

BEFORE THE INDIAN CLAIMS COMMISSION

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| MINNESOTA CHIPPEWA TRIBE, et al., | ) |                 |
|                                   | ) |                 |
| Petitioners,                      | ) |                 |
|                                   | ) |                 |
| v.                                | ) | Docket No. 18-U |
|                                   | ) |                 |
| THE UNITED STATES OF AMERICA,     | ) |                 |
|                                   | ) |                 |
| Defendant.                        | ) |                 |

Decided: December 8, 1964

FINDINGS OF FACT

1. The petitioners in the subject matter are:

A. Chippewas of the Mississippi

The Chippewas of the Mississippi consisted in aboriginal times of the following bands of Chippewa Indians: White Oak, Pokegama, Gull Lake, Mille Lac, Rice Lake, Snake River, Crow Wing, Sandy Lake, Swan River, Rabbitt Lake, Trout Lake and Pelican Lake Bands. This group has ceased to exist as such, and at the present time there is no recognized organization known as the Chippewas of the Mississippi.

B. Chippewas of Lake Superior

At the time of the Treaty of September 30, 1854 (10 Stat. 1109) and prior thereto, the Chippewas of Lake Superior consisted of the following bands of Chippewa Indians: Bois Forte, Fond du Lac, Grand Portage, Bad River (La Pointe), Lac Court O'Reilles, Lac du Flambeau, Lac Vieux Desert, Ontonagon and L'Anse. The "Chippewas of Lake Superior" group has ceased to exist as such, and at the present time there is no recognized organization known as the Chippewas of Lake Superior.

C. Minnesota Chippewa Tribe

The Minnesota Chippewa Tribe is a Wheeler-Howard Act Indian corporation duly organized pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) under a constitution and by-laws approved by the Secretary of the Interior on July 24, 1936. Its membership includes all Chippewa Indians duly registered on the approved rolls of the White Earth, Leech Lake, Fond du Lac, Bois Fort (Nett Lake) and Grand Portage Reservations, and the nonremoval Mille Lac Band of Chippewa Indians (Constitution of the Minnesota Chippewa Tribe, Sections 1 and 2). The Minnesota Chippewa Tribe is not the successor in interest to the claim presented under Docket No. 18-U but is entitled to maintain this action in a representative capacity on behalf of those of the bands included as "Chippewas of the Mississippi" and "Chippewas of Lake Superior" which were located in Minnesota and are included in the circumscribed membership of the Minnesota Chippewa Tribe as set forth above.

D. Individual petitioners

Individual Indians named as petitioners are Chippewas and members of various bands named as parties to this action. Such individual petitioners are entitled to maintain this action in a representative capacity for and on behalf of the respective tribes and bands of Chippewas who were parties to the Treaty of September 30, 1854.

E. Other bands

The Red Cliff, St. Croix, and Mole Lake Bands, named as petitioners, were not parties to the Treaty of September 30, 1854.

2. The claim presented in the subject matter relates to the land ceded to the United States by the Treaty of September 30, 1854. The ceded area has been described by Charles C. Royce on his Minnesota Map I in the 18th Annual Report of the Bureau of American Ethnology (Part II) Indian Land Cessions as area 332, and it will hereinafter be referred to as Royce Area 332.

The ceded area is located in the northeastern portion of Minnesota and is described in Article I of the 1854 Treaty as follows:

Article 1. The Chippewas of Lake Superior hereby cede to the United States all the lands heretofore owned by them in common with the Chippewas of the Mississippi, lying east of the following boundary line, to wit: Beginning at a point, where the east branch of Snake River crosses the southern boundary line of the Chippewa country, running thence up the said branch to its source, thence nearly north, in a straight line, to the mouth of East Savannah River, thence up the St. Louis River to the mouth of East Swan River, thence up the East Swan River to its source, thence in a straight line to the most westerly bend of Vermillion River, and thence down the Vermillion River to its mouth. (II Kapp. 648)

The matter is now before the Commission upon petitioners' amended motion for summary judgment that the Chippewas of Lake Superior, or the Chippewas of the Mississippi, or other plaintiff bands, or some combination thereof, were the owners by recognized title of Royce Area 332. The contention that title to Royce Area 332 had been "recognized" is based on a series of treaties entered into between the United States and various Chippewa Indians.

3. The first treaty involved in the history of Congressional dealings pertinent to this case was the Prairie du Chien Treaty of August 19, 1825, (7 Stat. 272). That treaty with some seven tribes in what was then the

Northwest Territory was an attempt to settle recurring inter-tribal hostilities. The purpose of the treaty, as expressed in its preamble, was "to promote peace among these tribes and to establish boundaries among them and the other tribes who live in their vicinity, and thereby to remove all causes of future difficulty."

Article 5 of the Prairie du Chien Treaty fixed a "line dividing their respective countries" between the Sioux and the Chippewas. That line extended from a point in Wisconsin on the Chippewa River northward across Minnesota to the Red River. Article 10 of the treaty stated that the United States agreed to and recognized the boundaries set forth in the preceding articles. Article 13 of the treaty provided that no tribe should hunt within the acknowledged limits of any other without their assent.

4. Pursuant to Article 12 of the Prairie du Chien Treaty, which called for a council of the Chippewa in 1826 upon some part of Lake Superior for explanation of the 1825 Treaty, treaty commissioners met with twelve bands of the Chippewas at Fond du Lac, Wisconsin, near Duluth. They concluded the Treaty of August 5, 1826, (7 Stat. 290). It bound the Lake Superior bands of Chippewas (who had not attended the 1825 negotiations) to the 1825 Treaty and reaffirmed that agreement for the whole Chippewa Tribe. In Article 3 the Chippewas granted the United States "the right to search for, and carry away, any metals or minerals from any part of their country. But this grant is not to affect the title of the land, nor the existing jurisdiction over it"; by Article 4

the Chippewas "grant" to each of their half-breeds certain land to be located by the President, "and as soon as such locations are made, the jurisdiction and soil thereof are hereby ceded."

In 1827, the Treaty of August 11, 1827, (7 Stat. 303) settled the segment of the line dividing the Chippewa "country" from that of the Menominees, left open by the 1825 Treaty.

5. Thereafter, the United States entered into a number of treaties of cession with Chippewa Indians and other tribes which had been parties to the 1825, 1826 and 1827 treaties referred to above. There were four pertinent treaties of cession with Chippewa Indians prior to the 1854 Treaty herein involved.

The first of these was the Treaty of July 29, 1837 (7 Stat. 536). By this treaty the "Chippewa Nation" ceded a tract of country in Minnesota and Wisconsin (identified by Charles C. Royce as area 242) to the south of Royce Area 332 herein involved.

6. The next treaty, and one of special importance in this matter, was the Treaty of October 4, 1842 (7 Stat. 591) with the Chippewa Indians of the Mississippi and Lake Superior. By this treaty the Indians ceded an area in Michigan and Wisconsin (identified by Charles C. Royce as area 261) to the south and east of Royce Area 332 herein involved. By Article III of that treaty it was provided that whenever the Indians should be required to remove from the ceded area,<sup>1/</sup> "all the unceded lands belonging to the Indians of Fond du Lac, Sandy Lake, and Mississippi

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<sup>1/</sup> The Indians retained the privilege of occupancy and hunting until required to remove by the President of the United States."

bands, shall be the common property and home of all the Indians, party to this treaty."

Article V of the treaty provided that:

Whereas the whole country between Lake Superior and the Mississippi, has always been understood as belonging in common to the Chippewas, party to this treaty; and whereas the bands bordering on Lake Superior, have not been allowed to participate in the annuity payments of the treaty made with the Chippewas of the Mississippi, at St. Peters July 29th 1837, and whereas all the unceded lands belonging to the aforesaid Indians, are hereafter to be held in common, therefore, to remove all occasion for jealousy and discontent, it is agreed that all the annuity due by the said treaty, as also the annuity due by the present treaty, shall henceforth be equally divided among the Chippewas of the Mississippi and Lake Superior, party to this treaty, so that every person shall receive an equal share. (II Kapp. 543)

7. By the Treaties of August 2, 1847, (9 Stat. 904) and August 21, 1847, (9 Stat. 904) with the Chippewa of the Mississippi and Lake Superior and with the Pillager Band of Chippewa Indians, respectively, lands to the southwest of Royce Area 332 were ceded to the United States. In the preliminary reports in connection with these treaties government representatives indicated what region United States officers considered to be Chippewa land.

In a memorandum report concerning "lands east of the Mississippi River in Wisconsin yet owned by the Indians etc." and on an accompanying map a large area circumscribed in red dots and marked "G" was described as "what is termed the common property of the Chippewas of Lake Superior and the Mississippi River" (Pet. Exs. 66, 67). The Area identified as "G" would include all of Royce Area 332.

By letter of June 5, 1847, treaty commissioners were instructed to obtain a cession (among other lands) of "the unceded lands owned by them the Chippewas of Lake Superior and the Mississippi River east of that river Mississippi. . . from Lake Superior as far west as the Mississippi" (Pet. Ex. 68, p. 2) the area described would have included Royce Area 332.

8. The final treaty of importance to this case was the Treaty of September 30, 1854. This was the treaty by which Royce Area 332 was ceded to the United States. In transmitting the treaty to the Commissioner of Indian Affairs, Henry C. Gilbert, one of the two treaty commissioners wrote that:

After Major Herriman's arrival we soon found that the Mississippi Indians could not be induced to sell their land on any terms. Much jealousy and ill feeling existed between them and the Lake Superior Indians, and they could not even be prevailed upon to meet each other in council. They were all, however, anxious that a division should be made of the payments to become due under former existing treaties, and a specific apportionment made between the Mississippi and the Lake Superior Indians, and places of payment designated.

Taking advantage of this feeling, we proposed to them a division of the country between them and the establishment of a boundary line, on one side of which the country should belong exclusively to the Lake Superior and on the other side to the Mississippi Indians. We had but little difficulty in inducing them to agree to this proposition, and after much negotiation the line designated in the treaty was agreed upon. \* \* \* (Pet. Ex. 84, p. 3)

By the express terms of the treaty the Lake Superior Chippewas ceded all the lands "heretofore owned by them in common with the Chippewas of the Mississippi, lying east of the following boundary line . . ."; the Chippewas of the Mississippi assented to the cession

and agreed that the entire consideration for the cession should be paid to the Chippewas of Lake Superior; the Chippewas of Lake Superior in turn relinquished to the Chippewas of the Mississippi "all their interest and claim to the lands heretofore owned by them in common, lying west of the . . . boundary line."

The signatories to the treaty were identified by bands, and it was understood that all "except the Chippewas of the Mississippi, shall hereafter be known as the Chippewas of Lake Superior."

9. The Commission finds that by action of the Congress of the United States in ratifying the treaties hereinabove set forth the United States had, by the time of the Treaty of September 30, 1854, recognized title in the Chippewas of the Mississippi and the Chippewas of Lake Superior to all of Royce Area 332 and, further, that by the Treaty of September 30, 1854, the Chippewas of the Mississippi freely and for good consideration relinquished all their interest in and claim to Royce Area 332 and that the Chippewas of Lake Superior were, therefore, the sole owners of Royce Area 332 ceded by the Treaty of September 30, 1854.

10. The treaty provided that it should become obligatory on the contracting parties as soon as it should be ratified by the President and Senate of the United States (Article 13). The treaty was ratified on January 10, 1855, and that date, therefore, was the date of taking by the United States of the lands in Royce Area 332.

Arthur V. Watkins  
Chief Commissioner

Wm. M. Holt  
Associate Commissioner

T. Harold Scott  
Associate Commissioner