

BEFORE THE INDIAN CLAIMS COMMISSION

THE ONEIDA TRIBE OF INDIANS OF WISCONSIN)	
)	
Petitioner,)	
)	
v.)	Docket No. 159
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: December 6, 1962

FINDINGS OF FACT

The Commission makes the following Findings of Fact:

1. The Oneida Tribe of Indians of Wisconsin is a recognized Tribe of American Indians with a constitution and by-laws approved by the Secretary of the Interior.

2. The Oneida Indians of Wisconsin were originally located in New York. Encouraged by the Government of the United States to remove from New York, they came to Wisconsin to live on lands acquired from the Menominee Tribe. Subsequently, by the treaty of February 3, 1838, (7 Stat. 566) a reservation in Wisconsin was set aside for the Oneida Indians in Wisconsin, referred to in the treaty as the First Christian and Orchard parties. The reservation was located near the present city of Green Bay, Wisconsin, in Royce Area 158, Wisconsin map No. 2. Said reservation comprises approximately 65,000 acres. The treaty by which the reservation was created contained a clause that the land reserved was to be held as other Indian lands are held.

3. Said Treaty of 1838 was to be binding when ratified by the United States. On May 12, 1838, by resolution of the United States

Senate said treaty was ratified and confirmed.

4. In 1838 the reserved land, as described in Finding 2 above, was covered with a dense growth of pine and hardwood timber.

5. The Oneida reservation was tribal property and remained so until the lands were allotted, or distributed in severalty, among members of the tribe on or about 1889, pursuant to the General Allotment Act of February 8, 1887 (24 Stat. 388).

6. The timber on the reservation was tribal property. As tribal property it could not be disposed of without the approval of the Government. Cutting of timber by individual members of the tribe was unauthorized, except as an incident to their residence on or cultivation of the land. Neither the tribe nor members thereof was authorized to cut timber for sale.

7. Both petitioner and defendant agree that timber was cut and sold on the tribal reservation by individual members of the tribe. This cutting and selling existed from some time prior to the treaty of 1838 to approximately 1870. Such cutting and selling was done over the objection of some but not all of the tribal chieftains. Some of the proceeds resulting from said sales were used by the individual Indians to purchase whiskey. This cutting and selling resulted in depletion of the timber on the reservation. The facts enumerated above were known to the various Indian Agents and were reported by them to the various Commissioners of Indian Affairs over the years. Some of the Indian chiefs made suggestions to stop or control the selling of the timber. Action by the United States Government to stop the unauthorized cutting was taken in 1868 when the Commissioner of Indian Affairs advised the United States Agent for the

Oneida Indians that the Department of the Interior intended to stop the violations.

In 1870 suits were commenced against purchasers from the Indians, and logs were seized on writs of replevin. One of the suits was reviewed by the United States Supreme Court, which ruled in United States v. Cook, 19 Wall. 591, that individual Indians had no right to cut the timber on a tribal reservation and that the United States was entitled to recover possession of the logs. This suit and other suits, one of which was Wooden Ware Company v. United States, 106 U. S. 432, against such purchasers were largely effective in putting a stop to the unauthorized sales; however, prior to approximately 1870 nearly all the salable timber on the reservation had been cut and removed.

8. Prior to the timber trespasses alleged in the petition some of the Chiefs of the First Christian Party of Oneida Indians signed an agreement with one of their numbers, i.e. Daniel Bread. This agreement was explained by Judge Drummond in United States v. Foster, (25 Fed. cases, p. 1171, case No. 15,141) as follows:

On the 4th day of January, 1836, the Oneida Nation made a contract of lease to Daniel Bread, one of their tribe, authorizing him to construct a dam and saw-mill on Duck creek, within the reservation, and to cut all the timber thereon necessary to build the dam and mill, as well as do lumbering thereat. Any one of the nation had a right to cut and draw logs to the mill, and one-half of the boards were to go to the mill, and the other half to him who cut and drew the logs. This condition as to the division of the property was to continue four years, and after that those who drew the logs were to be entitled to two-thirds of the boards.

Duck Creek, the stream on which Daniel Bread was to and did construct his sawmill and dam, is situated within the reservation of 65,400 acres. However, the evidence does not show the total amount of timber cut and sold under the lease.

Some time after Daniel Bread built the sawmill at Duck Creek, he assigned his agreement to one Foster who became a defendant and successful party in a replevin action filed by the United States for logs cut by individual Oneida Indians for the purpose of sale.

9. On February 18, 1870, the United States filed a replevin action against George Cook for logs cut by individual Oneida Indians on the reservation at Green Bay, Wisconsin, and sold to the defendant in that action. The jury returned a verdict for \$75.00 as the value of the logs and for 6¢ (six cents) as damages for detention. A bill of cost was taxed for \$257.96 and the judgment entered for the total was, after execution issued, paid and converted into the Treasury of the United States as revenue derived from fines, penalties and forfeitures.

Following the entry of judgment in this case of United States v. Cook, 86 U. S. 591, there was collected in settlement of other suits brought for timber trespasses by Oneida Indians the sum of \$773.25 which was deposited in the Treasury of the United States as revenue derived from fines, penalties and forfeitures. Further, following said entry of judgment, the unauthorized cutting and selling of timber came to a virtual halt.

10. On June 18, 1889, Dana C. Lamb was appointed as a Special Agent under the authority of the General Allotment Act of February 8,

1887, (24 Stat. 388) under instructions which read in part:

You will carefully calculate the quantity required to make the allotments upon the above basis, and if the amount is not in excess of the quantity of land in the reservation (65,540) you will proceed to make the allotment in said quantities.

The reservation contained in the treaty of February 3, 1838, (7 Stat. 566) was allotted in severalty (except 85 acres held for school purposes) to the Oneida Indians about the year 1889 under the general provisions of the Act of Congress of 1887, (24 Stat. 388) and the said lands are now held in accordance with said Act.

11. It is concluded that the Oneida Tribe of Indians of Wisconsin suffered substantial losses from the cutting and selling of timber. However, it was through the machinations of the tribal members, that the cutting and removal was accomplished.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner