

I

On October 10, 1968, the Commission held that as of the time of the Treaty of August 21, 1847, 9 Stat. 908, proclaimed on April 7, 1848, the Pillager Bands of Chippewa Indians were the owners of Royce 269 by recognized title. The Commission also held that the valuation date for the subject lands, ceded to the defendant by the 1847 Treaty, was April 7, 1848. It was directed that the case proceed to a determination of the acreage and fair market value of the ceded lands, as well as the value of the consideration paid plaintiffs for the land. 19 Ind. Cl. Comm. 500 (1968).

On October 21, 1968, plaintiffs filed a motion requesting that the Commission reconsider its determination concerning the valuation date, asserting that the proper date was February 16, 1911, the date of a presidential decree which provided that Royce 269 was no longer to be held by the defendant as Indian land. On May 20, 1969, the Commission determined that the presidential decree was issued not for the purpose of taking the lands of the plaintiffs but in connection with clarifying certain ambiguities in legislation which controlled the use of alcoholic beverages in the state. The Commission reaffirmed that April 7, 1848, was the proper valuation date in this matter, and the motion for reconsideration was denied. Pillager Bands of Chippewa Indians v. United States, Docket 144, 21 Ind. Cl. Comm. 1, 13 (1969). The decision concerning the valuation date was affirmed upon appeal by the Court of Claims. 192 Ct. Cl. 698, 428 F.2d 1274 (1970).

II

Royce 269 consists of 814,500 acres of land and water in the west central part of the present State of Minnesota. The tract is bounded

on three sides by rivers and lakes, including the Leaf and Crow Wing Rivers on the north, and the Long Prairie River and a series of lakes on the eastern and southern boundaries. The western boundary is a straight line running from the south end of Otter Tail Lake, south to the lakes which are situated immediately west of the Long Prairie River. There are parts of four Minnesota counties in the subject lands: Todd, Otter Tail, Douglas and Wadena. The land area, of 798,000 acres, includes 74,124 acres of pineland; 423,876 acres of northern hardwoods; 270,000 acres of oak and oak openings; and 30,000 acres of prairie land. The climate of Royce 269 made it suitable for habitation, for timber operations, and for agriculture. As of 1848, Royce 269 was frontier country. Most of the population in Minnesota (aside from that in the Red River Valley to the northwest) was located in the southeast portion of the state.

III

Water transportation for small craft was available along the Leaf and Long Prairie Rivers which flow into the Crow Wing River. The Crow Wing, flowing east, joins the Mississippi River a few miles east of Royce 269. Roads were little more than trails in 1848. The primary trails near Royce 269 included (1) one running along the Mississippi River north from St. Paul to the Crow Wing River, (2) a trail starting at the Crow Wing River and running a short distance by that river, then traversing west to Otter Tail Lake, and (3) one starting at St. Cloud, reaching the Sauk River, traveling along the Sauk River and passing west of Otter Tail Lake. One of the primary trails, north and south, ran all the way from St. Paul to Pembina in the Red River Valley, near Canada.

In 1847 plans were outlined for the construction of two railroads in Minnesota, one from Lake Superior and one from St. Paul, to meet at the Red River at a point near Fergus Falls, Minnesota. Thus, by 1848 it was known that railroad transportation would be instituted in Minnesota. Between 1853 and 1857 the Minnesota territorial legislature chartered 27 railroads but most of them failed in the general financial panic of 1857. The first railroad began operations in 1862 as a ten mile stretch between St. Paul and St. Anthony Falls.

IV

In 1848 the prime money markets were located in Boston, New York and Philadelphia but frontier funds were only remotely related to the eastern money markets. At that time Minnesota did not fully follow a money economy, being dependant in large part upon barter or credits for commodities. From 1849 to 1857, when Minnesota was a territory, the legal rate of interest was 5 percent a month or 60 percent a year. The prevailing rate for commercial loans was 3 percent a month and the rate increased to 5 percent a month if the note was not paid at maturity.

V

In 1848 white pine, an all purpose timber of high quality, was the primary type of lumber in demand. Large areas of pine were found in the north-central and northeastern parts of Minnesota, including Royce 269. The pine of Royce 269, in the northeastern part of the tract, was near important streams, and the entire area was drained by the Mississippi River. Thus, pine logs from Royce 269 could be sent to sawmills and

lumber markets at or near locations on the Mississippi such as St. Anthony (Minneapolis) and St. Paul.

Approximately 70 percent of Minnesota was forest land in 1848, and the state was in an excellent location to supply markets in comparatively treeless states west and south. At that time mills were developing at many points along the Mississippi, south of Minnesota. As early as 1840 logs were transported down the Mississippi from pineries both south and east of Royce 269, including the St. Croix Delta.

The first saw mill in Minnesota was constructed in 1820 by military personnel at Fort Snelling, near Minneapolis. Commercial lumbering began in 1839 at Marine on the St. Croix River, near the present-day Minnesota-Wisconsin boundary. At the time of the 1847 cession one of the primary lumber centers in Minnesota was Stillwater, whose mill had begun operations in 1844. The mill at Stillwater acquired logs mostly from pineries at or near the St. Croix River in the St. Croix Valley, an area which had been ceded by the Chippewa in 1837. The St. Croix River joins the Mississippi River a few miles south of Minneapolis and St. Paul, along the boundary between Wisconsin and Minnesota. St. Anthony, located on the Mississippi River, also became a lumber center with log stocks then coming primarily from the timberlands in the Rum River area, also ceded in 1837. By 1856, there were eight mills in operation at or near St. Anthony Falls which depended largely upon log stocks from points north along the Mississippi River. In 1857, St. Anthony exported 3 million board feet of lumber and 31 million board feet of logs. By 1858 the St. Anthony mills had a capacity of 60 million board feet of lumber per year.

VI

Of the 798,000 acres of land in Royce 269, there were 723,876 acres of agricultural land, including the prairie, land in oak openings, hardwood forest areas and bottom land, all interspersed with lakes and swamps. The 423,876 acres of hardwood forests and 270,000 acres of oak and oak openings required clearing before farming operations could begin. However, the settlers often sought the forested areas because they believed that the presence of hardwoods indicated that the land was good agricultural soil. Additionally, the trees provided timber for fuel and construction, and the settlers could work their farms during the productive season and clear the woods or construct improvements during the winter season. The productive soil of the prairie did not require time-consuming and expensive tree clearing.

Agricultural development in Minnesota in 1848 was in its infancy. The 1850 Census listed a total improved and unimproved farming area of 28,881 acres in the state, including only 5,035 acres under cultivation. The number of farmers was placed at 340, nearly all in southern Minnesota. General Land Office surveying notes disclosed a listing of a few scattered farms around St. Cloud, Long Prairie, Wadena, St. Croix Valley, and Sauk Center.

While the areas of land under cultivation in Minnesota tripled to 15,000 acres by 1855, primary food commodities such as wheat, corn and similar products were imported by river steamer from areas south of the state. It was not until 1854 that the first commercial flour mill was established at the Falls of St. Anthony (Minneapolis); and it was not

until 1858 that the first milled flour was exported from Minnesota. Thus, farming activities in Minnesota were extremely limited in 1848. In the 1860's and 1870's, with the introduction of railroads and an increasing population, farming operations grew substantially.

VII

Following the 1847 treaty when the plaintiffs ceded Royce 269 to the defendant, the United States made a treaty with the Menominee Indians on October 18, 1848, 9 Stat. 952, whereby the subject tract was ceded to the Menominee Indians in exchange for the land of the Menominees in Wisconsin. However, the Menominees refused to leave Wisconsin or occupy Royce 269. Thereafter, by treaty of May 12, 1854, 10 Stat. 1064, the subject land was receded by the Menominees to the United States. Accordingly, the tract continued to be Indian land until 1854 when the United States reacquired the land from the Menominees. However, it was not opened for white settlement until 1864.

VIII

The first public sales of pinelands in the St. Croix Delta in Minnesota occurred in July 1848. From July to September 1848 there were only 9,098 acres sold for cash, but approximately 14,700 acres were sold in 1849 through the use of military warrants. Land warrants, with a face value of \$1.25 per acre, were issued by the Federal Government to war veterans. The warrants could be utilized to purchase land in the public domain. The veterans often chose to sell the warrants, and when large numbers were simultaneously placed on the market, purchasers were able to acquire the warrants at prices much less than the face value. About 70 percent of the 5,859,000 acres

of public land sold in Minnesota between 1848 and 1858 were purchased with military warrants which had been acquired at discounts ranging from 40 cents to 90 cents an acre. Some ten years were required to sell about 1.3 million acres of pineland in the St. Croix Delta, of which 415,146.63 acres brought \$1.25 per acre cash and 692,542 acres were purchased for substantially less than \$1.25 by the warrant system .

The Stillwater or Cambridge Land District included territory east and north of the Mississippi River. In 1853 the St. Cloud Land District was created from the western part of the Stillwater or Cambridge District, which was then adjacent to but later, in 1854, included the subject tract. Between 1853 and 1857 a total of 339,754 acres were sold, of which 101,154 acres were sold for cash at \$1.25 per acre and 238,600 acres were sold for warrants.

In addition to the military warrant, there was also state scrip which was issued under the Morrill Land Grant College Act, 12 Stat. 503 (1862). It also had a face value of \$1.25 per acre. The scrip was issued to various eastern states which had insufficient public land to participate in and receive the proceeds of public land sales. Under the Act those states were given a certain amount of scrip, in accordance with their representation in the United States Congress, which scrip could be used for the purchase of land in the public domain. Many states glutted the market by simultaneously offering their scrip and, as a result, the price was depressed. In 1865 and 1866, Mr. Ezra Cornell, founder of Cornell University, used scrip to acquire approximately 500,000 pineland acres in Wisconsin and about 10,000 pineland acres in Minnesota for prices ranging from 50¢ to 60¢ an acre.

IX

In testifying for the plaintiffs, Mr. Harlan Dixon, Mayor and Realtor of Clarissa, Minnesota, described the soil in Royce 269 as superior to that in an adjoining tract, Royce 268, as well as in many other areas within the state. Mr. Dixon submitted no appraisal report or other supporting evidence, such as sales data, historical or economic studies, to establish the 1848 fair market value of land in the subject tract, or in Royce 268, or of other land to which he made reference. The testimony of Mr. Dixon with respect to asserted present day values of land in Minnesota cannot furnish a basis for findings to establish the fair market value of Royce 269 in 1848.

The plaintiffs introduced in evidence a portion of an appraisal report prepared by Mr. Robert Nathan, an economist, concerning the fair market value of the adjoining land, in Royce 268. That land was the subject of a claim by the Chippewa Indians of the Mississippi River and Lake Superior (Docket 18-T), and Mr. Nathan appeared as an expert witness in that case. However, Mr. Nathan did not testify in this case, and plaintiffs have not proposed any findings based on his report.

X

Defendant's appraiser was Bernard C. Meltzer, a real estate appraiser and counselor. He used three approaches in valuing Royce 269, and in finding 31 we have detailed his methods. Since there were no market transactions for Royce 269 in 1848, Mr. Meltzer first chose certain sales

made by the Federal Government, the State of Minnesota, and the railroads, all of which had been made several years after the value date herein. He discounted those sales to 1848 to arrive at an average price per acre of \$.2425. Thus he computed that the 814,500 acres had a total value of \$203,625.00 in 1848.

The second method emphasized the land cover including pinelands, northern hardwoods, prairie, oak openings, and land under water. He considered two primary potential uses of the land--as timberland or agricultural land. Mr. Meltzer came to the following conclusions with respect to the 814,500 acres in Royce 269:

<u>Type of Land</u>	<u>Acreage</u>	<u>Price per acre - 1848</u>	<u>Value</u>
Pineland	30,000	\$ 1.00	\$ 30,000.00
Prairie	30,000	.50	15,000.00
Northern hardwoods	446,000	.15	66,900.00
Oak openings	270,000	.25	67,500.00
Jackpine	22,000	.25	5,500.00
Water	16,500	Nominal	- - -
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Totals	814,500		\$184,900.00

Mr. Meltzer's third method was a refinement of the first two methods and was based not only on physical characteristics such as land cover but to factors such as location of prairie or farmland to trails or crude roads, location or distance of pinelands to waterways, and closeness of the acreage to possible rights of way of railroads to be

constructed. Using the sales data with similar methods of analysis and discounting back to 1848, the following refinements were reached by

Mr. Meltzer:

<u>Type of Land</u>	<u>Acreage</u>	<u>Price per Acre</u>	<u>Value</u>
Pineland (readily accessible)	13,000	\$1.25	\$ 16,250.00
Pineland (less accessible)	17,000	.85	14,450.00
Prairie (close to transportation)	5,000	1.00	5,000.00
Prairie (more remote)	25,000	.40	10,000.00
Oak Openings	270,000	.20 to .50	65,000.00
Northern Hardwoods (favorably situated)	111,000	.20	22,200.00
Northern Hardwoods (less marketable locations)	335,000	.15	50,250.00
Jackpine	22,000	.25	5,500.00
Water	<u>16,500</u>	.05	<u>825.00</u>
	814,500		\$189,475.00

Thus, considering the three methods, Mr. Meltzer reached an overall average of \$192,833.00, or approximately 23.5¢ an acre as the 1848 fair market value of Royce 269.

XI

Royce 269 was, in 1848, a tract which possessed desirable land for both commercial lumbering and farming. We have found that of the 798,000 acres of land in the area, 74,124 acres had a highest and best use for

commercial lumbering while the remaining 723,876 acres were best suited for agricultural uses.

Unlike most other cases before this Commission, Royce 269 was not acquired from the Indians for the purpose of opening additional lands for white settlement. Rather, the lands were to be used for the settlement of Menominee Indians, and it was not until 1864, some sixteen years after the valuation date, that the subject area was available for entry by white settlers. In such cases the absence of white settlement and disposition of the land cannot be taken as an indication of a lack of any demand for the lands. In arriving at a market value for Royce 269 the Commission has considered a situation in which it is assumed that the land was available for settlement and commercial lumbering in 1848, disregarding the fact that the 1847 treaty provided for a continued use of the area by Indians.

In 1848 the area to the south was experiencing rapid growth. There was an increasing demand for lumber, and the relatively treeless states to both the south and west represented expanding markets for lumber from Minnesota. Royce 269 was favorably located on rivers and streams which led to the Mississippi River, a principal means for getting logs to sawmills and the lumber markets. We have found that 74,124 acres of Royce 269 were pinelands and a source of commercial lumber. We agree with Mr. Meltzer's opinion that readily accessible pineland was worth about \$1.25 an acre in 1848. However, we consider that there was considerably more accessible pineland than did Mr. Meltzer,

and our ultimate conclusion as to the fair market value of the tract reflects this view.

The remaining 723,876 acres of land in Royce 269 were best suited for agricultural uses. Of this land, the 30,000 acres of prairie land were the most valuable. The oak and oak openings, which covered 270,000 acres, and the hardwood forested areas of 423,876 acres were not as desirable. This type of land represented about 85% of that in Royce 269. Although it was much less valuable, we do not agree with the low figures of \$.15 to \$.25 per acre used by Mr. Meltzer. While these lands required clearing, they were not overlooked by the early settlers who considered the presence of trees as evidence of the soil's fertility. The timber also provided material for building houses and fences and as fuel. While this area of Minnesota was largely frontier land and farming was in its infancy in Minnesota, the subject tract was favorably located with respect to water transportation. There was the prospect of rail transportation. And the climate was favorable for habitation and the growing of crops.

Based upon the evidence of record, as reflected in our findings, the Commission concludes that Royce 269 had a fair market value of \$425,000.00, as of April 7, 1848. This represents an overall average value of about 52 cents an acre for the entire 814,500 acre tract.

XII

The parties are in agreement that the consideration paid by defendant for the cession of Royce 269 was \$19,706.94. This is the total amount

expended under Article 4 of the 1847 treaty, supra, as set forth in finding 34.

The payment of consideration in the amount of \$19,706.94 for lands having a fair market value of \$425,000.00 was so grossly inadequate as to render that consideration unconscionable within the meaning of clause 3, section 2 of the Indian Claims Commission Act, 60 Stat. 1049, 1050.

XIII

The gratuitous offsets against the Pillager Bands of Chippewa Indians were settled for the period from February 22, 1855, to March 15, 1965, in Minnesota Chippewa Tribe v. United States, Dockets 18-B and 18-N, 15 Ind. Cl. Comm. 466 (1965). At the valuation hearing in this case on April 4, 1972, defendant agreed that if there were any gratuitous offsets to be claimed, outside the above mentioned period, such claims would be presented with the brief on value, together with any documents in support thereof. Defendant did present claimed offsets in a total amount of \$1,470.00. As set forth in finding 36, the gratuities were for hunting and fishing equipment (\$100.00) and for provisions (\$1,370.00).

The only documentation which defendant filed in support of the claimed gratuities is the General Accounting Office Report of September 26, 1963, which lists the two categories of expenditure. Defendant has not submitted any representative vouchers or other data with respect to the claimed offsets. No evidence has been presented concerning the number of Indians who shared in or otherwise benefited from the claimed gratuities. The Commission is unable to determine if the gratuities were a tribal benefit.

Defendant has failed to prove its entitlement to offset the claimed gratuitous payments, and they are disallowed.

The plaintiffs are entitled to recover the fair market value of their ceded lands (Royce 269) less the consideration paid therefor. This is \$425,000.00 less \$19,706.94 or a net amount \$405,293.06. There being no gratuitous offsets to be deducted, plaintiffs are entitled to a final award in this amount.

XIV

Plaintiffs have raised certain other matters which require a brief discussion. In addition to the 1848 fair market value of Royce 269, it is argued that the Indians held an easement in or right to use the ceded land, which right or easement was worth \$1.00 an acre. This easement, plaintiffs contend, was created by reason of Article 3 of the 1847 treaty, supra, which provided:

It is stipulated that the country hereby ceded shall be held by the United States as Indian land, until otherwise ordered by the President.

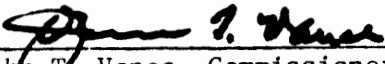
We do not agree that this article conferred on the Pillagers any easement or other right to use the ceded lands. This issue is similar to the trust theory which was previously advanced by plaintiffs in support of its 1911 "taking" date argument. At the time that theory was considered and rejected, we reviewed the circumstances surrounding the 1847 treaty and Article 3. Pillager Bands of Chippewa Indians, supra. The 1847 treaty was a clear, unequivocal treaty of cession. It was

negotiated for the purpose of removing the Chippewa to other lands still owned by them and to place the Menominees on the ceded lands. We find no support for the argument that the Pillager Bands of Chippewa Indians were accorded an easement or right to use the ceded area. As the Court of Claims noted, the provision in Article 3 that the territory was to remain "Indian land" referred to prospective occupation of the land by Menominee Indians, and it did "not indicate a retention of any type of proprietary interest by the Pillagers". 192 Ct. Cl. at 709.

XV

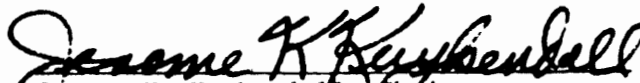
Plaintiffs have also sought to increase the award in this case by multiplying the fair market value by five times to account for the decreased purchasing power of the dollar since 1848. In addition the plaintiffs would impose 100% interest on the award to reflect six percent annual simple interest from August 13, 1956, when Congress mandated that this claim be adjudicated. There is no authority for the award of interest for "delays" in adjudicating claims or for the depreciated value of the dollar. The award in this case is based upon clause 3, section 2, of the Indian Claims Commission Act, supra, -- a claim based on the payment of an unconscionable consideration under the provisions of the 1847 treaty. There was no provision in the treaty relating to the payment of interest. In the absence of such a specific provision,

awards rendered on claims arising under clause 3, section 2 of the Act do not bear interest.

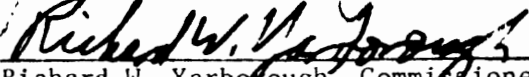


John T. Vance, Commissioner

We concur:



Jerome K. Kuykendall, Chairman



Richard W. Yarborough, Commissioner



Margaret H. Pierce, Commissioner



Brantley Blue, Commissioner