

BEFORE THE INDIAN CLAIMS COMMISSION

THE SENECA NATION OF INDIANS,)	
)	
Petitioner,)	Docket Nos. 342-B
)	342-C
v.)	342-D
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

TONAWANDA BAND OF SENECA INDIANS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 368
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: December 30, 1968

FINDINGS OF FACT

The Commission makes the following Findings of Fact:

1. Petitioner's Identity and Capacity. The petitioners in the above-captioned case are identifiable groups of Indians within the meaning of Section 2 of the Indian Claims Commission Act (60 Stat. 1049, 25 U.S.C. Sec. 70), and as such are entitled to bring and maintain this action. The Seneca Nation of Indians, the petitioner in Docket Nos. 342-B, 342-C and 342-D, is composed of Indians residing on the Allegany and Cattaraugus Reservations in

the State of New York. The Tonawanda Band of Seneca Indians, the petitioner in Docket No. 368, is composed of Indians residing on the Tonawanda Reservation in the State of New York. The petitioners, the Seneca Nation and the Tonawanda Band, are entitled to maintain this action on behalf of the Seneca Nation as it existed when the claims arose (Seneca Nation v. United States, 12 Ind. Cl. Comm. 755-756 (1963)).

2. The Claims. The claim in Docket No. 342-B is based upon the relinquishment by the Seneca Nation of Indians on October 22, 1784 (7 Stat. 15) to the United States of the bed of the Niagara River from Buffalo Creek on Lake Erie to Lake Ontario, which relinquishment was repeated in a treaty of November 11, 1794 (7 Stat. 44), and upon the sale by the Seneca Nation of Indians to the State of New York under the supervision of the United States, on August 20, 1802, of a tract of land on the east side of and adjacent to the Niagara River, being one mile wide and commencing and extending from Buffalo Creek on Lake Erie to Stedman's Farm, which was situated near the mouth of what is now called Gill Creek, on the east bank of the River about halfway between the Lakes. The tract thus sold to the State of New York contains about 14,000 acres, and will also be called the southern strip.

Docket No. 342-C is based upon the relinquishment referred to in the treaties outlined in the paragraph above and upon a sale

by the Seneca Nation of Indians to the State of New York, on September 12, 1815, of all of the islands in the Niagara River between Lake Erie and Lake Ontario and lying within the jurisdiction of the United States. Almost all of the islands in the river are within a boundary created by an extension from the shore of the southern and northern limits of the tract of land described in Docket No. 342-B. The area of the islands is estimated to be 20,000 acres.

The claim in Docket No. 342-D is based upon the relinquishment by the Seneca Nation to the United States on October 22, 1784 (7 Stat. 15) of a strip of land one mile wide together with the adjacent river bed of the Niagara River commencing at and extending northward from the mouth of Stedman's Creek, now Gill Creek, being the northern and western limits of the strip of land claimed in Docket No. 342-B, to Lake Ontario, and the subsequent appropriation by the State of New York of the lands within said tract without any further agreements with or payments to the Seneca Nation of Indians. The tract of land exclusive of the river bed is estimated to contain in excess of 10,000 acres and will be called the northern strip.

Docket No. 368 restates in somewhat different language the claims in Docket Nos. 342-B and 342-C.

These four cases were consolidated for trial by an order of the Commission.

3. Early Indian Use. Prior to the middle of the 17th century, the lands claimed by petitioners were occupied by a group of Indians known as the Neutrals or Wenros or Eries. Sometime in the middle of the 17th century the petitioner tribe drove these Indians out of the area; some of the defeated Indians were adopted or incorporated into the Senecas. The Senecas were one member of the Six Nations, the other five members consisting of the Cayugas, Onondagas, Oneidas, Mohawks and after 1720, the Tuscaroras.

The tribes of the Six Nations did not lead a nomadic existence. They maintained substantial permanent settlements, raised agricultural crops in the vicinity of the villages, and hunted widely for meat and pelts throughout an extensive area extending on both sides of Lakes Erie and Ontario. They repeatedly claimed this area to be their hunting grounds, particularly for beaver, and after 1650 no other group of Indians maintained or asserted any hunting rights in land lying south of Lake Ontario or south of Lake Erie as far as what is now the Pennsylvania border. In addition to hunting, the Seneca Indians fished extensively in Lakes Erie and Ontario, and for such purposes maintained temporary villages at generally permanent locations adjacent to the lakes and the connecting strait.

Other Indians, however, did use the Niagara River and strip as an avenue of communication.

4. The Niagara River. The Niagara River and the lands adjacent thereto had been and were an important avenue of communication since and prior to the time of the earliest European contact with the Great Lake region. Through the river the waters of Lake Erie empty into Lake Ontario. The river or strait flows northerly for about 34 miles. From the outlet of Lake Erie, it is navigable for about 20 miles to the upper rapids above the Falls. After it plunges over the Falls into a deep gorge, it flows turbulently for about seven miles through rocky cliffs to the present Lewiston, New York, where it flows as a quiet river for about seven miles to Lake Ontario. At Lewiston, on the east side of the River, a trail or portage route extended to a point about half a mile above the Falls at the beginning of the rapids and in what is now the city of Niagara Falls. This portage lies within the northern part of the strip in question here.

5. French Exploration. Although the Dutch and British had acquired knowledge of the area at about the same time as the French, it was the French through officials such as Count Frontenac, LaChesnaye, and explorers and missionaries such as Joliet, La Salle, La Motte, and Hennepin who understood the strategic importance of

the Niagara strait for the control of the Indian trade in furs. When the French in 1678 embarked upon their project for establishing a post at Niagara, they first came upon a small village of Senecas fishing at the mouth of the Niagara River. La Motte and Father Hennepin then journeyed to a great village of the Senecas to request from the Chiefs in Council permission to build a storehouse at Niagara for trading with them. No definite permission was granted, but later La Salle came and obtained the acquiescence of the Senecas and he then built a ship at the mouth of Cayuga Creek which is above the Falls.

By 1681, La Salle's post at Niagara became deserted. At that time it was noted by Father Hennepin that the Iroquois sow but little Indian corn, "inhabit the Village but in Harvest-time, or in the Season they go a fishing for Sturgeons, or Whitings which are there in great plenty."

6. French-British Rivalry. From this time in history, that is, after the abandonment by La Salle, the European powers entered many years of contest to occupy and control the Niagara passage and lands adjacent thereto. After 1681, when La Salle abandoned the Niagara strip, there was constant rivalry between the French and English as to which nation would control the Niagara waterway and the land adjacent thereto. This rivalry not only occasioned

fighting between the two European countries, but also caused various expeditions against the Senecas. The warfare continued intermittently from 1681 until 1701 when there occurred the first cession of Niagara.

The French-British Treaty of 1701 provided for neutrality of the Five Nations of Indians in the event of any war between the French and English. The British in New York, in order to overcome what seemed to them to be a concession to France, took a deed from the Iroquois that ceded to them all the Iroquois title in a vast area of land that included the Niagara strip.

7. French Control of Niagara. From 1701 thru 1727 the French extended their use of the Niagara portage through the efforts of such men as Charles Le Moyne, Louis Murray and others. However, the Frenchman Louis Thomas Joncaire was the dominant European figure in the area during this period. Through a series of agreements with the Indians, including the Senecas, he kept these Indians neutral during Queen Ann's War -- 1702-1713. This War was fought in both the Old and New Worlds and again aligned the French against the English. Joncaire, during this period, maintained control of the Niagara water passage.

In 1720, Louis Thomas Joncaire under orders from the Governor of France approached the Senecas for permission to build a house

upon their land and maintain that settlement in case the English would oppose. The Senecas acquiescing, Joncaire built a Royal Store at the foot of the portage road in what is now Lewiston.

The French subsequently built a fort at the mouth of the River, known as Fort Niagara, and later a smaller fortified post at the rapids above the Falls which was known as Fort Little Niagara. These forts were maintained in conjunction with a series of forts established by the French commencing at Fort Frontenac at the northeastern end of Lake Ontario and extending through Presque Isle, Venango and Pittsburgh in Pennsylvania as well as westward to Detroit and the Illinois country. The French and Indian Wars finally brought an end to the long French domination of Niagara. On July 17, 1759 Fort Niagara was surrendered to the British under Sir William Johnson.

During the entire period of French military oversight of the Niagara strait, the French officials continuously dealt with the Seneca Indians for the purpose of obtaining their consent for the erection and maintenance of military and trading establishments, and looked to and requested the Senecas to regulate and control the conduct and actions of Senecas living in the vicinity of the strait. These Seneca furnished to the French agricultural products and meat, and supplied labor in connection with the trans-

port of goods. To the extent that individual French claimed ownership rights in and to land in the area, these claims were based upon purported grants from the Seneca Nation "to whom these lands belong." There is no indication that the French sought such permissions from or claimed any ownership rights through any other group or tribe of Indians. During the same period, the English in their continuous efforts to dislodge the French from their strategic location continuously dealt with the Senecas or urged the others of the Six Nations to influence the Senecas, as the owners and controllers of the area.

8. The 1764 Treaties. After British rule began, the English entered into a treaty on April 3, 1764 with the Seneca Nation which provided in Article 3:

"That they cede to His Majesty and his successors for ever, in full Right, the lands from the Fort of Niagara, extending easterly along Lake Ontario, about four miles, comprehending the Petit Marais, or landing place, and running from thence southerly, about fourteen miles to the Creek above the Fort Schlosser or little Niagara, and down the same to the River, or Strait and across the same, at the great Cataract; thence Northerly to the Banks of Lake Ontario, at a Creek or small Lake about two miles west of the Fort, thence easterly along the Banks of the Lake Ontario, and across the River or Strait to Niagara, comprehending the whole carrying place, with the Lands on both sides the Strait, and

containing a Tract of abt fourteen miles in length and breadth. --And the Senecas do engage never to obstruct the passage of the carrying place, or the free use of any part of the said Tract, and will likewise give free liberty of cutting timber for the use of His Majesty, or that of the garrisons, in any other part of their Country, not comprehended therein."

In the treaty margin, this notation was made:

"Agreed to, provided the Tract be always appropriated to H.M.'s sole use, that at the definite Treaty, the lines be run in presence of Sr. Wm. Johnson and some of the Seneca's to prevent disputes hereafter."

This above description concerned the northern half of the subject lands, that is from Fort Schlosser to Lake Ontario, containing as a part the northern strip.

Then, on August 6, 1764 the English entered into another treaty with the Senecas which provided in Article 5 that:

"In addition to the grant made by the Chenussio Deputys to His Majesty at Johnson Hall, in April, of the Lands from Fort Niagara, to the upper end of the carrying place, beyond Fort Schlosser and four miles in breadth on each side of the River, the Chenussios now surrender up all the lands from the upper end of the former Grant (and of the same breadth) to the Rapids of Lake Erie, to His Majesty, for His sole use, and that of the Garrisons, but not as private property, it being near some of their hunting grounds; so that all that Tract, of the breadth before mentioned, from Lake Ontario to Lake Erie, shall become vested in the Crown, in manner as before mentioned, excepting the Islands between the great Falls and the Rapids, which the Chenussios bestow upon Sir

Wm Johnson as a proof of their regard and of their knowledge of the trouble he has had with them from time to time. All which the Chenussios hope will be acceptable to His Majesty, and that they may have some token of His favour."

This treaty cession description includes the southern strip.

9. The 1784 Treaty of Fort Stanwix. During the American Revolution, the Senecas were active in military support for the British cause. After the Revolutionary War the United States and the Six Nations entered into a peace treaty on October 22, 1784 (7 Stat. 15). This Treaty began by stating:

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

Article III of the Treaty provided:

"A line shall be drawn, beginning at the mouth of a creek about four miles east of Niagara, called Oyonwayea, or Johnston's Landing-Place, upon the lake named by the Indians Oswego, and by us Ontario; from thence southerly in a direction always four miles east of the carrying-path, between Lake Erie and Ontario, to the mouth of Tehoseroron or Buffaloe Creek on Lake Erie; thence south to the north boundary of the state of Pennsylvania; thence west to the end of said north boundary; thence south along the west boundary of the said state, to the river Ohio, the said line from the mouth of the Oyonwayea to the Ohio, shall be western boundary of the lands of the Six Nations, so that the Six Nations shall and do yield to the United States, all claims to the country west of the said boundary,

and then they shall be secured in the peaceful possession of the lands they inhabit east and north of the same, reserving only six miles square round the fort of Oswego, to the United States, for the support of the same."

This treaty cession description includes all of the subject lands.

10. The 1789 Treaty of Fort Harmar. On January 9, 1789 another Treaty was entered into between the United States and the Six Nations but was not ratified. The purpose of such Treaty was set out in the preamble and stated:

"...removing all causes of controversy, regulating trade, and settling boundaries, between the Indian nations in the northern department and the said United States, of the one part, and the sachems and warriors of the Six Nations, of the other part:"

Article I of the Treaty provided:

"WHEREAS the United States, in congress assembled did by their commissioners, Oliver Wolcott, Richard Butler, and Arthur Lee, esquires, duly appointed for that purpose, at a treaty held with the said Six Nations, viz: with the Mohawks, Oneidas, Onondagas, Tuscaroras, Cayugas, and Senekas, at fort Stanwix, on the twenty-second day of October, one thousand seven hundred and eighty-four, give peace to the said nations, and receive them into their friendship and protection: And whereas the said nations have now agreed to and with the said Arthur St. Clair, to renew and confirm all the engagements and stipulations entered into at the beforementioned treaty at fort Stanwix: and whereas it was then and there agreed, between the United States of America and the said Six Nations, that a boundary line should be fixed between the lands of the said Six Nations and the territory of the said United States, which boundary

line is as follows, viz: Beginning at the mouth of a creek, about four miles east of Niagara, called Ononwayea, or Johnston's Landing Place, upon the lake named by the Indians Oswego, and by us Ontario; from thence southerly, in a direction always four miles east of the carrying place, between Lake Erie and Lake Ontario, to the mouth of Tehoseroton, or Buffalo Creek, upon Lake Erie; thence south, to the northern boundary of the state of Pennsylvania; thence west, to the end of said north boundary; thence south, along the west boundary of the said state to the river Ohio. The said line, from the mouth of Ononwayea to the Ohio shall be the western boundary of the lands of the Six Nations, so that the Six Nations shall and do yield to the United States, all claim to the country west of the said boundary; and then they shall be secured in the possession of the lands they inhabit east, north and south of the same, reserving only six miles square, round the fort of Oswego, for the support of the same. The said Six Nations, except the Mohawks, none of whom have attended at this time, for and in consideration of the peace then granted to them, the presents they then received, as well as in consideration of a quantity of goods, to the value of three thousand dollars, now delivered to them by the said Arthur St. Clair, the receipt whereof they do hereby acknowledge, do hereby renew and confirm the said boundary line in the words beforementioned, to the end that it may be and remain as a division line between the lands of the said Six Nations and the territory of the United States, forever. And the undersigned Indians, as well in their own names as in the name of their respective tribes and nations, their heirs and descendants, for the considerations beforementioned, do release, quit claim, relinquish, and cede to the United States of America, all the lands west of the said boundary or division line, and between the said line and the strait, from the mouth of Ononwayea and Buffalo Creek, for them, the said United States of America, to have and to hold the same, in true and absolute propriety forever." 7 Stat. 33.

11. The 1794 Treaty of Canandaigua. On November 11, 1794, the United States and the Six Nations of Indians, of which the Seneca Nation was a part, entered into a treaty at Canandaigua, which, among other things, defined by metes and bounds the lands of the Seneca Nation in Article III as follows:

"The land of the Seneca nation is bounded as follows: Beginning on Lake Ontario, at the northwest corner of the land they sold to Oliver Phelps, the line runs westerly along the lake, as far as O-yong-wong-yeh Creek, at Johnson's Landing place, about four miles eastward from the fort of Niagara; then southerly up that creek to its main fork, then straight to the main fork of Stedman's creek, which empties into the River Niagara, above Fort Schlosser, and then onward, from that fork, continuing the same straight course, to that river; (this line, from the mouth of O-yong-wong-yeh Creek to the River Niagara, above Fort Schlosser, being the eastern boundary of a strip of land, extending from the same line to Niagara River, which the Seneca nation ceded to the King of Great Britain, at a treaty held about thirty years ago, with Sir William Johnson:) then the line runs along the River Niagara to Lake Erie; then along Lake Erie to the northeast corner of a triangular piece of land which the United States conveyed to the State of Pennsylvania, as by the President's patent, dated the third day of March 1792; then due south to the northern boundary of that state; then due east to the south-west corner of the land sold by the Seneca Nation to Oliver Phelps; and then north and northerly, along Phelp's line, to the place of beginning on Lake Ontario. Now, the United States acknowledge all the land within the aforementioned boundaries, to be the property of the Seneca nation; and the United States will never claim the same, nor disturb the Seneca nation, nor any of the Six

Nations, or of their Indian friends residing thereon and united with them, in the free use and employment thereof; but it shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase."

and Article IV of said treaty provided:

"The United States having thus described and acknowledged what lands belong to the Oneidas, Onondagas, Cayugas and Senekas, and engaged never to claim the same, nor disturb them, or any of the Six Nations, or their Indian friends residing thereon and united with them, in the free use and employment thereof: Now, the Six Nations, and each of them, hereby engage that they will never claim any other lands within the boundaries of the United States; nor ever disturb the people of the United States in the free use and employment thereof."

and, in Article V, it further provided:

"The Seneka nation, all others of the Six Nations concurring, cede to the United States the right of making a wagon road from Fort Schlosser to Lake Erie, as far south as Buffalo Creek; and the people of the United States shall have the free and undisturbed use of this road, for the purposes of travelling and transportation. And the Six Nations, and each of them, will forever allow to the people of the United States, a free passage through their lands, and the free use of the harbors and rivers adjoining and within their respective tracts of land, for the passing and securing of vessels and boats, and liberty to land their cargoes where necessary for their safety."

Article VI provided for compensation to the Indians, though specifically in return for relinquishing title to land. (7 Stat. 44) The Treaty was ratified and approved. This treaty description confirms the cession of the northern strip but includes the southern strip within the Seneca lands.

12. Background of the 1794 Treaty. The following pertinent comments on the 1794 Treaty are extracted and edited from the reports of Timothy Pickering, the negotiator of the treaty for the United States, to the Secretary of War, Henry Knox:

[November 12, 1794].

"...The strip four miles wide along the strait of Niagara, I strove to secure in such manner, that altho' the United States could not take possession, by virtue of former treaties, they might transfer the Indian Title to those who have pre-emption right, but it was in vain. They were extremely tenacious of this tract. When they desired me to add 500 dollars to the proposed annuity (to make it 5000) I asked them, as a consideration to cede only four small pieces of a mile square each, between Fort Schlosser and Lake Erie, for a Landing place on the Lake, and convenient stages between that and Fort Schlosser: but they chose rather to relinquish the annuity of 500 dollars. In this they were influenced by their fears of offending the British; and not by the particular value of the land, even of the whole strip. I therefore gave it up; knowing that as soon as we should possess Niagara, it would be ceded of course. This has since been declared to me by a very sensible and influential war-chief who said: 'As soon as you get Niagara, that strip will be yours.'

But tho' I have relinquished what title the United States acquired to this strip, by the treaty of Fort Stanwix, I have secured the important part of it which extends from the fort of Niagara to Fort Schlosser, comprehending the Carrying-Place: and this in full right: if by the treaty of peace with Britain the United States become entitled to the land which belonged to the Crown. --As soon as I mentioned this old cession to the

King, the Seneka Chiefs acknowledged it; and immediately produced an old man who was present at running the line as I have described it. The original treaty being in possession of the British, and not attainable, I thought of it some consequence to get an explicit acknowledgment of it from the Six Nations."

[November 26, 1794]

"I was proceeding to complete my journal of the negotiations with the Six Nations at the treaty lately held at Kon-on-daiqua: But in consequence of your request, this morning, that I would first state my reasons for relinquishing what title the United States might have acquired to certain lands in the Seneka Country of the Six Nations which were ceded by the Treaty of Fort Stanwix, I now lay before you the principles and motives of that measure. Just observing that all the lands in question originally belonged to the Senekas.

1. I know that the United States had no right to any part of the Seneka Country, but by virtue of the cession made by the States of New York and Massachusetts, which Congress had accepted.
2. I know that the line of cession, when ascertained by Mr. Ellicot, was what now constitutes the eastern boundary of the triangular piece of land which the United States sold to Pennsylvania.
3. I knew that by the agreement between the two States of New York and Massachusetts, the pre-emption rights to all the land in question belonged to Massachusetts; excepting a strip, a mile wide, along the strait of Niagara, which I understood New York was to retain: and that the whole lay within the jurisdiction of New York.
4. I knew that by the Constitution of the State of New York, no purchase or contract for the sale of lands made of or with the Indians, within the limits of that state, could be binding on the

Indians, or deemed valid, unless made under the authority and with the consent of the legislature of that state. And from the nature of the case, I knew that such authority and consent could never have been given, in regard to the lands in question, when, in the terms of the treaty of Fort Stanwix, they were ceded to the United States.

5. I knew, therefore that the United States had no right to the lands which I relinquished. In truth, when I proposed to give up the tract between the Pennsylvania Triangle and the Meridian of the Mouth of Buffalo Creek, I felt myself embarrassed -- not in making the relinquishment itself -- but for words to express it which should not be deceptive, by presenting an idea of something very valuable, while in fact the subject of the relinquishment was a shadow. The words used in my speech were these: 'All this tract you, by former treaties ceded to the United States: but I am now willing to relinquish all their claim to it.'

6. I knew the practical construction of the New York Constitution on this point. John Livingston and others obtain from the Six Nations a vast cession of land within that state, which had been made void, because done without the consent of the Legislature, and I considered that the United States had no better right than individuals to receive from the Indians a cession of the same lands.

7. It is true, that I strenuously endeavored to obtain the strip of land four miles wide, along the strait of Niagara; and I also inserted an article to comprehend the land round the Fort of Oswego, to the extent of six miles square -- because the same had been comprehended in the Treaty of Fort Stanwix, but not seeing how the United States exclusively could hold these lands I had draughted another article, in these words, 'All the cessions and relinquishments of the rights and claims of the Six Nations and each of them

hereby made, shall be for the benefit of the United States and any of them, and of any citizen or citizens thereof, to whom, accordingly to their laws and usages, the right of taking and holding the same, does or shall belong.' The form which the treaty finally assumed, superseded this provision.

8. The objects of my conference with the Six Nations were, to remove from their minds all causes of complaint and to establish a firm and permanent friendship.

The great cause of complaint, from all the Indian Nations, it is too well known, has been the depriving them of their lands, by means not always honourable, too often fraudulent, and sometimes to an unreasonable extent.

The Six Nations, particularly the Senekas, have frequently complained of the Treaty of Fort Stanwix. Their complaints of that and of the subsequent treaties on the Ohio, were renewed at the late conference."

* * * *

"These observations with those contained in my letter of Novr. 12th, will, I trust abundantly justify the relinquishment of the title of the United States, if they had any, to the tract of land which lies between the meridian of the mouth of Buffaloe Creek and the western boundary of the State of New York.

But I might have added, that General Chapin, a judicious man, and well acquainted with the situation, temper and necessities of the Seneka Nation was decidedly of opinion that this tract should be relinquished, without the least hesitation. And he also thought I insisted too strongly on retaining the strip of land four

miles wide along the strait of Niagara from Buffalo Creek down to Stedman's Creek. I indeed strove to retain it by every argument and persuasive I could think of for I knew the land was little necessary for these Indians as they had but very few, perhaps three or four families living upon it. I did not then know how their minds fear offending the British. How extremely tenacious they were of this strip will appear from the following fact.

Having offered them an annuity of 4500 dollars; and to enable them to conceive justly of that sum, as many strokes being made as it contained hundreds, in the form of four rows of ten strokes and one of five -- they desired, as their last request, that I would add five more strokes, to make all the rows even, and thus fix the annuity at 5000 dollars. ---Having a pencil in my hand I instantly marked down the other five strokes, and said: 'Tis done: But I have now, in return, one request to make of you. Desirous of forming such a treaty with you as would remove every just complaint; and that you might leave this Council Fire with mind perfectly satisfied, I have been granting you things of very great importance to your interest and welfare. On the other hand, I have represented to you the importance to the people of the United States of the whole strip of land from Buffaloe Creek to Stedman's Creek: Yet tho' when I found you very averse to yielding it, I gave it up; and asked for three or four tracts only each of one mile square, at such places in that strip as the convenience of our people might require: But these also you denied me. Now to show you how desirous I am to please you, I will add to the proposed annuity the five hundred dollars you request--provided you will grant me only those three or four small pieces of a mile square each.' --They answered 'No. You must rub out the five last strokes.'

The Indians readily admitted my claim to the strip of land from Stedman's Creek to Lake Ontario, which includes the Carrying Place at the Great Falls

of Niagara, and nearly half the land on the strait which was comprehended in the Treaty of Fort Stanwix; acknowledging it to be ours by the Right of War, as they had formerly ceded the same to the King of Great Britain. That they had made this cession, I first learned in conversation with Col. Butler last year in Canada. Since then, by accident, I found the treaty by which the cession was made. A copy of it is herewith presented. As soon as I had explained this transaction, the Seneca Chiefs, brought forward one of their elderly men who was present at running the line from the Creek at Johnson's Landing place on Lake Ontario to Niagara River above Fort Schlosser. The description of this line in the treaty is founded on his information."

13. The 1802 Sale. Two more agreements affecting these lands were made with the Senecas: sales to the State of New York. The first, on August 20, 1802 provided:

"The said Seneca Nation of Indians, by their said Sachems, Chiefs and Warriors, agreeably to the authority in them vested by said Nation, for the consideration hereinafter mentioned, do sell, cede, release and quit-claim to the People of the State of New York, all that tract of land one mile wide on the Niagara river, extending from Buffalo to Stedman's Farm, including Black Rock, and bounded Westward by the shore or waters of said river. And said Seneca Nation of Indians reserving to themselves nevertheless, the right and privilege of encamping their fishing parties on the beach of said river for the purpose of fishing, which is the common right of both parties, and to be enjoyed without hinderance or interruption from either; and while there encamped to use the drift wood for fuel but not to trespass on or injure the proprietor or proprietors of the adjacent lands. The said Seneca Nation of Indians reserving also to itself the right (which they now

enjoy) or passing the ferry across said Niagara River, at or near Black rock or at such other place in the vicinity where such ferry may hereafter be established, and kept, free of ferriage or toll at all seasonable times when the boats are crossing with other passengers or freight. And the said George Clinton, Governor, aforesaid, doth for the People of the said State of New York pay to the said Seneca Nation of Indians the sum of \$200.00; and doth grant to the said Indians that the people of the said State of New York shall pay to them or their order at the city of Albany the further sum of \$5,800.00; and also to the value of \$500.00 of chintz, calico and other goods suitable for their women on the 15th day of February now next ensuing, in full of the purchase money for said tract of land."

The land described is the southern portion of the mile strip east of the Niagara River. The negotiation for an conclusion of this agreement was supervised by officials of the United States Government. Approbation and consent were given by the President and Senate of the United States.

14. The 1815 Sale. The second agreement was again with the State of New York and was in regard to the islands in the Niagara River; whether the 1794 Treaty had included the islands in the Seneca lands was disputed. On September 12, 1815, a purchase agreement was entered into between the State of New York and the Seneca Nation; the pertinent part of that agreement reads as follows:

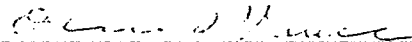
"1st. The said Chiefs, Sachems, and Warriors of the Seneca Nation in consideration of the sum of \$1,000.00 in hand paid them by Daniel D. Tompkins, Governor of the said State of New York, and of the covenants and agreements hereinafter contained, hereby sell, grant, convey and confirm to the people of the State of New York, all the islands in Niagara river between Lake Erie and Lake Ontario and within the jurisdiction of the United States, to have and to hold the same with the appurtenances, unto the said people of the State of New York, free and pure allodium forever. Reserving, however, to the said Chiefs, Sachems, and Warriors of the Seneca Nation of Indians, equal rights and privileges with the citizens of the United States in hunting, fishing and fowling in and upon the waters on the Niagara River, and of encamping on the said islands for that purpose, whilst the same shall continue to belong to the people of the State of New York.

2nd. The people of the State of New York, in addition to the sum of \$1,000.00 already paid to the Chiefs, Sachems and Warriors of the Seneca Nation of Indians, do hereby covenant to pay to them annually, forever, an annuity of \$500.00 to be paid on or before the first day of June each year forever hereafter, at Canandaigua in the county of Ontario; first payment to be made the first day of June, 1816."


It does not appear that the United States Government supervised the negotiation or conclusion of this agreement.

15. Conclusion. The Commission finds that as of the date of American sovereignty the Seneca Indians did not have a compensable interest in the lands within four miles of the Niagara River, an area which includes the subject of these claims. Therefore, Docket No. 342-D will be dismissed.

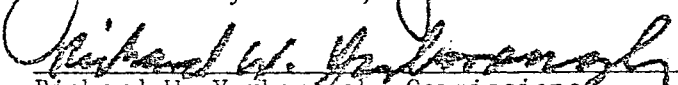
The Commission finds that the Seneca were granted, by the Treaty of 1794, a compensable interest in the southern strip and islands (but not the riverbed) described in the conveyances to New York of 1802 and 1815. The Trade and Intercourse Act of 1790 imposed an obligation on the United States to insure that the Seneca received a proper consideration for these cessions; any failure to meet this standard would amount to less than fair and honorable dealings under the Indian Claims Commission Act. The Commission will hold further proceedings in Dockets 342-B, 342-C, and 368 to determine the exact acreage involved (if not stipulated by the parties), its fair market value at the relevant dates, and the consideration received for the cessions.



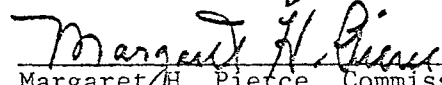
John T. Vance, Chairman



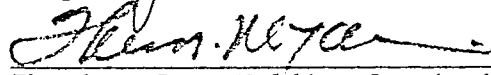
Jerome K. Kuykendall, Commissioner



Richard W. Yarborough, Commissioner



Margaret H. Pierce, Commissioner



Theodore R. McKeldin, Commissioner