BEFORE THE INDIAN CLAIMS COMMISSION

EMIGRANT NEW YORK INDIANS, ex rel., JULIUS DANFORTH, OSCAR ARCHIQUETTE, SHERMAN SKENANDORE, MAMIE SMITH and ARVID E. MILLER,	)	
Petitioners,	)	
v.	)	Docket No. 75
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

Decided: August 11, 1964

Appearances:

Marvin S. Chapman, with whom was Louis L. Rochmes, Ely M. Aaron, and Aaron, Aaron, Schimberg & Hess, Attorneys for Petitioners.

Craig A. Decker, with whom was Mr. Assistant Attorney General Ramsey Clark, Attorneys for Defendant.

OPINION OF THE COMMISSION

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

Petitioners herein, the Emigrant New York Indians, have been found to be entitled to an award of $1,452,824.00 under the terms of an amended interlocutory award entered this day. This award of $1,452,824.00 represents a gross award of $1,603,600.00 less a consideration of $150,776.00 under the treaty terms. The question

now before the Commission concerns the gratuitous payments made by defendant to petitioners after June 25, 1832, and which are chargeable against the interlocutory award under the terms of Section 2 of the Indian Claims Commission Act.

Defendant alleged in its amended answer the sum of $207,464.35 in gratuitous expenditures made for the benefit of the Emigrant New York Indians. However, at the hearing and in its requested findings on offsets defendant withdrew those payments which represented reimbursement for certain improvements belonging to Emigrant New York Indians on land from which they were removed. Defendant also withdrew certain other expenditures which were shown by the vouchers not to be proper offsets. This left a final requested total of offsets in the amount of $143,564.69.

Those gratuitous expenditures in the amounts shown under each finding have been subjected to the following criteria as set forth by this Commission in the case of Red Lake, et al v. United States, Docket No. 18-A, 9 Ind. Cl. Comm. 457, 517:

(1) Were the disbursements made by the United States gratuitous expenditures made to or for the petitioners without any obligation on the part of the Indians to repay them?

(2) Were the gratuitous expenditures for the benefit of the entire tribe?

(3) Do any of the gratuities come within the scope of any of the excepted categories?

(4) Does the nature of the claim and does the course of dealings between the petitioners and the United States in good conscience warrant the offset?

After subjecting the requested offsets to these criteria it was determined that a total amount of $139,351.35 qualified as proper offsets against the interlocutory award.

With reference to the individual findings, they were in most instances relatively clear as to their category. However, an explanation of the reasoning behind certain of them is desirable in the interest of clarity.

The $500.00 requested in Finding 67 was disallowed because the proof offered by defendant appears to compel the opposite conclusion from that argued for. If many of the Oneidas were relatively prosperous farmers then the money spent for seeds, fruit trees and fertilizer which was distributed to the needy would seem to be more of an individual assistance than a tribal benefit. This reasoning is with reference to the particular circumstances and we do not mean to say that the same reasoning would always hold true. There may be instances where what appears to be individual aid may in fact be a tribal benefit.

The agricultural instruments issued to the Oneidas and allowed as an offset in Finding 68 were, in the light of their generally successful farming activities, a tribal benefit and not for educational purposes.

The $1,108.00 of expenses for Indian delegations requested in Finding 69 represents two separate visits, one in 1851 and one in

1890. The sum of $1,000.00 claimed for the 1851 visit came about through the failure of defendant to properly pay an annuity due the Oneida Indians. Since the visit was occasioned by an error on the part of defendant it would seem improper to charge petitioners with this $1,000.00. In the case of the $108.00 there is no indication that the visit in 1890 was in the course of tribal business and thereby a benefit to the tribe and it was disallowed as an offset.

Finding 71 represents $65,884.27 expended for land for the Oneida Indians under the Indian Reorganization Act of June 18, 1934 (48 Stat. 984). The proof of the expenditure is satisfactory. Petitioners, however, argue that this offset, if allowed, should be charged against them at the same rate of 80¢ per acre as they were paid for the land in 1832 and not at the cost of the land when purchased by defendant for petitioners under the Reorganization Act. The Commission cannot agree with this contention. This was a gratuitous action on the part of defendant done from 1937 to 1945 when the natural course of economic and social events had led to a much higher value for the land than it had in 1832. In Section 2 of the Indian Claims Commission Act where Congress set forth its policy with regard to those items which were not subject to offset against any award made to a claimant is found the following language:

> * * *, or for expenditures made pursuant to the Act of June 18, 1934 (48 Stat. 984), save <u>expenditures</u> made under Section 5 of that Act, * * * (emphasis added)

Since Congress used the word "expenditures" and placed no limitation thereon we can only take it to mean exactly what it says, i.e., that which was expended. In this finding that figure amounts to $64,517.01 spent under Section 5 of the Act of June 18, 1934 (48 Stat. 984). For this reason the amount spent by defendant for land acquisition as requested in this finding has been allowed.

Finding 73 represents expenses of Indian delegations to Washington. $839.50 of this amount has been allowed as being a tribal benefit. The other expenses may be proper offsets but in the absence of proof as to the purpose of the visits it is impossible for the Commission to determine whether the benefit inured to defendant or petitioners. This being so and the burden being on the defendant these items must be disallowed.

Finding 76 represents the purchase of land under Section 5 of the Act of June 18, 1934 (48 Stat. 984) as found in Finding 71 except that in this case it is the Stockbridge and Munsee Indians rather than the Oneidas. The same reasoning would apply here and the offset of $22,534.10 will be allowed.

Findings 77 and 78 are for partitioning and allotting lands and are similar except for the groups which received the benefits. The division of land for allotment to individuals gratuitously done is a tribal benefit and is an allowable offset.

The expenditure requested in Finding 79 is for laying off a reserve established under the treaty and a similar expenditure has

heretofore been disallowed as an administrative expense of defendant in the Red Lake case, supra, and it is so disallowed herein.

Finding 80, showing a requested offset in the amount of $39,831.20, represents the value of the remainder of the 65,400 acre Oneida Reservation after deducting 23.87% thereof in the course of charging the Emigrant New York Indians for their proportionate share of the 500,000 acres.

Since this matter is somewhat unusual it would be well to go into the surrounding circumstances in order to place it in its proper perspective.

The Oneida Indians, along with the other New York Indians, received a 500,000 acre reservation under the 1831-1832 Stambaugh Treaty with the Menominees for those of the New York Indians who would remove to Wisconsin. The President was authorized to set aside this land in such manner as he might deem just and equitable to those New York Indians occupying the land at the end of a reasonable period of time. This just and equitable division amounted to 100 acres per individual as it was finally made to the Oneidas under the Treaty of February 3, 1838 (7 Stat. 566). The total set aside for the Oneidas was 65,400 acres and lay within the confines of the original 500,000 acre tract. The question of the proper treatment of this 65,400 acres was postponed by the Commission until this determination on offsets.

Defendant argues that the rights of the Oneidas to this land arose under the 1831-1832 Stambaugh Treaty and that it should be

treated as consideration. Defendant also argues alternatively that since there was no consideration given by the Oneidas for the 65,400 acres set aside under the Treaty of February 3, 1838, that this acreage is capable of being treated as a gratuity.

It is the opinion of the Commission that the remainder of the 65,400 acre Oneida Reservation to the amount of 49,789 acres should be treated as consideration under the Stambaugh Treaty of 1831-1832 (7 Stat. 342; 7 Stat. 346). At the same valuation of 80¢ per acre this amounts to $39,831.20.

As pointed out by defendant the Treaty of February 3, 1838 (7 Stat. 566) makes it clear that the source of the land comprising the 65,400 acre reservation created thereunder lay in the Stambaugh Treaty of 1831-1832 (7 Stat. 342; 7 Stat. 346).

Since this question was specifically reserved until the present stage of the proceedings it will, as a matter of convenience, be treated as an offset for the purpose of computing the final award. Due to the size of the amount involved it would not have affected the question of unconscionable consideration involved in the valuation phase of the case.

The summary of the amounts allowed and disallowed as shown by the findings of fact indicates a total of $139,351.35 of allowable gratuitous offsets and a total of $4,213.34 alleged offsets which have been disallowed by the Commission.

The course of dealings between petitioners and defendant

having been weighed in relation to these offsets and the offsets allowed having been found to conform to the requirements of Section 2 of the Indian Claims Commission Act, it is the judgment of this Commission that petitioners should recover from defendant the sum of $1,313,472.65. A final award will be entered showing an interlocutory award of $1,452,824.00, less gratuitous offsets in the amount of $139,351.35, and leaving a net balance of $1,313,472.65 due petitioners.

T. Harold Scott
Associate Commissioner

Concurring:

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner