

BEFORE THE INDIAN CLAIMS COMMISSION

THE SAC AND FOX TRIBE OF INDIANS )  
 OF OKLAHOMA, )  
 )  
 THE SAC AND FOX TRIBE OF MISSOURI, )  
 )  
 THE SAC AND FOX TRIBE OF MISSISSIPPI )  
 IN IOWA, )  
 )  
 EDWARD MACK, ET AL., EX REL., THE )  
 SAC AND FOX OF THE MISSISSIPPI AND )  
 THE SAC AND FOX NATION OF INDIANS )  
 OCCUPYING A RESERVATION IN THE )  
 TERRITORY OF OKLAHOMA, AND )  
 )  
 CHARLES W. ROBIDOUX, ET AL., EX REL., )  
 THE CONFEDERATED OR UNITED TRIBES OF )  
 SAC AND FOX INDIANS, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 THE UNITED STATES OF AMERICA, )  
 )  
 Defendant. )

Docket No. 95

Decided: December 27, 1971

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Sac and Fox Nation, also referred to as the Confederated Sac and Fox, is composed of three bands, each of which is represented by its duly authorized individual plaintiff members: (1) the Sac and Fox Tribe of Indians of Oklahoma; (2) the Sac and Fox Tribe of Missouri; and (3) the Sac and Fox tribe of the Mississippi in Iowa. The plaintiff

bands are identifiable groups of American Indians residing within the territorial limits of the United States and, as such, being successors in interest to the Sac and Fox Nation, being represented by individual member plaintiffs, and having been heretofore found qualified to maintain actions before the Indian Claims Commission, are entitled to bring and maintain this action for accounting pursuant to Clause 1 of Section 2 of the Indian Claims Commission Act of 1946 (60 Stat. 1049, 1050).

2. The fourth article of the treaty of August 4, 1824 (7 Stat. 229, 230), states:

The United States engage to provide and support a Blacksmith for the Sock and Fox nations, so long as the President of the United States may think proper, and to furnish the said nations with such farming utensils and cattle, and to employ such persons to aid them in their agriculture, as the President may deem expedient.

The plaintiffs allege, and the defendant does not dispute, that between the years 1826 and 1849 (inclusive), \$39,710.00 was appropriated and \$16,178.00 was disbursed to satisfy this treaty obligation. Absent a showing that the treaty obligation was not met, there is no deficit for which the defendant has failed to account.

3. The Indian signatories to the treaty of July 15, 1830 (7 Stat. 328), were the Omahas, Ioways, Ottoes and Missourias, the Confederated Tribes of the Sacs and Foxes, and the Medawah-Kanton, Wahpacoota, Wahpeton and Sisseton Bands or Tribes of Sioux. 54.4% of the total population of these various tribes were Sac and Fox Indians, the instant

plaintiffs. Sac and Fox Tribe v. United States, Docket 143, 15 Ind. Cl. Comm. 381, 407 (1965).

4. The fifth article of the treaty of July 15, 1830 (supra), states:

And the United States further agree to set apart three thousand dollars annually for ten successive years, to be applied in the discretion of the President of the United States, to the education of the children of the said Tribes and Bands, parties hereto.

The plaintiffs allege, and the defendant does not dispute, that while the aggregate \$30,000.00 was appropriated during the period specified by the treaty, no more than \$26,909.90 was actually disbursed, leaving a deficit of \$3,090.10. Of the sum last mentioned, the defendant has not accounted to the instant plaintiffs for 54.4%, that is, \$1,681.00.

5. The fourth article of the treaty of September 21, 1832 (7 Stat. 374, 375), states:

It is further agreed that the United States shall establish and maintain within the limits, and for the use and benefit of the Sacs and Foxes, for the period of thirty years, one additional black and gun smith shop, with the necessary tools, iron and steel; and finally make a yearly allowance for the same period, to the said tribes, of forty kegs of tobacco, and forty barrels of salt, to be delivered at the mouth of the Ioway river.

The plaintiffs allege, and the defendant does not dispute, that between the years 1833 and 1863 (inclusive), \$78,100.00 was appropriated, and \$60,245.94 was disbursed in satisfaction of this treaty obligation. Absent a showing that the treaty obligation was not met, there is no deficit for which the defendant has failed to account.

6. The second, third, and fourth articles of the treaty of September 28, 1836 (7 Stat. 520), state:

ARTICLE 2. In consideration of the cession contained in the preceding article, the United States hereby agree as follows, to wit; To pay to the confederated tribes of the Sac and Fox Indians in the month of June one thousand eight hundred and thirty-seven, the sum of thirty thousand dollars, and for ten successive years thereafter the sum of ten thousand dollars each year in specie, to be paid at the treaty ground opposite Rock island; to pay to the widow and children of Felis St. Vrain deceased former Indian agent who was killed by the Indians, one thousand dollars; to pay to the following named persons the sums set opposite to their names respectively, being the one half of the amount agreed to be due and owing by the confederated tribes of Sacs and Foxes to their creditors, provided said creditors will wait for the other half untill the same can be paid out of their annuities, for which purpose the Sacs and Foxes will set apart the sum of five thousand dollars each year, beginning in one thousand eight hundred and thirty-eight, out of their annuities to be paid upon said debts in the proper proportion untill the whole amount is discharged; to wit: to John Campbell ten thousand dollars, to Jeremiah Smith six hundred and forty dollars, to Stephen Dubois three hundred and five dollars and twenty cents, to Nathaniel Knapp one hundred dollars, to Wharton R. McPhearson two hundred and fifty dollars, to S. S. Phelps & Co. four thousand dollars, to Jessee W. Shull five hundred dollars, to James Jordan one hundred and fifty dollars, to John R. Campbell fifteen dollars, to Amos Farrar one hundred dollars, to the owners of the S. Boat Warrior, one hundred and sixty-two dollars and seventy-five cents, to George Davenport two thousand five hundred and sixty-three dollars and fifty cents, to Madame St. Ament five hundred dollars, to Madame Joseph Gunville five hundred dollars, to Madame Le Claire one hundred and twenty-five dollars, to Miss Blondeau one hundred and twenty-five dollars, to Antoine Le Claire two thousand four hundred and thirty-six dollars and fifty cents, to Francis Labachiere one thousand one hundred and sixty-seven dollars and seventy-five cents, to Pratte Chouteau & Co. twenty thousand three hundred and sixty-two dollars and forty-two and a half cents, to Nathaniel Patterson four hundred and fifty-six dollars.

ARTICLE 3. The United States further agree to deliver to the confederated tribes of Sacs and Foxes two hundred horses, as near that number as can be procured with the sum of nine thousand three hundred and forty-one dollars, to be delivered at the payment of the annuities in June one thousand eight hundred and thirty-seven.

ARTICLE 4. At the special request of the Sac and Fox Indians aforesaid, the United States agree to make the following provisions for the benefit and support of seven half-breeds of the Sac and Fox nation, to wit; the United States agree to pay to ---- Wayman for the use and benefit of his half-breed child by a Fox woman named Ni-an-no, one thousand dollars, to Wharton R. McPhearson for the use and benefit of his half-breed child by To-to-qua, a Fox woman, one thousand dollars, to James Thorn for the use and benefit of his half-breed child by Ka-kee-o-sa-qua, a Fox woman, one thousand dollars, to Joseph Smart for the use of his half-breed child by Ka-ti-qua a Fox woman one thousand dollars, to Nathan Smith for the use and benefit of his half-breed child by Wa-na-sa a Sac woman one thousand dollars, and to Joseph M. Street Indian agent, two thousand dollars for the use and benefit of two half-breed children, one child of Niwa-ka-kee a Fox woman, by one Mitchell, the other child of Ni-an-na by Amos Farrar, the two thousand dollars to be put at interest, and so much of said interest arising therefrom to be expended for the benefit of the children as said agent shall deem proper and necessary, and when each shall arrive at the age of twenty years, the said agent shall pay to each half-breed one thousand dollars and any balance of interest remaining in his hands at the time

7. The second article called for the payment of half of each of nineteen enumerated debts. The payment of half the debts amounted to \$44,459.12, and the defendant actually expended all required sums under this second article except \$19.12. Thus, it has failed to account for \$19.12 under the second article. The third article called for the purchase of up to 200 horses for no more than \$9,341.00. The defendant's obligation under this article was to furnish 200 horses--or as near that

number as could be bought for \$9,341.00. The defendant has accounted under this article in full by the purchase of 200 horses for \$8,341.00. The fourth article called for the payment of \$7,000.00 for the benefit of half-breed children, but the defendant attributed only \$5,000.00 to their benefit, leaving \$2,000.00 for which the defendant failed to account under the fourth article. Thus, under the second, third, and fourth articles of the treaty of September 28, 1836 (supra), the treaty obligations were not met to the extent of \$2,019.12 for which the defendant has failed to account.

8. The third article of the treaty of September 17, 1836 (7 Stat. 511), states:

The Ioways and Missouri band of Sacks and Foxes further agree, that they will move and settle on the lands assigned them in the above article, as soon as arrangements can be made by them; and the undersigned William Clark, in behalf of the United States, agrees, that as soon as the above tribes have selected a site for their villages, and places for their fields, and moved to them, to erect for the Ioways five comfortable houses, to enclose and break up for them two hundred acres of ground; to furnish them with a farmer, a blacksmith, schoolmaster, and interpreter, as long as the President of the United States may deem proper; to furnish them with such agricultural implements as may be necessary, for five years; to furnish them with rations for one year, commencing at the time of their arrival at their new homes; to furnish them with one ferry-boat; to furnish them with one hundred cows and calves and five bulls, and one hundred stock hogs when they require them; to furnish them with a mill and assist in removing them, to the extent of five hundred dollars. And to erect for the Sacks and Foxes three comfortable houses; to enclose and break up for them two hundred acres of ground; to furnish them, with a farmer, blacksmith, schoolmaster, and interpreter, as long as the President of the United States may deem proper; to

furnish them with such agricultural implements as may be necessary, for five years; to furnish them with rations for one year, commencing at the time of their arrival at their new home; to furnish them with one ferry-boat; to furnish them with one hundred cows and calves and five bulls, one hundred stock hogs when they require them; to furnish them with a mill; and to assist in removing them, to the extent of four hundred dollars.

The plaintiffs allege that during the years 1837, 1838, and 1839, \$44,860.00 was appropriated in satisfaction of this treaty obligation, and that \$43,883.00 was disbursed. Absent a showing that the treaty obligation was not met, there is no deficit for which the defendant has not accounted.

9. By Article 2 of the treaty of September 17, 1836 (supra), the defendant undertook to provide the instant plaintiffs with a tract consisting of 200 sections of land. A survey conducted in 1854 disclosed that the tract contained not 128,000 acres (200 sections), but only 111,000 acres, being short 17,000 acres. Thereupon the defendant undertook to make up the difference and, upon cession, to compensate the plaintiffs for the entire 200 sections. The 17,000 acres were involved in, and compensated for by, the judgment in Sac and Fox Tribe v. United States, Docket 195, 13 Ind. Cl. Comm. 295 (1964). Plaintiffs are not entitled to recover any amount under this article.

10. The fourth article of the treaty of July 15, 1830 (supra, Find. No. 3), states in part:

. . . And the United States further agree to make to the said Tribes and Bands, the following allowances for the period of ten years, and as long thereafter as the President of the United States may think necessary and proper, in addition to the sums herein before stipulated to be paid

them; that is to say;. . . and to the Sacs of the Missouri River. . . also instruments for agricultural purposes to the amount of two hundred dollars.

The plaintiffs allege, and the defendant does not dispute, that the quoted language established an obligation to furnish agricultural instruments, that the obligation could not have exceeded \$2,000.00 for the first ten years following the treaty, and that during the years 1831, 1832, 1833, 1835, and 1837 the defendant actually disbursed a total of \$1,085.45 in satisfaction of the "agricultural instruments" provision of the fourth article of the treaty of July 15, 1830 (supra). The defendant contends that the only obligation under this article was to provide an adequate number of agricultural instruments up to a yearly cost of \$200.00. Since plaintiffs have not shown that the aggregate sum actually disbursed was inadequate, defendant argues that its obligations have been met. The use of the phrases "following allowances" and "in addition to the sums herein before stipulated to be paid to them" compel the conclusion that the plaintiffs were, by reason of the "agricultural instruments" provision, entitled to either \$200.00 per year to be spent on agricultural instruments, or the instruments themselves to the value of \$200.00 per year, regardless of a showing of need and regardless of actual need. The firm commitment of the United States lasting for only the first ten years, the maximum for which the defendant must account under this fourth article is \$2,000.00. The defendant having accounted for the actual disbursement of \$1,085.45 and there being a showing that the treaty obligation was **not** met



thereby, there remains a deficit of \$914.55 for which the defendant has failed to account.

11. The fourth clause of the second article of the treaty of October 21, 1837 (7 Stat. 540), states:

To expend, in the erection of two grist mills, and the support of two millers for five years, ten thousand dollars (\$10,000).

Defendant expended \$6,537.57 for the erection and repair of grist mills and \$1,395.83 for the pay of millers, for a total disbursement of \$7,933.40. Defendant contends that this satisfied the requirements of the fourth clause of article 2 the crux of which was the furnishing of two grist mills and the support of two millers, not the \$10,000.00 price to be paid therefor. But defendant overlooks the fact that the treaty provision required the support of two millers for five years. Its accounting reflects only expenditures for pay of millers for 3 years as follows:

1840	\$729.17
1841	291.66
1842	<u>375.00</u>
Total	\$1,395.83

Defendant has not fulfilled its obligations under this provision of the 1837 treaty. There is a deficiency of \$2,066.60 for which defendant has failed to account.

12. The fifth clause of the second article of the treaty of October 21, 1837 (supra, Find. No. 11), states:

To expend in breaking up and fencing in ground on the land retained by said confederated tribes, and for other beneficial objects, twenty-four thousand dollars (\$24,000).

The defendant expended only \$11,033.33 for clearing, breaking and fencing land, which leaves a deficiency of \$12,966.67, for which the defendant has failed to account. The defendant again argues that the object of this clause was to break ground, and fence it, regardless of cost up to \$24,000.00, and alleges that the "other beneficial objects" were not specified, and were not requested or demanded by the plaintiffs, thus inferring that the defendant was under no real obligation to comply with that provision of the treaty.

The plaintiffs were under no duty to identify the "other beneficial objects" upon which almost \$13,000.00 might be profitably expended; neither were they under any duty to demand compliance with this particular provision; and in fact neither identification nor demand would have been productive. The defendant was under a duty to isolate the appropriate "other beneficial objects" and expend whatever sum, up to the treaty limit, might be required to accomplish them. Under these circumstances which show that the treaty obligation was not met, the expenditure of \$11,033.33 resulted in a deficit of \$12,966.67 for which the defendant has failed to account.

13. The sixth clause of the second article of the treaty of October 21, 1837 (supra, Find. No. 11), states:

To expend in procuring the services of the necessary number of laborers, and for other objects connected with aiding them in agriculture, two thousand dollars (\$2,000) a year, for five years.

Defendant expended \$9,226.16 in satisfaction of its obligations under this provision of the treaty. The defendant again argues that the object of this clause was to supply agricultural labor, that no more was needed, and that the plaintiffs did not request or demand additional services. The discussion immediately preceding (supra, Find. No. 12) applies. The defendant was obliged to expend a total of \$10,000.00. Under these circumstances, which show that the treaty obligation was not met, the expenditure of \$9,226.16 resulted in a deficit of \$773.84 for which the defendant failed to account.

14. The third article of the treaty of October 21, 1837 (supra, Find. No. 12), states:

The two blacksmith's establishments, and the gunsmith's establishment, to which the Sacs and Foxes are entitled under treaties prior to this, shall be removed to, and be supported in the country retained by them, and all other stipulations in former treaties, inconsistent with this, or with their residence, and the transaction of their business on their retained land are hereby declared void.

The plaintiffs contend, and the defendant does not dispute, that \$1,350.00 was appropriated in 1838 to satisfy this treaty obligation, of which only \$161.27 was actually disbursed. Sums in excess of \$40,000.00 were expended for blacksmith and gunsmith purposes subsequent to 1837 under the earlier treaties of August 4, 1824 (7 Stat. 229), and September 21, 1832 (7 Stat. 374). There has been no showing that the 1837 treaty obligation was not met. There is no deficit for which the defendant has failed to account.

15. The eighth clause of the second article of the treaty of October 21, 1837 (supra, Find. No. 11), states:

Eighth. To invest the sum of two hundred thousand (\$200,000) in safe State stocks, and to guarantee to the Indians, an annual income of not less than five per cent, the said interest to be paid to them each year, in the manner annuities are paid, at such time and place, and in money or goods as the tribe may direct. Provided, That it may be competent for the President to direct that a portion of the same may, with the consent of the Indians, be applied to education, or other purposes calculated to improve them.

The plaintiffs contend that the failure to disburse the \$10,000.00 appropriated in 1838 for this clause and the failure, in 1839 and in 1840, to appropriate more than \$5,000.00 each year for this clause, resulted in a deficiency of \$20,000.00, for which the defendant has failed to account. The defendant contends that where, as here, simple interest amounting to \$10,000.00 was due each year for seventy-one consecutive years, and where in the course of that period \$711,678.55 was disbursed from interest instead of \$710,000.00, there was in effect an overpayment and not a failure to account. The defendant has not failed to account for any sum actually due under clause 8 of article 2 regardless whether equal sums were disbursed in each and every year.

16. By the Act of August 26, 1842, c. 207, §§ 1, 2, 5 Stat. 536, the United States converted to a fiscal year which required that all accounts be rendered for a period from July 1 through June 30, and not for a calendar year as had been the past practice. The plaintiffs contend that as a consequence of the change-over, several treaty

obligations aggregating \$19,188.00 during the first half of calendar year 1843 were not paid during the first half of that calendar year, thus creating an instant deficiency. The defendant contends, correctly, that where the sums due were paid on time, the change-over to a calendar year is irrelevant. The defendant has not, as a consequence of its conversion from a calendar year to a fiscal year, failed to account for sums due the plaintiffs.

17. Articles II, IV, and V of the treaty of October 11, 1842 (7 Stat. 596), state in part:

#### ARTICLE II

In consideration of the cession contained in the preceding article, the United States agree to pay annually to the Sacs and Foxes, an interest of five per centum upon the sum of eight hundred thousand dollars, and to pay their debts mentioned in the schedule annexed to and made a part of this treaty amounting to the sum of two hundred and fifty-eight thousand, five hundred and sixty-six dollars and thirty four cents; and the United States also agree. . . .

#### ARTICLE IV

It is agreed that each of the principal chiefs of the Sacs and Foxes shall hereafter receive the sum of five hundred dollars annually, out of the annuities payable to the tribe, to be used and expended by them for such purposes as they may think proper, with the approbation of their agent.

#### ARTICLE V

It is further agreed that there shall be a fund amounting to thirty thousand dollars retained at each annual payment to the Sacs and Foxes, in the hands of the agent appointed by the President for their tribe, to be expended by the chiefs, with the approbation of the agent, for national and charitable purposes among their people; such as the support of their poor, burying their dead, employing physicians for the sick, procuring provisions for their

people in cases of necessity, and such other purposes of general utility as the chiefs may think proper, and the agent approve. And if at any payment of the annuities of the tribe, a balance of the fund so retained from the preceding year shall remain unexpended, only so much shall be retained in addition as will make up the sum of thirty thousand dollars.

The defendant was obligated by Article II to pay an annuity of \$40,000.00 for a period of 67 years, from 1843 through 1909, at which time the fund was capitalized by the Act of March 3, 1909 (35 Stat. 781, 783). This obligation amounted to \$2,680,000.00. The debt schedule referred to in Article II amounted to \$258,566.34 for a total Article II obligation of \$2,938,566.34. The defendant's accounting reflects disbursements of debt and interest payments of \$2,725,927.51 (Statement No. 26, G.A.O. Report, Def. Ex. 8, p. 179) plus \$300,045.61 (Disbursement Schedule No. 24, G.A.O. Report, Def. Ex. 8, p. 258) for an aggregate amount of \$3,025,973.12. This represents a payment of some \$87,404.78 in excess of the treaty obligations.

Plaintiffs have objected to the application of \$76,225 to this account. There are some thirteen items, totalling \$59,006.00, which plaintiffs contend were improperly credited and \$17,219.00 in removal expenses which plaintiffs assert were improperly applied. <sup>1/</sup> However,

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<sup>1/</sup> Plaintiffs quote that portion of section 2 of the Indian Claims Commission Act (supra) which prohibits the use of removal expenses as gratuitous offsets against any award. It should be noted that defendant has not included these removal expenditures as an offset, and, in fact, no claim for gratuitous offsets is involved in this phase of the case.

even if the entire \$76,225.00 were found to have represented improper applications of credits against the 1842 treaty obligations, the defendant would still have been entitled to credits which were \$11,179.78 in excess of its obligations.

Plaintiffs have also objected to defendant's failure to disburse the full \$40,000.00 every year. While it appears that defendant did expend less than the \$40,000.00 in the years 1843, 1844, and 1845, the United States disbursed interest payments in excess of the \$40,000.00 in other years. As a result there was in fact an overpayment and not a failure to account for the interest payments due under the 1842 treaty (see Finding No. 15, supra).

There is no deficit for which defendant has failed to account under Articles II, IV, and V of the 1842 treaty.

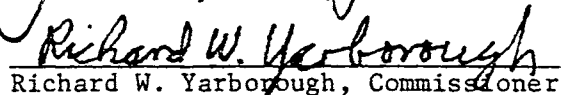
18. The plaintiffs allege that in 1911 and 1912, the defendant created a net deficiency in interest payments to the Iowa and Oklahoma Sac and Fox amounting to \$26,623.00. The defendant contends that while there was a net deficiency in interest payments in 1912, part of which had occurred in 1911, the deficiency was overcome by the end of the term during which 5% interest was to be paid on certain funds, and that the final result was an overpayment of \$21,015.97. This situation is indistinguishable from that discussed in Finding No. 15 (supra), and the Commission finds that the defendant has not failed to account for any sum actually due as interest within this claimed exception.

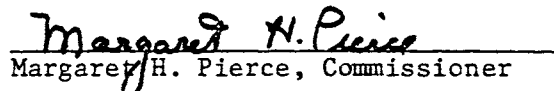
19. The plaintiffs contend, and the defendant does not dispute, that as of June 30, 1951, the General Accounting Office report shows

\$68,089.43 standing on the books of the Treasury to the account of the Iowa Sac and Fox. Plaintiffs request that they be awarded this sum. While conceding this fact, the defendant contends that by carrying the sum on the books of the Treasury, it has indeed been accounted for. The Commission cannot render a judgment which would extract the plaintiffs' own funds from the defendant's custody over the defendant's objections.

20. Based on the findings of fact set out above, the defendant has failed to account for \$20,421.78.

  
Jerome K. Kuykendall, Chairman

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner