

## BEFORE THE INDIAN CLAIMS COMMISSION

ROBERT DOMINIC, et al., as the	)	
representatives and on behalf	)	
of all members by blood of THE	)	
OTTAWA TRIBE OF INDIANS,	)	
	)	
Plaintiffs,	)	40-B
	)	40-C
v.	)	Dockets Nos.: 40-D
	)	40-E
UNITED STATES OF AMERICA,	)	40-F
	)	
Defendant.	)	

and

THE OTTAWA TRIBE, and GUY	)	
JENNISON, BRONSON EDWARDS,	)	
and GENE JENNISON, as	)	
Representatives of THE	)	
OTTAWA TRIBE,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No. 133
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: August 6, 1953

## Appearances:

Arthur B. Honnold, with whom  
was Charles B. Rogers,  
Attorneys for Plaintiffs,  
Dockets Nos. 40-B, C, D, E, & F.

Marvin C. Harrison, with whom  
were Theodore C. Bonney and  
Ralph Montgomery Arkush,  
Attorneys for Petitioners,  
Docket No. 133

Sim T. Carman and Leon J. Moran,  
with whom was Mr. Acting Assistant  
Attorney General J. Edward Williams,  
Attorneys for Defendant,  
Dockets Nos. 40-B, C, D, E, & F,  
and Docket No. 133.

OPINION OF THE COMMISSION

WITT, Chief Commissioner, delivered the opinion of the Commission.

On August 22, 1949, petitions 40-B, C, D, E, and F were filed with the Indian Claims Commission by "Robert Dominic, et al., as the representatives and on behalf of all members by blood of The Ottawa Tribe of Indians," asserting, either as the purported successors to, or on behalf of The Ottawa Tribe, claims based on the Treaties of August 3, 1795, July 4, 1805, November 17, 1807, September 29, 1817, and August 29, 1821.

On July 6, 1951, the petition in case No. 133 was filed, captioned "The Ottawa Tribe, and Guy Jennison, Bronson Edwards and Gene Jennison, as representatives of The Ottawa Tribe v. The United States of America," in which the petitioners assert, either as the purported successors to, or on behalf of The Ottawa Tribe, claims based on the Treaties of July 4, 1805, November 17, 1807, September 29, 1817, and August 29, 1821.

The petitioners in case No. 133 allege that the Ottawa Tribe, one of the petitioners therein, is an organized tribe of American Indians with a tribal organization recognized by the Secretary of the Interior as having authority to represent the Tribe and all its members.

The individual petitioners in case No. 133 appear as representatives of the Ottawa Tribe and all its members only for the purpose of obtaining a full and final judgment on all the issues, if it should be determined that the Ottawa Tribe is not now an organized tribe with capacity to sue in its own name. Petitioners therein assert that neither the Ottawas who were members of the entities known as the Ottawas and Chippewas of Michigan and the United Tribe of Chippewas, Ottawas and Pottawatomies, nor their descendants, were or are members of the Ottawa Tribe.

Plaintiffs in Dockets Nos. 40-B, C, D, E, and F assert that "no tribal organization exists recognized by the Secretary of the Interior as having authority to represent all descendants of the Ottawa Nation or Tribe of Indians, including all members by blood of the Ottawa Tribe or Indians, who now reside in several states of the Union; nor is there any organization with authority to present, in the name of the organization, the claims presented herein."

Defendant in answering cases Nos. 40-B, C, D, E, and F and No. 133 alleged that the petitioners therein have no legal capacity to institute and maintain these actions. In its answers to the petitions defendant has further alleged that the groups or bands allegedly composing the so-called "Ottawa Nation or Tribe of Indians" did not exist in fact as a tribal organization or political entity, or possess or claim to possess property rights in common during the period when the treaties involved were made and concluded with the United States, and that it is not now such a presently existing tribe, band or other

identifiable group of Indians as is contemplated by Section 2 of the Indian Claims Commission Act.

The essence of such pleadings on the part of the petitioners in these cases was the presentation of identical claims by two separate groups contending to have the sole right to bring said actions for the Ottawa Tribe, with the petitioners in case No. 133 further contending that the Ottawas of Michigan, or their descendants, who were known as the Ottawas and Chippewas of Michigan, and the Ottawas belonging to the United Tribes of Chippewas, Ottawas and Pottawatomies, were not, or are not, members of the Ottawa Tribe.

In view of these pleadings the defendant, on September 26, 1951, filed a motion for a preliminary hearing before the Commission, setting forth the pleadings of the petitioners and answers and prayed (1) that an order be granted for a preliminary hearing in said cases and (2) that the Commission receive evidence on the questions (a) whether the respective petitioners or any of them are entitled to maintain the aforesaid claim or claims, and (b) whether any of the petitioners is an identifiable tribe, band or group of Indians within the meaning of Section 2 of the Indian Claims Commission Act and entitled to maintain these actions.

The Commission granted defendant's motion for a preliminary hearing on these issues on November 7, 1951, and thereafter hearings were held and evidence submitted in Washington, D. C. on March 11, 1952, and October 14, 1952.

Following said hearings on the limited issues involved, briefs and requested findings of fact were filed by all parties and arguments made. Thus there is presented for determination at this time the following questions, to-wit: Whether or not the treaties involved in said claims were executed by an Ottawa Nation or Tribe as an entity, or by separate groups or bands of Ottawa Indians, and whether or not actions are maintainable by the petitioners, or any of them, based on said treaties, or any of them, in behalf of an Ottawa Nation or Tribe as an entity; or whether the petitioners are entitled to maintain the actions involved, or any of them, in any other capacity, or for any band or group of Ottawa Indians.

The determination of the above questions involves the history of the Ottawa Indians. The earliest known white contact with these Indians occurred in 1615, in what is now Canada, when they were visited by one Samuel de Champlain. With reference to them he wrote that they had several chiefs who took command each in his own district. Other early writers did not refer to the Ottawas as a rule as a single tribe, but rather mentioned several tribes, nations, or bands of Ottawas, using the term nations or bands indiscriminately.

William Vernon Kintetz, an Ethnologist of recognized authority on the Indians of the Great Lakes region, where the Ottawas were found originally, testified that these Indians did not have a head chief who was recognized as a chief over all separate bands at any time; that each band had a separate chief. He further testified that they had no continuous standing council, but that on occasions different groups of Ottawas would send their representative to meet with

other representatives.

The Ottawa Indians, at the close of the American Revolution, were scattered over an immense territory, constituting what are now known as the States of Michigan, Ohio, Wisconsin, and Illinois. There were Ottawas in the northwestern section of the lower peninsula of Michigan; along the Maumee River and its tributaries in Ohio; and some Ottawas had even found their way into southern Wisconsin and northeastern Illinois. There were no political ties between the several groups of Ottawas. Although the Indians named in the caption and the body of these treaties are referred to as constituting the Ottawa Nation or Tribe, it would seem that such designation was as stated by the witness Kinietz more of a "grandiose flattering" of the Indian group rather than a designation of a political entity. As further stated by said witness, those who were parties to a treaty were only those groups of Ottawas who were occupying or claiming the territory ceded.

The evidence is thought to definitely sustain the defendant's contention that all the Ottawa Indians were not, since known by the white man, members of an Ottawa Nation which embraced within its authority all bands and groups of Ottawas, and that there was no recognized entity as an Ottawa Nation (comprising all Ottawas) owning, or claiming to own, or ceding lands.

That there was no recognized single entity as an Ottawa Nation, but that the so-called nation consisted of separate entities in the nature of bands or groups of Ottawas is confirmed by the conduct of

the parties to the treaties involved in these claims. While the several treaties set aside reservations for the "Ottawa Nation" within the ceded area, and no reservation was set aside to any specific group, the evidence shows that only the groups joining in the cession thereafter occupied the reservations provided by any treaty; and subsequent cessions of these reservations were made to the United States only by the groups joining in the treaties which provided for said reservations.

The annuities provided for the so-called nation by the treaties involved seem to have been paid to specific bands in varying proportions--and paid, at times, to bands seemingly not joining in the treaty providing therefor. The record in evidence as to the payment of annuities due under the treaties of 1795, 1807, 1817, and 1818 showed that the total of \$4,300.00 was paid to the "Ottawa Tribe or Nation" each year until 1821, when \$700 was paid to the "Ottawas on Grand River"; and \$3,600 to the "Ottawas of Miami; Blanchard's Fork, and Roche de Boeuf." After an additional \$1,000 annuity came due under the treaty of August 29, 1821, said records showed \$1,700 paid annually to the "Ottawas on Grand River" and \$3,600 to "Ottawas of Miami, Blanchard's Fork, and Roche de Boeuf." The \$1,000 annuity accruing under the treaty of September 29, 1817 expired with the year 1833. The Accounting Office records beginning with 1834, until 1855, show payment to the "Ottawas on Grand River, \$1,700," and "Ottawas of Miami, Blanchard's Fork, and Roche de Boeuf, \$2,600." After 1855 no more annuities were paid to the "Ottawas on Grand River,"

and all payments made were to the "Ottawas of Miami, Blanchard's Fork, and Roche de Boeuf." In this connection, it is to be noted that on July 31, 1855, a treaty was made with "Ottawas and Chippewas", under the terms of which "the Ottawa and Chippewa Indians" released to the United States all annuities accruing under previous treaties and the Ottawas accepted in lieu of said annuities "the sum of \$35,000, in 10 annual installments of \$3,500 each, to be paid only to the Grand River Ottawas."

These Accounting Office records show, therefore, that beginning with the year 1821 the United States Government recognized as due and owing to the Ottawas on Grand River \$700 by reason of annuities accruing to them under a treaty or treaties executed prior to the treaty of August 29, 1821; and as accruing to them, the total annuity provided by the treaty of August 29, 1821, until they released such annuity, together with the previously entitled amount of \$700, by the treaty of 1855; and that the United States Government recognized the treaties of 1821 and 1855 as dealing with and affecting only the Ottawas on Grand River.

Attention is called to the fact that in the discussions prior to the execution of the treaty of 1821, Kewaygushcam, an Ottawa Chief of the Grand River Band, complained that his group had not received any portion of the annuities accruing by reason of the previous Ottawa treaties. His attention was called to the fact that he had received \$500 (probably meaning \$700) the previous year, which he acknowledged; and that for all subsequent years until the release of 1855 the Grand



River Band was paid \$700, plus the \$1,000 annuity provided by the 1821 treaty. However, when this Chief made this protest he referred to the Indians on the Maumee having sold "their lands." He also made the statement that "the Chippeways, the Pottawatomies, and the Ottaways were originally one nation."

Attention is also called to the fact that the release in evidence, of October 6, 1820, for the entire \$4,300--which recites same as being due "the Ottawa Tribe of Indians for the year 1820"-- is signed by Kewaywishcum, which is probably the same Indian referred to in the above as Kewaygushcum. Attention is called to the receipt dated November 5, 1821, where a group recited as being "chiefs of the Ottawa Nation of Indians residing on the Miami River, Anglaize, and Blanchards Forks," received \$3,500, being "our full share of all annuities due from the United States to said Ottawa Nation for the year one thousand eight hundred twenty one." A receipt dated December 13, 1821, recited as being signed by chiefs of the Ottawa Nation, acknowledged an additional \$100 as "completing the full share of annuities due to the Ottawas residing on the Miami River and at Blanchards Forks for this year." A receipt dated August 27, 1821, is a receipt seemingly given by the Grand River Band for \$700, recited to be "in part payment of the annuities due the Ottawa Indians for the year 1821." A receipt is in evidence dated July 23, 1822, seemingly executed by the Grand River Band of Indians, acknowledging payment of \$700 "being that portion of the annuities due to the Ottawa Indians by the treaties of Greenville, Detroit, Fort Meigs,

and St. Mary's, payable to the Ottawa Indians of Grand River and also (of) \$1,000, being the annuity due to the said Indians by the treaty of Chicago, both the said sums being for the year 1822."

