

## BEFORE THE INDIAN CLAIMS COMMISSION

JAMES STRONG, et al.	)	
(SAGINAW CHIPPEWA INDIANS)	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket No. 13-A
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

ORDER DISMISSING PLAINTIFFS' PETITION

The plaintiffs' petition in this case was filed on August 22, 1949, pursuant to the Commission's order of July 13, 1949, in Docket 13 directing separation of causes of action. This petition asserted three separate claims against the United States. The cause designated as the first claim in the petition in Docket 13-A was dismissed without prejudice by the Commission's order of March 9, 1950, entered upon the plaintiffs' motion requesting such dismissal because another petition of the Saginaw Chippewa Indians asserting the same claim had been presented to the Commission. The first claim is now pleaded in the petition in Docket 57. The cause designated as the third claim in the plaintiffs' petition in Docket 13-A was by the Commission's order of September 9, 1957, stricken from the petition and ordered set up in a separate petition given Docket 13-N. Remaining in Docket 13-A is the cause designated in the petition as the second claim, a claim asserted as arising from the cession, under the Treaty of July 29, 1837 (7 Stat. 536), of an area of land and water in the northwestern part of Wisconsin and the eastern part of central Minnesota identified as area 242 by Charles C. Royce on his maps of Wisconsin and Minnesota in Part 2 of the 18th Annual Report of the Bureau of American Ethnology.

This remaining claim in Docket 13-A is identical to the claim of the Minnesota Chippewa Tribe, and others, in Docket 18-C and was consolidated with Docket 18-C "for purposes of trial" by the Commission's order of December 20, 1961. The same order set the consolidated claims for trial in April 1963, upon the issue of Indian title to the said area 242. The trial setting was stricken from the calendar upon motion of the plaintiffs in Docket 18-C that contemplated the filing of a motion for summary judgment on title, which, if granted, would obviate the necessity of a trial on title. Such motion for summary judgment was filed by the plaintiffs in Docket 18-C on December 6, 1965, with a supporting memorandum and supporting exhibits. On October 10, 1968, the Commission entered its findings of fact, opinion, and order in Docket 18-C expressing, inter alia, its

conclusion as a matter of law that the United States did recognize title in the Chippewa Indians to all of the claimed lands (Royce Area 242) and that said lands were ceded to the United States by the Treaty of July 29, 1837, and granting the motion for summary judgment of recognized title (19 Ind. Cl. Comm. 514-530).

In a hearing before the Commission on February 18, 1969, on the calendar settings of pending cases counsel for the defendant and Mr. James R. Fitzharris, attorney of record for the plaintiffs in Docket 13-A, both advised the Commission that the Chippewas in Docket 18-C owned the interest in the land involved in the claims in Dockets 13-A and 18-C and that the Michigan Chippewas in Docket 13-A owned no interest in that area, and Mr. Fitzharris said that no proofs would be submitted for the plaintiffs in 13-A (Hearing Tr. pp. 4-6). In the calendar conference before the Commission on February 12, 1973, Mr. Fitzharris indicated to the Commission that the "proofs don't seem to substantiate any claim by the Saginaw Chippewas of Michigan in this area", and that although he was not in a position to move for dismissal of the claim in Docket 13-A, he would not object to such a motion "in view of the proof" (Conference Tr. pp. 5-6).

The aforementioned opinion of October 10, 1968, in Docket 18-C included a directive to the parties to include in the next proceedings and briefings their respective contentions on the issue of the entity or entities to be entitled to participate in any prospective award, should there be one. This directive was carried out. The Commission's interlocutory decision of July 21, 1971, on the valuation phase of the case in Docket 18-C (26 Ind. Cl. Comm. 22-60) included a determination based on substantial evidence that the Chippewa Indians of the Mississippi and Lake Superior, who are among the plaintiffs named in the petition in Docket 18-C, were the only parties in interest with respect to the 1837 treaty and the lands ceded thereunder (Royce Area 242). None of the evidence adduced in proceedings before the Commission in respect to Royce Area 242 indicated any use and occupancy or title of the Docket 13-A plaintiffs in or to that area.

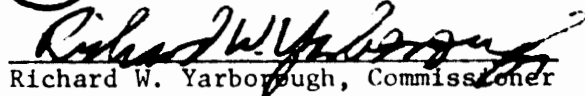
The Commission being fully advised in the premises finds that the claim in the matter of Docket 13-A is not supported by any evidence and is therefore, without merit, and that the petition in Docket 13-A should be dismissed. The Commission therefore on its own motion

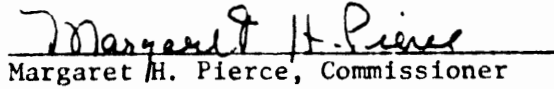
ORDERS that the petition in Docket 13-A be, and the same is hereby, dismissed with prejudice.

Dated at Washington, D. C., this 17<sup>th</sup> day of October 1973.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner