BEFORE THE INDIAN CLAIMS COMMISSION

MINNESOTA CHIPPEWA TRIBE, ET AL.,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No. 18-C
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: October 10, 1968

Appearances:
Jay H. Hoag, with whom was
Marvin J. Sonosky,
Attorneys for Petitioners.

David M. Marshall, with whom was
Mr. Assistant Attorney General Clyde O. Martz,
Attorneys for Defendant.

OPINION OF THE COMMISSION

Vance, Chairman, delivered the opinion of the Commission.

This case is now before the Commission on petitioners' motion for summary judgment by which they seek a determination that the "Chippewas of Lake Superior, or the Chippewas of the Mississippi, or the Pillager Chippewas, or other Chippewa bands included as parties plaintiff, or some combination of the same" were the owners by "recognized title" of the lands which were ceded to the United States by the Treaty of July 29, 1837 (7 Stat. 536). The petitioners assert that the United States recognized title in the Chippewas by the Prairie du Chien Treaty of August 19, 1825 (7 Stat. 272), and the subsequent course of dealings and series of treaties between the United States and the Chippewas. The lands involved in the 1837 cession are referred to as Royce Area 242.

This case is similar to the claims presented by the Minnesota Chippewas and others in Docket Nos. 18-S and 18-T. The Commission has entered its decisions on petitioners' motions in those cases (Docket No. 18-S, decided August 13, 1968 (19 Ind. Cl. Comm. 319); Docket No. 18-T, decided August 20, 1968 (19 Ind. Cl. Comm. 341)). In determining that the Prairie du Chien Treaty and the supplementary treaties in 1826 and 1827 were Congressional Acts which granted recognized title to Chippewas, we set forth in the opinions in those cases our reasons for our holdings. Those same reasons lead us to the conclusion that petitioners' motion for summary judgment should likewise be granted in the subject matter. We see no reason to reiterate our views in detail in this opinion. What the Commission stated in the opinions in Docket Nos. 18-S and 18-T is adopted as our reasons for the findings and determination made herein.

However, in the subject case defendant has presented an additional argument in opposition to the granting of petitioners' motion. This issue, which was not involved in either the Docket Nos. 18-S or 18-T cases, concerns the Menominee Indians. Defendant has set forth a detailed presentation of Menominee problems including alleged "gross overreaching" of the Menominees by the sophisticated New York Indians when the latter received a land cession from the Menominee in 1822; inadequate representation of the Menominee at the 1825 Prairie du Chien Treaty; poor representation of the Menominee at the 1827 Treaty when they were characterized as "a flock of geese without a leader"; alleged unjust fixing of Menominee boundaries at the Prairie du Chien Treaty and supplementary 1827 Treaty; and

subsequent claims of the Menominee to lands which overlap Royce Area 242 and a discussion of the basis and alleged validity of such claims.

The matters which defendant raises concerning the Menominee are not pertinent to this case. The history of Menominee dealings with the United States and other Indians and the merits of Menominee land claims are related to issues which were involved in the claims of the Menominee against the United States. Those claims were presented before the Court of Claims in seven separate suits. An overall settlement was embodied in a Court of Claims judgment of July 13, 1951, for $8,500,000.00. On April 24, 1952, Indian Claims Commission Docket No. 129 was, upon motion of the petitioner, dismissed with prejudice for the reason that all matters set forth therein had been compromised and settled in the Court of Claims judgment. As petitioners' counsel states in his brief, the government seeks to convert an issue of law into a trial on Menominee use and occupancy in which the government assumes the role of advocate for the Menominee.

But even if there were merit to the defendant's assertion that Royce Area 242 encroached on the Menominee aboriginal land holdings, that would not be a basis for denying the claim in this case based on recognized title. As we have set forth in more detail in our opinions in the Dockets 18-S and 18-T cases, recognized title is the granting to the Indians by Congress of a permanent right of occupancy in lands. And there need be no actual use or occupation or even the presence of Indians in an area to sustain recognized title. The lands to which an Indian tribe has been granted recognized title may be all or part of the lands formerly held by them under mere

aboriginal title or may be lands they never previously occupied. The Miami Tribe of Oklahoma, et al., v. The United States, 146 C. Cls. 421, 445 (1959). The presence, or even a prior exclusive use and occupation of an area by other Indians would not defeat a Congressional granting of recognized title.

The area in question in this case was a part of the area to which Congress granted recognized title in the Chippewas. By the 1825 Prairie du Chien Treaty and the 1827 Treaty clear, unambiguous boundaries were described which fixed the areas of the respective tribes. There is no basis for the contention that this Commission is free to substitute other boundaries to adjust for some supposed inequities among the various tribes which participated in the treaties.

It has also been determined that the 1825 and 1827 treaties recognized title in the Menominee. This Commission found in Emigrant New York Indians v. United States, 5 Ind. Cl. Comm. 560, 628, "... And petitioners [New York Indians] limit their claim to the area which was recognized in the Treaty of Prairie du Chien in 1825 and the Treaty of Butte des Morts in 1827 when the Menominee boundaries were finally established." In affirming this Commission the Court of Claims stated, "By the Treaties of Prairie du Chien and Butte des Morts in 1825 and 1827, and by supplemental treaties, the United States recognized the title of the Menominees to the area in question in this case." United States v. Emigrant New York Indians, 177 C. Cls. 263, 278 (1966). The Menominee lines as determined by the 1825 and 1827 Treaties do not extend into or in any way overlap Royce Area 242.

In the subject case petitioners contend that the area of recognized Chippewa country is bounded by the Canadian international line on the north; on the east by the 1827 Butte des Morts Treaty line which terminated in Lake Michigan; on the south by the Article 5 and Article 6 Prairie du Chien boundaries; and on the west the Article 5 line which terminated at the Red River fixed the boundary from that point up to the mouth of the Goose River on the North Dakota side. From the Goose River to the Canadian border and west into North Dakota has already been found to have been Chippewa country, occupied by Pembina Chippewas. Red Lake, Pembina Bands, et al., v. United States, 6 Ind. Cl. Comm. 247. The Commission is satisfied that these are the bounds of recognized title in the Chippewas as established by the 1825 Prairie due Chien Treaty and the supplementary treaties in 1826 and 1827.

We have, therefore, concluded that petitioners' motion for summary judgment should be granted. By Congressional action the United States granted recognized title in the Chippewa Indians to all of the claimed lands (Royce Area 242). The lands were ceded to the United States by the Treaty of July 29, 1837, which was proclaimed on June 15, 1838.

Having ruled favorably on petitioners' title claim to Royce Area 242, we shall reserve further judgment until proof has been offered as to the consideration paid for the cession, the acreage involved, and the fair market value of the area as of June 15, 1838.

Further, the Commission will consider at that time the matter of a precise definition of the entity or entities to be entitled to participate

in any prospective award, should there be one. Accordingly, the parties are directed to include in the next proceedings and briefings their respective contentions on this issue.

John T. Vance, Chairman

We concur:

Jerome K. Kuykendall, Commissioner

Richard W. Yarborough, Commissioner