

## BEFORE THE INDIAN CLAIMS COMMISSION

THE SAC AND FOX TRIBE OF MISSOURI,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 195
	)	
THE UNITED STATES,	)	
	)	
Defendant.	)	

Decided: May 1, 1964

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Sac and Fox tribe of Missouri, petitioner herein, is an organized tribe of American Indians residing within the territorial limits of the United States, and has the capacity to maintain this suit, as heretofore found by this Commission. (See 5 Ind. Cl. Comm. 316, 317).

2. By the Treaty of September 16, 1836, the United States set aside for the Sac and Fox Tribe of Missouri and for the Iowa Tribe, a tract of land comprising 400 sections located on the south (or west) side of the Missouri River, between the Kickapoo reservation (Royce Areas 325, 436 and 437) and the Grand Nemaha River. The Sac and Fox Tribe was granted the "lower" or southern half of this tract, and the Iowa Tribe was granted the "upper" or northern half.

The Sac and Fox reservation thus consisted of 200 sections in the northeastern corner of what later became the State of Kansas. On Royce's map, Kansas 2, it is shown as Area 324. It comprised parts

of Townships 1 and 2 South, in Ranges 15, 16, 17, and 18 East, and parts of Township 2 South, in Ranges 19, 20, 21 and 22 East.

3. By the Treaty of May 18, 1854, ratified by the Senate July 11, 1854, the Sac and Fox Tribe of Missouri ceded its tract to the United States, reserving, however, fifty sections of land, to be located, in the alternative, either in the western part of the tract, or to the north and northwest of the tract and south of the Great Nemaha River. The cession thus consisted of 150 sections, or 96,000 acres, comprising the easternmost 96,000 acres of the tract. For this cession the 1854 treaty provided for a consideration of \$48,000, payable in four annual installments, as follows: \$15,000 payable in October 1854; \$15,000 payable in October 1855; \$10,000 payable in October 1856; and \$8,000 payable in October 1857. This cession is the subject of the claim and the date of taking is July 11, 1854.

4. When the survey of the reservation under the Treaty of September 16, 1836, was made it failed to include all of the acreage to which the Indians were entitled under the terms of the treaty. For the purpose of making up this deficiency there was added by defendant an area of 17,000 acres to the area appraised in this case. This additional acreage is shown on defendant's Exhibit 2 as Area "A" on the western end of the Sac and Fox reservation. This brings the total to the 96,000 acres that the Sac and Fox had left from the 200 sections which they received under the Treaty of September 16, 1836, after deducting the 32,000 acres which they reserved under the Treaty of May 18, 1854.

5. The surveyors who first entered the Sac and Fox area in 1855 were under instructions to note the soil, geological features, timber, minerals, waters, and any other features of interest as well as to survey the land. These notes show that the surveyors rated the uplands in the Sac and Fox tract as mostly first-rate rolling prairie with portions, not over one-third, composed of second and third-rate soils. They rated the small creek bottoms as rich first-class soil and the Missouri River bottom as mostly second-rate soil.

The general area is the most fertile of the entire State of Kansas. Approximately the eastern half of the cession was in what is known today as the Loess Hills region comprising a relatively small area in north-eastern Kansas. The western portion of the cession is in the Loess Drift Hills and is second only to the Loess Hills in productivity. The crop yields in Doniphan County, in which a part of the cession is located, are 157 per cent of the State average, making them the highest in the State. The surveyors' notes of 1855 showed that the land in this tract was well adapted to the growing of corn, oats and wheat and for grazing.

6. Steep hills and highly rolling topography were recorded for the eastern part of the Sac and Fox tract by the original surveyors. Rolling prairie was the common term these surveyors gave to the terrain in the western part of the tract. The modern description for the eastern part of the tract is "rolling to hilly throughout" while the western part has "narrow, gently rolling divides with the long, moderate to moderately, steep slopes \* \* \*."

Brown County, which contains the western part of the Sac and Fox tract, is described as follows: "The topography varies from that of gently rolling lands to low hills. Most of the slopes are gentle, sharp slopes occurring only in the immediate vicinity of the larger streams."

Doniphan County, which contains the eastern portion of the subject lands, has the following present-day description: "The topography of the country is extremely variable. The eastern portion consists of extremely rolling to hilly country while the western portion consists of rolling plains and low hills."

7. The climate of the Sac and Fox tract was well suited to general farming. The temperature range in the present state varies from a January average of 30° to a July average of 79°. During the mid-winter season the average minimum temperature ranges from 25° in the southeastern counties to 14° in the northwestern; and sub-zero weather occurs almost every year in every part of the state, although as a rule temperatures below zero do not continue for more than two or three days. During mid-summer, normal maximum temperatures range from 90° to 95° over the State, and readings of 100° or higher are rather common.

The average growing season is adequate for general crop production. It varies from 175 to 178 days in the western part of the tract to a high of 190 days in the easternmost part.

The average annual precipitation is 34 to 35 inches. During the growing season the average precipitation is 25 inches.

The western part of the Sac and Fox tract had prairie streams

and branches in approximately one-third of the sections. The middle part had practically no streams or branches while the eastern part was well-watered by streams, including the Missouri River.

8. The areas along the streams and especially along the Missouri River were well-timbered. The Sac and Fox tract had a frontage of 22-1/2 miles of this timbered area along the Missouri. This timber was very desirable to the settlers for buildings, fencing and firewood. In those areas where there was a scarcity of timber there was often a supply of native limestone for building purposes. There were some areas in which both timber and stone were scarce, especially in the westernmost part of the tract. The eastern part was generally well supplied with timber because of the 22-1/2 miles of river frontage which contains most of the timber on the tract. Coal was present in the area as mentioned by the survey notes on Township 2, Range 18E. Its value lay in local supply. There were no other minerals mentioned in the survey notes or known to be in the area.

9. A study of the settlement pattern up to 1854 in adjoining western Missouri showed that location and timber were two important factors considered by the settlers on public lands. Timber and water-courses attracted the settler and large areas of open prairie were not sought after. That some considered the scarcity of timber in Kansas as a drawback to settlement is pointed out in A Journey Through Kansas by C. B. Boynton and T. B. Mason, published in 1855:

The general impression seems to be that the deficiency of timber is so great as to present a serious, if not insurmountable obstacle to the settlement of the country,

and consequently each squatter has made it his first object to secure a tract of timber both indispensable for his own farm, and as a profitable investment, from the opinion that timber and fuel must be both scarce and dear.

This subject is one of prime importance, and deserves a careful consideration; for if prairie farms, destitute of timber, can not be cultivated successfully, then, except for stock-raising, Kansas will prove of but little value. If the prairie farmer is to be at the mercy of the owner of timber, and tree-tops, for fuel, are to be sold at five dollars per cord, as in some locations now, it will be long before the Territory is changed into a populous State.

We incline to the opinion, however, that little difficulty need be apprehended from this cause, with judicious management. First of all, there is more timber in Kansas than meets the eye of one passing through the country. It is confined to the margins of streams, and the low grounds, where it is partially or wholly concealed, until the overlooking eminence is reached. \* \* \*

10. The transportation to and within the Sac and Fox tract was good. The Missouri River was the principal navigable stream west of the Mississippi River and was open to navigation about eight months of each year. Steamboat traffic began on the Missouri in 1830 and by 1854 had become extensive, with St. Joseph being a major river port. St. Joseph was located six miles downstream from the southeast corner of the subject tract. The town of Iowa Point, also a port of call for steamboat traffic, lay on the west bank of the river about six miles north and west of the Sac and Fox Agency. These two ports made the Sac and Fox area easily accessible to potential settlers as well as providing a method of shipping produce from the future farms in the tract. This, of course, made markets available at once for the products of these future farms. These downriver markets were in addition to the existing town of St. Joseph

which in 1850 had a population of three to four thousand people. Another market source also existed in the form of the emigrant trains going west from St. Joseph. These trains used St. Joseph as one of the stocking points before going west to California, Oregon and other areas.

In 1854 the Hannibal and St. Joseph Railroad was under way and a railroad was being projected west of St. Joseph to connect with a Pacific railroad at Fort Laramie. Current accounts in the Saint Joseph Gazette of May 3, 1854, indicated that it was expected that in 30 months the railroad would have reached St. Joseph, thereby linking it with the east coast. In fact this did not occur until 1859, some 60 months later.

The St. Joseph and California Emigrant Road, a major transcontinental wagon trail, passed through the southern part of the Sac and Fox tract. It was reported in the Saint Joseph Gazette of May 3, 1854, as follows:

Emigration. - The number of Emigrants, and stock will be much larger this spring than was anticipated. Our streets are constantly crowded and will be for two weeks to come. Up to the first day of May there had crossed the river at the St. Joseph Ferry, Cattle 7858, Wagons 220, Horses and Mules 588, Men, Women and Children, 1120 - As many more will yet cross here. A number stop here a while and then cross at ferries above. It is believed at least 15,000 head of cattle will cross at this ferry. We notice a number of families bound for California and Oregon, and still they come.

Much of the traffic into this area came upriver by steamboat with as many as 200 to 500 passengers arriving on a single boat.

11. The Sac and Fox tract was located in an area adapted to general crop farming. It was suited by climate, soil and topography

for the growing of crops such as wheat, corn and oats and to the production of livestock. It had the advantage of accessibility for settlement and for produce markets. Based upon the agrarian economy of the 1854 period the highest and best use of this tract was for general farming on family-sized tracts varying from 80 to 160 acres.

12. The settlement of northeastern Kansas was, according to figures of November 1854, the most rapid in the Territory. The special census taken in November 1854 shows that the 14th District, which included the Sac and Fox tract, was the third largest in population. It had 1167 people and was exceeded only by two districts located farther south near Ft. Leavenworth and Kansas City where the settlement tended to be more rapid because of the advantages presented by the converging of the Kansas and Missouri Rivers.

The population of Missouri in 1830 was concentrated primarily along the Missouri River. In the area of what later became Kansas City the population density was 18-45 persons per square mile. Elsewhere near Kansas on the Missouri River, the density was 2-6 persons per square mile.

By 1840 most of the State of Missouri fell in the 2-6 person class, while that portion along the Missouri opposite the Sac and Fox area was 18-45 people per square mile. This was true of the entire length of the Missouri River where it bordered the State of Missouri, except in the extreme northwest corner of that State.

By 1850 the 18-45 density in the St. Joseph to Kansas City area was slightly enlarged, while the area to the north of St. Joseph along the Missouri had increased substantially in population. A density of 6-8



persons extended from St. Joseph up beyond what became the north boundary of Kansas while a 2-6 density existed beyond as far as Council Bluffs, Iowa.

13. On August 4, 1854, the Congress finally passed what was known as the Graduation Act. This Act provided for the following prices on public lands in accordance with the length of time they had been on the market:

<u>Class</u>	<u>Time Unsold</u>	<u>Price</u>
First	10 to 15 years	\$1.00
Second	15 to 20 years	.75
Third	20 to 25 years	.50
Fourth	25 to 30 years	.25
Fifth	30 years or more	.12 1/2

In the neighboring State of Missouri there were still the following public lands which fell under the Graduation Act:

<u>Class</u>	<u>Price</u>	<u>Acres in Missouri</u>
First	\$1.00	2,471,000
Second	.75	2,612,000
Third	.50	1,843,000
Fourth	.25	456,000
Fifth	.12 1/2	6,468,000

The townships in Missouri north and east of the Missouri River and east and south of the Sac and Fox area on the opposite side of the Missouri which had been on the market approximately 10 years, had either been entirely sold, reserved for the railroad, or had a comparatively small amount of acreage unsold. This meant that the land in Missouri which bordered the Missouri River opposite and south of the Sac and Fox tract to below the Kansas River had been the most desirable to the settlers of the decade preceding the Sac and Fox cession. There was, however, a considerable amount of land both north and south of the Missouri River which was affected by the Graduation Act. Most of this land which

remained unsold was of a lesser soil quality than that along the Missouri River and without as much timber.

14. Economic conditions in the year 1854 were depressed. However, wheat crops were bad and this caused a sharp rise in the price of wheat. Interest rates in the money markets ran from 7 to 12 per cent for first-class commercial paper. Interest on deposits in the general area of the Sac and Fox tract ran from 3 per cent on deposits payable on 10 days notice, 4 per cent on 30 day deposits, 5 per cent on 90 day deposits, and 6 per cent on 120 day deposits.

The Federal government paid slightly less than 6 per cent on long-term bonds in 1848. Pennsylvania paid 5 per cent on long-term bonds in 1852 and 1853 and Missouri paid 6 per cent on ten-year bonds issued in 1851 and again in 1853.

Defendant's appraiser, after a study of the eastern money markets, arrived at an interest rate of 8 per cent as being the probable cost of money to a potential purchaser of the subject tract.

15. By the 1850's there had arisen a strong demand by the public that the lands set aside to the Indians in Kansas for a permanent home be opened for settlement. The rapid advance of settlement and the extension of the western boundary of the United States to the Pacific Coast as a result of the annexation of Texas in 1845, the establishing of title to the Oregon Territory in 1846 and the cession by Mexico in 1848 with the resulting passage of emigrants through the Indian lands were primary factors responsible for the demand that the title to

the Indian lands in Kansas and Nebraska be extinguished in whole or in part.

The land sales in the country as a whole in 1854 exceeded all previous years with the exception of the tremendous boom of 1835 and 1836. Immigration had been rising steadily and a peak of 428,000 immigrants entered this country in 1854. It was not until 1875 that this figure was surpassed.

16. By the provision of the Act of Congress of March 3, 1853 (10 Stat. 226, 239), the President of the United States was authorized to negotiate with the Indian tribes west of the States of Missouri and Iowa for the purpose of "securing the assent of said tribes to the settlement of the citizens of the United States upon the lands claimed by said Indians, and for the purpose of extinguishing the title of said Indians in whole or in part to said lands: \* \* \*." Pursuant to that Act the President designated the Commissioner of Indian Affairs to conduct the necessary negotiations with the Indians, and in the summer of 1853 Commissioner Manypenny paid a preliminary visit to the Indian country in question for the purpose of exploring it and obtaining the information necessary to prepare full and detailed instructions as to the terms and conditions of the treaties he had been directed to negotiate. On this trip Commissioner Manypenny visited and held councils with most of the Indian tribes located immediately west of Missouri and Iowa, including the Sac and Fox of Missouri, explaining to them the object of his visit to their country. In his report of 1853 to the Secretary of the Interior (November 9, 1853), in telling of his trip, Commissioner Manypenny stated that he had a communication from the Sac and Fox of Missouri to the

effect that they were willing to sell one-half of their lands and that their agent had indicated in a separate letter that they would probably be willing to sell it all by the time the treaty-making period arrived. The Commissioner also reported that he had found the tribes alarmed because whites had gone over into the Indian country to explore it with the intention to locate on it but that they had returned. He reported with respect to the country he had gone over:

That the specific grants to different tribes west of Missouri and Iowa (what is generally termed Nebraska) are in tracts that come up to the western boundaries of those States, and run back west, a greater or less distance, for quantity. These grants embody, no doubt, the best lands in the Indian country. The quality of the soil, for the most part, is of a very superior character, but portions of the lands are entirely destitute of timber. A number of roads to New Mexico, to California, and Oregon, pass through this country over these lands, and are travelled by numerous bodies of emigrants every year.

17. Of the seven treaties entered into under the Act of 1853 there were three which provided that the cessions were in trust to the government to be sold for the benefit of the Iowa, Delaware and Peoria tribes respectively. The Iowa trust lands (Royce Area 323, Kansas 2) comprised approximately 79,000 acres straddling the eastern end of the Kansas-Nebraska border. The Peoria trust lands (Royce Areas 326, 327, 328, Kansas 2) were located well south of the Sac and Fox tract on the Missouri border. Including the reserved lands, the Peoria trust lands comprised all of Miami County north of the Miami tract and extended approximately 32 miles west of the Missouri border. These trust lands

consisted of approximately 208,000 acres. The Delaware trust lands (Royce Areas 316, 317, Kansas 2) included substantial parts of Leavenworth and Jefferson Counties. On the east one section bordered the Missouri and on the south another section bordered on the Kansas River. These lands comprised more than 560,000 acres. The trust lands were put on the market in 1856 and 1857 after they were appraised.

18. In 1856 the Commissioner of Indian Affairs in his instructions to the Commissioners appointed under the 5th section of the Indian Appropriation Bill approved March 3, 1855, to appraise the trust lands made the following statements:

\* \* \*

In classifying and appraising the trust lands you will observe that by the express provisions of the treaties and the law, no part of them can be sold for less than one dollar and twenty five cents per acre, and therefore if upon personal view of the territory in which they respectively lie you be of the opinion that portions of the lands are less in value than \$1.25 per acre, you will not place a value on such lands.

In fixing a valuation you will regard the eligibility and quality of the lands, the proximity of the same to the Missouri or the Kansas River, or other water courses, to timber, to great leading roads, or other advantages, and their position with reference to eligible town or City sites, and those will all be taken into view and with any other causes which in your opinion will add value to these lands, will be made an element in fixing the price per acre at which you will appraise them. They will be appraised without any reference to the improvements which may have been made upon them but while these are left out of view, the improvements which have been made upon adjacent lands other than trust lands within the Territory of Kansas, so far as the same may add value to the trust lands, you should give due weight thereto, and allow this element of value to have its fair influence on your judgment. The sites of the various cities and towns

which have sprang upon these lands, will be valued as town lots, having in view in such valuation the eligibility and prominence of the site, but leaving out of view the improvements upon such lots, and for the purpose of appraising such lots you will have occasion to provide yourselves with a map or plat of the City or town in which they are situate.

\* \* \*

19. The Kansas trust lands were all appraised between April and November, 1856.

The first-class lands in the Iowa trust area were initially appraised at values ranging from \$1.50 to \$2.50 per acre; second-class lands at values from \$1.25 to \$2.50 per acre, and third-class lands at \$1.25 per acre.

The first-class lands in the eastern portion of the Delaware trust area were appraised at \$1.50 to \$4.00 per acre; second-class lands were \$1.25 to \$3.00 per acre, and third-class lands were \$1.25 to \$2.00 per acre. The eastern portion of these Delaware trust lands were the first trust lands sold and the sales took place between November 1856 and February 1857.

After this sale the Commissioner of Indian Affairs stated that the President was not satisfied with the appraisals and suggested as follows:

From the evidences of the value of that country as disclosed at the recent sale of the Eastern portion of the Delaware lands it is believed that you will readily see the necessity of increasing the rates at which you have appraised the first named lands.

Pursuant to these instructions the appraisal of the Iowa trust lands was increased by 25¢ per acre in each classification. The

western portion of the Delaware lands was increased from 25¢ to 50¢ per acre over the original appraisals.

This made a final average appraisal of \$1.79 for the eastern Delaware lands, \$1.65 for the western Delaware lands, and \$1.89 per acre for the Iowa trust lands.

The eastern Delaware lands sold at public auction between November 1856 and February 1857 for an average price of \$2.09 per acre. The western Delaware lands were sold during July and August of 1857 at an average price of \$1.68 per acre. The Iowa trust lands were sold during June 1857 for an average price of \$1.29 per acre.

In addition to the trust lands mentioned above there were three other cessions in 1854 not including the Sac and Fox cession. These were the Shawnee, Miami and Kickapoo. The Potawatomie cession of 1846 containing some 909,000 acres was also opened for sale during this same time.

20. Under the terms of the treaty with the Sac and Fox of Missouri they were entitled to select 50 sections or 32,000 acres for a permanent home. This selection was made from the lands of the Iowa Indians which adjoined and lay directly north of the Sac and Fox tract. As a result of this selection and under the terms of the treaty there was sold as a part of the Iowa trust lands 32,000 acres from the Sac and Fox tract. These 32,000 acres were those just to the south of the line between the Sac and Fox and Iowa line. As shown by defendant's Exhibit No. 1 these lands were appraised at prices ranging from \$1.50 per acre to as much as \$4.00 per acre for a small portion. They were

sold for an average price of \$1.87 per acre as indicated by a tabulation of approximately 94 per cent of the sales. It is difficult to get an exact figure since the line between the two tribes cuts across section and quarter-section lines.

21. Many of the trust lands sales were of locations claimed by the squatters, who included both settlers and speculators. These had taken up the choicest locations and they formed associations to protect their claims against the prospect of competitive bidding. Such claims although without legal status, were also bought and sold. The government yielded to the pressure of the squatters and Commissioner Manypenny directed that on sales of the trust lands to "bona fide settlers" who had made "lasting and valuable improvements" the appraisals were to be considered the fair value of the land and no competitive bidding need be had. The effect of this procedure was to extend to the "bona fide settlers" pre-emption rights similar to those accorded on the public lands, except that the price was the appraised value instead of the government minimum. Many of the so-called bona fide settlers were speculators who thus were enabled to obtain their lands at the appraised value. The requirement of "lasting and valuable improvements" proved unenforceable as a practical matter.

On the Delaware Trust lands about 25 miles south of the Sac and Fox land there were some 1200 squatters by the fall of 1854. There were also squatters on the Peoria Trust lands south of the Kansas River.

The same was true of the Iowa Trust lands and before the close of the sale 290 out of 687 of these "bona fide settlers" had assigned their land to other parties.



22. Defendant's expert witness, William G. Murray, testified at the hearing and submitted a written report which is defendant's Exhibit 1. In this report Dr. Murray set forth the various factors which were present and capable of assessment by a prospective purchaser as of July 1854.

This information was derived from the surveyors' notes of 1855 on topography, timber, stone and water. Information on climatic factors was derived from later studies which adequately reflect the conditions of 1854. Transportation facilities were derived from the usual historical sources. From these facts he determined the highest and best use of the land in 1854 was as subsistence farms of 80, 120 and 160 acre units. In arriving at a value of these lands for use as family-sized farm units Dr. Murray considered the amount of land available, particularly that in Missouri near the Sac and Fox cession, the effect of the Graduation Act of 1854, the population movement, interest rates, and other economic factors.

Based upon this information, which is reflected in the findings heretofore made, Dr. Murray arrived at an overall value of \$136,000 for the 96,000 acres appraised, or at the rate of approximately \$1.42 per acre. Dr. Murray stated on cross examination that this land was the best of the five tracts in Kansas which he had appraised for defendant (Tr., p. 126).

23. Petitioner did not have expert testimony but relied upon documentary evidence, including sales of the Iowa trust lands made in 1857, to establish the value. Based upon this evidence petitioner arrived at

a total value of \$720,000 for the 96,000 acres of the Sac and Fox reserve. This is an average of \$7.50 per acre.

24. Based upon the findings of fact heretofore made and upon the record as a whole, it is the finding of this Commission that as of July 1854 the Sac and Fox of Missouri tract of 96,000 acres had an overall value of \$240,000, or at the rate of \$2.50 per acre. The Commission further finds that defendant paid the sum of \$48,000 in consideration of the cession of said 96,000 acres belonging to the Sac and Fox of Missouri, which payment is admitted by petitioner. Based upon the evidence now before us and upon the allegation of the defendant, and the admission of petitioner as to the amount of consideration paid, this Commission finds that said consideration for land valued at \$240,000 was unconscionable, and that petitioner should recover the sum of \$240,000, less the consideration of \$48,000, or a judgment in the amount of \$192,000, less such offsets and credits as may be hereafter determined in accordance with the Indian Claims Commission Act and the Rules of this Commission.

Arthur V. Watkins  
Chief Commissioner

Wm. M. Holt  
Associate Commissioner

T. Harold Scott  
Associate Commissioner