BEFORE THE INDIAN CLAIMS COMMISSION

THE SAC AND FOX TRIBE OF OKLAHOMA
ET AL.,

Petitioners,

v.

THE UNITED STATES,

Defendant.

Docket No. 220

Decided: November 28, 1962

FINDINGS OF FACT

1. The Sac and Fox Tribe of Indians of Oklahoma, hereinafter referred to as the Oklahoma Sac and Fox, as represented by individual petitioner members, Edward Mack, Pauline Lewis, and William Newashe, is an identifiable group of American Indians having the right and capacity to bring and maintain this cause of action in behalf of all its members and all other Sac and Fox Indians similarly situated who may have an interest in the subject matter under Section 10 of the Indian Claims Commission Act. (60 Stat. 1049)

2. The petitioner, the Sac and Fox Tribe of the Mississippi in Iowa, also known as the Iowa Sac and Fox, as represented by individual petitioner members, Kenneth Youngbear, Charles Davenport, Harry Lincoln, Albert Davenport, Edward Davenport, Percy Bear, and Columbus Keahna, is an identifiable group of American Indians having the right and capacity to bring this suit in behalf of all its members and all other Sac and Fox similarly situated who may have an interest in the subject matter of this suit, under Section 10 of the Indian Claims Commission Act.
3. Early in the eighteenth century the Sac Tribe of Indians and the Fox Tribe of Indians, then independent tribes, confederated or merged their respective interests while maintaining their identities. Thereafter they were known and generally treated with by the Government as the Confederated or United Tribes of Sac and Fox Indians. By 1836 there came into existence a band of Sac and Fox Indians, who separated from the confederated group, and were known and treated with by the Government under the name of "The Sac and Fox Indians of Missouri," or "Missouri Sac and Fox." They are not parties to this lawsuit and have no interest herein.

By 1842 the confederated or united tribes were also known and identified as the Sac and Fox of the Mississippi. In that year these Indians concluded a treaty with the United States by which they ceded all their lands in Iowa and removed to a new reservation assigned to them west of the Missouri River in Kansas. In the winter of 1854 and 1855, a portion of the tribe, consisting for the most part of Fox Indians, because of internal difficulties and general dissatisfaction with their lot, left the tribe and returned to Iowa. From their own funds these Indians purchased a small tract near Tama, Iowa. Other groups and small parties of Sac and Fox Indians followed their brethren in each of the years from 1862 to 1866 inclusive. These Indians became identified and recognized as the Sacs and Foxes of Iowa. Their abandonment of the Kansas reservation and taking up residence in Iowa was done without the consent of the Confederated Sac and Fox tribes or the United States.
4. In 1856 the General Assembly of Iowa passed an act legalizing the residence of these Sac and Fox Indians within the State, and requesting the Secretary of War to pay them their annuities at their new home. Section I of said Act reads as follows:

"An act permitting certain Indians to reside within the State.
"Section 1. Be it enacted by the General Assembly of the State of Iowa, That the consent of the State is hereby given that the Indians now residing in Tama County, known as a portion of the Sacs and Foxes, be permitted to remain and reside in said State, and that the Governor be requested to inform the Secretary of War thereof, and urge on said department the propriety of paying said Indians their proportion of the annuities due and to become due to said tribe of Sac and Fox Indians.

* * * * *

"Approved July 15, 1856."

5. From the time these Iowa Sac and Fox first returned to Iowa up until 1866, the United States assigned no Indian Agent or other officer to them. It does not appear that the Government in any manner recognized their status although well aware of their presence as evidenced by the recitals in the treaty of 1859, hereinafter referred to. Not until 1866 was the first Indian agent approved for them in the person of Major Leander Clark. In that year he took a census of the Iowa Sac and Fox, which showed that they numbered 264. With the exception of the sum of $5,359.06, expended by Major Clark for goods and traveling expenses, these Indians received no annuity payments from 1855 to 1866.

6. On October 1, 1859, the United States concluded a treaty of cession with the confederated tribes of Sacs and Foxes of the Mississippi at the
Sac and Fox agency in Kansas (15 Stat. 467). Under Article I of said treaty, a portion of the existing reservation was to be set aside for the individual use of the members under an assignment program whereby each member, regardless of sex or age was to receive, as far as possible, eighty-acre contingent tracts. However, the exterior boundary of all the assigned lands, including any unassigned area "shall constitute and be known as the reservation of the Sacs and Foxes of the Mississippi...."

Having set up a diminished reservation, it was provided further under Articles 4 and 5 of said treaty, that the surplus lands would be offered for public sale, "under the direction of the Secretary of Interior," and the proceeds of said sale would be applied toward liquidating the outstanding tribal indebtedness as well as certain individual obligations.

Under Article 7 of said treaty the confederated tribes sought to extend the benefits and advantages of said treaty to all absent members who would rejoin them provided however:

"... That those who do no rejoin and permanently reunite themselves with the tribe within one year from the date of ratification of this treaty shall not be entitled to the benefit of any of its stipulations." (Art. 7, 15 Stat. 467)

How many absent members ever availed themselves of the opportunity of returning to the parent group within the time limitations imposed under this provision of the treaty is indeterminate.

7. By the Act of Congress of March 2, 1867, appropriating money "for the purpose of paying the current and contingent expenses of the Indian Department, and fulfilling treaty stipulations with the various Indian tribes," it was provided among other things,
"... That the band of Sacs and Foxes of the Mississippi now in Tamar County, Iowa, shall be paid pro rata, according to their numbers, of the annuities, so long as they are peaceful and have the assent of the Government of Iowa to reside in that State." (14 Stat. 492, 507)

Thereafter and up until 1884, the Iowa Sac and Fox received their proportional share of the tribal annuities accruing to the Sac and Fox Nation under the treaties of 1804 (7 Stat. 84), 1837 (7 Stat. 540), and 1842 (7 Stat. 596). Said annuity payments amounted to $11,174.66.

8. On February 18, 1867, the United States concluded a treaty of cession with the confederated tribes of the Sacs and Foxes of the Mississippi at the Kansas Reservation (15 Stat. 495). Under Articles 1 and 2 of said treaty, the Indians agreed to cede to the United States all of their Kansas reservation with the improvements thereon. In consideration for the cession the United States agreed under Article 3 of the treaty to pay the Indians one dollar an acre for the ceded land. In addition the United States agreed to pay the outstanding tribal indebtedness.

Article 6 of the treaty established a new reservation as follows:

"The United States agree, in consideration of the improvements upon the said reservation, to give to the Sacs and Foxes for their future home a tract of land in the Indian country south of Kansas, and south of the Cherokee lands, not exceeding seven hundred and fifty square miles in extent. The selection of such new reservation shall be made under the direction of the Secretary of Interior, and with his approval, by Commissioners appointed by the said Secretary, who shall visit the Indian country, with delegations from all the tribes proposing to remove thereto. . ."

The new reservation in the Indian Territory which was finally selected and approved for the Sac and Fox Nation comprised two contiguous tracts, and was located on lands formerly belonging to the Creek Nation. The
reservation was rectangular in shape being approximately 43 miles long from north to south, and 17 miles wide from east to west. It was geographically situated in the central portion of the State of Oklahoma and is bounded on the North by the Cimarron River, on the West by the lands of the Iowa and Kickapoo Indians, on the East by the lands of the Creek Nation, and on the South by the lands of the Seminole and Potawatomi Indians and the North fork of the Canadian River. As thereafter surveyed and marked, the Sac and Fox reservation consisted of approximately 479,688.05 acres and is identified officially as Royce Area 495.

9. Article 21 of the 1867 Treaty, as did Article 7 of the 1859 Treaty, expressed the desire of the Sac and Fox Nation to have all absent members of the tribe reunited with the parent group. The Commissioner of Indian Affairs was authorized to institute the necessary proceedings to accomplish that end.

There was a further provision with respect to the distribution of tribal annuities as follows:

"...; and no part of the funds arising from or due the nation under this or previous treaty stipulations shall be paid to any bands or parts of bands who do not permanently reside on the reservation set apart to them by the Government in the Indian Territory, as provided in this treaty, except those residing in the State of Iowa; ..." (Emphasis supplied)

This treaty recognition of the rights of the Sac and Foxes in Iowa to share in the tribal annuities is consistent with the aforementioned Appropriation Act of March 2, 1867 (14 Stat. 507) under which they received their first annuity payments, and which act was passed prior to the ratification of the 1867 treaty on October 14, 1868.
10. After the 1867 Treaty was concluded with the confederated tribes of Sac and Fox for the cession of all their Kansas lands, the Iowa Sac and Fox, continued to receive their proportionate share of the tribal annuities at the Tama Reservation. At the same time they steadfastly refused all overtures by the government and the confederated tribes to abandon their Iowa homes and rejoin the parent group upon the new reservation in the Indian Territory.

11. By the Indian Appropriation Act of March 2, 1889 (25 Stat. 980), Congress authorized the President to appoint a three man Commission (hereafter better known as the "Cherokee" or "Jerome" Commission) for the purposes of negotiating with the Cherokee Indians and with all other Indians owning or claiming lands lying west of the ninety-sixth degree of longitude in the Indian Territory for the cession to the United States of all their title, claim, or interest of every kind or character in and to said lands." (§ 14, 25 Stat. 980)

On May 31, 1890, the Commission opened negotiations with the Oklahoma Sac and Fox for the purchase by the United States of all surplus lands on the Sac and Fox Reservation. An agreement was concluded on June 12, 1890, whereby in consideration of $485,000 the Oklahoma Sac and Fox sold all their surplus unallotted lands to the United States. As to the allotments, the agreement permitted each man, woman, and child belonging to the Oklahoma Sac and Fox, to take 160 acres anywhere on the reservation.

12. Under Article VII of the 1890 agreement, the beneficiaries thereunder were limited to the following classes, to wit:

... to those persons whose names are now on the rolls as Sacs and Foxes at the said Sac and Fox Agency; and those that may be born to them and entitled by the laws
and customs of said Sac and Fox Nation to go upon said roll before said allotments are made; and those that may be adopted into said nation according to law by the National Council before said allotments are made."

The purpose of this article and its legal effect, was to insure that those members of Iowa Sac and Fox, living on the Tama, Iowa Reservation, would not share in the benefits of said agreement.

13. Prior to the 1890 Sac and Fox agreement, and as early as 1885, the Iowa Sac and Fox had asserted an interest in the Oklahoma reservation. In that year the Iowa group asked to share in the proceeds of an 1884 grazing lease which had been negotiated by the Oklahoma Sac and Fox. These Oklahoma Indians vehemently denied the validity of any such claim by the Iowa Sac and Fox on the grounds, that they, the Oklahoma Sac and Fox, were the sole owners of the Oklahoma reservation. In response to the position taken by the Oklahoma Sac and Fox, the Indian Bureau officially sided with Iowa Indians relative to their tribal interest in the Oklahoma reservation with the following statement:

In view of the fact that both branches of the tribe have an equal right under the treaty of 1868 to a home on the reservation, it being given to them in consequence of certain valuable considerations relinquished by the tribe as a whole, and as Article XXI of said treaty expressly provided, that the branch of tribe residing in Iowa shall continue to receive their share of all funds arising from or due the nation under that or previous treaty stipulations, I am inclined to the opinion that any general national fund such as the sale of the reservation would produce or as would arise from it through leasing it to outsiders for grazing purposes, should be shared in equally by every member of the nation included in the branch in Iowa and in the branch in the Indian Territory. (memorandum report of Indian Bureau, June 1, 1890)
14. In order to extend the benefits of a "national government," as provided in Article 9 of the 1867 Treaty, the Sac and Foxes, in convention assembled at the Sac and Fox Agency in the Indian Territory, adopted on March 26, 1885, a "Constitution of the Sac and Fox Nation". Among its provisions the Constitution establishes all lands belonging to the tribe as "common property," and causes the forfeiture of the tribal rights of any citizen who shall remove himself from the reservation and become a citizen of any other government.

15. On June 1, 1886, the Secretary of Interior made a further announcement with respect to tribal status of the Oklahoma and the Iowa Sac and Fox which runs counter to constitutional provisions governing the Oklahoma Indians. In considering a question with respect to the distribution of tribal funds from treaty provisions, the Secretary advised the Indian Bureau as follows:

The Sac and Fox Indians of the Mississippi, one of the parties to this treaty (February 18, 1867), include at present three classes, viz: (1) Those now living on the reservation; (2) those living in Kansas; (3) those living in the State of Iowa. The treaty was made with the tribe, and all of the several bands or classes composing the tribe are bound by its provisions.

16. On June 16, 1890, the Secretary of Interior forwarded to the President of the United States, the 1890 agreement concluded by the Jerome Commission with the Oklahoma Sac and Fox. In his letter of transmittal to the President the Secretary included his recommendations. Consistent with the previous position taken by the department concerning the respective interests of the Oklahoma and Iowa Sac and Fox in the Oklahoma
reservation, the Secretary recommended Presidential approval of the agreement as written with the exception of Article VII thereof, which limits the benefits of the agreement to the Sacs and Foxes in Oklahoma. He asks that this clause be held inoperative, and that the agreement should be ratified on condition that all members of the tribe in the Indian Territory and Iowa should be entitled to participate in the proceeds from the sale of these lands. It is the Secretary's position that,

The Indian Territory reservation was given to the tribe in consideration of the improvements in which the Iowa branch were equitably interested, having been made from the proceeds of the sale of lands held by the tribe in common, and their interest therein ought not to be diverted to others without their consent.

17. On July 3, 1890, the Congress received the President's message whereby he submitted for its consideration the agreement "concluded between the Jerome Commission and the Sac and Fox Nation of Indians in the Indian Territory, on the 12th day June last."

In his message the President took issue with the expressed opinion of the Secretary of the Interior concerning the tribal interest, if any, of the Iowa Sac and Fox in the proceeds from the sale of the surplus reservation lands. It was the President's opinion that said Iowa Sac and Fox had no such interest. He stated his views as follows:

... I very gravely doubt whether the remnant or band of the tribe now living in Iowa has any interest in these lands in the Indian Territory. The reservation there was apparently given in consideration of improvements upon the lands of the tribe in Kansas. The band now resident in Iowa, upon lands purchased by their own means, as I am advised, left the Kansas reservation many years before the date of this treaty, and it would seem, could have had no equitable interest in the
improvements on the Kansas lands, which must have been
the result of the labors of that portion of the tribe
living upon them. The right of the Iowa band to a
participation in the proceeds of the sale of the Kansas
reservation was explicitly reserved in the treaty, but
it seems to me, upon a somewhat hasty examination of the
 treaty, that the reservation in the Indian Territory was
intended only for the benefit of those who should go
there to reside. The Secretary of Interior has expressed a
somewhat different view of the effect of this treaty, but
if the facts are, as I understand, that the Iowa band did
not contribute to the improvements which were the con-
sideration for the reservation, and did not accept the
invitation to settle upon the reservation lands in the
Indian Territory. I do not well see how they have either
an equitable or legal claim to participate in the proceeds
of the sale of those lands.

18. By the Act of February 13, 1891, Congress ratified the June 12,
1890 agreement with the Sac and Fox Nation for the purchase of the
surplus Oklahoma reservation lands. Under Article 3 of said Act there
was appropriated the sum of $485,000.00 as compensation for said lands,
and under Article 8 of the Act there was appropriated an additional
$100,000.00 which sum was,

"...to be paid to the Sac and Fox band of Indians now
resident in Iowa, in full of all claims of every name and
nature which said Indians now have upon the property in-
cluded in the foregoing agreement of the Sac and Fox Indians
in the Indian Territory or upon the United States for the
moneys arising therefrom, ..." (26 Stat. 7 & 9, 795)

The Commission finds that the above payment to the Iowa Sac and Fox
was not a recognition on the part of the United States that the said
Iowa Sac and Fox had a compensable interest in the Sac and Fox reser-
vation in Oklahoma, nor did the payment create any such interest.

19. The Commission finds that, beginning in the year 1854 and
continuing through the year 1862, certain members of the then confederated
tribes of the Sac and Fox of the Mississippi, singularly and in small
groups, voluntarily absented themselves from the tribal reservation in
Kansas and returned to their old homesites in Iowa; where, having banded
together, they settled down on certain lands near the present town of
Tama, Iowa, and became known thereafter as the Iowa Sac and Fox. Said
abandonment of the Kansas reservation and withdrawal from the overall
tribe was done without consent of the confederated tribes of Sac and Fox,
and without the consent of the United States. By voluntarily and perma-
nently absenting themselves from the confederated tribes of Sac and Fox
on the Kansas reservation, the members of the Iowa Sac and Fox forfeited
all their tribal benefits and communal rights to said tribal lands,
improvements and other property belonging to the confederated tribes. In
consideration of the improvements made by the confederated tribes of Sac
and Fox on the Kansas reservation, the United States, under Section 6 of
the Treaty of February 18, 1867 (15 Stat. 495), gave to the confederated
tribes as a future home, the reservation in the Indian Territory (Royce
Area 495, Finding 8, Supra). Because, as of the effective date of the 1867
Treaty, the members of the Iowa Sac and Fox had already forfeited tribal
rights to the lands and property of the confederated tribes and no longer
maintained any tribal relations with the confederated tribes they acquired
no compensable interest in this Sac and Fox reservation in Oklahoma, and
therefore are not entitled to make the claims asserted herein with
respect to said reservation lands.

20. The 1890 agreement concluded between the United States and
the "Sac and Fox Nation in the Indian Territory," the Oklahoma Sac and
Fox, ceded to the United States all lands embraced within two contiguous tracts with the exception of 160 acres upon which the Sac and Fox Agency was located, and 640 acres upon which there was situated the Sac and Fox farm and school.

The ceded reservation is described as follows in Article I of the 1890 agreement:

Beginning at a point on the left bank of the North Fork of the Canadian River, where the West boundary line of the Creek Reservation crosses the same; thence North with said West boundary line to the right bank of the Cimarron River; thence up the said Cimarron River along the right bank thereof to a point on said right bank of said river, where the Section line between Sections Nineteen and Twenty (20) of Township Eighteen (18) North, of Range four (4) East of the Indian Meridian strikes the same; thence South on the Section line between Sections Nineteen (19) and Twenty (20) Twenty nine (29) and Thirty (30) Thirty-one (31) and Thirty-two (32), of said Township Eighteen (18), and between Sections five (5) and six (6), Seven (7), and Eight (8), Seventeen (17) and eighteen (18) Nineteen (19) and Twenty (20) Twenty-nine (29) and Thirty (30) Thirty-one (31) and Thirty-two (32), of Townships Seventeen (17), Sixteen (16) Fifteen (15), Fourteen (14) North, and between Sections Five (5) and Six (6) Seven (7) and Eight (8) and Sections Seventeen (17) and Eighteen (18) of Township Thirteen (13) North, all in range Four (4) East of the Indian Meridian, to the Southeast corner of Section Eighteen (18) in said Township Thirteen (13); thence West on the Section line between Sections Eighteen (18) and Nineteen (19), to the Range line between Ranges Three (3) and Four (4), East of said Indian Meridian, thence South on said Range line to a point on the left bank of the North Fork of the Canadian River, where the said Range line strikes the said river; thence down the said North fork of the Canadian River, along the left bank thereof to the place of beginning:

Beginning at the point on the left bank of the North Fork of the Canadian River where the Range line between the Ranges Three (3) and Four (4) east strikes the said river; thence up said river along the left bank thereof to a point on said left bank where the said range line again intersects said river; thence South on said Range Line to a point on the left bank of said River where said Range line again intersects said River; thence down said river along the left bank thereof
to the place of beginning - and all other land or country in Indian Territory, in which said Sac and Fox Nation has or claims any title, claim or interest.

21. As part of the consideration for the cession of the reservation, it was provided in Article II of the 1890 agreement that each citizen of the Sac and Fox Nation would be entitled to select an individual allotment of 160 acres anywhere in the ceded tract, except in sections 16 and 36 in each township, and on the lands previously reserved for the Sac and Fox Agency, farm and school. Five hundred forty-eight individual allotments were finally approved by the Secretary of Interior, embracing some 87,680 acres. The net acreage ceded to the United States under the 1890 agreement was therefore 391,188.05 acres. The Commission finds that the agreed compensation to be paid to the Sac and Fox Nation for their surplus lands, as well as the right of these Indians to take their 160 acre allotments anywhere on their reservation, was the result of fair and open negotiations between the tribal governing council and the Jerome Commission.

The final agreement was a compromise between the original tribal demands calling for 200 acre allotments anywhere on the reservation, and $2.00 per acre for the residue, and the initial best offer of the United States, being 160 acre allotments to be taken south of the Deep Fork of the Canadian River, and payment of $1.23 per acre for the residue. For several days the Indians considered the government's proposal and agreed to accept 160 acre allotments. However, if they should locate in the south half of the reservation they would demand $2.00 per acre for the reserve, but if they could select their allotments anywhere on the reservation, they would accept $1.57 per acre.

In reply the United States agreed to the first part of the Indian
counter proposal but was willing to pay only $1.23 per acre for the surplus lands. The Indians thereupon accepted $1.23 per acre price and a full agreement was reached. In all, the treaty negotiations consumed approximately twelve days.

The Commission also finds that there is no evidence of overreaching, sharp and fraudulent practices, or the withholding of information from the Indians by the government respecting the true value of the subject lands, or any other conduct on the part of the United States representatives that would indicate that the Indians were dealt with in an unfair and dishonorable manner.

22. Under Article IV of the 1890 agreement, the United States agreed to pay to the Sac and Fox Nation the sum of $485,000.00, which amount could be reduced by the value of the total number of Indian allotments in excess of the 528 provided for in the 1890 agreement. Section 3 of the Act of February 13, 1891 (26 Stat. 749) ratifying the 1890 agreement, authorized the appropriation of $485,000 out of any money in the Treasury not otherwise appropriated for the purpose of making the compensation provided for in the agreement. Since ultimately there was an excess of 20 allotments over and above the 528 provided for in the 1890 agreement, the United States deducted the sum of $200 per allotment, or a total of $4,000 from the consideration paid. Accordingly, the United States acquired from the Sac and Fox Nation 391,188.05 acres for which it paid $481,000.00, or $1.23 per acre. Said acreage shall be valued in this proceeding as of February 13, 1891, which is the effective date of ratification of the 1890 agreement.

23. Section 7 of the ratification act of February 13, 1891, made the ceded lands subject to applicable provisions of the homestead laws
for entry and settlement. In addition to meeting the requirements of
the homestead laws, each actual settler, before receiving a patent for
his homestead, was required to pay, at the end of the five year period,
$1.25 per acre, or at his option he could make such payment at the end
of 12 months and receive a patent. Prior to the issuance of a patent,
the land was not taxable, and not subject to levy for debts.

24. Shortly after the ratification of the 1890 agreement, special
alloting agents and surveyors were sent to the ceded area to carry out
the task of completing the Indian allotments. Selection of the allotments
was made more difficult by the reluctance of a few Indians to make their
selection. One faction of the Oklahoma Sac and Fox, led by M-co-ho-co,
refused to take allotments in severalty. M-co-ho-co's band finally made
contiguous selections, so as to form as far as possible a common area
located in the northeast corner of the former reservation. The majority
of the Indian allotments were taken near and along the north fork of the
Canadian river. Final approval of Sac and Fox allotment schedules was not
obtained from the Interior Department until September 4, 1891.

On September 13, 1891, President Harrison issued a proclamation whereby
he declared that the recently acquired Sac and Fox lands, the Iowa lands
to the west, and lands of Citizen Band of Pottawattamie Indians and
Absentee Shawnee Indians,

"... will, at and after the hour of twelve o'clock
noon (central standard time), Tuesday, the twenty-
second day of this, the present month of September,
and not before, be opened to settlement..."

subject, of course, to applicable laws, statutes and agreements covering
said lands.
25. During the years preceding the 1890 acquisition of the Sac and Fox lands, there had been developing a strong agitation among various interests to open up the Indian Territory for white settlement. The most persistent agitators were found in that group known as the "boomers," who enjoyed peak popularity around 1880 among the agricultural communities in southern Kansas. The immediate objective of the "boomers" was that area in the central part of the Indian Territory identified as the "Unassigned Lands."

The "Unassigned Lands" were originally a part of a larger tract which had been ceded to the United States in 1866 by the Creek and Seminole Nation of Indians for the purpose of locating thereon other Indian tribes. It comprises about 1,877,796 acres, and is situated in the center of the territory east of the 98° parallel of west longitude and north of the Canadian River. The Sac and Fox reservation was located about 18 miles east of these lands.

The persistent clamor of the "boomers," who were aided and abetted by Kansas speculators, the banking and railroad interests, and other groups, resulted in the passage of legislation that was to insure the eventual opening for settlement of these Oklahoma lands. By the Act of March 1, 1889 (25 Stat. 757), Congress ratified a certain agreement concluded with the Creek Nation whereby said Indians ceded to the United States full and complete title to those same lands covered by the 1866 Creek cession.
In like manner, pursuant to the provisions of Section 12 of the Appropriation Act of March 2, 1889 (25 Stat. 980, 1003), a conveyance and release was obtained on March 16, 1889 from the Seminole Nation extinguishing any interest these Indians may have and in the same lands, which had been previously ceded by them in 1866. Thereafter on March 23, 1889, the President issued a proclamation declaring the "Unassigned Lands" to be open for settlement under the homestead laws at twelve o'clock noon on April 22, 1889.

26. The prospect of free homesteads brought in a flood of settlers to the borders of what was now to be known as the Territory of Oklahoma. They came principally from neighboring Kansas and Missouri. They came on horseback, by covered wagon, and buckboards. The Santa Fe Railroad, having in 1887 completed a line through the "Unassigned Lands" running from north to south into Texas, announced that it was prepared to take any number of prospective homesteaders into the area on the opening day. At 12 o'clock noon on April 22nd the run for homesteads began. All the available acreage, some 11,000 claims, had been staked out by nightfall. In short order the towns of Guthrie and Oklahoma City came into being, and with the creation of the territorial government on May 2, 1890, the Territory of Oklahoma was officially established with Guthrie the provisional capitol. The opening of the "Unassigned Lands" was the springboard for the next run for the Iowa, Sac and Fox, and Pottawatomie-Absentee Shawnee surplus lands. Those that failed to secure an 1889 claim, stayed on, and, joined by new arrivals helped to swell the territorial population. By 1890 the population for the Oklahoma Territory was near 62,000. Guthrie had almost 8,000 people and Oklahoma City 5,000.
27. At 12 o'clock noon on September 21, 1891, the Iowa, Sac and Fox and Pottawatomie-Absentee Shawnee surplus lands, holding about 7,000 claims, were opened for settlement. It was estimated that 20,000 persons had gathered on the borders awaiting the go ahead signal. By sunset, all the available quarter sections had been claimed for homesteads. The previously reserved townsite location of "Chandler" was quickly surveyed, and in a few days all the town lots were claimed. In all there were some 900,000 acres available for homesteads within the three former reservations, and interspersed within this acreage were some 382,863 acres of Indian allotments. The frantic scramble for these claims gave proof of the strong demand for good lands, but at a cheap price.

28. The subject tract, being about 18 miles wide, from east to west, and 50 miles long from north to south was situated approximately in the center of Indian Territory. Its topographical features show generally a rolling upland mixed with patches of timber, and an abundance of open prairie land with some parts covered with scattered fragmentary rock. Although the running streams were not too numerous, most of the subject tract appeared to have adequate water. The area as a whole was well drained. The bottom lands along the rivers and streams were naturally level. The elevation of the subject tract ranges from 800 to 1500 feet above sea level.

29. For the most part the Sac and Fox lands were not subject to extremes in temperature, the weather generally being considered mild. At times there were short periods of excessive hot weather during which the summer temperatures were in excess of 100°. The average minimum temperature was 48.7°, with an average frost free growing season of 216 days between March
and October. Rainfall averages about 34 inches for the year with the
heaviest precipitation usually occurring in the spring. Some drought
was experienced during the hot summer months.

30. The upland soils in the subject tract consisted mainly of sand-
stone, shale and limestone. It supported large areas of native
grasses and scrub timber. It could be cultivated, and, although subject
to erosion, it did prove to be fairly productive. Along the streams and
river, the alluvial bottom lands were readily productive, but at times
subject to periodic overflow.

31. Prior to cession of the Sac and Fox tract, the Indians had used
very little of their lands for agricultural purposes. The failure of the
Indians to put more effort into farming can be attributed to their lack
of the requisite knowledge, skill, tools, and enthusiasm for such activity.
Some of the more energetic Indians did engage in agricultural pursuits on
the bottom lands, where cotton, corn, and fruit were grown. Because of
the abundance of native grasses, the large upland areas were suitable for
pasture lands and for growing hay. Consequently the Indians found it more
advantageous to lease the bulk of their uplands to white citizens for the
privilege of grazing cattle thereon. As of the summer of 1890 the Sac and
Fox tribe had an outstanding grazing lease of about 220,000 acres of their
lands to a cattle company for which they were receiving about $.03 per acre
per annum. The north end of the Sac and Fox lands was particularly suitable
for this purpose. Considering all factors, the highest and best use of
these lands to the white settlers would be for subsistence homestead
farming.
32. The Sac and Fox lands were fairly well timbered, being located in that portion of the Territory known as the cross timber area. In 1891 the available timber, however, had no genuine commercial value and would not support a lumbering industry. The upland timber consisted of various species of oak, such as burr, post and blackjack, as well as some hickory, ash, and blackberry. It was of a scrub variety, being good only for such things as post and rail fences, wagon wheels, and firewood. The bottom land timber was mainly elm, cottonwood, pecan, walnut, and sycamore. Some of these varieties could be sawed into lumber for building log and frame houses.

33. As of the date of valuation of the subject tract there were no known mineral deposits of value in the Sac and Fox area. In addition, what mineral deposits, including oil, which may have existed outside of the subject area, as of the date of valuation are not relevant in evaluating the subject tract consistent with its highest and best use.

34. As of the date of valuation, the subject lands can be classified as raw and unimproved. The Indian improvements were few, consisting of little more than their traditional bark house, or "wickiup." The more enterprising Indians, who had cultivated portions of the bottom land area, did build some log and frame dwellings. Some of the upland sections had been fenced by the lessees under their old grazing leases with the Sac and Fox tribe. For the most part, the improved Indian land still belonged to the owner who had taken it as part of his allotment.

35. There were no bridges or public roads in the tract. Transportation was by wagon or horseback over primitive roads. The Santa Fe was the nearest railroad line, where it ran through Guthrie some 30 miles west of the
reservation. Some 60 miles east of the subject tract, the Missouri, Kansas and Texas Railroad Company had completed a line as early as 1872 that ran through the Cherokee, Creek, and Choctaw reservations and into Texas. The St. Louis and San Francisco Railroad had constructed a railroad eastward toward the Indian Territory, and by 1890 it had extended to within 35 miles of the northwest corner of the Sac and Fox lands. The nearest markets and supply centers linked by rail service were at Guthrie and Oklahoma City, and required several days to reach by wagon.

36. In the latter part of the nineteenth century all commodity prices were low, as compared to the pre-Civil War period, but agricultural prices were relatively lower. This decline during the post Civil War era shows agricultural prices trailing the general commodity price level from ten to thirty points. The lowest farm prices were reached about 1896. Typical prices were as follows: Oats 23¢ a bushel; corn 15¢ to 30¢ a bushel; cotton 6¢ a pound. Farm laborers could make 50¢ per day and unskilled laborers 75¢ per day. The depression in farm prices and the resultant low farm income can be attributed in part to an over abundance of new public lands that had been opened up in the midwest and subjected to extensive agricultural development. During the period 1880-1890, there was noted a 50% increase in the amount of public lands that had been added to the farming areas of neighboring Kansas, Nebraska, and in South Dakota. In Kansas, Missouri, and Nebraska alone the amount of public lands disposed of under the free homestead act, the timber culture acts, etc., during the three year period of 1888 through 1890 rose to over 11½ million acres.

On the other hand, farm mortgage rates were high. Money was still a
scarce item to the farmer. In 1890 the mortgage interest rates on an investment ran about as follows: Arkansas 10%, Kansas 8%, Missouri 8%, New Mexico 12%, Texas 10% and Colorado 10%.

37. The average settler who made an entry on the subject lands was a poor man. He had been attracted to the Indian Territory by the prospects of obtaining a free homestead site, or one that would cost him next to nothing. The typical southern homesteader had come from an agricultural area that had been sorely depressed since the end of the Civil War. The settler from southern Kansas was a poor farmer looking for a new start. Besides the native born, there came many European immigrants, who had found it most difficult, if not impossible, to make a new start in the large eastern seaboard cities. The privations and impoverishment of the early Oklahoma settler have been frequently depicted in the historical documents of the beginning of Oklahoma. The poor financial condition of all homesteaders in general is no more evident than in the fact that Congress during the 1890's passed many forms of relief acts designed to extend the date of final proof and payment of homestead entries, e.g. (1894) 26 Stat. 684; (1896) 29 Stat. 321 (1897) 30 Stat. 62; (1898) 30 Stat. 571; (1900) 31 Stat. 221. However, it was the passage of the Free Homestead Act of March 17, 1900 (31 Stat. 179), that was the greatest boon to the struggling homesteader and the Oklahoma Territory. This Act provided in part for the cancellation of all payments then due on Homestead entries and the issuing of patents to the homesteaders upon completion of the statutory requirements. The Act did not apply to commuted entries. An estimated $15,000,000 in payments due was turned
back to the Oklahoma homesteaders. With respect to the Sac and Fox lands, only 31% were ever paid for and patented at $1.25 per acre either after being commuted or upon expiration of residency requirements.

38. The initial opening of Oklahoma lands occurred in 1889, and there is little if any evidence in the record of private sales prior to 1891. Defendant has introduced a list of 39 private sales that were taken off the deed records in Canadian County, Oklahoma, for the years 1890-1892. Canadian County is situated approximately 80 miles west of the subject tract, the greater part of it being located in what was originally the Unassigned Lands. The recorded sales in this two-year period are of small improved tracts averaging 160 acres or less. There were only 8 sales in the 1890's aggregating 1,263.92 acres for a total consideration of $5,275.00, or at an average of $4.19 per acre. There were 17 sales in 1891 amounting to 2,754.13 acres for a total consideration of $14,300.00 or $5.22 per acre, and in 1892, 14 sales amounting to 2,213.18 acres for a total consideration of $19,340.00 or $8.74 per acre. It is not possible to determine the extent, quality and the value of the improvements.

39. Petitioners have introduced into evidence certified title abstracts showing all warranty deeds conveying tracts of improved land of 40 acres or more situated in the Sac and Fox portions of Lincoln and Payne Counties. There are some 898 transactions listed between September 21, 1891 and December 31, 1900. There were no sales in 1891. Out of these 898 transactions, 108,576.40 acres were conveyed for a total purchase price of $851,879.65, which is an average per acre price of $7.85. The average acreage per sale is 118.82 acres. Over 70% of the listed sales occurred
during the four year period 1897-1900, which is six to nine years after
the date of valuation. In addition a goodly portion of the listed sales
are in fact resales. In Payne County alone over one-third of the listed
sales are resales, with some properties changing hands four, five and
six times before 1900.

40. A study of the 11th United States Census report for the year
1890 shows that in the Oklahoma Territory there were recorded 8,826
farms comprising 1,606,423 acres for an average of 182 acres per farm.
Of the total acreage 563,788 acres were classified as improved land,
while the remaining 1,042,695 acres were classified as unimproved land.
The 1890 census classification of "improved" farm land (exclusive of
buildings) defined the term as (1) "tilled including fallow and grass
in rotation (whether pasture or meadows)" and (2) "permanent meadows,
permanent pastures, orchards, and vineyards." The census definition of
"unimproved" farm land was (1) "woodland and forests" and (2) "other
unimproved, including old fields not growing wood." Estimated value of
all farm lands including land, fences, buildings, was $8,581,170 or
approximately $5.34 per acre. There is no separate evaluation of the
farm improvements, and from the data given there is no way to make such
a determination.

41. Since cash was a very scarce item to the early homesteader,
farm improvements could not be purchased. What early improvements there
were, were put there through the individual efforts of the homesteader
and the combined labor of his family. The quality of such improvements
depended on the talents and ambition of the landowner. The specific
cash value of these improvements is most difficult, if not impossible to ascertain. The petitioners by relying on projected mathematical computations that were taken from the 12th United States census report (1900), and from private sales data of improved tracts in the subject area for the year 1900, have sought to establish an overall value of $.75 per acre for all improvements on the subject tract for the years 1892-1900. The Commission finds, however, as it has in the past, that mathematical computations such as these, and other types of formulae involving the use of census figures and sales data, are highly speculative and judicially unacceptable in evaluating separately land improvements.

42. To the southwest and partly adjacent to the Sac and Fox lands were the Pottawatomi and Absentee Shawnee lands. This tract was opened to white settlement in 1891 along with the Iowa and Sac and Fox lands. It is generally comparable to the Sac and Fox lands. Under the provisions of the 1894 Indian Appropriation Act, an Indian allottee on the Pottawatomi and Shawnee lands was permitted to sell to the white settlers a portion of his allotment subject to the approval of the Secretary of Interior (28 Stat. 295). Because of the various complaints that arose over the purchase and sale of these allotted sales, the Secretary of the Interior in 1894 withheld his approval to some 121 deeds until a thorough examination could be made into the propriety and fairness of each sale. The 121 deeds from which his immediate approval had been withheld represented a total sales of 16,411.97 acres for a total price of $58,346.50 or a little over $3.55 per acre. The 121 sales consisted of transactions from 40 to 320 acres with overall average of 135 acres per transaction.
The special Indian agent for the area was instructed to examine each tract and determine as far as possible its true value. As reflected in his report, his appraisals varied from $3.00 to $25.00 per acre, based upon what he could determine the white settlers were asking for their own lands, and what they were willing to pay for these lands. The Indian allottees had selected the best lands lying along the streams and rivers as well as good rolling prairie land. It was this land that the white settlers found most desirable. The higher estimated valuations were based upon a consideration of the number of acres in cultivation, their proximity to the principal towns of Shawnee and Tecumseh and the Choctaw Railroad which ran through the Canadian Valley. The agent's overall valuation was $8.97 per acre.

43. (a) There is also in evidence 15 appraisals of Sac and Fox and Pottawatomi lands covering the years 1900 through 1910, some 9 to 19 years after the date of valuation. These transactions represented sales of 80 to 160 acres, totaling only 1,547 acres. It is improved land averaging about $17.00 per acre. Said appraisals are of no value in fixing the 1891 fair market value of the subject tract.

(b) There is also in evidence a schedule of damages involving small parcels of land which were selected by the Eastern Oklahoma Railroad Company for a planned rail line through some of the Sac and Fox allotted lands. There are only 124.16 acres involved for which the railroad company paid an average of $31.00 per acre. Because these selected lands were to be used for a singular purpose, and had a unique and special value to the railroad company, the very nature of the transactions, the small
acreages and the prices involved, contribute nothing in fixing the 1891
fair market value of the subject tract.

44. After the 1891 opening of the Iowa, Sac and Fox, and Pottawatomie-
Absentee Shawnee reservation lands, the following surplus reservation
lands in the Oklahoma Territory were opened for entry and settlement under
the homestead laws; in 1892 a "run" was made for over 3½ million acres of
the Cheyenne-Arapahoe surplus lands; in 1893 a "run" was made for over 5½
million acres in the Cherokee Outlet as well as over 130,000 acres of the
Tonkawa and Pawnee surplus lands; in 1895 a "run" was made for some 85,000
acres of Kickapoo surplus lands; and, in 1901, some 2 million acres of the
Kiowa, Comanche and Apache lands and Wichita, Caddo lands were opened up
for settlement by a lottery. Besides the Indian reservation lands, nearly
one-half million acres in Greer County were added to the public land market
in 1897. Greer County had been officially separated from Texas and annexed
to Oklahoma in 1896.

In all, some 12 million acres of raw and unimproved land within reason-
able proximity of the subject lands were made available for homesteading
purposes under the public land laws during the nine year period 1892-1901.
These additional openings of the Indian reservation lands were the end
result of diligent and successful efforts of the Jerome Commission in ob-
taining cessions from the tribal owners. The proposed objectives of the
Jerome Commission were certainly well known in 1891. This fact, when con-
sidered in light of the prevailing government land policy to make available
to the bona fide settler more cheap land as an inducement to rapid
settlement, would undoubtedly influence the 1891 fair market value of such
raw and unimproved areas as the subject lands if they were offered for private sale on a competitive basis.

45. Real estate appraisers, Henry J. Garrett and Roscoe H. Sears, both of Oklahoma City, Oklahoma, testified as expert witnesses for the defendant. Besides being the only real estate experts who testified in this case, they also co-authored the appraisal report that the defendant introduced into evidence. Messrs. Garrett and Sears adopted the market data or comparable sales approach as the most reasonable and practical method of evaluating the Sac and Fox lands in 1890. In evaluating the subject lands, they considered all those relevant factors that are detailed in the findings above, including such things as the highest and best use for the subject tract, topography, soils, climate, availability of timber and accessibility, the demand for lands, private land sales both within and without the subject tract, nearness to markets, amount and proximity of competitive government lands and the effect of the 1890 government land policies, population data, the purchasing power of the 1890 homesteader, as well as the general economic and financial condition of this period. It was their considered opinion that on June 12, 1890, the date the Sac and Fox agreement was signed, that the subject tract had a cash market value of $0.40 per acre.

46. Considering all the evidence in the record and based upon all matters set forth in the Commission's findings herein, the Commission finds and concludes that as of February 12, 1891, the effective date of the 1890 Sac and Fox agreement, the 391,188.05 acres of surplus Sac and Fox lands which were acquired by the United States under aforesaid agreement, and the subject matter of claims asserted herein, had an overall fair market value not in excess of $1.75 per acre. Since under the 1890
agreement the petitioners herein, the Oklahoma Sac and Fox received from
the United States as compensation for said lands $481,000 or $1.23 per
acre, the Commission finds the disparity between the price paid by the
United States for said land and the fair market value of the same as of
the date of taking was not unconscionable, and the United States had
paid a fair consideration of the Oklahoma Sac and Fox for the cession of
the subject tract. Accordingly, the petitioner tribe is not entitled to
recover on the claims asserted herein.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner