

BEFORE THE INDIAN CLAIMS COMMISSION

THE IOWA TRIBES, ET AL.,	)	
	)	
	)	
v.	)	Docket No. 153
	)	
THE UNITED STATES,	)	
	)	
Defendant.	)	

Decided: Feb. 9, 1959

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Petitioners herein; the Iowa Tribe of the Iowa Reservation in Kansas and Nebraska and the Iowa Tribe of the Iowa Reservation in Oklahoma comprising the Iowa Nation of Indians, are identifiable groups of American Indians residing within the territorial limits of the United States; and as such are the successors in interest to the Iowa Nation of Indians and have the capacity to maintain this present action on behalf of said Nation and all its members under the provisions of the Indian Claims Commission Act. (60 Stat. 1049, 1050 - Iowa Proposed Finding 1, Defendant's Proposed Finding 1)

2. The Commission on prior occasions has upheld the capacity of said petitioners to maintain other suits under the provisions of our Act. See - Commission's Finding 1, Otoe and Missouri, et al., vs. United States, 5 Ind. Cl. Com. 316; Commission's Finding 4, The Sac and Fox Tribe of Indians of Oklahoma, et al., v. United States, 5 Ind. Cl. Com. 367; Commission's Finding 1, The Iowa Tribe, et al., v. United States, 6 Ind. Cl. Com. 464

3. The Sac and Fox Nation (referred to in the petition as the Confederated Sac and Fox) is comprised of three petitioner bands, the Sac and Fox Tribe of Indians of Oklahoma, represented by individual petitioner, members, Edward Mack, Pauline Lewis and William Newashe, the Sac and Fox Tribe of Missouri represented by individual petitioner members, Charles W. Robidoux, John Connell, Dorothy Gilfillian, Thomas Greene, and Thomas Herrick, and the Sac and Fox Tribe of the Mississippi in Iowa, represented by individual petitioner members Kenneth Youngbear, Charles Davenport, Percy Bear, and Columbus Keahna. Said petitioner bands are identifiable groups of American Indians residing within the territorial limits of the United States and as such, being successors in interest to the Sac and Fox Nation and represented by individual member petitioners, are entitled to bring and maintain this action pursuant to the provisions of the Indian Claims Commission Act.

4. As in the case of the Iowa petitioner, the Commission has previously upheld the capacity of the Sac and Fox petitioners to maintain other suits under the provisions of our Act. See - Commission's Finding 1, Otoe and Missouriia, et al., v. United States, 5 Ind. Cl. Com. 316; Commission's Findings 1, 2, 3, The Sac and Fox Tribe of Indians of Oklahoma, et al., v. United States, 5 Ind. Cl. Com. 369; Commission's Finding 2, The Iowa Tribe, et al., v. United States, 6 Ind. Cl. Com. 464.

5. The lands involved in this proceeding are located in central Iowa and are designated as Cession 262 on the map Iowa 1 appearing in Royce's 18th Annual Report of the Bureau of American Ethnology, 1896-97.

Part II. Royce 262 was never specifically described in any one treaty but its boundaries can be determined by referring to other treaties of cession involving the adjoining areas. The two treaties of August 4, 1824 with the Iowa Nation (7 Stat. 231) and the Sac and Fox Nations (7 Stat. 231) fixed the south boundary line which coincides with the Iowa-Missouri State line. The treaty of July 15, 1830 (7 Stat. 326) with the Sac and Fox Nation, the Iowa Nation, and other Indians Tribes determined the north and west boundary lines. The Sac and Fox Treaty of October 21, 1837 (7 Stat. 540) established the eastern boundary line. (Sac and Fox Proposed Finding 5; Iowa Proposed Finding 8; Defendant's Request for Findings, etc., pp. 16, 23)

6. The Iowa Tribe ceded all its right, title, and interest in Cession 262 under Article I of the Treaty of October 19, 1838 (7 Stat. 563); which insofar as pertinent herein called for a cession of:

"\* \* \* all right or interest in the country between the Missouri and Mississippi rivers, and the boundary between the Sacs and Foxes, and Sioux, described in the second article of the treaty made with these and other tribes, on the 19th day of August 1825, to the full extent to which such claim is recognized in the third article of said treaty, \* \* \*"

7. The Sac and Fox Nation ceded all its right, title, and interest to Cession 262 under two treaties; the first, with the "Sacs and Foxes of Missouri" on October 21, 1837 (7 Stat. 543), who ceded under Article of said treaty all their interest to the land lying between the Mississippi and Missouri rivers,

"\* \* \* and the boundary line between the Sac and Fox and Sioux Indians, described in the second article of the treaty\* \* \* of August 19, 1825, to the full extent to which said claim was recognized in the third article of said treaty\* \* \*"

the second on October 11, 1842 (7 Stat. 596) with "The Confederated Tribes of Sac and Fox Indians," who under Article I of said treaty ceded:

"\* \* \*all the lands west of the Mississippi river to which they have any claim or title, or in which they have any interest whatever\* \* \*."

8. Royce Cession 262 involves lands embraced within that general area between the Mississippi and Missouri river below the boundary line separating the Sioux and Sac and Fox Tribes as fixed under Article 2 of the Treaty of August 19, 1825 (7 Stat. 272) at Prairie du Chien. Article 3 of the 1825 Prairie du Chien Treaty provided that:

"The Ioways accede to the arrangement between the Sacs and Foxes and the Sioux; but it is agreed between the Ioways and the confederated tribes of Sacs and Foxes, that the Ioways have just claim to a portion of the country between the boundary 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."

9. In the cases of Otoe and Missouri Tribe of Indians, et al., v. United States, 5 Ind. Cl. Com. 351 (Dockets 11-A, 138) and the Sac and Fox Tribe of Indians of Oklahoma, et al., v. United States, 5 Ind. Cl. Com. 367 (Docket 158) this Commission found as a matter of law that the language of the 1825 Prairie du Chien Treaty amounted to a recognition by the defendant of Iowa and Sac and Fox title to that general area described in Article 3 of said Treaty, even though the specific areas actually owned were never defined.

In Docket 158, at page 443 of the Commission's opinion, the following is stated:

"In view of (our) holding made later herein that the Treaty of August 19, 1825, called the Prairie du Chien Treaty, is thought by us to be recognition of title in the participants thereto 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."

Cession 262 lies wholly within that general area defined in Article 3 of the 1825 Prairie du Chien Treaty.

10. The Iowa Nation of Indians and the Sac and Fox Nation have recognized or reservation title to Cession 262, which lands are contained within that general area defined in Article 3 of the 1825 Prairie du Chien Treaty. In accordance with the language of Article 3 of said treaty (see Commission's Finding 8) their respective interests are separate and distinct, each holding exclusively of the other an undefined area within the cession.

11. With respect to all but a relatively small portion of Cession 262, the Iowa Nation and the Sac and Fox Nation are in substantial agreement as to the areas of exclusive ownership.

(a) The Iowa Nation claims exclusive ownership of,

"that portion of Cession 262 lying south of the southern watershed of the Racoon Fork of the Des Moines River, and south of the Des Moines River as far down stream as the present village of Eddyville, and west of the line running from Eddyville to the Iowa-Missouri state line at the watershed between the Grand and Chariton Rivers." (Iowa Proposed Finding 29)

(b) The Sac and Fox Nation agree that the Iowa Nation at the time of the 1825 Prairie du Chien Treaty used that portion of Cession 262,

"bounded on the south by the Missouri-Iowa state line, on the west by the western boundary line of Cession 262,

on the north by the south watershed line of the Racoon Fork of the Des Moines River and on the north and east by that River as far down stream as the location of the former upper Iowa village which was apparently near the present town of Eddyville, Iowa, and on the east by a line running south by southwest from the Eddyville, Iowa, point to the Missouri-Iowa State line between the watersheds of the Grand and Chariton Rivers. " (Sac and Fox Proposed Finding 24)

12. The Iowa Nation exerts a claim based upon joint usage with the Sac and Fox Nation prior to 1825 of a portion of Cession 262 lying east of the line drawn from Eddyville, Iowa, to the Missouri-Iowa State line which is referred to in the Iowa Proposed Finding 29 as set out above in the Commission's Finding 11(a). Iowa Proposed Finding 30 reads as follows:

"Prior to 1825 the Iowa Nation used jointly with the Sac and Fox that portion of Cession 262 lying due east of the line from Eddyville to the Iowa-Missouri State line referred to in Finding 29." (Underscoring supplied)

13. The Commission rejects as unsound the Iowa claim of title jointly with the Sac and Fox Nation to that area described in the Iowa Proposed Finding 30 based either on (a) recognized joint title under the provisions of the 1825 Prairie du Chien Treaty since the plain language of Article 3 of said treaty does not support such an interpretation, or (b) aboriginal title founded upon use and occupancy, since admittedly the Iowa Nation only used the area prior to 1825 and were not there at the time of the Treaty of October 19, 1838 (7 Stat. 568).

14. The Commission concludes from all the evidence that the Iowa Nation by virtue of the provisions of the 1825 Prairie du Chien treaty had recognized title exclusively to that area within Cession 262 lying southerly of a line commencing in the western boundary of

Cession 262 and running along the southern watershed of the Raccoon Fork until it joins the Des Moines River to the present town of Eddyville, Iowa, and thence westerly of a line running generally south from Eddyville, Iowa at the watershed of the Grand and Chariton Rivers; and, that by virtue of the provisions of the 1825 Prairie du Chien Treaty and from all of the evidence, the Sac and Fox Nation had recognized title exclusively to the balance of Cession 262. ( See map Iowa Ex. 306)

Edgar E. Witt  
Chief Commissioner

Louis J. O'Marr  
Associate Commissioner

Wm. M. Holt  
Associate Commissioner