BEFORE THE INDIAN CLAIMS COMMISSION

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| SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN, and JAMES STRONG, as representative of all members of the Chippewa Tribe of Indians having any interest in the claims asserted, Plaintiffs, v. UNITED STATES OF AMERICA, Defendant. | ) | Docket No. 13-H |

Decided: April 22, 1954

Appearances:

Arthur B. Honnold and
Chas. B. Rogers,
Attorneys for Plaintiffs.

Sim T. Carman, with whom was
Mr. Assistant Attorney General
Perry W. Morton,
Attorneys for Defendant.

OPINION OF THE COMMISSION

O'Marr, Commissioner, delivered the opinion of the Commission.

The claim here to be considered (First Claim pleaded in the petition) is before us for a second time. It was first submitted last year and on May 14, 1953, the Commission by order reopened the matter for the purpose of permitting the parties to offer additional evidence on the question as to whether the consideration received by the plaintiffs was unconscionable. (See opinion of Commission, 2 Ind. Cls. Com. 390, 397-399).

In accordance with the reopening of the case for further evidence

the plaintiffs offered at a rehearing held October 22, 1953, only one exhibit (Pl. No. 12) which is a census report made in 1880, while the defendant offered 12 exhibits (Nos. 51 to 62) and the case was finally closed. No other evidence was offered by either party.

Although we ordered a reopening of the case for further proof that would enable us to determine whether the consideration received by the Saginaw for the relinquishment of their rights in the Saginaw Reservation was unconscionable, the Saginaw, upon whom the burden of proof rests, has offered us no additional proof whatever on that vital question. On the other hand, the Government has offered much documentary evidence relating to the status of the tribal rights and interests of the Saginaw in the two reservations -- evidence not before us when we first had this claim under consideration.

As to consideration, the Saginaw now say the $20,000 the Government paid under Article 4 of the 1864 treaty cannot be considered as part of the consideration because under section 2 of the Indian Claims Commission Act money expended for education cannot be considered as part of the consideration. Apparently, counsel for the Saginaw is referring to gratuitous expenditures made for the Indians. Such expenditures are not allowable as offsets under the Act but the expenditure for the support and maintenance of the "manual labor school" was not a gratuity within the provisions of the act, but a treaty obligation of the Government (Sioux Tribe v. United States, 112 C. Cls. 39, 44) and therefore would be deductible if an award were made.

The Saginaw again contend that they received no consideration for the cession of the Saginaw Reservation because, as they again state,

they already owned the lands in the Isabella Reservation. We thought this contention was fully covered in our previous opinion but will reiterate what we said before.

By the express terms of the 1855 treaty the individual members were given the right to select lands within the area withdrawn from sale for the benefit of the Saginaw. This privilege expired about July 1, 1861. (See Finding 3, first provision of Ottawas and Chippewa treaty set forth therein). Under Article 1 of the 1855 treaty, the Indians selected 27,931.80 acres in the Isabella Reservation out of a total of 98,051.13 acres therein (Findings 2 and 12), and 5926.22 acres in the Saginaw Reservation out of a total of 60,593.23 acres therein. (Findings 2 and 13).

After the time expired for making selections, July 31, 1861, the Indians had the exclusive right for the next five years to enter the lands in either reservation. (Art. 1 of 1855 treaty). This "right to enter" consisted of the right "to entry in the usual manner and at the same rate per acre, as other adjacent public lands are then held * *." (See provision of the Ottawas and Chippewa treaty which is made applicable by the 1855 treaty, as set forth in Finding 3). This provision of the Ottawas and Chippewa treaty also provides that land "that shall not have been appropriated or selected within five years shall remain the property of the United States." This indicates that it was only when and if the land was selected or purchased (entered) that title to the land vested. No entries of unselected lands had been made in either reservation at the time of the 1864 treaty, so what the Saginaw actually had at that time were 70,119.33 acres in Isabella and 54,667.01 acres in Saginaw reser-

vation of unselected lands in the two reservations. In other words, at the time of the 1864 treaty they acquired the unselected lands in Isabella reservation which, prior to the 1864 treaty could be acquired only by entry and paying for them at the price of "adjacent public lands."

With respect to the purchase of lands under the 1855 treaty, it is provided that the Indians shall have the "same right to sell and dispose of land entered by them, under the provisions of the Act of Congress known as the Graduation Act, as is extended to the Ottawas and Chippewas by the terms of said agreement." (Meaning the treaty referred to in Finding 3). Turning to the Ottawas and Chippewa treaty of July 31, 1855, 11 Stat. 621, we find this provision:

> "Any Indian who may have heretofore purchased land for actual settlement, under the act of Congress known as the Graduation Act, may sell and dispose of the same; and in such case, no actual occupancy or residence by such Indians on lands so purchased shall be necessary to enable him to secure title thereto."

Reading these provisions in connection with the related provisions of the 1855 treaty the intention was to give the Saginaw members the right to acquire the unselected lands by paying for them and to obtain an unrestricted patent without actual residence required by the Graduation Act.

The 1864 treaty changed all of this. By express terms it eliminated the right to "purchase the unselected lands" in the Isabella reservation, gave the Saginaw the "exclusive use, ownership, and occupancy" of the unselected lands therein, and gave the Indians the right to again make selections therein, and without payment therefor. It was these rights, plus the $20,000 for the manual labor school, that constituted the consideration for the cession of the Saginaw Reservation, so in order for

us to decide whether the consideration was unconscionable we had to know the value of the Saginaw reservation land, 60,593.23 acres, ceded. The Saginaw have failed in both respects. As to the unselected lands in Isabella reservation, counsel for the plaintiffs cling to the notion that such lands did not constitute any part of the consideration for the cession of Saginaw reservation lands — this, in spite of our previous opinion — and as a result offered no proof as to the value thereof.

As to the value of the lands ceded, plaintiffs rely principally upon a tabulation of sales made by defendant (Def. Ex. 1). This tabulation shows some 500 sales aggregating 43,025.82 acres sold for $96,580.55, or about $2.24 per acre. Some four hundred of these sales were in 40-acre tracts or less and the remainder in 80-acre or larger tracts, with the largest of 187.65 acres. This would indicate a value of much less per acre at the date of the treaty for the lands sold if made in a large tract. Furthermore, these sales do not include 17,567.41 acres of the railroad land for which no acceptable proof of value has been offered.

In view of the above, we have no alternative but to dismiss the petition as to the first cause of action, the remaining causes of action having been disposed of by our order of May 14, 1953.

To save any misunderstanding that might arise from these provisions of Article 1 of the 1864 treaty:

> "The said Indians also agree to relinquish to the United States all claim to any right they may possess to locate lands in lieu of lands sold or disposed of by the United States upon their reservation at Isabella * *,"

it may be well to discuss them briefly.

It seems the Saginaw thought they had rights to locate lands outside

of Isabella to compensate them for lands within the six townships described in the treaty of 1855, which had been sold by defendant prior to the treaty. It is difficult to find any basis for this because by the treaty of 1855 it was only the unsold public lands in the six townships that were withdrawn from sale for their benefit and, according to the evidence, they received 98,051.13 acres of them. In any event, the claim was disposed of as we see by reading the following part of the report of one of the treaty Commissioners, dated October 31, 1864 (Def. Ex. 17, p. 451):

> "By the terms of this treaty it will be perceived that the Indians relinquish their right to the several townships upon Saginaw bay, and agree to make selections in severalty upon the Isabella reservation. They also relinquish all claims to locate lands outside of the reservation at Isabella, in lieu of lands disposed of by the government prior to the establishment of that reservation.
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> "This claim, the Indians informed me, would cover some 36,000 acres. Not being fully informed as to the validity of this claim, but finding that the Indians considered it good and valid for the purpose of effecting a settlement thereof, and as a consideration for the relinquishment of the townships upon Saginaw bay, it was stipulated that the government should pay the sum of $20,000 for the support of a manual labor school at Isabella. This is the only expenditure of money involved in the treaty, an amount insignificant in itself, in view of the relinquishments made by the Indians and the importance of having them all concentrated upon one reservation."

An order dismissing causes of action designated in the petition (as amended) claims first, second and fourth, will be entered.

Louis J. O'Marr
Associate Commissioner

We concur in the above:

Edgar E. Witt
Chief Commissioner

Wm. M. Holt
Associate Commissioner