

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 TRICK, PAULINE LEWIS, WILLIAM NEWASHE, ANOS BLACK, KENNETH YOUNGBEAR, CHARLES DAVENPORT, ALBERT DAVENPORT, PERCY BEAR, and COLUMBUS KEAHNA, 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. ROBIDOUK, 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 THE SAC AND FOX INDIANS and as representatives on behalf of all the MEMBERS thereof,

Petitioners,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 135-A

Decided: May 8, 1961

Appearances:

George V. Pletsch, Attorney for the Sac and Fox Indian Tribe of Oklahoma,

Stanford Clinton, Attorney for the Sac and Fox Tribe of Missouri,

Lawrence C. Mills, Attorney for the Sac and Fox of the Mississippi in Iowa.

Walter J. Muir, with whom was Mr. Assistant Attorney General, Perry W. Morton, Attorneys for the defendant.

OPINION OF THE COMMISSION

Watkins, Chief Commissioner, delivered the opinion of the Commission.

On July 2, 1958, this Commission rendered its findings of fact and opinion in Docket 135, the Iowa Tribe of the Iowa Reservations et al, etc., v. United States, 6 Ind. Cl. Comm. 464, 496. In that case the Confederated or United Tribe of the Sac and Fox Indians, who are the petitioners herein, had included in their overall claim against the United States with respect to Royce Area 69, the claim asserted herein for Royce Area 120, more commonly referred to as the "Half breed" tract.

At that time this Commission determined the title question to Royce Area 69, and with respect to Sac and Fox claims to the "Half breed" tract we stated the following:

"Under the terms of the Treaty of 1824 a reservation was given outright to the Sac and Fox half breeds and this reserve was never ceded back or purchased by the United States, although requested to do so by the Sac and Fox. Instead, Congress by the Act of June 30, 1834, released its reversionary interest therein to the Sac and Fox half-breeds, granting them the full power and authority to transfer and convey a full fee. . .

"On the proofs before us the Commission finds no basis upon which to attach either legal or moral liability to the defendant, if we deal with cession 120 as we would in the ordinary title case involving lands ceded to the United States. However, we shall reserve final judgment in the matter of cession 120 and afford an opportunity to the petitioner Sac and Fox, if it so desires, to present any additional evidence, covering the period 1824 to 1834 which would demonstrate to the satisfaction of the Commission that the defendant's conduct relative to the 'Half-breed' tract work such an injustice or injury the petitioner Sac and Fox in such a way as would oblige and compel the defendant to respond in measurable damages under the provisions of the Indian Claims Commission Act." (6 Ind. Cl. Comm. 464, 511)

Following our decision, and with the Commission's approval, the petitioners

separated their claim for Royce Area 120 from Docket 135, and incorporated the same in a new petition, docketed herein as 135-A. The petitioners then filed one additional piece of documentary evidence, which was designated "Sac and Fox Ex. 186", and which document comprised selected excerpts taken from the case of Joseph Webster v. Hugh T. Reid and reported in I Iowa Reports 615. 1/

The gravamen of petitioners' complaint against the United States, and the basis of its asserted claim to Royce Area 120, may be stated as follows: First, the half breed tract was created for the benefit of the United States as a payoff to certain influential half breeds, and in particular Maurice Blondeau, for their efforts in securing the Sac and Fox cession of Royce Area 69 under the provisions of the Treaty of August 4, 1824. Secondly, petitioners then argue that, in the event the Commission finds that the half breed reservation was created at the request of and for the benefit of the Sac and Fox Nation, the United States violated its 1824 treaty obligations by failing to survey the tract, failing to see its division among the half breeds and failing to determine who the half breeds were. In either case we cannot agree with the petitioners' conclusions.

---

1/ The Commission fails to see how the decision in this case aids the petitioners. It would seem that some principles expoused by the Court therein run counter to the petitioners assertion of a tribal interest in the half breed tract. For example there is the following statement in the Court's opinion.

". . . The treaty of 1825 conferred upon the half breeds the right to private property in the lands - not that of sovereignty over them. The provision that they were to hold it by the same title and in the same manner as other Indian lands are held, was intended principally, if not entirely, to prevent them from transferring their property without the consent of the United States, and the jurisdiction of the latter became entire and absolute. . ."  
(I Morris Iowa Reports 467, 426.)

To begin with, the Commission finds that contrary to the petitioners' contentions, the evidence in the record shows that the United States created the half breed tract at the behest of the Sac and Fox nation, not for the tribes' benefit or the Government's benefit, but for the sole benefit of the Sac and Fox half breeds. We need only cite a few examples from the evidence which support the Commission's findings and conclusion in this regard.

In 1826 the Sac and Fox tribe submitted to William Clark, the Superintendent of Indian Affairs, a list of thirty eight eligible half breeds who were entitled to share in a partition of the half breed tract as soon as it could be surveyed. Although the Government was not obligated under the 1824 treaty to survey the tract, General Clark had promised a government survey of the area as soon as he was authorized to institute one. Appended to the list of half breed names was a message from the Sac and Fox chiefs which read in part as follows:

"Father - Last year while at Pirarie des Chiens we wrote a letter to our Great Father the President of the United States requesting him to have the lands surveyed which we give to our relations the half breeds of our nations at the Treaty made at the City (of) Washington on the 4th of August 1824, but as yet we have received no answer. . . .

"Father - Above is the name and ages of the half breeds of our nation who were in existence when we made the Treaty and to whom we give the Tract of land and to none others whatever. (Emphasis supplied)

"Father - we wish you to interest yourself for our relatives the half breeds of our nations who are mentioned in the above list to have their land surveyed and equally divided, it being perfectly understood at the beforementioned Treaty that the late Maurice Blondeau was to have his choice of any place in the said Tract of land so granted. . . ."  
(Sac and Fox Ex. 124)

Again on September 29, 1829, in a letter from William Clark to Secretary of War, Eaton, we find the same theme repeated with respect to the status of the "half breed" tract in a formal communique signed by the principal chiefs of the Sac and Fox Nation, one of whom was the famous Keokuk. Contained therein are the following pertinent excerpts:

"We therefore do request that you will have the goodness to order the above land, reserved for our half breeds, surveyed and divided equally between them, as to quantity, quality, and situations. We wish you as our (illegible) stand, that it was our intention within mentioned tract of land to our half breeds born at the time of signing that Treaty, and where blood runs equal, yours and mine in their veins, to those children our nation gives that land - for themselves & their heirs forever." (Emphasis supplied, Sac and Fox Ex. 126)

During the same year at a pre-treaty council with the Winnebagoes and other tribes, Keokuk had occasion to speak out again in connection with the half breed tract. He deplored the fact that the half breed tract had not yet been surveyed, and again he observed that this tract was reserved "for half breeds (that is the children of Sac and Fox women by white men) and their children forever and for them only" (Sac and Fox Ex. 125).

In view of the above and in the absence of any real evidence to indicate the contrary, the Commission found that the Sac and Fox Nation intended to make, and did so make, an outright gift of a portion of their country to their half breeds, and, by so doing, it completely divested itself of any further tribal interest in the subject tract. Nor did it acquire any new interest thereafter. For all intents and purposes the Sac and Fox half breeds living at the time of the 1824 treaty became the true owners, holding the reservation in common in anticipation that within the near future the tract would be surveyed and divided up among them as individual owners. It

would never be communal property among its new owners. That complete and absolute private ownership was the ultimate objective can be substantiated by evidence in the record showing agitation among the half breeds for fee simple titles to their properties. This goal was finally reached in 1834, when the United States by statute released its reversionary interest to the Sac and Fox half breeds, and to them alone (14 Stat. 740).

We also find that the evidence fails to support petitioners' allegations of fraud and chicanery on the part of the defendant, to wit, that the United States induced the Sac and Fox Nations to give over the subject tract as payoff to certain influential half breeds, and in particular Maurice Blondeau. Blondeau undoubtedly had some influence since he was the Sac interpreter and he was also a potential beneficiary of the contemplated Sac and Fox land donation. However, in the absence of any additional evidence, these facts alone do not prove fraud on his part, or unfair and dishonorable dealings on the part of the United States. If we give credence to the early statements of the Sac and Fox chiefs in 1826, and there is no valid reason not to, the Commission can only conclude that Blondeau's potential reward had the blessings of the tribe. What else can be read into the tribal declaration,

" . . . it being perfectly understood at the beforementioned treaty that the late Maurice Blondeau was to have his choice of any place in said tract of land so granted." (Ibid)

We can dispose of petitioners' further contention that defendant violated its 1824 treaty obligations by failing to make an immediate survey on the half breed tract and a determination of the eligible claimants, all to injury and damage of the tribe, by simply saying that, besides finding no such treaty obligation we believe that the petitioners have assumed a tribal interest

in subject tract which they no longer enjoyed after 1824.

Royce Area 120 was created for the direct benefit of the Sac and Fox half breeds, and for them alone. Any failure on the part of the defendant to survey the tract and determine the rightful claimants (assuming there was such an obligation), was of genuine concern to the half breeds and worked an injury upon them and not upon the tribe. Any potential damage suits inured to the benefit of individual half breed owners and claimants. Even assuming the capacity of the petitioners herein to present the accumulated grievances of all the Sac and Fox half breeds with respect to subject tract, this fact alone does not convert a collection of individual claims into a tribal interest cognizable within the meaning of the Indian Claims Commission Act. <sup>2/</sup>

The Commission concludes therefore that upon the pleadings and evidence herein, the petitioners have not presented a claim to Royce Area 120 within the meaning of our Act and upon which relief can be granted. Accordingly, the petition is dismissed.

Arthur V. Watkins  
Chief Commissioner

We Concur:

Wm. M. Holt  
Associate Commissioner

T. Harold Scott  
Associate Commissioner

<sup>2/</sup> Contrary to the petitioners' viewpoint we believe that in the case of Missouria Tribe of Indians v. United States (2 Ind. Cl. Comm. 297), the Commission was confronted with somewhat similar contentions with respect to the Government's role in the creation of the Otoe half breed reserve under Article X of the Treaty of July 15, 1830, (7 Stat. 323). We dismissed the Otoe and Missouria Tribe's claim in this regard and the overall conclusions of law in that case would seem to apply in the instant case.