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Plaintiffs in Dockets
No. 13-M and No. 40-K

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torney of Record for
Plaintiffs in Docket
No. 29-K

Sam T. Carman, with whom
was Mr. Assistant Attor-
ney General Perry W. Mor-
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Defendant.

OPINION OF THE COMMISSION

Witt, Chief Commissioner, delivered the opinion of the Commis-
sion.

Area Involved

An examination of the petitions in Dockets Nos. 146, 15-M, 13-M,
40-K and 29-K, which were consolidated for trial for the purpose of
initially determining the area claimed and the rights of the respec-
tive claimants thereto, will show that the several claims are based
upon the treaty of August 29, 1821, 7 Stat. 218, between the Ottawa,
Chippewa and Pottawatomie Nations of Indians and the United States.
All the claimants and the government seem agreed upon this; however,
some of the claimants, particularly those in Dockets 146 and 15-M,
would include as part of the area ceded a tract of land which two
years previously had been ceded to defendant by the Chippewa Indi-
ans by the Treaty of September 24, 1819, 7 Stat. 203. This tract
comprises 999,014 acres (Def. Ex. 64, Docket 146) of the lands ce-
ded by the 1819 treaty and lie therein south and west of the Grand
river.

The defendant by its answer denies that the treaty of 1821 includes the tract last referred to and in its brief calls attention to and describes the overlap the petitioners claim as part of the 1821 cession.

Before discussing the treaty description of the eastern boundary line of the 1821 cession, an understanding of the boundaries of three cessions made prior to 1821 is necessary. The boundary lines of these treaties are graphically shown on the Royce Map, Michigan 1, Part 2, as cessions 66, 111 and 88. See also Maps, Def. Ex. 65, Docket 146, and Pet. Ex. 112, Docket 13-M.

Treaty of September 29, 1817:

By the Treaty of September 29, 1817, 7 Stat. 160, Royce 88, seven tribes ceded lands in Ohio and Michigan, the north and part of the western boundaries of which form part of the 1821 cession lines. About this there is no doubt or that it is the treaty referred to in the 1821 treaty, or that the eastern part of the line of the 1821 cession begins at the northeast corner of the 1817 tract. (Royce 88).

Treaty of November 17, 1807:

On November 17, 1807, 7 Stat. 105, four Indian nations ceded lands in southeast Michigan and northwest Ohio, the west line of which conforms to the Michigan Meridian and constitutes the southern end of the east line of the 1821 cession (Royce 66 and 117). This treaty line of 1807 is also the one referred to in the 1821 treaty as forming the south part of the east line of that cession.

Treaty of September 24, 1819:

By the treaty of September 24, 1819, 7 Stat. 203, the Chippewa Nation ceded to the United States a large area of land located in middle and eastern Michigan. This tract is shown as Royce area 111 and the south and westerly lines shown by Royce conform to the lines described in the treaty. It is that part of this area lying south and westerly of the Grand River in Michigan that the several petitioners have included as part of their claim, as being part of the 1821 cession. There are, as shown above, 999,014 acres in this area.

The three treaties described above are important because they adjoin the 1821 cession on the south and east, were all consummated prior to 1821, and therefore come within the phrase "former cessions" used in the 1821 treaty.

Treaty of August 29, 1821:

The boundaries of the lands ceded by the treaty of August 29, 1821, 7 Stat. 218, are described in Article I as follows:

Beginning at a point on the south bank of the river St. Joseph of Lake Michigan, near the Parc aux Vaches, due north from Rum's Village, and running thence south to a line drawn due east from the southern extreme of Lake Michigan, thence with the said line east to the Tract ceded by the Pottawatamies to the United States by the Treaty of Fort Meigs in 1817, if the said line should strike the said Tract, but if the said line should pass north of the said Tract, then such line shall be continued until it strikes the western boundary of the Tract ceded to the United States by the Treaty of Detroit in 1807, and from the termination of the said line, following the boundaries of former cessions to the main branch of the Grand River of Lake Michigan, should any of the said lines cross the said River, but if none of the said lines should cross the

said River, then to a point due east of the source of the said main branch of the said river, and from such point due west to the source of the said principal branch, and from the crossing of the said River, or from the source thereof, as the case may be, down the said River, on the north bank thereof, to the mouth; thence following the shore of Lake Michigan to the south bank of the said river St. Joseph, at the mouth thereof, and thence with the said south bank to the place of beginning.

The south line of the cession strikes the west line of the 1817 (Ft. Meigs) cession (Royce 88), and extends north to the northwest corner and east to the northeast corner of the cession where it meets the west line of the 1807 (Detroit) cession in accordance with the 1821 treaty description of the south line. The northeast corner of the 1817 cession is referred to in the 1821 treaty as the "termination of said line". It is the line north from this corner that must be located in accordance with the calls of the treaty description, but it is apparent that this line cannot be located from the treaty description alone; the topography of the area must be considered in connection with the treaty calls.

There can be no doubt about the west and southern boundaries of the 1821 cession. The only question that confronts us is the location of the east and northerly boundary lines of that cession. It will be seen that the call governing those lines reads:

* * * from the termination of said line [the northeast corner of the 1817 cession, Royce 88/], following the boundaries of former cessions, to the main branch of the Grand river of Lake Michigan, should any of said lines cross said River * * * down the said river, on the north bank thereof, to the mouth * * *.

This language is plain and simply states that the boundaries of

Former cessions to the main branch of the Grand River shall constitute the boundaries of the 1821 cession if any of the lines of the former cessions cross said river.

Obviously, to apply the description of the call to the lands, two things must be shown by evidence: (1) the "main branch" of the Grand River, and (2) whether any lines of a former cession cross said river. The petitioners have offered proof on both matters which consists of their Map, Ex. 112, Docket 13-M. This is the only evidence petitioners have offered on those questions. The defendant's map (Def. Ex. 65, Docket No. 146) is to the same effect.

An examination of Exhibit 112, Docket 13-M, will show that from its mouth on Lake Michigan, the Grand River appears as a large stream diminishing in size after passing Ionia, and after passing through Lansing it becomes noticeably smaller as it approaches the southeast corner of the 1819 cession. Petitioners' Exhibit 112 shows a river flowing through the south line of that cession (Royce 111), but it is mere conjecture that it is the Grand, in fact our inquiry of the Bureau of Land Management gave us no satisfactory proof of the source of the Grand River or that it extends that far south. But however that may be, the map definitely shows that, as compared with its tributaries, appearing on the exhibit, from its mouth to the place where the westerly line of the 1819 cession crosses the Grand River is the widest part of the river, and because of its size and prominence would be known to the treaty commissioners and the Indians, while the upper reaches of the river with its diminishing size and uncertain source would be less known;

in fact, Cass in 1819 mentioned "our ignorance of the topography of the interior of this Territory", (Def. Ex. 40, Docket 146) referring to the 1819 cession, through which the Grand flows for many miles. So it is reasonable to believe that by mention in the 1821 treaty of the "main branch of the Grand river" he and the Indians had in mind the prominent lower part of it and not its upper reaches. So on the record we must conclude that the "main branch" of the Grand River meant the part crossed by the westerly line of the 1819 cession.

With the above facts in mind, it is clear that the line which runs north from the northeast corner of Royce 88 along the west boundary of the 1807 cession (Royce 66) to a point where the south line of the 1819 cession (Royce 111) intersects the west line of Royce 66. thence sixty miles west, thence northeasterly on the westerly line of the 1819 cession until it crosses the main branch of the Grand (west of Saranac, Michigan), and from such crossing down the Grand to its mouth, constitutes the easterly and north line of the 1821 cession since it follows the boundaries of the 1807 and 1819 cessions, both of which were consummated prior to the 1821 treaty. That line is in strict conformity with the treaty call in that it follows lines of former cessions to the crossing of the main branch of the Grand and from there to the mouth. To extend the 1821 cession to the Grand in the 1819 area, as petitioners ask, would be to completely ignore the plain treaty requirement that the 1821 boundary lines follow the boundaries of "former cession * * * should any of said lines cross the said (Grand) river * * *." In this context, "to the main branch of the Grand River" can only refer

