

BEFORE THE INDIAN CLAIMS COMMISSION

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.)

Docket No. 300

THE UNITED STATES OF AMERICA,)

Defendant.)

Decided: December 15, 1971.

Appearances:

Marvin S. Chapman, Attorney for
Plaintiffs, Aaron, Aaron, Schimberg,
and Hess of Counsel.

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

OPINION

Blue, Commissioner, delivered the opinion of the Commission.

The plaintiff, the Stockbridge Munsee Community, has brought this action for an accounting of monies allegedly due and owing to the plaintiff tribe as a result of defendant's failure to fulfill its obligations under the treaties of August 11, 1827, 7 Stat. 303, September 3, 1839, 7 Stat. 580, November 24, 1848, 9 Stat. 955, February 5, 1856, 11 Stat. 663, and the Act of August 15, 1894, 28 Stat. 286, 307.

At a hearing conducted on September 28, 1968, the defendant submitted several reports that had been prepared by the General Accounting Office and General Services Administration, as well as other documentary material, all of which allegedly accounts in detail for all monies appropriated and disbursed by the defendant for the plaintiff pursuant to the above treaties and act of Congress. Thereafter, the plaintiff tribe filed a memorandum in support of its exceptions to the defendant's accounting reports, and the defendant filed its requested findings of fact and memorandum of points and authorities.

The plaintiff alleges that defendant's accounting shows that the defendant is still obligated to the Stockbridge Indians in the amount of \$22,335.74. Defendant concedes \$687.22 of this amount, but claims setoffs in excess of \$7,000. The Commission has carefully examined the record and we have found that in some instances the defendant failed to pay over or expend for the benefit of the plaintiff tribe stipulated amounts of money where it was under obligation to make such expenditures. We have concluded that the plaintiff may recover \$4,203.09 on the account as stated and, further, that the defendant is not entitled to any legal setoffs or counterclaims.

Our findings of fact are quite detailed and need not be repeated, and we shall limit our comments herein insofar as possible to certain items that were not allowed.

The plaintiff has predicated recovery on most of the items claimed simply on the fact that excess appropriations above actual disbursements were ultimately returned to a surplus account and not paid over to the Indians.

One example is the plaintiff's claim for surplus funds that were

appropriated to carry out the stipulations of Article 6 of the Treaty of September 3, 1839, supra. Under Article 6 of the 1839 Treaty, supra, the defendant obligated itself to defray the expenses of these Stockbridge Munsee Indians who desired to remove west of the Mississippi River and to furnish them with subsistence for one year after their arrival. No specific sum was stated in the treaty.

The plaintiff claims that the sum of \$12,283.08, which is listed in the defendant's accounting under the 1839 Treaty as carried to surplus, should have been disbursed for subsistence purposes under Article 6 of said treaty. Plaintiff has cited a report prepared by the Commission's Investigation Division on April 19, 1968, as confirming the fact that those Indians, who had removed to Kansas, could not sustain themselves and eventually faced starvation. This report, a two page memorandum (copies of which were made available to the parties), states at the very outset that, during 1839-40, some 169 Stockbridge Munsee Indians moved westward and settled on the Kansas lands where they apparently prospered during the initial years following their arrival. Nothing more was heard of these Indians until 1849, when at that time they were reported in a declining condition. By 1854 they were facing starvation.

In order to fulfill the stipulations of the 1839 Treaty, the Congress, by the Act of July 20, 1840, 5 Stat. 402, 404, appropriated \$36,265.40, which was set up under the heading "Carrying into Effect Treaty with the Stockbridge and Munsees". In all, the defendant spent

\$14,042.50 for removal and subsistence under Article 6 of the 1839 Treaty. The defendant's accounting shows that, all but \$660 of the above amount was disbursed during the calendar years 1840 through 1843. In absence of any evidence to the contrary, this would tend to confirm that the 169 Indians, who had removed to Kansas during 1839-40, constituted the principal, if not the only, Stockbridge Munsee group who availed themselves of the removal provisions under the 1839 Treaty, and further, since they initially prospered, the United States did in fact furnish these Indians with adequate subsistence for at least one year after their arrival.

Of the \$12,283.08 carried to surplus, supra, \$12,101.60 was the result of a prior transfer of surplus money from an unrelated account as authorized under Section 3 of the Act of March 3, 1843, 5 Stat. 612, 613, ". . . for the purpose of settling and closing the account of disbursing agents in the Indian department," Accordingly, said surplus funds were not obligated monies that the defendant was required to spend for subsistence under Article 6 of the 1839 Treaty. The remaining \$181.48 were also surplus funds which the defendant was not required to spend for subsistence under Article 6 of the 1839 Treaty. The Commission has not been made aware of any legal, equitable,

or accounting principle that would require the defendant to pay over to the plaintiff tribe surplus funds not needed to carry out treaty obligations where no specific expenditure has been mandated by Congress. See Seminole Nation v. United States, 316 U.S. 286 (1941), Shoshone Tribe of Indians v. United States, 82 Ct. Cl. 74, 85, 86, rev'd 299 U.S. 476 (1937).

What has been said above with respect to plaintiff's right to recover the unexpended balance returned to surplus also applies to surplus funds sought to be recovered under the 1848 Treaty.

For a different reason the Commission has denied the plaintiff's further claim of \$3,000 arising under the 1827 Treaty. The 1827 Treaty was concluded on August 11th of that year and was ratified and proclaimed on February 23, 1829. Initial appropriations to carry out the purposes of Article 5 of the 1827 Treaty were made in 1830. The plaintiff claims that had the payments under Article 5 of the Treaty of 1827 begun two years earlier, at the time of the agreement, then the plaintiff would have collected at some point two additional \$1,500 payments or \$3,000 more than it eventually did. The plaintiff says that the payments should have begun at the time of the agreement because the boundaries established by the agreement took effect at the time of the agreement. However, Article 7 of the 1827 Treaty provided that the treaty would not be obligatory until ratified. This being the case the defendant was not obligated to appropriate any money to carry out the treaty stipulations until after February 23, 1829. In our judgment, 1830 was the earliest

year that the appropriations could have been made. Plaintiffs' claim, therefore, is without merit.

Equally without merit is the defendant's attempt to set off or counterclaim against any award herein \$5,775 in annuity payments received by the Stockbridge Indians under the 1848 Treaty, and \$1,848.41 expended by the Secretary of Interior in conducting certain sales of Stockbridge Indian allotted lands.

Under Article 9 of the 1848 Treaty the United States had agreed to pay the Stockbridge Indians an annuity equal to 5% on the principal sum of \$16,500, or \$850 annually. By virtue of Article 5 of the 1856 Treaty the plaintiff tribe relinquished this annuity. At the time of the 1856 relinquishment the Indians were entitled to \$5,775 in annuities, which were in fact disbursed for their benefit. The defendant now alleges that the 1856 Treaty rescinded the 1848 Treaty, and, as a result of this total rescission and substitution of a new agreement, the plaintiff must disgorge all monies received under the old agreement. The Commission has found no such retroactive effect flowing from the language of the 1856 Treaty. What the plaintiff relinquished under the 1856 Treaty was the right to future annuity payments and nothing more.

Article 13 of the 1856 Treaty stipulated that, if the Secretary of Interior thought it expedient and proper, he might conduct an investigation into certain sales of Stockbridge Indian allotted lands, and, if improper sales had been made, or an improper consideration received, he was empowered to set them aside. An investigation was conducted and expenses

were incurred in the amount of \$1,848.41. The defendant alleges that, in the absence of any language in the 1856 Treaty, the Indians should be charged with this expense, since the Secretary's actions were voluntary, and no benefit actually accrued to the defendant. Defendant cites Choctaw Nation v. United States, 91 Ct. Cls. 320 (1940), for the proposition that as a general policy the United States does not assume the expense of the distribution or sale of tribal property. The Commission finds no fault in the Choctaw rule, only its application to the matter before us.

In the Commission's judgment the obligation assumed by the Secretary of Interior to investigate questionable sales of Stockbridge allotted lands was not simply a gratuitous gesture, but was a part of the overall 1856 Treaty consideration.

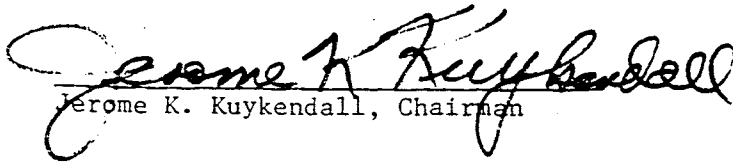
Much agitation had been engendered from earlier attempts by the United States to move the Stockbridge Indians out of Wisconsin, and to permit those Indians who wished to remain and become citizens to take allotments. White settlers who had purchased Indian allotments complicated the picture. The 1856 Treaty was an attempt to settle all these problems once and for all. To say the Secretary's actions taken pursuant to Article 13 of the 1856 Treaty did not inure to the benefit of the United States, is to ignore the overall purposes and effect of the 1856 Treaty and what it was intended to accomplish for both the Indians and the United States. The administrative expenses incurred as a result of the Secretary's actions are properly the defendant's expenses and not chargeable to plaintiff tribe.

The plaintiff is therefore entitled to recover from the defendant \$4,203.09 less any allowable gratuitous offsets.

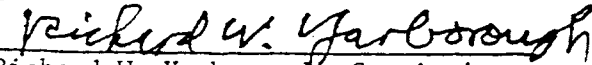


Brantley Blue, Commissioner

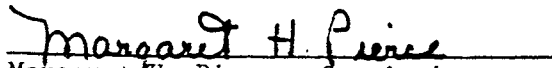
We Concur:



Jerome K. Kuykendall, Chairman



Richard W. Yarborough, Commissioner



Margaret H. Pierce, Commissioner

Commissioner Vance dissenting:

In my opinion, the entire record of this case, including the report of the Investigation Division of the Indian Claims Commission, shows that defendant's efforts to comply with the treaty provision to have been meager, indeed too little and too late.

The defendant's attempts to explain why funds were returned to surplus rather than expended to furnish subsistence for the Indians are inadequate; many of the Indians having been left in a starving condition after their removal.

The report of the Investigation Division of the Indian Claims Commission states:

To conclude, from the information available, the Stockbridge-Munsee were relatively secure immediately following their arrival in Kansas. It would appear, this position was the result of Indian diligence and industry rather than government aid.

Subsequently the Indian position deteriorated to a point where by 1854 they were facing starvation.

The defendant has failed to sustain the burden of proving the account. Accordingly, the plaintiffs should recover the amount claimed, \$22,335.74.


John T. Vance, Commissioner