

BEFORE THE INDIAN CLAIMS COMMISSION

OTTO AND MISSOURIA TRIBES)
 OF INDIANS,)
)
 Plaintiff,)
)
 v.)
)
 THE UNITED STATES OF AMERICA.)
)
 Defendant.)

Docket No. 11-A

THE IOWA TRIBES OF THE IOWA)
 RESERVATION IN KANSAS AND)
 NEBRASKA, ET AL.,)
)
 Petitioners,)
)
 v.)
)
 THE UNITED STATES OF AMERICA)
)
 Defendant.)

Docket No. 138

THE YANKTON SIOUX TRIBE OR)
 BAND OF INDIANS,)
)
 Petitioners,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 332-A

11-18-59

Subject: DETERMINATION OF THE ARTICLE 2 LINE,
1825 PRAIRIE DU CHIEN TREATY

PER CURIAM: In explanation of order made today:

Acting upon the motion of July 20, 1959, of the petitioners in
 Docket 332-A, the Yankton Sioux Tribe or Band of Indians, the Com-
 mission, by its order of September 6, 1959, permitted the aforesaid
 petitioners to intervene in the consolidated cases, Dockets Nos. 11-A
 and 138, for the limited purpose "of the determination by the Com-
 mission of the location of the line described in Article 2 of the
 Treaty of August 18, 1825 (7 Stat. 272)."

The line in question, often referred to as the "Sioux-Sac & Fox line" or "Yankton line" is set out in Article 2 of the 1825 Prairie du Chien Treaty:

"Article 2. It is agreed between the confederated Tribes of the Sacs and Foxes, 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 Desmoines river; and thence in a direct line to the lower fork of the Calumet river; and down that river to its juncture with the Missouri river. But the Yankton band of the Sioux tribe, being principally interested in the establishment of the line from the Forks of the Desmoines to the Missouri, and not being sufficiently represented to render the definitive establishment of that line proper, it is expressly declared that the line from the forks of the Desmoines to the forks of the Calumet river, and down that river to the Missouri, is not to be considered as settled until the assent of the Yankton band shall be given thereto. * * *."

By the treaty of July 15, 1830 (7 Stat. 328) at Prairie du Chien the Yankton Sioux gave assent to the line established under Article 2 of the 1825 Prairie du Chien Treaty. The 1830 Prairie du Chien Treaty¹ was also involved in Dockets 11-A and 138 where Royce Cession 151 was the subject matter of that proceeding.

In Dockets 11-A and 138 the Commission found and entered an interlocutory order to the effect that the petitioners therein, the Sac & Fox, Iowa, Omaha, and Otoe and Missouri Tribes of Indians, who are also parties to the present proceedings, by virtue of the 1825 and 1830 Prairie du Chien Treaties each had a one-fourth interest in that portion of

¹/ The assent of the Yankton Sioux was obtained in a subsequent proceeding at St. Louis on October 13, 1830.

Royce 151 located south of the line described in Article 2 of the 1825 treaty.^{2/} The Article 2 line as shown by the evidence in Dockets 11-A and 138, and which was not in dispute in that case, began at the upper fork of the Des Moines River and went directly northwest to the mouth of the Rock River as it enters the Calumet or Big Sioux River. It is the Rock River which the parties in Dockets 11-A and 138 pictured as the "lower fork of the Calumet river," as described in Article 2 of the 1825 treaty. The Commission in making its findings and entering its order never defined the Article 2 line nor did it identify by name or otherwise the "lower fork of the Calumet river."

The petitioners, The Yankton Sioux, challenge the location of the western terminus of the Article 2 line, claiming that the "lower fork"

2/ The Commission's order of November 29, 1957, amended Finding 50 of Dockets 11-A and 138 as follows:

"And that Finding No. 50 of said previous findings be stricken and that in lieu thereof said finding shall be made to read, as follows:

"50. The exterior boundary of the lands involved in these cases (Cession 151) was defined by Article 1 of the Treaty of July 15, 1830 (7 Stat. 328). Under the 1830 treaty the four tribes received the area in suit in common. We accordingly find that the interest of the tribes under the 1830 treaty were as follows:

"An undivided one-fourth interest each to the Iowa Tribe or Nation, the Otoe and Missouri Tribe, the Omaha Tribe and the Sac and Fox Tribe in that part of Tract 151 lying south of the line described in Article 2 of the Treaty of August 19, 1825."

of the Calumet or Sioux River is not the Rock River but was indeed another river known as the "Cherah" which flows from the east into the Calumet or Big Sioux near its juncture with the Missouri. This point is considerably south of the mouth of the Rock River where it joins the Calumet. Mapwise the petitioner relies upon two documents, an 1836 map by Nicollet depicting the hydrographical basin of the Mississippi River in which there is shown a tiny stream entering the Calumet or Sioux River from the east just above its juncture with the Missouri River (no treaty lines or cession lines are drawn on this map), and an 1858 map prepared in the Office of Indian Affairs showing an unnamed line commencing at Fort Dodge, Iowa, below the forks of the Des Moines River and proceeding due west to the mouth of the "Cherah River" (p. 27, Pet. Ex. 80).

Also included in the Yankton exhibits and supporting the position of the petitioners in Dockets 11-A and 138 is an 1897 map compiled in the Indian Office by R. D. Thompson showing a line specifically identified as the Sioux-Sac & Fox line. A portion of that line commences at the upper fork of the Des Moines River and proceeds northwest to the mouth of the Rock River where it enters the Calumet or Big Sioux River (p. 28, Pet. Ex. 80).

It should be noted, however, that none of the maps introduced on either side indicates the source upon which the drawings are based, nor does any other evidence introduced by the parties suggest a source.

The other evidence introduced on both sides concerns itself with the respective territorial claims of the tribes and is more argumentative

than probative insofar as determining the western terminus of the Sioux-Sac and Fox line.

The Commission's problem is to give definition to the 1825 treaty line. Royce 151, ceded under the 1830 Prairie du Chien treaty by all the parties who are now concerned with the 1825 line, includes within its boundaries the entire disputed portion. When both the 1825 treaty and the 1830 treaty are considered together there seems to be enough descriptive treaty language to indicate that the western terminus of the Sioux-Sac and Fox line as set forth in Article 2 of the 1825 Treaty is the mouth of the Rock River where it joins the Calumet or Big Sioux, and not the mouth of the "Cherah" River as contended by the Yankton Sioux.

At the time of the 1825 and 1830 Prairie du Chien Treaties the Rock River was an identifiable River and it can still be identified today.

So, two other Rivers, the Floyds River which enters the Missouri River on the east just south of the Calumet or Big Sioux and flows in the same general direction as the latter, and the Little Sioux River which enters the Missouri River on the east below the Floyds River and somewhat parallels the flow of both the Floyds River, and the Calumet or Big Sioux, are readily identifiable today. Both of these rivers have their sources well up into northern Iowa near the Iowa-Minnesota state line.

Turning first to Article 2 of the 1825 treaty we find that the western terminus of the disputed line is the "lower fork of the Calumet River" with the line then following down the Calumet or Big Sioux to its juncture with the Missouri. The choice of such language points out one important fact. The river, which is the lower fork of the Calumet, is well known

without being specifically named and must be a fairly substantial body of water. Also the western terminus of the Article 2 line must be located above the mouth of the Calumet or Big Sioux to be consistent with the treaty language. The line as fixed in the 1825 treaty is not disputed in the sense that it could not be determined at that time by the treaty participants, but the assent of the Yankton Sioux was not obtained at the time.

Commissioner William Clark, who was the principal Government representative in both the 1825 and 1830 treaties, sought to alleviate the unsettled state of the 1825 Article 2 line by suggesting a cession of the entire area on both sides of the line by all parties concerned, including of course the Yankton Sioux. Some of his statements at the 1830 treaty council are worthy of note:

"My children! The line between the Des Moines and Missouri Rivers as high as Calumet river, and down that river as low as the Ioways, has not been settled, the Sacs & Foxes having put in a claim to hunt on lands which the Yankton and Santee Sioux, and the Mahas, Ottobes and Ioways assert a right to part of.

"My children! I therefore propose, as a means of obviating further difficulties between yourselves, that you all relinquish to the U. States that portion of the country between the Des Moines and Missouri, which you all assert a right to hunt upon....."

And then he outlines the following suggested cession:

"My children! If all parties concerned, agree to this arrangement, the line will be from the second or upper fork of the Des Moines River to the forks of the first creek falling into the Calumet River, passing the heads of the Little Sioux and Floyds rivers and thence down said creek and Calumet River and down the Missouri River to the state line." (Underlining supplied.)

The above quoted language delineates generally the northern and western boundaries of Royce Cession 151 beginning at the eastern .

terminus of the 1825 Article 2 line and following north and then west to skirt the sources of the Floyds and Little Sioux Rivers, then southerly to reach what reasonably appears to be a fork of the same river which, when it joins the Calumet River, is identical with the western terminus of the 1825 Article 2 line, the "lower fork of the Calumet River."

Commissioner Clark's suggested cession was adopted and appears in Article 1 of the 1830 treaty as follows:

".....Beginning at the upper fork of the Desmoine River, and passing the sources of the Little Sioux, and Floyds Rivers, to the fork of the first creek which falls into the Big Sioux or Calumet on the east side; thence down said creek, and Calumet River to the Missouri River....."
(Art. 1, 7 Stat. 328.)

Upon comparison of the descriptive language and terms employed in Article 2 of the 1825 Treaty and Article I of the 1830 Treaty, it seems more reasonable to equate the "lower fork of the Calumet river" with "the first creek which falls into the Big Sioux or Calumet on the east side," than to consider either identical with the petitioner's "Cherah River" which is located just above the mouth of the Calumet or Big Sioux and too far below a point necessary to connect with the northern boundary line of Royce 151 in the 1830 treaty call. As depicted by Royce, that portion of the northwestern boundary line which follows "the first creek which falls into the Big Sioux or Calumet on the east side," is the Rock River. The correctness of the boundaries of Royce Cession 151 was not questioned in Dockets 11-A and 130, nor has it been made an issue in the present controversy.

Assuming that the Yankton Sioux position is sound and the Commission should draw the Sioux-Sac-Fox line to the mouth of the "Cherah River," the Commission would be faced with an enigma. The Yankton Sioux have

confessed to the absolute impossibility of matching the "Cherah" River with any of the known rivers, creeks, streams or forks which today would flow from the east into the Calumet or Big Sioux above its juncture with the Missouri River.^{3/}

It is concluded that upon the best available evidence and in light of the descriptive terms and language of the 1825 and 1830 Prairie du Chien Treaties, consistent with the intent of the parties thereto, that portion of the Sioux-Sac and Fox line, which begins at the upper fork of the Desmoines River and which proceeds in a general northwest direction, terminates at the mouth of the Rock River where it flows from the east into the Calumet or Big Sioux River. This Rock River, which was known at treaty times and which is easily identified today, is the same body of water described as the "lower fork of the Calumet river," in Article 2 of the 1825 treaty, and it is also the same body of water described as "the first creek which falls into the Big Sioux or Calumet on the east side," in Article I of the 1830 treaty.

3/ P. 21, Pet. Ex. 80 - Statement of Richard R. Wilkins, Esq., counsel for petitioners, Yankton Sioux:

"Nonetheless, I have been wholly unable to locate the present day name of any stream, creek, or fork, known as the 'Cherah River', either in the time of Nicollet's map (upon which it is shown near the mouth of the Big Sioux, Pl. Ex. 74, Docket 334-A) which is the earliest map showing that river, or at any subsequent time."

Dated at Washington, D. C., this 18th day of November, 1959.

Commissioner Arthur V. Watkins did not participate in this opinion.

Chief Commissioner

Associate Commissioner