

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

An agreement between the Cherokee Commission and the Sac and Fox Indians in the Indian Territory.

JULY 3, 1890.—Read, referred to the Committee on Indian Affairs, and ordered to be printed.

To the Senate and House of Representatives :

In compliance with the provisions of section 14 of the act of March 2d, 1889, I transmit herewith, for the consideration of Congress, an agreement concluded between the commissioners appointed under that section on behalf of the United States, commonly known as the Cherokee Commission, and the Sac and Fox Nation of Indians in the Indian Territory, on the 12th day of June last.

The Sac and Fox Nation have a national council, and the negotiation was conducted with that body, which undoubtedly had competent authority to contract on behalf of the tribe for the sale of these lands. The letter of the Secretary of the Interior and the accompanying papers, which are submitted herewith, furnish all the information necessary to the consideration of the questions to be determined by Congress.

The only serious question presented is as to that article of the agreement which limits the distribution of the funds to be paid by the United States, under it, to the Sac and Fox Indians now in the Indian Territory. I very gravely doubt whether the remnant or band of this tribe now living in Iowa has any interest in these lands in the Indian Territory. The reservation there was apparently given in consideration of improvements upon the lands of the tribe in Kansas. The band now resident in Iowa, upon lands purchased by their own means, as I am advised, left the Kansas reservation many years before the date of this treaty and, it would seem, could have had no equitable interest in the improvements on the Kansas lands, which must have been the result of the labors of that portion of the tribe living upon them. The right of the Iowa band to a participation in the proceeds of the sale of the Kansas reservation was explicitly reserved in the treaty, but it seems to me, upon a somewhat hasty examination of the treaty, that the reservation in the Indian Territory was intended only for the benefit of those who should go there to reside. The Secretary of the Interior has expressed a somewhat different view of the effect of this treaty, but if the facts are, as I understand, that the Iowa band did not contribute to the improvements which were the consideration for the reservation, and

did not accept the invitation to settle upon the reservation lands in the Indian Territory, I do not well see how they have either an equitable or legal claim to participate in the proceeds of the sale of those lands.

The whole matter is submitted for the consideration of Congress.

BENJ. HARRISON.

EXECUTIVE MANSION, *July 2, 1890.*

DEPARTMENT OF THE INTERIOR,
Washington, June 26, 1890.

The PRESIDENT:

The articles of agreement made between the Sac and Fox Nation in the Indian Territory and the Cherokee Commission June 12, 1890, with the accompanying report, were duly received in this Department on June 17, and, although their arrival was immediately announced to you, they were detained for consideration as to the form and validity thereof.

The subject can be best submitted to you by giving you an abstract of the agreement first, with a statement of the manner of its execution and some statistics relating to the different portions of the Sac and Fox tribe, one in the Indian Territory and the other on their own lands in Iowa.

By the first article of the agreement the Sac and Fox Nation cedes its reservation in the Indian Territory, which is described accurately in the article, reserving a quarter section of land, on which is located the Sac and Fox Agency, with the right to sell the same under the approval of the Secretary of the Interior, saving the rights of the United States, and the persons located thereon; also reserving a section of land held for schools and farms, subject to certain provisions set forth therein, but not deemed necessary to mention here.

By the second article of the agreement the United States agrees to give each citizen of the Sac and Fox Nation in the Indian Territory an allotment "in square form."

A peculiar feature of the allotment is that it is to be held for twenty-five years in trust as to 80 acres, and as to the other 80 only five years, or if the President consent for fifteen years, at the expiration of which period patents are to issue in fee.

For the cession on these terms the United States is to pay said nation the sum of \$485,000, provided the allotments shall not exceed 528; otherwise there shall be deducted the sum of \$200 for each allotment in excess. The \$485,000 are to be paid as follows: \$300,000 into the Treasury of the United States to the credit of the Sac and Fox Nation, and to bear interest at the rate of 5 per cent. per annum, due each year on the 1st of March; \$5,000 to be paid the Indian agent at the Sac and Fox Agency; the money to be used under the direction of the National Council of said nation; the residue is to be paid in currency to the citizens of the Sac and Fox Nation per capita at their agency within three months after the ratification of the agreement by Congress; each person over the age of twenty-one years and each married person, whether twenty-one years of age or not, to receive and receipt for his or her share. It is also stipulated that the Sac and Fox agent shall retain and pay out the share of any insane or imbecile citizen for the necessary support or improvement of his or her land.

Shares of orphan children under twenty-one years of age and unmarried shall be retained in the Treasury of the United States until marriage or majority; or, if the council deem a child capable of taking care of his or her money and make an order, it shall be paid at the next ensuing annuity payment to such person, it being the purpose that no money shall pass under the control of a guardian appointed by State or Territorial authority.

It is also provided that none of the money shall be applied to the payment of any claims preferred against the Sac and Fox Nation alleged to have accrued before the ratification of this agreement.

By article V it is provided that a sufficient corps of agents shall be sent to the Sac and Fox Agency, as soon as practicable after the agreement is ratified, to make allotments; that they shall give notice in writing to the principal chiefs, and the Indians shall have four months to complete their allotments, at the end of which time the Indian agent for the time being should make the selections for such persons as shall have failed to take allotments, and when these allotments are so made then the rest of the tract of country shall, so far as the Sac and Fox Nation is concerned, become public lands of the United States.

It is also agreed that the Indians having improvements shall have the preference of the lands on which they are for their allotments. By the seventh article it is provided that the beneficiaries under the agreement shall be limited to those persons whose names are now on the roll as Sacs and Foxes at said Sac and Fox Agency, and to those that may be born to them, and those entitled by law and custom of the Sac and Fox Nation to go upon said roll before the allotments are made, as well as those that may be adopted into the nation according to law, by the National Council before the allotments are made.

There is no question in regard to the authority of the National Council of the Sac and Fox Indians to have made this agreement; nor is there any defect in form save that the date of the day in June is omitted in the caption of the articles but may be supplied, it is considered, sufficiently from the resolution of the National Council, which is a part of the agreement, and states in its body that the date of the agreement is the 12th day of June.

A QUESTION OF LAW.

The legal question that arises in connection with this agreement is what interest, if any, has that portion of the Sac and Fox tribe living in Iowa to the reservation sold by the National Council of the Sac and Fox Indians on the reservation in the Indian Territory. There are 528 of these Indians in the Indian Territory and 393 in Iowa. The latter have purchased with their own money—the proceeds of their ponies, in part at least—1,258 acres, which they own in fee-simple and by the same right that white men own their property. There is a portion of the Sac and Fox Indians in Kansas, but they have no interest in the property in the Indian Territory.

This question is carefully and fully discussed in the opinion of the Assistant Attorney-General, herewith transmitted, and in whose conclusions I concur.

It would seem that the agreement made by the Cherokee Commission has been well executed on both sides by those having full authority; but that clause limiting the benefits of the contract to the Sacs and Foxes in the Indian Territory must be held inoperative and the same should be ratified only upon condition that all of the members of the

tribe in the Indian Territory and Iowa should be entitled to participate in the proceeds of the lands.

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

Congress has jurisdiction of the whole subject, and its ratification of the agreement should require the modification here suggested.

Most respectfully,

JOHN W. NOBLE,
Secretary.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, June 19, 1890.

SIR: I have the honor to acknowledge the receipt of your letter of June 17, 1890, transmitting an agreement, recently made by the Cherokee Commission with the Sac and Fox Nation of Indians in Indian Territory, under authority of the fourteenth section of the Indian appropriation act approved June 13, 1889 (25 Stats., 1005), and in compliance with your directions to immediately consider and report to you my opinion as to the sufficiency of its form and validity in law, with such remarks as the subject may seem to me to require, I would respectfully state that I have examined said agreement and the report of the commission accompanying the same and beg leave to submit the following observations and suggestions relative thereto.

(1) The date of the agreement is incomplete in that the day of the month upon which it was executed is omitted. However the resolution of the National Council of the Nation ratifying and confirming the agreement, and which is attached to and made a part thereof, sets forth that the agreement was executed on the 12th day of June, 1890.

(2) It is provided in section 2 that the allotments to the Indians, which are to be 160 acres in extent, to men, women, and children alike, shall be taken "in square form" to conform to the legal surveys. This is contrary to the general custom in allotting lands to Indians, and in the disposition of the public lands to white settlers. The practice is to allow Indians in selecting lands for allotment to select their tracts in form as best suits their wishes, provided only that the tracts selected shall conform to the legal subdivision of the surveys. I believe the same is true as regards the disposition of the public lands under the homestead and other land laws, a further requirement being that the lands shall be contiguous. However, as it is expressly provided in the agreement under consideration that the Indians may select their lands for allotment anywhere within the reservation limits, it is not thought that the Indians will be placed to any serious disadvantage by being required to select their tracts in square form, and it is presumed that the matter was discussed before the requirement was agreed to by the Indians and that they gave their consent intelligently.

(3) Section 3 provides that 80 of the 160 acres allotted to each Indian shall be held in trust by the United States for the period of twenty-five years for the sole use and benefit of the allottee or his heirs, and that the remaining 80 acres shall be so held in trust for five years, "or, if the President will consent, for fifteen years." There is a restriction

against alienation in the case of orphan children "until he or she shall have arrived at the age of twenty-one or shall marry," but no restriction as to alienation is made in the case of minor children who are not orphans, in respect of the 80 acres to be held in trust for five or fifteen years. It is not seen why the restriction should not have been extended to all minor children if deemed necessary in the case of orphans, as it appears to have been.

Article IV (paragraph 4) provides, in the matter of the distribution of the per capita cash payments therein stipulated for, that each person over the age of twenty-one years, and each married person whether twenty-one years of age or under, shall receive and receipt for his or her share thereof. It is also stipulated as to what disposition shall be made of the shares of imbeciles and orphan children, which provision appears to be satisfactory, but it does not provide as to who shall receive and receipt for the shares of minor children other than orphans. It is presumed, however, that the parents will receive and receipt for, according to custom in such cases, the shares of their minor children.

Article IV (last paragraph) also provides that no part of the compensation money (\$485,000) shall be applied in payment of any claim preferred against the said Sac and Fox Nation alleged to have accrued prior to the ratification of the agreement.

A hurried examination of the records of this office shows that there are a few, perhaps ten or twelve, depredation claims against the Sac and Fox tribe of Indians, one of which it was noticed, is about seventy years old.

Whether these claims or any of them are against the Sacs and Foxes of the Mississippi the records as far as examined do not disclose. The total amount of all of these claims does not I think exceed \$10,000 and the consideration this office has heretofore given them has been generally unfavorable.

Article VII of the agreement confines the benefits arising therefrom absolutely to those persons whose names are now on the roll as Sacs and Foxes at the Sac and Fox Agency, and to those that may be born to them and entitled by the laws and customs of said Sac and Fox Nation to go upon said roll before said allotments are made, and to those that may be adopted into said nation according to law by the National Council, before said allotments are made.

The effect of this provision would be to deprive the Sacs and Foxes, of Iowa—who number according to the last census 393 souls, being only 63 less than one-half of the entire membership of the tribe—of all benefits arising under the agreement, and to which in the opinion of this office they are rightfully entitled to the extent of their proportionate share.

By your direction, I telegraphed the chairman of the Cherokee Commission. (Hon. David H. Jerome), June 6, 1890, which was six days before the agreement was executed, calling his attention to the claim of the Sacs and Foxes, of Iowa, to an interest in the Sac and Fox Reservation in the Indian Territory, and advising him that his claim was under investigation, and that until the result of such investigation was communicated to him it would not be wise to conclude any agreement ignoring their interest.

The full text of the dispatch was as follows:

Sac and Fox Indians in Iowa claim interest in Sac and Fox Reservation in Indian Territory. Their claim is now being investigated. Until result of investigation is communicated to you, which will be in a day or two, it will not be wise to conclude any agreement ignoring their interest.

In a note accompanying your letter referring the agreement to me for examination, you inquired whether this office had any evidence showing that the above dispatch had been received by Mr. Jerome; whereupon (June 17, 1890) I telegraphed the Indian agent at the Sac and Fox Agency, Indian Territory, Samuel L. Patrick, as follows:

Was office telegram of 5th instant, to David H. Jerome, of Cherokee commission, delivered and when? Answer quickly.

No reply has yet been received from Agent Patrick, but you were pleased to refer to me this morning a lengthy telegram from Chairman Jerome, himself, dated yesterday (the 18th inst.), in which he acknowledges the receipt of my telegram of June 5 (he refers to it as the "6th" of June, and says he received it on that day, and states that before it was received the details of the contract (with the Sacs and Foxes) were agreed upon, that the commissioners expected another dispatch from this Department, and held the council open until the night of June 12, when, no further word coming to them, they closed the contract rather than abandon the negotiations.

The following is the exact text of the telegram in so far as it relates to the negotiations with the Sacs and Foxes:

We received Belt telegram June 6; that day, but before telegram was received details of contract were agreed upon. The telegram said "their claim is now being investigated. Until result of investigation is communicated to you, which will be in a day or two, it will not be wise," etc. We expected another dispatch stating with certainty what in the first was suggested as possible. We held contract open until night of June 12; no further word came, we closed the contract rather than abandon the negotiation. Again, we did not know what force Belt telegram was intended to have. We construed it as a suggestion at most advisory. The obnoxious provision in contract was necessary, indispensable to trade. We knew nothing of the Lamar decision quoted from the Belt letter, but from treaties could not conclude, and would not now but for said decision that the Iowa Sacs did acquire any interest in the new reservation down here. The consideration for present reservation was improvements on old reservation, but when treaty was made in 1868 the Iowa Sacs had been for a long time in Iowa. They got their share of price of old reservation. The improvements not belonging to Iowa, Sacs bought the present reservation. The Iowa Sacs now constitute no part of the said nation, have no voice in the management of its affairs or representation in the National Council. We were at the seat of government, dealt with the only authorities recognized by the United States at the only place, where, by the treaty the business could be done. Now, if the properly constituted authorities agree to sell for a price, it is a valid sale. It passes title and fixes the only price they can receive; but if the authorities, and they must act for Iowa Sacs as well as themselves, insert a proviso that does not conserve the interests of all, but attempts to appropriate to a part that which belongs to the whole, is not the proviso alone inoperative? If contract so made is ratified how could it affect the rights of Iowa Sacs. The National Council must act for all. There is no other authority in the nation. If this contract is not ratified, we feel certain that it can not be modified and the negotiation of a new one is far in the future.

The views of this office touching the claim of the Sacs and Foxes, in Iowa, to an interest in the reservation of the tribe in Indian Territory, are set forth in a memorandum accompanying my letter to the Department of June 6, 1890. I see no reason to recede from or modify my views as therein expressed, and I feel satisfied that if the present agreement shall be allowed to stand as it is and be accepted and ratified by Congress, the Sacs and Foxes in Iowa will demand satisfaction for their interest in said reservation. Final action on such demand may be delayed and postponed, but I feel that justice to these Indians will ultimately require its favorable consideration, and if their claim is not recognized now its future recognition will, I believe, result in the payment by the Government of an additional sum for the land acquired under the agreement equal at least to the value of the share claimed by the Sacs and Foxes in Iowa.

In conclusion, I will add that if the Department shall conclude to submit the present agreement to Congress for ratification, this office will upon indication of such purpose prepare the necessary copies of the agreement and report of the commission for transmittal to that body.

The agreement and report are herewith returned.

Very respectfully, your obedient servant.

R. V. BELT,
Acting Commissioner.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, June 23, 1890.

SIR: I have the honor to acknowledge the receipt, by your reference of the 20th instant, of the articles of agreement entered into by the Cherokee commission with the Sac and Fox Nation of Indians on June 12, 1890, the report of said commission transmitting the same, and the report of the honorable Acting Commissioner of Indian Affairs thereon, dated the 19th instant, in compliance with your directions contained in letter dated the 17th instant, referring said agreement and report for his consideration. By said reference my opinion is requested "upon the validity of this contract as to form and substance."

The honorable Acting Commissioner calls attention to the omission in the body of the agreement of the day of the month upon which it was executed, but he concludes that this is not material, for the reason that the proceedings of the National Council attached to and made a part of said agreement, show that it was executed on the 12th day of June, 1890. There can be no doubt of the date of the execution of said agreement, when all the proceedings which form a part thereof are considered, and the agreement is not, in my opinion, invalid on account of said omission.

The report from the Indian Bureau calls attention to the fact that the allotments to the Indians provided for in the second article of the agreement are to be in quantity of 160 acres "to men, women, and children alike," and must be taken "in a square form," which requirement as to form is contrary to the usual practice of allotting lands to Indians, or the disposition of the public lands of the United States under the settlement and other land laws, which only require that the legal subdivisions of the lands entered shall be contiguous. This requirement as to the form of the allotment, while not applicable to the general homestead law, has been inserted in special legislation, notably section 13, act of March 2, 1889 (25 Stats., 1005), and I see no valid objection thereto.

Serious objection, however, is urged by the Indian Bureau to Article VII of said agreement, which limits the "beneficiaries of this agreement to those persons whose names are now on the roll as Sacs and Foxes at the Sac and Fox Agency, and those that may be born to them and entitled by the laws and customs of said Sac and Fox Nation to go upon said roll before said allotments are made, and those that may be adopted into said nation according to law by the National Council before said allotments are made."

This article, in the opinion of the Acting Commissioner, has the effect of depriving the Sacs and Foxes of Iowa (who, numbering 393 accord-

ing to the last census, lacking only 63 of being one-half of the whole tribe) of any of the benefits under said agreement, and to which, in the opinion of the Indian Bureau, as set forth in memorandum dated June 6, 1890, they are justly entitled.

As to the form of the agreement, no serious objection is apparent; but to determine whether the agreement is valid or not requires an examination of the provisions of the treaties, acts of Congress, and action of the Department relative to said tribe of Indians, and their rights in and to said reservation. In other words, the validity of said agreement depends, primarily, upon the competency of the parties thereto to make it, and to bind all parties in interest to its provisions.

There can be no question, I think, of the authority of the commission under the provisions of section 14 of the act of Congress approved March 2, 1889 (25 Stats., 1005). They are "to negotiate with the Cherokee Indians, and with all other Indians owning or claiming lands lying west of the ninety-sixth degree of longitude in the Indian Territory, for the cession to the United States of all their title, claim, or interest of every kind or character in and to said lands, and any and all agreements resulting from such negotiations shall be reported to the President, and by him to Congress at its next session, and to the council or councils of the nation or nations, tribe or tribes, agreeing to the same, for ratification."

No suggestion or limitation is made as to the negotiation with any of the "other Indians," and there is only the proviso that the proposition shall be made to the Cherokees to treat upon the same terms as were offered and accepted by the Creek Indians in an agreement ratified by Congress on March 1, 1889 (25 Stats., 757). But the more serious questions arise (1) whether the Iowa Sacs and Foxes have any "title, claim, or interest" of any "kind or character" to the lands covered by said agreement, and (2) if so, whether the "Sac and Fox Nation in the Indian Territory" have the authority to dispose of such claim so as to bind the Sacs and Foxes in Iowa?

A large portion of country in Wisconsin, Iowa, and Missouri was formerly possessed by the Sacs and Foxes of the Mississippi, and was from time to time ceded under the provisions of various treaties made with them from an early date. Under treaty of October 11, 1842 (7 Stats., 596), they were removed to a reservation within the present limits of Kansas.

By Article I of the treaty of October 1, 1859 (15 Stats., 467), a portion of said reservation, containing about 153,600 acres, was set apart to be allotted in severalty to the individual members of the Sacs and Foxes of the Mississippi, giving (Article II) to each member thereof, without distinction to age or sex, 80 acres; and provision was made by Article IV for the sale, to the highest bidder, of the lands in their reservation, not reserved for allotment as aforesaid, "for the purpose of establishing the Sacs and Foxes of the Mississippi comfortably upon the lands assigned to them in severalty by building them houses, providing them with agricultural implements," etc.

Article V provides that out of the proceeds of the sale of said lands their debts should be paid; and Article VI provides that if there were not sufficient funds for those purposes arising out of the sale of those lands such "additional means as may be necessary therefor shall be taken from the money now belonging to them under former treaties."

Article VII provides:

The Sacs and Foxes of the Mississippi; parties to this agreement, are anxious that all the members of their tribe shall participate in the advantages herein provided for

respecting their improvement and civilization, etc. * * * It is therefore agreed that * * * the Commissioner of Indian Affairs shall cause * * * them to be notified of this agreement and its advantages. * * * That those who do not re-join and permanently re-unite themselves with the tribe within one year from the date of the ratification of this treaty, shall not be entitled to the benefit of any of its stipulations.

By Article I of the treaty of February 18, 1867 (15 Stats., 495), the Sacs and Foxes ceded to the United States all the lands, with the improvements thereon, contained in their unsold portion of the diminished reserve defined in the first article of said treaty of October 1, 1859. And by Article II of said treaty of 1867 an additional cession was made to the United States of the lands, with the improvements thereon, then remaining unsold as provided in Article IV of said treaty of 1859. By Article VI of said treaty of 1867—

The United States agree, in consideration of the improvements upon the said reservation, to give to the Sacs and Foxes for their future home a tract of land in the Indian country south of Kansas, and south of the Cherokee lands, not exceeding 750 square miles in extent.

Provision was made by Article VII for the removal of said Indians as soon as practicable to the new reservation. Article IX provided that the Indians might form a national government and provided for the support thereof. By Article XIV it was agreed that—

The Sacs and Foxes of Missouri, if they shall so elect, with the approval of the Secretary of the Interior, may unite with them and become a part of their people, upon their contributing to the common fund such a portion of their funds as will place them on an equal footing in regard to annuities.

By Article XXI it was provided that—

The Sacs and Foxes of the Mississippi, parties to this agreement, being anxious that all the members of their tribe shall participate in the advantages to be derived from the investment of their national funds, sales of lands, and so forth, it is therefore agreed that, as soon as practicable, the Commissioner of Indian Affairs shall cause the necessary proceedings to be adopted, to have such members of the tribe as may be absent notified of this agreement and its advantages, and to induce them to come in and permanently unite with their brethren; and that no part of the funds arising from or due the nation under this or previous treaty stipulations shall be paid to any bands or parts of bands who do not permanently reside on the reservation set apart to them by the Government in the Indian Territory, as provided in this treaty, except those residing in the State of Iowa; and it is further agreed that all moneys accruing from this or former tribes [treaties], now due or to become due said nation, shall be paid them on their reservation in Kansas; and after their removal, as provided in this treaty, payments shall be made at their agency, on their lands as then located.

These Indians, under the provisions of Article III of the treaty of November 3, 1804 (7 Stats., 85), the second article of the treaty of October 21, 1837 (*id.*, 540), and the second article of the treaty of October 11, 1842 (*id.*, 596), were entitled to permanent annuities, being interest on proceeds of sales of lands ceded under said treaties, aggregating the sum of \$51,000; and by the proviso to the Indian appropriation act approved March 2, 1867 (14 Stats., 507), it was enacted—

That the band of Sacs and Foxes of the Mississippi, now in Tama County, Iowa, shall be paid pro rata, according to their numbers, of the annuities, so long as they are peaceful and have the assent of the government of Iowa to reside in that State.

The reason for the location of said Indians in Iowa is stated by Indian Agent Hombert in his report, dated September 1, 1873, to have been on account of "the mortality that followed their removal" to their reservation in Kansas. He says:

By the sale of some of their ponies they were enabled to purchase and pay for a tract of land located in Tama County, Iowa, containing 419 acres, and by an act of the Iowa legislature they are permitted to remain in Iowa as long as they are peacefully disposed.

He also reports the number of said Indians then in Iowa at 335. (Rept. Com. Ind. Aff., 1873, p. 182.)

In the Indian appropriation act of Congress approved March 3, 1885 (23 Stats., 373), it was provided—

That hereafter the Sacs and Foxes of Iowa shall have apportioned to them, from appropriations for fulfilling the stipulations of said treaties, their per capita proportion of the amount appropriated in this act, subject to provisions of treaties with said tribes; but this shall apply only to the Sacs and Foxes now in Iowa; and provided further, that this shall apply only to original Sacs and Foxes now in Iowa, to be ascertained by the Secretary of the Interior.

It appears from the memorandum report of the Indian Office, dated June 6, 1890, that the number of Sacs and Foxes in Iowa, ascertained in accordance with said provision, was 317, in the Indian Territory 420, and in Kansas 113; total, 850; those in Kansas afterwards having been removed to the reservation in the Indian Territory.

On June 1, 1886, the Department (Mr. Secretary Lamar) considered the question of the distribution of the funds arising from treaty provisions with "the Sac and Fox tribe of Indians," and advised the Indian Bureau that—

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

It was desired that all the tribe should participate in the advantages to be derived from the investment of their funds, sale of lands, etc., by joining their brethren on the reservation. In aid of this it was provided that no part of the fund should be paid to any band or parts of bands who do not reside on the reservation, except those residing in the State of Iowa.

To what extent then are the Sacs and Foxes living in the State of Iowa, excepted from the obligation of the treaty? Simply this: Their right to remain in the State of Iowa is recognized without forfeiting their right to share in the common fund. No bands or parts of bands who do not reside on the reservation shall be paid any part of said fund, except those living in the State of Iowa. This is the sole exception in their favor; but they are equally bound by the treaty stipulations, providing that from the common fund shall be deducted the amounts specified for the support of the school and national government. (Records Ind. Div., V. 45, pp. 367-8.)

The secretary therefore held that the common fund was subject to such deduction before being distributed per capita.

In 1884 the Sacs and Foxes in the Indian Territory made a grazing lease of part of the reservation for a term of ten years, for \$4,000. The Iowa Sacs and Foxes claimed a share in the fund derived from said lease. The Sacs and Foxes in council assembled denied the right of the Iowa branch to any portion of said sum, for the reason that they are the sole owners of said reservation under the provision of article VI of said treaty of 1867; that Article IX of the same treaty recognizes the right of said tribe to have a national government; that there is no provision in any of the treaties with the United States whereby any part of said fund can be disbursed to any members of said tribe, except those on the reservation in the Indian Territory; and in conclusion they say:

That we will gladly divide our tribal benefits and privileges, also the revenue derived from our reservation, with our wayward brethren, if they will only return to this reservation and abide by the wishes of the Government and this people.

The Indian Office, April 11, 1885, replied to the position claimed by the Sacs and Foxes in the Indian Territory that the Department—

had never recognized or approved any grazing lease which they may have given on their lands, neither can it recognize any of the funds received therefrom. * * *

In view of the fact that both branches of the tribe have an equal right under the treaty of 1868 to a home on the reservation, it being given to them in consequence of certain valuable considerations relinquished by the tribe as a whole, and as Article XXI of said treaty expressly provides that the branch of the tribe residing in Iowa shall continue to receive their share of all funds *arising from* or due the nation under that or previous treaty stipulations, I am inclined to the opinion that any general national fund *such as the sale of the reservation would produce*, or as would arise from it through leasing it to outsiders for grazing purposes, should be shared in equally by every member of the nation included in the branch in Iowa and in the branch in the Indian Territory. (Memorandum report Indian Bureau, June 6, 1890, *supra*.)

The Sacs and Foxes held a convention at the Sac and Fox Agency in the Indian Territory, and on March 26, 1885, established a "Constitution of the Sac and Fox Nation." The preamble recites, among other things, that:

We, the people of the Sac and Fox tribe of Indians of the Mississippi in national council assembled, in order to extend the benefits of our national government, as provided for in section 9 of our treaty with the United States, proclaimed October 14, 1868 (1867), to establish justice, insure tranquility, promote the common welfare, and to secure to ourselves and our posterity the blessings of freedom, acknowledging with humility and gratitude the goodness of the Sovereign Ruler of the Universe in permitting us so to do, and imploring his aid and guidance in the accomplishment, do ordain and establish this constitution for the government of the Sac and Fox tribe of Indians of the Mississippi, to be called and known as the Sac and Fox Nation.

Article I establishes the boundaries of the lands of said nation, the same as those of the reservation provided for in said treaty of 1867, provides that the lands "shall remain common property," and forfeits the right of any citizen of said nation to the privileges of citizenship thereof who shall remove therefrom and "become a citizen of any other government." The second article of said constitution divides the powers of government into "three distinct departments, the legislative, the executive, and the judicial."

On February 12, 1887, this Department (Mr. Secretary Lamar) again considered the question of the proper distribution of funds due the Sac and Fox Indians under said treaty of February 18, 1867, and reaffirmed his said ruling of June 14, 1886 (*supra*), and also held that it was the duty of the Department "to ascertain who are the chiefs recognized as such by the tribe, and pay annually to each of the recognized chiefs of the tribe settled on the new reservation in the Indian Territory," under the provisions of the ninth article of said treaty, and decided that the chief of the Sacs and Foxes in Iowa was not entitled to \$500 salary out of the fund for the support of their national government. (Records Ind. Div., V. 49, p. 130.)

Reference is also made to the fact that "the tribe has adopted a constitution," and that "the tribe should be encouraged after having proceeded so far in the inauguration of their national government provided for under the treaty, to take all proper steps necessary to put it into full operation." (*Idem.*, p. 131.)

Again, on January 14, 1890, a communication was addressed by you to the Honorable Daniel Kerr, member of the House of Representatives, in reply to a letter from him dated December 29, 1889, relative "to the wants of the Sac and Fox Indians of Iowa, wherein they claim that they are entitled to a full half of the annuity provided for in the treaty of 1842 (7 Stats., 596), and that their chief is a legitimate head of the Fox tribe, [and] he should receive one-half of the amount provided for the chiefs in that treaty; that they should receive their share of the money arising from the sale of the Sac and Fox Reservation in Kansas, and also that they are entitled to a share of the money arising from the rent of the pasture lands in the Indian Territory.

The proviso of said act of January 4, 1884, was quoted, and Mr. Kerr was advised that "This act gives the Sacs and Foxes of Iowa their per capita proportion of the \$51,000 therein appropriated, and not one-half, or \$25,500, which they claim." The rulings of Secretary Lamar (supra) were adhered to, and it was held that the proviso relative to the annual payment "to each of the recognized chiefs of the tribe settled on the new reservation in the Indian Territory," in effect "prohibits payment to a chief in Iowa;" "that the claim of the Sacs and Foxes in Iowa to a share of the money arising from the rent of the pasture lands of the Sacs and Foxes in the Indian Territory does not seem to be well founded, as this money is not derived from any appropriation for fulfilling treaty stipulations in which they are entitled to share, but it is a product arising from the lands occupied and accepted as the reservation by those who have removed to it in the Indian Territory." (Records Ind. Div. V. 63, pp. 175-6.)

From the foregoing necessarily lengthy recital of the record facts, it must be apparent that the National Council of the Sacs and Foxes in the Indian Territory represents the tribe, and was competent to contract with said commission for the sale of the Indian Territory reservation. The Iowa Sacs and Foxes have recognized its authority to act in regard to said lands by the repeated and persistent claim to the fund arising from the grazing privileges. They are in Iowa only by permission of the Government and the State of Iowa, contrary to the original treaty requirements, and the only exception from treaty obligation is, as stated by Mr. Secretary Lamar, "their right to remain in the State * * * without forfeiting their right to share in the common fund." Moreover, they have been urged by the Sacs and Foxes in the Indian Territory to come and live with them, and share all of the privileges of tribal relation with their brethren on the reservation in said Territory, which they have hitherto declined to do.

I am of the opinion that said agreement was executed by the proper parties. While this is true, it is apparent that the seventh article of said agreement and the provisions limiting the benefits of the contract to the Sacs and Foxes in the Indian Territory must be held to be inoperative, for the reason that, while the National Council of the Sacs and Foxes has the authority to dispose of said reservation, and in so far as the rights of the Iowa Sacs and Foxes are concerned it acts for them as part of the tribe, it does not follow by any means that it can stipulate that the Sacs and Foxes in the Indian Territory "now on the roll," etc., shall be the sole beneficiaries of said agreement. The Indian Territory reservation was given to the tribe in consideration of "improvements" in which the Iowa branch were equitably interested, being made with the proceeds of the sale of lands held by the tribe in common, and their interest therein ought not to be diverted to others without their consent. By express treaty provisions, as well as by statute, they were permitted to reside in Iowa without forfeiting their rights. Unquestionably the United States could have required the Iowa Indians to reside upon the reservation in Indian Territory and have enforced its commands. "These Indian tribes are the wards of the nation. They are communities dependent upon the United States. * * * The power of the General Government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection as well as to the safety of those among whom they dwell." (United States v. Kagama, 118 U. S., 384.)

Such being the relation of the Indian tribes to the United States, it will be quite unnecessary to cite authority to show that it is the duty

of the Government to see that the rights of "its wards" are fully protected and their best welfare fully subserved. This is not done in the provision embodied in the seventh article of said agreement, in my opinion.

I am therefore of the opinion (1) that said commission had authority to execute said agreement, subject to the approval of Congress; (2) that the National Council of the Sacs and Foxes had the authority to dispose of said reservation in the Indian Territory for the benefit of the whole tribe of the Sacs and Foxes of the Mississippi; (3) that the Iowa Sacs and Foxes have equitable rights in the premises which should be protected; and (4) that said agreement is "valid in form and substance," except as hereinbefore indicated. As "all agreements resulting from such negotiations (*i. e.*, between the Indians and the commission) shall be reported to the President and by him to Congress at its next session * * * for ratification" (25 Stats., 1005), and as the whole subject is within the jurisdiction of Congress, it can ratify the agreement subject to such condition and modifications as may be deemed necessary considering all the facts in the case.

In the case of the *United States v. Kagama* (118 U. S. 375), the Supreme Court held, while the Government of the United States has recognized in the Indian tribes heretofore a state of semi-independence and pupilage, it has the right and authority instead of controlling them by treaties to govern them by acts of Congress, they being within the geographical limits of the United States and being necessarily subject to the laws which Congress may enact for their protection and for the protection of the people with whom they come in contact. To the same effect, see *Choctaw Nation v. United States* (119 U. S., 27), when the court, speaking of the Choctaw Nation, said:

It was capable, under the terms of the Constitution, of entering into treaty relations with the Government of the United States, although from the nature of the case, subject to the power and authority of the laws of the United States when Congress should choose, as it did determine in the act of March 3, 1871, * * * to exercise its legislative authority.

The papers submitted are herewith returned.

Very respectfully,

Geo. H. SHIELDS,
Assistant Attorney-General.

The SECRETARY OF THE INTERIOR.

SAC AND FOX AGENCY, IND. T., *June 12, 1890.*

SIR: The United States commissioners appointed to purchase or extinguish the Indian title to land in the Indian Territory, west of the 96° of west longitude, have the honor now to report, that on Wednesday, May 28, 1890, immediately upon concluding purchase of Iowa Reservation, they broke camp and started to the Sac and Fox Agency to negotiate with that tribe for its reservation, and arrived there about noon of May 29.

We passed almost entirely across the reservation, from northwest to southeast. There is very much prairie land and considerable of timber land, the woods, however, being open, and rich, nutritious grass everywhere this time of year.

The timber is mostly what is here called post oak, a tree of slow growth and firm fiber—admirably suited for rails and other fencing material and wagon hubs. The body of the tree is almost always short,

generally one log or rail-cut to the tree, sometimes two and very rarely three. The face of the country is tolerably level, the running streams not numerous, and rain not as frequent as to be desired. Very little of the land comparatively is in cultivation, but enough to show the adaptability of it to agriculture. They raise fair crops of corn and potatoes, and garden products in abundance. We are informed that wheat has been successfully raised at the school farm near the agency, but the Indians have not as yet tried it. The absence of mills on or near the reservation is the reason given for not doing so, but many are promising to try wheat hereafter.

The native wild grass is the only grass, except millet that has been tried. What success may be had with tame grasses is a question for the future to decide. Peaches and apples yield abundantly and we are assured that the country is very well adapted generally to fruit culture.

It is now dry and hot here—and it would seem too much so for entirely successful farming. The drought would seem to be the greatest foe to the tiller of the soil here.

The Sacs and Foxes have an outstanding lease of about 220,000 acres of their lands to a cattle company, for about 3 cents per acre per annum.

We are informed that this company have now on their pastures about 16,000 head of cattle which they are preparing to move according to the order of the Department, by October 1, next. Some few Indians have large herds, one 5,000 head, another 500, another 300, and nearly everybody has some. The Indians all seem to have more or less horses and ponies, and some hogs. This in general is the present condition here, as we find it.

The Sacs and Foxes were prepared for our coming. They had been in legislative session for some time and had generally determined to take allotments of land and to sell to the United States the residue of their reservation. Upon our arrival at the agency, we were met by Indian Agent Patrick who entertained us at dinner and later introduced us to Chief Keokuk.

He is now president of the National Council and, although unable to speak the English language, is a man of the tastes and habits of the white man, has good business qualities, keeps a hotel, store, and has a cattle ranch.

He is in fact a progressive Indian. He agreed to assemble the National Council on Saturday afternoon, May 21, and did so. The business of the commission was stated to the council by each member of the commission in turn, when Keokuk, as spokesman for the chief and as president of the council, replied that the Sacs and Foxes had fully considered the matter, and if permitted to retain 200 acres of land for each man, woman, and child of the nation, they would take \$2 per acre for the residue of their reservation. The commission at once informed them that their proposition could not be accepted, but that on the next Monday morning an offer would be made to them.

The Sacs and Foxes own the reservation without question under the treaty, they having, by treaty, bought and paid for it. They have, however, no patent for it.

The north boundary of their reservation is the Cimarron River, the south boundary is the North Fork of the Canadian River, and a few miles south of the Middle, the Deep Fork of the Canadian crosses the reservation. These rivers run through the richest farming land in the reservation. In selecting their allotments, we had reason to believe

that they would select the best lands along the rivers. Therefore our proposition to them was in three parts, or rather was three distinct propositions. First, if they would all locate south of the Deep Fork we would give them \$485,000 for the residue, or about \$1.23 per acre.

Second. If all would settle south of the Deep Fork—except those having improved farms north of the Deep Fork, who might locate there—we would give \$460,000 for the residue or about \$1.15 per acre.

Third. If they insisted on locating anywhere in said reservation, we would give them \$400,000 for the residue, or about \$1 per acre.

They took our proposition, which was in writing, and proceeded to consider it. After three days of consideration and debate, they sent for us. In all these propositions we proposed that each person should take 160 acres of land, in place of 200, as they had proposed, 80 acres of which should be held in trust by the United States for twenty-five years, and the other 80 for five years—of fifteen years if the President should so agree. When we met them again they reported that they would consent to the diminished allotment, but if they should locate in the south half of the reservation, they would demand the \$2 per acre. If, however, they should be permitted to locate anywhere they pleased, they would accept an amount equal to about \$1.57 per acre for the residue of their reservation.

We again informed them that we could not do better in price than we had offered, and invited them to consider the proposition again.

After a day or two they again reported that they would take the 160 acres, if they should be permitted to take it wherever they pleased in the reservation, and \$491,783.75 for the residue, or \$1.25 per acre.

We still felt that we ought not to yield the small difference; but proposed that they should take 160 acres each, wherever they wished—except in sections 16 and 36 in each Congressional township, and except the one-quarter section where agency is located and the school section—and we would give them the \$485,000, or \$1.23 per acre; provided that the allotments should not exceed in number five hundred and twenty-eight, and that there should be deducted from said sum the sum of \$200 for each allotment in excess of five hundred and twenty-eight.

We are aware that the allotments are, in size, in excess of the allotments provided for by the act of Congress, but we find it the hardest question of all to convince the Indian that allotments for children should be smaller than those for men and women. In fact they generally feel that the child should have more, because by education and civilization the child will be better fitted to take good care of it.

Because the allotments are large we deemed it best to provide that but 80 acres should be held in trust for twenty-five years, and the other 80 acres for but five years, to be extended to fifteen years if the President should so will. We thought it unwise that so much land should be free from taxation for so long a period, and that possibly the experience gained in handling or disposing of the one 80-acre tract in five years might teach them how to take care of the other 80 acres after twenty-five years.

The other details of the contract were all suggested and demanded by the Indians, and as each one seems to be in furtherance of the interest of the Indian and in no way inimical to the interest of the Government of the United States, we assented to and incorporated them in the contract.

The Sacs and Foxes have a written constitution and National Council, to which is committed all the affairs of the nation, and all the citizens

of the nation readily and willingly acquiesce in its determination. The constitution provides for four chiefs and sixteen members of the council.

One chief, however, has died since the last election, and the vacancy caused thereby has not been filled. The three chiefs and all the councilmen, save two, were present at the final meeting, and all the councilmen present voted for the ratification of the agreement.

The Sac and Fox Reservation contains 479,668 acres of land, and is said to be better land on the whole than the Cherokee Outlet. If the whole acreage of the reservation is counted—and it should be, for it all becomes farm land—the price is but a trifle over \$1 per acre. But if the land retained for Indian farms shall be deducted, and the residue only considered, then the price is about \$1.23 per acre, or less than the price given to the Creeks and Seminoles for Oklahoma, and also a less price than that which the commission was directed to offer to the Cherokees for the "Outlet."

We do not suggest this for the purpose of claiming to have made a good bargain, but rather to show that we are guided as to prices by precedents of Congress and the price that generally obtains for public land.

We can not close this report without acknowledging the uniform kindness, courtesy, and aid extended to us by Colonel Patrick, the Indian agent, his family, and all connected with the agency.

We go from here to the Pottawatomies, as early as we can get away, and we expect to be with them by Monday, the 16th instant, when we will report our further progress.

We have the honor to be, very respectfully, your obedient servants,

DAVID H. JEROME,
A. M. WILSON,
WARREN G. SAYRE,
Commissioners.

TO THE PRESIDENT.

Articles of agreement made and entered into at the seat of government of the Sac and Fox Nation in the Indian Territory on the tenth day of June, 1890, by and between David H. Jerome, Alfred M. Wilson, and Warren G. Sayre, commissioners on the part of the United States appointed for the purpose and the Sac and Fox Nation, witnesseth :

ARTICLE 1. The said the Sac and Fox Nation hereby cedes, conveys, transfers, surrenders, and forever relinquishes to the United States of America all their title, claim or interest, of every kind or character, in and to the following-described tract of land or country, in the Indian Territory, to wit: Beginning at a point on the left bank of the North Fork of the Canadian River where the west boundary line of the Creek Reservation crosses the same; thence north with said west boundary line to the right bank of the Cimarron River; thence up the said Cimarron River along the right bank thereof to a point on said right bank of said river where the section line between section nineteen (19) and twenty (20) of township eighteen (18) north, of range four (4) east, of the Indian meridian strikes the same; thence south on the section line between sections nineteen (19) and twenty (20), twenty-nine (29) and thirty (30), thirty-one (31) and thirty-two (32) of said township eighteen (18), and between sections five (5) and six (6), seven (7), and eight (8), seventeen (17) and eighteen (18), nineteen (19) and twenty (20), twenty-nine (29) and thirty (30), thirty-one (31) and thirty-two (32) of town-

ship seventeen (17), sixteen (16), fifteen (15), fourteen (14) north, and between sections five (5) and six (6), seven (7) and eight (8), and sections seventeen (17) and eighteen (18) of township thirteen (13) north, all in range four (4) east of the Indian meridian, to the southeast corner of section eighteen (18) in said township thirteen (13), thence west on the section line between sections eighteen (18) and nineteen (19) to the range line between ranges three (3) and four (4), east of the said Indian meridian; thence south on said range line to a point on the left bank of the North Fork of the Canadian River where the said range line strikes the said river; thence down the said North Fork of the Canadian River along the left bank thereof to the place of beginning.

Also the tract of land situated in township ten (10) north, of range four (4) east, of said Indian meridian, north of the North Fork of the Canadian River (not within the limits of the tract of country above described), and bounded as follows: Beginning at the point on the left bank of the North Fork of the Canadian River where the range line between ranges three (3) and four (4) east strikes the said river; thence up said river along the left bank thereof to a point on said left bank where the said range line again intersects said river; thence south on said range line to a point on the left bank of said river where said range line again intersects said river; thence down said river along the left bank thereof to the place of beginning—and all other land or country in said Indian Territory, in which said Sac and Fox Nation has or claims any title, claim, or interest.

Provided, however, the quarter section of land on which is now located the Sac and Fox Agency shall not pass to the United States by this cession, conveyance, transfer, surrender, and relinquishment, but shall remain the property of the said Sac and Fox Nation to the full extent that it is now the property of said nation, subject only to the rights of the United States therein by reason of said agency being located thereon, and subject to the rights, legal and equitable, of those persons that are now legally located thereon. And it is agreed that the national council of said Sac and Fox Nation shall have the right at any time, subject to the approval of the Secretary of the Interior for the time being, to sell and convey said quarter section of land, or any part thereof, saving in such conveyance the rights of the United States and of persons legally located thereon, for the benefit of said Sac and Fox Nation, but shall not be subject to be taken by any citizen of the Sac and Fox Nation in allotment, nor subject to homestead entry under any law of the United States. And the section of land now designated and set apart near the Sac and Fox Agency for a school and farm shall not be subject either to allotment to an Indian or to homestead entry under the laws of the United States, but shall remain as it now is and kept for school and farming purposes so long as said Sac and Fox Nation shall so use the same; provided, however, that at the time allotments are being taken, as hereinafter provided for, the national council of said Sac and Fox Nation may release from the operation of this part of this agreement one or more quarters of said school section of land, and such part or parts so released shall thereby become subject either to allotment hereunder or to homestead entry. And for each quarter of said school section so released the said national council shall have the right to select anywhere in said reservation another quarter section of land except in section sixteen (16) and section thirty-six (36) of any Congressional township, to be held as said school section is provided herein to be held, so long as said Sac and Fox Nation

shall use the same for school purposes or for farming purposes in connection with this said school.

ARTICLE II. In consideration of the cession, conveyance, transfer, surrender, and relinquishment by said Sac and Fox Nation of all their title, claim, and interest, of every kind and character, in and to the lands described in the preceding article, the United States of America hereby agrees with said Sac and Fox Nation that each and every citizen thereof over the age of eighteen (18) years shall have the right to select for himself or herself one-fourth of a section of land in one body, in a square form, to conform in boundaries to the legal surveys, anywhere in the tract of country hereinbefore described, except in sections sixteen (16) and thirty-six (36) in each Congressional township, and said one-quarter section of land where said agency is located, and said school section or other lands selected in lieu thereof.

The father of any child, or if the father be dead the mother, shall have the right to select for each of his or her children under eighteen (18) years of age one-quarter section of land, in one body, in a square form, under the same restrictions only as above provided for citizens over the age of eighteen (18) years. If there shall be a child under eighteen (18) years of age, and having neither father nor mother, then the agent for the time being at said Sac and Fox Agency shall select for such child the same amount of land, under the same restrictions and limitations as are above provided for other children.

ARTICLE III. It is further agreed that when the allotments to the citizens of the Sac and Fox Nation are made, the Secretary of the Interior shall cause patents to issue therefor in the name of the allottees, which patent shall be of the legal effect and declare that eighty (80) acres of the land to be designated and described by the allottee, his or her agent as above provided, at the time the allotment is being made, shall be held in trust by the United States of America for the period of twenty-five (25) years, for the sole use and benefit of the allottee, or his or her heirs, according to the laws of the State or Territory where the land is located; and that the other eighty (80) acres shall be so held in trust by the United States of America for the period of five (5) years, or if the President of the United States will consent for fifteen (15) years, for like use and benefit; and that at the expiration of the said periods respectively the United States will convey the same by patent to said allottee or his or her heirs, as aforesaid, in fee, discharged of said trust and free from all incumbrances; provided, that in no case shall a patent in fee be issued to a person who is an orphan at time allotment is made and unmarried until he or she shall have arrived at the age of twenty-one (21) years or shall marry. In order that the question of the age of any orphan allottee as aforesaid shall not be subject to future inquiry, it is agreed that the age of each orphan allottee under the age of twenty-one (21) years shall be fixed and ascertained by the person making the allotment and reported by him to the Department of the Interior, and such report of the age of any allottee shall be held and deemed conclusive in carrying out this agreement.

ARTICLE IV. As a further and only additional consideration for the cession, conveyance, transfer, surrender, and relinquishment of all title, claim, and interest in and to the tract of land described in Article I hereof, the United States agrees to pay the Sac and Fox Nation the sum of four hundred and eighty-five thousand (\$485,000) dollars; provided, the entire number of allotments hereunder shall not exceed five hundred and twenty-eight (528), and should the allotments exceed in number five hundred and twenty-eight (528), then there shall be deducted from

said sum of four hundred and eighty-five thousand (\$485,000) dollars the sum of two hundred (\$200) dollars for each allotment in excess of said number.

Said sum of four hundred and eighty-five thousand (\$485,000) dollars shall be paid as follows: Three hundred thousand dollars thereof shall be retained in the Treasury of the United States to the credit of the said Sac and Fox Nation, and bear interest at the rate of five per centum (5 per cent.) per annum; which interest shall become due and payable on the first day of March in each year.

Five thousand (\$5,000) dollars thereof shall be paid to the United States Indian agent at the Sac and Fox Agency, to be paid out and expended by him under the direction and authority of the national council of the Sac and Fox Nation.

The residue of said sum of four hundred and eighty-five thousand (\$485,000) dollars shall be paid out in currency to the citizens of the said Sac and Fox Nation, per capita, at the Sac and Fox Agency, in the Indian Territory, within three months after the ratification of this agreement by Congress, as follows: Each person over the age of twenty-one (21) years shall receive and receipt for his or her share thereof; each person that is married shall receive and receipt for his or her share thereof whether twenty-one (21) years of age or not.

The United States Indian agent at the Sac and Fox Agency shall retain and pay out the share thereof belonging to any insane or imbecile citizen of said nation, for his or her sole use and benefit, either for necessary support or for the improvement of his or her land.

The share thereof belonging to orphan children under twenty-one years of age and unmarried shall be retained in the treasury of the United States until he or she shall marry or become twenty-one (21) years of age, when he or she shall be entitled to receive and receipt for the same at said Sac and Fox Agency free of charge; or if the national council shall at any time deem any orphan child capable of taking proper care of his or her money, said council may make an order to that effect, upon which order being made the United States Indian agent at said Sac and Fox Agency shall make requisition for such person's money, which at the ensuing annuity payment shall be paid to such person. It is the purpose and intention and agreement that no part of this fund shall ever pass under the control of any guardian appointed by or acting under any State or Territorial authority.

It is further agreed that no part of said sum of four hundred and eighty-five thousand (\$485,000) dollars shall be applied in payment of any claim preferred against said Sac and Fox Nation alleged to have accrued prior to the ratification of this agreement.

ARTICLE V. It is further agreed that the Department of the Interior shall, as soon as practicable after the ratification of this agreement by the Congress of the United States, send to said Sac and Fox Agency a competent corps of allotting agents and necessary assistants, to make, survey, designate, and describe the allotments herein provided for, who shall give a notice in writing to the principal chief of the Sac and Fox Nation that they are prepared and ready to proceed in making said allotments, and said Sacs and Foxes shall then have four months from the time of giving such notice to complete the taking of their allotments, and if, at the end of such period of four months, it shall be ascertained that any of the citizens of said nation have failed or refused to take their said allotments, then the United States Indian agent, for the time being, at said Sac and Fox Agency, shall make selections for such persons, which shall have the same effect as if such persons had made

such selections for themselves. It is further agreed that as soon as such allotments are so made and approved by the Department of the Interior, and the provisional patents hereinbefore provided for are issued, then the residue of said tract of country shall, as far as said Sac and Fox Nation is concerned, become public lands of the United States, and under such restrictions as may be imposed by law be subject to white settlement.

ARTICLE VI. It is further agreed that whenever any citizen of said Sac and Fox Nation shall have made and owns valuable improvements in any lands in said reservation, he or she shall have the preference over any other citizen of said nation to take his or her allotments so as to embrace said improvements, provided they shall be limited as hereinbefore provided as to boundaries and area.

ARTICLE VII. It is further agreed that the beneficiaries of this agreement shall be limited to those persons whose names are now on the roll as Sacs and Foxes at the said Sac and Fox Agency, and those that may be born to them and entitled by the laws and customs of said Sac and Fox Nation to go upon said roll before said allotments are made, and those that may be adopted into said nation according to law by the national council before said allotments are made.

ARTICLE VIII. This agreement shall be in force and have effect from and after its ratification by the national council of the Sac and Fox Nation and the Congress of the United States.

In witness whereof the said David H. Jerome, Alfred M. Wilson, and Warren G. Sayer, commissioners on the part of the United States, have hereunto set their hands the day and year aforesaid, and the principal chief and the first assistant principal chief of said Sac and Fox Nation have hereunto set their hand and the seal of said nation the day and year aforesaid

And the secretary of said Sac and Fox Nation now attests the same.

DAVID H. JEROME,
ALFRED M. WILSON,
WARREN G. SAYRE,

Commissioners for the United States.

MAH KO-SAH-TOE (his x mark),
Principal Chief.

MOSES KEOKUK (his x mark),
First Asst. Prin. Chief.

Attest:

[SEAL.]

WALTER BATTICE,
Secretary of Sac and Fox Nation.

Be it resolved by the national council of the Sac and Fox Nation lawfully assembled at the council house of said nation, That the contract and agreement made and concluded by and between David H. Jerome, Alfred M. Wilson, and Warren G. Sayre, commissioners on behalf of the United States and said Sac and Fox Nation, bearing date the 12th day of June, A. D. 1890, for the cession of the lands of said nation therein described to the United States, and the allotment of land to the citizens of said nation and other purposes, and signed by said United States commissioners, the principal chief, and the first assistant principal chief of said Sac and Fox Nation, which agreement is hereto attached and made a part hereof, be, and the same is hereby, approved, ratified, confirmed, and agreed to.

Councilman Charles S. Keokuk moved the adoption of the resolution, which motion was seconded by Councilman Henry C. Jones; whereupon the president of the council put the question to the council, and it was unanimously adopted by the following vote: Ayes—

Executive councilmen: Mesh-she-walk, Kish-ka-tun-o-ka-h, Pea-twý-tuck, Nom-mol-wah, William Harris, Henry C. Jones, Ke-om-o-what, Nah-taw-waw-pa-mah.

Additional councilmen: Charles S. Keokuk, Waw-paw-ko-huck, Ah-squa-se-pit, Waw-kal-le, Waw-pe-kol-hol, O-sha-ke.

Absent: O-kaque, Ka-kaque.

Summary: ayes, fourteen (14); absent and not voting: two (2).

And it is further ordered that as a further authentication of the making of said agreement, that the principal chief and first assistant principal chief of said Sac and Fox Nation are hereby directed to sign the same and affix thereto the seal of said nation, and that their signatures to said agreement be attested by Walter Battice, secretary of said nation.

SAC AND FOX NATION, *Indian Territory, ss:*

I, Walter Battice, secretary of the Sac and Fox Nation in the Indian Territory, hereby certify that the above and foregoing is a full, true, and complete transcript of the proceedings of the Sac and Fox national council at a session thereof held at the seat of government of said Sac and Fox Nation on the 12th day of June, A. D. 1890, as the same appears and remains of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of the principal chief of said nation the day and year aforesaid.

[SEAL.]

WALTER BATTICE,
Secretary Sac and Fox Nation.

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