

BEFORE THE INDIAN CLAIMS COMMISSION

THE LITTLE SHELL BAND OF CHIPPEWA)	
INDIANS, SOMETIMES KNOWN AS THE TURTLE)	
MOUNTAIN BAND OF CHIPPEWA INDIANS AND)	
AS THE PEMBINA BAND OF CHIPPEWA)	
INDIANS, and)	
)	
JOSEPH H. DUSSOME, HELEN THUMM, EDWARD)	
BELGARD, LUCY TURCOTTE SHARP, ELIZABETH)	Docket No. 191
SWAN, DAVE DONEY, GEORGE ST. CLAIR,)	(Second Claim)
MICHAEL THUMM, ALBERT GARDIPPE, GABRIEL)	
AZURE, MADLINE FAYANT, AND JOHN BRIEN,)	
MEMBERS AND REPRESENTATIVES OF SAID)	
BAND,)	
Plaintiffs,)	
)	
and)	
)	
CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S)	
RESERVATION, MONTANA, JOE CORCORAN, on)	
behalf of the CHIPPEWA CREE TRIBE,)	
BLANCHE PATENAUDE, JOSEPH RICHARD,)	Docket No. 221-B
JOSEPH GOOSELAIN, JOHN B. SLAYTER, WM.)	
JOHN DELORME, WILLIAM TROTTIER, on)	
behalf of the LITTLE SHELL BAND OF)	
INDIANS and the CHIPPEWA CREE TRIBE,)	
)	
Plaintiffs,)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: April 5, 1974

Appearances:

Lawrence C. Mills of Mills
and Garrett, Attorney for
Plaintiffs.

Howard G. Campbell and
Joseph S. Davies, Jr., with
whom was Assistant Attorney
General Kent Frizzell, Attorneys
for Defendant.

OPINION OF THE COMMISSION

Vance, Commissioner, delivered the opinion of the Commission.

The claims now before the Commission under dockets 191 and 221-B relate to a single tract of land and, accordingly, the dockets have been consolidated and tried jointly. The claims, brought under Clause 4, Section 2 of the Indian Claims Commission Act, 60 Stat. 1049, 1050, are for compensation for the alleged appropriation by the United States of land aboriginally owned by plaintiffs or their ancestors. The land involved encompasses about 16 million acres in northern Montana, extending from the Missouri River on the south to the international boundary with Canada (the 49th parallel of latitude) on the north; and from the North Dakota-Montana border westward to a line running from the mouth of the Marias River northward to the Sweetgrass Hills at the international boundary.

Plaintiffs contend that they were deprived of the western three-fourths of the claimed territory when, by a treaty in 1855,^{1/} those lands were included in a tract which was set aside as a reservation for the Blackfoot Nation. Plaintiffs contend that they were deprived of the

^{1/} Treaty of October 17, 1855, ratified on April 15, 1856, 11 Stat. 657, between the United States and tribes west of the Rocky Mountains (the Flathead Nation, consisting of the Flathead, Upper Pend d'Oreille, and Kootenay, and the Nez Perce) and tribes east of the Rocky Mountains (the Blackfoot Nation, consisting of the Piegan, Blood, Blackfoot, and Gros Ventre).

eastern portion of the claimed area when the President, by Executive order on July 5, 1873, extended the Blackfeet Reservation eastward to the boundary of the territory of Dakota.^{2/}

The claims in this case are based on the plaintiffs' assertions that Cree or Chippewa Indians, or some combination thereof, held aboriginal or Indian title to the described territory. To prevail in their claims the plaintiffs must prove that their ancestors exclusively used and occupied the claimed lands, or some portion thereof, for a long time prior to the United States appropriation of the area.

In support of the claim plaintiffs presented as their expert witness Dr. Floyd W. Sharrock, Professor of Anthropology at the University of Montana. Dr. Sharrock and his wife, Susan R. Sharrock, prepared an ethnohistorical account of the Cree Indians which is in evidence as plaintiffs' exhibit 150. The documents upon which they based their report are also in evidence, and three Indian witnesses testified for the plaintiffs.

Dr. and Mrs. Sharrock concluded from their ethnohistorical study that Cree, Chippewa, and Assiniboine Indians were in the contested area in 1803 when the United States acquired sovereignty over the lands involved. By the mid-19th century the Cree were the dominant power in the north central area of Montana, north of the Missouri River. And finally,

^{2/} The Executive order extension was confirmed by the Act of April 15, 1874, 18 Stat. 28.

they concluded, the Cree power and uncontested territory began to diminish after 1860.

Defendant's expert witness, Dr. John C. Ewers, the Senior Ethnologist at the Smithsonian Institution, concluded that neither the Cree nor the Chippewa were among the aboriginal inhabitants of the claimed area. Rather, he found, the lands were used and occupied by the Blackfeet, Gros Ventre and Assiniboine Indians.

Much of the evidence in this case relates to Cree and Chippewa activity outside the claimed area. There is also considerable evidence which deals with the presence of other Indians within the claimed area. However, this is the evidence upon which plaintiffs have relied, and we are entering findings which reflect the evidence. Contrary to the contentions of plaintiffs' counsel, we are unable to conclude that the evidence supports any finding that either the Cree or the Chippewa, or any combination of Cree-Chippewa Indians, exclusively used and occupied any portion of the claimed area.

All of the reports relating to the Cree Indian occupancy prior to 1800 placed them in Canada, far to the north of the claimed area. While Dr. Sharrock testified that the Cree "significantly occupied" the claimed area by 1803, we find no evidence which could support such a conclusion. The only basis for Dr. Sharrock's opinion appears to be a report that in the early 1700's the Cree and Assiniboine Indians traded with agricultural, village people, on the Missouri River. The report of visits to corn-growing, village Indians for the purpose

of trading indicates that the Cree and Assiniboiné were in territory used and occupied by other Indians. While the Cree may have traveled through parts of the subject area to reach the village Indians, this is not evidence of use and occupancy to support an aboriginal title claim.

There is no evidence that Chippewa Indians were in any part of the claimed area prior to 1800. In fact the Chippewa did not obtain a foothold west of Lake Superior until about 1736. The westernmost extension of the Chippewa in the United States during the eighteenth century was the Red River, several hundred miles east of the claimed area.

In 1805 Lewis and Clark ascended the Missouri River, along the south boundary of the claimed area. The map of their trip depicted all of the claimed lands as Assiniboiné territory. The westernmost mapping of any Chippewa Indians was in the Red River Valley on the present Minnesota-North Dakota boundary. No Cree bands were listed on the map. In their journals Lewis and Clark described a band of Cree Indians which roved as far as the Missouri River, but this was reported to be territory belonging to Assiniboiné Indians. Likewise Lewis and Clark reported the presence of Cree at Mandan villages on the Missouri River. But this was indicated as country used and occupied by Mandans and, in any event, was located some one hundred miles southeast of the subject area.

Plaintiffs rely on a report by Regis Loisel, which they contend referred to Cree hunting directly upon the subject lands. The Loisel

statement was that Cree were among those who hunted on the east bank of the Missouri River, more or less above the Yellowstone River. Contending that Loisel was not accurately informed as to the geography of the Upper Missouri River area, plaintiffs speculate that it is "likely" that Loisel meant the north bank of the Missouri, in which event the Cree would have been hunting on the subject lands. But the Loisel report stated that not only the Cree but also the Assiniboines, Blackfeet, Flatheads, Pawnees, and "an infinity of others" hunted on the same lands. This would indicate the subject area was then a common hunting ground for numerous Indian tribes.

Other reports in the early 1800's such as those by Alexander Henry, Alexander MacKenzie, John Tanner, and the journals of Henry and Thompson reported on the presence of Cree Indians at a number of locations, none of which were in the subject area. The Cree were also listed as among various Indian tribes whose members traded at posts in the vicinity of the claimed lands. None of the posts was actually in the area, and presence at a post for trading purposes is not evidence of Indian use and occupancy of the land.

During the 1830's and 1840's various Indian agents reported on the Indian tribes in the upper Missouri River area. The Cree were reported as inhabiting lands in Canada, outside the claimed area. The only Cree activity in the vicinity of the subject lands related to trading activities. There are no references in the reports of Indian agents which would ascribe any portion of the claimed area to Cree or Chippewa Indians.

In 1833 Prince Maximilian visited Fort Union, at the mouth of the Yellowstone River, and continued up the Missouri River. He described a large area, which included most of the claimed lands, as territory claimed by the Assiniboiné. The Cree, he reported, lived in the same area as the Assiniboiné, that is between the Saskatchewan, the Assiniboiné and the Missouri Rivers. The map accompanying the account of his travels depicts all of present Montana north of the Missouri River and east of the mouth of the Milk River as Assiniboiné country. It does not show any Cree territory, and it does not place any Chippewa west of the Missouri Coteau and south of the 49th parallel of latitude.

George Catlin, who traveled among the western Indians between 1832 and 1839, found Cree occupying the country from the mouth of the Yellowstone River in a northwestward direction far into the British provinces. His map of Indian localities placed the Cree directly north of the claimed area along the Saskatchewan River.

In 1835 Chardon reported in his Fort Clark Journal that the Cree were one of the tribes on the Missouri River. He located 300 Assiniboiné and Cree just above the mouth of the White River. But that was southeast of the claimed area. They were reported to have been on their way to attack the Gros Ventre. Cree and Assiniboiné were also reported to have attacked Gros Ventre Indians in the Sweetgrass Hills.

In the 1840's the Cree were reported as inhabiting the Cypress Hills (in Canada) and Woody Mountain (also in Canada). Plaintiffs argue that Cree were on the subject lands, and they place especial

reliance on a reported incident which they consider "perhaps the most dramatic evidence of Cree influence" during the period. Rudolph Frederick Kurz, an artist who lived among the fur traders and Indians, related an incident when a Cree chief, La Plumet Caille, while rowing across a river (unnamed), faced northward and with his hand described a semicircle from the point of sunrise to that of the sunset as he said "Tout ca a moi" (all that is mine). He repeated these words several times in the presence of Assiniboine Indians who, Mr. Kurz observed, might have understood his signs. Such a report is the slimmest kind of evidence upon which to base a determination of Indian title, and we find this incident of no value in defining the lands which Cree Indians may have exclusively used and occupied. We do not know precisely where the Cree chief was when this statement was made. And it has all the indications of a grand and perhaps exaggerated gesture without any limitation of the extent of the territory to which he might have had reference.

Father Jean-Pierre De Smet, who traveled among the Cree in the late 1840's, reported the tribe to be a large and powerful one which constantly encroached upon the lands of its adversaries. He described the Cree territory as ranging from the Rocky Mountains on the west to some distance beyond the Red River on the east, but he limited their north-south range to the lands between the two branches of the Saskatchewan River. They were thus a considerable distance north of the claimed area.

Reports of Indian agents in the 1850's reflected the presence of Cree Indians in the general area of the upper Missouri River, but there were no indications of any area which was exclusively used and occupied by them. The 1855 report of the Commissioner of Indian Affairs listed an estimated 800 Cree as residing on the upper Missouri River. However the report also listed over 18 thousand Indians from some seven other tribes as also residing on the upper Missouri River.

In 1855 the trader Edwin Thompson Denig prepared a report for Governor Isaac I. Stevens on the Cree Tribe. He said the Cree boundary on the north and northeast was the Saskatchewan and Red Rivers; on the south and east it was the Pembina River; thence west to the Coteau de Prairie and along the coteau through Woody, Cypress, Tinder, Moose, and Prickly Pear Mountains to or nearly to the head of the Saskatchewan; thence down that river to Lake Winnipeg; and around that lake to its eastern extremity. None of this territory is in the claimed area.

In 1855 the United States convened a treaty council with the Blackfeet and other Indian tribes residing in the vicinity of the headwaters of the Missouri River. The purpose of the treaty was to establish well defined and permanent relations of amity with all the tribes in that part of the country. The treaty commissioners did not attempt to treat with the Cree, although the Cree Chief Broken Arm was present at the negotiations and signed the treaty as a witness. By

that treaty of October 17, 1855, 11 Stat. 657, the western portion of the subject area was set apart as a reservation for the Blackfeet Nation.

At the treaty council Commissioner Stevens referred to the presence of the Cree, who, he stated, came from the north and east. This statement was reported to have reference to Broken Arm whose residence was noted as being in the region of Wooden Mountains (in Canada). It is significant that Broken Arm entered no dissent to the proceedings and offered no statement with respect to any Cree claim or interest in the lands involved. In fact it appears that Broken Arm concurred in and approved the treaty, which he signed as a witness. Ordinarily when an Indian tribe was being excluded from or restricted with reference to territory to which it had a claim, some protest or objection would have been made by such tribe. The failure of the Cree to enter any such protest is an indication that the tribe had no claim to the lands which were being set apart for the Blackfeet Nation.

The 1855 treaty did not end the conflicts between the Indians. There were continued reports of raids by a number of Indians, including Cree, within the general area. None of the post-treaty reports indicated any Cree use and occupancy of any portion of the claimed area. Mr. F. V. Hayden, a scholar and employee of the Smithsonian Institution, traveled extensively among the Plains Indians in the 1850's. In 1856 he described the Cree territory as bounded on the north and northwest by the Red and

Saskatchewan Rivers; on the south and east by the Pembina River; the southern boundary ran west to the Coteau de Prairie (Missouri Coteau) and from there along the Coteau through Woody, Cypress, Tinder, and Prickly Pear Mountains nearly to the bank of the Saskatchewan. The described territory is outside the claimed area. He also reported that the Cree frequently were found west of the described area on hunting expeditions in the land of the Assiniboine.

Indian Agent Alfred J. Vaughan in 1858 described all of the land from the mouth of the Milk River to the Rocky Mountains as Blackfeet or Gros Ventre country. This includes most, if not all, of that portion of the claimed area which was the subject of the 1855 treaty.

In support of their claim plaintiffs have cited an 1864 report by Indian Agent G. E. Upson that the entire Cree Nation was encamped at the Park or Wood, 60 miles from Fort Union. The Cree were preparing to fight the Gros Ventre. Unfortunately Agent Upson did not identify the location of "the Park or Wood." In any event evidence of an encampment of Indians preparing to enter battle is not evidence of use and occupancy which could support an aboriginal title claim.

There are a number of Canadian reports in evidence which mention Cree Indians south of the international boundary. But the reports are after 1880 which is some six to twenty-five years after the plaintiffs claim to have been deprived of their aboriginal title to the claimed area.

Dr. David G. Mandelbaum, an eminent anthropologist and authority on the Plains Cree Indians, has authored reports on the Cree. His works and maps, portions of which are in evidence, depict the Cree territory

as being in Canada extending as far southward as Wood Mountain, which is about 20 miles north of the claimed area.

We have also considered the testimony of three Indian witnesses who told of the stories which their ancestors had related to them concerning Cree hunting expeditions and Cree ownership of the land north of the Missouri River. However, such testimony cannot support a finding that the Cree exclusively used and occupied the claimed area.

We have carefully reviewed the evidence in this case, and, as summarized herein, we have concluded that it fails to indicate any area within the claimed territory which was used and occupied by Cree or Chippewa Indians. In fact the plaintiffs have established only the most tenuous association with the general area under consideration. Even plaintiffs' expert witness and counsel have used such terms as "visited," "traded," "joint efforts" or "development of dominating influence" to describe the plaintiff Indians relationship to the claimed area. Mere visitations, trading, and raiding of other Indian territory does not support a claim of aboriginal Indian title. Such title must be based on evidence of actual, exclusive use and occupancy of a defined area for a long time. Such evidence is totally lacking in this case. The facts to be drawn from the record in this case are that the claimed area was used as a common hunting ground by many tribes and neither the Cree nor the Chippewa can validly claim it as their aboriginal habitat.

Our conclusions in this matter are consistent with findings which have been made by this Commission and the Court of Claims in other

cases involving the area in question. See Assiniboine Tribe v. United States, 77 Ct. Cl. 347 (1933), cert. denied, 292 U.S. 606; Blackfeet Tribe v. United States, 81 Ct. Cl. 101 (1935); Blackfeet and Gros Ventre Tribes v. United States, Docket 279-A, 18 Ind. Cl. Comm. 241 (1967); Three Affiliated Tribes of the Fort Berthold Reservation v. United States, Dockets 350-B, et al., 25 Ind. Cl. Comm. 179 (1971).

We conclude that the plaintiffs have failed to prove that either the Cree or the Chippewa, or any combination of Cree and Chippewa Indians,

3/ In this case the Assiniboine Indians claimed aboriginal title to lands which included all of the claimed area. The Court of Claims found that:


* * * Over parts and possibly all of these lands the Assiniboines, a comparatively small tribe, at one time reduced by an epidemic to about 1,500, roamed for years along with other tribes, fighting, hunting, and in small bands pitching their tents here and there to remain for periods not shown by the evidence. So also did other tribes roam over a large portion of this territory, hunting, fighting, and pitching their tents, and to a very considerable proportion of it we think the Blackfeet Indians or the Gros Ventre could show as good or better title so far as occupancy and possession could establish it. So far as the evidence shows, the greater part of this tract north of the Missouri River claimed by plaintiff was a kind of "no man's land" prior to the time the Government disposed of it.

* * * we cannot agree that a tribe which is shown to have made such wide and extensive migrations can be held to have established title by "immemorial possession" to lands over which they roamed. (Id. at 367-68.)

ever exclusively used and occupied any part of the claimed area.
Accordingly, the claims herein must be dismissed and such an order will
be entered.


John T. Vance, Commissioner

We Concur:


Jerome K. Kuykendall, Chairman


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner