

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

Stanford Clinton, Attorney for
Sac and Fox Tribe, Missouri

Nicholas C. English, Attorney
Iowa Tribe, Oklahoma

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

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

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.

* * * *

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.

(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 forcefully 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 guardianward 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

* 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.

264. In the Kansas case, the Court of Claims explained the content and purpose of Article 3 of the 1815 Kansas treaty of peace wherein it was provided that the Kansas Indians ". . . do hereby acknowledge themselves to be under the protection of the United States of America, and no other Nation, Power or sovereign whatsoever . . ." (Art. 3, 7 Stat. 137). The Court said - (p. 302):

The purpose and effect of the treaty were to place the contracting parties upon the same footing in every respect upon which they stood before the war with Great Britain. No contention is made that the relationship of guardian and ward existed between them before the war. Certainly this relationship could not be created by a treaty that merely re-established their pre-existing political relations. The contention that this was the effect of Article 3 of the Treaty is without merit.

We conclude therefore that the Government's extinguishment of Indian title to Royce Area 69 under the two 1824 treaties of cession appears to be nothing more than outright purchase of the Sac and Fox and Iowa interests thereto. Whether or not those purchases were made for an unconscionably low consideration is the question we will now decide after determining as best we are able the 1825 fair market value of both tracts.

The area which this Commission has awarded the Iowa claimants is a rectangular tract of land in northwestern Missouri lying south of the Iowa state line and containing 1,551,200 acres. It comprises all of present day Gentry, Harrison, and Mercer counties, practically all of Worth and Grundy counties, and the northern portion of Daviess County. These counties were organized during the years 1836, 1845 and as late as 1861. Surveys of the subject tract did not begin until 1837, some 13 years after it had been ceded, and were not completed until 1845. Lands

within the Iowa tract were not opened for private entry and sale under the public land laws until 1839.

The topographical and climatic features of the Iowa tract, as well as its soil, mineral, timber, and water content, have been detailed in the Commission's Findings 27 through 30. Briefly, the Iowa tract may be described as predominantly rolling prairie land with an abundance of streams, that give it both an adequate water supply and good drainage. The largest river flowing through the Iowa tract is the Grand River, which meanders in a southeasterly direction before emptying into the Missouri River some sixty miles to the south. There is ample timber along the stream valleys that would be valuable to potential settlers for building and fencing material, and also firewood. Soil conditions were relatively good in the Iowa tract. The soil was predominately of a glacial till, which is the distinctive soil feature of northern Missouri. It was friable, generally well drained, and as of 1825 would be considered rich, fertile, and above average. There was limestone available, but it had no commercial value in 1825. There were no other known mineral deposits of value in the Iowa tract as of 1825.

The climatic conditions that controlled the six months growing season in northern Missouri show a warm and humid climate in summer and relatively cold weather in the winter. The annual precipitation varies between 32 and 40 inches of rainfall.

Everything considered, the Iowa tract in 1825 was best adapted for small subsistence homestead farming with the larger prairie expanse being ideal for pasturing livestock and horses.

It would be many years after the 1824 treaty of cession before the first settlers would put to good use the lands within the Iowa tract, for, as we shall discuss further, the Missouri territory was first peopled in those areas adjacent to its great rivers. Immediately after the close of the War of 1812, the westward thrust of new settlement and immigration that crossed the Mississippi River, followed along and filled both sides of the Missouri River before turning inland. The Iowa tract was unfavorably situated with respect to the path of this new settlement, and in 1825 there was no real demand for these Iowa lands that would make them an attractive purchase on the public land market.

Seventy miles east of the Iowa lands was located the Sac and Fox tract in the extreme northeast corner of Missouri. It was bounded on the east and northeast by the Mississippi River and the Des Moines River. The Iowa state line was its northern boundary. The Sac and Fox tract contains some 1,241,700 acres, and includes all of present day Lewis and Clark counties, most of Scotland County, the northeastern part of Knox County, and a small segment of Shelby County.

The Sac and Fox tract is also a part of the great north Missouri glacial plains, and is an area of relatively low relief, varying hardly more than a hundred feet between its highest and lowest elevations. It is more level than the Iowa tract with less rough lands. Many small streams wind through wide valleys with the water eventually draining into the Mississippi. A few of the larger streams were navigable for a short distance by small craft. On the eastern boundary of the Sac and Fox

tract there is a wide bottom area of rich alluvial soil fronting on the Mississippi River. This bottom area was and still is subject to periodic inundation.

The timber supply in 1825 was ample in the Sac and Fox tract, although it was restricted to those areas along the slopes of the stream valleys.

Minerals were of no commercial value in the Sac and Fox tract as of 1825.

The Sac and Fox soil was derived from the same glacial material typical of all northern Missouri soils. As of 1825 these soils were above average in quality. Since both the Iowa tract and Sac and Fox tract has been equally glaciated, their surface features and contours were reasonably comparable. Based on soil ratings, there is little difference between the Iowa and Sac and Fox tracts, with little to choose between their overall productive capabilities (Tr. 494, 495, Testimony of Prof. H. H. Kruseköpf).

The Commission is of the opinion that like the Iowa tract, the lands within the Sac and Fox tract seem best adapted in 1825 to small scale or subsistence homestead farming with the level prairie lands being utilized for grazing purposes.

The Sac and Fox tract did enjoy one great advantage over the Iowa lands. It was readily accessible to and from the more populated areas via the great Mississippi River. While the tide of new immigration into Missouri during the early 1800's was not directed primarily up the Mississippi River, yet in the pre-1824 treaty days, there were settlers ensconced on several of the small streams that flowed through the extreme

southern portion of the subject tract and in the areas immediately to the south. These streams, such as the Jeffreon, the North Fabious, the Wyaconda and Fox rivers, were navigable for short distances and flowed easily into the Mississippi River. In fact, there is no point within the Sac and Fox tract that can be counted more than 30 miles from either the Mississippi River or the Des Moines River. While 1825 steamboat travel on the Mississippi north of St. Louis is questionable, flatboats and keelboats could reach its upper regions and also ascend the Des Moines.

The 1825 Missouri traveler heading north could approach the southern boundary of the Sac and Fox tract by a road that extended as far as Palmyra. This was a small town in Marion County located just outside of the Sac and Fox tract. There were also two other nearby towns in existence as of 1825. One was the tiny settlement of Wyaconda, that was situated at the mouth of the Wyaconda River on the Mississippi River within the Sac and Fox tract. The other was the town of Hannibal in Marion County, which was also located on the Mississippi River ten miles south of Palmyra. Actually, there had been settlers living in the Salt River area below the Sac and Fox tract as early as 1816. Another distinctive feature of the Sac and Fox tract at the time it was ceded, was the fact that the Government had already surveyed a goodly portion of the area as early as 1818. In addition there had been at least 644 public land sales within the tract during the years 1818 and 1819. We shall comment further on these sales.

All this pre-treaty activity both within and without the Sac and Fox tract indicates to the Commission that these lands were readily accessible

to potential settlers, and that, unlike the situation surrounding the Iowa tract, there existed a limited demand for settlement of at least the southern portion of the Sac and Fox tract.

The Commission has gone into considerable detail in its findings of fact to outline the history of the early settlement of the northern Missouri up to the 1824 treaties of cession, including its economic and political development. We have shown that, after the United States acquired the Missouri territory as part of the 1803 Louisiana Purchase, there was concluded two important treaties of cession with the neighboring Sac and Fox Indians in 1804 (7 Stat. 84), and with the Osage Nation of Indians in 1808 (7 Stat. 107). Those two treaties seemingly extinguished all Indian title to those lands north of the Missouri River, and their proclamation was an important factor in stimulating further settlement westward along both sides of the Missouri.

In 1807 the two sons of Daniel Boone settled down on the Missouri River north of the Osage River in an area soon to be well known as the "Booneslick" area. This "Booneslick" area began to grow almost immediately. In 1811 there were at least 75 families located there. While the town of St. Charles, Missouri, which is located about 20 miles up the Missouri, had been established during the prior Spanish regime, its population rarely exceeded a hundred families prior to 1803. However, by 1811 its population exceeded a thousand souls.

The War of 1812 put a brake on the flow of immigration into the "Booneslick" area, but immediately after the close of hostilities the settlers began again to come in great numbers. In 1814 the entire

Missouri population was nearly 25,000. In 1816 the area just north of the Missouri River and above the mouth of the Osage River was formed into Howard County, and the town of Franklin was set up in 1817 as its county seat. By 1818 Franklin had at least a 150 houses and was a thriving community. Further up the Missouri River the town of Chariton was established, and nearly five hundred inhabitants could be found living there and in the surrounding area. By 1820 there were over 21,000 people living in the "Booneslick" area, or nearly one-third of the entire Missouri population.

In 1820 the Missouri legislature established eight new counties along both sides of the Missouri as far as its then western border. The pattern of settlement in Missouri westward continued along both sides of the Missouri River, with the new settlers preferring the river lands and the adjacent stream valleys that provided the needed timber and the easy access to the main artery of transportation, the Missouri River. The development of the inland and plains area was to come at a later date. By 1820 over eighty percent of the male population was now engaged in some form of agricultural activity, and the farmers of that day still preferred to clear the wooded areas along the streams, rather than to tackle the tough prairie sod.

Between 1803 and 1820 Missouri experienced relative prosperity centered around its growing farm economy. The influx of new settlers provided a local market for surplus farm products. In 1819 the United States had slipped into a general depression, but its effect did not reach Missouri until the early 1820's, when there was experienced a noticeable drop in local farm prices as well as a drop in new immigrants.

Money never was too plentiful in Missouri in these early days. There were no banks and borrowers relied on private investors for loans upon which the Frontier interest rate was nearly 10 percent. By 1824 the economy began to firm up and there was an increase in new settlers, who, as soon as they arrived, would need land upon which to settle themselves and their families. Seemingly, as it developed, there was more than an adequate supply to satisfy their immediate demand.

As early as 1816 the Congress had authorized the survey of all public lands in the Missouri territory to which the Indian title had been extinguished. Two years later the then northern and western boundary lines of Missouri had been surveyed as well as some 9 million acres of public lands. By June 30, 1824, nearly 15 million acres of surveyed public lands were available for original entry in Missouri, and by the end of that year there were over 350 townships, some 8 million acres, north of the Missouri River that were subject to original entry.

Prior to the Act of April 24, 1820, (3 Stat. 566) public lands could be purchased for \$2.00 per acre on credit in minimum tracts of 160 acres. Thereafter the minimum price was reduced to \$1.25 cash with the minimum acreage fixed at 80 acres. The public land sale records for Missouri show that, between the time the first public lands were sold in 1818 up until June 30, 1824, only 789,866 acres were sold, with the greater part being purchased in the years 1818 and 1819 while the credit system was still in effect. Obviously, during this period the supply of public land far outstrip the demand.

In 1821 some 400,000 acres of land were opened for public sale in the extreme western portion of the State. These lands bordered on the Missouri River and were almost due south of the Iowa tract. The choice sites along the Missouri River were first taken up, but after five years on the market, only 9 percent or 36,000 acres had been sold.

East of the above lands there had been surveyed in 1816 in the northern part of what then was Howard County a tract of some 500,000 acres, known as the military bounty lands. These military bounty lands were in fact a part of a larger 800,000 acre tract that was situated south of, but reasonably near, both the Iowa tract and the Sac and Fox lands. The evidence and testimony adduced at trial showed that, for our purposes, the military bounty lands were reasonably comparable to both the Iowa and Sac and Fox tracts in physical characteristics and overall productive capabilities. Through the petitioners' efforts there is in evidence a collection of deed abstracts covering several volumes, which purport to show private conveyances of 40 acres or more, made between 1819 and 1830, of lands both within the military bounty tract, and of lands between the military bounty tract and the Missouri River. There is also included some of the "Booneslick" area on the north side of the river.

With the organization of Chariton County in 1820, it thereafter contained the bulk of the military bounty lands. An examination of the deed records from Chariton County covering sales of the military bounty lands shows that, between 1819 and 1830, 150,101 acres were sold for a recited consideration of \$132,694, or at an average per acre price of \$0.84. Very likely most of these sales involved unimproved lands, since many of the

grantors holding these military warrants lived great distances from the military tract, and preferred selling their patents rather than moving. Most of the military bounty sales had occurred during the years 1818 and 1819, and the Commission found strong evidence of speculative purchasing. One purchaser acquired over 10,000 acres at an average per acre price of \$0.19, while five individual grantees managed to accumulate 51,000 acres of military bounty lands for an average price of near \$0.70 per acre.

The lands south of the military lands, particularly in the first several tiers of townships bordering the north side of the Missouri River, were sold at a much higher price. These lands were near the towns of Chariton and Franklin and some of the older Booneslick settlements. These particular townships had been opened for original entry as early as 1818 and 1819. Between 1818 and into the early part of 1825, the deed abstracts from Howard County show some 150 private sales of 40 acres or more in which nearly 41½ thousand acres were sold at an average per acre price of \$3.28. We noted some resales, and also that it was impossible to determine from the property descriptions the nature and extent of any improvements.

The petitioners have put in evidence abstracts of private sales made within the Sac and Fox tract covering the 23 year period 1826 through 1848. These abstracts were taken off the deed records of Marion, Lewis, Clark, Scotland, and Knox counties, with the first transactions being recorded in Marion County in 1826. Up until 1830 only 22 private sales had been recorded in the entire Sac and Fox tract. The totals from all

five counties show that during the 23 years that were covered just over 193,000 acres were sold at an average per acre price of \$2.73 (Finding 64). In the case of these sales the Commission was unable to determine from the deed descriptions the nature, extent, and quality of any improvements.

As we mentioned earlier, public land sales in the Sac and Fox tract began as early as 1818, and for the two year period 1818-1819, some 644 public land sales took place within the Sac and Fox tract and in the area immediately to the south. Most of their transactions were credit sales when the minimum price was \$2.00 per acre and the minimum acreage unit that could be purchased was 160 acres. With the abolition of credit sales in 1820, those who had acquired lands on credit, if they so desired, were now permitted to relinquish any unpaid acreage they had contracted for, or else, they could relinquish that which they had paid for, and take credit on other lands that now could be purchased at the minimum price of \$1.25 per acre cash and in smaller 80-acre units. Many credit purchasers did in fact take advantage of these liberal provisions by abandoning their holdings in the Sac and Fox area, and relocating on new sites further south. After 1820 public land sales in the immediate Sac and Fox area practically ceased. In fact only 19 cash transactions involving public lands were noted in the Sac and Fox tract between the years 1819 and 1824.

While the abolition of the credit system certainly contributed to the diminished sales of public lands in the Sac and Fox area, the fact that Sac and Fox Nation did not yet cede its tribal interest therein

until 1824 must also be considered a factor. Nevertheless, there were vast amounts of public land available to potential settlers in eastern Missouri during the middle 1820's, and this overabundance at \$1.25 per acre could not help but depress and control the price of private sales, not only in 1825, but for many years thereafter.

Mr. Arthur S. Kirk, a qualified land appraiser, was offered by the defendant as an expert witness, and in the course of his testimony Mr. Kirk was permitted to express an opinion relative to 1825 fair market value of the Iowa and the Sac and Fox tracts. Mr. Kirk had also prepared and submitted an evaluation report on the two tracts. The historical and documentary material contained therein was most helpful to this Commission in arriving at its own independent appraisal of the two tracts. Mr. Kirk made a personal inspection of both tracts, and indicated that he personally relied upon the market data, or comparable sales approach, in reaching his conclusions on value. He testified that he attempted to put himself in the shoes of a potential 1824 buyer, who was willing and able to buy the subject tracts, and in this role, he considered among other things, the evidence of public and private sales of small tracts in and about the two areas as of 1824, the amount of other land available on the 1824 land market and its proximity to the tracts, their relative accessibility, the topographical features and the soil conditions of the two tracts, the available timber, minerals, and water supply, the climate, the existing transportation facilities, the population growth, and the general economic and political factors that would influence the 1825 land market.

Mr. Kirk pictured both subject tracts as having no commercial or industrial use as of 1825, but were best adapted to small scale farming and for the raising of livestock. In his considered opinion the Iowa tract had an 1825 fair market value on the average of \$0.20 per acre, while the Sac and Fox tract, having easier access to the Mississippi, had an 1825 market value on the average of \$0.30 per acre.

While Mr. Kirk's testimony was, as was the testimony of all the expert witnesses, indeed enlightening and most helpful, the Commission has exercised its own independent judgment in arriving at an 1825 estimate of the fair market value of the two subject tracts. Considering the topographical and physiographic features of both tracts, as well as soil qualities and overall productive capabilities consistent with the highest and best use, the Commission finds little to choose between the two areas. However, we must give a distinct advantage to the favorable location of the Sac and Fox lands in 1825.

After the close of the War of 1812, northeastern Missouri managed to catch some of the new immigration and settlement that expanded across the Mississippi River into the Missouri territory, and then spread westward along both sides of the Missouri River. There was even a limited demand for lands within the Sac and Fox tract several years prior to the 1824 treaty of cession. A goodly portion of the subject tract had been surveyed in 1818. In the two years that followed there were recorded the first public land sales of Sac and Fox lands. At treaty time there existed several small settlements within the

subject tract and in the adjacent areas to the south. The first private sales of Sac and Fox land were recorded in 1826.

On the other hand, the Iowa tract lay well to the north of the 1825 tide of immigration. That there was no demand for the Iowa lands immediately after the 1824 treaty of cession, is attested to by the fact that they were not surveyed and offered for public sale until some 15 to 20 years after they had been ceded.

The Iowa lands did have value though even in 1825, and we have found ample evidence upon which to estimate that value. In so doing the Commission has considered the 1825 topographical features of the Iowa tract, its natural resources, soil quality, timber, water, and mineral value, its nearness to market and transportation facilities, as well as the mass of evidence showing the public and private land sales of small tracts in the adjacent areas to the south and southeast of the subject tract, which for valuation purposes, we have found to be reasonably comparable.

Based upon the findings entered herein, and all the evidence in the record, the Commission is of the opinion that as of January 18, 1825, the Iowa tract, containing 1,551,200 acres, had a fair market value of \$698,040.00, or an average value of \$0.45 per acre.

On the same basis and considering all the factors as enumerated above and applicable to the Sac and Fox tract, the Commission is of the opinion that as of January 18, 1825, the Sac and Fox tract, containing 1,241,700 acres had a fair market value of \$993,360.00 or an average value of \$0.80 per acre.

As consideration for entering into a treaty of cession, and for ceding all their right, title, and interest to Royce Area 69, the United

States, under the 1824 Iowa treaty, agreed to pay to the Iowa tribe five hundred dollars in cash and merchandise, plus five hundred dollars annually for a period of ten years. It was further provided that as long as the President deemed it expedient, the United States was to provide blacksmith services and to supply the Iowa tribe with necessary farm utensils, livestock, and agricultural assistance. The defendant put in evidence a Government Accounting Office report which detailed all disbursements made to the Iowa Tribe or Nation of Indians under the 1824 Iowa treaty of cession. The Commission has found that, pursuant to said treaty, the United States disbursed for the benefit of the Iowa Tribe the sum of \$19,846.23 which sum, when compared to 1825 fair market value of the Iowa tract of \$698,040.00, was payment of an unconscionable consideration within the meaning of the Indian Claims Commission Act. The Iowa petitioners are therefore entitled to an interlocutory award of \$678,193.77 less any amounts the defendant may be entitled to set off as provided for in our Act.

For entering into a treaty of cession and for ceding all their right, title, and interest to Royce Area 69, the United States, under the 1824 Sac and Fox treaty of cession, obligated itself to pay to the Sac and Fox Nation the sum of one thousand dollars in cash and merchandise, plus the sum of one thousand dollars annually for a period of ten years, plus the sum of five hundred dollars to Maurice Blondeau "at the request of the Chiefs of the said Sock and Fox Nation, . . ." (Art. 3, 7 Stat. 229). The United States was also to provide blacksmith services to the Sac and

Fox Nation for as long as the President deems expedient, as well as supplying them necessary farm utensils, livestock, and agricultural assistance for as long as the President deemed necessary.

From the same Government Accounting Office report the Commission has found that the United States, in satisfaction of its 1824 treaty obligations, disbursed to the Sac and Fox Nation the sum of \$27,799.61, which sum, when compared to the 1825 fair market value of the Sac and Fox tract of \$993,360.00, amounts to payment of an unconscionable consideration under our Act. The Sac and Fox petitioners are therefore entitled to an interlocutory award of \$965,560.39, less any amounts the defendant may be entitled to credit against said award as offsets.

Arthur V. Watkins
Chief Commissioner

We concur:

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner