

BEFORE THE INDIAN CLAIMS COMMISSION

THE SENECA NATION OF INDIANS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 342-H
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: August 30, 1963

FINDINGS OF FACT

The Commission makes the following Findings of Fact:

1. The petitioner, The Seneca Nation of Indians, is an identifiable group of American Indians residing within the territorial limits of the United States within the meaning of section 2 of the Indian Claims Commission Act and as such has the right to bring and maintain this action.

2. A treaty of peace between England and the United States, marking the end of the Revolutionary War, was concluded at Paris on September 3, 1783.

The Seneca Nation was among the Indian tribes who had joined the British in the Revolutionary War and fought against the United States. However, the peace treaty between the United States and Great Britain made no provision for Britain's Indian allies, and it became desirable for the United States to make separate peace treaties with them.

On October 15, 1783, the Continental Congress authorized a convention to be held with the Indians who had taken up arms against the

United States. The Resolution authorizing the peace treaties provided as follows:

* * * the preceding measures of Congress relative to Indian affairs, shall not be construed to affect the territorial claims of any of the States, or their legislative rights within their respective limits * * *

Consequently, the United States entered into a peace treaty with the New York tribes known as the Six Nations, one of which was the Seneca Nation. This treaty was called the Treaty of Fort Stanwix, and took place October 22, 1784 (7 Stat. 15). This treaty established the western boundary of the lands of the Six Nations and left the subject lands in the area inhabited by the Six Nations. The Six Nations remained at peace with the United States until 1794.

During this interim period the State of Pennsylvania made efforts to establish a town on the present site of Erie, Pennsylvania. The British Governor of Canada, thinking that his ambition to establish a buffer Indian state was being threatened by these efforts, did everything possible to influence the Six Nations against the establishment of the new town. As a result the President ordered the American settlement at Presque Isle suspended, fearing that it might provide provocation to the Indians to join the northwest frontier Indian tribes against whom General Anthony Wayne was then bitterly engaged.

After a preliminary meeting between the Americans and the Six Nations held at Buffalo Creek the United States decided to hold a treaty with them "for the purpose of amicably removing all causes of misunderstanding and establishing permanent peace and friendship between the United

States and the Six Nations." (Def. Fdg. 16) The treaty was subsequently entered into at Canadaigua, New York, November 11, 1794 (7 Stat. 44).

Article III of this treaty delineates the boundaries within which the Senecas had possessory rights. The United States acknowledged the right of the Seneca Nation to these lands which had been obtained as a result of treaties with the State of New York and agreed that "it shall remain theirs, until they choose to sell the same to the people of the U.S. who have the right to purchase." (7 Stat. 45) All of the said lands as so defined were, and still are, within the boundaries of the State of New York. The subject lands are included within these boundaries. However, this was a treaty of amity rather than a treaty of cession.

3. Prior to 1786 most of what is now western and central New York was claimed by the states of Massachusetts and New York under conflicting grants from the Crown of England. However, on December 16, 1786, an agreement was reached between the two states settling the dispute. This agreement, which became known as the Hartford Compact, provided that Massachusetts would relinquish its claim to sovereignty over the entire area in which the subject lands lay. New York, in return, ceded to Massachusetts the right of pre-emption (and all other rights of property subject to the occupancy of the soil by the native Indians.) This right of pre-emption referred to in the Compact was the right to purchase or extinguish Indian title.

4. After the adoption of the Constitution, the Congress enacted a statute to regulate trade and intercourse with Indian tribes which provided as follows (Act of July 22, 1790, Sec. 4, 1 Stat. 137, 138):

* * * no sale of lands made by any Indians, or any nation or tribe of Indians within the United States, shall be valid to any person or persons, or to any state, whether having the right of pre-emption to such lands or not, unless the same shall be made and duly executed at some public treaty, held under the authority of the United States.

This provision was amended and superseded by the Act of March 1, 1793, Sec. 8, 1 Stat. 329, 330, which in turn was superseded by the Act of May 19, 1796, Sec. 12, 1 Stat. 469, 472. Section 12 of the 1796 Act (which was the same as Section 8 of the 1793 Act, with the exception of minor and inconsequential changes) provided:

That no purchase, grant, lease or other conveyance of lands, or of any title or claim thereto, from any Indian, or nation or tribe of Indians, within the bounds of the United States, shall be of any validity, in law or equity, unless the same be made by treaty, or convention, entered into pursuant to the constitution: and it shall be a misdemeanor in any person, not employed under the authority of the United States, to negotiate such treaty or convention directly or indirectly, to treat with any such Indian nation, or tribe of Indians, for the title or purchase of any lands by them held, or claimed, punishable by fine not exceeding one thousand dollars, and imprisonment not exceeding twelve months: Provided nevertheless, that it shall be lawful for the agent or agents of any state, who may be present at any treaty held with Indians, under the authority of the United States, in the presence, and with the approbation of the commissioner or commissioners of the United States, appointed to hold same, to propose to, and adjust with the Indians, the compensation to be made, for their claims to lands within such state, which shall be extinguished by the treaty.

The foregoing provision has continued in effect until the present day. (Act of March 3, 1799, Sec. 12, 1 Stat. 743, 746; Act of March 30, 1802, Sec. 12, 2 Stat. 139, 143; Act of June 30, 1834, Sec. 12, 4 stat. 729, 730; R.S. 2116, 25 U.S.C. 177)

5. On September 15, 1797, the Seneca Nation of Indians with the sanction of the United States entered into an agreement with Robert Morris

at Genesee, New York. Prior to this time Mr. Morris had acquired the pre-emption right from the State of Massachusetts to extinguish Indian title to certain lands in western New York. Morris, previous to the agreement with the Senecas, had already sold substantially all of these lands to other persons, obligating himself as the seller, to extinguish the Indian title.

Under the above agreement petitioner for a consideration of \$100,000 ceded certain described lands to Robert Morris with the exception of certain lands therein reserved. This agreement was signed by Mr. Thomas Morris, attorney for Robert Morris, and by fifty-two sachems, chiefs, and warriors of the Seneca Nation of Indians. Thus, Indian title to all the lands described in the above agreement to which the Seneca Indians had a right of occupancy was extinguished except for the reserved lands.

Although not specifically described in the agreement, the parties to the above agreement had agreed that a certain tract of a mile square near to the Allegany River, upon which was located an "oil spring", was to remain the property of the Seneca Nation. The ownership, possession and control of the aforesaid reservation by the Seneca Nation of Indians have been recognized from time to time by the Congress of the United States, the Department of Interior, officials of the State of New York, and by the Supreme Court of the State of New York.

6. On May 8, 1845, the New York State Legislature passed an "Act for the protection and improvement of the Seneca Indians, residing on the Cattaraugus and Allegany reservations in this state." The law provided that these Indians, in the name of the "Seneca Nation of Indians"

could prosecute and maintain certain actions in the State courts of law and equity, including actions to protect their rights and interests in Oil Spring Reservation, part of which is the subject of this action.

In 1848 this group of Indians adopted a "Constitutional Charter composed of legislative, executive and judiciary departments," and the United States Commissioner of Indian Affairs recognized this organization in his dealings with these Indians. The new Constitution was also recognized by the State of New York.

By virtue of the 1845 New York law, the petitioner, on November 12, 1855, brought an action in ejectment in the Cattaraugus County Supreme Court of New York State against one Philonus Pattison to remove him from the northwest corner of the Oil Spring Indian Reservation. Judgment was rendered for petitioner indicating Seneca ownership of said reservation.

7. Canal legislation in the State of New York began with the laws of 1792 which authorized a private corporation for inland water communication. Due to the growth of the State, greater facilities were required. Consequently, the laws of 1811 authorized the appointment of a commission to investigate ways and means of canal expansion. In 1817 the canal fund was constituted and its management placed under the commissioners of the canal fund consisting of the Lieutenant Governor, Surveyor-General, Secretary and Treasurer. These commissioners were directed to make canals between the Mohawk and Seneca rivers and between Lake Champlain and the Hudson River.

By an Act of April 17, 1830, the New York legislature directed the canal commissioners to survey a route for a canal from Rochester by way of the Genesee River to the Allegany River at Olean, and report their findings to the legislature. The Act of May 6, 1836, provided for the construction and completion of a navigable canal extending from the Erie Canal in Rochester through the valley of the Genesee River to a point near Mount Morris and thence by the most eligible route, to the Allegany River at or near Olean, New York. This canal was to be known as the Genesee Valley Canal.

About 1858 the State of New York, acting under the provisions of the Canal Law of the State, began the construction of a dam to provide a feeder for the Genesee Erie Canals. About 1858 or 1859, an area consisting of 47.25 acres lying within the Oil Spring Reservation, along with non-Indian lands lying outside the reservation, was appropriated for this purpose by the State of New York in accordance with pertinent statutes of the New York law. Part of the land appropriated was for the reservoir or lake to be formed from the construction of the dam and most of the remainder was for an outlet to the canal and for land liable to be damaged and flooded. Sometime between 1863 and 1872 the reservoir was raised and an additional 3.7 acres within the Oil Spring Reservation were appropriated. These appropriations were made without any grant of authority, consent, or approval of the Congress of the United States, or of any officer or agency of the Federal Government (Def. Ex. 18).

8. Pursuant to the provisions of the New York State law pertaining thereto, the Canal Appraisers heard the claim of petitioner for the appropriated 47.25 acres at Albany, February 3, 1864 and February 5, 1865, after a personal examination of the premises. An award was made

in the amount of \$1,396.04 which included \$929.50 for the 47.25 acres and \$466.54 for interest from the date the land was taken until payment was made. No record has been found of the later appropriation of 3.7 acres, or payment for the same.

On September 21, 1865, the council of the Seneca Nation of Indians unanimously adopted a motion authorizing their attorney, Daniel Sherman, to receive the certificate of award for the above appropriation, collect the money, execute a receipt for the same and sign the name of the Seneca Nation of Indians to any writing necessary in obtaining, selling or negotiating said award or certificate.

Subsequently, on May 12, 1866, the State of New York issued a check in the amount of \$1,396.04 payable to D. Sherman, Attorney, and on the same date Mr. Sherman as "Attorney for the Seneca Nation of Indians" acknowledged receipt of a check of this amount from the Treasurer of the State of New York. However, previously, in pursuance of the Seneca Council Resolution of September 21, 1865, Mr. Sherman, on behalf of the Seneca Nation of Indians, had sold and assigned the above certificate of award authorizing the assignee to collect and receipt the same in full.

9. The subject lands form a strip along the shore of Cuba Lake or reservoir. This lake or reservoir was formed by the erection of a dam for the purpose of forming a feeder to the Genesee Valley Canal and was part of that canal system. The Genesee Valley Canal was abandoned about 1878. The dam and lake were then continued as part of the Erie Canal system until about 1892 when they were abandoned as to that use also. Thereafter they were maintained for such other use as could be made by the Canal Department of the State of New York. On May 2, 1912, the

Canal Board adopted a resolution formally abandoning them and on May 24, 1913, the New York State Legislature placed them under the care of the Conservation Commission "for reservoir purposes for the benefit and profit of the People of this State," with special power to rent lots adjacent to the reservoir. Since then, lots have been rented for camp sites, first by the Conservation Commission and later by the Allegany State Park Commission. With the exception of a small acreage these lots are located entirely within the 47.25 acres acquired from the Seneca Nation of Indians by the State of New York.

10. In January 1924, the Seneca Nation of Indians submitted a formal petition to the Commissioners of the New York Land Board seeking a determination of its rights to the Oil Spring property, the subject of this action. Petitioner claimed the lands reverted to them when the use for which they had been taken was abandoned. Petitioner also claimed that it was entitled to the rents realized by the State of New York from cottage lot rentals on the subject property.

The New York Attorney General advised the Commissioners that the appropriation of the lands was valid, that under the laws of New York land taken for public use did not revert to the former owner upon abandonment of that use, that the statute of limitations was a bar to the claim in the same manner as in the case of a citizen and that the Seneca Nation, having been compensated, had no moral right to the title nor to the monies collected from the rents. The Commissioners followed the recommendation of the Attorney General and denied the petition. The State of New York continues to claim ownership of the lands so appropriated and continues to exercise dominion and control over the same. It refused

to return such lands to the possession and control of the Seneca Nation or to account for the rent and profits from said lands.

11. Because of the fact that New York was one of the thirteen original colonies, the legal title to the subject lands has never been in the United States and the State of New York has dealt directly with Indian tribes claiming lands within its borders. The defendant has at no time attempted to recover said lands for the petitioner or evict the persons in possession thereof. It has not collected the rents and profits therefrom for the benefit of the petitioner and has at no time rendered any assistance to the petitioner for such purpose. Some transactions between the petitioner and the State of New York were held with the sanction of the Federal Government and some were held without such sanction. The State of New York, to a great extent, has exercised the usual prerogatives of sovereignty over the Seneca Nation of Indians. The State of New York has provided them educational facilities, highways through their reservations, medical or health supervision, etc.

The State of New York by legislation gave the Seneca Nation of Indians authority to prosecute all claims to protect their rights and interests to the Allegany, Cattaraugus and "oil spring reservations." Prior to the appropriation complained of, the Seneca Nation in 1848, voluntarily submitted to the jurisdiction of the State of New York by virtue of its adoption of a Constitutional Charter which was recognized by the State of New York. The charter provided that the council of the Seneca Nation of Indians would have power to make laws not inconsistent with the constitutions of the State of New York or the United States

and that the laws passed by the legislature of the State of New York for their protection and improvement,

* * * shall continue in full force and effect as heretofore, except so far as they are inconsistent with the provisions of this constitution or charter.

The Office of Indian Affairs of the United States also recognized new form of government of the Seneca Nation and advised its members that,

The new form of government of the Indians * * * will be recognized by the Government, and so far as may be necessary, the relations of the Government with those Indians will be made to conform thereto.

12. After considering all the evidence presented in this case and the record as a whole, including the arguments of both petitioner and defendant as they relate to both legal and factual questions, the Commission finds that defendant did not violate any duty or obligation toward petitioner and is not guilty of a lack of fair and honorable dealings under the Indian Claims Commission Act. We find, therefore, that petitioner is not entitled to recover.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner