

BEFORE THE INDIAN CLAIMS COMMISSION

THE IOWA TRIBE OF THE IOWA)
 RESERVATION IN KANSAS AND)
 NEBRASKA, ET AL.,)
)
 Petitioners,)
)
 vs.)
)
 THE UNITED STATES,)
)
 Defendant.)

Docket No. 209

Decided : June 1, 1962

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. As heretofore found by the Commission in Docket No. 158 (5 Ind. Cl. Comm. 367-369; Findings 1-4), the petitioners named herein constitute and represent respectively the Iowa Nation and the Sac and Fox Nation, parties to treaties referred to below. Said petitioners have the capacity to maintain this action.
2. The lands involved in this proceeding, approximately 400 sections in southeast Iowa, are described on Royce's map of Iowa as Cession 226, and are so referred to hereinafter.
3. Cession 226 and Cession 175, a tract in eastern Iowa which surrounds Cession 226 on three sides, were part of an area in Iowa described in Article 3 of the Treaty of Prairie du Chien, concluded on August 19, 1825 (7 Stat. 272). As heretofore found by the Commission in Docket No. 158 (Findings 37, 47, 49) by said Treaty of 1825 the United States recognized the title of the Sac and Fox and Iowa Nations to lands

in Iowa which included Cession 226 and 175, and it was agreed in Article 3,

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.

However, no arrangement was ever made for a division of any part of the area between the two nations, as contemplated by Article 3.

4. The Commission has heretofore found in Docket No. 158 (Finding 89) that the Iowa and Sac and Fox jointly had Indian title to that part of Cession 175 lying south of a line extending from the point where the western boundary of said cession crosses the Red Cedar River to a point on the Mississippi River five miles northeast of Muscatine, Iowa. Cession 226 lies entirely within the boundaries of Cession 175 south of the line so described.

5. In a stipulation and agreement filed on November 5, 1959, the petitioners and the defendant have stipulated as follows:

The lands involved in this Docket (Royce's Cession 226) are a part of the same area described in Article 3 of the Treaty of Prairie du Chien concluded on August 19, 1825 (7 Stat. 272). The Commission has held in its decisions rendered in Dockets Nos. 153. (7 Ind. Cl. Comm. 98) and 158 (5 Ind. Cl. Comm. 438) that the United States by Article 3 of the 1825 Treaty of Prairie du Chien recognized the title of the Sac and Fox Nation and the Iowa Nation to the lands described in said article. The holdings of the Commission in said cases with respect to recognized title by the provisions of the 1825 Treaty of Prairie du Chien are controlling and determinative with respect to the issue of recognized title in this case.

6. Cession 226 was carved out of Cession 175 and reserved to the Sac and Fox Nation under the Treaty of September 21, 1832 (7 Stat. 374)

whereby the Sac and Fox interest in Cession 175 was ceded to the United States.

7. The Sac and Fox Nation ceded Cession 226 to the United States under the Treaty of September 28, 1836 (7 Stat. 520). The treaty was ratified by the Senate with an amendment which provided as follows (7 Stat. 523):

The Ioway Indians having set up a claim to a part of the lands ceded by this treaty, it is therefore hereby provide, that the President of the United States shall cause the validity and extent of said claim to be ascertained, and upon a relinquishment of said claim to the United States, he shall cause the reasonable and fair value thereof to be paid to said Ioway Indians, and the same amount to be deducted from the sum stipulated to be paid to the Sacs and Foxes.

It does not appear that any investigation was thereafter made to ascertain the validity or extent of the Iowa claim.

8. Prior to the Treaty of October 19, 1838 (7 Stat. 568) the Iowa Nation had requested of the United States that it be paid for its interest in all of the lands between the Mississippi and Missouri Rivers north of the State of Missouri and east of Cession 151, but its requests were, until 1838, entirely ignored by the defendant.

9. Any interest the Iowa Nation had in Cession 226 was not extinguished until the Treaty of October 19, 1838 (7 Stat. 568).

10. In 1806, the principal hunting country of the Sac and Fox Nation was reported to be "on both sides of the Mississippi, from the mouth of the Ouisconsin to the mouth of the Illinois river." A large Sac village was established on or near the mouth of the Iowa River near to Royce Area 226 in the 1770's. There may have been no Sac village on the Iowa River for a few years after 1818. However, when the remaining members

of the Sac and Fox Nation left Illinois commencing in 1828, a new village was established on the Iowa River within Cession 226.

The Iowas were in the southern part of Cession 175 as late as 1823. The Iowas were in the habit of making continuous usage of the land in Cession 175 in a belt eastward from their major village on the Des Moines River about 125 miles up from its mouth. As of 1803-04 the Iowa and Sac and Fox jointly used to an equal extent the portion of Cession 175 lying southwest of a line drawn from a point where the western boundary of Cession 175 crosses the Red Cedar River to a point on the Mississippi River about five miles northeast of Muscatine, Iowa. During the period between 1804 and the conclusion of the War of 1812, the Iowa Nation largely withdrew from the aforementioned portion of Cession 175, partly as a result of actions by the defendant. After the War of 1812, a portion of the Iowa Nation returned and continued to use and occupy to some degree the southern part of Cession 175. Cession 226 is located south of the above-described line and is surrounded on three sides by Cession 175.

11. At the time their respective interests were ceded to the United States by the Sac and Fox treaty of September 28, 1836 (7 Stat. 520) and the Iowa treaty of October 19, 1838 (7 Stat 568), the Sac and Fox Nation and the Iowa Nation each had an undivided one-half interest in Cession 226.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner