

BEFORE THE INDIAN CLAIMS COMMISSION

BOIS FORTE BAND, PETER SMITH, CALVIN)
KADUB, WILLIAM JOHNSON, and)
LAWRENCE A. CONNOR,)

Plaintiffs,)

v.)

Docket No. 18-D

THE UNITED STATES OF AMERICA,)

Defendant.)

Decided: June 27, 1969

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The subject claim has been filed by the Bois Forte Band of Chippewa Indians and by four individuals, each of whom is a member by blood and enrolled in the Bois Forte Band.

2. The claim presented in the subject matter relates to the lands which were ceded to the United States by the Treaty of April 7, 1866 (14 Stat. 765, 2 Kappler 916). Those lands are shown as Area 482 by Charles C. Royce on his Minnesota Map No. I in the 18th Annual Report of the Bureau of American Ethnology, Part II, Indian Land Cessions. The lands will hereinafter be referred to as Royce Area 482.

3. This case is now before the Commission on Plaintiffs' Motion for Summary Judgment that the Bois Forte Band of Chippewa Indians was the owner by recognized title of the lands (Royce Area 482) ceded by the Bois Forte

Band of Chippewas to the United States by the Treaty of April 7, 1866, ratified April 26, 1866. This motion was made on the ground that the United States recognized the title of the Chippewas by the Treaty of Prairie du Chien of August 19, 1825 (7 Stat. 272, 2 Kapp. 250), Treaty of Fond du Lac of August 3, 1826 (7 Stat. 290, 2 Kapp. 268), and the Treaty of Butte des Morts of August 11, 1827 (7 Stat. 303, 2 Kapp. 281), the last two supplemental to the 1825 Treaty of Prairie du Chien, and by the entire course of dealings between the United States and the Chippewas.

4. In 1825 Congress appropriated funds for the purpose of holding treaties with the Sioux, Chippewas, Menominees, Sauks and Foxes. The stated purpose was to establish boundaries and promote peace between the tribes. Commencing on August 5, 1825, treaty commissioners General William Clark and Lewis Cass met with seven tribes at Prairie du Chien, Wisconsin. More than 1000 Indians were present, including about 150 Chippewas among whom were principal men of the Lake Superior Chippewa from La Pointe, Fond du Lac, Lac du Flambeau, Lac Court O'Reilles, St. Croix, Sault St. Marie, and Yellow River; representatives of the Chippewas of the Mississippi from Sandy Lake, Mille Lac, Rice Lake and Red Cedar Lake; and representatives of the Pillagers from Leech Lake.

General Clark, after assuring the assembled tribes that the United States was not seeking any of their lands, stated the real purpose of this

treaty council as well as the objectives to be accomplished, as taken from the following excerpts of his opening remarks:

Your Great Father has been informed that war is carried on among his red children. The Sacs, Foxes, and Chippewas on the one side and the Sioux on the other; and that the wars of some of you, began before any of you now living were born . . .

. . . Your Great Father has heard of your war songs and of your war parties. They do not please him. He desires that his red children should bury the Tomahawk and he has sent us here to inform you what are his wishes . . .

Your hostilities have resulted in a great measure from your having no defined boundaries established in your country. Your tribes do not know what belongs to them and your people thus follow the game into lands claimed by other tribes.

This cause will be removed by the establishment of boundaries which shall be known to you and which boundaries we must establish at this council fire.

We therefore propose to you to make peace together and to agree upon fixed boundaries for your country within which each tribe should hunt and over which others shall not pass without their consent. (Pl. Ex. 7, pp. 9, 10; Dkt. 18-T)

Thereafter the several tribal leaders and representatives outlined their territorial claims. Because of the overlaps there was considerable disagreement over proposed boundaries. After further negotiations, these conflicts were compromised and certain boundaries were finally agreed upon.

On August 19, 1825, following fourteen days of negotiation the treaty was concluded between the United States and the Sioux, Chippewas, Sac and Foxes, Iowas, Winnebago, Menominee, and a portion of the Ottawa, Chippewa

and Pottawatomie tribes. Immediately following the signing of the treaty, General Clark told the Indians, "Your Great Father the President of the United States . . . intends to be always upon the different lines which separate your different countries to prevent any bad people from crossing over to do mischief. . . ." (Pl. Ex. 7, p. 25; Dkt. 18-T)

The treaty commissioners reported to the Secretary of War that they had concluded "a Treaty of peace and limits . . . The establishment of equitable boundaries among the tribes was the most difficult part of our task. We will not trouble you with the details of it, but merely observe, that a just compromise between former possessions and more recent conquests, was the basis of the arrangement. All parties were well satisfied, and in fact the boundaries were established among themselves." (Pl. Ex. 8; Dkt. 18-T)

The Commissioner of Indian Affairs reported to the Secretary of War that by the 1825 Treaty "their [the treaty tribes] long and bloody wars have been terminated, and boundaries assigned to them, as the surest guaranty against future hostilities." (Pl. Ex. 10, Dkt. 18-T)

5. The preamble to the Prairie du Chien Treaty recited its purpose:

". . . In order, therefore 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, the United States have invited the Chippewa, Sac and Fox, Menomnie, Ioway, Sioux, Winnebago, and a portion of the Ottawa, Chippewa and Potawatomie Tribes of Indians living upon the Illinois, to assemble together, and in a spirit of mutual conciliation to accomplish these objects; and to aid therein, have appointed William Clark and Lewis Cass, Commissioners

on their part, who have met the Chiefs, Warriors, and Representatives of the said tribes, and portion of tribes, at Prairie des Chiens, in the Territory of Michigan, and after full deliberation, the said tribes, and portions of tribes, have agreed with the United States, and with one another upon the following articles.

Article 2 of the Treaty fixed "the Line between [the] respective countries" of the Sac and Foxes and the Sioux. Article 5 commences, "It is agreed between the Sioux and the Chippewa, that the line dividing their respective countries shall commence . . .". Article 6 provided that, "It is agreed between the Chippewas and the Winnebagoes, so far as they are mutually interested therein, that the southern boundary line of the Chippewa country" should be as described.

However, Article 8 provided that the boundary would be subject to later agreement by the Menominee as to one segment. Article 8 stated,

The representatives of the Menominies not being sufficiently acquainted with their proper boundaries, to settle the same definitively, and some uncertainty existing in consequence of the cession made by that tribe upon Fox River and Green Bay, to the New York Indians, it is agreed between the said Menominie tribe, and the Sioux, Chippewas, Winnebagoes, Ottawa, Chippewa and Potawatomie Indians of the Illinois, that the claim of the Menominies to any portion of the land within the boundaries allotted to either of the said tribes, shall not be barred by any stipulation herein; but the same shall remain as valid as if this treaty had not been concluded. It is, however, understood that the general claim of the Menominies is bounded on the north by the Chippewa country, on the east by Green Bay and Lake Michigan extending as far south as Millwaukee river, and on the West they claim to Black River.

Article 9 described an area of "country secured to the Ottawa, Chippewa, and Potawatomie tribes of Illinois."

Article 10 then provided that the assembled tribes would acknowledge the general controlling power of the United States, disclaiming any dependence or connection with any other power. "And the United States agree to, and recognize, the preceding boundaries, subject to the limitations and restrictions before provided."

It was understood, by Article 13, "that no tribe shall hunt within the acknowledged limits of any other without their assent . . .".

6. The Prairie du Chien Treaty did not settle with finality all of the boundary lines between competing tribes. By Article 11 specific provisions were made for subsequent council, including one in 1826 with the "Yankton band of the Sioux." And by Article 12 there was set forth an agreement with the Chippewa tribe to meet in 1826 at Lake Superior to obtain the assent of the Chippewas in that area.

The anticipated council with the Yankton Sioux did not occur that next year, but a council did convene in 1826 at Fond du Lac, Wisconsin, near Duluth, with twelve bands of Chippewas. Lewis Cass and Thomas L. McKenney, Commissioner of Indian Affairs, were appointed treaty Commissioners.

Governor Cass opened the council with an explanation of the 1825 Treaty of Prairie du Chien and its objectives and the reason for the 1826 council "in the middle of your own country". He stated:

. . . Your Great Father, being very desirous to terminate this War, called together, last year, at Prairie du Chien, the Chippewas, Sioux, Sacs and Foxes, Iowas, Menomnies and Winnebagoes, and after sometime, the Tomahawk was buried, and all the Tribes became friends and shook hands together. In order to prevent any difficulty hereafter, a boundary line was agreed upon, to divide your country from that of the Sioux, . . .

But Prairie du Chien was a long distance from your country, and many of your people were unwilling to go there. Your Great Father has therefore sent us here to state to all your people in the middle of your own country, what was transacted at the Prairie, and to express his wish that it may be faithfully adhered to, on your part. . . .

* * *

We also wish that you would allow Great Father to look through the Country and take such copper as he may find. . . . (Pl. Ex. 19, p. 1; Dkt. 18-T)

A treaty was concluded binding the Chippewas to the Chippewa boundary lines fixed in the 1825 Treaty and stipulating that those lines should be carried out in 1827 with the Menominee and Winnebago. The following bands were parties to the treaty: La Pointe, Ontonogan, Lac du Flambeau, Fond du Lac, St. Croix River, Snake River, Sault St. Marie, Ottoway Lake, Vermillion Lake, Rainy Lake, Crow River and Sandy Lake.

By Article 3 of the 1826 Treaty "The Chippewa tribe grant[ed] to the government of the United States the right to search for, and carry away, any metals or minerals from any part of the country. But this grant is not to affect the title of the land, nor the existing jurisdiction over it."

And in Article 4 "the Chippewa tribe . . . grant[ed] to each of the persons described in the schedule [t]hereunto annexed, being half-breeds and Chippewas by descent . . . six hundred and forty acres . . ."

7. The second treaty supplemental to the Prairie du Chien Treaty was negotiated at Butte des Morts, Wisconsin, in 1827. The same men who concluded the 1826 treaty, Lewis Cass and Thomas L. McKenney, were the

treaty commissioners. The treaty settled the southern boundary of "the Chippeway country" between the Menominee and Winnebago. In Article I the treaty stated "Whereas, the southern boundary of the Chippewa country, from the Plover Portage of the Ouisconsin easterly, was left undefined by the treaty concluded at Prairie du Chien . . .

"Therefore, in pursuance of the said provisions, it is agreed between the Chippewas, Menominies, and Winebagoes, that the southern boundary of the Chippeway country shall run as follows . . ."

In their report on the 1827 Treaty, the treaty commissioners wrote, "The first article requires no explanation. It provides for a final determination of the Chippeway boundary, and so far as regards that tribe, it carries into full effect the principles of the Treaty of Prairie du Chien." (Pl. Ex. 26, p. 1; Dkt. 18-T)

8. The Bois Forte Band was a part of the Chippewas of Lake Superior which entered into the Treaty of September 30, 1854, (10 Stat. 1109, 2 Kapp. 648), ceding Royce 332 to the United States. The "Bois Forte Band" was one of the bands of Chippewas of Lake Superior signatories to that treaty.

The recitations of Article 1 of the 1854 Treaty establish that the Chippewas of Lake Superior and the Chippewas of the Mississippi owned country in common. Article 1 fixed a line dividing the country and by cross-conveyances converted the common ownership of the whole into separate ownerships of separate countries. Both the Lake Superior and Mississippi Chippewas ceded to the United States all their interest east of the dividing

line (i.e., Royce 332), except for reservations, with the entire consideration payable to the Lake Superior Chippewas. (Article 1.) The Chippewas of Lake Superior relinquished to the Chippewas of the Mississippi all of their interest in the land west of the dividing line "owned by them in common." (Article 1.)*

That relinquishment had no application to the Bois Forte Band. Article 12 of the 1854 Treaty, after directing that the Bois Forte Indians receive additional benefits because of the "great extent of that part of the ceded country owned exclusively by them", set out the following proviso:

Provided, That the stipulation by which the Chippewas of Lake Superior relinquishing [sic] their right to land west of the boundary-line shall not apply to the Bois Forte band who are parties to this treaty.

9. By the Treaty of April 7, 1866, the Bois Forte Band of Chippewas ceded its lands, except for two reservations (Royce Areas 483 and 484).

10. The Commission finds that by the action of the Congress of the United States in ratifying the Prairie du Chien Treaty of August 19, 1825, and the further Congressional action in ratifying the Treaties in 1826, 1827 and 1854 (all of which have been set forth herein), the United States did recognize title in the Chippewa Indians to all of the claimed lands.


11. The Commission further finds that said lands were ceded to the United States by the plaintiff Bois Forte Band under the provisions of the

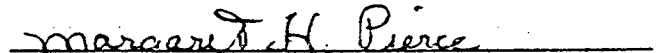
* The following year the United States acquired the land of the Mississippi Chippewas by the Treaty of February 22, 1855, (10 Stat. 1165, 2 Kapp. 685; Royce Area 357).

Treaty of April 7, 1866. By Article 7 of the Treaty it was agreed that upon ratification of the Treaty all former treaties, with certain exceptions, would be abrogated. The Commission finds that the ratification date of the treaty should also be considered the effective date of the cession of Royce Area 482. That date was April 26, 1866. Accordingly, April 26, 1866, was the date of taking of the lands involved.


Jerome K. Kuykerdall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner