

BEFORE THE INDIAN CLAIMS COMMISSION

JAMES STRONG, <u>et al.</u> , as the representatives)	
and on behalf of all members by blood of)	Docket No. 13-E
the CHIPPEWA TRIBE OF INDIANS,)	
)	
RED LAKE BAND, <u>et al.</u> ,)	Docket No. 18-L
)	
THE DELAWARE TRIBE OF INDIANS,)	Docket No. 27-E
)	
HANNAHVILLE INDIAN COMMUNITY, <u>et al.</u> ,)	Docket No. 29-D
)	
THE SIX NATIONS, <u>et al.</u> ,)	Docket No. 89
)	
THE OTTAWA TRIBE, and GUY JENNISON,)	Docket No. 133-A
<u>et al.</u> , as representatives of THE)	
OTTAWA TRIBE,)	
)	
LAWRENCE ZANE, <u>et al.</u> , <u>ex rel.</u> ,)	Docket No. 139
WYANDOT TRIBE, <u>et al.</u> ,)	
)	
ABSENTEE DELAWARE TRIBE OF OKLAHOMA,)	Docket No. 202
DELAWARE NATION, <u>ex rel.</u> , W. E.)	
EXENDINE and MYRTLE HOLDER,)	
)	
THE OTTAWA TRIBE, and GUY JENNISON,)	Docket No. 302
<u>et al.</u> , as representatives of THE)	
OTTAWA TRIBE,)	
)	
THE SENECA-CAYUGA TRIBE OF OKLAHOMA,)	Docket No. 341-C
and PETER BUCK, <u>et al.</u> , members and)	
representatives of members thereof,)	
)	
Plaintiffs,)	
)	
POTAWATOMI INDIANS OF INDIANA AND)	Docket No. 29-D
MICHIGAN, INC.,)	
)	
Intervenor,)	
)	
JAMES STRONG, <u>et al.</u> , as the represen-)	Docket No. 13-F
tatives and on behalf of all members)	
by blood of the CHIPPEWA TRIBE OF)	
INDIANS,)	
)	
THE POTTAWATOMIE TRIBE OF INDIANS, THE)	Docket No. 15-I
PRAIRIE BAND OF THE POTTAWATOMIE)	
TRIBE OF INDIANS, <u>et al.</u> ,)	

Allan Hull, Attorney for Plaintiffs
in Dockets 133-A, 133-C and 302.

Robert S. Johnson, Attorney for
Plaintiffs in Docket 15-I.

Paul G. Reilly, Attorney for Plaintiffs
in Dockets 89, 341-C and 341-D.

Louis L. Rochmes, Attorney for Plaintiffs
in Dockets 27, 27-E, 202 and 308.

James M. Upton, with whom was Mr.
Assistant Attorney General Wallace
H. Johnson, Attorneys for Defendant.

OPINION ON MOTIONS FOR REHEARING IN DOCKETS 341-C AND 341-D

Blue, Commissioner, delivered the opinion of the Commission.

On June 19, 1973, the plaintiffs in the above-captioned Dockets 341-C and 341-D, the Seneca-Cayuga Tribe of Oklahoma, et al., filed the following motions:

1) a motion for rehearing in Docket 341-D of the Commission's order entered in the cases consolidated under the above-captioned Docket 13-F on May 23, 1973, at 30 Ind. Cl. Comm. 370-71, dismissing the plaintiffs' claim in said Docket 341-D; and

2) a motion for extension of time to file for rehearing in Docket 341-C of the Commission's order entered in the cases consolidated under the above-captioned Docket 13-E on April 4, 1973, at 30 Ind. Cl. Comm. 37-38, dismissing the plaintiffs' claim in said Docket 341-C.

On July 5, 1973, the Commission entered an order, at 31 Ind. Cl. Comm. 11-12, in the cases consolidated under the above-captioned Docket 13-E, denying the plaintiffs' motion under Docket 341-C for an extension

of time to file for rehearing on the grounds that, as explained in said order, the motion was procedurally defective and unnecessary. At the same time the Commission ordered that the June 19, 1973, motion under Docket 341-C be deemed to constitute a motion for rehearing under Docket 341-C filed as of July 5, 1973, and that the parties would have fifteen days from the date of the entry of the order to file responses to the motion for rehearing as is provided in Rule 33(c) of the Commission's General Rules of Procedure, 25 C.F.R. § 503.33(c).

Responses in opposition to the motions for rehearing were filed on July 9, 1973, by the Chippewa plaintiffs in Dockets 13-E and 13-F, the Shawnee plaintiffs in Docket 64-A and the Wyandot plaintiffs in Dockets 139 and 141. The defendant responded in opposition on July 20, 1973.

The Seneca-Cayugas contend in these motions for rehearing that the findings of fact and conclusions of law upon which were based the orders dismissing both Dockets 341-C and 341-D were erroneous insofar as was found that the Indian who signed the Treaty of Greeneville, August 3, 1795, 7 Stat. 49, 54, as "Reyn-tue-co, (of the Six Nations, living at Sandusky)" signed with and as a representative of the Delawares and insofar as was concluded that the predecessors of the Seneca-Cayuga Tribe of Oklahoma, et al., were not signatories to the 1795 Treaty of Greeneville and acquired no rights thereunder. See Dockets 13-E, et al., 30 Ind. Cl. Comm. 8, at 12, 27, 35, and Dockets 13-F, et al., 30 Ind. Cl. Comm. 337, at 345, 359, 368.

The evidence submitted with the motions and relied upon to support the motions consists of a photostatic copy of the original handwritten

1795 Treaty of Greeneville and portions of the minutes of the treaty proceedings. The photostatic copy of the original handwritten treaty has not been introduced as evidence in either Dockets 13-E, et al., consolidated or Dockets 13-F, et al., consolidated, but is in evidence in other cases before the Commission; namely, Dockets 315, et al., consolidated, as defendant's Exhibit No. A-602, and Dockets 13-G, et al., consolidated, as defendant's Exhibit No. 538. Portions of the minutes of the 1795 Greeneville Treaty have been admitted into evidence in Dockets 13-E, et al., consolidated, as defendant's Exhibit No. A-252, and in Dockets 13-F, et al., consolidated, as defendant's Exhibit No. B-221. The complete minutes of the treaty are in evidence in Dockets 13-G, et al., consolidated, as defendant's Exhibit No. 31. By the accompanying order and in connection with its consideration of these motions for rehearing, the Commission has, on its own motion, admitted into evidence in these proceedings the photostatic copy of the handwritten 1795 Greeneville Treaty (Def. Exh. A-602, Dockets 315, et al.) and the complete minutes of the Greeneville Treaty proceedings (Def. Exh. 31, Dockets 13-G, et al.)

The Seneca-Cayugas assert that this evidence demonstrates that the plaintiffs' predecessors in interest participated in the 1795 Greeneville Treaty and signed the same in their own right independent of the Delawares.

This contention on motion for rehearing would appear to be at variance with the prior stated position of the Seneca-Cayuga Tribe of Oklahoma, et al., as it was set forth in said plaintiffs' proposed findings of fact, filed herein on March 2, 1970. There, plaintiffs proposed the following finding of fact:

RECOGNITION OF THE INDIAN TITLE

Finding 8

The Greenville Treaty

All the tribes named in the cession treaties referred to above, */ except the Senecas, were also named as parties to the treaty of Greenville concluded August 3, 1795. However the 'Six Nations of Sandusky' were present at the treaty proceedings and 'Reyn-tu-co, of the Six Nations living at Sandusky' signed the treaty. *** The possession of this territory the United States guaranteed to the participating tribes. ***

As evidence in support of this proposed finding the plaintiffs cited certain excerpts from the minutes of the proceedings at the 1795 Greenville Treaty and the Statutes at Large version of the treaty itself, including specifically the signature page.

A difference does exist between the signature page of the handwritten copy of the 1795 Greenville Treaty (Attachment A) and the signature page as printed in the Statutes at Large (Attachment B). In the Statutes at Large, published in 1846, the signature page, 7 Stat. at 54, reads, insofar as here pertinent, as follows:

Delawares of Sandusky

Haw-kin-pum-is-ka
 Pey-a-mawk-sey
 Reyn-tue-co, (of the Six Nations, living
 at Sandusky)

*/ These treaties are the treaty of July 4, 1805, 7 Stat. 87, under which Royce Areas 53 and 54, which were the subject of the claims in Dockets 13-E, et al., consolidated, were ceded to the United States; and the Treaty of September 29, 1817, 7 Stat. 160, under which Royce Areas 87 and 88, which was the subject of the claims in Dockets 13-F, et al., consolidated, were ceded to the United States.

The Statutes at Large divided the remaining signers in the same manner; i.e., an italicized heading for the name of the tribe or group, followed by a list of the signers belonging to that tribe or group.

In the handwritten copy, the mark of each Indian appears in columnar form, and to the left of each mark is written the signer's name. Immediately to the left of the name is a vertical bracket which bracket encloses varying numbers of names included within the top and bottom arms of the bracket. The top and bottom arms of each bracket merge with the opposite arms of adjoining brackets to form one line. To the left of each bracket is written vertically the name of a tribe or group, thus indicating that each of the signers within a particular bracket were members of that tribe or group. Above and below the vertical name of each tribe or group is a double line.

Reyntueco made his mark at the bottom of the left-hand column of signers. There appears to be no dispute that he was the last Indian to sign the treaty. To the left of his mark is written "Reyn-tue-co (of the Six Nations living at Sandusky)". There is no bracket to the left of his name nor is there a tribal designation written vertically in the margin to the left of his name. Above his name enclosed by brackets are the marks and names of two Indians to the left of whose names is written vertically "Delawares of Sandusky." Below this vertically-written tribal designation is a double line. Reyntueco's is the only name on the signature page not bracketed with a tribal designation written in the margin next to it.

The Commission's decision that Reyntueco signed the 1795 Greenville Treaty as a Delaware was based upon the version of the treaty printed in the Statutes at Large. The Commission has previously held, in the case cited in the instant motions for rehearing as one of those cases where the handwritten copy of the treaty was in evidence, that the "*** Treaty of Greenville ***", appeared to and was understood by the signatories as it now appears in the Statutes at Large." See Peoria Tribe v. United States, Dockets 99, et al., 16 Ind. Cl. Comm. 574, 580 (1966). Furthermore, until the filing of these motions for rehearing the handwritten copy of the treaty was never introduced as evidence in these proceedings, nor did the Seneca-Cayugas seriously dispute the classification of Reyntueco as a Delaware signer based upon the Statutes at Large version of the treaty. The Seneca-Cayugas' assertion was limited to the fact that there were Six Nation Indians (Mingoes) at the treaty proceedings (as the minutes of the treaty proceedings show) and that one of them apparently signed the treaty. However, the silence of the Seneca-Cayugas regarding the inclusion of Reyntueco with the Delawares of Sandusky on the signature page in the Statutes at Large was persuasive of their inability to refute the conclusion, reasonably to be drawn from the Statutes at Large version, that he signed the treaty as a Delaware.

We have considered the motions for rehearing and the evidence on which they are based and our conclusion is that the motions should be denied. The evidence so relied upon by the Seneca-Cayugas does not persuade us that a rehearing will serve any purpose in bringing to

light any matters of which the Commission is not already apprised. The distinction in format between the signature pages will not, in light of the other evidence available to and considered by the Commission, support the proposition now urged in the motions for rehearing that Reyntueco signed, not as a Delaware, but rather as a representative of the Six Nations of Sandusky in their own right independent of the Delawares. Furthermore, references to the "Six Nations", "Six Nations of Sandusky" and "other Indians of Sandusky" in the minutes of the Greeneville Treaty proceedings do little to support plaintiffs' argument. The scattered references (Def. Exh. 31, Dockets 13-G, et al., at 566, 567, 568, 570, 571, 575, 577 and 578) show at best that a few Six Nation Mingoes attended the treaty but the minutes taken as a whole show clearly that neither the Indians nor Wayne accorded them the status of contracting parties.

Our findings and conclusions previously entered with respect to the Seneca-Cayugas' predecessors were based upon the language of Greeneville Treaty, including the absence of any reference in the preamble or text thereof to the Six Nations or Mingoes. The treaty preamble recites those tribes considered contracting parties. At the conclusion of the text of the treaty it is specifically stated that it was "*** the Sachems and War-Chiefs of the before-mentioned Nations and Tribes of Indians" (7 Stat. at 53; emphasis added) who signed the treaty.

In the case of Sac and Fox Tribe v. United States, 161 Ct. Cl. 189, 195 (1963), cert. denied, 375 U.S. 921 (1963) (aff'g Docket 83, 7 Ind. Cl. Comm. 675 (1959)), the Sac and Fox Tribe contended they were accorded recognized title to certain lands by virtue of the 1795 Greeneville Treaty. Although the instant case differs on its facts from the Sac and Fox case in that the Sacs and Foxes were admittedly not even present at the Greeneville Treaty proceedings, the following language of the Court in that case is, we believe, equally applicable as a statement of why we concluded here that the plaintiffs' predecessors were not contracting parties under the Greeneville Treaty. The Court there said:

*** Under its terms, only the named tribes were to be bound or benefited. The preamble recites that the federal representative met with the agents of 'the said tribes of Indians' (referring to the twelve signatory tribes) and agreed upon a treaty which, when ratified, was to be binding on the United States 'and the said Indian tribes' (emphasis added). The reconfirmed boundary was designated as the line 'between the lands of the United States, and the lands of the said Indian tribes'; the ceded lands were given up by the 'said Indian tribes'; certain rights of passage for United States citizens were allowed by 'the said Indian tribes'; trade was to be opened with 'the said Indian tribes'; the United States and 'the said Indian tribes' forbade private revenge or retaliation; and previous treaties between the United States and 'the said Indian tribes, or any of them' were to become void (emphasis added). The United States, as its major concession, relinquished territorial claims 'in consideration of the peace now established and of the cessions and relinquishments of lands made *** by the said tribes of Indians'; and a payment was made 'to the said Indian tribes,' with specified annual allowances to be paid in the future to the twelve signatories by name (emphasis added).

Just as the Sacs and Foxes were not one of "said" tribes so neither, as the treaty language shows, were the plaintiffs' predecessors.

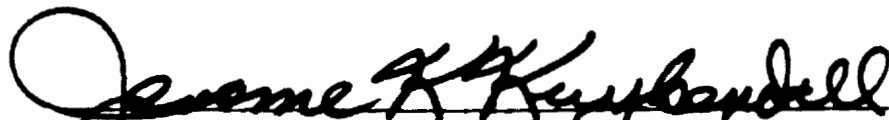
For all of these reasons, we believe that despite the differences in format between the handwritten and printed versions of the treaty, Reyntueco "of the Six Nations, living at Sandusky" signed the treaty, along with those other Sandusky Indians who signed immediately before him, as one of the "Delawares of Sandusky." We further continue to believe, for the reasons stated above, that the plaintiffs' predecessors were not signatories to the 1795 Greeneville Treaty.

The accompanying order therefore denies the motions by the Seneca-Cayugas for rehearing in Dockets 341-C and 341-D.



 Brantley Blue, Commissioner

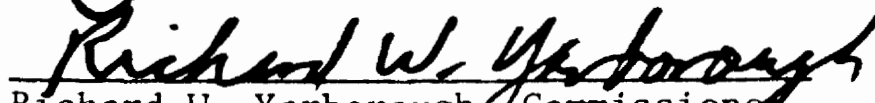
We Concur:



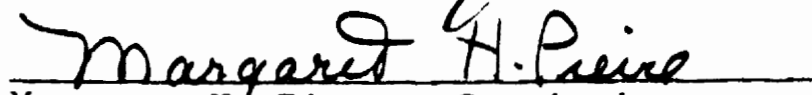
 Jerome K. Kuykendall, Chairman



 John T. Vance, Commissioner



 Richard W. Yarborough, Commissioner



 Margaret H. Pierce, Commissioner

TREATY WITH THE WYANDOTS, ETC. 1795.

Chippewas.

Mash-i-pi-nash-i-wish, (or Bad Bird)
 Nab-sha-ga-she, (from lake Superior)
 Ka-tha-wa-aung,
 Ma-asa,
 Ne-me-kaw, (or Little Thunder)
 Pa-shaw-kay, (or Young Ox)
 Nan-guey,
 Mee-ne-toh-gee-sogh,
 Pee-wan-ehc-mo-nogh,
 Wey-nse-gwas,
 Got-mo-a-tich,

Ottawa.

Che-go-nickaka, (an Ottawa from Sandusky)

Potawatames of the River Saint Joseph.

Thu-pe-ne-bu,
 Naw-ac, (for himself and brother A-si-me-the)
 Ne-nan-ac-ka,
 Kee-asa, (or Sun)
 Ka-ba-ma-saw, (for himself and brother Chi-sau-gan)
 Bug-ga-nunk,
 Wap-me-ne, (or White Pigeon)
 Wa-che-nwa, (for himself and brother Pe-da-go-shok)
 Wah-sbi-c-w-usw,
 La Chasse,
 Ma-she-ge-the-nogh, (for himself and brother Wa-wa-ack)
 Hin-go-swash,
 A-ne-wa-saw,
 Naw-bulgh,
 Mia-se-no-go-maw,
 Wa-we-eg-she,
 Thaw-me, (or le Blanc)

In presence of, (the word "goods" in the 5th line of the 3d article; the word "before" in the 26th line of the 3d article; the words "five hundred" in the 13th line of the 4th article; and the word "Piankashaw" in the 14th line of the 4th article, being first interlined.)

H. De Butte, first A. D. C. and Sec'y to M. G. Wayne. Wm. H. Harrison, Aid-de-camp to M. G. Wayne. T. Lewis, Aid-de-camp to M. G. Wayne. James O'Hara, Quarter-Master Genl. John Mills, Major of Infantry, and Adj. Genl. Caleb Swan, P. M. T. U. S. Geo. Deuster, Lieut. Artillery. Vign. P. frs La Fontaine, Ant. Lasselle. H. Lasselle. Jn. Beau Beau. David Jones, Chaplain U. S. L. Lewis Deufait. R. Lachambre, Jas. Peppen. Baticu Coutien. P. Navarre.

Sworn Interpreters.

Wm. Wells, Jacques Lasselle, M. Morins, Et. Sans Crainte, Christopher Miller, Robert Wilson, Abraham x William, Isaac x Zane.

To the Indian names are subjoined a mark and seal.

Ge-e-que, (for himself and brother Sho-win-ee)

Potawatames of Huron.

O-ki-a,
 Cha-mung,
 Se-ga-go-wan,
 Na-naw-me, (for himself and brother A-gin)
 Mar-chaud,
 Wa-na-mo-ac,

Miamis.

Na-goh-quan-gogh, (or La Gris)
 Ma-she-kun-nogh-quob, (or Little Turtle)

Miamis and EtL-River.

Pee-joo-wa, (or Richard Ville)
 Coch-ke-pogh-togh,

EtL-River Tribe.

Sha-mo-kun-ne-ee, (or Soldier)

Miamis.

Wa-pa-man-gwa, (or the White Loon)
 Wee'a, for themselves and the Piankashaws.

A-ma-cun-aa, (or Little Beaver)
 A-coo-la-tha, (or Little Fox)
 Francis,

Kickapoes and Kaskaskins.

Kee-aw-hah,
 Ne-nugh-ka, (or Josee Renard)
 Pai-kee-ka-nogh,

Delawares of Sandusky.

Haw-kin-pum-iz-ka,
 Pey-a-mawk-ary,
 Reyn-tue-co, (of the Six Nations, living at Sandusky)