

BEFORE THE INDIAN CLAIMS COMMISSION

SAGINAW CHIPPEWA INDIAN TRIBE OF)	
MICHIGAN, A FEDERAL CORPORATION,)	
JAMES STRONG, ELMER B. SIMONDS,)	
AND ISAAC McCOONSE, AS REPRESENTA-)	Docket No. 57
TIVES OF THE SAGINAW, SWAN CREEK)	
AND BLACK RIVER GROUP OR BANDS OF)	
CHIPPEWA INDIANS,)	
Plaintiffs,)	
)	
and)	
)	
RED LAKE BAND, ET AL.,)	Docket No. 18-G
)	
Plaintiffs,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant:)	

Decided: April 1, 1970
Appearances:

James R. Fitzharris, Attorney
of Record, Docket No. 57;
Jay H. Hoag, Attorney of Record,
Docket No. 18-G.

Howard G. Campbell, with whom was
Mr. Assistant Attorney General
Edwin L. Weisl, Jr., Attorneys for
the Defendant.

OPINION OF THE COMMISSION

Chairman Kuykendall delivered the opinion for the Commission.

The claim presented herein is brought under section 2, clause 3, of the Indian Claims Commission Act, 60 Stat. 1049, and is based on an alleged unconscionable consideration paid for lands which were ceded to the United States by the Treaty of September 24, 1819 (7 Stat. 203). Those lands are shown as Area 111 by Charles C. Royce on his Michigan I map 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 111.

Since the plaintiffs in both Docket Nos. 18-G and 57 alleged claims relating to the 1819 cession of Royce Area 111, the cases were consolidated for trial. However, the plaintiffs in Docket No. 18-G did not submit any evidence in support of their claim, and nothing has been presented to even suggest an interest of any of the Docket No. 18-G plaintiffs in the subject matter of the claim herein. In fact, counsel for those plaintiffs stated at the hearing on this case that the proper plaintiffs to this action are the Saginaw Chippewas and that, after the filing of the petition in Docket No. 18-G, subsequent investigation revealed that none of the Indians in Docket No. 18-G was of the Saginaw, Swan Creek or Black River group of Indians. We have concluded from the record in this case that the Saginaw Chippewa Indians were the Chippewa Indians who ceded Royce Area 111 in 1819 and that the plaintiffs in Docket No. 57 are the proper parties to prosecute any claim relating to that cession. Since the Docket No. 18-G plaintiffs are not proper parties herein and none of them have any interest in the subject matter of this suit, the claim presented in Docket No. 18-G will be dismissed.

At the hearings in this matter the plaintiffs in Docket No. 57 presented evidence to support their claim of aboriginal title to Royce Area 111. At the conclusion of the hearing they moved the Commission for appropriate findings and an order determining that they had been

granted recognized title to Royce Area 111. The recognized title claim was based on the Treaty of Greeneville of August 3, 1795 (7 Stat. 49), and the Treaty of September 24, 1819 (7 Stat. 203), ceding Royce Area 111 to the United States. The motion was denied by an order on December 15, 1965, in which the Commission stated that a determination of recognized title would involve factual matters which would be better determined upon full briefs and proposed findings of fact by the parties. We have considered the question of recognized title with respect to Royce Area 111 and have concluded that the plaintiffs in Docket No. 57 did, in fact, possess such title.

The Treaty of Greeneville of August 3, 1795, was a treaty of recognition. Miami Tribe of Oklahoma v. United States, 146 Ct. Cl. 421, 175 F. Supp. 926 (1959). By the terms of that treaty the United States relinquished its claims to the Indian lands within a defined area. The relinquishment was intended to confer on the Indian participants the right to permanently, "as long as they please", occupy the land without interference.

The defendant opposed any determination of recognized title in plaintiffs' favor on the ground that the record does not establish that any of their ancestors, Saginaw Chippewas, signed the Treaty of Greeneville. While it is true that no evidence has been adduced identifying any one of the eleven Chippewa signers of the treaty as a Saginaw Chippewa, we are satisfied that the Saginaw Chippewas did participate in the treaty and are entitled to all the benefits of the treaty.

In Finding of Fact No. 4 we have described in detail the pertinent provisions of the Treaty of Greeneville. In Article IV of the treaty the United States agreed to pay the Chippewas an annuity of \$1,000,00. The records of the United States disclose that a substantial portion of the required annuity payments due the Chippewas under the Greeneville Treaty were in fact disbursed to Saginaw Chippewas. A detailed report of Greeneville Treaty disbursements was prepared by the General Accounting Office and transmitted on December 26, 1933, to the Attorney General of the United States for use in connection with a pending suit by the Saginaw, Swan Creek, and Black River Chippewas in the Court of Claims (See Finding of Fact No. 6). The Commission has on its own motion, made the applicable portions of that report a part of the record in this case as Commission Exhibit 1. The report establishes that from January 1, 1812, to June 30, 1856, the United States disbursed a total of \$44,000.00 in Greeneville Treaty payments to the Saginaw Bands of Chippewa Indians. The United States relied on that report to establish that it had properly disbursed all of the required Chippewa annuities pursuant to the 1795 Greeneville Treaty. The suit was subsequently dismissed on motion of the plaintiffs for nonprosecution.

100 Ct Cl. 570 (1943).

On April 1, 1940, the Mole Lake Band and five other Chippewa bands filed a petition in the Court of Claims (No. 45162). Three additional bands of Chippewas became plaintiffs by intervention in

that suit. None of the plaintiffs in the subject case was involved in the Mole Lake case. Among the causes of action involved in that case were alleged unpaid balances due the plaintiffs therein from the Chippewa portion of the Greeneville Treaty annuities. The defendant filed the same General Accounting Office report in that case to establish that the Chippewa annuities under the Greeneville Treaty had been properly disbursed. The Court of Claims found that the Greeneville Treaty obligations of the United States did not run to any of the Mole Lake case plaintiffs. The Court noted that the United States had disbursed a total of \$44,000.00 in Greeneville Treaty annuity payments to the Saginaw Bands of Chippewa Indians. Mole Lake Band, et al., v. United States, 126 Ct. Cl. 596, 606 (1953).

We have also noted the defendant's position in another consolidated case before the Commission involving Chippewas and the Greeneville Treaty. In Red Lake Band et al., (Docket No. 18-E) and Ottawa and Chippewa Indians of Michigan et al., (Docket No. 58) the defendant, in its proposed findings dealt with the identity of the signers of the Greeneville Treaty. Since we consider the defendant's position in that case to be of some significance to the question now before us, we have made the defendant's "Requested Findings of Fact, etc.," filed on October 21, 1958, Docket Nos. 18-E and 58, a part of the record in this case as Commission Exhibit 2. In those "Proposed Findings", relating to the proper parties and recognized title, the defendant stated.

Finding No. 4

* * * * *

Thus, it clearly appears that the Ottawa and Chippewa nations of Indians of Michigan, as such, were not a party to the Treaty of August 3, 1795 at Greeneville, although both Masass, a Chippewa Chief from Michilimackinac, and Mashipinashiwish or Bad Bird, an Ottawa-Chippewa chief from L'Arbre Croche, did actually sign this treaty as individual Indians.

Of the various autonomous groups of Ottawas and Chippewas, only the Ottawas of Grand River and the Maumee and the Chippewas of the Saginaw were parties to the Treaty of August 3, 1795 at Greeneville.
(Emphasis supplied) (Commission Exhibit 2, pp. 19,20)

Under the particular circumstances of this case, we are convinced that the Saginaw Chippewas were, in fact, participants in the Treaty of Greeneville. The defendant, in disbursing the Chippewa portion of the Greeneville Treaty annuities, considered the Saginaw Bands of Chippewas to be the proper Chippewa Indians to receive the annuity payments promised by the United States. Thus all of the Chippewa portion of the Greeneville Treaty annuities paid after 1812 was disbursed to Saginaw Chippewas. Prior to that time the records of the United States do not reveal the particular bands of Chippewas involved. But no other bands of Chippewas have been listed as payees of any of the annuities. Having consistently maintained that the Saginaw Chippewas were the proper recipients of the annuity disbursements, the defendant cannot now be heard to deny that Saginaw Chippewas were participants in the Greeneville Treaty. In two cases brought in the Court of Claims (one involving the same Saginaw, Swan Creek and

Black River Chippewa plaintiffs as in this case) the United States has interposed the records of Greeneville Treaty annuity payments to the Saginaw Chippewas to demonstrate that the payments required by that treaty had been properly made. In the Mole Lake case the Court of Claims found that no part of the Greeneville Treaty annuities for Chippewas was owing any of the seven Chippewa bands represented therein because those bands had not been parties to the Greeneville Treaty. The Court took notice of the fact that the Chippewa payments had been made, including a total of \$44,000.00 to the Saginaw Chippewas.

Would the defendant now have this Commission hold that the Saginaw Chippewas were not parties to the Greeneville Treaty? If they were not, what of all the annuity disbursements paid to Saginaws in discharge of the treaty obligations? To the contrary, as recently as 1951 the defendant has urged the Commission to find as a fact that the "Chippewas of the Saginaw were parties to the Treaty of August 3, 1795 at Greeneville."

Admittedly we would prefer to base our conclusion that the Saginaw Chippewas were parties to the Greeneville Treaty on evidence positively identifying individual Saginaws at the 1795 Treaty negotiations and specifying which of the signers were of the Saginaw bands. But apparently that is not possible in this case. It is, of course, understandable. The United States chose to consider the Chippewa Nation as the participant at the Greeneville negotiations. There was no effort at that time to identify the individual bands

which might have been involved. Even in the 1819 Treaty of cession the Indians were dealt with as the "Chippewa Nation of Indians," although there is no dispute that the Indians who ceded Royce Area 111 were the Saginaw Chippewas. In this case we find the evidence sufficient to establish that the Saginaw Chippewas were Greenville Treaty participants, and, as such, that band of Chippewas was entitled to all of the recognized title rights granted by the United States under the Greenville Treaty.

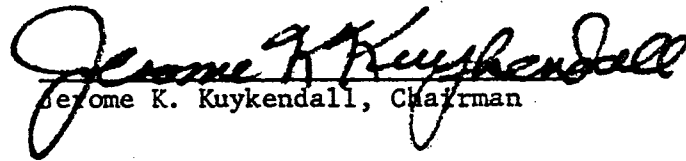
Our conclusion that the Saginaw Chippewa participated in the treaty has been further strengthened by the reference to the Greenville Treaty in Article 5 of the 1819 Treaty. In that article the United States agreed that a stipulation in the 1795 Greenville Treaty would apply to the 1819 Treaty. The stipulation concerned the right of Indians to hunt upon the ceded lands. It is logical to conclude that this provision was included in the Saginaw Chippewa cession because the United States knew it was dealing with the same Chippewas who had participated in the Greenville Treaty.

While the Greenville Treaty recognized the title of the Indian participants, such recognition was subject to a later determination of the precise boundaries of the lands which had been "relinquished to" or recognized in the respective Indian tribes. With respect to the Saginaw Chippewas that was accomplished in 1819 by the treaty which described by metes and bounds the lands which were then ceded to the United States. Thus the Treaty of September 24, 1819, supra,

completed the recognition of the Saginaw Chippewas' title.

By the Treaty of September 24, 1819 supra, the Saginaw Chippewas ceded Royce Area 111. Article 9 of the treaty stipulated that it should become effective upon ratification. However, in the absence of the recorded ratification date, the proclamation date of March 25, 1820, will serve as the date of taking.

Accordingly, this case will proceed to a determination of (1) the acreage of the lands ceded, as described in Article 1 of the 1819 Treaty, less the reservations as described in the treaty; (2) the fair market value of the ceded lands as of March 25, 1820; and (3) the consideration given for the cession of Royce Area 111.


Jerome K. Kuykendall, Chairman

Concurring:

John T. Vance, Commissioner



Richard W. Yarborough, Commissioner



Margaret H. Pierce, Commissioner



Brantley Blue, Commissioner