

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. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Defendant. )

Docket No. 18-B

Decided: February 5, 1964

Appearances:

Jay H. Hoag, with whom were  
 Marvin J. Sonosky and John S.  
 White, Attorneys for Plaintiffs

Sim T. Carman, with whom was  
 Mr. Assistant Attorney General,  
 Ramsey Clark,  
 Attorneys for Defendant

O P I N I O N

Holt, Associate Commissioner, delivered the opinion of the Commission.

On June 28, 1960, this Commission entered findings of fact, an opinion, and an interlocutory order in the subject matter. In that decision we determined that within the claimed area (Royce area 357 in Minnesota) there were, in aboriginal times, two separate, distinct land using entities, each of which held Indian title to a separate and distinct area of land. Those two divisions or bands were (a) the

Mississippi bands and (b) the Pillager and Lake Winnibigoshish bands. In our finding of fact number 48 we set forth the area (in the eastern part of the claimed tract) which we found had been exclusively used and occupied in aboriginal times by the Mississippi bands. In our finding of fact number 49 we set forth the area (in the western part of the claimed tract) which we found had been used and occupied in aboriginal times by the other land owning entity, namely the Pillager and Lake Winnibigoshish bands. Upon a determination that neither the Mississippi bands nor the Pillager and Lake Winnibigoshish bands had exclusively used and occupied the remainder of the claimed area, we found that neither of the two land using entities had held original Indian title to the remaining areas. The Commission further found that the defendant had not granted a "recognized title" in either the Mississippi bands or the Pillager and Lake Winnibigoshish bands. The areas which were excluded were two segments of land on the east and the north of Royce area 357, and those two segments of land have subsequently been referred to as "excluded segment A" (the eastern portion) and "excluded segment B" (the northern portion).

The decision of the Commission was appealed on several grounds by petitioner. The Court of Claims, in its decision of April 5, 1963, (Appeal No. 11-61) held that:

The interlocutory order of the Commission is reversed insofar as it determines that the Indians did not have sufficient ownership and title to the two "excluded segments" of Area 357; is modified as indicated in this opinion with respect to those on behalf of whom the Minnesota Chippewa Tribe and the other appellants appear in this proceeding; and is vacated without prejudice, as indicated in this opinion, with respect to the determination

that the Mississippi bands and the Pillager and Lake Winnibigoshish bands held title to separate and distinct areas of land as specified by the Commission. The case is remanded for further proceedings consistent with this opinion.

In compliance with the decision of the Court of Claims the Commission must make certain amendments to the findings and order entered in this case. First, with respect to the parties to this action, the Court has determined that it was error to include the word "descendants" in identifying that group of Indians entitled to be represented in the matter of the claims presented in this case. To conform with the mandate of the Court of Claims we shall amend our finding of fact number 1 to describe only those bands of Chippewas who were parties to the 1855 Treaty without reference to "descendants." Similarly, our finding of fact number 2 will be amended to delete the reference to "descendants."

The Court of Claims having determined that the defendant had granted recognized title to the two excluded segments, we must delete our finding of fact number 47 and enter a proper finding reflecting such recognition. We are confronted with the question "In whom did the United States recognize title to the excluded segments?" The granting of the recognized title was not found by the Court of Claims to have occurred by any single Congressional action. The Court held that from a "sequence of Treaty materials, extending from 1825 to 1855, we draw the conclusion that at least by 1855 the United States had recognized the Chippewas' title to the two segments of Area 357 excluded by the Commission from Chippewa ownership" (Slip Opinion, p. 7). The treaty materials referred to included the treaties of August 19, 1825; August 5, 1826; August 11, 1827;

July 29, 1837; October 4, 1842; August 2, 1847; August 21, 1847; and September 30, 1854. However, the Court considered two treaties, those of October 4, 1842 and September 30, 1854, of special significance in reaching its conclusion. Both of those treaties were entered into with the Mississippi bands and the Lake Superior bands of Chippewas. Neither the Pillager nor the Lake Winnibigoshish bands were parties to those treaties. Therefore neither the Pillager nor the Lake Winnibigoshish bands could have received a grant of title under either of the treaties upon which the Court of Claims placed its greatest reliance. The law in this regard appears clear and was, in fact, restated by the Court of Claims in the case of The Sac and Fox Tribe of Indians of Oklahoma, et al. v. The United States, Appeal No. 1-61, decided April 5, 1963 (the same day as the decision in the instant case). In that decision the Court stated "The general rule is, of course, that an Indian tribe obtains no legal right from a treaty to which it is not a contracting party." (cases cited) Sac and Fox supra, slip opinion, 4.

The decision of the Court of Claims in this case indicates that it considered that recognized title to the excluded segments had been granted to the Mississippi bands. The Court stated:

"This reflects a clear understanding that both groups of Chippewas /i.e., Lake Superiors and Mississippis/ had previously owned the eastern and northeastern portion of Area 357 (at a minimum), but that thereafter only the 'Chippewas of the Mississippi' would own it." (Slip op. 7)

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". . . the 1842 Treaty declared in express terms that 'the whole country between Lake Superior and the Mississippi, has always been understood as belonging, in common to the Chippewas' (of the Mississippi and Lake Superior)." (Slip op. 8)

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"The latter agreement [1854 Treaty] divided the then remaining unceded territory between the Lake Superior Chippewas and the Mississippi Chippewas; the general area in suit, which was characterized as 'heretofore owned' by the two groups 'in common', was assigned to the Mississippis. The treaty commissioners told the Indians that thereafter the land on the west side of the dividing line (including the two omitted areas) was to 'belong exclusively' to the Chippewas of the Mississippi. Since these bands were relinquishing all interest to the lands on the other side of the new line, and were also giving up all right to monetary compensation for that land, they must, in turn, have received (or been confirmed in) permanent rights to that territory on their side of the new boundary which was now declared to be theirs alone" (Slip op. 8, 9).

Clearly when the Court speaks of the two excluded segments having been held by the "Indians" or the "Chippewas" by recognized title it means by the "Mississippi bands of Chippewas." Accordingly, we shall delete our present finding of fact 47 and enter a finding that defendant had granted recognized title to the two excluded segments to the Mississippi bands.

Finally we come to the final action of the Court of Claims, namely that which vacated without prejudice our previous determination that the Mississippi bands and the Pillager and Lake Winnibigoshish bands held title to separate and distinct areas of land. After careful reconsideration of this question we have determined that the area should be divided. In our original decision we found that the evidence established that the area claimed was, in aboriginal times and until the 1855 cession, used and occupied by two separate and distinct land using entities. In this regard we believe the evidence is overwhelming and conclusive. The various Indian bands represented in this action clearly did not use and

occupy the area as one autonomous entity. The division which was in existence aboriginally was preserved in the 1855 Treaty itself. At the treaty negotiations the Mississippis produced a map showing the country owned by them.<sup>1/</sup> Throughout the negotiations the Indians reiterated their separate interests. The two divisions had separate delegations. The treaty commissioners met separately with the two delegations. The two divisions received separate reservations (which we believe were located within the areas which had been aboriginally used and occupied by the respective bands). The consideration was stated separately for the respective groups and was paid to each entity separately.

And if there could be any doubt as to the necessity for separately defining the land interests of the two land using entities such doubt must be removed by ~~the~~ Court of Claims decision which holds that title to the excluded segments was held by the Mississippi bands. As the Court of Claims stated, it was to "belong exclusively" to the Chippewas of the Mississippi -- it was to be "theirs alone." They were paid a separate consideration for the cession of their lands. If we find that such consideration was "unconscionable" within the meaning of Clause 3, Section II of the Indian Claims Commission Act we shall enter a judgment in favor of that entity (the Mississippi bands.) We cannot enter a judgment directly to "the Mississippi bands," since of course they no

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<sup>1/</sup> Unfortunately this map has never been located, but we do believe that the line dividing the Mississippis from the Pillagers and the Lake Winnibigoshish bands would have been in close approximation to that fixed by this Commission.

longer exist as such. We therefore must enter any judgment to the Minnesota Chippewas on behalf of the Mississippi bands. We do not believe that we could in justice simply enter a judgment for the "Minnesota Chippewa Tribe on behalf of the Mississippi, Pillager, and Lake Winnibigoshish bands of Chippewas, without further specification or division." Such a judgment would permit the Pillager and Lake Winnibigoshish bands to participate in a judgment based on title to lands owned by a separate entity. Conversely, the Mississippi bands would participate in a judgment based on title to lands in which the Mississippi bands had no interest. We therefore anticipate that any prospective award will be to the Minnesota Chippewa Tribe on behalf of (1) the Mississippi bands and (2) the Pillager and Lake Winnibigoshish bands as their respective interests are determined.

Of course, as the Court of Claims has pointed out, the whole of Area 357 will have to be valued. But in order that we may determine the value of the respective interests of the two entities entitled prospectively to beneficially participate in any recovery in this case, we must determine the fair market value of the tracts to which each of the two entities held title. The lands held by the Mississippi bands (which includes that area described in Finding of Fact No. 48 as held under "Indian title" together with the areas referred to as excluded segments A and B held under "recognized title") will be valued and that sum weighed against the consideration paid to said Mississippi bands. The areas described will of course be reduced by the acreages within the five areas which

were, by Article 2 of the 1855 Treaty set apart for the Mississippi bands--namely:

Mille Lacs	(Royce Area 454)
Rabbit Lake	(Royce Area 456)
Gull Lake <sup>2/</sup>	(Royce Area 453)
Pokegama Lake <sup>2/</sup>	(Royce Area 457)
Sandy and Rice Lakes	(Royce Area 455)

Any judgment entered beneficially in favor of the Mississippi bands will be chargeable with any allowable gratuitous offsets which were paid to the Mississippi bands.

Similarly, the land held by the Pillager and Lake Winnibigoshish bands (which consists of that area described in Finding of Fact No. 49 as held under "Indian title") will be valued and that sum weighed against the consideration paid to the said Pillager and Lake Winnibigoshish bands. The area will be reduced by the acreages within the three areas which were by Article 2 of the 1855 Treaty set apart for the Pillager and Lake Winnibigoshish bands--namely:

Leech Lake	(Royce Area 358)
Lake Winnibigoshish <sup>3/</sup>	(Royce Area 359)
Cass Lake <sup>3/</sup>	(Royce Area 360)

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2/ Both of these reservations while located west of the Mississippi River are nevertheless within the area described in Finding of Fact No. 48 as held by the Mississippi bands under Indian title.

3/ While portions of both these reservations extend north of the Mississippi River and are east of a line running north from Lake Itasca (the source of the Mississippi River), they are nevertheless within the area described in Finding of Fact No. 49 as held by the Pillager and Lake Winnibigoshish bands under Indian title.

Any judgment entered beneficially in favor of the Pillager and Lake Winnibigoshish bands will be chargeable with any allowable gratuitous offsets which were paid to the Pillager and Lake Winnibigoshish bands.

While we recognize that the decision in this case, as we have outlined it, presents some anomalies,<sup>4/</sup> we do believe that it will lead to a fair, just and proper disposition of the claim brought in this Docket No. 18-B. Only by following the procedure which we have set forth are we convinced that we can, insofar as possible, assure that the proper Indian parties will have been fairly compensated for any unconscionable consideration which defendant may have paid for the cession of their respective lands. We do not believe the Indians involved can now or at any time hereafter legitimately complain that some other tribe, band, or identifiable group of Indians was permitted to share in a judgment for lands owned by them--or that one band or group was improperly charged with the reservations set aside for other Indians--or that one band or group of Indians was charged with gratuities expended for the benefit of other Indians.

We should like to briefly comment on one other argument presented by petitioner--namely that the relative interests of the Mississippi Chippewas and of the Pillager and Lake Winnibigoshish Chippewas were determined and designated by the division of the consideration provided

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<sup>4/</sup> We have in this case a rather unusual admixture of Indian title and recognized title and a tract of land "owned" by the Mississippis which is not contiguous to the remainder of their lands but is adjacent to lands which, we believe, was exclusively used and occupied by the Lake Winnibigoshish and Cass Lake bands of the overall Pillager-Lake Winnibigoshish land using entity.

for the treaty and that, therefore, if any division of a judgment is required it should be on that same basis. The Court of Claims has recently held in another "Chippewa" case that the judgment should be divided in the same proportions as provided in the treaty of cession (as supplemented). See Red Lake, Pembina and White Earth Bands et al v. The United States, Appeal No. 7-62, decided January 24, 1964.

However, in the Red Lake-Pembina case the decision was based on a determination that there was one overall land using entity.<sup>5/</sup> In the instant case there were separate and distinct land interests. The Court of Claims has held the Mississippi bands alone held title to part of the claimed area. And we find there was separate and distinct land ownership of the remainder of the area.

In the Red Lake-Pembina case the Court of Claims noted that the division (one-third for Pembina and two thirds for Red Lake) "was in accord with the respective populations of the bands at that time." In the instant case the division (approximately one-third for the Mississippi bands and two-thirds for the Pillager and Lake Winnibigoshish bands) was not in accord with respective populations. It was, we believe, in accord with the value of the respective land interests ceded. We believe that the division which will result from any judgment awarded in this case, based as it will be on the respective land interests, will be correct and we must, therefore, reject petitioners' suggested method of division.

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<sup>5/</sup> We note, however, that petitioner's counsel in the Red Lake-Pembina case argued before the Court of Claims that "there were two land-owning entities at treaty time in 1863--the Red Lake Band and the Pembina Band" (Appellants Opening Brief in the U. S. Court of Claims, p. 66).

The Commission now has before it the question of the fair market value of the lands involved. At a conference held on July 26, 1963, both parties were advised by the Commission of some of the questions which we foresaw as a result of the Court of Claims decision. Defendant's attorney stated that, in his opinion, any overall average per acre valuation could be applied to each separate area and that the government would have no objection to a finding of the same average per acre value for both portions or for the whole of Area 357. Petitioner pointed out that if each group were found to have owned separate country, then each tract thus owned must be valued separately. Further, petitioner's attorney stated "the area is not common in terms of valuation. My recollection is that the western end of the area embraces substantially all of the land which was classified as agricultural. If I remember there was a million acres over toward the Red River Valley, whereas the remainder of the valley area was valued substantially for timber value, so that by taking an average of the whole you would be applying to agricultural land timber values, and you would be applying to timber lands agricultural values" (Tr. 49, 50).

In view of the decision in this case it is obvious that certain additional evidence is required to enable the Commission to complete its decision on value. Specifically, there must be evidence concerning the acreages of the tracts owned by the two entities. Further, there should be evidence concerning the proportion of the various land types (such as timber, agricultural, swamp, etc.) located within each of the respective tracts. Accordingly, the Commission will order that the

parties supplement the present record, either by a stipulation or such additional evidence as may be necessary to enable the Commission to proceed to a determination of the fair market value of the two tracts which together comprise Royce Area 357.

Both counsel have agreed on one point and that is that this case proceed as expeditiously as possible to an ultimate determination without further proceedings which would delay a decision. The Commission wholeheartedly agrees. We do not foresee the necessity of any extensive or elaborate or costly proceedings to supplement the record. Nor will the submission of the additional evidence delay disposition of this case. The Commission now has the matter of the fair market value of Area 357 under active consideration and the supplementary matters can easily be submitted during the period needed to prepare our decision.

We concur:

Wm. M. Holt  
Associate Commissioner

Arthur V. Watkins  
Chief Commissioner

T. Harold Scott  
Associate Commissioner