

BEFORE THE INDIAN CLAIMS COMMISSION

RED LAKE BAND, ET AL., including )  
 the BAY MILLS INDIAN COMMUNITY, ) Docket No. 18-E  
 )  
 AND )  
 )  
 OTTAWA AND CHIPPEWA INDIANS OF )  
 MICHIGAN, ET AL., ) Docket No. 58  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 THE UNITED STATES OF AMERICA, )  
 )  
 Defendant. )

Decided: October 28, 1970

Appearances:

Rodney J. Edwards, Attorney for Docket 18-E Plaintiffs.

James R. Fitzharris, Attorney for Docket 58 Plaintiffs.

David M. Marshall, with whom was Mr. Assistant Attorney General Shiro Kashiwa, Attorneys for Defendant.

OPINION OF THE COMMISSION

Chairman Kuykendall delivered the opinion of the Commission.

On March 13, 1970, plaintiffs filed a motion for a rehearing and for modification of certain Findings of Fact and Opinion which were entered in this matter by the Commission on May 20, 1959 (7 Ind. Cl. Comm. 576).

The findings which plaintiffs seek to have modified concern the determination by the Commission that the Chippewa and Ottawa Indians

held neither original Indian title nor recognized title to Area 113 (St. Martin Islands) and sub-Areas "U" and "S" of Area 205 of Royce's Michigan I Map.

The plaintiffs contend that the Treaty of Greeneville of August 3, 1795 (7 Stat. 49), and the Treaty of July 6, 1820 (7 Stat. 207), ceding Royce Area 113, conferred recognized title in the Chippewas and Ottawas to Royce Area 113. Plaintiffs also contend that the same Greeneville Treaty, supra, and the Treaty of March 28, 1836 (7 Stat. 491), which ceded Royce Area 205, likewise conferred recognized title to all of Royce Area 205, including sub-Areas "U" and "S".

In view of later decisions, we conclude that the title decision of May 20, 1959 (7 Ind. Cl. Comm. 576), was in error and plaintiffs' motion should be granted. The Treaty of Greeneville of August 3, 1795, supra, 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.

In Saginaw Chippewa Indian Tribe of Michigan v. United States, 22 Ind. Cl. Comm. 504 (1970), this Commission ruled that while the Greeneville Treaty recognized the title of the signatory Indian tribes, such recognition was subject to a later determination of 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 by an 1819 treaty which described by metes and bounds the lands which were then ceded to the United States. In the case at bar, recognition was likewise completed by the Treaty of July 6, 1820, supra, which described by name and location the islands which were ceded, and by the Treaty of March 18, 1836, supra, which described by metes and bounds the lands which were ceded to the United States. Sub-Areas "U" and "S" are included within the metes and bounds description of Royce Area 205.

Accordingly, for the reasons set forth above, the plaintiffs' motion is granted and the decision of this Commission of May 20, 1959, supra, regarding title is modified to hold that the Chippewa and Ottawa Indians did have recognized title to Royce Area 113 (St. Martin Islands) and all of Royce Area 205, including sub-Areas "U" and "S".

Finding of Fact No. 8 entered on May 20, 1959, supra, determined that Royce Area 113 contained 1,395 acres of land and that sub-Areas "U" and "S" respectively contained 956,160 and 253,440 acres of land.

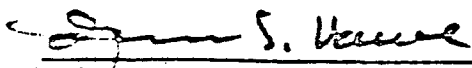
Royce Area 113 was ceded to the United States by the Treaty of July 6, 1820. Article 3 of that treaty provided that it would become obligatory on the contracting parties after its ratification by the President. The Treaty was proclaimed on March 8, 1821, supra, and that date will be used as the effective date of the cession for purposes of valuing the area. Sub-Areas "U" and "S" were ceded to the United States by the Treaty of March 28, 1836, supra, which became effective


on that date.

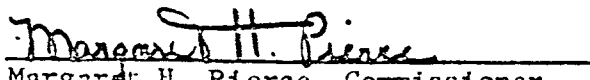
On December 23, 1968, the Commission valued the 12,044,934 acres of land in Area 205 (exclusive of sub-Areas "U" and "S") at \$10,800,000.00 (20 Ind. Cl. Comm. 137), which results in an average of approximately \$0.90 per acre. In its decision of January 14, 1970, the Commission used the \$0.90 per acre amount in determining the value of lands allotted to the Indians (22 Ind. Cl. Comm. 372). Since sub-Areas "U" and "S" are a part of and contiguous to Area 205, it would seem proper that \$0.90 per acre also be used in placing a value on these sub-Areas. If this is agreeable to the parties, a proposed finding to that effect should be submitted for adoption by the Commission. If, however, this is not acceptable the issue of the fair market value of sub-Areas "U" and "S" may be considered at the subsequent hearing on the value of Royce Area 113.

This case will now proceed to the required valuation determinations.

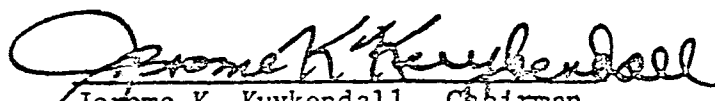
Concurring:

  
 John T. Vance, Commissioner

  
 Richard W. Yarborough, Commissioner

  
 Margaret H. Pierce, Commissioner

  
 Brantley Blue, Commissioner

  
 Jerome K. Kuykendall, Chairman