

BEFORE THE INDIAN CLAIMS COMMISSION

THE OTTAWA TRIBE and GUY JENNISON,	)	
BRONSON EDWARDS and GENE JENNISON,	)	
AS REPRESENTATIVES OF THE OTTAWA	)	
TRIBE,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket No. 304
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: March 17, 1971

Appearances:

Allan Hull and Louis L. Rochmes, Attorneys  
for Plaintiffs.

W. Braxton Miller, with whom was  
Mr. Assistant Attorney General Clyde O. Martz,  
Attorneys for Defendant.

OPINION OF THE COMMISSION

Commissioner Vance delivered the opinion of the Commission.

This is a claim by the Ottawa Tribe of Oklahoma for additional compensation under section 2, clause 3, of the Indian Claims Commission Act, 60 Stat. 1049, 1050, for the cession by the Maumee Band of Ottawa Indians of two tracts of land in northwestern Ohio under the provisions of the Treaty of February 18, 1833, 7 Stat. 420. The smaller of the tracts, Royce Area 183, which is located on the north side of the Maumee River where it empties into Maumee Bay, was reserved to the Maumee Band of Ottawa Indians under the Treaty of November 17, 1807,

7 Stat. 105, and was described therein as an area ". . . four miles square on the Miami bay, . . ." As officially surveyed, Royce Area 183 contains 6,743.82 acres, after deduction of grants made to certain individuals. The larger tract, Royce Area 182, is located on the south side of the Maumee River directly opposite Royce Area 183, and was reserved to the Maumee Band of Ottawa Indians under the Treaty of September 29, 1817, 7 Stat. 160. It is described in the 1817 Treaty as a ". . . tract of land, to contain thirty four square miles, to be laid out as nearly in a square form as practicable, . . ." As ceded under the 1833 Treaty, Royce Area 182 contained 20,237.92 acres. Accordingly, the net cession to the United States under the 1833 Treaty was 26,981.74 acres, for which lands the United States paid to the Ottawa band a treaty consideration of \$29,440.00, an amount which the plaintiff alleges is unconscionable under our Act. In determining the ultimate issue of the defendant's liability to the plaintiff tribe, we have valued the 26,981.74 acres as a unit and as of March 22, 1833, which is the effective date of the 1833 treaty of cession.

The ceded area consists of two contiguous tracts of land on opposite sides of the Maumee River in the extreme northwestern part of Ohio, at the entrance of Maumee Bay in Lake Erie. This general area was known historically as the Maumee Valley. Enhanced by a natural water route through Lake Erie, Maumee Bay, and the Maumee River, the Maumee Valley hosted the mainstream of new settlers from the northeast seeking new lands in Ohio and eastern Indiana. Most of this area was

open for settlement by the 1833 cession date. Prior to 1833, the Maumee Valley had enjoyed notoriety as a result of the large-scale military engagements that took place there during the Indian wars of the Northwest Territory (1793-1796) and the War of 1812. Successful settlements, which included the towns of Perrysburg and Maumee, had already been established by 1833.

The subject tracts were generally flat, except for slight elevations and rolling slopes along the Maumee River and the banks of the smaller streams. The combined length of the shoreline in the tracts amounted to approximately ten miles. In 1833, a considerable portion of the lands in the ceded area were swampy and poorly drained. Because of this drainage problem, the subject lands were of poor quality generally and would offer little agricultural attraction unless improved by extensive drainage, an expensive and time consuming project. The overland access routes to the ceded tracts from the East were very poor. The few roads that crossed the Black Swamp on the southern borders of Royce Area 182, were nearly impassable during wet seasons and the winter months. These factors—poor soil, the difficulty of access, as well as climatic unpredictability in fall and winter—contributed to a substantial retardation of large-scale homesteading in northwestern Ohio.

As early as 1825, the Ohio Canal Commission had proposed as part of the western Ohio canal system an alternative canal route that would run along the north bank of the Maumee River to the borders of the subject

tracts. Within months of the 1833 cession date, Ohio, by the law of March 3, 1834 (32 Ohio Laws 308) agreed to build the Ohio section of the Wabash and Erie Canal from the Indiana border. The terminal of this canal was projected near or within the borders of the subject Ottawa tracts. Several months later, Congress granted Ohio lieu lands to help finance the construction of this canal. The prospect of a busy port on the Maumee River encouraged Eastern investors, particularly shipping interest in Buffalo, to invest in potential townsites along the banks of the Maumee River. As a result of this interest, a number of towns were established near the borders of subject tracts, including Port Lawrence and Vistula, consolidated in 1833 to become the town of Toledo. Economically, the year 1833 was especially favorable for land speculators since it marked the beginning of an economic boom which prevailed generally in the United States until 1837.

The parties herein are in total disagreement as to the 1833 highest and best use and fair market value of the subject tracts. It is the plaintiff's contention that the land within the subject area could best be utilized for commercial purposes, and that in 1833 it was worth \$22.50 per acre, a figure derived from the appraisal of the unappropriated land within the ceded area that was made by the Ohio Canal Commission between 1834 and 1836. The values fixed by the Ohio Canal Commission range from \$4.00 per acre for inland property to \$200.00 per acre for waterfront sites. The main object of the Ohio Canal Commission's appraisal was to insure as far as possible the highest

return in order to finance expensive canal construction. However, actual sales of lieu lands in and around the ceded area that were made by the Canal Commission in 1835 realized only \$8.60 per acre on the average. Moreover, the record indicates that between June, 1834 and August 1835, approximately 740 acres of choice waterfront lands, which had been reserved to individual Ottawa chiefs and favored white friends under the 1833 Treaty, were sold for an average price of \$10.80 per acre, and resold shortly thereafter for an average price of \$35.00 per acre. There are no sales of record that would confirm the high range of values placed on the subject lands by the Canal Commission.

The defendant introduced the appraisal report of Richard B. Hall, a real estate appraiser of some forty years experience, who valued the subject tracts in 1833 at roughly \$1.50 per acre. While Mr. Hall contended that the highest and best use for the subject tracts was for agricultural purposes at some future date, he placed a much higher value on the river and bay front lands, \$7.50 per acre, and an extremely low value, \$0.50 per acre, on inland property. The average value from sales data covering some thirty private transactions in adjacent areas between 1826 and 1833 was \$2.78 per acre. Although it is not clear to what extent the defendant has relied upon the private and public land sales data in the record in calculating the 1833 fair market value of the ceded area, we think the suggested figure of \$1.50 per acre is much too low. Nor do we agree that in 1833 the subject tracts were best suited for future agricultural development.

Clearly, the over-riding factor bearing upon the value of the ceded area in 1833 was its potential for commercial uses. Uppermost in the minds of investors and townsite speculators was the expectation of a high profit that would be realized within the borders of the subject tracts as a result of increased shipping activity on the Maumee River and the proposed canals. While the 1833-1837 economic boom exerted an inflationary effect on land prices, fair market value embraces the inflated sales of a boom period as readily as it must absorb the market declines of a depression. Town lot sales in Port Lawrence and Vistula in 1833 and 1834 reflect in part the inflationary pressures on the land market. The prices of these lots ranged anywhere from \$25 to \$200 each depending on their location to the waterfront.

Based upon the findings of fact herein and the entire record, the Commission has concluded that, as of March 22, 1833, the effective date of the 1833 treaty of cession, the highest actual and potential best use of the ceded area was for commercial purposes, and, as of that date, the subject tracts as a whole had a fair market value of \$230,000, or approximately \$8.52 per acre. The treaty consideration of \$29,440 that was paid to the Maumee band for the 1833 cession of the subject tracts, having a then fair market value of \$230,000, was so grossly inadequate as to be unconscionable within the meaning of section 2, clause 3, of the Indian Claims Commission Act. Accordingly, the plaintiff is entitled to recover the sum of \$200,560, less gratuitous offsets, if any, that may be allowable under our Act.

Finally, we take note that the plaintiff tribe seeks to recover a judgment herein in its own name as the successor in interest to the 1833 Maumee Band of Ottawa Indians. Plaintiff cites the case of Dominic ex rel. Ottawa Tribe of Indians v, United States, 2 Ind. Cl. Comm. 461 (1953), as determinative of this issue of successorship. In the Dominic case the plaintiff herein brought a series of claims arising out of the treaties of July 4, 1805, 7 Stat. 87, November 17, 1807, 7 Stat. 105, September 29, 1817, 7 Stat. 160, and August 29, 1821, 7 Stat. 218. After deciding that Ottawa lands were not owned by an Ottawa Nation but by the specific Ottawa bands or groups that negotiated the various Ottawa treaties of cession, the Commission found parenthetically and without any explanation that the plaintiff herein was the successor in interest to some of the Ottawa bands, including the "Ottawa of the Maumee" that participated in the 1807 and 1817 treaties, supra, under which the subject reservations herein were established.

Insofar as the instant claim arising out of the 1833 Treaty is concerned, the Commission finds that the plaintiff tribe does have successorship rights. However, we are not convinced on the record before us that the plaintiff tribe is the full successor in interest to the Maumee band that concluded the 1833 treaty of cession, and, therefore, the sole owner of the instant claim.

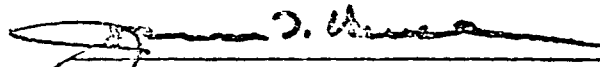
As the defendant has correctly pointed out, members of the Maumee band then residing on the Ottawa reserves at the mouth of the Maumee River in 1833 were not required to remove to the recently established Ottawa reservation in Kansas either under the 1833 Treaty or the

earlier Ottawa Treaty of August 30, 1821, 7 Stat. 359. Removal was entirely optional.

Shortly before the 1833 Treaty, George B. Porter, the Territorial Governor of Michigan, advised the Secretary of War that members of the Maumee band living on the subject tracts were willing to sell these reserves but that:

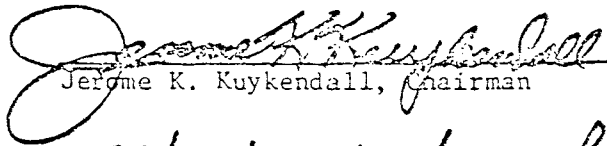
" . . . they do not wish to remove west of the Mississippi. They are rather inclined to go to Canada; or somewhere in our vicinity.--A gentleman from Maumee, in whom both you and I have great confidence, who has intercourse with them told me this day that it would be very difficult, if not entirely out of the question, to persuade them to go west of the Mississippi." (National Archives, Office of Indian Affairs, Record Group No. 75, Michigan Superintendency, Roll 421.)

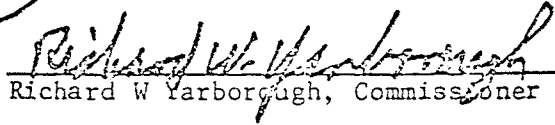
After the 1833 cession of the Maumee River reserves, those Ottawa Indians remaining behind requested a loan in order to purchase lands in Ohio. Although the Government would have preferred removal to the Kansas reservation, the Commissioner of Indian Affairs approved the contemplated purchases of the Ohio lands. Excerpts from a General Accounting Report show that in 1843 some 2,344 Ottawas were listed under the Michigan superintendency, and that for the years 1838-1846 only 250 to 350 Ottawas were listed under the Osage River Agency in Kansas. In the absence of any evidence in the record showing that members of the Maumee band, or descendants of members, as a group, ever joined their western brethren in Kansas after the 1833 Treaty, the Commission will enter judgment for the plaintiff tribe for and in behalf of the Maumee Band of Ottawas that negotiated the 1833 treaty of cession.

  
John T. Vance, Commissioner

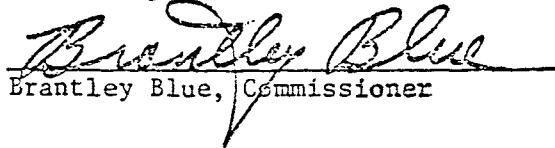


We Concur:

  
Jerome K. Kuykendall, Chairman

  
Richard W Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner