

BEFORE THE INDIAN CLAIMS COMMISSION

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| THE ONEIDA NATION OF NEW YORK, THE |) | |
| ONEIDA TRIBE OF INDIANS OF WISCONSIN, |) | |
| THE ONEIDA NATION BY JULIUS DANFORTH, |) | |
| OSCAR ARCHIQUETTE, SHERMAN SKENANDORE, |) | |
| MAMIE SMITH, MILTON BABCOCK, BERYL |) | |
| SMITH AND AMANDA PIERCE, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | Docket No. 301 |
| v. |) | (Claims 3 - 8) |
| |) | |
| THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |

Decided: August 18, 1971

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The plaintiffs herein are identifiable groups of American Indians residing within the territorial limits of the United States and have the right and capacity under the Indian Claims Commission Act, 60 Stat. 1049, to bring and maintain this claim in a representative capacity for and on behalf of the Oneida Nation.
2. Among the aborigines first encountered by European colonists on the North American continent were those who shared a common language identified as "Iroquoian." The aborigines who spoke this language were generally found in the vicinity of the Eastern seaboard of the continent.
3. In those earliest contacts, the Iroquoian aborigines identified themselves as "The Five Nations." After the Tuscarora Indians who emigrated from the Carolinas to the north affiliated themselves with the

existing Iroquoian Confederacy in the 1720's, that confederacy was frequently referred to as "The Six Nations." The Oneida Nation is one of the tribes which made up the Iroquois Confederacy or the Six Nations.

4. The plaintiffs ceded certain lands to the State of New York by the Treaties of June 28, 1785, and September 22, 1788. By the terms of the Treaty of 1788, at Fort Schuyler, the plaintiffs ceded all their lands to the State of New York, except for an area of approximately 100 square miles that was reserved for their own use and was to be held by them and their posterity forever.

5. By the Treaty of Canandaigua of November 11, 1794, 7 Stat. 44, with the Six Nations, the United States acknowledged title of the Oneida Nation to those lands reserved to them in the Treaty of September 22, 1788, between the Oneida Nation and the State of New York. Article II of the treaty stated:

The United States acknowledge the lands reserved to the Oneida, Onondaga and Cayuga Nations, in their respective treaties with the state of New-York, and called their reservations, to be their property; and the United States will never claim the same, nor disturb them or either of the Six Nations, nor their Indian friends residing thereon and united with them, in the free use and enjoyment thereof: but the said reservations shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase. (7 Stat. at 45).

6. By a series of treaties entered into between 1795 and 1846 the plaintiffs ceded to the State of New York their interests in the reservation of approximately 100 square miles as stated in the cession agreement of 1788.

Under the Treaty of September 15, 1795, three tracts of land within the Oneida Reservation were obtained by the State of New York. The

consideration for the first tract was a down payment of \$2,952 and a perpetual annuity of \$2,952. The consideration for the second and third tracts of land was a perpetual annuity equal to a sum derived by multiplying the number of acres in the tract by a rate of \$3 per one hundred acres, and a grant by the State of New York to the Indians of the land lying between Chellingo and Canaseraiga Creeks, as far south as an easterly line from the Deep Spring to the easternmost of the said streams, to be drawn by the shortest distance between the said spring and the said easternmost stream, and as far north as the junction of the said two streams.

The consideration actually paid by the State of New York for the three tracts was \$2,952 and annuities of \$4,169.28 until 1838, when they were commuted for the sum of \$69,488. The \$4,169.28 represented \$2,952 plus \$600 under the Treaty of September 22, 1788, plus \$3 per hundred acres as previously stated.

7. Under the Treaty of June 1, 1798, the plaintiffs ceded a tract from the reservation to the State of New York for a cash consideration of \$500 and a perpetual annuity of \$700. In 1838 the annuity was commuted for the sum of \$11,666.66. This treaty recited that there was "Present, Joseph Hopkinson Commissioner appointed under the authority of the United States to hold the Treaty." It was stipulated in the treaty that one copy would remain with the United States, another copy with the State of New York and another copy with the Indians. The treaty bore the signature of said Joseph Hopkinson, and an addendum by John Adams, the President of the United States, stating that the treaty was held under the authority of the United States in the presence and with the approbation of Joseph Hopkinson, the Commissioner of the United States, appointed to hold the same.

8. On March 5, 1802, pursuant to a resolution of the Senate and Assembly of the State of New York, a provisional agreement was entered into between the State of New York and the Oneida Nation, whereby the plaintiffs agreed to cede a further portion of its reservation.

Pursuant to the provisional agreement, a treaty was held on June 4, 1802. The treaty recited that there was "Present John Taylor Agent appointed under the authority of the United States to hold the Treaty." The treaty stipulated that one copy would "remain with the United States another to remain with the State of New York and another to remain with the Indians" and John Taylor signed the treaty as Commissioner.

According to the treaty the State of New York paid a cash consideration of \$900 and a perpetual annuity of \$300. In 1838, the annuity was commuted for the sum of \$5,000.

9. Under the Treaty of March 21, 1805, the two parties of the Oneida Nation, the Christian Party (afterwards known as the First Christian Party) and the Pagan Party (afterwards known as the Second Christian Party), mutually agreed to a division and partition of the balance of the Oneida Reservation.

10. Under the Treaty of March 13, 1807, the Christian Party of Oneida Indians ceded two tracts from their reservation to the State of New York for a cash consideration of \$600 and a perpetual annuity equal to 6 percent of the number of acres (less 20 acres granted to a specified individual) multiplied by 75 cents per acre. The cash consideration was paid and an annuity of \$644.86 was also paid each year until 1838 at which time the annuity was commuted for the sum of \$10,747.66.

One of the two tracts ceded in the above mentioned treaty was sold and quitclaimed to the State of New York for the benefit of one Angel De Ferrier in consideration of services which he rendered to the Oneida Nation. The State of New York also agreed to convey to Angel De Ferrier an additional 400 acres from the other tract.

11. Under the Treaty of February 16, 1809, the Christian Party of Oneidas ceded to the State of New York "all their lands still belonging to the said Christian Party of the Oneida Nations of Indians on both sides of Fish Creek which empties itself into the Wood Creek near the head of the Oneida Lake containing roughly seven thousand and five hundred acres." The consideration consisted of a down payment of \$600, an additional sum of \$1,000 to be paid at the Castle in Oneida on June 1, 1809, and a perpetual annuity equal to 6% of \$2,000, which was paid. In 1838 the annuity was commuted by payment of the sum of \$2,000.

12. Having acquired the lands of the Oneida Reservation lying west of the Creek, which had belonged to the Christian Party of the Oneida Nation, the State of New York then began to acquire portions of the reservation that belonged to the Pagan Party of the Oneida Nation.

Under a treaty entered into between the State of New York and the Pagan Party on February 21, 1809, the Pagan Party ceded a tract of land to the State of New York. The consideration for the cession of the tract was 56 cents per acre, of which \$1,000 was paid as a down payment with the balance to be set aside to generate a 6% annuity payable to the Pagan Party annually in perpetuity. The Pagan Party received a cash payment of \$1,000 on February 21, 1809, and an annuity of \$332.48 was

paid each year until 1838 at which time it was commuted for the sum of \$5,541.33.

13. The Christian Party of the Oneida Nation by the Treaty of March 3, 1810, ceded a tract from the reservation to the State of New York. The consideration was 50 cents per acre, of which \$500 was to be paid in cash at the execution of the treaty, \$300 on June 1, 1810, and a perpetual annuity equal to 6% of the remainder. The payments of \$500 and \$300 were made as well as the annuity of \$185.75 each year until 1838 at which time it was commuted for the sum of \$3,095.84.

14. The Christian Party of the Oneida Nation by the Treaty of February 27, 1811, ceded a tract from the reservation to the State of New York. The consideration was 50 cents per acre, payable \$200 as a down payment on February 27, 1811, \$400 on June 1, 1811, and a perpetual annuity at the rate of 6% on the remainder which was paid at the annual rate of \$71.82. In 1838 the annuity was commuted by the payment of the sum of \$1,197.

A survey was ordered by the Surveyor General of the State of New York of the lands in Lenox in the County of Madison, which the State of New York acquired by the treaties of March 3, 1810, and February 27, 1811. According to the state's survey in 1811, the purchase under the Treaty of 1810, consisted of 8,441 acres and the purchase under the Treaty of 1811, consisted of 3,594 acres.

15. By the Treaty of March 3, 1815, the Christian Party of the Oneida Nation ceded to the State of New York four tracts of land from its reservation. The consideration for the four tracts of land was \$1 per acre. The State of New York paid \$562 on the execution of the treaty and \$592.50 on June 13, 1815.

16. The State of New York and the Second Christian Party, formerly the Pagan Party of the Oneida Nation, entered into a treaty on March 27, 1817. The State of New York by this treaty acquired an additional portion of the Oneida Reservation. The consideration was as follows: 600 acres were to be sold and the proceeds used to build a church for the Second Christian Party on their lands. The treaty further stated that the consideration for 1,356 acres conveyed to the State of New York was the release to the Second Christian Party of 678 acres of land which the state had acquired from the First Christian Party. There were 700 acres granted to individuals named in the treaty. The consideration for the remaining land conveyed by the treaty was to be a sum of money calculated at the rate of \$2 per acre, of which \$1,200 was to be paid at the execution of the treaty and the balance was to be set aside to generate a 6% annuity payable annually to the Second Christian Party.

The cash consideration of \$1,200 was paid at the execution of the treaty with a provision for an annuity of \$120.85 each year. In 1838 the annuity was commuted by the payment of the sum of \$2,014.17.

17. The First Christian Party of Oneida Indians, by the Treaty of August 26, 1824, with the State of New York, ceded two additional tracts from their reservation. The consideration for the first tract was a cash down payment of \$353 and a perpetual annuity of \$240. The consideration for the second tract was a cash down payment of \$800 and a perpetual annuity of \$60. The annuities of \$240 and \$60 were paid until 1838 when they were commuted by the payment of \$5,000.

The treaty also provided that out of the lands ceded, 400 acres were to be granted to specified individuals and that the specified individuals were to hold their lands for five years.

18. The State of New York entered into a treaty on February 1, 1826, with the Second Christian Party of the Oneida Nation, by which the State of New York acquired a tract from the reservation. The consideration for the sale was \$3 per acre, of which \$1,000 was a down payment and the remainder was to be paid June 1, 1826, or when the Governor was satisfied that the Indians were about to move to Green Bay, Wisconsin. The only consideration paid by the State of New York for the land ceded by this treaty was \$1,000. This treaty also provided that Lewis Denny be paid \$30 for improvements and 200 acres of the cession were to be granted to one Nathan Davis.

19. By 1829 the Oneida Reservation had already been considerably reduced in size as a result of the treaties with the State of New York. During the next seventeen years, a series of ten treaties with the State of New York divested the plaintiffs of all but a small portion of their remaining land in New York. During this period a number of members of the Oneida Nation emigrated to Wisconsin.

By the Treaty of February 13, 1829, the State of New York acquired another tract of land from the First Christian Party of the Oneida Nation. The state was to have the tract surveyed and appraised and was to pay as consideration the amount that the appraised value exceeded a \$1,500 down payment made at the time the treaty was executed. The State of New York also agreed to place the value of 200 acres of land in a trust fund, the interest therefrom at 6% per annum to be paid to the First Christian Party of the Oneida Nation for the support of a teacher at Green Bay, Wisconsin

until it was deemed appropriate to use the fund for some other purpose.

The only consideration paid by the State of New York was \$3,817.30.

The State of New York conveyed 100 acres to Timothy Jenkins from this cession.

20. By the Treaty of October 8, 1829, the State of New York acquired from the First Christian Party another tract of land from the Oneida Reservation.

It was agreed that certain portions of a 600 acre tract within the lands conveyed by the treaty would be reserved for certain persons who would pay the appraised value thereof.

According to the treaty the State of New York was to make a down payment of \$1,000 and, after the lands had been surveyed and appraised, the state was to pay an additional consideration in the amount that the appraised value of a certain six hundred acre tract of the land conveyed exceeded \$1,000. The State of New York paid the amount of \$14,187.05.

21. The Orchard Party of the Oneida Indians by the Treaty of April 3, 1830, ceded a tract from the reservation to the State of New York. The state was to have the tract surveyed and appraised and the amount of the appraisal was to be paid to the Indians over and above a down payment of \$1,200.

It appears that the only consideration actually paid by the State of New York was the \$1,200 cash down payment upon the execution of the treaty.

There were separate appraisals of each of the 11 lots that made up the subject tract and the aggregate of all the 11 appraisals added up to \$9,289.69.

22. The Orchard Party of the Oneida Indians by the Treaty of February 26, 1834, ceded about 1,000 acres from the reservation to the State of New York. Approximately one hundred acres were reserved for individuals mentioned in the treaty who were to pay the appraised value for their portion of the land and improvements.

The consideration consisted of a cash down payment of \$1,400 and, after the land was surveyed and appraised, the amount by which the appraised value exceeded the cash down payment. The state paid an aggregate of \$14,715.16.

23. By a treaty entered into between the State of New York and the Orchard Party of the Oneida Nation on February 24, 1837, the state acquired a one acre tract for the amount the resale of the land brought after deducting the costs of the sale. The one acre tract was appraised at \$240 and sold for \$248 on January 1, 1838. The Orchard Party received payment of \$230.90 on January 25, 1838.

24. On June 19, 1840, a treaty was entered into between the State of New York and the First and Second Christian Parties of the Oneida Nation for the acquisition by the state of that part of the Oneida Reservation which belonged to the members of the tribe who were then removing from New York to Wisconsin.

In order to ascertain and determine the quantity and the precise location of the lands to be reserved for the Indians who did not intend to emigrate, it was agreed that a surveyor would be hired to survey the

land. The State of New York agreed to have the lands subdivided into parcels or lots of convenient and suitable dimensions for occupation as farms and for the advantageous sale of the lands from time to time as rapidly as the removal of the members of the Oneida Nation made possible. The state agreed to secure the best price possible for the land. A record was to be kept by the state of any expenses incurred in surveying and selling the land and also of the proceeds received from the sales of the land.

The proceeds were to be held and retained in trust to pay any expenses the state incurred in surveying and selling the land, and the balance of the proceeds, with all interest, was to be paid to the emigrating parties.

At the conclusion of the treaty, the state was to pay to designated trustees the sum of \$15,000 for the first emigrating party and \$6,000 for the second emigrating party. If the land conveyed by the treaty was not resold by May 1, 1841, the state was to advance to the first emigrating party an additional \$15,000 plus interest thereon. The State of New York paid \$117,235.65 for the land.

25. In connection with another emigration to Green Bay, the State of New York and the First and Second Christian parties of the Oneida Nation entered into a treaty on March 8, 1841, by which the state acquired a tract of land.

According to the treaty the Commissioners of the land office were to have the ceded land surveyed, measured and subdivided into parcels or lots of convenient and suitable dimensions for occupation as farms. The land was then to be sold by the state as rapidly as the removal of the Indians

would permit. The state was to secure the best price possible for the land. The proceeds from the sale of the land were to be held by the state in trust to be used (1) to repay all advances made by the state on account of the cession of the lands, with interest thereon at the rate of 6% per annum, (2) to repay all expenses of surveying and executing the treaty, (3) to pay the residue with all interest that may have accrued to the emigrating party upon their removal beyond the limits of the State of New York.

If the lands were not sold by May 1, 1841, the state was to advance to the emigrating party the full amount of the appraised value of the land, excluding improvements and deducting the expense of surveying the lands and executing the treaty. The appraised value of the improvements on said lands were to be paid to each individual to whom improvements belonged when they emigrated beyond the State of New York's limits.

According to the state's own records, the actual consideration that the Oneidas received for the entire tract of 274.85 acres was \$5,239.95, the appraisal value was \$7,220.50 and the actual resale price was \$7,903.50.

26. In connection with the removal from the State of New York of several members of the Orchard Party, a treaty was entered into between the Orchard Party and the State on March 13, 1841. There were 98 members of the Orchard Party, 44 of whom were to leave the reservation. According to the treaty, the Orchard Party owned a total of 484.32 acres in the town of Vernon in the County of Oneida, which was recognized to be theirs by prior treaties. The land was divided among the members of the party, per capita and each was entitled to 4.94 acres.

That portion belonging to the emigrating members of the Orchard Party was acquired by the State of New York and consisted of 217.44 acres.

As in some of the earlier treaties the consideration to be paid by the State of New York for the land was the price received by the state upon resale of the land. The commissioners of the land office were to have the land surveyed and measured and subdivided into parcels or lots of convenient and suitable dimensions for occupation as farms. The state was to keep account of all expenses of surveying and executing the treaty, was to have the land sold from time to time at the best price possible and was to hold the proceeds in trust: (1) to pay all advances made by the state on account of the cession, with interest thereon at the rate of 6% per annum, (2) to pay all expenses of surveying and executing the treaty, and (3) to pay the balance to the emigrating party upon their removal beyond the limits of the state. At the conclusion of the treaty the State of New York was to advance \$880 to the trustees for the emigrating party.

The land ceded was to be appraised and if the land was not sold by May 1, 1841, the state was to advance to the emigrating party a sum equal to the full appraised value of the land, excluding any improvements.

It appears the State of New York actually paid \$5,078.13 for the land in question.

27. On May 23, 1842, the State of New York entered into three separate treaties with the First Christian Party, Second Christian Party and Orchard Party of the Oneida Nation. The first treaty was between the First and Second Christian parties and the State of New York. The

second treaty was between the Orchard Party and the State of New York. The third treaty was also between the State of New York and the Orchard Party which ceded another tract of land.

The lands acquired by the state under the three treaties were to be sold by the state and the proceeds were to be held in trust: (1) to pay all advances made on account of the cession and partition plus interest at the rate of 6% per annum; (2) to pay all expenses of the survey and execution of the treaty; and (3) to pay the balance to the party or parties of the Oneida Nation entitled thereto.

According to the state's records, it appears that the state paid as total consideration for all the land it acquired under the three treaties, the sum of \$9,603.70.

28. By the Treaty of February 25, 1846, between the State of New York and the Oneida Nation, the State paid to the Oneida Nation the sum of \$1,656.25 for a part of the Oneida Reservation known as the "Missionary Lot" which was granted by the state to Samuel Kirkland, then a missionary to the Oneida Tribe of Indians.

Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

Richard W. Yarborough
Richard W. Yarborough, Commissioner

Margaret H. Pierce
Margaret H. Pierce, Commissioner

Brantley Blue
Brantley Blue, Commissioner