
Shortly after the conclusion of the Treaty of 1832 (7 Stat. 374), Cession
175 was opened up for white settlement and was largely occupied by white
settlers.

41. At the time of the execution of the Treaty dated October 19,
1838 (7 Stat. 568), the Iowa Nation were living on a reservation on the
Great Nemaha River, west of the Missouri River, some two hundred miles from
Cession 175. The defendant had already obtained from the Iowa the cession
of all their interests in Cession 151.

42. For a number of years prior to the Treaty of 1825 hereinafter re-
ferred to, the Sac and Fox had repeatedly requested that the boundary lines
of their lands be fixed and marked, primarily with reference to lands other
than Cession 175. In 1824, representatives of the Sac and Fox Nation,
who visited Washington in that year, were promised that a treaty council would
be held at Prairie du Chien in the following year for that purpose.
43. General Clark was advised by Secretary of War Parbour early in 1825 that he had been commissioned by the President of the United States to hold treaties with the Sac and Fox Nation, Iowa Nation, and other Indian Tribes:

* * * * for the purpose of establishing boundaries, & promoting peace among those tribes.

in respect of Cession 175 in addition to other lands. It was left to General Clark's:

* * * * discretion as to the measures to be adopted for the attainment of these views & objects * * * *.

General Clark requested Sac and Fox Agent Forsyth to notify the Sac and Fox of the 1825 treaty council and to have the Sac and Fox Nation send a deputation of its members:

* * * * to be fully authorized by their Tribes to establish boundaries between themselves and other Tribes and to perform such other matters, and things as the interest of their Tribes may require in connection with other Tribes.

44. The treaty council convened on August 5, 1825. General Clark and Governor Cass acted as treaty commissioners. There were present at the council representatives of the Sac and Fox Nation, the Iowa Nation and the Sioux and other Indian tribes. At the opening of the council, General Clark advised the assembled Indians that the treaty commissioners:

* * * * propose to you to make peace together and to agree upon fixed boundaries for your country within which each tribe should hunt & over which, others shall not pass without their consent.

45. Extended negotiations took place at the treaty council between the representatives of the Sac and Fox Nation and the Sioux Nation over the establishment of a boundary line between the lands of the two nations.
Little difficulty was encountered in fixing the boundary line across north-easter Iowa insofar as that line is pertinent to Session 175. That line, fixed by Article 2 of the Treaty of 1825, is parallel with and twenty north miles north of the boundary line of Session 175. A treaty concluded on July 15, 1830 (7 Stat. 325) provided by its terms for cession by the Sac and Fox Nation of this 20 mile strip to the United States.

46. At the conclusion of the treaty council on August 19, 1825, the Treaty of 1825 was entered into by the United States with the Sioux and Chippewa, Sac and Fox, Menominee, Ioway, Sioux, Tinnebago and a portion of the Ottawa, Chippewa and Potawatomi tribes for the recited purpose:

"* * * to promote peace among these tribes, and to establish boundaries among them and other tribes who live in their vicinity and thereby to remove all causes of future difficulty * * * *".

Pursuant to Article 2 of that Treaty, it was agreed between the Sac and Fox Nation and the Sioux that the line between their respective countries shall be as follows:

Commencing at the mouth of the Upper Ioway River, on the west bank of the Mississippi, and ascending the said Ioway river, to its left fork; thence up that fork to its source; thence crossing the fork of Red Cedar River, in a direct line to the second or upper fork of the Tesouines river; and thence in a direct line to the lower fork of the Sulumet river; and down that river to its juncture with the Missouri river.

The western part of the line in Article 2 of the Treaty of 1825 was subject to the assent of the Yankton and Santee Sioux which was subsequently obtained by a treaty signed on July 10, 1830.

47. Articles 3, 10 and 15 of the Treaty of 1825 are as follows:

Article 3

The Ioway accede to the arrangement between the Sacs and Foxes, and the Sioux; but is agreed
between the Ioways and the confederated tribes of the Sacs and Foxes, that the Ioways have a just claim to a portion of the country between the boundary line described in the next preceding article, and the Missouri and Mississippi; and that the said Ioways and Sacs and Foxes, shall peaceably occupy the same until some satisfactory arrangement can be made between them for a division of their respective claims to country.

Article 10

All the tribes aforesaid acknowledge the general controlling power of the United States, and disclaim all dependence upon, and connection with, any other power. And the United States agree to, and recognize, the preceding boundaries, subject to the limitations and restrictions before provided. It being, however, well understood that the reservation at Fever River, at the Wisconsin, and St. Peters, and the ancient settlements at Prairie des Chisens and Green Bay, and the land property thereto belonging, and the reservations made upon the Mississippi, for the use of the half breeds, in the treaty concluded with the Sacs and Foxes, August 24, 1824, are not claimed by either of the said tribes. (Underscoring added)

Article 13

It is understood by all the tribes, parties hereto, that no tribe shall hunt within the acknowledged limits of any other without their assent, but it being the sole object of this arrangement to perpetuate a peace among them, and amicable relations being now restored, the Chiefs of all the tribes have expressed a determination, cheerfully to allow a reciprocal right of hunting on the lands of one another, permission being first asked and obtained, as before provided for.

48. General Clark and Lewis Cass in transmitting the Treaty of 1825 to the Secretary of War advised:

* * * The establishment of equitable boundaries among the tribes was the most difficult part of our task. We will not trouble you with the details of it, but merely, observe, that a just-compromise between former possessions and more recent conquests, was the basis of the arrangement. All parties were well satisfied, & in fact the boundaries were established, among themselves."
47. By the Treaty of 1825 the United States recognized the Sac and Fox Nation to be the owner of an interest in lands in the State of Iowa, including section 175. The Iowa Nation was also recognized by Article 3 of the Treaty of 1825 to have "a just claim to a portion" of the same lands. However, no division was ever made between the Sac and Fox and Iowa Nations of their respective lands, as contemplated by Article 3.

Additional Evidentiary Findings Supporting the Above

(1) In the Article of Agreement and Capitulation entered into between General Gaines of the United States Army and Governor Reynolds of the State of Illinois, with the chiefs and the braves of Black Hawk's Band on the 30th day of June 1831, it is provided in its 3d paragraph, as follows:

The United States will guarantee to the United Sac and Fox Nation * * * the integrity of all the lands claimed by them westward of the Mississippi River pursuant to the Treaties of the years 1825 and 1830.

Said document in its 5th paragraph provides that the Indians shall grant the right of the United States Government to establish military posts and roads within the limits of the country guaranteed them by the Treaties of 1825 and 1830. This evidences a recognition of the United States representatives joining in the execution of said document that said Treaties of 1825 and 1830 recognized Indian title in the Indian participants therein.

(2) In the Journal of the treaty proceedings held in October of 1837 in the City of Washington, D. C., references are made to the Treaty of 1825 being an agreement as to boundaries of land ownership between the participants in said treaty.
(3) In the report of the Commissioner of Indian Affairs Crawford to the Secretary of War Spencer, dated May 8, 1942, several references are made to the Treaty of 1825 as recognizing the ownership of the lands described therein by the Indians participating therein; and that the Sac and Foxes and the Iowas were recognized as possessing Indian title to lands described in said treaty, which title must be extinguished before the United States becomes the full owner of said lands.

(4) In letter of May 31, 1842 by the Secretary of War Spencer to the Governor of Iowa, this statement is made in discussing Indian ownership of lands described at the 1825 treaty:

It appears that every officer of the Government who has been in any way connected with the subject, has publicly and officially treated the claims of the Iowas as being joint or common with those of the Sac and Foxes, and has recognized the existence of the joint right of the latter Indians to the lands in question.

50. The Treaty of 1832 recites that the United States:

* * * partly as indemnity for the expense incurred, and partly to secure the future safety and tranquility of the invaded frontier, demanded of the said tribes (Sac and Fox Nation), to the use of the United States, a cession of a tract of the Sac and Fox country. * * *

namely, the lands comprising Section 175. Indemnity was claimed by the United States by reason of the so-called Black Hawk War. The causes of that episode go back to a purported treaty concluded on November 3, 1804, with certain members of the Sac and Fox Nation.

51. A treaty dated November 3, 1804 with the United States was signed by some Sac and Fox Indians who had come to St. Louis for the purpose of surrendering an Indian involved in the killing of some white persons. By the terms of the treaty, all of the lands of the Sac and Fox Nation east
of the Mississippi River were ceded to the United States, including the principal village of the Sac Tribe, or Shakeno, near Rock Island, Illinois. (These lands are Force Session 50.) The authority of the Indians who signed the Treaty of 1804 was promptly disclaimed by the Sac and Fox Nation and the Nation thereafter continuously protested to the United States that the treaty was invalid and unjust. The United States, however, insisted that the Sac and Fox Nation comply with the Treaty.

Confirming Evidence and Convent

Many members of the Sac and Fox contended that this treaty was invalid and unjust and it was this feeling in regard to said treaty that was made the basis of the claims of Black Hawk and those aligned with him, and their determination to remain in the village near Rock Island, Illinois and occupy that village and the land adjacent thereto. The lands described and ceded by the Treaty of 1804 were included as a part of the public lands and much of same was occupied by white settlers and the attempt of the Indians to remain in said territory resulted in friction, animosity and hostilities.

52. Following the Treaty of 1804 members of the Sac and Fox Nation continued to live in Session 50. Until after 1832 there were lands in Session 50, particularly in the Rock River area, which had not been sold by the United States and on which the Sac and Fox Nation was entitled to live and hunt under Article 7 of the Treaty of 1804. Article 7 is as follows:

Art. 7. As long as the lands which are now ceded to the United States remain their property, the Indians belonging to the said tribes, shall enjoy the privilege of living and hunting upon them.

Prior to June 1, 1833, only approximately 2% of the lands along the lower Rock River had been sold by the United States. Nevertheless, in 1835, the
Sac and Fox Nation was informed that its members could no longer live in Illinois.

53. The Chiefs' Councils of the Sac and Fox Nation determined to accede to the demand of the United States that the members of the Nation move west of the Mississippi River. The Councils' action was reported by Agent Forsyth in a letter to General Clark, in which he said:

* * * * I never heard that any of the Indians intended to solicitate your permission to remain in their Old Villages where they now reside, because it is now settled among themselves, that they will make new villages next Spring, but they have not agreed among themselves where they will make those new Villages, but that point will be settled the ensuing Autumn. * * * * * * * * * * * * * * * *

Confirming Evidence and Comment

The quotation in the Finding is from a letter dated July 6, 1820, Sac and Fox Ex. 224.

Agent Forsyth at a meeting held earlier in 1826 with the chiefs of the Sac and Fox Nation who resided in the vicinity of Rock Island received vigorous argument that no lands higher up the Mississippi River than the mouth of Rock River had been sold (Letter, May 24, 1826, to General Clark.)

Witness Dr. Wallace testifies:

* * * * when this eviction notice was given by Forsyth in 1826 he immediately aroused the old Sac and Fox objections that this had never been a proper treaty * * * * * * * *

After some argument between the chiefs and Forsyth the Chiefs, in accordance with their settled policy agreed to abandon Rock River village and go and make a new village on the Iowa River. * * * * * * * * * * * * *

That settled the matter as far as the chiefs' council of the Sac and Fox council was concerned. They continued the objection but they acceded to the request.
The governing bodies or Chiefs Councils of the Sac and Fox tribes were comprised of representatives of the several clans into which each tribe was divided. Each tribe had its own Chiefs' Council and, whenever the Sac and Fox Nation as a whole was concerned, there would usually be separate councils and then a consultation between the two tribes or occasionally the two tribes would have a joint council meeting together. In addition to the clan chiefs, a number of principal men who had special followings or special skills or reputations usually sat with the Chiefs' Councils of each tribe. The Chiefs' Council would be responsible for official action taken by the tribe in connection with any public affairs and treaty councils and possessed a number of specific functions concerning warfare. The power of the Chiefs' Councils was subject to the important limitation that the Councils did not have at their disposal police or military power or other authority to enforce their acts and decisions. In general, the acts and decisions of the Chiefs' Councils could be enforced only by discussion and persuasion in which the traditional respect accorded such acts and decisions would carry weight or through payments of property or money.

Confirming Evidence and Context

The finding is based upon the testimony of Dr. Wallace, whose testimony in this connection appears at pages 371-75 of the Transcript. Documentary evidence in support of the finding can be found in Sac and Fox Agent Forsyth's comprehensive 1827 Report and the equally comprehensive 1820 Report of Major Harston. Other sources of value include Atwater's 1829 Journal, Black Hawk's Autobiography, and the contemporary writing of Walter P. Miller, "Two Concepts of Authority." The entire period involved in this proceeding and in particular
the years 1828-32; show the Chiefs' Councils of the Sac and Fox Nation in action under a variety of trying circumstances.

**Lack of Authority of Chiefs' Councils.** Dr. Wallace testified that the powers of the Chiefs' Councils of the Sac and Fox Nation:

**""** was very much limited because it didn't have any sort of police or natural army which could act as an executive arm. **""** **""** **""** **""** **""** **""** **""** (Tr. 372)

Dr. Wallace further commented that the Power to govern in the Sac and Fox Nation was:

**""** very slight in comparison with the capacities of a government in our own society, because as I said, they did not have access to police power. They could not function for inter-tribal matters as a court. They only had the powers of persuasion and recommendation, and it made a great strain upon them when they in contact with the whites found it necessary to try to assume certain powers of control which weren't characteristic of an aborigine.

It is an interesting process to observe how the Sac council in particular attempts to exert control by buying agreement to its recommendations on the part of obstinate members of the tribe by giving horses and presents of various kinds to persuade people to behave as the council recommends.

Since they didn't have any power of taxation there, their only ready cash came from annuities. It was pretty difficult for them to do this. (Tr. 373-374)

Major Harston wrote that all of the Indian nations, including the Sac and Fox, which he had mentioned in his report:

**""** are governed almost altogether by the advice of their chiefs and the fear of punishment from the evil spirit not only in this, but in the other world. The only instances wherein I have ever known any laws enforced or penalties exacted for a disobedience of them by the Sauks and Foxes, are when they are returning in the spring from their hunting grounds to their village.

55. Keokuck, while not an hereditary chief, was one of the most prominent and important members of the Sac and Fox Nation. He acted
constantly in the period after 1820 as representative, spokesman and ambassador of the Chiefs' Council of the Sac Tribe and frequently for the Fox Tribe as well. In the troublesome times of 1828 to 1832, he was charged by the Chiefs' Councils to carry out his Nation's policy to avoid any conflict with the whites and of complying with the demands of the United States to move all members of the Sac and Fox Nation west of the Mississippi River. After the Black Hawk episode, he was made a principal chief of the Sacs at the direction of the United States at the council held in connection with the Treaty of 1832.

Black Hawk also a well-known Sac Indian who lived during this period. He was a an important brave. In his youth he achieved some success and considerable renown as a warrior. He became one of the leaders of the group of Sac and Fox Indians who were determined to remain east of the Mississippi River. Throughout his career he frequently was at odds with the constituted authorities of the Sac and Fox Nation.

56. The decision of the Chiefs' Councils of the Sac and Fox Nation to yield the lands east of the Mississippi River to the United States was an unpopular one and many members of the Sac and Fox Nation refused to leave. The Chiefs' Councils were greatly concerned that the continued presence of Sac and Fox Indians east of the Mississippi River might lead to trouble with the white squatters and would have serious repercussions in the Nation's relations with the United States. Keokuck was directed, as the Nation's representative, to remain at Saukenuk during 1829 and to keep peace among the Indians there and the white persons, and to persuade, if possible, these Indians to move west of the Mississippi. Keokuck's post was described by Sac and Fox Agent Forsyth as follows:
his intention was to go down to the Ihowai River to reside but that the head chiefs who are now at Ihowai River directed him to remain at Rocky River to keep things in order if possible and that he must obey the chiefs otherwise him and those of his family now here would have been at their new village at Ihowai River long since. That he had succeeded in preventing two partizans who have been fasting since last winter from going to war. * * * * indeed he sees the necessity that the Indians should abandon their old village at Rocky River and live on their own lands.

Keokuck and other representatives of the Sac and Fox Nation continued their efforts during the next two years to persuade and influence Black Hawk's party to stay west of the Mississippi River.

57. After 1828, the Sac and Fox Indians who remained east of the Mississippi River did so contrary to the authority of their chiefs. These Indians were referred to as the 'mutinous group' or band and later as Black Hawk's party or band. General Clark described this group in 1831 as being composed of:

* * * * parts of two Bands headed by two inconsiderable chiefs, who after abandoning their old village have, it appears returned again, in defiance of all consequences.

58. The mutinous group of Sac and Fox Indians continued to return east River of the Mississippi in the years 1829, 1830 and 1831. These Indians asserted their right to occupy lands east of the Mississippi River on the old ground that the Treaty of 1804 was invalid. Black Hawk in his Autobiography stated that he had been told by great chiefs of both the United States and the British that if the Sac and Fox Nation had never sold its land 'our Great Father would not take it from us.' This group of Indians also maintained that, under the terms of the Treaty of 1804, they were entitled to live and hunt on the lands east of the Mississippi River which were the property of the United States.
59. White trespassers or squatters as they were then known commenced to settle in Saukenuk in 1829. The squatters took possession or destroyed most of the lodges belonging to the Sac and Fox Indians, enclosed their cornfields, and opened and despoiled the graves of their ancestors. Many Indians were attacked and beaten by the squatters and all suffered indignities and insults from them. Whiskey was traded by squatters for the Indians' guns and other possessions contrary to the wishes of their leaders. To Black Hawk and his party, the most shocking occurrence was the purchase of the site of Saukenuk itself in 1829-1830 by their trader Davenport and five of his associates.

60. Although little damage and little physical harm was inflicted by members of the mutinous group of Sac and Fox Indians upon the white squatters, General Clark directed Agent Forsyth in 1830 to tell the Sac and Fox Indians "for the last time" that they must join the rest of the Nation west of the Mississippi River.

61. In 1831 Black Hawk and his followers came again to Saukenuk and were once more directed to return west of the Mississippi River. Black Hawk agreed that if the United States would make a payment which he and his braves could honorably accept, he would move peaceably. On May 15, 1831, Sac and Fox Agent St. Vrain wrote to General Clark for instructions, calling particular attention to the provisions of the Treaty of 1804 entitling the Sac and Fox Nation to live on those lands and making the suggestion that a treaty be held:

I would be glad to have some instructions how to act with this band of Indians. I would not be at a loss, were it not for the 7th article of the Treaty with the
Sac and Foxes of 3d November 1834. I respectfully ask, would it not be better to hold a treaty with those Indians, and get them to remove peaceably, than to call on the Military to force them off. But St. Train's advice was not followed.

**Evidence and Comment**

A number of factors may have induced Black Hawk and his party to return east of the Mississippi River. Black Hawk and presumably other members of his party were receiving advice from representatives of the United States and others that, if they had not sold their lands, the United States would not take them. Representatives of the Sac and Fox Nation were also seeking to visit Washington for the purpose of making some arrangement with respect to the Treaty of 1832 by which it was hoped that at least Saukenuk and the lower Rock River could be retained by the Nation (Council, March 27, 1830, between General Clark and the Sac and Fox Nation, letter, April 6, 1830, General Clark to Secretary of War.) They also may have entertained the hope that their trader Davenport would exchange the site of Saukenuk which he had purchased for other lands belonging to the Nation.

Black Hawk realized upon his return in 1831 that the situation was becoming hopeless. He was in a position, however, in which he must save face and therefore he sought that opportunity (Tr. 426). In his Autobiography he said, in effect, that he would yield the lands if he could do so honorably, which, according to his customs, could be done only if the proposal were made by the United States in the first instance. (Black Hawk's Autobiography). However, the Great Chief in St. Louis (General Clark presumably) refused.
62. Governor Reynolds of Illinois immediately called out the Illinois Militia upon learning of the return of the Sac and Fox Indians in 1831 and advised General Clark:

* * * * that in, or about, 15 days a sufficient force will appear before those Indians to remove them dead or alive over to the west side of the Mississippi.

In the latter part of June, the Illinois Militia advanced on the Sac and Fox villages located on Rock River.

**Evidence and Comment**

Governor Reynolds' statement is contained in a letter dated May 26, 1831, to General Clark. Governor Reynolds' motives, like his predecessor Governor Edwards, were strongly political.

He was told, however, by General Clark to take no action and that the removal of Black Hawk's party rested with General Gaines. On that day, Governor Reynolds wrote to General Gaines stating that he had called out the Militia to repel what he termed an "invansion" of the State of Illinois. The following day, General Gaines wrote to Governor Reynolds to the effect that he did not "deem it necessary or proper to require militia" under existing circumstances.

Talks were conducted on June 4, 5, and 7 by General Gaines with representatives of the Sac and Fox Nation. On the second day of these talks, General Gaines wrote to Governor Reynolds requesting a battalion of mounted men.

63. The Sac and Fox Nation was successful in persuading many members of Black Hawk's party to retire west of the Mississippi River. Upon the arrival of Governor Reynolds and the Militia, Black Hawk and the
balance of his party returned to Iowa side of the River. When the Militia found the Sac and Fox were gone, proceeded to burn the Indian Village on Rock River, after executing "Articles of Agreement and Capitulation," dated June 20, 1831. This instrument describes those executing the same on the part of the Indians as "The Chiefs and Braves of the Band of Sac Indians usually called "the British Band of Rock River" with their old allies, the Pottawattomy, Winnebago and Kickapoo nations." The second paragraph of said instrument provides:

The British Band of Sac Indians are required peaceably to submit to the authority of the friendly chiefs & braves of the United Sac & Fox Nation, & at all times hereafter, to reside & hunt with them upon their own lands west of the Mississippi river, & to be obedient to their laws and treaties.

64. The Sioux and Menominee Indians in the Spring of 1832 prepared to take revenge against the Sac and Fox Nation for an attack of Sac and Fox on Menominee in summer of 1831. There were also reports that Black Hawk's party intended to return to Illinois in the spring. On April 8, 1832, General Atkinson left St. Louis with United States troops for Fort Armstrong at Rock Island and Prairie du Chien, for the purpose of preventing the threatened war between the Sac and Fox and Sioux and Menominee Indians and to obtain the surrender of the Sac and Fox Indians involved in the Menominee killings. While en route up the Mississippi River, General Atkinson was informed that Black Hawk and his party had, on April 5, 1832, crossed the river to the east side.

Evidence and Comment

Agent Street informed General Clark that the Sioux were assembling and were passing wampum to the Menominee for the purpose of preparing a
spring campaign against the Sac and Fox. The Menominee had also assembled about 350 warriors and had passed wampum to the Sioux, Ottawas, and Potawatomies and even to the upper Sioux; the neutrality of even the Winnebagoes was uncertain (Letter, Jan. 11; 1832). He also said:

These measures strongly indicate an extensive combination, which is gaining ground from an impression that the government will not interfere.

The Sac and Fox Nation solicited aid from the Missouri tribes to oppose the Sioux and Menominee Indians and their allies (Letter, February 23, 1832, General Clark to Commissioner of Indian Affairs Herring).

General Atkinson left for Rock Island on the morning of April 8, 1832 (Letter, April 7, 1832, to General Gaines). General Clark predicted that General Atkinson would obtain a "voluntary" surrender of the principal men engaged in the Menominee killings although he also acknowledged that the chiefs of the Sac and Fox Nation:

* * * * cannot (as they stated) undertake a matter of the kind—they have not the power. (Letter, April 8, 1832, to Commissioner of Indian Affairs Herring)

Black Hawk's party had for some time previous been making preparations to return east of the Mississippi River (Black Hawk's Autobiography, pp. 27-28) and according to Colonel Taylor these plans must have been known to General Atkinson and to the Commanding General in Washington for several months (Letter, December 4, 1832, to Major General Jesup). General Atkinson, however, did not believe that Black Hawk had any serious intention of re-occupying his old village (Letter, April 7, 1832, General Atkinson to Major General Macomb). On the date of General Atkinson's departure, General Clark advised Commissioner of Indian Affairs Herring that he had received from
Sac and Fox Agent St. Vrain, as well as from other sources, information
to the effect that Black Hawk and his party would return to their old
villages on the Rock River although, in his opinion, Black Hawk did not
intend to do so. (Letter, April 8, 1832) However, while proceeding up
the Mississippi River, General Atkinson heard at the lower rapids (presum-
ably the Rapids Des Moines) that Black Hawk and his band had crossed the
Mississippi River on April 5 (Minutes of Council, April 13, 1832).

65. The party known as Black Hawk's party crossed the Mississippi
River on April 5, 1832 at a place generally described as Yellow Banks,

clearly opposite the mouth of the Iowa River. A Sac chief, Napope, and

the Sac brave, Black Hawk, were the leaders of the party. Two foxes and

all of the Sac Indians involved in the Menominee killings were with the

party. The party included a number of women, children and old people and

probably less than 500 men, of whom 100 were Kickapoos and the balance

mostly Sacs with some Foxes. Members of the party carried with them

baggage, heavy equipment such as mats for building lodges, and a number

of peltries for trading.

Evidence and Comment

The bluffs described as Yellow Banks extend along the Mississippi

River for some distance. Mrs. Ellen C. Whitney, an expert witness testifying

for the Sac and Fox petitioners, located the place of crossing as being

nearly opposite the mouth of the Iowa River in present Mercer County,

Illinois. (Tr. 185) The date and place of crossing is stated by General

Atkinson in his letter of April 13, 1832 to Governor Reynolds.

Napope was regarded by Black Hawk as his chief and the head of the

party (Message, April 26, 1832). Napope said:
Black Hawk was the head warrior and older than us and led us (Minutes of Examination of Indian Prisoners, August 20, 1832).

Napope was probably the only principal or hereditary chief of the Sac and Fox Nation with Black Hawk (Testimony of Dr. Wallace, Tr. 424).

While other Indians in Black Hawk's party were sometimes referred to as chiefs, this resulted, in Dr. Wallace's opinion, from:

"*** * their own private organization, probably their own private band leaders who would be called chiefs when they were speaking about themselves (Tr. 493).

The acquisition of new political status by persons in Black Hawk's party is emphasized by the message brought from the party to General Atkinson by Wa-com-me, a Sac chief, that Napope was "now" the principal chief (Answer from Black Hawk, April 26, 1832).

The Sac Chief Wa-com-me informed General Atkinson that two of the principal Foxes and all of the Sacs concerned in the Menominee killings were with Napope (Answer from Black, April 26, 1832).

Black Hawk said the party carried:

"*** * such provisions as we had, camping equipage,"
"*** * (Black Hawk's Autobiography).

The party's equipment is also described by Colonel Taylor in a report to Major General Jesup (Letter, December 4, 1832). Peltries were found in the camp of Black Hawk's party following the skirmish known as Stillman's Run (Letter, May 18, 1832, Samuel Whiteside to General Atkinson).

Ellen C. Whitney appeared as an expert witness in regard to the so-called Black Hawk War. Mrs. Whitney is probably the outstanding authority in the United States on this subject. She holds a Bachelor's Degree from
Southern Illinois University with a major in history (Tr.55). Prior to her employment by the Illinois State Historical Library, she worked as a researcher and as a reporter for International News Service.

Mrs. Whitney testified that she had been employed by the Illinois State Historical Library since December, 1946, and in March 1948 commenced work on the Library's Black Hawk War collection, on which she has worked continuously since that time with the exception of one year (Tr.56, 62): that the collection originally consisting of approximately 1,000 original documents, and today numbers about 2,000 documents as a result of a comprehensive search for additional material in the Archives, the Library of Congress in Washington, and among the many State historical associations (Tr.56-57,59-60). Mrs. Whitney's work included identifying the persons mentioned in manuscripts, writing biographical notes about the persons involved in the Black Hawk incident, obtaining additional manuscripts whenever her research indicated their existence, making a comprehensive search of the secondary sources which, she said, involved examining from 900 to 1,000 books, and evaluating the materials which she examined (Tr.57-59,143-144); that the purpose of her work has been to prepare for publication, as one of the Library's historical collections, its documents on the Black Hawk disturbance and to evaluate the materials to be published.

66. Black Hawk's party probably desired peacefully to return east of the Mississippi River. The party had been invited to return east of the Mississippi River and plant corn at the village some 40 miles up the Rock River of the Winnebago half-breed known as the Winnebago Prophet. Black Hawk stated that the Prophet had told him:
That Black Hawk's party was not a war party, and had no intention of being the aggressor against the United States is the opinion of Dr. Wallace. Dr. Wallace interpreted Black Hawk's crossing the Mississippi River as being:

* * * * without the intention of attacking but with the feeling that he is in the right and that, if attacked, he will defend himself. (Tr. 427)

Dr. Wallace further expressed the opinion that in "no sense was this a war party at all" and reiterated it was "a community on the move" as from "winter encampment to summer village"; and further that the Black Hawk episode "does not at all" conform to the usual pattern of Indian warfare (Tr. 439, 440-41).

Evidence and Comment

The Winnebago Prophet at a conference held with Major Bliss stated that he had invited the members of Black Hawk's party to stay at his village (Council, April 6, 1832). The invitation received from the Prophet is repeated by Black Hawk at a council with the Sac messengers, April 26, 1832, and in his Autobiography and by Napope (Examination of Prisoners, August 20, 1832). The offer of the Winnebago Prophet was particularly attractive because Black Hawk's party had been prevented from harvesting the corn planted in the summer of 1831 east of the Mississippi River and no new fields had been cleared in which corn could be raised (Black Hawk's Autobiography).

General Atkinson's analysis of the situation at this time was that Black Hawk's party would not commit the first hostile act but would resist
any attempt to remove it from the Rock River Country (Letters, April 13, 1832 to Gov. Reynolds; Council between Black Hawk and Sac and Fox Messengers, April 26, 1832). Black Hawk took the position that he had been invited to the Prophet's village to grow corn, and that he would not make the first attack but would defend himself if attacked (Black Hawk's Autobiography).

Both Dr. Wallace (Tr. 423-25) and Mrs. Whitney (Tr. 172-73) regarded the visions and dreams of the Winnebago Prophet (who was engaged in a kind of religious revival) as an influential factor in Black Hawk's decision to return to Illinois. The Prophet predicted that Black Hawk might return and remain unmolested. Black Hawk's reliance on the Prophet's promises is asserted in his Autobiography but his confidence in the Prophet was not shared by most members of the Sac and Fox Nation (Black Hawk's Autobiography). Mrs. Whitney believed that, while Black Hawk felt that he had a grievance, he:

*** didn't have any well-defined plans. He just started out. (Tr. 176-77)

67. The Sac and Fox Nation was opposed to and disapproved of the action taken by Black Hawk's party in crossing the Mississippi River, and used all of its influence and did everything within its power short of military to prevent Black Hawk's party from doing so. The Nation believed the Winnebago Prophet to be largely responsible for the Party's action.

When Black Hawk sent messengers to Keokuck with information that the Prophet and Napope had said that support would be received from the British and other Indian tribes, his Autobiography reports that:

They did not hear. Ke-o-kuck said that I had been imposed upon by liars, and had much better remain where I was and kept quiet.
and that he could not persuade any braves from Keokuck's band to accompany him.

**Evidence and Comment**

The quotation in the Finding is from Black Hawk's Autobiography, Black Hawk also stated that when Keokuck ascertained that Black Hawk was determined to secure his village and:

* * * * fearing that some difficulty would arise, he made application to the Agent (St. Vrain) and great chief (General Clark) at St. Louis, for permission for the chiefs of our nation to go to Washington to see our Great Father, that we might have our difficulties settled amicably.

and that Keokuck also requested, through the:

* * * * trader (Davenport), who was going on to Washington to call on our Great Father and explain everything to him, and ask permission for us to come on and see him.

When permission was not forthcoming, Black Hawk determined to return east of the Mississippi River and then attempted to recruit braves from Keokuck's band without success. He concluded:

Every overture was made by Ke-o-kuck to prevent difficulty, * * * *.

The Chiefs' Councils of the Sac and Fox Nation did what they could to prevent Black Hawk's party from returning to Illinois. One of their chiefs, Apanose, was sent to Black Hawk's camp on the west side of the Mississippi River near the Des Moines Rapids for the purpose of persuading them not to cross the Mississippi River and of advising of the probable consequence to them if they did. He also tried to convince individual members to come away but Apanose said he was "a little too late" for the Winnebago Prophet's message
had been received before he got there (Minutes of Council, April 13, 1832). Keokuck too regarded the Prophet as the "One who has raised all this trouble * * * *"

The Fox chief, Taimah, also used his best efforts to restrain Black Hawk's party and to ascertain its designs when the party visited his village at Flint Hills on the west side of the Mississippi River on their way to Rock River (Letter, July 22, 1832, to the President). Taimah also said that the minds of Black Hawk's party "were greatly corrupted with varicous foreign fables." The good faith of Taimah was attested by General Clark's sug-agent Ruland (Letter, August 24, 1832, to Commissioner Herring).

The Sac and Fox Nation also obtained credits from its trader Davenport in order to purchase

* * * *provisions, ammunitions, clothing, and other necessities, which were found requisite to restrain some of our young men from joining Black Hawk's party, as well as to support our families. (Speech of Keokuck, June 1, 1833; see also Minutes of Council, September 19, 1832).

Dr. Wallace, after reviewing a series of examples of these efforts by the Sac and Fox Nation to prevent Black Hawk's party from crossing the Mississippi River, stated:

I can't think of anything which the Sac and Fox Council or Nation could have done which they didn't do, first of all to prevent Black Hawk from going back across the Mississippi River * * *. (Tr. 443)

General Scott in negotiating treaty of September 19, 1832 ceding the land involved herein to the United States which followed the termination of the so-called Black Hawk War in addressing the council of the chiefs, headmen and warriors of the Confederated Tribes of the Sac and Foxes said, among other things:
It is fully known to all who hear us, to the whites, as well as to the Red-men, that a bloody war has been waged, during the past summer, by the Black-Hawk, and his followers against the citizens, and upon the Territory, of the United States. Black Hawk and his band, contrary to his duties to his own nation, and in violation of Solemn Treaties entered into with the United States, crossed from the West to the East of the Great River, in front of us. He was twice summoned by the Great War Chief (Genl. Atkinson) to return to the West side, and respect the treaties his nation had entered into with the United States. He refused to return; He was deaf to the language addressed to him. Having recruited his followers, and united himself with the Prophet's band, he ascended the Rock River, and after passing Dixon's Ferry, and Turtle River, he commenced an indiscriminate attack on all the whites he encountered. He raised the tomahawk against the United States, murdered their defenseless citizens, and massacred the helpless women and children whom he met, without mercy.

At this point of time, your Great Father, not knowing precisely how many warriors were engaged with Black Hawk, or how many misguided men of other nations might join his standard, sent me from the Great Lake, on the other side of the mountains, to see whether any other tribes were engaged in these wanton hostilities. Your Great Father the President never doubted but General Atkinson would be able to destroy Black Hawk and his Band; but not knowing whether other bands might not join him, the President sent me to look into the matter, and here I am in the midst of my troops, who surround you.

If I had found the friendly bands now present, engaged with the Black Hawk, I had brought a force sufficient to sweep the Sacs and Foxes, as well as the Winnebagoes from the face of the Earth. It is because we found the Principal chiefs of the confederated tribes of Sacs and Foxes faithful to the treaties they had entered into with the United States, and that they have not dipped their hands in American blood, that we now with pleasure hail you, as friends and children.

* * * * * * * * * * * * * * * * * * * * * * * * * * * *

We are aware that our friends the Chiefs present exerted themselves, and endeavored to restrain their young men from crossing the river to join Black Hawk. This we shall bear in mind in the consideration of the whole affair. But what has been before stated to you is the law which governs cases of this kind. If a particular part of a nation goes out of
their country, and makes war, the whole nation is responsible. It is repeated that this is the strict, acknowledged law of nations; it is also strict justice - and, if we do not now enter into your country, and mark off the part of your land forfeited, it is because we respect the chiefs present, regard them as friends, and do not wish to act harshly with them. We state to you at the beginning the strict law of justice, and state what we have a right to exact. Put a great people like the United States, who feel power, feel also disposed to treat the weaker party with moderation, and temper justice with humanity. The United States, a great nation, must punish their enemies. The Black Hawk has been signally chastised. But the U. States must go further, as an example to others, and hence the demands which the commissioners will presently make of you.

* * * * * * * * * * * * * * * * * * * * * * *

In kindness to our Red brethren, and particularly to Keokuck, the Stabbing Chief, and Wau-pel-la whom we have great reason to respect, and to those who have done their utmost to staunch the flow of blood, we have agreed to propose the following allowances, for the country proposed to be ceded:

We propose to give, then, for the country described:

An annuity of twenty thousand dollars for the period of thirty years

(Underlining supplied)

Elsewhere in the Minutes of said conference General Scott is shown to have referred to Black Hawk, the Prophet, their two sons, and a few others, as being guilty of misconduct by reason of which such cession is being required and to the fine services rendered the tribe by Keokuck and the fact that the other chiefs, head-men and warriors had taken the advice of Keokuck and other chiefs was to be rewarded; and that because of services rendered by Keokuck he was then presented a medal and named as a chief to whom they should obey and respect as a chief appointed by the United States in the future.
General Atkinson arrived at Fort Armstrong for the council meeting on April 13, 1832, and renewed his talks with representatives of the Sac and Fox Nation and with regard to the surrender of eight or ten persons involved in the Menominee killings. He also sought information concerning Black Hawk's party.

At the council meeting on April 13, 1832 the chiefs expressed opposition to activities of Black Hawk and his party and their desire to do everything they could in opposing. At this council meeting General Atkinson of the United States Army stated with reference to the conduct of Black Hawk and his party: "I care nothing for it, they can be as easily crushed as a piece of dirt."

Keokuck first spoke on behalf of the chiefs and replied to General Atkinson as follows:

* * * my village and the British band do not like each other, they will not listen to us, and that is the reason we do not know what to do. You say they must give themselves up, or the chief must do it, we can't give them up, it is out of our power, all of the Sacs engaged in the murder of the Menominies are off, or with Black Hawk's Party; we are unfriendly to that Band, we will tell them what you say, last fall we had a meeting on invitation of Major Bliss and our agent, as soon as the Council was over those who are with Black Hawk's party went away, and we never could get them to speak with us since. If the War Party had started from our village, we would feel ourselves bound to give them up, but as it is, we are unable. You wish us to keep peace, and have nothing to do with Rock river Indians, we will do so in token of our intentions, you see we have lain our spears there altogether, while you are gone to the Prairie we will endeavour to speak to them, and try to persuade them to go back, if we do not succeed, we can do no more, then we will go home, and try to keep our village at peace; the one who has raised, all this trouble is a Winnebago called the Prophet.
Wapello, a Fox chief, promised to visit Morgan's village where certain of the Fox Indians involved in the Menominee killings lived and attempted to bring about their voluntary surrender.

In letter of April 8, 1832, General William Clark in regard to surrender of those involved in the Menominee killings says:

I think it is not improbable that a voluntary surrender will be made of the principal men engaged in the Menominee massacre; but the chiefs of the Nation cannot (as they have stated) undertake a matter of the kind—they have not the power. (Letter, April 8, 1832, to Commissioner Herring) (Underscoring supplied)

68. Black Hawk and his party had moved openly up the Mississippi River by land and by canoe. The Sac and Fox representatives informed General Atkinson that the party had encamped a few miles south of Rock River on April 12 and, on the next day, were within six to eight miles of the place where their council with General Atkinson was being held. Black Hawk's party made no attempt to occupy its old village but proceeded up the east side of Rock River towards the Winnebago Prophet's village. General Atkinson reported on April 13 to his Commanding Officer, General Macomb, that he had decided not to pursue Black Hawk's party because his force was too small and that the party had as yet committed no act of hostility. He also wrote to Governor Reynolds to the same effect.

Evidence and Comment

The women and children in Black Hawk's party proceeded in canoes carrying the provisions and camp equipment and the braves and warriors by horseback along the east side of the Mississippi (Black Hawk's Autobiography; Letter, December 4, 1832, Colonel Taylor to Major General Jesup). Representatives of the Sac and Fox Nation who were attending
the council with General Atkinson at Fort Armstrong, Rock Island, on
April 13, 1832, informed him of the movements of Black Hawk's party
(Minutes of Council, April 13, 1832).

69. The Sac and Fox Nation sent two of its representatives from
Rock Island on April 15 for the purpose of persuading members of Black
Hawk's party to return west of the Mississippi River. They found Black
Hawk's party about 18 miles up the Rock River moving in the direction of
the Prophet's village. The Nation's representatives returned to Rock
Island on April 16 and reported that they had been badly received by
Black Hawk's party.

Evidence and Comment

At the council held with General Atkinson on April 13, 1832, Keokuck
had said that while General Atkinson was at Prairie du Chien:

We will endeavor to speak to them, and try to per-
suade them to go back, if we do not succeed, we can
do no more, * * * *

The Sac and Fox Nation again sent its chief, Apanose, as one of its repre-
sentatives/ unsuccessful attempt to persuade Black Hawk's party to return
is contained in Sac and Fox Agent St. Vrain's journal.

70. Several of the principal Fox Indians involved in the Menominee
killings surrendered themselves to Wapello, the Fox chief. He, in turn,
on April 19, delivered them to General Atkinson who had returned to Rock
Island from Prairie du Chien. These men were accepted by General Atkinson
who, in a letter to General Macomb, commended the chiefs of the Sac and
Fox Nation as follows:
Moreover the conduct of the friendly chiefs, Wapella, stabbing Chief & Keokuck has been so decidedly earnest, and persevering to obey the orders of the Government in bringing the matter to a satisfactory conclusion.

Evidence and Comment

The quotation is from a letter dated April 19, 1832.

St.Vrain in his journal records the return of General Atkinson to Rock Island on April 18 and the arrival there on the same day of Wapello and Morgan's bands. At the council held on April 19 Wapello tendered to General Atkinson the three Fox Indians, all of whom were members of important Fox families, as:

"** young men who have taken pity on the women and children, there are three of them, these are my chiefs, these are the men who went into the braves lodge to give themselves up; Father, I have received these young men, I now deliver them to you."

The balance of the persons involved in the Menominee killings were with Black Hawk's party (Letters April 19, 1832, General Atkinson to General Macomb).

71. On April 17, 1832, Black Hawk and his party reached the Winnebago Prophet's village which is approximately 40 miles from the mouth of Rock River. At the request of General Atkinson, two Sac chiefs were sent to Black Hawk and his party with instructions from General Atkinson which, in part, are as follows:

I advise you to come back and recross the Mississippi without delay. It is not too late to do what is right—and what is right do at once. If you do not come back and go on the other side of the great river I shall write to your great father & tell him of your bad conduct. You will be sorry if you do not come back ** * If your hearts are good I will send an officer to talk with you in three or four days.
Evidence and Comment

Black Hawk's party was reported to have reached the Winnebago Prophet's village on the evening of April 17 (Sac and Fox Agent St. Vrain's Journal). The talk from which the quotation in the Finding is taken is dated April 24, 1832. The two Sac Indians were Peatchony and Wa-com-me, both of whom General Scott and Governor Reynolds identified as Sac chiefs (Letter, September 22, 1832 to General Clark).

72. The two Sac chiefs reached the Prophet's Village on April 25th and returned to Rock Island on April 26th. The Sac chiefs delivered the following answer from Napope, who was identified as "now the principal chief" of Black Hawk's party:

We have no bad feelings, why do they send to us to tell us to go back—we will not look back, we will go on. I had no bad intention when I came up Rock River. I was invited by the Winnebagoes at Peketolica to go and live with them.

Black Hawk and other braves, members of the party, made statements to similar effect.

73. The Illinois Militia was called out by Governor Reynolds of Illinois. We advised General Atkinson on April 22, 1832 that he would have 1,500 men ready to march on the Indians on April 25 or 26. Governor Reynolds appears to have regarded his political career in jeopardy by reason of Black Hawk's party's presence in the State of Illinois for he said:

Nothing will save me; but a decisive stroke on the Indians. I have so written to the War Dept. of the U.S. and so I write you.

On May 4, Governor Reynolds informed General Atkinson that he had arrived with the mounted volunteers at Yellow Banks on the previous day and that he was:
The British band, with Black Hawk at their head, assembled first at Old Fort Madison, on the Mississippi, and marched up the river by land and water to the Yellow Banks, where Oquawka stands at this day, on the 6th of April, 1832. They amounted to about five hundred warriors—women, children, and dogs in proportion—and had with them all their horses, baggage, and wealth.

But the danger of the frontiers was so pressing that I decided, on the 16th of April, to call out a large number of volunteers. I did this on my own responsibility, as I had not then received any requisition from General Atkinson, who commanded the regular forces at Rock Island.

General Henry Atkinson in a letter to Governor Reynolds, dated April 13, 1832 advises the Governor that a Band of Sacs under Black Hawk joined by about 100 Kickapoos, and a few Pottawattamies amounting in all to about 500 men has assumed a hostile attitude and crossed the Mississippi at the Yellow Banks on the 5th of April and were moving up on the east side by Rock River toward the Prophet's Village. He further states that this band had not yet committed any act of hostility and that they profess not to intend to strike the first blow but to resist any attempt to remove them again from the Rock River country. He says: "I think the frontier is in great danger." and states that he will know more about the intentions of the Indians in two or three days when he will again write the Governor.

As stated by Governor Reynolds he called for volunteers for the Illinois Militia without waiting any further information from General Atkinson, but on his own responsibility.
It was not until after Governor Reynolds had called out the militia and on April 18, 1832 that General Atkinson advised him that all it would be necessary for him to do at that time would be "to put some company of rangers on the fronts" that he would advise him further in a day or two.

On April 18th General Atkinson in a letter to Major General Edmund P. Gaines said that the Sacs and their associates had passed up on the east side of Rock River and were on their way to the Prophet's Village. He says:

They as yet committed no act of hostility, but their whole conduct indicates a determination to resist any attempt that may be made to drive them back to the West of the Mississippi---and it is thought by some persons here whose opinions, and acquaintance with the Indians should have weight, that they will strike as soon as they secure their women & children in the swamps, I am rather of the opinion however, that they will not, until an attempt is made to coerce them; still the probabilities are against this opinion. Within three or four days I shall obtain positive information as to their location and probably their intentions. I have persons employed, on whom I can depend to visit the country and collect information, all of which shall be promptly communicated.

If the unfriendly Indians and their associates remain quiet, or more properly speaking do not commence further hostility than the mere act of invading the Country, I presume you will wait till advice is received from the Government before you take, or order measures for their removal. Should this possible case of quiet take place; I shall in the course of a week or ten days return to St. Louis, to more readily correspond with you and receive your instructions.

On April 24, 1832 General Atkinson wrote direct to Black Hawk and Chiefs and Braves of his Band, as follows:

I am sorry to learn that you have taken your Band across the Mississippi and carried them up on Rock River contrary to the treaty you made last year with General Gaines & Governor Reynolds. Your great father will be angry with you for doing so. I advise you to come back and recross the Mississippi without delay. It is not too late to do
what is right—and what is right do at once. If you do not come back and go on the other side of the great river I shall write to your great father & tell him of your bad conduct. You will be sorry if you do not come back. Some foolish people have told you that the British will assist you—do not believe it—you will find when it is too late that it is not true.

If your hearts are good I will send an officer to talk with you in three or four days.

Indian Agent Felix St. Vrain in his Journal covering April 15th to May 9, 1832 reports that on April 16th Messengers Lambusier and Apinoes, who had been sent by General Atkinson to see the Black Hawk Band and plead for them to go back West of the Mississippi, brought news that this Band badly received such messengers and appeared hostile. St. Vrain reports as of the 26th word was received from Black Hawk to the effect that they had no bad intention but that they would not return to the West side of the Mississippi. As of April 27th he reports that Mr. Gratiot reported he had visited the Black Hawk Indians and stated that they were hostile; that Black Hawk's "heart was badly inclined."

74. Governor Reynolds was advised in a letter dated May 5, 1832, from Secretary of War Cass that his Militia should be placed under the command of General Atkinson and that General Atkinson had been instructed:

* * * * to compel these Indians to recross the Mississippi River. He will merely give notice to them, that if they do not immediately retire, they will be attacked, and he will follow this notice by offensive measures, and not desist till the object be attained. And should they recross the river & continue embodied, evincing a hostile disposition he will follow them, and subdue and disperse them. And he will also continue his operations till such a number of the murderers of the Menominees are surrendered as will answer the purpose of justice, and serve as a proper example to the Indians.
Secretary of War Cass commented that:

Recent letters from Genl. Atkinson leave the impression
that objects of the Indians are not precisely known,
* * * *.

75. Early in May, Black Hawk and his party had probably determined
to return peaceably west of the Mississippi River. The party had dis-
covered that they could not remain at the Winnebago Prophet's village and
that no assistance would be given them by either the Winnebagoes or the
Potawatomies. On May 4 Agent St. Vrain received the report that members
of Black Hawk's party were returning west of the Mississippi River. General
Clark in a letter dated May 5, 1832 advised the Secretary of War that Black
Hawk and his party:

* * * * being disappointed in the Winnebagoes & Puttowatamies,
and being alarmed at the movements of the military and mounted
Militia, are descending Rock River with the evident intention
of recrossing the Mississippi.

In letter dated May 12, 1832, Agent Owen informed Governor Reynolds:

* * * * that the Sacs are on Rock River about 30 miles
above Ogee's ferry, in a state of starvation and are
anxious to recross the Mississippi but dare not descend
Rock River for fear of being intercepted by the Militia
& indiscriminately slaughtered without affording them
an opportunity of explaining the cause of their recent
movements. They aver most positively to the Potawatomies
that they had no design of committing any wrong what-
ever towards the people of their great Father.

Evidence and Comment

The Winnebago Prophet had been ordered by Major Bliss on April 6, 1832,
to rescind his invitation to Black Hawk's party to plant corn at his village
(Conversation, April 6, 1832). When advised by the Winnebagoes that his
party could not remain at the Prophet's village and further that no assistance
would be forthcoming either from the Winnebagoes or the British, Black Hawk
realized that he had been deceived and that the promises made to Napoleon were false (Black Hawk's Autobiography). Black Hawk and his party then sought permission of the Potawatomies to make a village and plant corn on their lands but without success. Apparently some members of the party were willing to return west of the Mississippi on April 25 (Report of Wa-com-me, April 26, 1832). At that time the party had but little corn. Black Hawk's later attempts to obtain some from the Potawatome were unsuccessful (Black Hawk's Autobiography).

Agent St. Vrain recorded in his journal for May 4:

Poy-ne-ha-ne-sa said that the Sac Indians of Rock River were returning to the west side of the Mississippi, that they had been disappointed about the assistance expected from the Winnebagoes, and others, that he had left them all at Profets Village three days ago.

Black Hawk in his Autobiography said he concluded that:

I think the whole general tenor of secondary sources and primary sources available to me leads me to believe this is a safe and sound conclusion * * * * (Tr. 349)

namely, that prior to Stillman's Run, the first engagement of the Episode, Black Hawk's party contemplated no hostile action and desired to return west of the Mississippi River (Tr. 344-49).

The testimony of Dr. Wallace was to the same effect (Tr. 427-426).

76. Prior to the first engagement of the episode, known as Stillman's Run on May 14, 1832, Black Hawk's party had committed no hostile acts or depredations and had determined to return west of the Mississippi River.

On May 12, 1832, several companies of Illinois Militia under the command Major Stillman were directed to proceed from Dixon's Ferry against some of Black Hawk's party reported to be at or near a place known as Old Man's Creek, which was subsequently renamed Stillman's Run.
Black Hawk was then encamped a few miles to the north with a party of some 40 or 50 warriors, the main part of his party being some distance away. On the evening of May 14, he was engaged in giving a feast to certain Potawatomi chiefs who were visiting him. He learned of the presence of the Militia force and dispatched a peace mission to arrange a conference concerning the terms of surrender so that he might return across the Mississippi River. This party consisted of three men under a flag of truce. They were escorted a distance by another party for the purpose of ascertaining how the peace party was received.

The first shots of the skirmish were fired by the Militia who noticed and attacked the escort party; two members of the party were killed and the balance fled with the Militia in pursuit. The escort reached Black Hawk's camp and he came to their assistance. The attacking Militia thereupon fled, abandoned their camp and many deserted.

The three messengers from Black Hawk's party who reached the Militia camp under a flag of truce had in the meantime been seized by the Militia. One was killed and the remaining two were able to effect their escape.

Evidence and Comment

Defendant contends that the contention that Black Hawk Band were desirous of recrossing the Mississippi was due to mis-information or in any event that such reports were not in good faith because "no confidence can be placed in what he (Black Hawk) may promise." After the fighting and bloodshed of the Stillman's Run incident on May 14th, the Government took the position that no further peaceful negotiations were possible. Although the Government contends that Black Hawk and his allies after May 14th "proceeded to lay waste
to the country and kill white men, women and children indiscriminately," the total whites killed, as itemized in Defendant's Brief, p. 161 numbered only 71.

Mrs. Whitney testified that no depradations were reported and that no hostile acts had been committed by Black Hawk's party prior to Stillman's Run and further that the settlers generally regarded the members of Black Hawk's party to be friendly (Tr. 63-82, 168-69). One editor collected various contemporary observations concerning Black Hawk's party (History of Peoria County, Illinois). Thus, John Dixon, whose home was at Dixon's Ferry, said that the braves "were orderly and gave no signs of hostile intentions." Another settler in the lead mining area was paid by the party for corn taken from him, and Captain Green said that he had never heard of Black Hawk's band, while passing up Rock River "committing any depradations whatever, not even petty theft." The author concludes that it is a well-known fact that no Indian warriors ever went on the war path encumbered with women and children, and that, more than this:

* * * * it does not appear from the sixth day of April until Stillman's soldiers disregarded his flag of truce on the 12th of May, that a single settler was murdered or suffered any material injury at the hands of Black Hawk or his band.

The finding as to Stillman's Run is based largely upon Mrs. Whitney's testimony (Tr. 86-98; 290-295), Dr. Wallace's testimony (Tr. 428), the report of Governor Reynolds in his Memoirs, the report of Black Hawk in his Autobiography, and the statement of Napope, a Sac chief with Black Hawk's party, taken at the conclusion of the Black Hawk episode. Dr. Quaife, a noted historian and editor of the edition of Black Hawk's Autobiography in evidence, stated:
The conflict here described, known as the battle of Stillman's Run or Stillman's Defeat, occurred May 14, 1832, a few miles southwest of the Mouth of Sycamore Creek, in Ogle County, Illinois. Black Hawk's description of the disgraceful affair is substantially correct.

As Mrs. Whitney pointed out in the course of her testimony, the fact that the Militia attacked the Indians, as narrated by Black Hawk, is corroborated by Napope, Governor Reynolds and Col. Taylor (Tr. 89-90), and General Atkinson himself deplored Stillman's action. No official report appears to have been made by Stillman, whose account was subsequently published in the newspapers. Mrs. Whitney, whose studies have included a careful and searching analysis of the reliability of the accounts of this incident, evaluated Stillman's statement to be:

* * * * primarily (in the nature of) a publicity statement to counteract the widespread criticism he had received for having brought on the battle. (Tr. 91)

Dr. Wallace unqualifiedly accepts the flag of truce displayed at Stillman's Run as a genuine attempt on the part of Black Hawk's party to surrender (Tr. 440).

There is a general unanimity among contemporary authorities that the responsibility for Stillman's Run rested wholly with the United States. Thus, the Militia are described in one account as being:

* * * * in a kind of frolic--under Col. S; they came upon a few quiet and inoffensive Indians, and murdered several of them in cold blood; (Cooke, Scenes and Adventures in the Army; or Romance of Military Life)

In yet another account, it is stated:

They also deny that there was any violation of the flag of truce, but in this evidence seems to be overwhelming. (The History of Peoria County)
77. By a letter dated May 22, 1832, President Jackson directed that
the surrender of Black Hawk, with other members of his party, as hostages
for the future good conduct of their party demanded. Operations were directed
by the United States to be continued against Black Hawk's party until his
party submitted unconditionally to this demand and was made an example to
other Indians. General Clark, who found the instructions for dealing
with Black Hawk's party to be "highly gratifying," recommended to Secretary
of War Cass that a:

* * * * War of extermination should be waged against
them. The honor & respectibility of the Government
requires this.

Evidence and Comment

President Jackson's direction referred to in the findings was communicated
on his behalf by Major General Macomb to General Atkinson (Letter, May 22,
1832). He later directed that Black Hawk's party must be chastised as a
deterrent to other Indian tribes (Letter, June 12, 1832, Acting Secretary
of War Robb to General Atkinson). The displeasure of the President at
General Atkinson's failure to bring an early termination of the Black Hawk
episode is expressed in this letter.

Secretary of War Cass furnished General Clark with a copy of General
Macomb's Letter to General Atkinson's (Letter, May 22, 1832).

In a later letter, Secretary of War Cass informed General Clark that:

The United States will not suspend their operations till
Black Hawk, and his party are reduced to unconditional sub-
mission, and such a lesson taught them as will secure their
future good conduct, and will reach every tribe east of the
Rocky Mountains. (Letter June 27, 1832)

General Dodge, in calling for volunteers predicted:
**A**

* * * * it will surely be the policy of the government to let them receive that kind of chastisement which will quiet them effectually, and make a lasting example for others. (Call for Volunteers, June, 1832)

78. Although the desire of Black Hawk and his party to surrender was generally known, General Atkinson and other representatives of the United States did not communicate the terms of surrender to Black Hawk's party as directed by President Jackson and Secretary of War Cass. Instead they took steps to prevent Black Hawk's party from reaching the west side of the Mississippi River and to provide, if possible, for its destruction. In a letter dated July 24, 1832, General Dodge assured General Atkinson that:

* * * * every possible exertion will be made to destroy the enemy crippled as they must be with their wounded and families as well as their want of provision supplies.

Evidence and Comment

Prior to Stillman's Run General Atkinson, Governor Reynolds and General Clark all heard that Black Hawk and his party desired to return west of the Mississippi River. President Jackson and Major General Macomb had, among others in Washington been so informed (Letter, May 22, 1832, Major General Macomb to General Atkinson). And, immediately prior to Stillman's Run, Black Hawk and his party had expressly sought truce.

"The President's order that Black Hawk be demanded of his associates, with other hostiges" is contained in a letter dated May 22, 1832, Major General Macomb to General Atkinson. The terms upon which a truce would be granted Black Hawk's party were repeated to General Scott upon his assumption of command of the regular troops and the Militia (letter, June 15, 1832 from
Secretary of War Cass to General Scott). General Clark was subsequently instructed by Secretary of War Cass to tell Black Hawk's party that:

> * * * * their only chance of preservation is to remain quiet; and that course I trust they will take. (Letter June 26, 1832)

But there is no evidence that General Clark, General Atkinson or any other representative of the United States communicated the terms of surrender to Black Hawk's party at any time prior to its final annihilation (Testimony of Mrs. Whitney, Tr. 167-68). As the quotation in the finding indicates, the destruction of Black Hawk's party was first desired.

Troops were stationed along the Mississippi River between the Rock and Wisconsin Rivers, and other troops pursued Black Hawk's party up the Rock River to "kill them all" (Letter, June 4, 1832, Agent Street to General Dodge). War parties of Sioux, Menominee and Winnebagoes and other Indians were sent out by the United States from the north to complete the party's encirclement. Not until Black Hawk's party had been dispersed and largely destroyed were any terms of surrender sent to it.

79. After Stillman's Run, Black Hawk's party moved northward in a continued attempt to find a safe route to the west side of the Mississippi River. General Atkinson, who was informed of these movements, stationed troops along the Mississippi River and sent other troops in pursuit of Black Hawk's party. In seeking to reach the Mississippi River near the northern boundary of the present State of Illinois, warriors from Black Hawk's party were involved in several small encounters at the Forts of Apple River and Kellog's Grove in June, 1832. These were the only encounters involving Black Hawk's party, as such, between May 14, 1832, the date of Stillman's Run and the engagement which took place on July 21, known as Wisconsin Heights. The other frontier incidents in this period were independent and isolated encounters involving individual Indians who were usually not members of Black Hawk's party.
Evidence and Comment

General Atkinson was informed by Potawatomi Agent Owen that the Potawatomies had, on May 28, 1832, requested the Sacs to leave the neighborhood of their country and that the Sacs had answered that:

** they were then drying their meat and preparing to cross the Mississippi immediately & would go unless prevented by the whites, and it is the decided opinion of Big Foot, that they will act in accordance with this promise.

General Atkinson dispatched a company to Colonel Taylor with the advice that Black Hawk's party intended to cross the Mississippi River and that:

** should they attempt to pass down towards the Mississippi and if practicable prevent them from effecting that object. (Letter, June 7, 1832)

The plan was to encircle and attack Black Hawk's party from all sides (Letter June 4, 1832, Agent Street to General Dodge; Letter, July 23, 1832, General Clark to Agent Hughes.)

General Atkinson later advise General Alexander on June 26, 1832 that unofficial information had been received that Black Hawk's party was attempting to make "their way across the Mississippi by the route of Plum River" and that General Alexander was directed to prevent Black Hawk's party from reaching the Mississippi River. A brigade of troops had been sent under General Posey to Kellogg's for that purpose. There occurred at this time at Kellogg's Grove and Apple River, as Black Hawk sought to reach the Mississippi River, the only engagements involving Black Hawk's party as such between Stillman's Run on May 14, 1832, and the engagement on the Wisconsin River known as Wisconsin Heights on July 21, 1832. Mrs. Whitney located Kellogg's Grove in northern Illinois in present Stevenson County and Apple River in the
in the vicinity of Galena in the northwestern part of the State. (Tr. 190-191) She interpreted the fighting in this area as an attempt by Black Hawk to find an escape route. (Tr. 317-318)

Black Hawk and his party realized that it would be folly to proceed against the volunteers and continued to retreat up the Rock River (Black Hawk's Autobiography; testimony of Mrs. Whitney, Tr. 97, 99). In the opinion of Mrs. Whitney, Black Hawk's party was just as eager to cross the Mississippi after Stillman's Run as before (Tr. 350-351). Dr. Wallace interpreted Black Hawk's movements after Stillman's Run as an attempt to get back across the Mississippi River by a round-about route through the Winnebago country. (Tr. 428-29)

Mrs. Whitney in her testimony analyzed at length all of the incidents historically associated with the so-called Black Hawk War (Tr. 101-11; 121;139). It was her opinion that many of the frontier incidents in this period did not involve Black Hawk's party as such and that for the most part such incidents were independent and isolated encounters involving individual Indians who usually were not members of Black Hawk's party. From Mrs. Whitney's testimony it appears that 30 out of the 71 white persons killed in the Illinois-Wisconsin area during the summer of 1832 were killed by Indians other than Black Hawk or the Sacs who accompanied him.

80. Finding that it could not cross the Mississippi River south of Galena, Black Hawk's party continued to move northward hoping to cross to the west side by descending the Wisconsin River. By the time the party arrived at the Wisconsin River it was in desperate need of food and supplies. On July 21, 1832, Black Hawk's party was attacked while attempting to cross the Wisconsin River. In this engagement, known as Wisconsin Heights,
one white man was killed and Indian casualties numbered between 36 and 68. Additional casualties were inflicted upon the members of Black Hawk's party fleeing down the Wisconsin River in canoes by the Winnebago Indians sent against them by the United States and United States troops and gunboats stationed at the mouth of and on the Wisconsin River.

Evidence and Comment

Black Hawk had established a temporary camp at a place called Four Lakes in the country of the Winnebago. Food became extremely scarce there and several of his people died of hunger. When the movement of the Army against him resumed, he concluded to remove his women and children across the Mississippi by descending the Wisconsin (Black Hawk's Autobiography). Even prior to Stillman's Run, Black Hawk's party was suffering from lack of food and was reported by some observers to be starving. General Street reported that the prisoners taken on the Wisconsin River were:

* * * * the most miserable looking poor creatures you can imagine. Wasted to mere skeletons, clothed in rags scarcely sufficient to hide their nakedness, some of the children look as if they had starved so long they could not be restored. (Letter, August 1, 1832 to General Clark)

Black Hawk's party had vigorously defended against substantial odds the advance of the Militia at Wisconsin Heights in order to permit the women and children to cross the Wisconsin River. After this had been accomplished, Black Hawk's party retreated overland to the Mississippi River (Black Hawk's Autobiography; Letter, August 1, 1832, Agent Street to General Clark). Black Hawk observed that some of his people then left him and descended the Wisconsin hoping to escape to the west side of the Mississippi, to which he had no objection as they were in a desperate condition.
General Dodge recommended to Captain Loomis that the Wisconsin be blockaded to prevent the party from escaping (Letter, July 22, 1832). General Dodge also assured General Atkinson that every possible exertion would be made to destroy the crippled enemy and that he would follow them wherever they went (Letter, July 24, 1832). Two days later Captain Loomis stationed two gunboats at the mouth of and on the Wisconsin River (Letter, July 24, 1832, Agent Street to General Clark). Members of Black Hawk's party who were descending the Wisconsin River in canoes were fired upon by the gunboats and by the troops at Prairie du Chien. The Winnebagoes also attacked them, even at night by torchlight. (Letter August 1, 1832, Agent Street to General Clark) with the result that only a few of these Indians survived (Black Hawk's Autobiography).

81. On the afternoon of August 1, 1832, Black Hawk, with members of his party who had arrived at the Mississippi near the Bad Axe River, again caused a flag of truce to be raised and sought to open negotiations with the commander of the gunboat Warrior for the surrender of the party. The Warrior violated the flag of truce and opened fire upon Black Hawk's party.

Evidence and Comment

The trail of the Indians from the Wisconsin to the Mississippi was described by Agent Street as:

* * * * indicative of their wretched situation— it was evidently the trail of a routed & fleeing enemy. Dead, wounded, and dying men & children were left on the road." (Letter, August 3, 1832 to General Clark)

The commander of the Warrior assumed without investigation that the flag of truce was a decoy and callously reported that:
*** we let slip a six-pounder, loaded with canister, followed by a severe fire of musketry; and if ever you saw straight blankets, you would have seen them there. (Letter, August 3, 1832, Joseph Throckmorton)

But Black Hawk had intended to surrender and in fact raised two white flags (Black Hawk's Autobiography). His attempt to surrender is accepted by Mrs. Whitney as authentic and well corroborated (Tr. 134-136).

At the close of the episode, various members of Black Hawk's party were taken prisoners by the United States and interrogated. One prisoner said that he was standing near Black Hawk at the time he raised the white flag and that Black shouted that:

I wish to come and shake hands with you—waiving his hands to correspond. (Minutes of Examination of Prisoners, August 19, 1832)

Other prisoners similarly described Black Hawk's attempt to surrender (Minutes of Examination of Prisoners, August 20, 1832 and August 27, 1832).

82. On the following day, August 2, the final engagement, known as Bad Axe, took place. The remnants of Black Hawk's party, including women and children, were caught between the attacking forces under General Atkinson and the Mississippi River. Agent Street described the engagement as follows:

The Ind. war is at an end. Yesterday Genl. Atkinson with his main force overtook the hostile Inds. 36 miles above Prairie du Chien on the East bank of the Mississippi, and after a hard fought battle of 6 or 8 hours defeated, and destroyed nearly the whole of them. Genl. Atkinson lost 8 or nine killed, and 30 or 40 wounded. The Inds. were pushed literally into the Mississippi, the current of which was at one time perceptibly tinged with the blood of the Indians who were shot on its margin & in the stream.
Evidence and Comments

The quotation in the finding is from a letter dated August 3, 1832, to General Clark. A similar report is made by General Atkinson to General Scott August 5, 1832. General Scott forwarded General Atkinson's letter to Secretary of War Cass with the comment that the engagements at Bad Axe and Wisconsin Heights had:

* * * * greatly reduced the number of the enemy, broken his spirits, & probably terminated the active operations of war. (Letter, August 10, 1832)

83. Shortly after Stillman's Run the United States requested and encouraged the Sioux, Menominee and Winnebago and other Indian tribes to go to war against Black Hawk's party. These Indians were told that the United States intended to encircle and kill all of Black Hawk's party. The Winnebagoes were advised, for example, that only by attacking Black Hawk's party could they prove their friendship to the United States and avoid being mistaken and killed as members of his party. The Winnebagoes were also advised that Black Hawk's party would seize their lands if they did not prevent it from doing so. Guns and supplies were furnished the Indian tribes by the United States to be used in their attacks on Black Hawk's party.

Evidence and Comments

Agent Street was directed to collect as many Menominees and Sioux Indians as he could (Letter, May 26, 1832, General Atkinson to Captain Loomis). He reported that he had uniformly said to the Indians that their Great Father had placed his army between Black Hawk's party and the Mississippi River to prevent its return, that other troops marched against the party and that:
* * * * your G.F. no longer able to keep them at peace, has penned them up, and intends to kill them all.
(Letter, June 4, 1832, General Street to General Dodge)

Although Agent Street told the Winnebagoes that only by attacking Black Hawk's party could they prove their friendship and avoid being killed by mistake, he encountered some reluctance among the Winnebagoes which he overcame through gifts and presents. By June 6th he had assembled an Indian force of between 160 and 200 warriors from the Sioux, Winnebago and Menominee and had dispatched messengers to other villages of the Sioux and Menominee (Letter, June 6, 1832, Agent Street to General Atkinson).

The Indians were:

* * * * delighted at the permission to go to war, and have been dancing nearly all the time since their arrival. The Menominees especially rejoice in the prospect of revenging * * * *,

the Indians killed in the preceding year by members of the Sac and Fox Nation. The Winnebago chief was told:

* * * * if you sit still they (Black Hawk's party) will take your country from you.

On the following day, guns were delivered to the 225 Indians then assembled for the purpose of fighting the Sac and Fox with the promise that they would be the property of the Indians if they were well employed (Letter, June 7, 1832, Agent Street to General Clark).

A talk was sent to the Winnebago by General Atkinson in which he suggested that:

You may promise the Sacs a piece of land to deceive them in the way you propose in your talk with Genl. Dodge. Keep the Sacs deceived about everything till we are ready to strike them. (Talk, June 11, 1832).

When the Sioux showed reluctance at attacking Black Hawk's party and returned to Prairie du Chien without doing so, Agent Street delivered
a scurrilous talk impugning their integrity and valor (Talk, June 22, 1832). In July the Stockbridge and Oneida Indians were requested to provide 200 soldiers and were advised that by promptly doing so:

You will merit as well as receive the thanks of the government. (Letter, July 25, 1832, Agent Boyd to Stockbridge and Oneida Indians)

The Winnebago Indians were active along the Wisconsin River, bringing in numerous scalps and prisoners and were complimented by Agent Street as having "behaved admirably" (Letter August 1, 1832). The activities of the Sioux are the subject of the succeeding finding.

84. On August 5, 1832, following Bad Axe, General Atkinson for the first time undertook to comply with the instructions given him in May and June, 1832, by President Jackson and Secretary of War Cass to demand, as terms of surrender, that the principal men of Black Hawk's party be surrendered as hostages and the party itself be disbanded. General Atkinson advised Major Beall that the terms were to be transmitted by Keokuck and that he expected to arrive at Fort Armstrong within five or six days "when I expect to have, through Keokuck the determination of Black Hawk's party." Messengers were promptly sent by Sac and Fox Nation to bring in the remnants of Black Hawk's party.

Evidence and Comment

The terms of surrender have been described and referred to in connection with Findings 77 and 78. President Jackson and Secretary of War Cass both stated in effect that a truce would be granted Black Hawk's party upon compliance with the terms demanded and they both contemplated and directed that the terms be communicated to Black Hawk's party (Letter, May 22, 1832, Major General Macomb to General Atkinson; Letter, June 15, 1832, Secretary of War Cass to General Scott; Letter, June 27, 1832,
Secretary of War Cass to General Clark), but they never were prior to August 5, 1832. General Atkinson's instructions to Major Beall are contained in a letter dated August 5, 1832. In a letter written the same day to General Scott, General Atkinson advised that it was "now" his purpose:

* * * * to direct Keokuck to demand the surrender of the remaining principal Men of the hostile party.

Major Beall was commanding officer at Fort Armstrong where General Scott was then located. General Atkinson's directions were communicated by Major Beall to Acting Sac and Fox Agent Pilcher (Letter, August 16, 1832, General Scott to Secretary of War Cass).

Initially the Sac and Fox Nation encountered some difficulty in finding the remnants of Black Hawk's party due to the attack which the Sioux had made on that party at the direction of General Scott. The Nation established a camp near Fort Armstrong from which it kept General Scott advised of the arrival of members of Black Hawk's party (Letter, August 19, 1832, General Scott to Secretary of War Cass). Additional messengers were sent by the Sac and Fox Nation in continuation of the search. By August 19, 1832, General Scott was convinced that all of the members of Black Hawk's party west of the Mississippi River had been accounted for either through killing by the Sioux or by capture and surrender. In so advising the Secretary of War, he said that Keokuck

* * * * & his brother chiefs are acting with zeal & good faith toward us. (Letter, August 26, 1832)

85. Although the remnants of Black Hawk's party were reported to be seeking to surrender to General Scott and the terms of surrender granted
the United States were at last being communicated to these Indians, General Scott nevertheless instructed the Sioux, Menominee and Winnebago to continue their attacks on the scattered remnants of Black Hawk's party. On August 3, the morning following Bad Axe, a war party of 100 Sioux was sent out by General Scott on the trail of those members of Black Hawk's party who had succeeded in crossing the Mississippi River. The Sioux attacked and killed 100 or more of these Indians, including children, women and old persons. Other casualties were inflicted upon the members of Black Hawk's party remaining east of the Mississippi River by the Winnebago and Menominee. Upon receipt of these reports, General Scott advised Secretary of War Cass on August 26th that:

There is now, no doubt, that Black Hawk's band is destroyed.

and proposed that the three voluntary prisoners confined in connection with the killing of the Menominee be released for the reason that the Menominees

* * * * who recently marched across to the Mississippi, and who had an opportunity of avenging themselves on the fugitive Sacs & Foxes * * * * expressed themselves, I Understand as satisfied * * * *.

Evidence and Comments

The quotations in the finding are from a letter dated August 26, 1832. Both General Atkinson and General Scott were informed that the remnants of Black Hawk's party west of the Mississippi River desired to surrender and negotiate for peace through the Sac and Fox Nation (Letters, August 5, 1832, General Atkinson to General Scott; to Major Peal; letters, August 10 and 11, 1832, General Scott to Secretary of War and Governor Reynolds). And of course both had known of the desire of Black Hawk's party to surrender even prior to Stillman's Run.
General Scott who was at Fort Armstrong also knew that General Atkinson finally proposed to give the terms of surrender to Black Hawk's party (Letter, August 16, 1832, General Scott to Secretary of War Cass). He was first informed that the Sioux whom he had sent in pursuit of Black Hawk's party (Letter, August 10, 1832, General Scott to Secretary of War Cass) had killed or captured 100 of the party by representatives of the Sac and Fox Nation who had been sent concurrently to communicate the terms of peace (Letter, August 16, 1832, General Scott to Secretary of War Cass). The initial report by the Sac and Fox did not satisfy General Scott and he ordered the Sac and Fox Nation to bring in the remnants of the party within ten or twelve days or he would fill its country with troops.

On August 20, the Sac and Fox Nation brought in about 50 other persons of Black Hawk's party, including boys, women and children, and General Scott commenced to interrogate these prisoners. From this interrogation he concluded, contrary to his earlier opinion that the Sioux did overtake the members of Black Hawk's party west of the Mississippi River and:

* * * that nearly the whole of Black Hawk's band have been killed, drowned or captured, or have been reported as ready to be surrendered by the kindred but friendly bands. (Letter, August 19, 1832, General Scott to Secretary of War Cass).

The Sioux Indians claimed that they had killed about 200 of the Sac and Fox Nation and taken 22 prisoners. While Agent Street regarded this number as possibly exaggerated since only 68 scalps and 22 prisoners had been delivered to him (Letter, August 22, 1832, to General Scott), the Sioux were told that their Great Father "would be pleased at their conduct."
The Nez Perce were instructed after the war to "scour the country between the Wisconsin and Missoula" and they killed or captured some 10 or 12 members of Black Hawk's party (Letter, August 10, 1832, General Scott to Secretary of War Genes). The Minnehagoues took 97 prisoners and killed about 50 or 60 of Black Hawk's party after Fall Creek (Letter, August 22, 1832, Agent Street to General Scott).

86. Less than one-sixth of the population of the Sau and Fox Nation was with Black Hawk's party. The total number of persons in his party, including old men, women, and children, probably did not exceed 1200 of whom at least 300 were Hickapooes. From Sec and Fox Agent Forsyth, General Atkinson, Sau and Fox representatives, Sec and Fox Agent St. Vrain, and other observers placed the number of men with Black Hawk's party between 140 and 160. Of these at least 100 and perhaps more were Hickapooes and there were also with the party some Minnehagoues and Potawatomies.

Evidence and Comment

Mrs. Whitney computed the total membership of Black Hawk's party by analyzing the lists of prisoners taken during and at the conclusion of the episode and of the Indians killed. From this analysis, it appears that between 967 and 1017 persons were with Black Hawk's party. The amount varies because not all observers would include women and children in their lists of casualties. There would, in addition, be some persons who died of starvation or sickness. There was, in addition, no record. She concluded that there were about 1500 people with Black Hawk's party (Tr. 472-73; 363-64), which figure is accepted by Dr. Wallace (Tr. 452-53).
To arrive at the number of Sac and Fox Indians with Black Hawk's party, Dr. Wallace deducted 100 Kickapoo men with families, or to be conservative, about 300 persons altogether, which would leave about 900 persons who were Sac and Fox Indians with Black Hawk's party (Tr. 439-40).

After Black Hawk's party had crossed the Mississippi River, there were some accretions to it from the Winnebago Prophet's village, probably 100 warriors or 300 or 400 people, together with a few other Winnebagoes and a very few Potawatomies (Testimony of Dr. Wallace, Tr. 440). In the opinion of Dr. Wallace, the population of the Sac and Fox Nation would at this time have been in the neighborhood of 6000 persons (Tr. 439). Various documentation as to the Nation's population is cited in connection with Finding 26.

The contemporary observers primarily addressed themselves to the question of the number of men with Black Hawk's party. The observers mentioned in the finding and the number of men stated by them are as follows: Former Agent Forsyth--468 men, including 100 Kickapoos (Forsyth's 1832 Report); General Atkinson about 500 men, including about 100 Kickapoos and a few Potawatomies; Sac and Fox representatives--500, apparently including the Kickapoos and Potawatomies; and Agent St. Vrain--600, including Kickapoos, Potawatomies and Winnebagoes. Other accounts of the number of persons with Black Hawk's party include the following:

Agent Boyd said that the "great body of the nation" are not in arms against the United States (Letter, July 25, 1832, to the Stockbridge and Oneida Indians). Acting Secretary of War Robb stated that only "a few
of your Nation" and led by "Black Hawk (Tulc, September 4, 1832). No members of the band of the Sac and Fox Nation residing on the Missouri River participated in the episode (Letter July 19, 1832, General Clark to Commissioner of Indian Affairs). Indian trader Davenport said there was in all about 500 Indians (Letter, June 8, 1832, to Farnham). Subagent Connolly, in his Memorandum, stated that the party which was all Sac did not exceed 400 men and boys, counting the whole number.

In the opinion of Tr. Wallace, there were 350 and 400 Sac and Fox warriors with Black Hawk at the time he crossed the Mississippi River (Tr. 438-39). Mrs. Whitney also expressed the opinion that the documentation which she had seen all supports the figure that there were about 500 warriors with Black Hawk of whom 400 were Sac and Fox and the others Kickapoo and Potawatomies (Tr. 67-69).

87. The Sac and Fox Nation was not responsible, as a matter of law, for the acts of Black Hawk's party and the United States was not entitled to demand indemnity from the Nation for the Black Hawk hostilities.

88. The Sac and Fox had no alternative but to accept the demand made by the United States. General Scott had stated to them on behalf of the United States that the entire Sac and Fox Nation was responsible for the acts of Black Hawk's party and that:

** As conquerors we would have a right to help ourselves; to enter your country and mark off, for seizure, that portion which belonged to Black Hawk's band of your nation.

Evidences and Consent

The quotation in the finding is from the minutes of the treaty council. In transmitting the Treaty, General Scott and Governor Reynolds stated to Secretary of War:


** ** * that the power to dictate was very much in our
own hands; but we did not believe that more disadvan-
tageous terms for the Sac & Fox confederacy, would have
comported with the true glory of the U. States.
(Letter, September 22, 1832).

In the following year representatives of the United States in seeking
to overcome the opposition of the Potawatomies to the sale of certain
of their lands pointed to the failure of the Sac and Fox Nation volun-
tarily to sell its lands on the Mississippi as an object lesson for the
Potawatomies and states:

You are not ignorant. You know what calamities befell
the Soc's and Winnebego's during the last year. ** **
Does not the experience of the last year satisfy you
that it is too late to treat at the cannons mouth? Two
years ago, your Great Father wished to treat with the
Soc's and Foxes--but they refused to listen to his wise
councils. They opened their ears to the advice of the
wicked & designing and after they were cut to pieces by
his warriors, he treated them as he pleased. (Minutes of
Treaty Council, September 21, 1833).

In the opinion of Dr. Wallace, the Sac and Fox would interpret the
demand made by the United States in accordance with their own customs
(Tr. 436-37). The Nation would, in his opinion, regard the Treaty as a
thing which was necessary for them to do at the time but as not constituting
by any means an admission of guilt or admission that the Nation had been
responsible for Black Hawk (Tr. 446-47). From the standpoint of the Chiefs'
Councils of the Sac and Fox Nation, it was very difficult to buy off an
injured party in another nation and that party or his relatives would be
entitled:

** ** * to measure the degree of retribution according
to his own likes. (Tr. 437)

The United States was applying this same rule in Dr. Wallace's opinion,
when General Scott told the Sac and Fox representatives that the death
of one American would not be satisfied by taking all of the Sac and Fox country (Minutes of Treaty Council; Testimony of Dr. Wallace, Tr. 437). The Sac and Fox Nation was also confronted with the necessity of obtaining additional annuities in order to cover the graves of the persons with Black Hawk's party who had been killed to prevent such persons from retaliating on the United States which, of course, would mean further bloodshed (Tr. 437-38).

89. The Iowa and the Sac and Fox are found to have Indian title, recognized by defendant, to the lands described in Finding No. 5, being the lands described in and ceded by Article I of the Treaty of September 21, 1832, 7 Stat. 374, less the part thereof reserved by Article II of said treaty, as of the 9th day of February, 1833, the date on which said treaty was ratified.

That the respective interests of the two tribes in said lands are the following:

(1) The Sac and Fox had exclusive Indian title to the lands of said cession (Royce 175) lying north of the line extending from the point where the western boundary of said cession crosses the Red Cedar River to a point on the Mississippi River five miles northeast of Muscatine, Iowa;

(2) The Iowa and the Sac and Fox jointly had Indian title to the lands of said cession lying southerly of the line described in the next preceding paragraph (1), and their interests therein were equal.

Edgar E. Witt
Chief Commissioner