

BEFORE THE INDIAN CLAIMS COMMISSION

THE SIX NATIONS, by Dean Williams, Jacob Jimerson, Ruby Charloe, David Charloe, Lewis Whitewing, Stewart Jamison, Peter Buck, Milton Babcock, Beryl Smith, Amanda Pierce, Julius Danforth, Oscar Archiquette, Sherman Skenadore, and Mamie Smith, members and representatives thereof,
 THE SENECA NATION OF INDIANS,
 THE CAYUGA NATION, by Stewart Jamison and Peter Buck, members and representatives thereof,
 THE ONEIDA NATION, by Julius Danforth, Oscar Archiquette, Sherman Skenadore, Mamie Smith, Milton Babcock, Beryl Smith and Amanda Pierce, members and representatives thereof,
 THE SENECA-CAYUGA TRIBE OF OKLAHOMA,
 THE ONEIDA NATION OF NEW YORK,
 THE ONEIDA TRIBE OF WISCONSIN,
 THE TUSCARORA NATION,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

THE STOCKBRIDGE MUNSEE COMMUNITY,
 THE STOCKBRIDGE TRIBE OF INDIANS, and the MUNSEE TRIBE OF INDIANS by Arvid E. Miller and Fred L. Robinson,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 84

Docket No. 300-B

Decided: August 11, 1970.

FINDINGS OF FACT

(1) The Seneca Nation, the Oneida Nation of Indians of New York, The Seneca-Cayuga Tribe of Oklahoma, the Tuscarora Nation and the Oneida Tribe of Indians of Wisconsin are tribes of American Indians

residing within the territorial limits of the United States, each of which has a tribal organization recognized by the Secretary of the Interior as having authority to represent the tribe and all of its respective members in matters relating to claims or rights within the provisions of and under the Indian Claims Commission Act (60 Stat. 1049, 25 U.S.C. § 70).

The Seneca-Cayuga Tribe of Oklahoma is a tribe consisting of organized portions of the Seneca and Cayuga Nations. The Oneida Nation is made up of the Oneida Tribe of Wisconsin and the Oneida Nation of New York. Except for the said Seneca-Cayuga Tribe of Oklahoma, the Oneida Tribe of Wisconsin, and the Oneida Nation of New York, the tribal plaintiffs named above were at all times members of the Six Nations, which made certain treaties with the United States. The Six Nations, the Cayuga Nation and the Oneida Nation do not now have tribal organizations recognized by the Secretary of the Interior. However, they are identifiable groups of American Indians.

The tribes of the Six Nations were eastern Indians who shared the common language "Iroquoian." They were originally known as the Five Nations but after the Tuscaroras joined the Iroquoian Confederacy they were sometimes referred to as the Six Nations. They were identified as Senecas, Cayugas, Onondagas, Oneidas, Mohawks and Tuscaroras.

The Stockbridge Munsee Community in Docket No. 300-B is a tribe of American Indians residing in the United States, having a tribal organization recognized by the Secretary of the Interior as having authority to represent the tribe. The Stockbridge Indians were a tribe

of the Mahican Confederacy who came under the protection of the Oneidas in the 1780's. In the 1830's, together with the Oneidas and Munsee, they moved to Wisconsin.

The Stockbridge Tribe and the Munsee Tribe do not now have separate tribal organizations. The said tribes have for many years been amalgamated and known as the Stockbridge Munsee Tribe, or as the Stockbridge Munsee Community, which is the successor in interest to the two component tribes.

Therefore, we find that all of the plaintiffs enumerated in the caption of these suits are the tribes or bands or the successors in interest to the tribes or bands who participated in the various agreements which form the basis for the claims herein and that they have the right and capacity under the Indian Claims Commission Act (60 Stat. 1049) to bring and maintain these accounting actions on their own behalf or through proper representatives.

(2) The suits were brought for a general accounting of all the plaintiffs' property and funds that have come into the possession of the defendant. The defendant provided a series of seven accounting reports relating to some 21 treaties or agreements. Thereafter the plaintiffs filed objections limiting their claims to alleged deficiencies in the payments required under two agreements between the plaintiffs and the United States. In addition, the Seneca Nation of Indians filed separate objections in regard to a deficiency allegedly resulting from a failure of defendant to make specific payments after assuming the obligations of a private agreement.

After a hearing held on May 29, 1969, certain of the figures regarding the amounts in controversy were modified. However, the issues remained the same. Two of the claims arise under the Article of April 23, 1792, and the Treaty of November 11, 1794, and involve all the plaintiffs. The third claim involves only the Seneca Nation of Indians and arises out of a treaty of August 31, 1826, between the Senecas and three private individuals who purchased certain lands in New York State from the Senecas.

Article of April 23, 1792

(3) In an unpublished Article dated April 23, 1792, President George Washington, with the advice and consent of the Senate, stipulated on behalf of the United States an Article with the Five Nations of Indians, being the "Senekas, Oneidas, the Stockbridge Indians incorporated with them, Tuscaroras, Cayugas and Onondagas" that:

THE UNITED STATES, in order to promote the happiness of the five nations of Indians, will cause to be expended annually the amount of one thousand five hundred dollars, in purchasing for them clothing, domestic animals and implements of husbandry, and for encouraging useful artificers to reside in their villages.

Thereafter, on April 25, 1792, President Washington sent a message to the Five Nations and the Stockbridge Indians that "in order that the money necessary to defray the annual expenses of the arrangements which have been made should be provided permanently, I now ratify an article which will secure the yearly appropriation of the sum of one thousand five hundred dollars" The fiscal records of the

United States indicate that no sums were ever appropriated or disbursed in accordance with the terms of the Article of April 23, 1792. The Article was in effect until superseded by the Treaty of November 11, 1794 (7 Stat. 44).

On March 26, 1792, President George Washington, in a letter to the United States Senate, had proposed the terms of the Article of 1792. In it he stated that the government will give the Indians annual presents "conditioned on the evidence of their attachment to the interests of the United States." There was, in his words, a "present crisis of affairs" which rendered the extension of this measure to the Indians highly judicious.

The Commission finds that there was consideration for the Article of April 23, 1792, that the terms of the Article were not gratuitous and therefore the plaintiffs are entitled to recover \$1500 for each of the three years (1792, 1793 and 1794) when the Article was in effect and funds were not appropriated and paid. The total recovery under this claim is \$4500.00.

Treaty of November 11, 1794

(4) On November 11, 1794, the United States entered into a treaty with the Six Nations (7 Stat. 44). The treaty secured certain tracts for member tribes of the Six Nations; the Six Nations agreed never to claim other lands in the United States; the United States was granted the right to make and use a road; and the people of the United States were to have free passage through the Indians' lands and free use of

harbors and adjoining rivers. In consideration of the peace and friendship established and all of the engagements, as outlined above, the United States delivered to the Indians \$10,000.00 in goods and agreed to:

Add the sum of three thousand dollars to the one thousand five hundred dollars, heretofore allowed them by an article ratified by the President, on the twenty-third day of April, 1792; making in the whole, four thousand five hundred dollars; which shall be expended yearly forever, in purchasing clothing, domestic animals, implements of husbandry, and other utensils suited to their circumstances, and in compensating useful artificers, who shall reside with or near them, and be employed for their benefit. The immediate application of the whole annual allowance now stipulated, to be made by the superintendent appointed by the President for the affairs of the Six Nations, and their Indian friends aforesaid.

The preamble to the treaty stated that it should become binding on the United States and the Six Nations when ratified by the President, with the advice and consent of the Senate. The treaty was proclaimed on January 21, 1795. Accordingly, we find that date to be the effective date of the treaty and 1795 to be the year in which the annual payments due the Six Nations were increased to \$4500.00.

(5) The defendant has prepared an accounting report reflecting the appropriations and disbursements of monies in fulfillment of the 1794 Treaty obligations. That report covered the years commencing in 1795 through 1952. During that period of 158 years the treaty required payments of \$711,000.00 (158 x \$4500 = \$711,000.00).

Defendant claims credit for disbursements totaling \$703,133.33 which is computed as follows:

1795 - 1813	\$ 79,468.04
1814 - 1836	108,063.82
1837 - 1951	512,901.47
1952	<u>2,700.00</u>
Total	\$703,133.33

The plaintiffs conceded that \$677,781.58 ^{1/} of the claimed items are proper credits in discharge of the defendant's treaty obligations. The plaintiffs' objections are as follows:

- (a) The defendant should only be entitled to a credit of \$70,319.76 for the 1795 to 1813 period. The journals of the Superintendent or Agent for the Six Nations reflect disbursements during the 1795 to 1813 period of \$70,319.76, which is \$9,148.28 less than the \$79,468.04 claimed by defendant for that period. The larger figure resulted from defendant's use of records of the Accountant of the War Department and certain records of the Military Storekeeper at Philadelphia which disclosed that goods valued at \$79,468.04 were forwarded from Philadelphia as annuities for the Six Nations.

Since the disbursement records indicate that only \$70,319.76 was delivered for the Six Nations, we will use that figure as the credit to be allowed defendant for the 1795 to 1813 period.

^{1/} Due to mathematical errors this figure is incorrectly listed as \$677,740.92 in plaintiffs' brief (Proposed Finding No. 6, footnote 6). See also the \$0.66 correction referred to in footnote 2, infra.

(b) There are 10 specific items to which plaintiffs take exception as improper expenditures under the 1794 Treaty. The claimed credits for the remaining years (after 1814) are based on disbursement records and total \$623,665.29 computed as follows:

1814 - 1836	\$108,063.82
1837 - 1951	512,901.47
1952	<u>2,700.00</u>
Total	\$623,665.29

Of the disbursements represented in this total plaintiffs' objections are:

1. Board and care of orphans	\$4,000.00
2. Expense of Indian delegations	5,340.17
3. Expenditure for Education	3,530.18 ^{2/}
4. Paid on account of sawmill for Oneidas at Wisconsin in the year 1850	1,000.00
5. Payment for provisions in 1865 for Stockbridge and Munsees at Wisconsin	1,448.00
6. Pay of subagent and interpreter in year 1838	337.50
7. Returning Indians to reservation	18.76
8. Payment in 1865 for removal expense claimed to have been incurred in 1839 for Stockbridge and Munsees at Wisconsin	21.00

^{2/} This is a corrected figure. The item is listed in plaintiffs' brief as \$3,530.84 (Proposed Finding No. 10).

9. Oneidas' share of medical supplies with other Indians at Green Bay Agency, Wisconsin	50.00
10. Payment in the year 1908 out of "The Civilization Fund"	<u>457.86</u>
Total	\$16,203.47

The Commission finds that item 4, the payment on account of a sawmill for the Oneidas at Wisconsin (\$1,000.00), was a proper disbursement in discharge of defendant's obligations under the 1794 Treaty. That item of \$1,000.00 will be allowed as a credit.

The Commission finds that the remaining 9 items, totaling \$15,203.47, do not come within the purview of the expenditures which defendant could make in discharging the \$4500 annuity obligations of the 1794 Treaty. Accordingly, no credit will be allowed for the \$15,203.47 enumerated in items 1, 2, 3, 5, 6, 7, 8, 9, and 10. This will reduce defendant's claimed credits for the 1814 through 1952 period from \$623,665.29 to \$608,461.82.

(6) In summary the credits to be allowed in fulfillment of the 1794 Treaty obligations are:

1795 - 1813	\$ 70,319.76
1814 - 1952	<u>608,461.82</u>
Total	\$678,781.58

Plaintiffs are entitled to recover a total amount of \$32,218.42 (\$711,000.00 minus \$678,781.58) on their claim relating to the 1794 Treaty.

(7) The plaintiffs are not entitled to interest on the amounts the Commission has determined are recoverable on the claims made by plaintiffs under the Article of 1792 and the Treaty of 1794. There is no statutory authority for recovery of interest on these claims, and there are no provisions in either agreement allowing interest under the terms of the Article or the Treaty. In addition no constitutional taking has resulted from the payment of a lesser sum under the terms of the two agreements or the payment for items which were found not to be covered by the terms of the Treaty of 1794.

Seneca Treaty of 1826

(8) On August 31, 1826, the Seneca Nation of Indians concluded a treaty with three private citizens, Robert Troup, Thomas L. Ogden and Benjamin W. Rogers (American State Papers Indian Affairs, Vol. 2, pp. 866-67). The treaty, called the Treaty of Buffalo Creek, was held under the authority of the United States in Erie County, New York and attending were a representative from the State of Massachusetts and a commissioner appointed by the United States for holding the treaty. Various parcels of land were sold by the Indians to the three men for a consideration of \$48,216.00. The treaty document contained no statement concerning the manner of payment of the \$48,216.00 and there was no provision in the treaty for interest on the sum of \$48,216.00.

On September 2, 1826, Oliver Forward, the United States Commissioner who attended the treaty ceremony reported to the Secretary of War as to the execution of the treaty and said he approved of it. He made

reference at the time to the "annuities" the tribe was to receive. Thereafter, on January 26, 1827, the three private citizens wrote to James Barbour, then Secretary of War, about the Treaty of 1826 with the Senecas. They explained that a copy of the conveyance had been given to the United States Commissioner and that the treaty was to take effect

". . . when the grantees shall have secured in the public stocks an annuity or annual income to the amount of \$2,583, for the use and benefit of the Seneca Nation of Indians."

They also stated it was the wish and expectation of the Indians that the annuity should be in the name of the President, as it had been in another treaty in 1797. The men also stated:

"We have now the Honor to inform you, that stock in the public debt of the United States, bearing an interest of 6 per cent, has been purchased by us to an amount sufficient to produce the stipulated annuity"

A few weeks later, on February 16, 1827, an employee of the Office of Indian Affairs wrote to the Secretary of War about this treaty. He compared it to other treaties and said that whereas other treaties had provided for the mode of investment of the principal and a stipulated annuity, with the President as guardian of the fund, the Treaty of 1826 between the Senecas and the three private citizens didn't do this. However, he stated that, clearly, it was the Seneca Indians' wish that the money received from the 1826 Treaty be treated as were the treaties which actually incorporated provisions for investment, and that stock be purchased which would return the stipulated sum, with the President

as guardian of their interests. The Indian Affairs employee felt that the President was not bound under the Treaty but the President did hold a relation to the Indians "as the guardian of the rights of the Indians to be their representative in such a case . . . I mean where the treaty does not expressly provide for it." (Pltf. Ex. No. 6)

On February 24, 1827, the President transmitted the Treaty, the letter of Troup, Ogden and Rogers, and the Report of the Superintendent of Indian Affairs in a message to the Senate of the United States, requesting the advice and consent of the Senate to the ratification of the treaty. The Senate reported that it deemed its advice and consent not necessary. It does not appear that the treaty was ratified.

On August 28, 1846, the Commissioner of Indian Affairs received a letter from the Cashier of the Ontario Bank in Canandaigua, New York. The bank was replying to an earlier letter of August 24, 1846, from the Commissioner. The Ontario Bank had been acting as trustee for the Seneca Nation since April 1827. It was holding \$43,050, the remainder of the money which Troup, Ogden and Rogers had paid under the Treaty of 1826, less expenses of the negotiation. Troup, Ogden and Rogers had initially delivered to the bank the United States stocks bearing 6% interest. The stocks were retired and the bank continued to hold the money. The cashier, in referring to the Treaty, stated:

"This sum . . . was intended to secure to the Indians a perpetual annuity of \$2583 . . . This annuity has been punctually and regularly paid by the Bank, since the date of the agreement, to the United States Agent . . . "

The Bank was willing to continue to pay the annuity or to pay it to the President pursuant to a law of the United States enacted on June 27, 1846. (9 Stat. 20) Under Section 3 of that Act, the President was specifically authorized to receive from the Ontario Bank the trust money from the Treaty of 1826. It was to be deposited in the United States Treasury for the credit of the Indians and they were to receive interest thereon at the rate of 5% per annum until the principal was paid over to them.

The Act of June 27, 1846, made no reference to any annuity which the Seneca Nation had been receiving and had been assured it would receive perpetually from the investment of the principal under the Treaty of 1826.

The Bank of Ontario did not pay over to the United States the Seneca fund until August 24, 1855. No appropriation was made by the Congress for the year 1856. On August 18, 1856 (11 Stat. 65, 75) the Congress appropriated, for fiscal year 1857, \$2,152.50 representing interest at 5% on the Seneca fund, in accordance with Section 3 of the Act of June 27, 1846 (9 Stat. 20). Thereafter, from 1858 through 1909, annual appropriations of \$2,152.50 were made.

(9) The treaty of 1826 consisted of a written agreement as to the total amount of money to be paid by certain private citizens for specified Seneca Nation property, and an oral agreement between the same parties concerning investment of the principal for the return of a specific sum of money to be paid as a yearly annuity. The United States was aware, when it took over the principal, under the Act of June 27, 1846 (9 Stat. 20) that it was the intention of the parties

that the Senecas receive an annual annuity of \$2583.00. For every year from 1857 through 1909, under the terms of the Act of 1846, the Senecas have received \$430.50 less than was provided by the Agreement in 1826, for a cumulative loss of \$22,816.50. They received nothing in 1856 so their total loss as a result of the receipt of the fund by the United States Treasury is \$25,399.50.

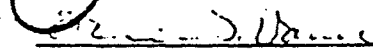
(10) The Seneca Nation of Indians is not entitled to interest on the loss the Commission has determined it has sustained by virtue of defendant's reduction of the yearly payments which were agreed to as part of the Treaty of 1826.

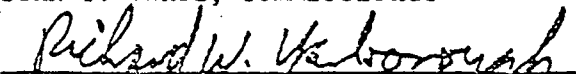
(11) The plaintiffs are entitled to recover the following sums less allowable gratuitous offsets, if any:

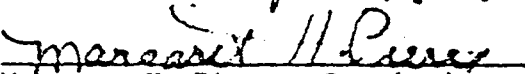
1792 Article	\$ 4,500.00
1794 Treaty	<u>32,218.42</u>
Total	\$36,718.42

The Seneca Nation of Indians is entitled to recover \$25,399.50.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner