

BEFORE THE INDIAN CLAIMS COMMISSION

THE PILLAGER BANDS OF CHIPPEWA INDIANS)	
IN THE STATE OF MINNESOTA,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 144
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: May 20, 1969

ADDITIONAL FINDINGS OF FACT

The Commission makes the following additional findings of fact which are supplemental to findings numbered 1 through 12 heretofore made herein:

13. On June 5, 1847, Henry M. Rice and Isaac A. Verplank were appointed Commissioners to negotiate with the Chippewa Indians of Lake Superior and the Upper Mississippi for a new home for the Winnebago Indians and further to procure from the Chippewas the portion of the country between the Long Prairie and Leaf Rivers as a home for the Menominees. The area between the Long Prairie and Leaf Rivers is the land which is involved in this case, Royce Area 269. The instructions stated, "The purchase of these two sections from the Chippewas would still leave a sufficient quantity of the lands owned by them west of the Mississippi river for a suitable and comfortable home for all the various bands of those Indians and on many accounts it is desirable to concentrate them in their country there."

(Plaintiffs' Ex. 93, Dkt. No. 18-T).

14. By letter dated September 10, 1847, Commissioner Verplank transmitted the treaties concluded August 2 and August 21, 1847. The letter referred to the "lands purchased." No mention was made of any provision to hold the lands in trust or that the conveyances by the Chippewas were "loans." A report of the Commissioner of Indian Affairs, 1847, referred to the lands involved in both 1847 treaties as being well suited for the Winnebagoes and "a residence for the Menominees" (Plaintiffs' Ex. No. 104, Dkt. No. 18-T). And the report further indicated the intent of the government to move all the Chippewas west of the Mississippi.

15. On October 18, 1848, the United States made a treaty with the Menominees in which they later ceded all their lands in Wisconsin. Article 3 provided that:

In consideration of the foregoing cession, the United States agree to give, and do hereby give, to said Indians for a home, to be held as Indians' lands are held, all that country or tract of land ceded to the said United States by the Chippewa Indians of the Mississippi and Lake Superior, in the treaty of August 2, 1847, and the Pillager band of Chippewa Indians, in the treaty of August 21, 1847, which may not be assigned to the Winnebago Indians, under the treaty with that tribe of October 13, 1846, and which is guaranteed to contain not less than six hundred thousand acres. (Treaty of October 18, 1848 (9 Stat. 952; 2 Kappler 572))

However, the Menominees refused to move to Minnesota and occupy the tract which had been given them. Thereafter, by the Treaty of May 12, 1854 (10 Stat. 1064, 2 Kappler 626) the Menominees receded the lands to the United States in exchange for a part of their previous lands in Wisconsin and other consideration. That treaty provided, in part:

Whereas, among other provisions contained in the treaty in the caption mentioned, it is stipulated that for and in consideration of all the lands owned by the Menomonees, in the State of Wisconsin, wherever situated, the United States should give them all that country or tract of land ceded by the Chippewa Indians of the Mississippi and Lake Superior, in the treaty of the second of August, eighteen hundred and forty-seven, and by the Pillager band of Chippewa Indians in the treaty of the twenty-first of August, eighteen hundred and forty-seven, which had not been assigned to the Winnebagoes, guaranteed not to contain less than six hundred thousand acres; should pay them forty thousand dollars for removing and subsisting themselves; should give them fifteen thousand dollars for the establishment of a manual-labor school, the erection of a grist and saw mill, and for other necessary improvements in their new country; should cause to be laid out and expended in the hire of a miller, for the period of fifteen years, nine thousand dollars; and for continuing and keeping up a blacksmith shop and providing iron and steel for twelve years, commencing on the first of January, eighteen hundred and fifty seven, eleven thousand dollars.

And whereas, upon manifestation of great unwillingness on the part of said Indians to remove to the country west of the Mississippi River, upon Crow Wing, which had been assigned them, and a desire to remain in the State of Wisconsin, the President consented to their locating temporarily upon the Wolf and Oconto Rivers.

Now, therefore, to render practicable the stipulated payments herein recited, and to make exchange of the lands given west of the Mississippi for those desired by the tribe, and for the purpose of giving them the same for a permanent home, these articles are entered into.

Article 1. The said Menomonee tribe agree to cede, and do hereby cede, sell, and relinquish to the United States, all the lands assigned to them under the treaty of the eighteenth of October, eighteen hundred and forty-eight.

16. Then by the Treaty of February 22, 1855 (10 Stat. 1165, 2 Kappler 685), the Chippewas, including the Pillager and Lake Winnibigoshish Bands ceded

a defined tract in Minnesota (Royce Area 357) and "entirely relinquish[ed] and convey[ed] to the United States, any and all right, title, and interest, of whatsoever nature the same may be, which they now have in, and to any other lands in the Territory of Minnesota or elsewhere." (Article 1). And by Article 2 of that Treaty three defined reservations were set aside as permanent homes for the Pillager and Lake Winnibigoshish Bands. The three reservations were to the north of Royce Area 269, near Leech Lake, Cass Lake, and Lake Winnibigoshish. The Pillagers were then removed to their designated reservations.

17. In 1864 the lands were opened for settlement and white settlers entered the area. During the years following settlement of the entire territory there arose certain difficulties concerning the sale of liquor. Federal laws generally prohibited the introduction and sale of liquor in Indian country. And many of the treaties entered into with Indian tribes contained provisions extending liquor prohibitions even to lands ceded by the Indians. On February 2, 1911, the Secretary of the Interior forwarded certain proposed orders to the President which were intended to modify "stipulations in treaties ceding Indian lands, situate within the present boundaries of the State of Minnesota, to the United States, by which stipulations laws of the United States concerning the introduction and sale of liquor in Indian country were maintained in force and effect within the country ceded." (Def. Ex. 1 on rehearing, p. 6). And among the treaties was the 1847 Treaty ceding Royce Area 269, involved in this case.

The Secretary wrote:

The suggested modification marked No. 4 abrogates the provision of the treaty of August 21, 1847 (9 Stat. 908), declaring that the country ceded thereby shall be held by the United States as Indian land until otherwise ordered by the President. This is a small area to the west center of the state outlined in blue coloring.

(Def. Ex. 1 on rehearing, p.8)

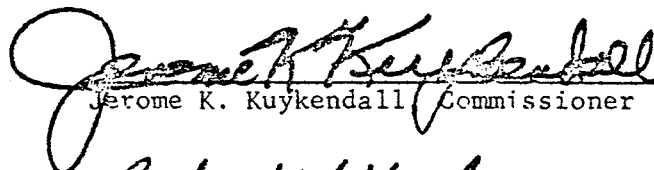
The proposed "modification" was executed in the form of an Executive Order by President Taft as follows:

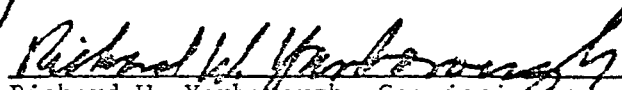
By virtue of the power vested in me by the provisions of article 3 of the treaty of August 21, 1847 (9 Stat. I., 908), it is hereby ordered that the country ceded by the provisions of said treaty shall no longer be held by the United States as Indian land.


The White House, February 16, 1911
Wm. H. Taft

(4 Kappler 1023)


John T. Vance, Chairman


Jerome K. Kuykendall, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner