

BEFORE THE INDIAN CLAIMS COMMISSION

RED LAKE, PEMBINA AND WHITE EARTH
 BANDS, AND MINNESOTA CHIPPEWA TRIBE,
 PETER GRAVES, JOSEPH GRAVES, AUGUST
 KING, KATHERINE CARL BARRETT, ROSETTI
 VILLEBRUN, EUGENE BREDOIS, AND HAROLD
 EMERSON,
 Plaintiffs,
 v.
 UNITED STATES OF AMERICA,
 Defendant.

Docket No. 18-A

Appearances:

Mr. Jay H. Hoag, with whom
were Messrs. Austin Lathers,
Clarence G. Lindquist, and
H. J. Grannis,
Attorneys for Plaintiffs.

Messrs. Sim T. Carman and
Ralph A. Barney, with whom
was Mr. Assistant Attorney
General A. Devitt Vanech,
Attorneys for Defendant.

SEP 17 1951

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Red Lake Band of Chippewa Indians is a duly recognized Band of Indians residing within the territorial limits of the United States and, as such, is authorized to maintain this action under

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Section 2 of the Indian Claims Commission Act (25 U.S.C. 70a).

The Pembina Band of Chippewa Indians was a duly recognized band of Indians at the time the treaty of October 2, 1863 (13 Stat. 667) was negotiated with said band wherein it ceded to the United States its interest in the lands for which the claim in this action is made. Although said Pembina Indians are not presently recognized as an organized band of Indians, its members or their descendants are an identifiable group of American Indians residing within the territorial limits of the United States, having a common claim which they are authorized to have heard and determined by the Commission under Section 2 of the Indian Claims Commission Act. The plaintiffs, Rosetti Villebrun and Katherine Carl Barrett, are members of this group of Pembina Indians who are descendants of the original members of the Pembina Band and are entitled to maintain this action in a representative capacity on behalf of themselves and all other members of this claimant group of Pembina Indians.

2. The Chippewa was one of the larger tribes of Indians found in the northern section of the United States. This tribe in early historic times was located along the shores of Lakes Euron and Superior, and during the 18th century had extended its range on westward across Minnesota and even into eastern North Dakota. The tribe or nation consisted of a large number of villages, bands or divisions that were scattered over this large area from east to west. There

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were many of the bands or groups that were known by the name of the village, lake or river near which they resided. There were two such bands of Chippewa Indians called the Red Lake Band and the Pembina Band.

The Red Lake Band inhabited the territory around Red Lake in northern Minnesota, where they were living at the time the Lewis and Clark expedition visited that area in 1804. The Pembina Band lived along the Pembina River in the vicinity of the village of Pembina, located just west of the Red River of the North in the extreme northeastern corner of North Dakota. The two bands remained in approximately the same locations until the making of the treaty of cession on October 2, 1863.

In 1851 the membership of the Red Lake Band of "all ages and sexes" was estimated at 400, and the Pembina Band at 660. At the council meeting, where the treaty of October 2, 1863 was negotiated, an enumeration taken of the Red Lake and Pembina Bands in attendance, including men, women and children, listed 352 Pembina Indians, 663 Pembina half-breeds, 579 Red Lake Indians and 24 Red Lake half-breeds, or a total of 1618.

3. On August 19, 1825 a treaty (7 Stat. 272) was made by the United States with the Chippewa, Sioux and other Indian tribes establishing boundaries of their respective territories. The line dividing the territories of the Chippewa and Sioux Tribes, as fixed by

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Article 5 of said treaty, is as follows:

It is agreed between the Sioux and the Chippewas, that the line dividing their respective countries shall commence at the Chippewa River, half a day's march below the falls; and from thence it shall run to Red Cedar River, immediately below the Falls; from thence to the St. Croix River, which it strikes at a place called the standing cedar, about a day's paddle in a canoe, above the Lake at the mouth of that river; thence passing between two lakes called by the Chippewas 'Green Lakes,' and by the Sioux 'The lakes they bury the Eagles in,' and from thence to the standing cedar that 'The Sioux Split;' thence to Rum River, crossing it at the mouth of a small creek called choaking creek, a long day's march from the Mississippi; thence to a point of woods that projects into the prairie, half a day's march from the Mississippi; thence in a straight line to the mouth of the first river which enters the Mississippi on its west side above the mouth of Sac river; thence ascending the said river (above the mouth of Sac river) to a small lake at its source; thence in a direct line to a lake at the head of Prairie river, which is supposed to enter the Crow Wing river on its South side; thence to Otter-tail lake Portage; thence to said Otter-tail lake, and down through the middle thereof, to its outlet; thence in a direct line, so as to strike Buffalo river, half way from its source to its mouth, and down the said river to Red River; thence descending Red river to the mouth of Outard or Goose creek: The eastern boundary of the Sioux commences opposite the mouth of Ioway river, on the Mississippi, runs back two or three miles to the bluffs, follows the bluffs, crossing Bad axe river, to the mouth of Black river, and from Black river to half a day's march below the Falls of the Chippewa River.

This dividing line, as described in the treaty, extends across southern Minnesota in a northwesterly direction until it reaches the Buffalo River, half way between its source and its mouth, and then down the Buffalo River to where it enters the Red River; then it continues north down the Red River to the mouth of the Goose River, which enters the Red River from the west, where the line ends.

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4. After Minnesota was established as a Territory on March 3, 1849 the United States decided that a treaty should be negotiated with the Indians and half-breeds claiming the territory along the Red River of the North so that they could be permanently settled, and the use of the area by other Indians and half-breeds from north of the International border could be controlled. By an act of Congress dated September 30, 1850 (9 Stat. 544, 556) an appropriation of \$10,000 was made "for expenses of treating with the Indians and half-breeds for the extinguishing of their title to lands on the Red River of the North in the Territory of Minnesota." Thereafter, on September 20, 1851, Alexander Ramsey, as treaty commissioner, negotiated a treaty with the Red Lake and Pembina Bands of Chippewa Indians by which they ceded and relinquished to the United States an area of land along each side of the Red River which is described as follows:

Beginning on the East bank of the Red River of the North, where it is intersected by the International Boundary line; thence East along said line thirty miles; thence Southwardly in a direct line to strike Buffalo River 'half way from its source to its mouth'; thence along said river to its mouth; thence Northwardly along the west bank of Red River of the North to the mouth of Goose River; up said river to its most westerly source following the south branch thereof; thence Northwardly in a direct line to strike a point on the International boundary line five miles west of the Grand Cote; and thence east to the place of beginning.

The Senate of the United States on June 23, 1852 refused to ratify the treaty of September 20, 1851.

5. An act of Congress on July 5, 1862 (12 Stat. 512, 529) appropriated \$15,000 "for the purpose of negotiating a treaty with the

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Chippewas of northern Minnesota and the extinguishing of their title to the lands in that vicinity." Pursuant to the act of July 5, Alexander Ramsey was commissioned to negotiate the treaty and was authorized to secure a cession of all the land claimed by the Chippewas on each side of the Red River of the North. On October 2, 1863 a treaty (13 Stat. 667) was concluded with the Red Lake and Pembina Bands of Chippewa Indians whereby they ceded to the United States the lands which are described in Article 2 of said treaty, as follows:

Article 2. The said Red Lake and Pembina Bands of Chippewa Indians do hereby cede, sell, and convey to the United States all their right, title, and interest in and to all the lands now owned and claimed by them in the State of Minnesota and in the Territory of Dakota within the following described boundaries, to wit: Beginning at the point where the international boundary between the United States and the British possessions intersects the shore of the Lake of the Woods; thence in a direct line southwesterly to the head of Thief River; thence down the main channel of said Thief River to its mouth on the Red Lake River; thence in a southeasterly direction, in a direct line toward the head of Wild Rice River, to the point where such line would intersect the northwestern boundary of a tract ceded to the United States by a treaty concluded at Washington on the 22d day of February, in the year eighteen hundred and fifty-five, with the Mississippi, Pillager, and Lake Winnebigoshish bands of Chippewa Indians; thence along the said boundary-line of the said cession to the mouth of Wild Rice River; thence up the main channel of the Red River to the mouth of the Shayenne; thence up the main channel of the Shayenne River to Poplar Grove; thence in a direct line to the Place of Stumps, otherwise called Lake Chicot; thence in a direct line to the head of the main branch of Salt River; thence in a direct line due north to the point where such line would intersect the international boundary aforesaid; thence eastwardly along said boundary to the place of beginning.

The area ceded contained approximately 9,799,940 acres, and is

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marked on Maps 1 of both Minnesota and the Dakotas in Royce's Indian Cessions of the United States (18th Annual Report of the Bureau of American Ethnology) as Parcel 445.

The portion of the above described area lying between the Goose and Cheyenne Rivers on the Dakota side of the Red River comprised approximately 2,311,660 acres of the 9,799,940 acres contained in the cession. The plaintiffs, in their proposed findings of fact, concede this tract of 2,311,660 acres was used as a common hunting ground with certain bands of Sioux Indians and therefore claim one-half thereof, or 1,155,830 acres. This makes a total of 8,644,110 acres of the cession claimed by the Red Lake and Pembina Bands.

The treaty was ratified by the Senate of the United States on March 1, 1864.

6. On April 12, 1864 the Commissioner of Indian Affairs, acting apparently under the authority of the appropriation act of Congress of July 5, made and concluded a supplemental treaty at Washington, D. C. with the Chiefs and headmen of the Red Lake and Pembina Bands whereby the terms of the October 2, 1863 treaty were modified as to the consideration to be paid by the United States and made some other minor changes, but reaffirming the 1863 treaty and making no additional cession of land. This treaty was ratified by the Senate on April 21, 1864.

7. By the terms of the treaty of October 2, 1863 the United States agreed to pay the Red Lake and Pembina Bands a total sum of

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\$510,000 as consideration for the area ceded by them in said treaty. This was increased somewhat by the supplemental treaty of April 12, 1864. The record shows that between the years of 1864 and 1878, inclusive, the defendant has paid the sum of \$684,044.54 for and on behalf of the Red Lake and Pembina Bands in fulfilling its obligations under the treaty of October 2, 1863, as modified by the supplemental treaty of April 12, 1864.

8. At the time the treaty of October 2, 1863 was negotiated, and for a number of years prior thereto, the Red Lake Band of Chippewa Indians was occupying and in possession of the territory around Red Lake in northern Minnesota located just east of the area ceded by said treaty, and the Pembina Band of Chippewa Indians was occupying an undefined area along the Pembina River near the village of Pembina, located on the west of the Red River in the northeast part of North Dakota. While both of said bands are shown as having hunted and roamed over much of the area ceded by the 1863 treaty, they did not actually occupy and exclusively possess and use any part of the area ceded by the 1863 treaty, except the undefined and indefinite area occupied by the Pembina Band along the Pembina River in the extreme north of the 1863 cession. But there is no proof showing the part of this area that was actually occupied by the Pembina band prior to and at the time of said 1863 treaty.

9. That prior to and at the time of negotiating and concluding the treaty of October 2, 1863 and the supplemental treaty of April 12,

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1864 with the Red Lake and Pembina Indians, the defendant had not recognized and did not intend to recognize or acknowledge the exclusive use and occupancy right or title of either the Red Lake Band or Pembina Band in any definite portion of the area of land ceded by the treaty of 1863.

September 17, 1951