



in Oklahoma, and, the Sac and Fox Nation consisting of the Sac and Fox Tribe of Indians of Oklahoma, the Sac and Fox Tribe of Indians of Missouri, and the Sac and Fox Tribe of the Mississippi in Iowa, and all the individual members named herein, in which said petitioners sue for additional compensation for those lands in central Iowa officially designated as Royce Cession 262. As we have found in the prior cases,<sup>1/</sup> and as we now find in the instant case, the petitioners are identifiable groups of American Indians residing within the territorial limits of the United States and have the capacity to bring this suit under the provisions of the Indian Claims Commission Act. In like manner we find that these petitioners are the proper representatives and successors in interest to those groups of Iowa and Sac and Fox Indians who participated in the Prairie du Chien Treaty of 1825 (7 Stat. 272), referred to hereafter the sake of brevity as the 1825 Treaty, and who, in the years that followed, ceded in three separate treaties with the United States all their interests in Royce Cession 262.

Specifically these treaties of cession were: the Treaty of October 1837 with the Missouri Sac and Fox (7 Stat. 540), the Treaty of October 19, 1838 with the Iowa Nation (7 Stat. 568), and finally the Treaty of October 11, 1842 with the confederated tribes of Sac and Fox Indians (7 Stat. 596). Each of these treaties substantially called for a general cession to the United States of all of the petitioners' interest to those lands lying between the Missouri and Mississippi Rivers and south of the Sioux-Sac and Fox line as described in Article 2 of the aforementioned 1825 Treaty. Within this vast area, and forming

the central portion thereof is Cession 262 whose boundaries are not set out in any one treaty but are the product of several separate instruments. The Sac and Fox Treaty of October 21, 1837 (7 Stat. 54) set up the eastern boundary line, and the southern line, which is the Iowa-Missouri State line, was fixed by the two treaties of August 4, 1824, concluded with the Iowa and Sac and Fox Indians (7 Stat. 229, 231). Finally, the Treaty of July 15, 1830 with the Iowas, Sac and Fox, and other tribes (7 Stat. 328) fixed the western and northern boundary lines of Cession 262.

The title question to Cession 262 is the agreed issue to be determined at this stage of the proceedings. We note that the petitioners rest their title claims either upon the theory of having a prior recognized or reservation title to Cession 262, or an Indian title perfected through aboriginal use and occupancy.

It is the Commission's considered opinion as shown hereafter that the question of a recognized or reservation title, which is fundamentally a question of law, decides the title issue in this case; and in this connection we need only cite and apply the rule found in the prior decisions of this Commission involving these same claimants upon the subject of recognized title concerning lands embraced within the terms of the 1825 treaty. Therefore, it would seem that the Commission, at least in this case, is relieved of the duty of setting out detailed findings of fact in support of ultimate findings as in the case of determining aboriginal or Indian title.

In Docket 158, this Commission had occasion to pass upon the effect of the provisions of Article 3 of the 1825 Treaty on the question of recognized title. The same issue is raised in the instant case. On page 443 of the

opinion therein, 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 to the lands described therein we think it unnecessary to discuss in much detail the evidence in the record as to 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 is part and parcel of that same vast area described in Article 3 of the 1825 Treaty, and if stare decisis means anything, we have no alternative but to adhere to our former ruling on this point and resolve the title question herein in favor of the petitioners and against the Government.<sup>2/</sup> We therefore hold as a matter of law that both the Iowa Nation of Indians and the Sac and Fox Nation, by virtue of the language of Article 3 of the 1825 Prairie du Chien Treaty, have a recognized or reservation title and compensable interest in Royce Cession 262.

The other question to be resolved, and the bone of contention between the respective petitioners is the extent and manner by which each nation holds its title to the subject lands. In other words, the problem of apportionment has been presented to the Commission for determination. In like manner the Commission believes that this issue can be resolved on certain agreed facts between the petitioners and upon controlling questions of law.

We shall discuss the suggestions advanced by the Iowa petitioners as the proper solution in the manner of effecting an equitable division of Cession 262. Of course it follows that once the extent of the Iowa petitioner's claim to Cession 262 has been resolved the Sac and Fox claim is in like manner settled.

In its proposed Finding 52, the Iowa petitioners suggest two alternative methods of dividing the area.<sup>3/</sup> They argue first that the Commission should find that the Prairie du Chien Treaty of 1825 recognized that the Iowa Nation of Indians and the Sac and Fox Nation had "joint Indian title" to all of Cession 262, so that in effect each nation enjoys an undivided moiety in the whole area. To accept the proposition as advanced by the Iowa petitioners, it is necessary to give that legal effect to that portion of the language in Article 3 of the 1825 Treaty, which reads as follows:

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3/ Proposed Findings of Fact by Iowa Petitioners, page 114.  
Proposed Finding 52

"By virtue of the Treaty of August 19, 1825 (7 Stat. 272):

- A. The Iowa Nation and the Sac and Fox Nation are found to have joint Indian title, recognized by the defendant to the lands in Royce Cession 262 described in Proposed Iowa Finding 6; or in the alternative,
- B. The Iowa Nation had Indian title recognized by the defendant:
  1. To the lands within Cession 262 lying southerly of a line commencing in the western boundary of Cession 262 and running along the southerly watershed of the Raccoon Fork until it joins the Des Moines River near the present City of Des Moines, Iowa, and thence down the Des Moines River to the present Town of Eddyville, Iowa, and thence westerly of a line running generally south from Eddyville, Iowa to the state line between Missouri and Iowa at the watershed of the Grand and Chariton Rivers, and
  2. Jointly with the Sac and Fox Nation to an undivided one-half interest in all that portion of Cession 262 lying due east of the line from Eddyville, Iowa, to the Missouri-Iowa state line hereinabove referred to."

"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 the Sacs and Foxes, that the Ioways have a just claim to a portion of the country between the boundary described in the next preceding article and the Missouri and Mississippi."

If this is the language relied upon by the Iowa petitioners as creating a "joint ownership" of the area described therein in the strict legal sense as the term might be used in real property law, we fail to see how a plain reading of the words therein lends itself to such an interpretation. When the Commission passed up the same question in Docket 158 relative to the Iowa and Sac and Fox having a recognized title to that area set out in Article 3 of the 1825 Treaty, it generally viewed such ownership in terms of separate and exclusive areas, and chose to make such separation when evidence showed that apportionment in this manner could be accomplished fairly and equitably.<sup>4/</sup>

Some emphasis has been made upon the fact that at various times, subsequent to the conclusion of the 1825 Treaty, certain Government officials, in commenting upon the results of the 1825 Treaty with reference to the Iowa and Sac and Fox claims, employed such phrases as "undivided interest", "owned in common," "held in common", "being joint or common," and other of similar import. The Commission studied all these sundry reports and statements in their entirety and concluded without too much difficulty that the writers never intended to give or to convey a legal interpretation to any of the treaty language. We do

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<sup>4/</sup> In Docket 158, the Commission did award jointly to the Iowa and Sac and Fox claimants a portion of Cession 175 in order to insure an equal interest. This was occasioned by the lack of evidence upon which the Commission could equitably separate the areas of actual ownership. The Commission made a factual determination based upon the evidence of joint usage of this area as of the date of the 1825 Prairie du Chien Treaty.

not consider these non-contemporaneous and non-legal statements as controlling or persuasive in changing the Commission's opinion that Article 3 of the 1825 Treaty was intended to recognize the title to the area described therein to be in the Iowa and Sac and Fox Indians, with each holding separate and exclusive areas therein.<sup>5/</sup>

The Commission notes with particular interest that such construction is perfectly consistent with the earlier position of the Iowa petitioners as adequately stated in their proposed findings of fact filed in Docket 138. That case also involved lands falling within the scope and meaning of Article 3 of the 1825 Treaty, and at that time the Iowa petitioners urged upon the Commission the following legal proposition:

"As pointed out by Proposed Finding of Fact 33, the Iowa Nation and the Sac and Fox were two distinct tribes. While the relationship between them was generally amicable, there was no common or joint ownership of land. Actually neither of these tribes at the time of the Prairie du Chien Treaties of 1825 and 1830 would have considered their land as jointly owned by the other.

"Moreover, Article 3 of the 1825 Prairie du Chien Treaty is not phrased in terms of joint ownership; rather this article is explicit recognition by the United States and the Sac and Fox that the Iowa Nation had \*\*\* a just claim to a portion of the country \*\*\* south of the Sioux line between the Missouri and Mississippi rivers." (Emphasis supplied)

The Commission therefore rejects the Iowa petitioners' suggestion of "joint ownership" with the Sac and Fox Nation of all of Cession 262 and turns its attention to the Iowa petitioners' second alternative proposal, that its predecessors had Indian title to that portion of Cession 262 as set out in the Proposed Finding 29. This area was outlined on a map prepared by Dr. Anthony

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<sup>5/</sup> Commission's Findings 8, 10

Wallace, who was offered as an expert witness on behalf of both the Iowa Nation of Indians and Sac and Fox Nation, and who has testified for these same Indians in other cases before the Commission. Dr. Wallace's map was admitted into evidence without objection as Iowa Exhibit 306. This section of Cession 262 is described in Iowa Proposed Finding 29 as:

" \* \* \* lying south of the southern watershed of the Raccoon Fork of the Des Moines River as far downstream 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."

In its Proposed Finding 24, the Sac and Fox Nation agrees substantially with the extent of the Iowa claims of Indian title to a portion of Cession 262 as set out above.<sup>6/</sup> Since we are concerned with arriving at an agreed division of property rights between the petitioners, the actual validity of the Iowa claims of aboriginal title is immaterial. The consent of the Sac and Fox Nation thereto is all that is needed in this instance to clear the air. The Commission therefore accepts and adopts that area described in the Iowa Proposed Finding 29 and the Sac and Fox Proposed Finding 24 as correctly stating the limits of the Iowa petitioners' claim of recognized title exclusively to a portion of Cession 262 as of the date of the Prairie du Chien Treaty of 1825.

One last question remains. The Iowa petitioners are also asking the Commission to find, under the 1825 Treaty, recognized title jointly with the Sac and Fox Nation to that relatively small area of land lying roughly west of the aforementioned line from Eddyville, Iowa, to the Iowa-Missouri state

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6/ Commission's Finding 11



line below the Des Moines River in the southeast corner of Cession 262. In sole support of said request the Iowa petitioners state in their Proposed Finding 30 that:

"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."

Of course we have already rejected the concept of recognized joint ownership to the whole of Cession 262. Even assuming the contrary and the correctness of the above quoted finding, the Commission is unable to find that language in the 1825 Treaty which would supply the retroactive application desired by the Iowa petitioners.<sup>7/</sup>

What the Commission is attempting to do in this case on the record before us, is to sever and apportion the respective ownership claims of the Iowa and the Sac and Fox Indians into separated bounded areas on the theory that if the true boundary lines had been actually drawn in 1825 said lines might substantially conform with our present determinations. Furthermore we find no reason for the Iowa petitioners to complain of an injustice, if we follow this method of proceeding. In its proposed findings filed in Docket 138, the Iowa Nation stated quite frankly:

"To decide this case, the Commission must do what the United States should have done in 1825 and 1830, and, on the basis of the record in this proceeding, reconstruct the boundaries as they existed at those dates \* \* \*"

and then with more emphasis it was stated further:

"The failure of the United States to designate boundaries as required by the 1825 treaty has thrust upon the Commission

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<sup>7/</sup> Commission's Findings 12, 13

that responsibility of reconstructing the boundaries of Iowa land in 151 as they existed in 1825 and 1830. 8/

We think the above statements are substantially sound and eminently just and fair when applied to the claims in this case. The Commission, therefore, sees no need to adopt a different course of action, and shall hold the ownership claim of the Iowa petitioners to those lands in Cession 262 in which a claim of ownership could have been asserted by their predecessors in interest as of the date of the 1825 Treaty. This area has already been determined as being that portion described in Iowa petitioners' Proposed Findings 29 and 52 (B) (1) and agreed to by the Sac and Fox petitioners in their Proposed Find-  
g 24. 9/

Having determined the extent of the Iowa petitioners' claim to Cession 262 it is only a matter of simple arithmetic, as between these petitioners, to award to the Sac and Fox Nation the balance of Cession 262. This end result comports favorably with the respective claims of these petitioners

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8/ Proposed Findings of Fact by Iowa Petitioners in Docket 138, pages 167, 173.

9/ Supra - Footnotes 3, 5, 6

relative to their exclusive and predominant use of Cession 262 as of the date of the 1825 Treaty. 10/

/s/ EDGAR E. WITT  
Chief Commissioner

We concur:

/s/ LOUIS J. O'MARR  
Associate Commissioner

/s/ WM. M. HOLT  
Associate Commissioner