BEFORE THE INDIAN CLAIMS COMMISSION

THE CAYUGA NATION OF INDIANS, et al.,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No. 343
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: NOV 14, 1968

Appearances:

Paul G. Reilly, Attorney for Petitioners

Milton E. Bander, with whom was
Mr. Assistant Attorney General
Clyde O. Martz, Attorneys for
Defendant

OPINION OF THE COMMISSION

PER CURIAM

Defendant's motion for partial summary judgment is directed at the "First Claim" appearing in the Cayuga petition, wherein the petitioners allege that on February 25, 1789 the Cayuga Nation, without the sanction and authority of the United States, ceded to the State of New York all its lands situated within the state for an unconscionable consideration. The petitioners claim liability on the part of the United States on the basis that the central government breached its fiduciary obligations to the Cayuga Nation by failing to protect the Cayugas from improvidently selling their lands to the State of New York. According to the petitioners the

United States assumed such fiduciary obligation to the Cayugas under the provisions of the October 22, 1784 Fort Stanwyx Treaty, 7 Stat. 15.

The 1784 Fort Stanwyx Treaty was fundamentally a treaty of peace concluded between the central government and those tribes comprising the "Six Nations", one of whom was the Cayuga Nation.* The Cayugas, Senecas, Mohawks, and Onondagas had openly sided with the British in the American Revolution, and the United States, following the formal closing of hostilities with Great Britain under the 1783 Treaty of Ghent, sought immediate pacification of these hostile Indian tribes who posed a serious threat to the efforts of our newly formed Government to avoid a costly and prolonged frontier war with the sizeable Indian population.**

Apart from giving peace to the Cayugas and receiving them under their protection, the United States under Article III of the 1784 Treaty caused a common boundary line to be drawn, and the members of the Six Nations ceded any and all claims they might have to lands located west of the boundary line, and in return the United States agreed that, as to their lands east and north of this line, ". . . then they shall be secured in the peaceful possession of the land they inhabit east and north of the same, . . ."

The defendant relies upon the recent decision of the Court of Claims in the case of The Six Nations et al., v. United States, 173 C. Cls. 899,

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* The other five tribes participating in the 1784 Fort Stanwyx Treaty were the Oneida, Tuscarora, Senecas, Mohawks, and Onondagas.

** The peaceful intentions of the Government at Fort Stanwyx is clearly shown in the opening language of the 1784 Treaty wherein it is stated:

> "The United States of America give peace to the Senecas, Mohawks, Onondagas and Cayugas, and receive them into their protection upon the following conditions: . . ."

as the compelling authority for the Commission to dismiss the Cayuga claim as set forth above, as failing to state a claim upon which relief can be granted.

In the Six Nations case, suit was brought under our Act to recover additional compensation for two tracts of land that the Six Nations transferred to the State of Pennsylvania in the 1780's for an alleged unconscionable consideration. The United States had no proprietary interest whatsoever in the two Pennsylvania tracts belonging to the Six Nations. As is the position taken in the instant case, the Six Nations predicated the liability of the United States upon the breach of a purported fiduciary obligation to the Six Nations that the central government had assumed under the provisions of the 1784 Fort Stanwyx Treaty.

In denying the Six Nations relief on these two claims, the Court rejected the existence of the fiduciary role of the United States in reference to these Pennsylvania land transfers as contrary to the intent and purposes of the 1784 Fort Stanwyx Treaty, and as incompatible with relationship between the States and the central government with respect to Indian affairs as spelled out under Article IX of the Articles of Confederation.

As the Court of Claims said in the Six Nations case:

> ". . . but we discern no basis for imposing that status on the United States, as of 1784 with respect to lands within the states. The majority of the Six Nations had confederated with the British and were technically enemies until the Treaty of Fort Stanwyx became effective; this enemy status would be enough to preclude the implication of a fiduciary relationship unless there were affirmative action by the Congress to show otherwise. The Continental Congress adopted no legislation shouldering such a burden; the Congressional concern was centered on Indian lands outside the states. The resolution

> calling for peace negotiations with the Indians expressly provided '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. . .' Indeed, the portion of the Articles of Confederation dealing with Indian affairs - quoted above - may have deprived the Congress of the power to oversee the Six Nations' dealings with Pennsylvania with respect to lands within its boundaries."

Turning its attention specifically to the provisions of the 1784 Treaty of Fort Stanwyx, the Court went on to say:

> "Appellants say, nevertheless, that the Treaty of Fort Stanwyx--signed immediately prior to the negotiations with Pennsylvania--made the United States responsible, at once, for preserving the Indians' interests as against third parties (including the states). But the most significant part of the treaty was merely a peace pact reciting (7 Stat. 15) that 'The United States of America give peace to the Senecas, Mohawks, Onondagas, and Cayugas, and receive them into their protection upon the following conditions.' This was a common provision designed to substitute the United States for the British Crown as the paramount sovereign . . . It did not, by itself, create a fiduciary relationship . . .
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> "Article III did provide, after spelling out the bounds of the ceded lands, that the Six Nations 'shall be secured in the peaceful possession of the lands they inhabit east and north of' the territory they were giving up to the United States. In context, this meant no more than that the new sovereign would not take the remaining lands for itself; there was no promise to preserve the Indians against bad bargains with others . . ."

Then, after stating the possible contravention of Article 9 of the Articles of Confederation should federal authorities seek to police state legislative action affecting Indian land transfers within the state, the Court concluded:

> "We find nothing, in short in the text of the treaty or the treaty negotiations implying or acknowledging that the United States would thereafter guard the Six Nations in their transactions with the states or private individuals."

In the companion case, The Seneca Nation of Indians, et al. vs. United States,* decided the same day as the Six Nations case, the Court of Claims in affirming the Commission also denied recovery on the Seneca claim for additional compensation from the United States for Seneca lands in New York that were sold to private parties in 1788; and, in more explicit language the Court stated:

> "Appellant's demand for relief as to the sale must be denied for reasons similar to those given, for the purchase by Pennsylvania of the northwestern quadrant of that state, in The Six Nations v. United States, supra. The land involved in this purchase did not ever belong to the United States; the Federal Government did not deal with the Indians; and it had no partnership or concert with Massachusetts (or New York). The central government was, and could properly be, a mere bystander. No fiduciary role was assumed by the Continental Congress, under the Articles of Confederation, with respect to these lands then within state borders. Nor did the Treaty of Fort Stanwyx, 7 Stat. 15 (1784), impose any such fiduciary status or supervisory role on the United States.

The Commission finds such strong factual parallelisms surrounding the Seneca sales and the Cayuga sale herein that we are unable to suggest any notable distinction which would permit the Cayuga petitioners to escape the applicable law and the identical result that was obtained in the Seneca case.

Like the Senecas, the Cayugas sided with the British during the American Revolution; they were treaty participants at the 1784 Fort Stanwyx Treaty; they sold some of their land in the 1780's not to the United States but to a third party, the State of New York (the Seneca land was sold to a

* 173 C. Cls. 917

private party); they claim they were victimized by receiving unconscionable consideration for these lands; and they seek to hold the United States liable for their alleged loss on the basis that the provisions of the Fort Stanwyx Treaty made the United States their fiduciary, who in their hour of need should have protected them from such an unconscionable bargain with a third party.

We find nothing in the petition or in the Cayuga response to defendant's motion for partial summary judgment that raises any material issue of fact; and therefore, assuming that every pertinent fact petitioners have alleged in the complaint is true with respect to the 1789 sale of Cayuga lands to the State of New York, the Commission, if it is to follow rulings of the Court of Claims in the Six Nations and Seneca decisions, must enter an order granting defendant's motion for partial summary judgment and dismissing the "First Claim" in the petition for failing to state a claim upon which relief can be granted.

John T. Vance, Chairman

Jerome K. Kuykendall, Commissioner

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner