

BEFORE THE INDIAN CLAIMS COMMISSION

MINNESOTA CHIPPEWA TRIBE WHITE EARTH)
 BAND, LEECH LAKE BAND, MILLE LAC BAND,)
 ED WILSON, JAMES DAVIS, JOHN CORBOW,)
 WILLIAM MORELL, HAROLD EMERSON, JOSEPH)
 MORRISON, OLE SAM, MONROE SKINAWAY,)
 EUGENE REYNOLDS, FRANK LA ROSE, JOSEPH)
 MONROE, ARCHIE LIBBY AND JOHN SQUIRREL,)

Plaintiffs,)

vs.)

Docket No. 18-B

UNITED STATES OF AMERICA,)

Defendant.)

Decided: June 28, 1960

Appearances:

Jay H. Hoag, with whom
 was Marvin J. Sonosky,
 Attorneys for plaintiffs

Sim T. Carman, with whom
 was Mr. Assistant Attorney
 General, Perry W. Morton,
 Attorneys for Defendant

OPINION OF THE COMMISSION

Holt, Commissioner, delivered the opinion of the Commission.

The petition in this case, Docket No. 18-B, was filed by the above-entitled petitioners. The Minnesota Chippewa Tribe, a Wheeler-Howard Act Indian corporation, is entitled to maintain this action in a representative capacity on behalf of all descendants of those Chippewa Indians who were parties to the Treaty of February 22, 1855, (10 Stat. 1165) and have an interest in the claim arising under that treaty.

After a complete study of all evidence now of record in this proceeding, the Commission is of the opinion that our previous finding, in the matter of Docket No. 18-N, that the Minnesota Chippewa Tribe is the successor in interest to all of the Chippewa Indians in Minnesota with the exception of the Chippewa Indians on the Red Lake Reservation was ill-advised. Any recovery which may result in this case should be for the benefit of all descendants of those Chippewa Indians who were parties to the 1855 treaty regardless of their present day membership in this Wheeler-Howard Act Corporation. There is no evidence that the claims of the Indians, parties to the 1855 Treaty, were ever merged or consolidated with the bands and group now comprising the Minnesota Chippewa Tribe. Many of the descendants of the aboriginal Mississippi bands and pillager and Lake Winnibigoshish bands are now members of the Minnesota Chippewa Tribe, and that organization may maintain this action in a representative capacity. But this does not mean that it has become the successor in interest to the claims of the descendants of those aboriginal bands.

We have found the individual named petitioners to be descendants of original members of the Mississippi, Pillager and Lake Winnibigoshish bands and, as such, they are, of course, entitled under the act to maintain this action on behalf of themselves and in a representative capacity for all descendants of the aboriginal bands.

While this case was consolidated for trial with Docket No. 18-N, on both the issues of title and value of the lands involved, we are only deciding the title question in the matter of Docket No. 18-B at this time, as agreed to by counsel for all interested parties at the hearing on June 16, 1960.

The petitioners have alleged that they were paid an unconscionable consideration for the cession of their lands. The land was ceded to the United States by the Treaty of February 22, 1855 (10 Stat. 1165). The ceded tract (which is referred to as Royce area 357) extends across north-central Minnesota including the headwaters of the Mississippi River with a triangular shaped portion reaching the Canadian border. The area, as described in Finding of Fact No. 3, less the seven reservations, contains about 10.1 million acres.

It is petitioners' contention that they were the owners of Royce area 357 both by aboriginal Indian title and by recognized title. We will discuss the recognition claim first.

To maintain a claim based on recognized title there must have been Congressional action granting or according the petitioner Indians an ownership right in and to the lands involved. It is well established that Congress has the exclusive right to dispose of public lands. As the Supreme Court stated in Hynes v. Grimes Packing Co., 337 U. S. 86, 103, 104:

"When a reservation is established by a treaty ratified by the Senate or a statute, the quality of the rights thereby secured to the occupants of the reservation depends upon the language or purpose of the congressional action. Since Congress, under the Constitution, Sec. 3 of Art. 4 has the power to dispose of the lands of the United States, it may convey to or recognize such rights in the Indians, even a title equal to fee simple, as in its judgment is just," citing Northwestern Bands of Shoshone Indians v. United States, 324 U. S. 335.

In Tee-Hit-Ton Indians v. United States, 348 U. S. 271, 278, 279, the Court stated:

"It [recognized title] may be established in a variety of ways but there must be the definite intention by congressional action or authority to accord legal rights, not merely permissive occupation."

Petitioners maintain that the United States recognized their title by,

1. The Prairie du Chien Treaty of August 19, 1825;
2. The pattern of dealings with the Chippewas subsequent to the Prairie du Chien Treaty; and
3. The February 22, 1855, Treaty of cession.

The stated purpose of the Prairie du Chien Treaty was to establish boundaries between the the tribes and to promote peace. By Article 5 of the Treaty a partial boundary was established between the Sioux and Chippewa. By Article 10 of the Treaty the United States agreed to recognize the boundary thus established. We do not find any congressional intent to accord to the Chippewas any permanent right to the lands in Royce area 357. The mere establishment and agreement to recognize a boundary line between these two tribes did not result in a recognition of title in Chippewa Indians to the vast areas of land lying to the north of that line, which area was left undefined and unlimited as to the Chippewas.

We find nothing in the subsequent pattern of dealings with the Chippewas to give support to petitioners' claim that their recognized title was thus confirmed. The Commission is aware of the fact that the United States subsequently dealt with Chippewas for country north of the Prairie du Chien line. It is true that the United States honored its agreement to recognize that line as the boundary between the Sioux and Chippewa but this does not indicate that Congress intended to grant or recognize title in the Chippewas to lands north of the line.

The actions or statements of government officials, no matter how numerous or positive, are insufficient to accord recognized title in the petitioner Indians.

The Treaty of February 22, 1855, was a treaty of cession and did not constitute a congressional recognition of title in the petitioners. As the Commission stated in The Iowa Tribe of the Iowa Reservation in Kansas and Nebraska, et al., v. The United States, 6 Ind. Cl. Comm. 464, 501, "Generally speaking, we know that the setting of boundary lines in a treaty of cession is somewhat arbitrary. The government's main concern in establishing these lines is to be doubly sure that every conceivable claim asserted by the Indians, regardless of merit, is included within the ceded area; so that is it quite immaterial what portion of the ceded area the Indians may have exclusively occupied and controlled as long as it passes under the terms of the treaty." See also Quapaw Tribe v. United States, 1 Ind. Cl. Comm. 469, Aff'd 128 C. Cls. 45.

We have found that the United States did not recognize title in either the Mississippi bands or the Pillager and Lake Winnibigoshish bands to any portion of Royce area 357.

We turn now to a consideration of petitioners' claim of original Indian title to Royce area 357. Original Indian title is the Indians' right of occupancy of lands based upon their aboriginal possession. To sustain this claim petitioners must establish the area or areas of land which the Mississippi and Pillager and Lake Winnibigoshish bands of Chippewa Indians exclusively used and occupied within the claimed Royce area 357.

This Commission has previously held that the date upon which the United States became sovereign over the area in question is material

because original Indian title could be no greater than that held when the United States sovereignty attached. The Iowa Tribe of the Iowa Reservation in Kansas and Nebraska v. The United States, 6 Ind. Cl. Comm. 464; Red Lake Band, et al., v. The United States, 7 Ind. Cl. Comm. 576. Defendant has maintained that United States sovereignty attached on July 4, 1776, to that portion of Royce area 357 east of the Mississippi River, and on April 30, 1803, to that portion on the west side of the Mississippi River.

Petitioners dispute the materiality of the sovereignty date since they argue that an Indian tribe could obtain original Indian title even after the United States became sovereign over the area. Further, they argue that if any date is material it should be the date upon which the United States obtained title to the area and not the date upon which sovereignty attached. As to the area east of the Mississippi River, petitioners maintain that title to the land remained in the State of Virginia after the Declaration of Independence until it was ceded to the United States by deed of March 1, 1784.

In our Finding of Fact No. 4 we have outlined the early history concerning the United States' acquisition of the area. However, we find no reason to belabor this question since we find substantial evidence from which to conclude that the Chippewa Indians involved held Indian title to a certain portion of Royce area 357 east of the Mississippi River prior to 1776 (the earliest possible date of United States' acquisition) and that they held Indian title to a certain portion of Royce area 357 west of the Mississippi River prior to 1803 (the Louisiana

Purchase). Since the evidence does not indicate that the Chippewa Indians involved increased the area which they exclusively used and occupied after the 1776 and 1803 dates, we have considered the material period to have extended from these dates until the area was ceded to the United States by the Treaty of February 22, 1855. We have, accordingly, carefully considered all the evidence and made detailed findings covering this critical period.

The Chippewas were one of the larger groups of Indians of the Algonquin linguistic stock located in the northern section of the United States. When first contacted by white explorers in the seventeenth century, the Chippewas were in the area around Lakes Huron and Superior. Beginning in the early part of the eighteenth century, they started pushing their way westward across Minnesota, gradually displacing the Sioux and driving them across the Mississippi and south to the Minnesota River. By the end of the century they had extended their occupation through northern Minnesota and across the Red River into northeastern North Dakota. They had a large number of villages, bands, and local divisions scattered over a region extending a thousand miles from east to west, and many of these bands or groups came to be known by the name of the village, lake, or river near which they resided. The Mississippi bands of Chippewas and the Pillager and Lake Winnibigoshish bands of Chippewas were the two groups which petitioners allege had original Indian title to all of Royce area 357 at the time of the 1855 cession and for many years prior thereto.

We have detailed in our findings of fact the evidence upon which have been based our ultimate findings of the areas exclusively used and occupied

by petitioners. That evidence consists of writings of historians; reports of early explorers, scientists, traders and missionaries, and the writings and reports of various government agents and military men who had occasion to report on the Indian occupation of the territory involved.

Historians Warren and Neill wrote of the early Chippewa actions against the Sioux in the early part of the 18th century. The traders and explorers in the area prior to 1776 then told of the Chippewa occupation and hunting activities about the sources of the Mississippi River, in the eastern portion of Royce area 357.

The occupation and use of the eastern portion was followed by a westward expansion across the area. Traders Cardotte and Perrault referred to various Chippewa locations in the eastern and central portions of the tract. Perrault wrote of the Leech Lake Pillagers hunting to the west on the prairies at the western edge of the tract.

Following the Louisiana Purchase in 1803 American explorers entered the area, the first of whom was Lt. Zebulon Pike. Pike described the Chippewa territory and distinguished the different Chippewa groups or bands in the region in question.

Members of the Cass expedition in 1820 described the Chippewa settlements in Royce area 357 and stated the limits of the hunting grounds of the various Chippewa bands. The following expeditions of Beltrami and Long confirmed the Chippewa locations in the area.

At the Prairie du Chien treaty council the various Sioux and Chippewa chiefs stated the limits of their respective countries. The

only portion of Royce area 357 claimed by the Sioux was in the Otter Tail-Pine Lake region. The Sioux and Chippewa agreed on a partial boundary between their territories, and that line, described in Article 5 of the Prairie du Chien Treaty of August 19, 1825, constitutes the southwest boundary of the subject tract.

Schoolcraft's expedition in 1832 confirmed the continuing occupation of the various Chippewa groups in Royce area 357. Nicollet in 1836, Owen in 1848 and Wood in 1849 reported on the occupation and use of the area by the Chippewas.

Various government officials also reported that the Chippewa Indians were divided into various bands with each band claiming exclusive title to a separate and distinct portion of land. In 1850 Governor Alexander Ramsey reported the Chippewas to be divided into three groups:

1. Mississippi Chippewa
2. The Pillagers
3. The Northern or Red Lake Division

While Governor Ramsey included Cass and Winnibigoshish Lakes as two of the principal residences of his third group, he went on to distinguish the subsistence habits of the Cass and Winnepeg (Winnibigoshish) bands from the Red Lake and Pembina groups. And he noted that the Pillager head chief, Flat Mouth, had a great influence over the Cass and Winnibigoshish groups and that the latter's chief had agreed to abide by Flat Mouth's experience and advice.

Although the names "Chippewa Nation" or "Chippewa Tribe" were used in some of the early treaties made with Chippewa Indians, they were never organized as a single political entity with a central authority to act for all Chippewas. The Chippewas were rather divided into various bands or groups which in many instances were grouped under larger divisions

or sub-tribes, each of which occupied separate and distinct areas of land.

Following the 1825 Prairie du Chien Treaty the United States dealt with various Chippewa bands for cessions of territory north of the Article 5 Sioux-Chippewa line. The United States assembled representatives of those bands which were believed to have any interest in the area to be ceded. Actually Chippewa Indians from various bands or groups in Royce area 357 signed several other treaties of cession, as indicated in our Findings of Fact Nos. 37 through 40.

The negotiations leading to the Treaty of February 22, 1855, were conducted in Washington, D. C. The principal spokesman for the Mississippi band of Chippewas was Hole-in-the Day. Chief Flat Mouth was the spokesman for the Pillager and Winnipec bands. Throughout the negotiations both chiefs refrained from entering into any discussions concerning the territories of the bands other than those whom they represented. The treaty commissioner stated to Hole-in-the-Day that he did not think the Chippewa had any distinct interests and he therefore addressed himself not to the Pillagers alone but to the Chippewa Nation and that he did not think there existed any rival interests between the different bands of the Chippewa Nation. Chief Flat Mouth replied, "There is truth, Father, in everything you have said. We feel that it is all true. We should have no conflicting interests; but we are in this respect like the white. We have separate and distinct interests. We know our own possessions. We know what property we own" Commissioner Manypenny replied that he was aware of their separate interests and did not wish

to disturb them. He requested that they define among themselves their boundaries and to say what quantity of land they wished reserved and where. The Commissioner met separately with the Pillager and Winnepec delegation and with the Mississippi band delegation. Chief Flat Mouth, on behalf of the Pillager and Winnepec delegation, requested reserves at Lake Winnepec, Cass Lake and Leech Lake. Hole-in-the-day never specified the reserves which the Mississippi band desired out of the area to be ceded. However, there were five areas set apart for the permanent homes of the Mississippi bands, which were described in Article 2 of the Treaty as Mille Lac, Rabbit Lake, Gull Lake, Pokegama Lake and Sandy and Rice Lakes. Three separate reserves were set aside for the Pillagers and Lake Winnibigoshish bands. These were the three reserves which had been requested by Flat Mouth, namely Leech Lake, Lake Winnibigoshish and Cass Lake. The treaty provided for the consideration to be divided between the Mississippi bands and the Pillager and Lake Winnibigoshish bands and payments of annuities were to be distributed to the Mississippi bands at one of their reserves and to the Pillager and Lake Winnibigoshish bands at their reserve at Leech Lake.

Petitioners' expert ethnologist, Dr. Stewart, listed 27 centers of population for the Chippewas of Royce area 357 as of 1857. Those localities were concentrated mainly in the central and southern portions of the area. His northernmost localities were at Turtle Lake and Lake Bowstring and his westernmost locations were at Otter Tail Lake on the south border and Rice Lake to the north.

Dr. Stewart testified that Royce area 357 was aboriginally occupied by two main divisions of Chippewa Indians, the Mississippi bands and

the Pillager bands. He stated that the Pillager bands included the Otter Tail Pillagers, the Cass Lake Pillagers, the Leech Lake Pillagers and the Winnibigoshish Pillagers and others. He testified that the Mississippi bands likewise contained a number of such groups.

Defendant's expert historian, Dr. Hickerson, testified that Royce area 357 was occupied in aboriginal days by three divisions of Chippewa.

They were:

- (a) The Mississippi Bands, occupying the area designated sub-area 357-A on his map 2;
- (b) The Pillager, occupying sub-area 357-B, on his map 2; and
- (c) The Northern Bands, occupying sub-area 357-C on map 2.

The descriptions of the three areas of occupation are set forth in detail in our finding of Fact No. 45.

Based on all the evidence the Commission has concluded that Royce Area 357 was occupied in aboriginal days by two groups of Chippewa Indians. The Mississippi bands, which at the 1855 Treaty council were represented by Chief Hole-in-the Day, occupied an area about the upper Mississippi River. One of their principal locations was at Sandy Lake and their area of use extended generally to the southwest along the streams and lakes on both sides of the Mississippi River. There is, however, evidence that the Mississippi bands did extend the area of their use and occupation to the north to Pokegama Lake and Trout Lake. The evidence clearly establishes the following locations as the principal sites of the Mississippi bands' use and occupation: Pine River, Whitefish Lake, Cedar Lake, Rabbit Lake and River, Gull Lake, Crow Island, Rice Lake, Trout Lake and Pokegama Lake. All of these sites are included

in the area found by the Commission to have been held by the Mississippi bands under original Indian title.

The evidence indicates that the Mississippi bands collectively used and occupied the area described in Finding of Fact No. 48. The contemporary reports on the Indians in Royce area 357 clearly show that the Mississippi bands were a distinct Chippewa division occupying the area found by the Commission to have been held by them under original Indian title. Both experts for defendant and petitioners have recognized this division. As previously stated the proceedings at the treaty council clearly indicated the separate and distinct interests of the two Chippewa groups.

The second aboriginal group in Royce area 357 was the Pillager and Lake Winnibigoshish bands. The Pillager and Lake Winnibigoshish bands, who were represented at the 1855 Treaty council by Chief Flat Mouth, had their main residences at Leech Lake and Lake Winnibigoshish from which location their hunting grounds extended to the west and southwest. The evidence established that the principal sites of the Pillager and Lake Winnibigoshish bands' use and occupation included: Round Lake, Bowstring Lake, Cass Lake, Turtle Lake, Bemidji Lake, Rice and Upper Rice Lake, Wild Rice River, along the Crow Wing River, Lake Itasca, Otter Tail River and Otter Tail Lake.

While some authorities have reported the Pillagers Winnibigoshish bands to have been separate divisions of Chippewa, the Commission believes, after carefully weighing all the evidence, that these Indians in fact collectively used and occupied the area described in Finding of Fact No. 49.

The evidence indicates that, in aboriginal days, the Pillager Chief Flat Mouth, exercised a great influence over the Cass and Winnibigoshish Lake bands. The Pillager and Lake Winnibigoshish bands joined in hunting parties and in war parties. At the 1855 Treaty council this combined group was represented by Chief Flat Mouth. The group was usually referred to in the council minutes as the Pillagers although it is clear that at all times Chief Flat Mouth acted on behalf of the Pillager and Lake Winnibigoshish bands. Although Flat Mouth insisted that his group had separate and distinct interests from the neighboring Mississippi bands, there was never any mention of a division of Interest between the Pillager and Lake Winnibigoshish bands. They sought and were granted three reservations for their common occupation, at Leech Lake, Lake Winnibigoshish, and Cass Lake. Their annuities were provided for apart from those of the Mississippi bands.

The Commission has excluded from the total area claimed an area in the eastern and northeastern portion of Royce area 357, and the area extending north of Round and Bowstring Lakes to the Canadian border. The evidence does not establish any continuing exclusive use and occupation of these areas by either the Mississippi bands or the Pillager and Lake Winnibigoshish bands until the cession date.

Almost invariably the reports in the 1800's referred to the Mississippi bands' hunting and using the area to the west and southwest of Sandy Lake and north along the Mississippi River to include Pokegama Lake and Trout Lake. The evidence does not establish their original Indian title to the area east of those locations.

With respect to the area north of Round and Bowstring Lakes, there is likewise no evidence to indicate an exclusive use and occupation by the Chippewa bands involved in this action. Therefore, their claim of original Indian title to this area must fail. There is evidence that petitioner Chippewas did travel over the area to the British outposts at Rainy Lake to obtain ammunition for warfare against the Sioux and liquor. However, this is not sufficient proof of Indian title. Further, there is evidence of use of the area by other Chippewa groups not a part of either the Mississippi bands or the Pillager or Lake Winnibigoshish bands. It is, of course, not sufficient proof of petitioners' Indian title to merely rely on evidence that only Chippewa Indians were in the area. As we have previously stated the Chippewa tribe or Nation was not the aboriginal land-using group. Rather each distinct group or band of Chippewas which collectively used and occupied a separate and definable area of land was the aboriginal land-using group. Joint use of an area by two or more distinct groups of Chippewas would defeat a claim of Indian title as much as use of an area by both Sioux and Chippewa.

This case must now proceed for determination of the acreages of the two areas found to have been held under original Indian title by the respective Chippewa groups, the value of each of the two areas on the date of taking, the value of the consideration provided for in the Treaty of cession for each of the areas, and the amount constituting the United States' payments on the claim made to each of the respective Chippewa groups.

The parties have presented their evidence of value of the entire Royce area 357. In view of our findings of the areas held under original Indian title certain revisions will be necessary. The acreages of the two tracts must be determined and the parties may have other revisions or amendments to the evidence to present and there may be additional material which should be introduced in the light of this decision. The parties are instructed to advise the Commission of whatever further proceedings they consider necessary in this regard.

Wm. M. Holt
Associate Commissioner

I concur:

Edgar E. Witt
Chief Commissioner

Commissioner Watkins took no part in the consideration and decision of this case.