The receipt dated the 29th day of August, 1822, is recited as being signed by the "chiefs of the Ottaway Nation of Indians residing on the Miami River and Blanchards Forks," of \$3,600, "being a full and fair division to us of the Ottawa annuity for the year one thousand eight hundred and twenty two."

This entire record indicates that there was no chief of the entire nation, nor general council of the entire nation of Ottawas having control over any lands as belonging to the entire nation; but that different bands of Ottawas occupied and had the authority to dispose of different sections of land, though other bands of Ottawas may have had some interest therein. In fact, it would seem from the cessions themselves that the lands conveyed were frequently jointly owned, not only by different bands of Ottawas, but also by Chippewas, Pottawatomies, and sometimes by Wyandottes and other Indian tribes.

The only treaty that seems, from the record, to have been recognized as belonging to one band of Ottawas alone is the treaty of August 29, 1821; and that it was recognized as belonging solely to the Grand River Band of Michigan is indicated by the fact that the annuity of \$1,000 provided therein was thereafter paid to this band alone, and the payment of said annuity ceased after the release by this band alone in the treaty of 1855.

In this connection, it is to be noted that the plaintiffs in Docket No. 133, in their original petition, assert an interest in the lands ceded by the treaty of August 29, 1821, but thereafter abandoned such claim of right in said land. Plaintiffs in Docket No. 133 seem to have recognized that they could not consistently contend that the Grand River Band had no interest in the cessions of 1795, 1807, 1817, and 1818 because they seemed not to have been parties to said treaties, and yet that they (the parties to said treaties) had a claim in the cession of 1821 which was made solely by the Grand River Band of Ottawas-- and that to be consistent in their contention that the Grand River Band should be denied the right of participation in claims based on the treaties of 1795, 1807, 1817, and 1818, the plaintiffs in Docket No. 133 should abandon any contention that they were entitled to be beneficiaries of any claims based on the 1821 treaty. However, the fact that the plaintiffs in Docket No. 133 originally contended that the Ottawa Tribe (that is, all Ottawa Indians) owned the lands ceded by the treaty of 1821, is persuasive of the contention of the plaintiffs in Dockets Nos. 40-B, C, D, E, and F that while the Ottawas consisted of many separate bands and tribes, each occupying separate parts of the country, that said occupation of any particular territory by a band of Ottawas was not to the exclusion of the right of other bands of Ottawas to jointly occupy the same--and that all the lands, although occupied by separate bands of Ottawas, were to an extent owned by all the bands of Ottawas.

As the plaintiffs in Docket No. 133 are not now asserting interest in the claims being prosecuted in Dockets Nos. 40-B and 40-F, therefore those claims shall be prosecuted alone by the plaintiffs in said Dockets numbers.

As the claims asserted in Dockets Nos. 40-C, D, and E are based on treaties ceding lands which bands other than the Grand River Band may be able to show an interest in, and the same claims are being asserted in Docket No. 133, therefore Dockets Nos. 40-C, D, E, and 133 shall be consolidated and the respective rights of the bands shall be determined after all evidence is adduced upon the consolidated trial of said causes.

As this opinion and the findings of fact upon which it is based involve the several dockets discussed, it is not thought necessary to render separate opinions or make separate findings of fact, but this opinion and said findings of fact are applicable to all said Dockets numbers.

Edgar E. Witt  
Chief Commissioner

I concur in the foregoing:

Wm. M. Holt  
Associate Commissioner