

BEFORE THE INDIAN CLAIMS COMMISSION

THE OTTAWA TRIBE AND GUY JENNISON,)
BRONSON EDWARDS and GENE JENNISON,)
As Representatives of THE OTTAWA)
TRIBE,)

Petitioners,)

vs.)

Docket No. 303

THE UNITED STATES OF AMERICA,)

Defendant.)

Decided: November 26, 1962

Appearances:

Allan Hull, with whom were
Harrison, Thomas, Spangenberg
& Hull, and Louis L. Rochmes,
Attorneys for Petitioners

William D. McFarlane, with whom
was Mr. Assistant Attorney General,
Ramsey Clark,
Attorneys for Defendant

OPINION OF THE COMMISSION

Holt, Associate Commissioner, delivered the opinion of the Commission.

In a prior determination in this case (8 Ind. Cl. Comm. 831) this Commission made findings of fact and rendered an opinion in which it held that petitioners herein were entitled to recover of defendant certain stated sums and that as to certain other issues the petitioners were entitled to recovery of and from the defendant but that the amounts could not be definitely determined without further hearings and proof thereon. The Commission by Interlocutory Order of June 29, 1960,

held that defendant was liable for, and the parties were ordered to submit additional proof thereon, as to the following:

2. * * *

(a) The appraised value of the 10,702 acres of school lands, amounting to \$50,196.97, turned over to trustees by the 1873 agreement for sale for benefit of the Ottawas, less whatever sums are shown to have been actually paid to the Ottawas by the trustees from the proceeds of sale and less the amounts expended for expenses and services set forth in Finding of Fact No. 44, and

(b) For an amount equal to the profit that may be shown was made by Hutchinson and Kalloch from the sale of 5,000 acres of Ottawa school land which may be shown by records of bona-fide first sales of these lands, and

(c) For the value of 3,032 acres of Ottawa school lands sold by the trustees who did not invest the proceeds as required by the Treaty of June 24, 1862 -- the amount to be determined by taking the average sales prices of record for these sales.

In addition to a determination of the above questions the Commission has now before it the issue of what offsets, if any, defendant is entitled to under the provisions of the Indian Claims Commission Act.

Following the entry of the Commission's Interlocutory Order of June 29, 1960, the defendant filed a motion for rehearing on October 14, 1960, which motion was objected to by the petitioners and orally argued before the Commission by the parties. On March 10, 1961, this Commission rendered an opinion (9 Ind. Cl. Comm. 98) denying defendant's motion for a rehearing. The previous findings of fact and opinions made in this case fully set forth the pertinent facts involved in these claims and need not be reiterated now. After denial of defendant's

motion for rehearing hearings were held on the remaining issues and defendant introduced additional evidence on the matters for determination and on offsets while petitioners rested its case on the evidence already before the Commission.

Defendant's proposed findings of fact and brief (filed on August 3, 1962) contain an exhaustive examination of the entire record on not only the limited issues as to amounts of recovery set forth in the Commission's Interlocutory Order of June 29, 1960, to be given further consideration but also a reargument of the entire case. This was done in spite of the fact that defendant's motion for rehearing was, after careful consideration thereof by the Commission, denied on March 10, 1961 (9 Ind. Cl. Comm. 98). The Commission in view of its previous findings of fact and opinions in this case intends herein to confine itself to the limited questions set forth in its Interlocutory Order of June 29, 1960, and to a determination of offsets.

Trust in Liquidation under 1873 Settlement.

Petitioners contend that the only payment made by the trustees charged with the sale of 10,702 acres of school lands under the 1873 settlement (Findings of Fact 32 and 33, 8 Ind. Cl. Comm. 831, 860-861) was the sum of \$4,934.27 paid in 1881. Petitioners also contend that although a further amount of \$7,280.88 was found due in 1883 from the trustees by the judge examining the accounts of the trustees named after the settlement agreement, no order for payment of such fund was entered and that there is no evidence that the Ottawa Indians ever

were paid this additional amount. Defendant urges that the \$7,280.88 plus the \$4,934.27, or a total of \$12,215.25, should be found to have been paid the Ottawa Indians. The burden of proof is upon defendant to show payment of the \$7,280.88 to the Ottawas. The record does not show such payment and this sum may not be so deducted. Petitioners are entitled to recover the amount of \$50,196.97, less the amount of \$4,934.27 paid to the Ottawa Indians, and less the sum of \$1,571.45 expended for expenses and services of the trustees as found in Finding of Fact No. 44, leaving a balance due petitioners of \$43,691.25.

Profit Made by Hutchinson and Kalloch from Sale of 5,000 Acres of School Land

The 5,000 acres include the town site of Ottawa, Kansas, of 640 acres sold by the trustees of the Ottawa school lands to one of their own members, Young, for \$800.00, who in turn conveyed the land to Hutchinson, also a trustee and his son-in-law, for \$800.00. Hutchinson later sold this site to the Ottawa Town Company for \$10,000.00. (Finding of Fact No. 11). Petitioners seek to recover the sum of \$223,728.10 which they contend the promoters of the Ottawa Town Company received as profit in the sale of town lots. Defendant on the other hand urges that the United States is liable, if at all, only for the profit made by Hutchinson by his sale to the Ottawa Town Company. Defendant asserts that the evidence shows that the sale on September 15, 1864, from Hutchinson to the Company, was a bona fide sale made for the consideration of \$10,000.00, as shown by the warranty deed and the minutes of the Ottawa Town Company, and that the profit to Hutchinson being \$9,200.00,

this is the sum which petitioners are entitled to recover for 640 acres of school land under paragraph 2(b) of the Commission's Interlocutory Order of June 29, 1960. Petitioners have offered no proof to show that the same of the town site to the Ottawa Town Company by Hutchinson was anything but a bona fide transaction. It is true that Hutchinson was an officer of the town company but this fact falls far short of imputing any cloud upon the transaction. The consideration paid Hutchinson by the town company, without proof to the contrary, may well have been the fair market value of the 640 acre unimproved town site at the time of purchase. The only profit that may be accurately figured from the record to have been made by Hutchinson in this transaction is \$9,200.00.

The remaining acreage of the "5,000 acre school tract" consisted of 4,348.79 acres. This was part of the 5,000 acres purchased by Young which he assigned to I. S. Kalloch to whom a patent was issued in February 1865. On June 17, 1865, Kalloch sold Richard D. Lathrop an undivided one-half interest in the lands for the sum of \$4,000.00, which deed was recorded June 17, 1865. Between 1865 and 1871, 4,093.60 acres of the 4,348.79 acres were resold by the following parties to the public for the sum of \$43,537.03 as follows:

1. Kalloch and wife sold 2,818.12 acres for \$18,292.84
2. Lathrop sold 982.81 acres for \$18,106.56
3. Kalloch and Lathrop sold 130.12 acres for \$2,550
4. Hutchinson sold 162.55 acres for \$4,587.63

