BEFORE THE INDIAN CLAIMS COMMISSION

SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN, and JAMES STRONG, as representatives of all members of the Chippewa Tribe of Indians having any interest in the claims asserted,	)	
Plaintiffs,	)	
v.	)	Docket No. 13-H
UNITED STATES OF AMERICA,	)	
Defendant.	)	

Decided: May 14, 1953

Appearances:

Arthur B. Honnold and
Charles B. Rogers,
Attorneys for Plaintiffs.

Sim T. Carman, Leon J. Moran,
and Donald E. Schwinn, with
whom was Mr. Assistant Attorney
General James M. McInerney,
Attorneys for Defendant.

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Saginaw Chippewa Indian Tribe of Michigan, comprising the Saginaw, Swan Creek and Black River Bands of Chippewa Indians, and James Strong, a member of said tribes, as representatives of the Saginaw Chippewa Indian Tribe, maintain this action under the provisions of the Indian Claims Commission Act. These Indians will hereafter be referred to as the Saginaw.

2. A treaty between the Saginaw and the United States was made on August 2, 1855 (11 Stat. 663; 2 Kapp. 733), Article 1 of which treaty reads as follows:

> Article 1. The United States will withdraw from sale, for the benefit of said Indians, as herein provided, all the unsold public lands within the State of Michigan embraced in the following description, to-wit:
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> First. Six adjoining townships of land in the country of Isabella, to be selected by said Indians within three months from this date, and notice thereof given to their agent.
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> Second. Townships Nos. 17 and 18 north, ranges 3, 4, and 5 east.
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> The United States will give to each of the said Indians, being a head of a family, eighty acres of land; and to each single person over twenty-one years of age, forty acres of land; and to each family of orphan children under twenty-one years of age, containing two or more persons, eighty acres of land; and to each single orphan child under twenty-one years of age, forty acres of land; to be selected and located within the several tracts of land hereinbefore described, under the same rules and regulations, in every respect, as are provided by the agreement concluded on the 31st day of July, A. D. 1855, with the Ottawas and Chippewas of Michigan, for the selection of their lands.
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> And the said Chippwas of Saginaw and of Swan Creek and Black River, shall have the same exclusive right to enter lands within the tracts withdrawn from sale for them for five years after the time limited for selecting the lands to which they are individually entitled, and the same right to sell and dispose of land entered by them, under the provisions of the Act of Congress known as the Graduation Act, and is extended to the Ottawas and Chippewas by the terms of said agreement.
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> And the provisions therein contained relative to the purchase and sale of land for school-houses, churches, and educational purposes, shall also apply to this agreement.

Article 6 of said treaty provides as follows:

> Article 6. The tribal organization of said Indians, except so far as may be necessary for the purpose of carrying into effect the provisions of this agreement, is hereby dissolved.

Pursuant to said Article 1, the Indians selected the following-described lands in the County of Isabella: The north half of township fourteen, and township fifteen and sixteen, north, of range three west, the north half of township fourteen and township fifteen north, of range four west, and townships fourteen and fifteen north of range five west. (Def. Ex. 12). This area became known as the Isabella Reservation, of which area 98,051.13 acres (the unsold part thereof) were available for Indian selection and entry, and 160 acres for churches, school-houses and educational purposes.

Of the land in the Saginaw Bay area, Townships 17 and 18 north, ranges 3, 4 and 5 East in Michigan, the unsold part of which was made available for Indian selection and entry, comprised 60,873.23 acres, however, 280 acres thereof were apparently not released or relinquished by the 1864 treaty, hereafter to be referred to, so there were 60,593.23 acres thereof affected by the latter treaty. This area became known as the Saginaw Reservation. (Def. Ex. 1).

3. By the treaty of August 2, 1855, it was provided that the selections of land by individual Indians as therein provided should be made under the same rules and regulations in every respect as provided by the agreement concluded by the United States on July 31, 1855, with the Ottawas and Chippewas of Michigan (11 Stat. 621; 2 Kapp. 725). These rules and regulations are set out in Article 1 of said treaty and are as follows:

* * * * *

> For the purpose of determining who may be entitled to land under the provisions of this article, lists shall be prepared by the Indian agent, which lists shall contain the names of all persons entitled, designating

them in four classes. Class 1st, shall contain the names of heads of families; class 2d, the names of single persons over twenty-one years of age; class 3d, the names of orphan children over twenty-one years of age, comprising families of two or more persons, and class 4th, the names of single orphan children under twenty-one years of age, and no person shall be entered in more than one class. Such lists shall be made and closed by the first day of July, 1856, and thereafter no applications for the benefits of this article will be allowed.

At any time within five years after the completion of the lists, selections of lands may be made by the persons entitled thereto, and a notice thereof, with a description of the land selected, filed in the office of the Indian agent in Detroit, to be by him transmitted to the Office of Indian Affairs at Washington City.

All selections of land under this article must be made according to the usual subdivisions; and fractional lots, if containing less than 60 acres, may be regarded as forty-acre lots, if over sixty and less than one hundred and twenty acres, as eighty-acre lots. Selections for orphan children may be made by themselves or their friends, subject to the approval of the agent.

After selections are made, as herein provided, the persons entitled to the land may take immediate possession thereof, and the United States will thenceforth and until the issuing of patents as hereinafter provided, hold the same in trust for such persons, and certificates shall be issued, in a suitable form, guaranteeing and securing to the holders their possession and an ultimate title to the land. But such certificates shall not be assignable and shall contain a clause expressly prohibiting the sale or transfer by the holder of the land described therein.

After the expiration of ten years, such restriction on the power of sale shall be withdrawn, and a patent shall be issued in the usual form to each original holder of a certificate for the land described therein PROVIDED That such restriction shall cease only upon the actual

issuing of the patent; AND PROVIDED FURTHER That the President may in his discretion at any time in individual cases on the recommendation of the Indian agent when it shall appear prudent and for the welfare of any holder of a certificate, direct a patent to be issued. AND PROVIDED ALSO, That after the expiration of ten years, if individual cases shall be reported to the President by the Indian agent, of persons who may then be incapable of managing their own affairs from any reason whatever, he may direct the patents in such cases to be withheld, and the restrictions provided by the certificate, continued so long as he may deem necessary and proper.

Should any of the heads of families die before the issuing of the certificates or patents herein provided for, the same shall issue to the heirs of such deceased persons.

All the land embraced within the tracts hereinbefore described, that shall not have been appropriated or selected within five years shall remain the property of the United States, and the same shall thereafter, for the further term of five years, be subject to entry in the usual manner and at the same rate per acre, as other adjacent public lands are then held, by Indians only; and all lands, so purchased by Indians, shall be sold without restriction, and certificates and patents shall be issued for the same in the usual form as in ordinary cases; and all lands remaining unappropriated by or unsold to the Indians after the expiration of the last-mentioned term, may be sold or disposed of by the United States as in the case of all other public lands.

Nothing contained herein shall be so construed as to prevent the appropriation, by sale, gift, or otherwise, by the United States, of any tract or tracts of land within the aforesaid reservations for the location of churches, schoolhouses, or for other educational purposes, and for such purposes purchases of land may likewise be made from the Indians, the consent of the President of the United States, having, in every instance, first been obtained therefor.

It is also agreed that any lands within the aforesaid tracts now occupied by actual settlers, or by persons entitled to pre-emption thereon, shall be exempt from the provisions of this article; provided, that such pre-emption claims shall be proved, as prescribed by law, before the 1st day of October next.

4. By the treaty of August 2, 1855, the described tracts in Isabella Reservation and in the Saginaw Reservation were withdrawn from sale and individual Indians were given rights to select, and did select tracts there-

in in quantities depending upon their marital status, age, etc., fixed by said treaty. (Art. 1).

5. Subsequent to the execution of the 1855 treaty, the Saginaw became dissatisfied with the Saginaw Reservation area, so at the request of the Saginaw, and with the encouragement of the representatives of the United States, the Saginaws concluded a treaty with the United States on October 18, 1864, (14 Stat. 657). This treaty was ratified by the Senate of the United States on May 22, 1866 and proclaimed by the President on August 16, 1866. By this treaty, the Saginaw released to the United States the Saginaw Reservation land "reserved to said tribe" by the treaty of August 2, 1855, and relinquished to the United States "all claim to any right they may possess to locate lands in lieu of the lands sold or disposed of by the United States upon their reservation at Isabella, and also the right to purchase the unselected lands in said reservation, as provided for in the first article of said treaty." (Article 1). The area so released, as shown by Finding 2 hereof, comprised 60,593.23 acres.

Article 2 of said treaty reads as follows:

> In consideration of the foregoing relinquishments, the United States hereby agree to set apart for the exclusive use, ownership, and occupancy of the said of the said Chippewas of Saginaw, Swan Creek, and Black River, all of the unsold lands within the six townships in Isabella County, reserved to said Indians by the treaty of August 2, 1855, aforesaid, and designated as follows, viz:
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> The north half of township fourteen, and townships fifteen and sixteen north, of range three west; the north half of township fourteen and township fifteen north, of range four west, and townships fourteen and fifteen north, of range five west.

Article 3 of said treaty relinquished all selections made by individual Indians who were granted the right to make selections of

land upon the Isabella Reservation in lieu of the selections made by them in the Saginaw Reservation. It also provided for selections by Indian chiefs and head-men, and other members of the Saginaw; for selections by certain named persons, and by Ottawas, Chippewas and Pottawatomies then belonging to the bands of which Metayomeig, May-me-she-gaw-day, Kech-kebe-me-mo-say, and Waw-be-maw-ing-gun were chiefs.

This article also provided for a list of all persons who had made selections in the Saginaw Reservation under the treaty of August 2, 1855, and those who may be entitled to selections under the provisions of the treaty of 1864. This treaty also provided for the expenditure of the sum of $20,000 for the support and maintenance of a manual-labor school upon the Isabella Reservation.

6. At the time the treaty of 1864 became effective there were no lands within the Isabella Reservation subject to selection under the 1855 treaty, but by the provisions of the 1864 treaty all lands the Indians were entitled to select or purchase (entry) therein, which had not been previously acquired by the Indians, became subject to selection by individual members of the Saginaw, their chiefs and headmen, certain named persons, and by members of named bands of Ottawa, Chippewa, and Pottawatomie Indians.

The evidence does not show the acreage in the Isabella Reservation that was made available for selection by members of the Saginaw under the 1864 treaty. It does show, however, that of the total of 98,051.13 acres assigned to the Indians therein, 2303.42 acres were selected by individual Indians under the 1864 treaty. (Def. Ex. 1, pp. 2 and 18). Whether the 2303.42 acres were all the lands the Indians selected in

the Isabella Reservation under the 1864 treaty, does not definitely appear, nor has the value of the rights or things the Saginaw acquired under the treaty of 1864 been shown.

As to the value of the Saginaw rights in the Saginaw Reservation, which the Saginaw relinquished by the 1864 treaty, the evidence mainly relied upon by plaintiffs is the report of sales of tracts therein by defendant subsequent to August 2, 1855, shown by defendant's Exhibit 1, pp. 3 to 16. This exhibit covers only a part of the area relinquished, that is, 43,025.82 acres of the 60,593.23 acres the Saginaw relinquished by the 1864 treaty. The figure 60,593.23 includes 17,567.41 acres of railroad grants made after the 1855 treaty became effective and pursuant to the Act of June 3, 1856, (11 Stat. 21). (Def. Ex. 1, pp. 2 and 17-18).

7. The treaty of October 18, 1864, was consummated by the United States and twenty-eight chiefs and headmen of the Saginaw as their representatives. This treaty was made because the Saginaw Reservation lands were unsuitable for the Indian use and because it was recognized by both the Indians and government representatives that a removal of that part of the Saginaw located in said reserve would promote their welfare. (Def. Exs. 14, 15, 17). The treaty as concluded, was with the authorized representatives of the Saginaw who fully understood its contents and voluntarily executed it and later approved amendments thereto. (Def. Exs. 17, 18, 19, 20, 21, 22, 23, 24).

The Commission further finds that no fraud was practiced or in any way involved in the negotiation or execution of said treaty of 1864.

8. On the second cause of action involving the removal by non-Indians of timber from lands in the Isabella Reservation, acquired by

the Indians under the treaties of 1855 and 1864, the plaintiff has offered little evidence in support of its claim, but relies mainly upon statements contained in a letter (Cl. Ex. 2) written by the Assistant Secretary of the Interior on February 21, 1935.

The evidence shows that whites, in devious ways, obtained timber from Indian lands in the Isabella Reservation. Generally, this was done through dealings with individual Indians who had made selections under the treaties of 1855 and 1864. In other cases, the timber was acquired from Indian patentees. But however or through whom the timber was taken, the record is devoid of any facts sufficient to determine whether the plaintiff has a right to recover therefor. The proof consists entirely of vague and general statements as to time of taking, quantity of timber taken, or places from which taken.

Furthermore, there is no proof whatever that the failure of defendant, as alleged in the petition, to issue allotment certificates and patents resulted in loss or damage to plaintiff.

9. By the Congressional Act of September 28, 1850 (9 Stat. 519), the United States granted to the State of Michigan swamp lands within that State, and pursuant to that Act, the State of Michigan, acting through its proper authorities, selected 14,601.41 acres of swamp land within the Isabella Reservation, and 14,829.43 acres of such lands within the Saginaw Reservation. All of such selections were made prior to the treaty of August 2, 1855, and approved by proper authorities of the United States, although patents for all of such selections were not delivered to the State of Michigan until after August 2, 1855. That by the "so-called" Swamp Land Act of 1850 and the action of the State

authorities pursuant thereto, all of the swamp land selected in the two reservations passed to the State of Michigan. Furthermore, none of the lands so selected were wrongfully classified as such.

That by reason of said Act of 1850 and the selections made thereunder, the rights thereto for selection or entry did not pass to the Saginaw or its members under the provision of the treaty of August 2, 1855, and such lands were not included in the category of "unsold public lands" within the areas of either the Isabella or saginaw reservations referred to in Article 1 of the treaty of 1855.

LOUIS J. O'MARR
Associate Commissioner

WM. M HOLT
Associate Commissioner