

Three of the petitioner tribes are (1) the Sac and Fox Tribe of Indians of Oklahoma, (2) the Sac and Fox Tribe of Missouri, and (3) the Sac and Fox Tribe of the Mississippi in Iowa, each of which claims it has been recognized by the Secretary of the Interior as having authority to represent its members; said three bands, together with individuals, appearing as the representatives of and in behalf of the Confederated or United Tribes of Sac and Fox Indians and all members thereof; and (1) the Iowa Tribe of the Iowa Reservation in Kansas and Nebraska and (2) the Iowa Tribe of the Iowa Reservation in Oklahoma, as the sole successors in interest to the Iowa Nation of Indians and all its members. In effect, there are just two entities constituting petitioners, to-wit, the Confederated or United Tribes of Sac and Fox Indians and the Iowa Nation of Indians.

In the original petition, petitioners claim to have been the joint owners of said Royce Area 175 in eastern Iowa, when said land was ceded to the United States by the Treaty of 1832, by the Confederated Tribe of Sac and Fox under duress for an unconscionably inadequate consideration; and when by the Treaty of October 19, 1838 it was ceded to the United States, along with other lands, by the Iowa Tribe of Indians for a grossly inadequate consideration. Petitioners claim, in said original petition, that "at all times relevant to the claims set forth in this petition, the Confederated Sac and Fox and the Iowa Nation were the owners and entitled to the exclusive use, possession and occupancy of the Eastern Iowa lands," (Royce Cession 175). In said original petition, petitioners further allege that by the Treaty of August 19, 1825, executed by petitioning Indians and others, the defendant "specifically recognized and

acknowledged that the Confederated Sac and Fox and the Iowa Nation were the rightful claimants and had the title" to the land herein involved in addition to other lands. Petitioners, elsewhere in said petition, allege the Confederated Sac and Fox and the Iowa Nation were "recognized and acknowledged by defendant to be the owners of, and to be entitled to the exclusive use, possession and occupancy of the Eastern Iowa lands by various other treaties, acts and transactions to which defendant was a party." (Underscoring added)

Since the conclusion of the evidence, the Sac and Fox have, in briefs, filed, asserted that they were the sole owners of the land involved herein and that they alone are entitled to be compensated therefor.

Petitioners in the original petition, alleged (Par. 23) that Articles 2 and 3 of the aforesaid Treaty of 1825 "recognized and acknowledged" that petitioners had the title "to the country bounded on the south and west by the Missouri River and on the east by the Mississippi River and on the north by a line commencing at the mouth of the Upper Iowa River on the west bank of the Mississippi and ascending the Upper Iowa River to its left fork, thence up that fork to its source, thence crossing the fork of the Red Cedar River in a direct line to the second or upper fork of the Des Moines River and thence in a direct line to the lower fork of the Calumet (Big Sioux) River and down that river to its juncture with the Missouri River." They also alleged (Par. 23) that it was further provided by said treaty "that the Confederated Sac and Fox and the Iowa Nation would peaceably occupy such territory until some satisfactory arrangement could be made between them for a division of their respective

claims to such country, but no such arrangement was ever consummated"; and therefore "as a result of the failure of the defendant to complete such satisfactory arrangement, no division of country between the Confederated Sac and Fox and the Iowa Nation was ever concluded."

However, as stated, the Sac and Fox in their briefs assert that they were the sole owners of the land involved and that they alone had exclusive use and occupancy of all the land involved herein; and that the Iowa Nation had no interest in the same and is entitled to no award on the claim herein asserted.

The ^{Iowa}petitioners contend in their briefs, as in the original petition, that they had an interest in said land by reason of use and occupancy, and also that their interest therein was recognized by the defendant in the Treaty of 1825 and by other acts of defendant. Since the conclusion of the evidence, in briefs filed, the Iowa Nation contends that the evidence shows that "the Iowa and the 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," (Iowa Req. Fdg. 12) and that "the Treaty of Prairie du Chien of 1825 and the subsequent construction thereof by responsible Government officials constituted recognition of the Indian title of the Iowa Nation to the lands in Cession 175," as described in said Requested Finding 12 (Iowa Req. Fdg. 16). By these requested findings the Iowa Nation makes claim to ownership of the specific lands as described in said Requested Finding 12 and asks that its recovery

herein be based on its joint ownership with Sac and Fox of said described portion of Royce Cession 175.

Defendant contends that none of petitioner tribes had original Indian title in Cession 175, or any part thereof, and had no treaty or recognized title in said area or any part thereof; and that no tribe actually occupied, possessed or controlled any definable area of this cession to the exclusion of other tribes; and that the treaties of cessions of 1832 and 1838 were merely quitclaim conveyances of unfounded claims.

Defendant, in the alternative, contends that whatever interest in Cession 175, if any, the Sac and Fox Tribes ever had was forfeited by their participation in what is known as the Black Hawk War, in which, it is alleged that, the Black Hawk's invasion of Illinois in 1832 was in direct breach and violation of several prior treaties of the Sac and Fox with defendant and specifically in violation of the capitulation and agreement signed by the authorized chiefs of Sac and Fox Tribes in 1831. The defendant further contends that the treaty/^{and} conveyance of 1832 constituted a just, fair and reasonable indemnity to the defendant by reason of the said Black Hawk War, and provided adequate compensation to the grantors, and that therefor petitioners, Sac and Fox, are entitled to no further compensation for the cession made by said treaty, regardless of the value of the land ceded by said treaty. Defendant further contends that no Indian tribes had any legal interest in the minerals in Cession 175, because title to said minerals was vested in the defendant by the Louisiana Purchase.

The Iowa Nation contends that it did not participate in and had no connection with the so-called Black Hawk War nor with Black Hawk's Band

and was not a party to the Treaty dated September 21, 1832; that it was under duress at the time it executed the Treaty of 1838; and that the consideration provided to be paid under the Treaty of 1838 was unconscionably small.

In view of holding made later herein that Treaty of August 19, 1825, called the Prairie du Chien Treaty, is thought by us to be recognition of title in the participants thereto to the lands described therein, we think it unnecessary to discuss in much detail the evidence in the record as to the use and occupancy of the land claimed by the petitioners--this because when Indian title has been recognized, it is unnecessary to prove aboriginal title. However, we think the extent of the use and occupancy of the land involved will be of importance in determining the respective interests of petitioners therein, and this will be discussed when we reach that problem.

It is undisputed that the treaty convention resulting in the Treaty of August 19, 1825 was convened by the United States Government because of hostilities between Indian Tribes which had come about by reason of conflicts between the tribes as to the boundaries existing between them; and that the Government was undertaking to terminate said conflicts and disputes in order to stop existing hostilities and prevent others. The hostilities and disputes were not only causes of suffering between the tribes but were injuring white settlers and traders. The Act of Congress providing for the negotiation of this treaty provided that same should be "for the purpose of establishing boundaries and to promote peace."

Treaty Commissioner William Clark upon the assembling of the tribal representatives at Prairie du Chien told the Indians that peace would be achieved by defining the boundaries of the respective lands of the various tribes. He summarized the Government's objective in these words;

"We therefore propose 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."

It was stated in the preamble of the Treaty that the objective was to promote peace among the tribes and to establish boundaries between the tribes occupying the land described in said treaty and other tribes who lived in the vicinity and to remove all causes of future difficulties.

For most of the tribes at the treaty session, definite boundaries were determined by the treaty, and no controversy arose thereafter with respect thereto. In a few cases lines left unsettled were fixed by subsequent treaties. This occurred with respect to the Chippewa, Winnebago, and the Menomonee Tribes. It was provided by the treaty that the north-east boundary known as the Sac and Fox-Sioux line should be assented to by the Yancton Band which was not present at the time of the 1825 treaty. This line was later approved by the Yancton Band, however. By Article 3 of the treaty joint ownership of a portion of the territory was acknowledged as being in the Sac and Fox and Iowas, and it was agreed that the two tribes should peaceably occupy same "until some satisfactory arrangement can be made between them for a division of their respective claims to said country." However, there was never any fixing of boundaries to their respective countries. Said treaty also recognized that the Otoms

were interested in a portion of the country, but their interest was never determined. It was provided by Article 11 of this treaty for the convening of "such of the tribes, either separately or together, as are interested in the lines left unsettled herein, and to recommend to them an amicable and final adjustment of their respective claims." This article also provides for an adjustment of the title between the Otoes, Sacs, Foxes and Iowas.

The controversies as to undetermined boundaries between occupants of the territory described in the 1825 treaty lead to convening of a treaty convention in 1830 which resulted in the execution of the Treaty of July 15, 1830. It is undisputed that the 1830 treaty convention was called to complete the work that had been begun by the 1825 treaty--that is to settle the disputed issues as to boundaries and to achieve a peace that the 1825 treaty had been expected to bring about but which had not resulted because of controversies and hostilities continuing after the execution of the 1825 treaty because of unsettled and undetermined boundaries. The matter of the 1830 treaty is only mentioned because of it having been called for the purpose of settling boundaries, thus emphasizing the purpose of the previous Treaty of 1825 as having been to settle boundaries and eliminate disputes and hostilities between the tribes because of conflicting boundary claims. Among the tribes summoned to the said 1825 convention were the Sioux, Sac and Fox, the Iowa, the Omaha, and the Otoe and Missouria and they participated in the treaty thereafter executed and dated July 15, 1830.

The similarity of the purpose in negotiating them, and the conditions which brought them about, to the situation that existed later in 1851, when the Fort Laramie Treaty was executed, is significant and helpful in determining the purpose of these 1825 and 1830 treaties, because the Fort Laramie Treaty was held by the Court of Claims and by this Commission as a treaty recognizing Indian title (see Crow Tribe of Indians v. United States 3, Ind. Cls. Comm 147).

The purpose of the Fort Laramie Treaty was to settle conflicting boundary claims and to end and prevent hostilities resulting from said conflicts. As stated this Commission, as had the Court of Claims previously, held that the Fort Laramie Treaty, which fixed the boundaries of various tribes, constituted a recognition of the title of the tribes within such boundaries. It is difficult to see how any treaty negotiated at a convention called for the purpose of fixing boundaries could have any such effect except by recognizing the title of the tribes involved to the lands within the boundaries fixed. There would be no way of bringing about a settlement of controversies as to boundaries by merely recognizing the boundaries as claims of the respective contenders; such recognition would merely leave the situation as it was before. The only way the conflicts could be settled and the hostilities avoided by reason thereof would be to definitely find ownership in keeping with the boundaries fixed.

The 1825 treaty and the 1851 treaty were both prompted by the same situation--intertribal warfare; both had the same objective--to end the warfare by fixing boundaries; both treaties had the same basic provisions--the description of the outside boundaries of the territories of the

different tribes. The 1825 Treaty really went a little farther than the 1851 in that by the 1825 Treaty the United States expressly agreed to recognize the boundaries therein set up and agreed to thereafter fix the intertribal unfixed boundaries. General Clark even advised the Indians that the "President intends to be always on the different lines which separate your different countries," which could only mean that the Government would protect the boundaries. General Clark said to the 1825 Indian delegations: "We therefore propose 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." The Treaty Commissioners in 1851 were instructed:

It is important, if practicable, to establish for each tribe some fixed boundaries, within which they should stipulate generally to reside; and each should agree to not intrude within the limits assigned to another tribe without its consent.
(Quoted in the Crow decision at page 161)

Failure to determine boundary lines between the tribes involved does not prevent recognition, however, of Indian title to lands being in the respective tribes.

This Commission in the case of Miami Tribe, et al v. United States, 2 Ind. Cls. 617, held that certain tribes were joint owners of certain territory, and that the title thereof had been recognized by the United States; and similar holdings were recently made by this Commission in Miami Tribe, et al. v. United States, Docket No. 253.

In Beecher v. Wetherby, 95 U.S. 517; 24 L. Ed. 440, discussing the question of ownership of lands which were within the area of the approximate boundaries fixed for the Menominee Tribe by the 1825 treaty, the United States Supreme Court declared:

In 1825, the United States undertook to settle by treaty the boundaries of lands claimed by different Tribes of Indians as between themselves, and agreed to recognize the boundaries thus established, the tribe acknowledging the general controlling power of the United States, and disclaiming all dependence upon and in connection with any power. The land thus recognized as belonging to the Menomonee Tribe embraced the section in controversy in this case. Subsequently, in 1831, the same boundaries were again recognized.

The recognition by the Treaties of 1825 and 1830 that the Indian tribes participating therein had Indian title to the lands therein described was not a recognition of ownership of any specific portion of the lands by the Sac and Fox or by the Iowa. But recognition by the defendant that the cessions of the tract involved herein (Royce Area 175) by the Sac and Fox and Iowa extinguished Indian title thereto, and vested title to said area in the United States; and the fact that no other tribe is shown to have claimed a part of Cession 175, which is admitted by defendant (Dft's Br., p. 66); together with the testimony of Dr. Wallace, as eminent anthropologist, that the Sac and Fox and Iowa Tribes, to the exclusion of all other tribes, occupied at relevant times, all of Cession 175, warrants us in holding that these tribes jointly had Indian title to all of said Cession 175 when it was ceded to the United States, and we so hold.

In considering the respective rights of the Sac and Fox and the Iowa in the land involved, it may first be noted that it is in evidence that the two tribes at approximately the same dates, 1764 or 1765, established villages and hunted on both sides of the Mississippi River in northeastern Iowa in the territory involved herein and that the two nations jointly and as friends occupied lands cooperatively until the early years of the 19th Century when by reason of the Sac and Fox being the stronger and the more

aggressive of the tribes, it became the dominant tribe and was in position to control and limit the Iowas where and when desired. The respective portions or rights of the two nations in the territory between the Mississippi and Missouri Rivers were recognized as of difficult determination at the time of the execution of the 1825 treaty. In the letter of September 1, 1825 of Cass and Clark (who negotiated the 1825 treaty) to the Secretary of War, which accompanied the transmission of the executed treaty (Sac and Fox Ex. 116) a statement is made that "the establishment of equitable boundaries among the tribes was the most difficult part of our task," and "that a just compromise between former possession and most recent conquest, was the basis of the arrangement;" however, that the interest of the Iowas was widely in extent over the area between the Mississippi and the Missouri Rivers is shown by the joinder of said nation in the Cession of Royce Area 151 in 1830, which borders on the Missouri River far to the west of the cession involved herein; and in the journal of proceedings of Council held in 1837 between the Sac and Fox and Iowas (Sac and Fox Ex. 158) statement is made that it was agreed that the Iowas had a just claim in the cession of land lying between the Mississippi and Missouri made by the Sac and Fox alone since 1825, as to which the Iowa had never received any part of the consideration "to which they were entitled." The cession to which they seem to be referring were the Cessions of Royce Area 152 in 1830, 175 in 1832, and 226 in 1836. This journal also reports contention made that the Iowas were the original occupants of the lands recognized as belonging to them and the Sac and Fox by the 1825 treaty--that they had named all the rivers therein and that the interest of the Sac and Fox was by reason of their

their conquest of the Iowas. The occupancy and "possession" by the Iowas of extensive territory in the area involved was confirmed by William Clark (one of the negotiators of the 1825 treaty) in letter dated January 5, 1837 (to whom written not clear) in which he says:

I state for your information that upon my arrival in Upper Louisiana 34 years ago, I found the Ioways in possession of an immense tract of country between the Mississippi and Missouri Rivers, their claim to which so far as my knowledge extends, was undoubted and unquestioned, and which they have never abandoned, living on it from that time to the present;"

that the designation of boundaries as between them and the Sac and Fox was "required by the 3d Article of Treaty of P. des Chien of 19th August 1825, but which duty, from various causes has never been executed, consequently the Ioways still hold an undivided interest in the country therein referred to, such portions of it, excepted, as have been sold by their approbation and consent." (Iowa Ex. 72) In communication by T.H.C (presumably T. H. Crawford, Commissioner of Indian Affairs) to the Hon. J. C. Spencer, Secretary of War, dated May 28, 1842 (Sac and Fox Ex. 164) statement is made "the third article of the same instrument (the 1825 treaty) recognizes plainly the right of the Iowas to an undivided interest in the land," referring to the land described in the treaty lying between the Missouri and Mississippi Rivers. In this connection this document further states that "it appears also clearly enough that the Sac and Fox were regarded as a principal or leading tribe of its proprietors for they declare and establish what shall be the future boundaries of the Sioux and themselves--to which the Iowas asserted. The right (to the land as between the Sac and Fox and Iowas) was a common one and undivided--to be

measured, if a division ever took place, by their relative numbers."

This document also calls attention to the fact that when the Treaty of September 28, 1836, ceding Area 226, by Sac and Fox alone was being considered by the Senate, it was amended as follows:

The Ioway Indians having set up a claim to a part of the lands ceded by this Treaty, it is therefore hereby provided, that the President of the United States shall cause the validity and extent of said claim to be ascertained, and upon a relinquishment of said claim to the United States, he shall cause the reasonable and fair value thereof to be paid to said Ioway Indians, and the same amount to be deducted from the sum stipulated to be paid to the Sacs and Foxes.

Following this quotation of the amendment made to the treaty by the Senate, the above document says: "Thus showing clearly that in their own view and that of the United States, whatever right they had was held in common with the Sacs & Foxes, as well North as South of the Des Moines." (Sac and Fox Ex. 164)

The reference from which we have quoted, together with other documents and happenings as set out in the Findings of Fact, have convinced this Commission that the Iowas have a recognized interest in the land involved herein, to wit, Royce Cession 175.

The more difficult question is the determination of the extent of that interest and as to how the territory involved or any award made therefor should be divided as between the Sac and Fox and the Iowa.

As noted, a reference is made previously to statement made in the Sac and Fox Exhibit 164 that, if a division of the land should ever take place between the Sac and Fox and Iowas, it would be measured "by their relative numbers." Elsewhere in the same document (p. 6) it is

stated that the claims of the Missouri Sac and Foxes and the Iowas "were regarded to be on the same footing and it will be observed that the considerations for the relinquishments in each case (referring to relinquishments mentioned) are the same as near as may be." However, this does not mean that the rights of the Confederated Sacs and Foxes (including both the Missouri and the Mississippi Sac and Foxes) and of the Iowas would necessarily be the same; and it is elsewhere stated (p. 6, 7) in said document that by reason of the ultimate removal of the Iowas from the eastern Iowa land "their right to it" (that is the eastern Iowa) in common with the Sacs and Foxes does not appear to have been regarded as very clear or of very great value." Same document elsewhere indicates that in numbers the Sacs and Foxes of Missouri constitute a minority of the Confederated Sacs and Foxes.

In letter of February 1, 1837 by C. A. Harris (presumably Commissioner of Indian Affairs) to the Secretary of War, he said with reference to the interest of the Iowas in the country between the Missouri and Mississippi Rivers that "the portion to which the Iowas are entitled, has never been set apart for them, nor can the true extent of their rights be now ascertained." (Underscoring supplied) (Iowa Ex. 73)

The United States arranged for a determination of the respective interests of the Sac and Fox and Iowa and a commission was appointed in 1834 to make such division says Dr. Anthony F. C. Wallace, an able anthropologist testifying for the petitioners, but that they "never actually solved the problem." (Tr. 474) Dr. Wallace further testified that there

was a discussion of this question in 1836 and 1838 but no agreement reached. Dr. Wallace further testified that in 1833-1834 an extremely civilized Indian of the Iowa Tribe, Young Mahaska, made his own legal deductions from the Treaty of 1825, and presumably his own investigation and determined that the Iowas were entitled to an exact 50% of all the territory between the Mississippi and Missouri Rivers and south of the northern line fixed by the treaty. Dr. Wallace, however, testified that in his judgment that was too large a percentage. Dr. Wallace, however, prepared a map on which he delineates the portion of Area 175 which he says in the period from approximately 1765 - 1812 was exclusively used by the Sac and Fox and the portion which he says was used jointly by Sac and Fox and the Iowas to the exclusion of others during said period. This map was introduced in evidence as Sac and Fox Exhibit 388. It shows as used jointly by Sac and Fox and the Iowa that portion of Cession 175 which the Iowa petitioners describe in their requested Finding No. 12. The absence of these Indians from Territory 175 from 1812 until approximately 1828 is said to have been caused by the demands of the United States that they leave this territory at the time of the 1812 war with Great Britain.

Of course, it is very much more difficult for this Commission at this date to determine the respective rights or interests of the Sac and Fox and the Iowa in the territory involved than it would have been for the treaty makers in 1825 or 1830 or for other contemporaries of those years or for even the investigators trying to do so in 1834 or 1837. In view of the statement made by Gen. Clark of the possession, use and

occupancy of an immense territory by the Iowa between the Missouri and the Mississippi Rivers in the early 1800's and the evidence in the record of occupancies by them of widely separated portions of that territory at different times in later years, we believe the evidence justifies the division of interests of the two tribes as set forth in Finding 89, namely; that of the Sac and Fox an exclusive interest in the lands of the cession lying northerly of the Red Cedar river-Mississippi river line, and equal interests in the cession southerly of that line.

As to the effect of the so-called Black Hawk War on the rights of the Sac and Fox, this Commission in the Creek case, Docket No. 21, a similar situation, has expressed its viewpoint as to what constitutes a war between nations; and as to the character of hostilities between Indians and the United States which would justify indemnity to the United States. Based on reasoning therein, as applied to the facts herein, we are of the opinion that the hostilities between the Black Hawk group of Indians and the United States did not constitute a war between nations, and would not justify the appropriation by the United States of lands of the Sac and Fox Nation as indemnity. The hostilities in the instant case were by an uncontrollable faction of the tribe, and were not approved or encouraged by the Sac and Fox as a Nation, or by said Nation's governing authorities, and therefore indemnity by the Nation was not due by it.

Inasmuch as counsel for the parties have agreed to confine this initial hearing of the case to the question of the rights of the petitioner groups to the lands ceded by the Treaty of September 21, 1832, we cannot determine the liability of the defendant, if any, until proof has been offered on the

matters necessary for such determination, including the consideration received by the Indians for the cessions of the lands, the acreage, and the value thereof at the time Indian title passed to defendant.

Edgar E. Witt
Chief Commissioner

Concurring:

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner