

## BEFORE THE INDIAN CLAIMS COMMISSION

THE SIX NATIONS, et al.,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

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Docket No. 344

Decided: March 1, 1963

FINDINGS OF FACT

The Indian Claims Commission makes the following findings of fact herein:

1. The plaintiff herein is an identifiable group of American Indians, residing within the territorial limits of the United States.
2. Among the aborigines first encountered by European colonists on the North American continent were those who shared a common language identified as "Iroquoian." The aborigines who spoke this language were generally found in the vicinity of the Eastern seaboard of the continent.
3. In those earliest contacts, the Iroquoian aborigines identified themselves as "The Five Nations." After the Tuscarora Indians who emigrated from the Carolinas to the north affiliated themselves with the existing Iroquoian confederacy in the 1720's, that confederacy was frequently referred to as "The Six Nations." The Six Nations so identified were the Senecas, Cayugas, Onondagas, Oneidas, Mohawks, and Tuscaroras. From 1746, the Missisauga (Mississaga; Chippewa stock) Indians were allied as the seventh tribe of the Iroquoian confederacy or

league, but that alliance lasted only until the outbreak of the French and Indian war in 1754.

4. The Six Nations occasionally acted as a unified organization with a single objective, but at other times the tribal components of the confederacy acted individually, or even at cross-purposes. During the Revolutionary War, the Oneidas and some of the Tuscaroras fought on the side of the colonists, but the Senecas, Cayugas, Onondagas, Mohawks and the rest of the Tuscaroras allied themselves with the British and fought against the rebellious colonists.

5. The Six Nations were not nomads. They maintained substantial settlements, raised crops near those settlements, hunted, and traded pelts to European colonists for arms and goods. The Six Nations were warring Indians who exterminated, incorporated, or dispersed many of their surrounding neighbors. Their westward expansion was halted by the Chippewa, while on the north The Six Nations fought sporadically with the French and with Indians allied with the French.

6. Among the European colonists experiencing contacts with The Six Nations were those living within the bounds of the Proprietary of Pennsylvania. The origin of this Proprietary was a Royal Charter issued by Charles II, King of England, to William Penn on March 4, 1681. In summary, the Charter granted William Penn land, roughly rectangular, in one compact body bounded by the Delaware River on the east, by the 40th degree of northern latitude on the south, by the 43d degree of northern latitude on the north, and on the west by a meridian line five degrees in longitude west of the Delaware River. Subsequent adjustments with

other grants issued by the King of England placed the northern boundary on the 42d, instead of the 43d, degree of northern latitude. As adjusted, the northern and western boundaries of the Proprietary of Pennsylvania (i.e., the northwest corner of Pennsylvania) formed a perfect right angle, the apex of which was a point in Lake Erie less than five miles from shore.

7. William Penn developed a pattern of buying land, within the chartered boundaries of Pennsylvania, from Indians who claimed to own it. This pattern or practice was neither required nor suggested in the Royal Charter, which did not take Indian ownership of land into account. The charter did not require any payment to Indians or that Penn pursue any peaceful means to come to agreement with the Indians concerning use and occupancy of land in Pennsylvania. The pattern or practice followed in Pennsylvania was a humanitarian one, designed to minimize conflict and loss of life. It was less expensive than expulsion of Indians by conquest.

8. In 1777 the Delegates of the several states (i.e., colonies) agreed to Articles of Confederation providing for perpetual union between the thirteen states. Among other things, Article IX thereof provided:

The United States in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, \* \* \*

The United States in Congress assembled shall also have the sole and exclusive right and power of \* \* \* regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated \* \* \*

The Articles of Confederation were ratified by the states, excepting Maryland, in 1778 and 1779. Maryland withheld ratification, and consequently the Articles of Confederation did not take effect, until 1781. Maryland refused to ratify until the states whose land claims embraced the Northwest Territory ceded their western claims to the United States. The Northwest Territory comprised lands north and west of the Ohio River, and New York and Massachusetts professed overlapping claims to lands there. New York ceded its claims to land in the Northwest Territory to the United States in 1781, by voluntarily limiting the western boundary of New York State to a meridian line twenty miles west of Niagara intersecting, on the north and south, by the 45th degree of northern latitude and the Pennsylvania-New York boundary, respectively. In 1785, Massachusetts ceded its claims to land in the Northwest Territory to the United States, adopting substantially the western boundary specified by New York four years earlier.

9. The states' cessions to the United States of land claims in the Northwest Territory comprised the first land of the federal public domain. Lands to the east which were not ceded by the states to the United States remained the property of the several states, individually, and never became part of the federal public domain.

10. The treaty of peace between England and the United States, marking the end of the Revolutionary War, was concluded at Paris on September 3, 1783. It made no reference to England's Indian allies and did not provide for amicable relations between the hostile Indians and the new sovereign nation, the United States of America. The necessity for a peace treaty between the United States and the Indians was concurrent

in time with the desires of the states of New York and Pennsylvania to negotiate with the Indians concerning land purchases.

11. In 1783, the Continental Congress passed a Resolution recognizing the need for negotiations with the lately hostile Indians. In the same year, the General Assembly of the State of Pennsylvania advised Congress that the state intended to negotiate with Indian nations adjoining Pennsylvania frontiers concerning land purchases. It was ultimately determined that representatives of New York, Pennsylvania, the United States, and The Six Nations would meet at Fort Stanwyx in October of 1784. The Resolution passed by Congress provided in part:

That the commissioners for holding the convention with the Indians under the act of the fifteenth day of October instant give notice to the supreme executive of the State of Pennsylvania, of the time and place of holding such treaty, to the end, that the persons to be appointed by that State, for purchasing lands within the limits thereof, at the expence of the said State, may attend for the sole purpose of making such purchase, at the time and place appointed for holding the said treaty: and the commissioners on the part of the United States, are instructed to give every assistance in their power, to the commissioners who may be appointed on the part of Pennsylvania, towards promoting the interest of that State, as far as the same may consist with the general interest of the Union . . .

The United States commissioners were appointed on March 12, 1784. Negotiations on behalf of New York were authorized by that state on April 6, 1784.

12. The New York delegation, and some representatives of The Six Nations, were present at Fort Stanwyx by September 5, 1784. The New York delegation attempted immediate negotiations with The Six Nations, but the Indians' representatives expressed a desire to deal first with the United States commissioners. The Pennsylvania and United States delegations

arrived at Fort Stanwix around the second day of October, 1784. The Pennsylvania delegation had with it extensive trade goods to be used in its negotiations.

13. During the first few days of the conference, Indian delegates were still arriving daily. During this period, many of the efforts of the United States representatives were devoted to inhibiting sutlers' sales of liquor to Indians and to a continuing controversy with the New York delegation which seemed determined to frustrate United States negotiations. The unregulated sale of liquor to Indians frequently led to their intoxication, with consequent detriment to the progress of the negotiations during the first few days. The United States representatives did control the flow of liquor before serious negotiations got under way.

14. Firm negotiations between The Six Nations and the United States commenced on October 17, 1784. During such negotiations, the Pennsylvania delegates attended as spectators, but did not participate in the negotiations at all. The Indians' speaker proposed a boundary line between property of the United States and property of the Indians. The United States Commissioners deemed the proposal unacceptable and, on October 20, proposed an alternate. The Indian representatives accepted this alternative boundary and, on October 22, 1784, a treaty of peace between the United States and The Six Nations was concluded. The treaty contained the boundary line which dropped due south from Lake Ontario through the now city of Buffalo, New York, to the northern boundary of Pennsylvania, due west to the western boundary of Pennsylvania, and due south to the Ohio River. The Six Nations yielded to the United States

all claims to lands west of the line so drawn, including the area popularly known as the Erie Triangle. No land within the then boundaries of Pennsylvania was included; all claims pertained to lands in the federal public domain by reason of states' cessions.

15. When the United States commissioners finished their business with representatives of The Six Nations, the commissioners were asked by the Pennsylvania delegates to introduce the latter formally to the Indians. The Pennsylvania delegation had been instructed to extend cooperation to, and expect cooperation from, the United States commissioners. The commissioners did agree to introduce the Pennsylvania delegates to the Indians, and one of the commissioners, General Wolcott, stated:

We now, announce to you Col. Atlee, Mr. McClay and Col. Johnston, three honorable gentlemen from the State of Pennsylvania, who have come by the consent of Congress, as commissioners, to transact some affairs with you, on the part of that state, after the conclusion of the present treaty, should it the treaty between the United States and The Six Nations/ be concluded in a manner satisfactory to the United States.

Colonel Atlee of the Pennsylvania delegation then addressed the Indians:

You have been now told by the honorable Commissioners from Congress, that we attend as commissioners from your old friends of Pennsylvania, to transact business with you on the part of that state. At a proper season, we will produce to you our commission, and lay before you the business committed to our charge, and we doubt not but you will take it under immediate consideration, and return a favourable answer.

16. The United States representatives took no part in the deliberations between the Pennsylvanians and Indians, except for a short ceremonial speech to the Indians on the last day of the conference, after all details of the agreement between Pennsylvania and The Six Nations

had been settled. The United States representatives did not take part of, or presume to advise, either party to the detriment of the other. In so refraining, the United States representatives honored the strict limits imposed upon the United States in dealings with Indians by the ninth of the Articles of Confederation.

17. The United States, at the Fort Stanwix conference, did not accept or seize the claims of any Indians to lands within the boundaries of the State of Pennsylvania. The United States did not impose any pressure upon the Indians to give particular consideration to Pennsylvania's wishes. In abstaining impartially from the negotiations between Pennsylvania and The Six Nations, the representatives of the United States accorded the Indians the fairness and honor which the circumstances and the times demanded.

18. At the Fort Stanwix conference, Pennsylvania bought from The Six Nations, for a consideration recited in the deed from The Six Nations, all of the area embraced by the instant Claim No. 1, known herein as Area I. The boundaries recited in the deed provided in part:

. . . DO grant, bargain, sell, release, and confirm unto the said Commonwealth /Pennsylvania/, all that part of the said Commonwealth not yet purchased of the Indians within the acknowledged limits of the same, BEGINNING on the south side of the river Ohio, where the western boundary of the state of Pennsylvania crosses the said river, near Shingo's old Town, at the mouth of Beaver creek, and thence by a due north line to the end of the forty-second and beginning of the forty-third degrees of north latitude, thence by a due east line separating the forty-second and forty-third degree of north latitude, to the east side of the east branch of the river Susquehanna, . . .

The boundary dividing the colonies of New York on the north and Pennsylvania on the south was established as the 42d degree of northern latitude and



not the 43d degree specified in the Charter to William Penn. The deed from The Six Nations to Pennsylvania purported to convey, or quit-claim, to the latter a considerable portion of land which was actually part of the State of New York, and the Erie Triangle.

19. When New York ceded its claims to land in the Northwest Territory to the United States, the land so ceded became the first public domain of the United States. At the time of this cession, the western boundary described in the deed had not been surveyed and, for years afterward, no one knew precisely where it lay. In 1786 and 1787, Pennsylvania completed the surveys of the western and northern boundaries of that state. These surveys disclosed that the Pennsylvania waterfront on Lake Erie extended only about four miles. In 1780, Pennsylvania authorities laid plans to buy the triangular tract, ceded to the United States by New York, Massachusetts, and, later, the Six Nations, which was bounded by the western boundary of New York on the east, by the northern boundary of Pennsylvania on the south, and by Lake Erie on the northwest. This is the tract known as the Erie Triangle (Area I-A). It includes Presque Island, just offshore. Indians denoted as Ottawas, Chippewas, Mississagas, and Lake Indians lived intermittently in the Erie Triangle, and other Indians may have passed through and hunted in that area, from time to time.

20. Since the western boundary of New York was not surveyed until 1790, the area embraced by the Erie Triangle was a matter of conjecture. Pennsylvania authorities were under the impression that it comprehended seven or eight hundred thousand acres. The United States sold the Erie Triangle to Pennsylvania in 1788:

Whereas it appears that the board of treasury in conformity to the Act of Congress of the 6th June last have entered into a contract with the Delegates of the state of Pennsylvania in behalf of the said State, for the tract of land bounded East, agreeably to the cession of western territory by the States of Massachusetts and New York, south by Pennsylvania, North and West, by lake Erie, and whereas the said tract is entirely separated from the other lands of the western territory, over which the jurisdiction of the United States extends; and whereas under these circumstances it will be expedient for the State of Pennsylvania to hold and exercise jurisdiction over the tract aforesaid, therefore,

Resolved, that the United States do hereby relinquish, and transfer all their right, title and claim to the Government and Jurisdiction of the said tract of land, to the State of Pennsylvania forever; and it is hereby declared and made known that the laws and public Acts of the said State shall extend over every part of the same tract to all intents and purposes as if the same had been originally within the charter bounds of the said State; provided that the Inhabitants of the said tract shall be maintained in all the rights and priveleges which other citizens of the said State of Pennsylvania are now or may hereafter be constitutionally entitled to enjoy.

It was ultimately determined that the Erie Triangle, including Presque Island, embraced 202,187 acres for which Pennsylvania paid the United States \$151,640.25 at the rate of \$0.75 per acre.

21. In 1789, Pennsylvania acquired the Erie Triangle from the Indians. This specific purchase from those who claimed to own it, The Six Nations, was necessitated by the fact that Pennsylvania's survey in 1787 of her own northern boundary disclosed that the northern boundary was appreciably south of where it had been believed to have been, thus casting doubt upon the boundaries intended by the 1784 deed from the Indians. The Six Nations did "grant, burgain, sell, remise, release, quit claim, and assign" to Pennsylvania land

. . . lying & being within the territory of the United States, bounded on the South by the North'n boundary of Pennsa., on the East by the Western line or boundary of the State of New York, agreeable to an act of Cession of the said State of New York, and the State of Massachusetts to the United States, and the North by the Southern shore or Margin of Lake Erie, including Presqu' isle and all the Bays Harbors along the shore or Margin of the said Lake Erie from the West boundary of the said State of Pennsa., to where the west line or boundary of the State of New York may cross or intersect the southern shore or margin of sd. Lake Erie, . . .

Inclusion of the yet unknown western boundary of New York again rendered indeterminate the extent of the actual cession.

22. When Pennsylvania acquired the Erie Triangle from The Six Nations, the signing Chiefs were under the impression that there were some Six Nations villages in that area and, by the Fifth Article of the agreement, attempted to reserve those areas to the use of their people:

That as several Villages belonging to the signing Chiefs and their people are now living on the said Conowago creek and in other parts of the country supposed to be within the tract of country West of the West line of the State of New York and East of the line through the Waters as described in the third Article -- And as they have no country to remove to from where they now live, the said chiefs do reserve for their own and their people's residence, hunting and fishing, all that part of the tract of Country described in the second Article, passing from the Allegany River along the middle of the Conowago Creek, the Chadochque Lake a meridian line from the North end of said lake to Lake Erie.

It was subsequently determined that the signing chiefs misunderstood where their villages were, as all of the attempted reservation fell entirely within the State of New York, well east of the Erie Triangle.

23. Of the various villages herein alleged to be Six Nations towns, only one, Conneaut, is material. Conneaut, located at the juncture of Conneaut Creek and Lake Erie, about ten miles west of the Erie Triangle

in the now State of Ohio, was not a Six Nations town at all times material to this suit. If Indians who lived at Conneaut traveled between that settlement and other sites alleged to be Six Nations towns -- and this Commission does not now consider the validity of identifying such other sites as Six Nations towns -- then there could have been passage through the Erie Triangle. Any use entailed in such passage would have been wholly transitory.

24. The Commission finds that it has not been established by substantial evidence that The Six Nations held Indian title to Area I-A, known as the Erie Triangle.

Arthur V. Watkins  
Chief Commissioner

Wm. M. Holt  
Associate Commissioner

E. Harold Scott  
Associate Commissioner