

BEFORE THE INDIAN CLAIMS COMMISSION

THE YANKTON SIOUX TRIBE	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 332-A
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided:

Appearances:

John W. Cragun of Wilkinson, Cragun & Barker, Attorney of Record, and Angelo A. Iadarola of Counsel, Attorneys for Petitioner

Craig A. Decker, with whom was Mr. Assistant Attorney General Clyde O. Martz, Attorneys for the Defendant.

OPINION ON PETITIONER'S MOTION FOR SUMMARY JUDGMENT

Chairman Vance delivered the opinion of the Commission.

On January 12, 1962, in the case of The Sisseton and Wahpeton Bands or Tribes et al., v. United States, this Commission on jurisdictional grounds dismissed the petitioner's, the Yankton Sioux Tribe, claim for Royce Area 151. \* Thereafter the petitioner successfully appealed the Commission's ruling to the Court of Claims.\*\* The petition in this docket having been reinstated, we have before us for decision the Yankton Sioux Tribe's motion for summary judgment in which it has asked the Commission to determine summarily as a matter of law that the Yankton Sioux Tribe

\* Docket Nos. 142, 359-363, and 332-A, 10 Ind. Cl. Comm. 137.

\*\* The Yankton Sioux Tribe or band of Indians v. United States, 175 Ct. Clms. 564.

had recognized title to that portion of Royce Area 151 that lies north of the line described in Article 2 of the August 19, 1825 Prairie du Chien Treaty, 7 Stat. 272, and which was ceded to the United States under the subsequent Prairie du Chien Treaty of July 15, 1830, 7 Stat. 328, 329, and the Treaty of October 21, 1837, 7 Stat. 542.

In responding to the petitioner's motion, the defendant insists that there are material factual issues that must be decided before the Commission can resolve the title question, and, since it has raised such genuine and material issues of fact, the petitioner's motion for summary judgment must be denied.

Royce Area 151 is a rather lengthy and sizeable tract of land that encompasses practically the entire western half of Iowa, a small fraction of southwestern Minnesota, and the extreme northwestern section of Missouri adjoining the Missouri River. See Royce maps, Iowa 1, Minnesota 1, and Missouri 1, 18 Annual Report of the Bureau of American Ethnology, part 2.

Royce Area 151, along with the important 1825 Prairie du Chien Treaty, 7 Stat. 272, has been the subject of prior litigation before this Commission. We have already determined as a matter of law, and with the approval of the Court of Claims, that the 1825 Prairie du Chien Treaty was a treaty of recognition that afforded to all the Indian treaty participants reservation or recognized title to their tribal lands as delineated in the treaty. Iowa Tribes et al., v. United States, 7 Ind. Cl. Comm. 101, Sac and Fox Tribe of Indians et al., v. United States, 5 Ind. Cl. Comm. 438, Otoe and

Missouria Tribes of Indians, v. United States, 5 Ind. Cl. Comm. 316, The Sisseton and Wahpeton Bands or Tribes, et al., v. United States,\* supra.

While the subject land in this case is that portion of Royce Area 151 north of the line fixed in Article 2 of the 1825 Prairie du Chien Treaty, it should be pointed out that in Docket Nos. 11-A and 138, supra, the Otoe and Missouria Tribe of Indians, et al., v. United States, this Commission concluded as a matter of law that by virtue of the provisions of the 1825 Prairie du Chien Treaty and the 1830 Prairie du Chien Treaty, four tribes, the Otoe Missouria, Omaha, Iowa, and Sac and Fox, jointly had recognized title to that portion of Royce Area 151 that lies south of the line established under Article 2 of the 1825 Prairie du Chien Treaty. The fixing of this line, which has frequently been referred to as either the "Article 2 line", "Sioux Sac and Fox line", or "Yankton line", was a serious attempt on the part of the United States to settle tribal territorial disputes around the Missouri and Mississippi River systems. At that time the principal tribal contestants were the several Sioux tribes or bands to the north, including the Yankton, and the Sac and Fox tribe to the south, along with the smaller Otoe Missouria, Omaha, and Iowa tribes. Insofar as pertinent, Article 2 of the 1825 Prairie du Chien Treaty caused a territorial partition to be made in the following manner:

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\* On an appeal from a portion of this case (Docket 359), the Court of Claims, after an extensive review of the historical background and the provisions of the 1825 Prairie du Chien Treaty concluded, "...We find nothing in the historical background of the treaty that suggests other than that the intent of the United States, and that of the various Indian tribes assembled, was to carve the entire territory so as to give each tribe title to the lands claimed. It was a treaty of recognition; it defined the country of the respective Indian tribes; it was not a treaty of cession." (Lower Sioux Indian Community in Minnesota, et al., v. United States, 163 Ct. Cls. 329)

"It is agreed between the confederated Tribes of the Sacs and Foxes, and the Sioux, that the Line between their respective countries shall be as follows: Commencing at the mouth of the Upper Ioway River, on the west bank of the Mississippi, and ascending the said Ioway river, to its left fork; thence up that fork to its source; thence crossing the fork of Red Cedar River, in a direct line to the second or upper fork of the Desmoines river; and thence in a direct line to the lower fork of the Calumet river; and down that river to its juncture with the Missouri river. But the Yancton band of the Sioux tribe, being principally interested in the establishment of the line from the Forks of the Desmoines to the Missouri, and not being sufficiently represented to render the definitive establishment of that line proper, it is expressly declared that the line from the forks of the Desmoines to the forks of the Calumet river, and down that river to the Missouri, is not to be considered as settled until the assent of the Yancton band shall be given thereto...." \* (Emphasis supplied)

Not being satisfied with the Commission's location of the western terminus of the "Article 2 line" in Royce Area 151, the petitioner, the Yankton Sioux Tribe, in a separate proceeding sought to have this Commission relocate the western terminus of the "Article 2 line" farther to the south and nearer to the mouth of the Big Sioux River. The Commission refused to make any such change in the "Article 2 line", and on appeal to the Court of Claims, this Commission's action was affirmed.\*\*

Turning our attention once more to the Sisseton case, supra, we are of the opinion that certain findings of fact previously entered therein are relevant, pertinent and material to a proper disposition of the title question presented in this motion for summary judgment. Specifically, the Commission found in the Sisseton case, that the 1825 Prairie du Chien

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\* Article 2, 7 Stat. 272

\*\* The Yankton Sioux Tribe or Band of Indians v. United States,  
175 Ct. Cls. 564.

Treaty was a treaty of recognition; that the Yankton Sioux tribe was an interested party to the establishment of the "Article 2 line", and that the fixing of this particular line would not be finally settled until the assent of the Yankton Sioux Tribe was obtained.\* We further found that representatives of the Yankton Sioux Tribe were not present during any of the treaty negotiations, and that Article 11 of the 1825 Prairie du Chien Treaty called for a treaty council with the Yanktons during the following year so that the 1825 treaty stipulations could be explained to them in detail, and their assent to the 1825 treaty obtained if they were so disposed.\*\* Finally, we found that the "Yankton and Santie Band of Sioux" gave their assent to the establishment of the 1825 "Article 2 line" on October 13, 1830, and, that by virtue of the provisions of the July 15, 1830 Prairie du Chien Treaty, 7 Stat. 328 and the Treaty of October 21, 1837, 7 Stat. 542, the Yankton Sioux Tribe effectively and without qualification ceded to the United States all right, title, and interest to Royce Area 151.\*\*\* There is nothing in the defendant's response to petitioner's motion that seriously challenges these findings of fact.

In view of the above, the Commission is of the opinion ~~that~~ the Yankton Sioux Tribe had recognized or reservation title to the northern segment of Royce Area 151. However, the defendant would dilute Yankton Sioux ownership of the subject land. It alleges in its reply that the

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\* Findings 25, 26, 10 Ind. Cl. Comm. 137, 153, 154

\*\* Finding 26, supra.

\*\*\* Finding 26, supra., Finding 54, 10 Ind. Cl. Comm. 137, 174, 175.

petitioner is seeking a recovery not only for its rights, but as defendant puts it,

"...but also for those of certain Santee Sioux as well."\*

Although certain provisions of the 1830 Prairie du Chien Treaty speak in terms of the "Yancton and Santie Bands of Sioux", the defendant would have us reach the conclusion that there is no connection whatsoever between the "Yancton and Santie Bands of Sioux," but rather that they are independent tribal entities. Thus, argues the defendant, the Commission must deny the petitioner's motion for summary judgment in order that additional evidence can be presented to show what part of Boyce Area 151 north of the "Article 2 line" belonged to the Yankton Sioux Tribe and what part was held by this "Santie Band."

On the other hand, the Yankton Sioux Tribe claims that the repeated grouping of "Yancton and Santie Bands of Sioux" throughout the 1830 Prairie du Chien Treaty, when read in connection with other contemporary evidence, clearly connotes recognition by the treaty officials of a meaningful tribal affiliation between the Yankton Sioux and this particular "Santie" band. While the petitioner has the burden of showing that there is no genuine issue of fact with respect to Yankton Sioux title to the subject area, yet it falls upon the defendant to convince the Commission that there is indeed a triable issue of material fact.

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\* Page 4, Defendant's "response To Petitioner's Motion For Summary Judgment."

Judgment." \_\_\_\_\_

\* P. 14, Def. Req. Fedgs. of Fact, Objections to Pet. Proposed Fd

We have carefully considered the evidence cited by the defendant in its response, and have concluded that, instead of raising a genuine issue of fact, it avoids the same, and never does meet the very issue that the petitioner contends for. For example, the Commission's attention has been directed to certain evidence that purports to show that of the four Mississippi Sioux bands, the Medawakanton and Wahpakoota Sioux bands were commonly known as the Santee Sioux. This may be a fact, but it fails to answer the petitioner's contention that the "Santie Band" referred to in the 1830 Prairie du Chien Treaty are not the same Santee Sioux identified by defendant, but rather a separate band, small in number, that had attached itself to the Yankton Sioux.

Certainly the best evidence that such a tribal attachment existed, is the provisions of the 1830 Prairie du Chien Treaty, the very treaty under which the instant claim arises. Besides the 1830 treaty language, the petitioner has cited certain contemporary evidence that strongly corroborates its contention that this 1830 tribal attachment was an uncontroverted fact. Designated as "Attachment No. 1", in its reply to defendant's response, the petitioner offers a letter dated June 28, 1831, from Indian Agent Jon L. Bean. In his letter, Agent Bean details his efforts to distribute to the Yankton and "Santie" bands the annuities due them under the 1830 treaty. Insofar as pertinent, this letter to General Clark reads as follows:

"General,

"We reached this place a few days since in Steam boat Yellow Stone, after a passage of sixty eight days, and found a number of Indians in waiting - Tetons, Oquillallos, and Sowans, to all of whom I made a present,

and sent them off, not having any thing of consequence to give them to eat, and they in a state of starvation. The Yancton band with Santies among them say [sic.] on the opposite side of the river, and after making a fair dividend of the (three thousand dollars annuities \$2900 [sic.]) allowed the Yancton and Santie bands, I sent for the Yanctons and explained to them the number of articles and prices, which they refused, saying that it had been explained to them differently, and that the whole amount belonged to them, and that no part belonged to the Santies as a separate band; -I however refused to give them more than half until I could hear from you. My present impression is, that the reason why the treaty was so worded was that fearing the Yanctons and those Santies who lived with them, and had claims in the district of country purchased, might disunite -and hence it was put Yancton & Santie bands. I believe it ascertained to nearly a certainty that the "Men of the Leaf", about forty lodges in number, and the only Santies who ever appear to have had claims within these limits, will join either the Yanctons or Wabeshaw's band of the Mississippi, -and I would most respectfully suggest the propriety of giving the annuities en masse to the Yancton & such Santies as are with them - as "the Yancton and Santie Band".

Further support for the petitioner's motion is also found in the Sisseton case wherein the Commission determined that the Mississippi Sioux (which, of course, includes defendant's Santee Sioux) had no compensable interest in Royce Area 151.\*

After a careful review of all the evidence of record, the Commission believes that a trial of the supposititious matters raised in defendant's response, would only delay matters and in no way change the result that petitioner now seeks in its motion. Therefore, the Commission will enter

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\* Finding 31, 10 Ind. Cl. Comm. 137, 156, 157.

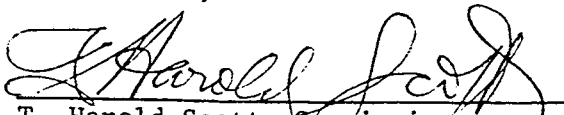
an appropriate order granting the petitioner's motion for summary judgment, and this case shall now proceed as expeditiously as possible for a determination of all the remaining issues bearing upon the question of defendant's liability herein.

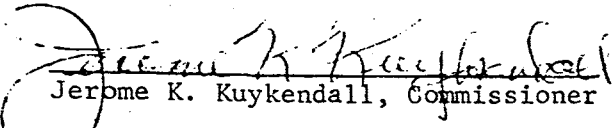
  
John T. Vance, Chairman

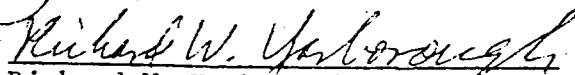
We concur:

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Wm. M. Holt, Commissioner

  
T. Harold Scott, Commissioner

  
Jerome K. Kuykendall, Commissioner

  
Richard W. Yarbrough, Commissioner