

on this account for the sum of \$150,311.03, together with interest thereon at the rate of five per cent per annum.

Claim is also made against defendant for the additional sum of \$13,195.49, together with interest thereon at the rate of five per cent per annum, which, as shown by Defendant's Exhibit No. 1, is the total of several items erroneously charged against these Indians and paid out of their funds, as follows:

Interest on money advanced while defendant was in default of compliance with the terms of the treaty of January 14, 1837:		\$ 3,051.66
	(and)	623.83
Administrative expenses of examining claims against the Indians		\$ 3,020.00
Special inducements or bribes paid to chiefs:		\$ 5,000.00
	(and)	1,000.00
Medical attention--unauthorized charges:		\$ 113.15
	(and)	386.85

The defendant alleges that by Article 3 of the treaty of August 2, 1855, and supplements thereto, (meaning the treaty of October 18, 1864) it was released and discharged from further liability to account for the value of the remaining unsold lands (which had been ceded to the defendant in trust by the treaty of January 14, 1837); and that the items aggregating \$13,195.49 claimed as having been erroneously charged to the plaintiff were properly charged to the plaintiff, and as to which defendant should not be held liable;

or defendant's liability therefor, if any, offset by refunds due it, or released by Article 3 of the 1855 treaty.

The plaintiff contends that the release agreed to by the Indians under Article 3 of the treaty of August 2, 1855, is unconscionable because the defendant has plead said release as a defense to other claims of the plaintiff based on prior treaties, the pendency of which said claims and the defense urged thereto the Commission should take judicial notice of; plaintiff contending that they "have elected to have the consideration specified in said treaty of 1855 credited against the claims under the earlier treaties as revised, commencing with the earliest in which recovery is had."

Defendant contends that the validity of the release must be ascertained as it applies to each case before the Commission. The question of the sufficiency of the consideration given by the Treaty of August 2, 1855, for the release of claims based on treaties arising prior to 1837 cannot now be determined by the Commission for the facts pertaining to those claims are not now in evidence. It is possible, however, in this case to test the sufficiency of the release as it specifically applies to the case herein at bar. The Commission is of the opinion that the defendant's contention as to said release is sustained, and that the determination of whether or not the release discharges the defendant from liability to the plaintiff for the value of the 60,124.41 acres of land unsold at the time of the treaty of 1855

and conveyed to the defendant by said treaty should be based on a determination of the consideration received by the plaintiff under the terms of the treaty of 1855 as contrasted with the value of the cessions and relinquishments made by the plaintiff under the terms of said treaty.

The plaintiff makes the contention that the release should be considered as applicable not only to the cessions and benefits specifically named in the treaty of 1855 as conveyed and released, but that same should be considered as applicable to the claimed liability of the defendant to the plaintiff for the value of approximately 690,000 acres of land ceded by the plaintiff to the defendant by the treaty of July 4, 1805, for an unconscionable consideration; and for the reasonable value of approximately 2,620,800 acres of land ceded to the defendant for an unconscionable consideration by the treaty of November 17, 1807; and of the liability for the reasonable value of approximately 4,326,230 acres of land ceded to the defendant by the treaty of September 24, 1819, for an unconscionable consideration. (See Plaintiff's Requested Finding No. 12). Aside from the fact that at the time of the treaty of 1855 there existed no liability in law to the plaintiff for cessions made for an unconscionable consideration, if any, and therefore the plaintiff having no claim of such character against the defendant at the time, certainly a release, even if broad enough to cover all liabilities at the time of whatever nature, cannot be considered as having in contemplation the release of liabilities not then in existence.

It is further to be noted that the release provided by the treaty of 1855 describes the claims to be released as those which are "legal and equitable * * * against the United States for land, money and other thing guaranteed to said tribes, or either of them, by the stipulations of any former treaty or treaties." (Underscoring supplied).

Under the Findings of Fact (Finding no. 11), under the treaties of 1855 and 1864 (which 1864 treaty merely supplemented the 1855 treaty as far as benefits accruing to the Indians is concerned), the Saginaw Indians received individual allotments and patents to lands aggregating more than 98,000 acres, and also money or expenditures in lieu of money for their benefit in the aggregate amount of \$252,000. If all the annuities and benefits accruing to the Chippewa Indians under previous treaties (as shown by Finding No. 12) are held to have been the property of the Saginaw Chippewas, and they are credited with capitalization of all said annuities and benefits at the rate of six percent, they can be credited with surrendering benefits of the cash value of \$96,666.66. Crediting this on the net expenditure of \$252,000 accruing to said plaintiff would leave a net money consideration received by the Indians, over and above that surrendered by them, of \$155,333.34.

If the Saginaw Tribe is not to be credited with all said annuities and benefits under the treaties named in Finding No. 12, but only for those which are a fixed and definite obligation of the defendant to said Indians, then they would have a credit of approximately \$80,000

and the net money consideration received by them over and above the value of annuities and benefits released would be approximately \$172,000. Under no basis of calculation of the value of benefits released as compared with benefits received, applying same to the moneys involved, can it be said that the plaintiff received less than \$155,333.34 in excess of the benefits; which amount exceeds the value of land ceded as claimed by the plaintiff in the amount of \$150,311.03.

It is also to be noted that the Indians received individual allotments under the treaties of 1855 and 1864 of over 98,000 acres of public land of the United States.

Summarizing the provisions of the treaty of 1855, as to the benefits accruing to the United States thereby, they are:

(1) Full title to the lands unsold of the 102,400 acres previously by the treaty of January 14, 1837, ceded to the defendant in trust, the amount of such unsold lands being approximately 60,124.41 acres.

(2) The Saginaw Indians surrendered their rights to all annuities secured to them under former treaties, the cash value of such annuities not exceeding \$96,666.66, and possibly not more than \$80,000.

Summarizing the consideration passing from the defendant to the Saginaw Indians:

(1) The defendant agreed to give to each individual member of the Saginaw Tribe land out of the public lands of the United States and thereafter there was patented under the allotment provisions of

said treaty to individual members of the Saginaw Tribe over 98,000 acres of land.

(2) The defendant further agreed to give the Saginaw Indians \$220,000 and to expend for their benefit \$32,000, providing a total money consideration to said Indians of \$252,000.

As previously stated, under no basis of calculation can the plaintiff be held to have received a less consideration for the 60,124.41 acres of land conveyed by them to the defendant than \$155,333.34, which is in excess of the liability asserted by the plaintiff against the defendant on account of the conveyance of said land to the defendant. In addition to this excess consideration in money received by the plaintiff, they also received individual allotments of land in excess of 98,000 acres. Therefore, plaintiff's claim for the land cession must be disallowed.

As found by us in Findings Nos. 13, 14 and 15, the items aggregating \$13,195.49 sued for by the plaintiff as being items erroneously charged against them by the defendant were properly so charged because of the provisions of the treaties involved; or were offset by refunds due to the defendant; or if not properly charged to the plaintiff, or offset by such refunds due the defendant, were in any event released by Article 3 of the treaty of 1855. Therefore, plaintiff is not entitled to recover as to said items, or as to any one of the same.

WHEREFORE, plaintiff's claims as herein made are denied
and plaintiff's petition is dismissed.

/s/ Edgar E. Witt
Chief Commissioner

CONCURRING:

/s/ Louis J. O'Marr
Associate Commissioner

/s/ Wm. M. Holt
Associate Commissioner