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13-K and 40-I.

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and for the Intervenor in Docket Nos. 15-L,
29-I, and 216.

Sim T. Carman, with whom was Mr. Assistant
Attorney General Ramsey Clark, Attorneys for
the Defendant.

OPINION OF THE COMMISSION

Pierce, Commissioner, delivered the opinion of the Commission.

The claims in this consolidated case arise out of the provisions of the Treaty of August 24, 1816, 7 Stat. 146, concluded between the United States "and the chiefs and warriors of the united tribes of Ottawa, Chipawas, and Pottowotomees, residing on the Illinois and Melwakee rivers, and their waters, and on the southwestern parts of Lake Michigan, of the other part." The Indian participants in the 1816 treaty were a subgroup of the Potawatomi Nation or Tribe, acting on behalf of the whole tribe. See Citizen Band v. United States, Docket 71, et al., 27 Ind. Cl. Comm. 187, 323 (1972).

The subject matter of these claims involves two adjoining tracts in Illinois, Royce Areas 77 and 78, which, respectively, were relinquished and ceded to the United States by the united tribes pursuant to Article 1 of the 1816 treaty.

An unusual aspect of this case is that the petitions filed by the Potawatomi plaintiffs in Dockets 15-L and 216 contain no claim for additional compensation for Royce Area 77. Instead, additional compensation is sought only for the alleged 1,200,000 acres in Royce Area 78. The petition in Docket 29-I does include a claim for additional compensation for Royce Area 77. However during the 1962 hearings before this Commission, counsel for the plaintiffs in Docket 29-I abandoned the claim.

In their final position, all Potawatomi plaintiffs maintain that the 1816 treaty consisted of two separate transactions. They contend that the first was a wash transaction in which the Potawatomi relinquished all their right, claim and title to Royce Area 77 in exchange for the United States' relinquishment to the Potawatomi of a comparable area in the northern part of Royce Area 50.^{1/} They contend that the second transaction was the cession of Royce Area 78 by the Potawatomi to the United States in exchange for goods and merchandise. For reasons stated hereafter we have found that these contentions are valid, except insofar as the northern boundary of Royce Area 77 is not in accordance with the treaty (see n. 8 and Finding 7).

^{1/} The land relinquished by the United States in Royce Area 50 was north of and adjacent to Royce Area 77 and included Royce Area 147 and the western three-fourths of Royce Area 148, which the Potawatomi ceded to the United States under the Treaty of July 29, 1829, 7 Stat. 320. (See Docket 217, et al.) It also included roughly the southern three-fourths of Royce Area 149, ceded to the United States by the Winnebago under the Treaty of August 1, 1829, 7 Stat. 323 (see Docket 243, et al.); and the southwestern one-third of Royce Area 187, ceded to the United States by the Potawatomi under the Treaty of September 26, 1833, 7 Stat. 431 (see Dockets 15-J and 71-A).

The Potawatomi plaintiffs in Dockets 29-I and 216 claim both "Indian Title" and "recognized title" to Royce Area 78. The Potawatomi plaintiff in Docket 15-L relies upon only recognized title to Royce Area 78. The plaintiff in Docket 29-I alleges that the Treaty of Greeneville of August 3, 1795, 7 Stat. 49, and the Treaty of August 24, 1816, supra, each conferred recognized title in the Potawatomi Tribe, to Royce Area 78.^{2/} The plaintiffs in Dockets 15-L and 216 appear to claim recognized title from a number of sources including:

1. Statements of treaty commissioners in 1793 (plaintiffs' proposed finding 7);
2. The Treaty of Greeneville of August 3, 1795 (plaintiffs' proposed findings 9 and 10);
3. Statements by United States officials between 1795 and 1833 (plaintiffs' proposed finding 11); and
4. Alleged recognition by other Indian tribes (plaintiffs' proposed finding 12).

Since, for reasons stated subsequently herein, we have found recognized title to Royce Area 78 in the Potawatomi Tribe or Nation stemming from the 1795 Treaty of Greeneville, and the subsequent 1816 follow-up cession treaty, we find it unnecessary to discuss the other above enumerated claims of recognized title.

The defendant contends:

^{2/} Through paragraph 10 of its petition this plaintiff also alleges recognized title under Article 3 of the Treaty of January 21, 1785, 7 Stat. 16; and under Revised Statutes (2nd Ed.) 1878. In fact neither of these nor the 1816 treaty per se recognized title in the Potawatomi Tribe to Royce Area 78.

1. That since their earliest contact by the white man neither of the so-called Chippewa, Ottawa, or Potawatomi Nations has ever consisted of a single political entity;
2. That the Indian participants at the 1816 treaty were an autonomous group of mixed Potawatomi, Ottawa, and Chippewa Indians acting on their own behalf;
3. That said group was not represented at the 1795 Treaty of Greeneville; 3/
4. That said group had neither "Indian Title" nor "recognized title" to either Royce Area 77 or 78, and;
5. That the 1816 treaty was a single transaction with relinquishment of land and payment of goods by the United States being given to extinguish the Indians' pretended claims to Royce Areas 77 and 78.

The Chippewa and Ottawa plaintiffs in Dockets 13-K, 18-P, and 40-I included claims for Royce Areas 77 and 78 in their original petitions. However, the predecessors in interest of these particular plaintiffs did not participate in the 1816 treaty, nor is there any evidence of record showing that these Indians had any compensable interest in these lands.

On October 14, 1959, the plaintiffs in Docket 216 moved that the petitions in Dockets 13-K, 18-P, and 40-I be dismissed on the grounds that their claims had been decided adversely in other proceedings, which are res judicata. Specifically it was urged that in Prairie Band of Potawatomi v. United States, Docket 15-J, et al., 4 Ind. Cl.

3/ These first three of the defendant's contentions were rejected by our decision in Citizen Band, Docket 71, et al., supra.

Comm. 473 (1956), it was decided that the Chippewa and Ottawa plaintiffs in Dockets 13-J and 40-H (the same as in Dockets 13-K and 40-I) were descended from Indians residing in northern Michigan and were not part of the group which participated in the 1816 treaty, and had no interests in its lands. (Findings on General Issues, No. 5, 4 Ind. Cl. Comm. 412-413, and No. 13, Id., at 419-420; and Findings 11(1) and 12, 4 Ind. Cl. Comm. 481-482). It was further specifically claimed that the plaintiffs in Docket 18-P represent the Red Lake and Pembina Bands of the Chippewa Indians, who were found in Red Lake, Pembina and White Earth Bands v. United States, Docket 18, et al., 6 Ind. Cl. Comm. 247, 249, 255, 259-267 (Findings 1, 2, 10, 13-17) (1958), to inhabit northern Minnesota and North Dakota. The plaintiffs in Docket 216 contend that these circumstances establish that the plaintiffs in Docket 18-P have no connection with the Indians who participated in the 1816 treaty, and no interest in their lands. We concur in this analysis.

During the 1960 and 1962 hearings in this proceeding, counsel for the plaintiffs in Dockets 13-K, 18-P, and 40-I stated that he was submitting no evidence because he had no case. The defendant is in accord that these plaintiffs have no interest in this litigation. Accordingly the motion of the plaintiffs in Docket 216, that the petitions in Dockets 13-K, 18-P, and 40-I be dismissed, is granted by the accompanying order.

Representatives of the Potawatomi Nation had participated in the historic Greenville Treaty of August 3, 1795, 7 Stat. 95. Citizen Band, Docket 71, et al., supra, 27 Ind. Cl. Comm. 187, 194-203. Under this treaty the signatory tribes thereto and the United States agreed to establish a general boundary line between the lands belonging to the United States and those occupied by the Indians. This general boundary line began near present day Cleveland, Ohio, ran south almost 70 miles, then westerly across central Ohio to the Ohio-Indiana border and then southwesterly in Indiana to the Ohio River. Indian claims to all the land situated east and south of the Greenville Treaty line were ceded and relinquished to the United States, and in return the United States, with certain exceptions not material to this case, agreed to relinquish to the signatory tribes all lands situated west and north of the Greenville Treaty line.

While no intratribal boundaries were fixed between the Indians then occupying the lands relinquished by the United States, it was understood between the contracting parties that the Government was dealing with each tribe independently, and that through future negotiations appropriate boundaries would be established. Under decisions of this Commission and the Court of Claims it has been concluded as a matter of law that the 1795 Greenville Treaty, together with the needed "follow-up" treaties, did recognize this legal right and title of the signatory

tribes to the lands relinquished by the United States. Sac and Fox Tribe of Indians v. United States, Docket 83, 7 Ind. Cl. Comm. 675 (1959), aff'd, 161 Ct. Cl. 189, cert. denied, 375 U. S. 921 (1963) (and cases cited therein); Miami Tribe v. United States, 146 Ct. Cl. 421, 431, 438, 439, 440, 442 (1959), aff'g Dockets 67 and 124, 2 Ind. Cl. Comm. 617 (1954), 4 Ind. Cl. Comm. 346 (1956).

We conclude that by virtue of the 1795 Treaty of Greeneville and the "follow up" cession treaty of August 24, 1816, the Potawatomi Tribe had recognized title to Royce Area 78 (with the exception of Item (14) previously ceded under Article III of the 1795 Treaty of Greeneville).

Under the Treaty of November 3, 1804, 7 Stat. 84, the Sac & Fox Tribe ceded to the United States the large tract of land designated as Royce Area 50. This area included all of the lands subsequently designated as Royce Area 77 in Illinois, as well as a substantial area to the north and west thereof in Illinois, Wisconsin, and Missouri.^{4/}

The Potawatomi living in Royce Area 77 and using portions thereof as farming and hunting lands, alleged that they did not learn of the 1804 Sac & Fox cession until 1815. In that year a serious confrontation developed between the Potawatomi and government surveyors sent to survey

^{4/} The Sac & Fox claim to the area was decided in Sac & Fox Tribe v. United States, Docket 83, 7 Ind. Cl. Comm. 675 (1959), aff'd, 161 Ct. Cl. 189, cert. denied, 375 U. S. 921 (1963). Therein it was determined that as of 1804, the Sac & Fox had "Indian title" to the northwest corner of Royce Area 77, based on exclusive use and occupancy. The plaintiff's expert witness testified that the Potawatomi had exclusive use and occupancy of the northeast corner of Royce Area 77 as of 1804. The Commission found that the balance of Royce Area 77 was an area of non-exclusive use in 1804.

the southern portion of the area. Black Partridge, a Potawatomi chief, promptly asserted a formal claim to the lands being surveyed, and in so doing protested the 1804 cession by the Sac and Fox of these same lands. When Governor Ninian Edwards reported the Potawatomi claim to the Secretary of War, he advised the Secretary that the Potawatomi of the Illinois for years past had occupied these lands as their principal hunting ground. In October 1815 Governor Edwards, and the other men appointed as United States treaty commissioners in the area, advised the Secretary of War that the Potawatomi then occupied and asserted a right to the Illinois River lands in Royce Area 77 and that, without an adjustment of the dispute, the surveyors would likely meet with serious opposition.

Initially there was a negative reaction by the War Department to the validity of the Potawatomi claims to the Illinois River lands, and in order to pacify these Indians, Governor Edwards was directed to offer the claimants a quantity of goods. This overture failed.

In May of 1816 Governor Edwards and the two other treaty commissioners were instructed, if at all possible, to effect with the Indians a mutual exchange of lands within Royce Area 50, as this would ". . . be more acceptable to the President than if obtained by purchase."^{5/} If this offer was rejected, the commissioners were to offer additional consideration.

^{5/} 6 Am. State Papers, (Indian Affairs, Vol. 2, at 97 (1834)), Letter, William H. Crawford, Secretary of War to Messrs. Clark, Edwards, and Chouteau, Treaty Commissioners, May 7, 1816. At this time the bulk of the lands in Royce Area 50 were considered surplus, and far removed from the immediate demand of new settlement.

At the same time the treaty commissioners were also instructed to negotiate with the rightful owners for the cession of an adjoining tract (Royce Area 78), which cession in the words of the Secretary of War ". . . would be of immense importance, and should be obtained, if practicable, at any expense, either of recession or purchase."^{6/} It appears that the Government was uncertain as to which Indians inhabited Royce Area 78. In fact the area was also inhabited by Potawatomi (and by affiliated Ottawa and Chippewa who were Potawatomi politically).

Royce Area 78, which is located just south of Chicago, has generally been identified as Potawatomi country from earliest times. The evidence shows Potawatomi villages in Royce Area 78 prior to the 1816 treaty and mixed Potawatomi, Chippewa, and Ottawa occupancy as early as the 1795 Greenville Treaty. The defendant has conceded that from 1811 until the August 24, 1816, treaty of cession, the united tribes of Potawatomi, Chippewa, and Ottawa "exclusively used and occupied all of Area 78" with the exception of the six mile square Fort Dearborn military post at the mouth of the Chicago River.^{7/}

When the above-described offers were presented to the Indians, they asked for additional time to return to their homes and consider the matter. The council adjourned and the Indians departed. The next meeting between the treaty commissioners and the Indians apparently took place in August of 1816 when the treaty of cession was actively negotiated.

^{6/} Id.

^{7/} Defendant's Statement of the Case, Requested Findings of Fact, Objections to Petitioners' Proposed Findings of Fact, and Brief, at 57.

As the Commission sees it, the full instructions from the War Department to the 1816 treaty commissioners required them to obtain:

1. A relinquishment of the Potawatomi claim and title to Royce Area 77 in exchange for recession or relinquishment by the Government of its claim and title to an equivalent amount of land in Royce Area 50 north of Royce Area 77; and
2. If possible, a cession of Royce Area 78 at any expense, either by recession or purchase.

While we do not have the benefit of any treaty minutes spelling out the actual negotiations, it seems reasonable to the Commission that the two separate transactions were consummated, as instructed, albeit in one treaty document.

Article I of the 1816 treaty begins with the relinquishment of all Potawatomi claims to Royce Area 77^{8/} and immediately follows with the Potawatomi cession of Royce Area 78 as follows, "And they moreover cede to the United States all the land contained within the following bounds"

Article II sets out the consideration for ". . . the aforesaid relinquishment and cession", including goods, merchandise and the relinquishment by the United States to the Indians of additional land

^{8/} It appears that the northern boundary of Royce Area 77 does not follow the treaty, which calls for all land within the 1804 Sac & Fox cession, south of a due west line from the southern extremity of Lake Michigan. The northern boundary, as drawn by Mr. Royce, appears to be a line running slightly north-east from the confluence of the Mississippi and Rock Rivers. This line is some miles south of the line called for in the treaty. However, since the land relinquished by the Potawatomi is deemed to be equivalent to the land received by them in exchange, the map discrepancy is not material in this proceeding.

in Royce Area 50.^{9/} In view of the War Department's instructions to the treaty commissioners, we construe Article 2 of the 1816 treaty as providing for:

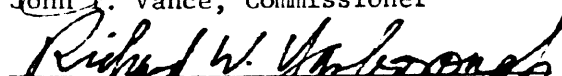
1. The Government's relinquishment of land as an equivalent exchange for the Potawatomi relinquishment of their claim and title to Royce Area 77; and
2. The provision of goods by the Government (and the notation of merchandize already provided) in exchange for the Potawatomi cession of Royce Area 78.

This case shall now proceed for a determination of acreage of Royce Area 78, the fair market value thereof as of the effective date of the 1816 cession treaty, the consideration paid for said lands, and all other matters bearing upon the extent of defendant's liability, if any, to the plaintiff tribes and the intervenor.


Margaret H. Pierce, Commissioner

We concur:

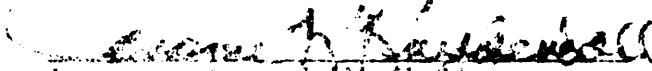

John T. Vance, Commissioner

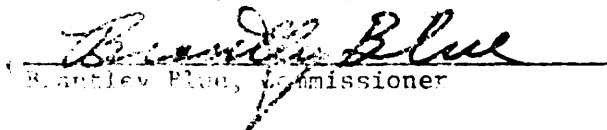

Richard W. Yarborough, Commissioner

^{9/} See n. 1, *supra*, for a description of the land relinquished by the United States. Article 2 of the 1816 treaty excepted certain reserves from the area relinquished by the United States.

Kuykendall, Chairman, and Blue, Commissioner, concurring:

This is another in a series of claims asserted on behalf of the "Potawatomi Tribe or Nation". Our views concerning the political structure of the Potawatomis during the relevant treaty periods, to wit, there was never any such overall landowning "Potawatomi Tribe or Nation", were set forth in the dissent filed in Citizen Band of Potawatomi Indians v. United States, Docket 71, et al., 27 Ind. Cl. Comm. 187 (1972). Since we are bound by the rule in this case that any award to plaintiffs herein should be on behalf of the "Potawatomi Tribe or Nation", we concur.


Jerome K. Kuykendall, Chairman


Bentley Blue, Commissioner