

BEFORE THE INDIAN CLAIMS COMMISSION

THE SAC AND FOX TRIBE OF INDIANS OF OKLAHOMA, THE SAC AND FOX TRIBE OF THE MISSOURI, SAC AND FOX TRIBE OF THE MISSISSIPPI IN IOWA, AND EDWARD BUCK, PAULINE LEWIS, WILLIAM NEWASHE, ARCS BLACK, KENNETH YOUNGBEAR, CHARLES DAVENPORT, ALBERT DAVENPORT, PERCY BEAR, AND COLUMBUS KEARNA, appearing as the representatives of and on the relation of the SAC AND FOX OF THE MISSISSIPPI, and as representatives and on behalf of all of the members thereof, and together with CHARLES W. ROUIDOUX, JOHN CONNELL, DOROTHY GILFILLIAN, THOMAS GREEN, AND THOMAS HERRICK, appearing as the representatives of and on the relation of the CONFEDERATED OR UNITED TRIBES OF SAC AND FOX INDIANS and as representatives and on behalf of all the members thereof,

Petitioners,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 135-A

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Confederated or United Tribes of Sac and Fox Indians, referred to in the petition as "The Confederated Sac and Fox", and also known as the Sac and Fox Nation, is presently comprised of three bands, The Sac and Fox Tribe of Indians of Oklahoma, as represented by individual

petitioner members, Edward Mack, Pauline Lewis, and William Newashe; The Sac and Fox Tribe of Missouri, as represented by individual petitioner members, Charles W. Robidoux, John Connell, Dorothy Gilfillian, Thomas Green, and Thomas Herrick; and the Sac and Fox Tribe of the Mississippi in Iowa, as represented by individual petitioner members, Kenneth Youngbear, Charles Davenport, Percy Bear, and Columbus Keahna. These three bands are the successors in interest to the Sac and Fox Nation as it existed during the periods pertinent to the claims asserted herein, and these bands and the individual petitioner members thereof are entitled to bring this suit under the provisions of the Indian Claims Commission Act on behalf of the Sac and Fox Nation and its members.

2. The subject land is a tract consisting of 119,088.27 acres, and it is situated in the extreme southeastern part of the State of Iowa at the confluence of the Des Moines River and the Mississippi River. This area is officially designated as Royce Area 120 (Iowa I - Annual Report of the Bureau of Ethnology 1896-97, Part 2), but is more commonly referred to and known as the "Half breed" tract:

3. Originally the subject tract was a part of a larger area that was the subject of negotiations between the Sac and Fox Nation and the United States under the Treaty of August 4, 1824 (7 Stat. 229), and it came into being in the following manner:

(a) Pursuant to the provisions of Article I of the 1824 Treaty, the Sac and Fox Nation ceded to the United States all its right, title and interest to lands which it may lay claim to in the State of Missouri

situated and lying between the Missouri and Mississippi Rivers,

" . . . and a line running from the Missouri, at the entrance of Kansas River, north one hundred miles to the northwest corner of the state of Missouri, and from thence east to the Mississippi." (Art. I, 7 Stat. 229).

(b) Within this area, as provided further under Article I of the 1824 Treaty, there was created the following reservation for the benefit of the Sac and Fox half breeds;

"It being understood, that the small tract of land lying between the rivers Desmoine and Mississippi, and the section of the above line between the Mississippi and the Desmoine, is intended for the use of the half breeds belonging to the Sac and Fox Nation; they holding it, however, by the same title, and in the same manner that other Indian titles are held." (See Commission's Finding 24, Docket 135, 6 Ind. Cl. Comm. 463.)

4. At the time of the Treaty of August 4, 1824, the Sac and Fox Nation was desirous of providing a suitable tract of land for the use and benefit of its half breeds. These half breeds were the children of Sac and Fox women by white men. In agreeing to and in carrying out the request of the Sac and Fox Nation in this regard by incorporating the appropriate language in the 1824 Treaty, the United States did not benefit or profit by this transaction. It retained its reversionary interest in the subject reservation. The evidence in the record does not show that the United States either induced or requested the Sac and Fox Nation to donate land to its half breeds, or exerted any undue influence or pressure upon the Nation to accomplish the same purpose.

5. In donating outright Royce Area 120 to its half breeds under the

1824 Treaty, the Sac and Fox Nation divested itself of any further tribal interest in or tribal claim to the subject tract. It was contemplated by the Sac and Fox Nation, its eligible half breeds, and by the United States that this land would thereafter be divided up and subject to individual ownership.

6. The United States, was not obligated by treaty to survey the "Half breed" tract. However, there existed an apparent understanding between William Clark, the treaty Commissioner, and the Sac and Fox Chiefs, that as soon as he was authorized the area would be surveyed in order that each eligible half breed claimant would know his portion. In a letter to the Secretary of War in 1826, Clark indicated to his superiors that the Sac and Fox half breeds were already settling on the tract, and making improvements. He stated further that these half breeds were agitating for an immediate survey and division of the tract so as to enable them to improve their individual properties, and that several of the half breeds were anxious to hold their lands under a fee title.

7. In 1829 William Clark forwarded to the War Department a formal request from the Sac and Fox Chiefs for a survey of the "Half breed" tract. Included therein was a restatement of the tribes known position that it had been the intention of the Sac and Fox Nation at the time of the 1824 treaty to give the subject tract to their half breeds living at the time of the treaty for themselves and their heirs forever.

8. In 1831 Congress appropriated some \$2,000.00 to cover the survey of the "Half breed" tract. Thereafter the War Department advised William Clark to take immediate steps for a survey and division of the tract.

Upon completion of the survey public notice was to be given to the prospective claimants to present their claims for processing and validation.

In the spring of 1832 the town of Keokuk had been surveyed and by the early part of 1833, the entire tract had been officially surveyed.

9. At the time of the 1824 Treaty some of the half breeds were already living on the subject tract, but the actual number of Sac and Fox half breeds entitled to an individual portion of share of the tract had not been determined. It was estimated that there were between thirty eight and one hundred one eligible half breeds. While this issue was still in dispute, there arose further demands from other half breed owners that they be given full fee title to their property. In 1833 John W. Johnson, a half breed landowner, advised the Secretary of War, that a petition would be sent to the next Congress asking that a full fee title be granted to the eligible half breed landowners.

10. On June 30, 1834, the United States by statute relinquished its reversionary interest in the subject tract to the Sac and Fox half breeds:

"An Act to relinquish the reversionary interest of the United States in a certain Indian reservation lying between the rivers Mississippi and Desmoins.

"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,
That all the right, title, and interest which might accrue or revert to the United States to the reservation of land, lying between the rivers Desmoins and Mississippi, which was reserved for the use of the half-breeds belonging to the Sacs and Fox nations, now used by them, or some of them, under a treaty made and concluded between the United States and the Sacs and Fox tribes or nations of Indians, at Washington, on the fourth day of August, in the year one thousand eight hundred and twenty-four, be, and the same are hereby, relinquished and vested in the said half-breeds of the Sacs and Fox tribes or nations of Indians, who at the passage of this act are, under the reservation in the said treaty,

entitled, by the Indian title, to the same; with full power and authority to transfer their portions thereof, by sale, devise or descent, according to the laws of the state of Missouri.

"Approved, June 30, 1834." (4 Stat. 740; 23rd Cong. 1st Session).

11. With the release of the defendant's reversionary interest in Royce Area 120, the Sac and Fox half breed owners and claimants succeeded to the full benefits of absolute fee ownership. They now possessed the unqualified right to sell or dispose of their individual holdings and to pass good title. Whatever inconveniences, losses, or damages that may have been occasioned by any unreasonable delay on the part of the government in completing an early survey of the subject reservation, was borne by the half breed owners, and not by the Sac and Fox tribe. As a result, if there be any potential claim for damages, it is in substance an individual claim belonging at that time to the particular half breed owner or claimant, and not to the petitioners herein in their tribal capacity.

12. The Commission therefore finds and concludes that by virtue of the provisions of Article I of the Treaty of August 4, 1824 (7 Stat. 229), the Sac and Fox Nation gave up any tribal interest in Royce Area 120, nor did the said Nation thereafter reacquire any tribal interest in said tract. The Commission finds further that if petitioners have succeeded to the claims of any or all of the original Sac and Fox half breed owners, said claims are not tribal but individual in nature and not justiciable under the provisions of the Indian Claims Commission Act. Accordingly, petitioners

9 Ind. Cl. Comm. ³⁰¹~~289~~

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cannot maintain the instant suit as a tribal claim, and the petition should be dismissed.

Arthur V. Watkins
Chief Commissioner

William M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner