

BEFORE THE INDIAN CLAIMS COMMISSION

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

Decided: December 8, 1964

Appearances:

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

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

OPINION OF THE COMMISSION

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

In our findings we have set forth descriptions of the various petitioning parties in the matter of Docket No. 18-U. We have found that the prospective parties in interest to the claim arising from the Treaty of September 30, 1854, are properly represented by petitioners entitled to maintain claims before this Commission.

The claim presented in this case arises from the Treaty of September 30, 1854, pursuant to the terms of which Royce Area 332 was ceded to the United States. Petitioners have alleged that the lands ceded were owned, at the time

of the cession, by the Chippewas of Lake Superior, or the Chippewas of the Mississippi, or other petitioning bands, or some combination thereof. It is also alleged that the consideration paid or agreed to be paid for the cession was "grossly inadequate and unconscionable." The matter is before us at this time upon petitioners' amended motion for summary judgment with respect to the title to Royce Area 332. It is contended that the United States had recognized title to Royce Area 332 in certain of the petitioners. We have at this time only the issue of "recognized title" to Royce Area 332.

Of primary importance to petitioners' motion, and to our determination as well, is the recent decision of the United States Court of Claims in the matter of Minnesota Chippewa Tribe, et al. v. The United States, 315 F. 2d 906 (C. Cls. 1963). In that case this Commission found that two portions of the claimed area had not been owned by the petitioning Indians. In overruling this Commission the Court of Claims held that the two excluded areas had been held by the Indians by "recognized title." The Court found such Congressional recognition from a sequence of treaties extending from 1825 to 1855. The treaties involved were the same ones which we have set forth in our Findings of Fact Nos. 3 through 8 entered herein. In the Minnesota Chippewa Tribe case the Court, in reviewing those treaties and the various preparatory materials involved and official United States reports, concluded that:

The events occurring from the Prairie du Chien Treaty of 1825 to 1842 may have already accorded that recognition. But, as we have indicated, we need not at this time unravel that earlier skein, for 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). This "whole country" thus formally recognized clearly covered all of one of the excluded segments (lying due east of the Mississippi) and appears also to have included the other (which lies to the north and east of the river). For the future, the 1842 agreement provided that the still unceded lands "belonging to the aforesaid Indians" to the west of the easterly cession then being made--again including the two disputed segments--"shall be the common property and home" of the Indians and "are hereafter to be held in common." Shortly thereafter the official Government reports prior to the 1847 treaties made it even more definite that both excluded segments lay within territory which under the 1842 agreement was acknowledged as "the common property" of the Indians, and "owned" by them. And if sufficient recognition in the technical sense had not been granted by the 1842 Treaty, the 1854 Treaty closed the gap. The latter agreement 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. (Minnesota Chippewa Tribe et al v. The United States, 315 F. 2d 906, 911-912)

The area which the Court concluded had been the "common property" of the Mississippi and Lake Superior Chippewas would have included all of Royce Area 332. The line dividing the land between the Mississippi Chippewas and the Lake Superior Chippewas is the same line referred to in our Finding of Fact No. 8. The Court of Claims determined that the Mississippi Chippewas had, by the 1854 Treaty, relinquished all interest to the lands on the other side (east side) of the new line. They had received (or been confirmed in) permanent rights to the lands on the west side of the new boundary. This case involves the other side of

the compact. By the 1854 Treaty the Lake Superior Chippewas relinquished all their interest to the lands on the west side of the new line, and they received (or were confirmed in) permanent rights to the lands on the east side - or Royce Area 332.

Recognized title is the granting to the Indians by Congress of a permanent right of occupancy in lands. The only source of "recognized title" is the Congress of the United States. Congress, and Congress alone, has the power to dispose of the lands of the United States, and it may do so by conveyance to or recognition of such rights in Indians as it may feel proper. Such title is not in any way dependent upon "Indian title,"<sup>1/</sup> although it has been variously referred to as "recognized Indian title" or "recognized original Indian title." No actual land use or occupation is necessary to sustain a tribes' recognized title. If Congress has acted to grant or recognize title to land in a particular tribe that tribe thereafter possesses a right to permanently hold such lands. "There is no particular form for congressional recognition of Indian right of permanent occupancy. It 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" Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 278-79 (1955). As the Court of Claims recently summarized:

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<sup>1/</sup> Indian title, also variously referred to as original or aboriginal title or aboriginal Indian title, is a mere permissive right to land use and occupation which Indian tribes aboriginally acquired through exclusive use and occupation of lands for a long time.

Congress, acting through a treaty or statute, must be the source of such recognition, and it must grant legal rights of permanent occupancy within a sufficiently defined territory. Mere executive 'recognition' is insufficient, as is a simple acknowledgment that Indians physically lived in a certain region. There must be an intention to accord or recognize a legal interest in the land. The Sac and Fox Tribe of Indians of Oklanoma, et al. v. The United States, Appeal No. 1-61, decided April 5, 1963, Slip Op. 2.

Applying these criteria to this case we have concluded that by its action in ratifying the series of treaties set forth in our findings in this case Congress intended to and did grant or recognize title in the Lake Superior Chippewas to Royce Area 332. As the Court of Claims has done in the Minnesota Chippewa case so have we in this case based our determination not on any single Congressional action but rather upon the entire series of Congressional dealings referred to - commencing with the 1825 Prairie du Chien Treaty and culminating with the Treaty of September 30, 1854.

Petitioners have urged that "recognition" was effected by the 1825 Treaty of Prairie du Chien. We do not believe that the 1825 Treaty resulted in a recognition of title in the "Chippewas" to any definable territory, and it certainly did not accord the Lake Superior or Mississippi Chippewas any territorial rights to Royce Area 332. With respect to the Chippewas the 1825 Treaty drew an open-ended boundary extending from a point in Wisconsin northwestward across Minnesota to the Red River. The line was designated to divide, in that area, the respective countries of the Sioux and Chippewa. In the Minnesota Chippewa appeal to the Court of Claims petitioners likewise contended that the 1825 Treaty constituted recognition of title to the area claimed in that

case. The Court of Claims did not find that the 1825 Treaty had recognized title in the Chippewas, although there is no doubt it constituted an important element in the series of treaties relied upon to reach an ultimate conclusion of recognition of title in the two areas involved in that appeal. However, as we read that decision, the 1825 Treaty was not the principal Congressional action relied upon. Rather it was the subsequent 1842 and 1854 Treaties which compelled the decision in that case. Significantly, the dissent by Chief Judge Jones, in which he was joined by Judge Whitaker, stated that the majority opinion was based primarily on the language of Article V of the 1842 Treaty.

We realize, of course, that the Prairie du Chien Treaty has been held by us to have accorded recognized title to other Indian tribes. However, in those cases, none of which involved Chippewa Indians, other articles of the treaty served to more clearly and definitely circumscribe specific areas.

The 1842 Treaty served to define in more precise terms a definable territory which was to "belong" to specific Chippewa Indians. The treaty referred to the "whole country between Lake Superior and the Mississippi" as the "common property and home" and "belonging in common" to the Lake Superior and Mississippi Chippewas. As the Court of Claims stated, the territory thus defined covered Royce Area 332.

The preliminary government reports in connection with the 1847 Treaties (described in our Finding of Fact No. 7), while not in themselves sufficient in any way to grant a recognized title, are helpful and pertinent in clarifying from a contemporaneous viewpoint the intent

behind the Congressional actions taken with respect to the Indians involved.

And finally we come to the 1854 Treaty, described by the Court of Claims as "perhaps even more enlightening." It was this treaty which divided the country between the Mississippi Chippewas on one hand (to the west) and the Lake Superior on the other (to the east). By the express terms of the 1854 Treaty the Mississippi Chippewas relinquished any interest or claim to the lands involved in this action. It clearly left the Lake Superior Chippewas as the exclusive owners of Royce Area 332, which area was by that treaty ceded to the United States.

We have concluded that the Lake Superior Chippewas were the sole owners by recognized title of Royce Area 332. We have found that the Mississippi Chippewas, having relinquished any rights they may have had to Royce Area 332, have no further interest in the matters involved in the subject claim.

This case will now proceed for a determination of the acreage and fair market value of Royce Area 332, as of January 10, 1855, the effective date of the Treaty of 1854. Also to be determined will be the value of the consideration given by defendant for the cession of Royce Area 332.

Wm. M. Holt  
Associate Commissioner

We concur:

Arthur V. Watkins  
Chief Commissioner

T. Harold Scott  
Associate Commissioner