BEFORE THE INDIAN CLAIMS COMMISSION

THE IOWA TRIBE OF THE IOWA RESERVATION IN KANSAS AND NEBRASKA, THE IOWA TRIBE OF THE IOWA RESERVATION IN OKLAHOMA, ET AL., THE SAC AND FOX TRIBE OF INDIANS OF OKLAHOMA, THE SAC AND FOX TRIBE OF MISSOURI, AND SAC AND FOX TRIBE OF MISSISSIPPI IN IOWA, ET AL.,	)	
Petitioners,	)	
v.	)	Docket No. 135
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

Decided: August 29, 1963

Appearances:

Brian Sullivan, Attorney for Iowa Tribe, Kansas and Nebraska

Nicholas C. English, Attorney Iowa Tribe, Oklahoma

George B. Pletsch, Attorney for Sac and Fox Tribe, Oklahoma

Stanford Clinton, Attorney for Sac and Fox Tribe, Missouri

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

Walter J. Muir, with whom was Mr. Assistant Attorney General Ramsey Clark, Attorneys for the Defendant.

OPINION OF THE COMMISSION

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

On July 2, 1958, this Commission decided that the ancestors of two tribal claimants, the Iowa Nation and the Sac and Fox Nation, aboriginally owned and ceded to the United States two separate tracts in northern Missouri under the treaties of August 4, 1824 (7 Stat. 229; 7 Stat. 231), The Iowa Tribe of the Iowa Reservation in Kansas and Nebraska et al., v. The United States, 6 Ind. Cl. Comm. 464.

Now we must properly evaluate each tract, that is, we must estimate their fair market value as of the effective date of purchase, and having made these determinations, we must then decide whether the United States paid an unconscionably low consideration to each tribe as would permit the tribal claimants herein to recover further compensation. The agreed date of valuation is January 18, 1825. On that day President Monroe officially proclaimed both treaties "in pursuance of the advise and consent of the Senate as expressed by their resolutions of the thirteenth instant." (Comm. Fdg. 25)

In narrowing the issues as stated above, this Commission rejects as inapplicable to the facts in this case, two theories of recovery advanced by both tribal claimants, but more strongly urged upon us by the Iowa Indians.

Under the first theory of recovery, it is contended that there was no actual or open market for the ceded tracts on the agreed evaluation date, nor, and what is more important, is there any evidence upon which this Commission could rightfully fix an 1825 fair market value. Therefore, argue the petitioners, the tribal claimants are entitled to be compensated for the ceded tracts at the rate of $1.25 per acre, which figure was the then prevailing statutory minimum price for the purchase of government lands. (Citing The Miami Tribe of Oklahoma et al., v. United States (1956) 175 Fed. Supp. 926, and New York Indians v. United States 170 U. S. 1, 18 S. Ct. 735, 42 L. Ed. 1163) The Commission will concede that there was no open or actual market for these lands in the true sense of the word as of the effective cession dates, but our numerous and detailed findings made herein attest to the plain fact that the

Commission has found more than ample evidence upon which to estimate their 1825 fair market value. In so doing we have simply followed the criteria set down by the Court of Claims in the case of Otoe and Missouri Tribe of Indians et al., v. United States, 131 Ct. Cls. 593, 2 Ind. Cl. Comm. 335, and repeatedly followed by the Commission in many other cases where, as here, there has been no actual open market for ceded Indian lands at the time of cession. As stated by the Court of Claims in the Otoe case, (p. 633, 634)

> In the absence of a market at the time in question, and therefore the absence of evidence of 'market value' in the conventional sense, this court and the Commission have taken into consideration numerous other factors in determining the value of lands ceded by the Indians.
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> This method of valuation takes into consideration whatever sales of neighboring lands are of record. It considers the natural resources of the land ceded, including its climate, vegetation including timber, game and wildlife, mineral resources and whether they are of economic value at the time of cession, or merely of potential value, water power, its then or potential use, markets and transportation - considering the ready markets at that time and the potential markets.
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> (See also, Pawnee Indian Tribe et al., v. United States, 8 Ind. Cl. Comm. 648, Affirmed April 4, 1962, Ct. Cls. Appeal No. 7-61)

The second theory of recovery espoused by the tribal claimants is founded upon a purported "constructive trust" that existed between the United States and the petitioners' ancestors with respect to the government's acquisition of the two subject tracts. This theory has nothing to do with fixing a fair market value to the subject lands, but the amount of any recovery is to be measured by the value of the consideration that the Government received in disposing of these lands through public sale or otherwise. As perhaps stated more forceably in the words of the

Iowa petitioners,

> The essence of the second theory of recovery is that the Government stands in the position of constructive trustee for the monetary equivalent in consideration in dollars worth which it received upon the transfer of the Iowa tract from the Government into other hands. (Proposed Findings of Fact and Brief on Issues of Valuation and Liability of Iowa Petitioners, p. 78)

Briefly then, both claimants contend that the United States finds itself in the position of a constructive trustee because of its guardian-ward relationship to the tribal claimants; that the defendant trustee has breached its fiduciary duties to both tribal claimants from the fact "* * * that the defendant acquired the land for an unconscionable consideration * * *" and further, since "the defendant purchased from the Iowa Nation (and Sac and Fox Nation) property (-ties) which it was under a duty to handle or deal with for the benefit of the Iowa tribe (or Sac and Fox Nation)"* the defendant trustee has been unjustly enriched at the expense of the tribal claimants, and the Indians are entitled to recovery in money an amount equal to consideration received by the Government from its disposition of the subject tracts.

Without attempting to answer the petitioners' contentions singly, the Commission finds that this same equitable theory of recovery was considered and wholly rejected by the Court of Claims in the case of The Sioux Tribe of Indians et al., v. United States, 146 F. Supp. 229.

In the Sioux case, the tribal claimants argued that the correct value of their ceded lands was not the fair market value, or sales value as of

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* Proposed Findings of Fact and Brief on Issues of Valuation and Liability of Iowa Petitioners, p. 135 (parenthetical material added)

the date of taking, but rather a sum equal to any royalties that could have been earned from leasing the rights to the minerals contained therein as well as for paying for all the timber lands. As stated by the Court of Claims:

> The basis of this theory of compensation is that because of the alleged legal relationship of guardian and ward existing between the Sioux and the United States, the United States had no power to appropriate the ward's property even on payment of its sales value, but only the power to manage that property for the continuing benefit of the ward and pay over to the ward the proceeds realized by the guardian's best efforts . . . The argument is, in effect, that the guardian-ward relationship existing between the U. S. Government and the Sioux Indians is the same fiduciary relationship that exists between the guardian and ward in private law. This being so, the Government's action in forcing the Indians to cede to it their land was a violation of their fiduciary duty to their wards to manage its property to the benefit of the wards.

Before rejecting the above theory of recovery in the Sioux case, the Court of Claims reiterated the fundamental principle of the Government's inherent and paramount right to extinguish the Indian title to land in which it has always held the fee subject to Indians' right of occupancy, and further, that in accomplishing this purpose, the Government's only obligation is to treat fairly with the Indians. Fair treatment means that the Indians must be justly compensated for the lands so taken. Then the court specifically met the issue and disposed of it as follows:

> The appellant's reliance on its guardian-ward theory of determining the conscionableness of the consideration is not well founded. If the United States was in any legal sense the guardian of the Sioux with respect to the property in question, there might be some merit to appellant's argument. However, we do not find that the legal relationship of guardian and ward did exist between the United States and the Sioux. While it has often been said by this court and the Supreme Court that the general relationship of the Government to the Indians of the United States is similar to that of a guardian and ward, it has

> never been held that such a general relationship amounts to a legal guardian ward relationship in the absence of some specific language to that effect in a treaty, agreement, or Act of Congress. In the absence of such specific language, the general relationship of the United States to the Indians has been that of a strong and powerful sovereign to a comparatively weak and defenseless people and because of that fact, the courts have likened the relationship to that of guardian and ward and held that doubts in treaties and agreements should be resolved in favor of the weak and defenseless party in such treaties and agreements. (146 Fed. Supp. 237, 238)

We have carefully considered the language in both 1824 treaties of cession and have found nothing in either of them that would give rise to any such fiduciary relationship that would impose upon the United States the trustee's duty of managing the lands involved herein for the benefit of the two Indian claimants. The Iowa petitioners have called our attention specifically to language in Article 4 of the 1824 Iowa Treaty as creating the exact trust relationship contended for. Article 4 states in part that,

> The undersigned Chiefs, for themselves, and all parts of the Ioway tribe, do acknowledge themselves and the said Ioway tribe, to be under the protection of the United States of America, and of no other sovereign whatsoever . . . (7 Stat. 231)

The Sac and Fox petitioners direct our attention to the language in Article 1 of the earlier treaty of November 3, 1804 (7 Stat. 84) as accomplishing the same thing.

The Commission has dealt with the identical contention by the tribal claimants in the case of The Omaha Tribe of Nebraska et al., v. United States, 6 Ind. Cl. Comm. 68. In rejecting the argument of the Omaha Indians, the Commission cited the earlier opinion of the Court of Claims in the case of The Kansas Indians et al., v. The United States, 80 C. Cls.