

## BEFORE THE INDIAN CLAIMS COMMISSION

CITIZEN BAND OF POTAWATOMI INDIANS OF OKLAHOMA, et al.,	)	
	)	Docket No. 216
	)	
THE PRAIRIE BAND OF THE POTAWATOMI TRIBE OF INDIANS, et al.,	)	
	)	Docket No. 15-L
	)	
HANNAHVILLE INDIAN COMMUNITY, et al.,	)	Docket No. 29-I
	)	
JAMES STRONG, et al., AS THE REPRESENTATIVE AND ON BEHALF OF ALL MEMBERS BY BLOOD OF THE CHIPPEWA TRIBE, INCLUDING ALL DESCENDANTS OF THE CHIPPEWA MEMBERS OF THE UNITED NATION OF INDIANS,	)	
	)	Docket No. 13-K
	)	
RED LAKE, PEMBINA AND WHITE EARTH BANDS OF CHIPPEWA INDIANS, et al.,	)	
	)	Docket No. 18-P
	)	
ROBERT DOMINIC, et al., AS THE REPRESENTATIVE AND ON BEHALF OF ALL MEMBERS BY BLOOD OF THE OTTAWA TRIBE OF INDIANS,	)	
	)	Docket No. 40-I
	)	
Plaintiffs,	)	
	)	
POTAWATOMI INDIANS OF INDIANA AND MICHIGAN, INC.,	)	
	)	
Intervenor,	)	
	)	
v.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: December 26, 1973

FINDINGS OF FACT ON TITLE1. The Parties Plaintiffs.

The Prairie Band of the Potawatomi Tribe of Indians, plaintiff in Docket 15-L; the Hannahville Indian Community, the Forest County Potawatomi

Community, and the Potawatomes of Michigan and Indiana, Inc., plaintiffs in Docket 29-I; and the Citizen Band of Potawatomi Indians of Oklahoma, plaintiff in Docket 216, are identifiable groups of American Indians each having the right and capacity under Section 2 of the Indian Claims Commission Act, 60 Stat. 1049, 1050, to bring and maintain the claims asserted herein arising out of the Treaty of August 24, 1816, 7 Stat. 146, on behalf of the Potawatomi Indian Tribe or Nation. Prairie Band of the Potawatomi Tribe of Indians v. United States, Docket 15-C, et al., 28 Ind. Cl. Comm. 454, 469 (1972).

Under Section 10 of the Indian Claims Commission Act the individuals listed as plaintiffs in this proceeding have no standing to present or maintain this suit. The individuals listed as plaintiffs in the October 13, 1953 petition in Docket 29-I, are not parties plaintiff. Their names were added to the petition without approval of the Commission when the petition was reprinted as a separate cause of action.

On July 15, 1965, the Potawatomi Indians of Indiana and Michigan, Inc., filed a motion to intervene on behalf of the Potawatomi Tribe or Nation in all pending Potawatomi dockets including those herein. The Commission has previously determined that the intervenor under similar circumstances has demonstrated during the relevant treaty times that its membership is descended from the Potawatomi Tribe or Nation. Accordingly we find that said intervenor has a common interest in the subject matter

of this lawsuit, and is otherwise qualified under Section 2 of the Indian Claims Commission Act to bring and maintain these claims on behalf of the Potawatomi Tribe of Nation. See Citizen Band of Potawatomi Indians v. United States, Docket 71, et al., 27 Ind. Cl. Comm. 187, 326 (1972); Prairie Band of the Potawatomi Tribe of Indians v. United States, Docket 15-C, et al., 28 Ind. Cl. Comm. 454, 470 (1972).

The Chippewa Tribe of Indians, Plaintiff in Docket 13-K; the Red Lake, Pembina and White Earth Bands, et al., of Chippewa Indians, plaintiffs in Docket 18-P; and the Ottawa Tribe of Indians, plaintiff in Docket 40-I, each has the right to bring the claims asserted herein. However, their predecessors in interest did not participate in the Treaty of August 24, 1816, and their claims to the lands ceded to the United States thereunder are not supported by any evidence. During the 1960 and 1962 hearings in this proceeding their counsel stated that he was submitting no evidence because he had no case. On October 14, 1959, the plaintiffs in Docket 216 moved that the petitions in Docket 13-K, 18-P, and 40-I be dismissed on the grounds that their claims had been decided adversely in other Commission proceedings which are res judicata.

2. Treaty of Greeneville, August 3, 1795, 7 Stat. 49.

At Greeneville, in the Northwest Territory, the United States concluded a treaty on August 3, 1795, with several Indian tribes, including the Potawatomi Tribe or Nation, for the purpose, inter alia, of establishing a division boundary between the United States and the land of the signatory Indian tribes. By Article III of the 1795 treaty, a general boundary line was established between the lands of the United States and the lands of the Indians. This boundary line began where Cleveland, Ohio, is now located, ran south almost 70 miles, then westerly across central Ohio to the Ohio-Indiana border and then southwesterly in Indiana to the Ohio River. The participating tribes ceded and relinquished to the United States all claims to the lands lying east and south of the above described boundary line.

By Article III, the Indians also ceded to the United States sixteen tracts of land on the Indians' side of the general boundary line. Item (14) of the tracts thus ceded was a tract six miles square at the mouth of the Chicago River.<sup>1/</sup> It subsequently was overlapped by Royce Area 78. Items (15) and (16), which subsequently were partially overlapped by Royce Area 77, consisted, respectively, of a tract 12 miles square at or near the mouth of the Illinois River, and a tract

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<sup>1/</sup> The tract subsequently was designated Royce Area 24.

six miles square at the old Piorias fort and village, near the south end of Lake Illinois (Lake Peoria) on the Illinois River.

By Article IV of this treaty (7 Stat. 51) the United States (with certain exceptions) relinquished all claim to "Indian lands, northward of the river Ohio, eastward of the Mississippi, and westward and southward of the Great Lakes and the waters uniting them, according to the boundary line agreed on by the United States and the king of Great-Britain, in the treaty of peace made between them in the year 1783."

Article V of the 1795 treaty (7 Stat. 52) gave further meaning to the extent of the relinquishment of the United States of the lands north and west of the established boundary line as follows:

To prevent any misunderstanding about the Indian lands relinquished by the United States in the fourth article, it is now explicitly declared, that the meaning of that relinquishment is this: The Indian tribes who have a right to those lands, are quietly to enjoy them, hunting, planting, and dwelling thereon so long as they please, without any molestation from the United States: but when those tribes, or any of them, shall be disposed to sell their lands, or any part of them, they are to be sold only to the United States: and until such sale, the United States will protect all the said Indian tribes in the quiet enjoyment of their lands against all citizens of the United States, and against all other white persons who intrude upon the same. And the said Indian tribes again acknowledge themselves to be under the protection of the said United States and no other power whatever.

### 3. Recognition of Title.

The relinquishment by the United States of its claim to the land described in Article IV of the 1795 treaty was intended to confer upon

the signatory tribes rights of permanent use and occupancy to that land. While the 1795 treaty failed to delineate the boundaries between the participating tribes within the general area the United States had thus recognized as being owned by these Indians, the tribal representatives understood that the United States was dealing with each tribe independently and that boundaries thereafter would be established between the participating tribes through future negotiations and subsequent "follow-up" treaties. The Treaty of August 24, 1816, 7 Stat. 146, under which the instant claims arise, was one of the "follow-up" treaties that delineated intertribal boundaries and secured additional land cessions to the United States.

Among the membership of the Potawatomi Tribe or Nation present at the 1795 treaty negotiations, and signing the instrument, were a number from the Illinois-southern Wisconsin region. They included Sagganunk, a chieftain from the Chicago-Milwaukee area, who, under the name "Soukamock," receded in the Treaty of July 29, 1829, 7 Stat. 320, on behalf of the Potawatomi Nation, the land acquired in the August 24, 1816, treaty, supra. Another participant was Sun, a Potawatomi chief from the Wabash River area, who, at Vincennes in 1792, had represented the united tribes, among others.

4. Royce Areas 77 and 78.

The lands subject to the claims of the Potawatomi Indians herein are two separate but adjoining tracts in Illinois officially identified

as Royce Areas 77<sup>2/</sup> and 78, shown on maps Illinois 1 and 2, 18th Annual Report of the Bureau of American Ethnology, 1896-97, Part 2. Both tracts are located within that broad area of land that the United States relinquished to those tribes who participated in the 1795 Treaty of Greenville, among them being the Potawatomi Tribe or Nation.

5. Early Potawatomi Claims to Royce Area 77.

Royce Area 77 is located principally in west central Illinois between the Mississippi and Illinois Rivers. It includes a part of old Royce Area 50 that had been previously ceded to the United States by the Sac and Fox Indians under the Treaty of November 4, 1804, 7 Stat. 84. It also partially overlaps Items (15) and (16) ceded by the Indians under Article III of the 1795 Treaty of Greenville (see Finding No. 2, supra).

By the Act of May 26, 1812, 2 Stat. 728 (and amendments thereto), that portion of Royce 50 east of the Mississippi River had been set aside as military bounty land for the veterans of the War of 1812.

In 1815 when government surveyors went into the area, Black Partridge, a chief of some of the Potawatomi living in Royce Area 77 and using portions thereof as farming and hunting lands, asserted a claim on behalf of the Potawatomi to the lands being surveyed:

Great Father, when below attending the treaty at Portage descioux 3/ we were told for the first time that the Sacks at a treaty held some time since with one of your chiefs, we know not where, and without our Knowledge, sold to the Americans all the lands or chiefly all lying on this river the Principal

2/ See Finding 7 for discussion of erroneous mapping of Royce Area 77.

3/ Treaty of July 18, 1815, 7 Stat. 123.

Hunting ground of our Nation we then intended speaking to your chiefs, about this subject, but was told all things heretofore done wrong between the red People and Americans was to be thrown away, and a new beginning made and Consequently thought this matter would be thrown away and therefore said nothings about. But on returning home we were told your People would shortly be ordered by you to survey and settle on our land under the Purchase from the Sacks for which reasons we wish you now to understand that no Part of this River does or ever did belong to the Sacks that whatever Sale they may have made was wholly unauthorised and hope you will not Permit your People to settle it untill enquiry can be made, where you will surely find the right in the Pottawattomies.

You have always said you did not wish to wrong your red Childred [sic], if this is true and the Sacks have sold our land improperly; and One of your Chiefs by mismanagement has become the Purchaser; we think you will see us righted, and not deprived of the principal hunting ground relied on for the Subsistance of ourselves our Women and Children--(17 C. Carter, Territorial Papers of the United States, 227-229--(1950); Pls. Ex. No. 3, Dkt. 15-L.)

Governor Ninian Edwards of Illinois Territory reported the claim to the Secretary of War whom he advised that the Potawatomi of Illinois River had "for years past occupied the land as their principal hunting ground". On October 18, 1815, Governor Edwards, Governor William Clark of Missouri, and Auguste Chouteau, who were United States treaty commissioners then engaged in negotiating with the tribes in the general area of the Mississippi, advised the Secretary of War as follows:

The Pattawatamies now occupy and assert a right to the land on the Illinois river which is contained in the cession made by the Sacs and Foxes in 1804, and it is certainly to be apprehended that, without some adjustment of the dispute, the surveyors appointed to survey the military land within the Illinois Territory will meet with some serious opposition. (6 Am. State Papers, Indian Affairs, Vol. 2, at 10 (1834).)  
In November 1815, Governor Edwards was authorized by the War

Department to pay compensation for a relinquishment of the claim. His



negotiations with the united nation to this end were unsuccessful.

6. Pre Treaty Negotiations.

By letter of May 7, 1816, Messrs. Clark, Edwards and Chouteau received from the Secretary of War a new set of instructions for the negotiation of a contemplated treaty, which in material part read as follows:

As the validity of the Illinois cession [of Area 50 in 1804 by Sacs and Foxes] is contested by some of the tribes who have used it as a hunting ground, the President has directed me to instruct you to use your best endeavors to quiet these claims. This may be done by giving them presents in consideration of their relinquishment of their supposed right to the land in question, or it may be effected by the stipulation to pay them an annual stipend proportioned to the colorable title which may be supposed to exist. Should the nations who originally ceded the lands set up any kind of claim to it, their demands should promptly be repelled; but presents may be given them in case of their acquiescence in the original cession. As this cession is very extensive, and greatly exceeds the demands for lands in that quarter, and would withal, if settled, produce the necessity of establishing another Territorial Government, and give rise to a small settlement in Indiana Territory, separated by an immense distance from the inhabited parts of the Territory, the President has deemed it expedient to offer, as an equivalent for the relinquishment of any conflicting claim to those lands, the recession of such parts as lie north of the northern line of the State of Ohio, extending westwardly to the Mississippi river, and east of the western boundary of the Indiana Territory. . . . The relinquishment of all Indian title to the lands south and west of the lines above defined, in consideration of the proposed recession, will be more acceptable to the President than if obtained by purchase. . . . Should the proposition be rejected, you will then proceed to the discussion of the consideration which it will be proper to give them. . . . It is conceived that you had better err on the side of liberality, taking into view the nature and validity of their respective claims. Twenty thousand dollars have been ordered to St. Louis . . . to be distributed in presents to the various tribes with whom you may have to treat. This sum is exclusive of the consideration which you may find it necessary to promise for the purpose of quieting Indian claims to the Illinois purchase. . . . (Am. State Papers, supra, at 97.)

The commissioners were further instructed in the same letter relative to the acquisition of another tract (Royce Area 78) adjacent to Area 77 on the northeast as follows:

Should the tribes inhabiting the country between the cession and the southwestern margin of Lake Michigan, present themselves, you are required to sound their disposition to cede a district of country which will connect the lake with the Illinois purchase. This cession would be of immense importance, and should be obtained, if practicable, at any expense, either of recession or purchase. In all other cases, importunity to cede is expressly interdicted. (Id.)

The indications at this time were that the government officials were uncertain as to the identity of the Indian inhabitants of this area. As it turned out this particular tract was also claimed by the united tribes, composed of Potawatomi and affiliated Ottawa and Chippewa, who politically were Potawatomi. The evidence shows that as early as 1751, there is reference to the "Potawatomi of Chicago River" in the northern portion of Royce Area 78. By the time of the 1795 Greenville Treaty, there was a mixed occupancy of Ottawa, Chippewa, and Potawatomi Indians in Royce Area 78. The defendant concedes that from 1811 until the treaty of cession of August 24, 1816, apart from the six mile square Fort Dearborn military reserve at the mouth of the Chicago River, the "united tribes" of Potawatomi, Ottawa, and Chippewa Indians exclusively used and occupied all of Royce Area 78. (Def's. Requested Finding of Fact No. 27, see footnote 7 of opinion herein.)

Upon being apprised of the Government's new proposals, the Indians advised the treaty commissioners that they would reconvene at a later date with a deputation competent to make a treaty.

7. The Treaty of August 24, 1816.

The Treaty of August 24, 1816, was concluded at St. Louis, Missouri Territory, between the United States and "[T]he chiefs and warriors of the united tribes of Ottawas, Chipawas, and Pottowotomees, residing on the Illinois and Melwakee rivers, and their waters, and on the southwestern parts of Lake Michigan . . ." The avowed purpose of the treaty was to settle the "serious dispute" between the contracting parties relative to Potawatomi claims to a portion of lands in Royce Area 50 that had been ceded under the 1804 Sac and Fox Treaty.

Under Article I of the treaty, the united tribes relinquished all of their right, claim and title to that part of Royce Area 50 ". . . which lies south of a due west line from the southern extremity of Lake Michigan to the Mississippi river". The area thus relinquished has been mapped as Royce Area 77 on map Illinois 2, 18th Annual Report of the Bureau of American Ethnology, 1896-97, Part 2. However the northern boundary of the area thus mapped does not follow the treaty call. Instead of lying along a due west line from the southern tip of Lake Michigan it appears to be a line running slightly northeast from the confluence of the Mississippi and Rock Rivers. This line is some miles south of the line called for in the treaty. (Since the land relinquished by the Potawatomi is deemed to be equivalent to the land received by them in exchange, this map discrepancy is not material in this proceeding.)

Under Article I of the treaty, the united tribes also ceded to the United States a smaller tract of land that adjoined Royce Area 77 on the east. This smaller tract is Royce Area 78, more particularly described by metes and bounds as:

[B]eginning on the left bank of the Fox river of Illinois, ten miles above the mouth of said Fox river; thence running so as to cross Sandy creek, ten miles above its mouth; thence, in a direct line, to a point ten miles north of the west end of the Portage, between Chicago Creek, which empties into Lake Michigan, and the river Depleines, a fork of the Illinois; thence, in a direct line, to a point on Lake Michigan, ten miles northward of the mouth of Chicago creek; thence, along the lake, to a point ten miles southward of the mouth of the said Chicago creek; thence, in a direct line, to a point on the Kankakee, ten miles above its mouth; thence, with the said Kankakee and the Illinois river, to the mouth of Fox river, and thence to the beginning . . . .

Article 2 of the 1816 Treaty stipulated that, "In consideration of the aforesaid relinquishment and cession", the United States, in addition to a considerable quantity of merchandise already delivered to the Indians, agree to pay them annually for a period of twelve years, "goods to the value of one thousand dollars."

As further consideration the United States agreed ". . . to relinquish to the said tribes all the land contained in the aforesaid cession of the Sacs and Foxes, which lies north of a due west line, from the southern extremity of Lake Michigan to the Mississippi river . . . ." Except for certain reserved areas, the land thus relinquished to the Potawatomi approximated the northern one third of Royce Area 50. It included Royce

Area 147 in Illinois and Wisconsin and the portion of Royce Area 148 in Illinois which lies west of the Fox River.<sup>4/</sup> (Since the northern boundary of Royce Area 77, as erroneously mapped by Mr. Royce, forms the southern boundary of Royce Areas 147 and 148, the latter areas as thus mapped, contain many square miles of territory not called for by the treaty.) The land relinquished by the United States to the Potawatomi under the 1816 treaty 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; 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.

There were no treaty minutes covering the actual negotiations of the 1816 Treaty. However, on September 9, 1816, the Treaty Commissioners reported relative to the successful negotiations of the 1816 Treaty as follows:

We are happy to have the honor of informing you that we have finally succeeded in bringing to a satisfactory adjustment all difficulties in relation to the adverse claims set up by certain tribes of Indians to the lands purchased by our Government of the Sac & Foxes in 1804, and that we have obtained a cession of a tract of Country which will connect that purchase with Lake Michigan agreeably to our instructions. (17 C. Carter, supra, at 387 [footnote omitted], Pls. Ex. No. 3, Dkt. 15-L.)

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<sup>4/</sup> Royce Areas 147 and 148 were ceded by the Potawatomes to the United States under the Treaty of July 29, 1829, 7 Stat. 320. The Potawatomi claims for those areas were decided in Citizen Band v. United States, Docket 217, et al., 11 Ind. Cl. Comm. 641 (1962); 15 Ind. Cl. Comm. 232 (1965), aff'd in part, rev'd in part, and remanded, 179 Ct. Cl. 473 (1967), cert. denied, 389 U. S. 1046, 390 U. S. 957 (1968); 30 Ind. Cl. Comm. 144 (1973).

In discussing a part of the consideration given by the United States in exchange for the "relinquishment and cession" by the Indians, the treaty commissioners offered this comment:

. . . Taking all things into consideration we do not think the amount of goods which we have contracted to give them, a sufficient equivalent for the relinquishment and cession which we have obtained from them; but by contracting to give them no more, we have left room for the Government to exceed its obligations, and thereby to produce infinitely more favorable impressions upon the minds of those people. (Id. at 389.)

The 1816 Treaty was proclaimed on December 16, 1816. The effective date of the relinquishment of Royce Area 77 and the cession of Royce Area 78 is August 24, 1816, the date the treaty was signed.

#### Conclusions of Law

1. The claims to Royce Areas 77 and 78 brought by the Chippewa Tribe of Indians in Docket 13-K; the Red Lake, Pembina and White Earth Bands of Chippewa Indians in Docket 18-P; and the Ottawa Tribe of Indians in Docket 40-I, are not supported by any evidence. The 1959 motion by the plaintiffs in Docket 216 that the petitions in Dockets 13-K, 18-P, and 40-I be dismissed, should be granted.

2. The individuals listed as plaintiffs in this proceeding have no standing to present or maintain this suit.

3. The other Potawatomi plaintiffs in Dockets 15-L, 29-I, and 216, and the intervenor therein, have the right and capacity under Section 2 of the Indian Claims Commission Act to bring and maintain on behalf of the Potawatomi Tribe or Nation the claims asserted herein arising out of the Treaty of August 24, 1816, 7 Stat. 146.

4. The Indian participants in the Treaty of August 24, 1816, 7 Stat. 146, were a subgroup of the Potawatomi Nation or Tribe, acting on behalf of the whole tribe.

5. By virtue of having participated in the Treaty of Greenville of August 3, 1795, 7 Stat. 49, and the subsequent "follow-up" treaty of cession of August 24, 1816, the Potawatomi Tribe or Nation held recognized title to Royce Area 78, except for the overlapped portion of Item (14) ceded under Article III of the Treaty of Greenville of August 3, 1795.

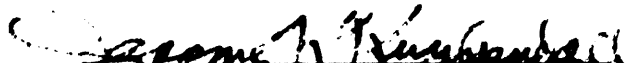
6. The Treaty of August 24, 1816 consisted of the following separate transactions:

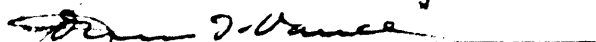
(1) A wash transaction by which the Potawatomi relinquished all of their right, claim and title to the Illinois portion of Royce Area 50 south of a due west line from the southern extremity of Lake Michigan to the Mississippi River (erroneously mapped as Royce Area 77), in exchange for the United States' relinquishment to the Potawatomi of a comparable area in Royce Area 50 north of the same due west line, and


(2) The cession of Royce Area 78 by the Potawatomi to the United States in exchange for goods and merchandise.

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner