

action, based upon these same cessions, are plead in Docket 18-E and the same relief is sought. The two dockets are consolidated for trial with the understanding that all evidence introduced in either action would apply with equal effect in the other.

The plaintiffs in Docket 58 are the Ottawa and Chippewa Indians in the State of Michigan, also known as the Ottawa and Chippewa Indians of Michigan, and individual members thereof. They sue on behalf of all the Ottawa and Chippewa Indians interested in the claims herein presented. The defendant admits that the ancestors of these Indians on March 28, 1836, held original Indian title to approximately 12,044,934 acres of land within Area 205 as outlined upon Royce's Map 1 of Michigan, Vol. 18, B.A.E., exclusive of prior cessions, reservations, and two tracts therein which are hereinafter referred to as Sub-areas "U" and "S".

The plaintiffs in Docket 18-E are the Keweenaw Bay Indian Community and former Chippewa Bands whose membership now comprise that Community, and Charles Picard and Edward Monguse, who are members of the Community; the Bay Mills Indian Community and individual Chippewa who are members of it, and the Sault Ste. Marie Band which comprises a part of the Bay Mills Indian Community. It is now conceded that the former Chippewa bands whose members comprise the Keweenaw Bay Indian Community resided west of the tracts here involved and had no interest in these lands. Accordingly the petition in Docket 18-E will be dismissed as to the Keweenaw Bay Indian Community, the L'Anse, Lac Vieus Desert and Ontonagon Bands of Chippewa Indians, Charles Picard and Edward Monguse, plaintiffs therein. Defendant challenges the right of the remaining plaintiffs in Docket 18-E to present either of the claims asserted, alleging that they sue "in a representative capacity in the name of the Bay Mills Indian

Community" and "not in behalf of the Ottawa and Chippewa Indians" who executed the two treaties involved.

The issues presently for determination are whether the plaintiffs in Docket 18-E have any standing before the Commission, and whether original title has been established by any of the parties plaintiff to Area 113, being the St. Martin Islands in Lake Huron, on the cession date of July 6, 1820, and as to Sub-areas "U" and "S" on their cession date of March 28, 1836. The second issue involves the further question of whether ownership, if found, existed solely by reason of use and occupancy or had been recognized, which recognition defendant denies. We shall first discuss the capacity and right of the plaintiffs in Docket 18-E to maintain this action.

It appears that in the 18th century a number of separate, autonomous bands or groups of Chippewa and Ottawa Indians resided within Area 205. Of the Algonquin linguistic stock, they spoke different but mutually intelligible languages. The two were intermarried, and some bands included both Ottawa and Chippewa Indians. By 1836 all of these Indians were recognized by the United States and by themselves as forming a tribal unit known as the Ottawa and Chippewa Indian Nations in the State of Michigan (42 Ct Cls. 240). The merger date is indefinite, but this tribe appears as plaintiff in Docket 58. It relies upon the Durant Roll of 1919 for identification of its membership and that roll, according to its title, is limited to Ottawa and Chippewa Indians, or their descendants, who were "on the roll of the Ottawa and Chippewa Tribe of Michigan in 1870, and living on March 4, 1907". The record does not disclose whether this 1870 roll included all of the Indians who may have had an interest in the two tracts of land here involved upon the dates of their cession. or all the successors of

such Indians. However, the plaintiffs appear in a representative capacity on behalf of all such persons.

While the allegations of representation may have been more adroitly set forth, yet there can be no doubt but that the plaintiffs in Docket 18-E include descendants of and sue in behalf of all the Chippewa Indians whose ancestors held an interest in the tracts of land here involved upon the dates of their respective cessions. At least one of these plaintiffs is a member of the organization appearing as plaintiff in Docket 58. Neither of these parties contest the right of representation or the capacity of the other to sue. They join in one proposed Findings of Fact, present joint Briefs, and seek but one joint recovery. We are not concerned with the identification of each individual who may be entitled to participate in any recovery the Commission may allow in either of the causes of action here presented, since that is, of course, an administrative function, but we are interested in determining that all such parties are properly represented.

We are of the opinion that the parties plaintiff in both these dockets possess the representative capacity to sue and represent parties entitled to participate in any eventual recovery herein. Since they do not contest the right of representation as between themselves, and since the degree of defendant's liability, if any, is not to be measured by the number of parties plaintiff, and can not be increased through this joint representation, and since defendant is not required to meet any new or more extensive claim by reason thereof, the Commission believes that defendant's objection to the participation of the plaintiffs in Docket 18-E has no justiciable merit. The joint efforts of the plaintiffs in both dockets, will, therefore, be recognized.

There remains for determination the question of whether the plaintiffs have established original Indian title or a recognized title to Areas 113 and Sub-areas "U" and "S". It does not appear to be disputed that Indian title had been extinguished before March 28, 1836, to those four tracts of land within Area 205 which are identified as Areas 21, 22, 23 and 112; Areas 21 and 22 being the land on either side of the Straits of Mackinac and the Mackinac Island which were in possession of England and passed to the United States under the declaration of sovereignty of July 4, 1776, as recognized by the Treaty of Paris on August 3, 1783, (8 Stat. 21), Area 23 being the Bois Blanc Island which was ceded by the Treaty of August 3, 1795, (7 Stat. 49), and Area 112 being a tract about the Sault Ste. Marie which was ceded on June 16, 1820, (7 Stat. 206). The defendant admits that on March 28, 1836, plaintiffs' predecessors in interest held original Indian title to the remainder of Area 205 with the exception of Area 113 and Sub-areas "U" and "S".

Plaintiffs say that their title to the three tracts under dispute was recognized by the defendant in the Greenville treaty of August 3, 1795, (7 Stat. 49). The record establishes that Chippewa Indians then in possession of the Bois Blanc Island executed the 1795 treaty and that those Indians later merged into a tribal organization of Ottawa and Chippewa Nations of Indians which the Court of Claims found existed in 1836, (42 Ct. Cls. 240). It does not appear that this tribal organization existed in 1795 or that the Ottawa Indians who formed a part of this amalgamated tribe and whose descendants are plaintiffs herein were parties to the Greenville Treaty. (Dominic, et al., v. United States, 2 Ind. Cl. Com. 466, Con. Dkt. 40-B) Accordingly, the only land to which recognized title

may have applied under that treaty is that land which the Chippewa then held under identifiable possession. Since the part of Area 205 in possession of the Chippewa was not described in either the 1795 treaty or the March 28, 1836, treaty, neither of these treaties can be relied upon for that identification which is necessary in order to support a finding of recognized title. (Miami Tribe vs. United States, 5 Ind. Cl. Com. 180, 189, 215, Con Dkt. 253). It follows, then, that plaintiffs' right to recover for land claimed by reason of either Chippewa or Ottawa ancestry depends upon proof of original Indian title, or in other words, proof of exclusive use, occupancy and control. The extent of original Indian title land can be no greater than that which each ancestral group held under original Indian title when the United States sovereignty attached in 1776, and which they continued to use, occupy, possess and control on March 28, 1836.

We do not think the record convincingly established that plaintiffs' predecessors held original title to Area 113, the St. Martin Islands in Lake Huron, at the time of their cession on July 9, 1820, nor do we believe there is support for plaintiffs' claim or recognized title to these islands. There are only two recorded visits to them by white men, one by Alexander Henry in company with his adoptive Ottawa family in 1763, and one in 1820 by Henry Schoolcraft and a Captain Douglas. Neither of these parties subsequently mentioned seeing any evidence of Indian occupancy, although Schoolcraft's visit was exploratory and he described the soil, mineral, timber and general topography of the larger island. Chippewa Indians were reported living on them in 1824 and 1840 and there are two other references to Indians on them after 1824, but official enumerations of the Indians within the Michilimackinac superintendency in 1817, 1819 and

1835 do not locate any Indians on the islands. The record also suggests that those reported there in 1824 may have been cutting wood on what was then the public domain for use in the construction of new agency buildings. In any event the presence of Ottawa Indians on the islands in 1763 can not help to establish a recognized Chippewa title, for while it is not evident upon what date the amalgamated tribe of 1836 did come into existence, it is evident that the Chippewa and Ottawa in the Michilimackinac superintendency were separate groups until after the 18th century.

There are included in the evidence presented herein numerous reports from officials and others who were in contact with the Indians in this region both before and after the United States extended its sovereignty over the area, and more suggests an occupancy or use of the islands by Indians prior to their cession. The extraordinary circumstances surrounding Henry's visit indicate it was an unusual occurrence. We are also impressed with the fact that Agent Boyd procured the cession, not from the Indians on the island or on the northern peninsula within five miles of them, or from those on Mackinac Island some ten miles away, or even from those residing south of the Straits, but from Ottawa and Chippewa at L'Arbre Croche, which lies by direct measurement some 45 miles away, and was considerably farther by canoe. Furthermore, these Indians are said merely to "claim" the islands, rather than to own them. We are of the opinion that plaintiffs have failed to establish an ancestral use and occupancy of the St. Martin Islands.

Now as to ownership by petitioners of Sub-areas "U" and "S":

The record establishes that for some years prior to 1836 the Chippewa held possession of the Cheboygan River, with one village about 40 miles

above its mouth. The Cheboygan watershed in the northern part of the southern peninsula is some distance away and separated from these Sub-areas by the headwaters of the Au Sable River, and Chippewa Indians are not shown to have penetrated this far up the Au Sable by 1836, so we can not say a recognized Chippewa title to either Sub-area "U" or "S" is shown to have been created by the treaty of 1795.

As to the use and occupancy of Sub-area "U": Houghton and Higgins lakes are in the northern part of Sub-area "U". James Shawandona told of hunting there but gave no dates, and since the Ottawa and Chippewa remained in Michigan and continued their established way of life until after 1855, this hunting may have occurred even subsequent to the cession date of 1836. The same situation prevails with respect to burial grounds reported near the lakes and concerning Hinsdale's report of an Indian trail from Saginaw which skirted the eastern shores of the two lakes and then branched to Mackinac and the Grand Traverse. Certainly the trail was unknown among the Saginaw Chippewa and their traders in 1834 when the Government sent an exploratory party to mark out a route from Saginaw to Mackinac. Although the Ottawa have a tradition of once living at Houghton Lake, it was considered a secluded region and was not part of their living or hunting grounds in 1819. It appears to have been an occupied area as late as the 1850s, for when Blackbird made a trip across the peninsula to Saginaw shortly before 1855, he traveled two and a half days southeast of the lakes before finding Indian habitations, nor does he mention any Indians living or hunting about the lakes.

As game became scarce and competition for furs became more keen, it appears the Indians went farther inland for hunting. Traders' posts were located about 40 miles upstream on many of the western rivers, and the

Indians' hunting camps were 70 to 80 miles inland along the streams, so it is quite probable that at least the southwestern portion of Sub-area "U" was being hunted over by Ottawa Indians by the 1820s, but it is not established that this situation prevailed during the previous century.

The evidence supporting plaintiffs' claim of use and occupancy of Sub-area "S" is not convincing. There is no proof that plaintiffs' ancestors were ever actually within its boundaries. It lies within the watershed of the Saginaw, with the Chippewa, Pine, Tobacco and Cedar rivers all rising within it. It is an accepted fact that Indians used natural calls in bounding their countries, and when some more outstanding geographical feature was not visible for physical identification, that watersheds and drainage divisions were used. The Saginaw Chippewa were said by their traders to have been upon all affluents of the Saginaw River. They traded with Detroit, and, while friendly with plaintiffs' ancestors, they were a separate and distinct unit of the Chippewa Indians. It is known that they hunted on Pine River and had a village beside it a short distance southeast of Sub-area "S"; that a trail led from that village northeast through the Sub-area; that a second village stood near Clare, on Tobacco River, slightly northeast of the Sub-area. It is evident that the Saginaw Chippewa used this Sub-area, and may in fact have exclusively done so.

From a consideration of the entire record we conclude that the plaintiffs have failed to establish such use and occupancy of these Sub-areas "U" and "S", as is necessary to establish original Indian title, and that they have failed to identify either Area 113 or Sub-areas "U" and "S" as land to which recognized Chippewa Indian title was extended by the Treaty

August 3, 1795.

The record establishes that Royce Areas 21, 22, 23, 112 and 113 contain a total of 50,452 acres; that Sub-areas "U" and "S" contain approximately 956,160 and 253,440 acres, respectively; that exclusive of said areas there are 12,446,905 acres within Area 205, of which acreage the Ottawa and Chippewa Nations of Indians retained 401,971 acres for reservation purposes from the cession of March 28, 1836, (7 Stat. 491). These acreages will be accepted as controlling in the absence of a future stipulation by the parties hereto or the presentation of further evidence respecting acreages when evidence touching the value of the ceded lands is submitted by the Commission.

Edgar E. Witt
Chief Commissioner

I concur:

Wm. M. Holt
Associate Commissioner