

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.

FINDINGS OF FACT

1. The Stockbridge Munsee Community, plaintiff, is a tribe of American Indians having a tribal organization recognized by the Secretary of Interior as having authority to represent the tribe. The Stockbridge Indians, a tribe of the Mahican Confederacy, and the Munsee Tribe a division of the Delawares, no longer have separate tribal organizations. The said tribes have been amalgamated for many years and are known as the Stockbridge Munsee Tribe, or the Stockbridge Munsee Community. The Stockbridge Munsee Community is the successor in interest to the Stockbridge Tribe and the Munsee Tribe.

2. This is an action for an accounting based on the following treaties and statutes: the Treaty of August 11, 1827, 7 Stat. 303; the Treaty of September 3, 1839, 7 Stat. 580, the Treaty of November 24, 1848, 9 Stat. 955; the Treaty of February 5, 1856, 11 Stat. 663; and the Act of August 15, 1894, 28 Stat. 286, 307.

Treaty of August 11, 1827, 7 Stat. 303

3. All items claimed under the 1827 Treaty are monies allegedly not spent for education as provided in Article 5 of the treaty which reads as follows:

"The sum of one thousand dollars shall be annually appropriated for the term of three years; and the sum of fifteen hundred dollars shall be annually thereafter appropriated as long as Congress think proper, for the education of the children of the tribes, parties hereto, and of the New York Indians, to be expended under the direction of the President of the United States."

Article 7 of the 1827 Treaty provided that:

"This treaty shall be obligatory after its ratification by the President and Senate of the United States."

The 1827 Treaty was concluded at Butte des Morteson the Fox River in the Territory of Michigan, and the treaty parties, besides the United States, were the "Chippewa, Menomonie, and Winibago tribes of Indians."

4. (a) Returned to surplus or unaccounted for, \$1,173.66

Plaintiff claims that out of sums appropriated for educational purposes under Art. 5 of the 1827 Treaty the following amounts were either carried to surplus or not accounted for: \$0.10, \$901.77, \$204.86, \$66.93, and should have been disbursed.

The record herein discloses that between 1830 and 1867 the Congress appropriated and provided \$55,500 for educational purposes. During that same period the defendant disbursed \$55,295.14 in carrying out the provisions of Art. 5 of the 1827 Treaty, leaving an unexpended

balance of \$204.86 which was carried to surplus.

The language in Article 5 of the 1827 Treaty directs that the appropriated sums be "expended under the direction of the President of the United States". The Commission finds that under this treaty provision, the President was required to spend all of the money Congress thought proper to appropriate and his not doing so was a breach of that article of the treaty for which plaintiff should now recover.

(b) Returned to surplus, \$521.59

By the Act of July 21, 1852, 10 Stat. 15, 23, the sum of \$521.59 was appropriated to replace monies previously appropriated to carry out Article 5 of the 1827 Treaty, but which had been retained by an Indian agent. Upon recovery of this sum from the agent or his sureties, \$521.59 was carried to surplus on the books, and represented a reimbursement to the United States. No part of this sum was due and owing to the Indians under the 1827 Treaty.

(c) Monies due and owing for failure to begin treaty payments at time of agreement, \$3,000

Article 5 of the 1827 Treaty provided for the annual appropriation of one thousand dollars for the term of three years. Article 7 of the 1827 Treaty provided that it would become obligatory "after its ratification by the President and Senate of the United States," supra. The 1827 Treaty was ratified and proclaimed on February 23, 1829.

By the Act of Congress, entitled "An Act making appropriations to carry into effect the treaty of Butte des Mortes", approved May 20, 1830, the sum of \$3,000 was appropriated "for purposes of education," as provided by Article 5 of the 1827 Treaty, 4 Stat. 403.

Since the 1827 Treaty contains no specific date upon which initial appropriations and expenditures for educational purposes were to commence, 1830 was the earliest year following the ratification of the 1827 Treaty in which Congress could have made initial appropriations. Accordingly, the record does not support plaintiff's claim for payments to have begun two years earlier than they did, or at the time the treaty was signed.

Treaty of September 3, 1839, 7 Stat. 580

5. On September 3, 1839, the United States concluded a treaty of cession with the "Stockbridge and Munsee tribes of Indians" at Stockbridge, Wisconsin, wherein said Indians for the sum of \$23,040 and other consideration ceded certain lands on the east side of Lake Winnebago. Payment to the tribes of the above stated consideration was to be carried out in the manner prescribed in the treaty.

Under Articles 2 and 3 of the 1839 Treaty, \$12,647.05 was to be paid to the emigrating Indians for their land and improvements. Under Article 4 of the 1839 Treaty, \$6000 of the balance was to be invested at 5% interest, and the remaining \$4,392.95 was to be paid outright to the sachems and counsellors.

Under Article 6 of the 1839 Treaty, the United States agreed to defray the expenses of those Indians who wished to remove west of the Mississippi River, and to furnish them with subsistence for one year after their arrival at their new homes.

The record herein shows that of the \$12,647.05 which the United States was obligated to pay out under Articles 2 and 3 of the 1839 Treaty,

the defendant disbursed \$12,633.47 and is liable to the Plaintiff tribe in the amount of \$13.58.

The record herein also shows that pursuant to Article 4 of the 1839 Treaty, the defendant disbursed the sum of \$4,392.95 as a cash payment to the sachems and counsellors of the tribe, and further, of the total sum of \$20,432.41 due the Plaintiff tribe for monies invested pursuant to said article, the defendant has accounted for all but \$378.08, which amount is due and owing.

6. Returned to surplus, \$12,283.08

Under Article 6 of the 1839 Treaty, supra, the defendant obligated itself to defray the expenses of those 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. 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.

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". For the years 1840, 1841, and 1842, the defendant disbursed the sum of \$13,242 to cover removal and subsistence expenses under Article 6 of the 1839 Treaty. Thereafter, and for like purposes, the defendant disbursed in 1843, \$140.50; in 1854, \$21; in

1856, \$273; in 1857, \$303; and in 1860, \$63. In all, the defendant spent \$14,042.50 for removal and subsistence under Article 6 of the 1839 Treaty.

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.

Treaty of November 24, 1848, 9 Stat. 955

7. On November 24, 1848, the United States concluded a treaty of cession with the Stockbridge Tribe of Indians. In consideration of the relinquishment of certain rights and privileges, and the cession of a township of land on the east side of Lake Winnebago in the State of Wisconsin, the United States under Article 5 of the 1848 Treaty agreed to ". . . pay to said tribe, within six months after the ratification of this agreement, the sum of sixteen thousand five hundred dollars, . . ." to assist the Indians in establishing themselves in a new home. Article 6 of the 1848 Treaty called for the payment of an additional \$14,504.85 during the same period to cover the value of the improvements on the ceded land. Under Article 8 of the 1848 Treaty the United States agreed to defray the cost of removal of those Indians who wished to emigrate west of the Mississippi River and to furnish them with subsistence for one year after their arrival. It was further agreed under Article 8

that the United States would invest \$16,500 at not less than 5% interest and pay said interest annually to the tribe as a permanent annuity. Under Article 11 of the 1848 Treaty the United States agreed to pay \$3,000 to the sachem and headmen of the tribe to cover certain tribal expenses.

Under a "Supplemental Article" to the 1848 Treaty, the Stockbridge and Munsee Indians relinquished their claims to other lands in Indiana and Wisconsin in consideration of the immediate payment of \$5,000 to chiefs of the Indians, plus the further sum of \$20,000 in ten annual installments ". . . to commence when the said Indians shall have selected and removed to their new homes, as contemplated by the seventh article of this treaty."

The 1848 Stockbridge Treaty, and the "Supplemental Treaty" thereto were ratified on March 1, 1849.

8. To fulfill the stipulations contained in the 1848 Treaty, the Congress, by the Act of March 3, 1849, 9 Stat. 370, 372, 373, appropriated \$52,804.85, which was set up under the heading "Fulfilling Treaties with Stockbridges". For the years 1851 through 1856, an additional \$4,950 was appropriated to meet the annuity payments under Article 9 of the 1848 Treaty. An additional \$78.41 was transferred to the Stockbridge account to augment an appropriation. In all, \$57,833.26 was made available to carry out the provisions of the 1848 Treaty, of which amount \$44,629.85 was actually disbursed.

9. Under Article 6 of the 1848 Treaty the defendant was obligated to pay the Stockbridge Tribe \$14,504.85. The record shows actual expenditures

of \$14,354.85, leaving a balance due and owing the plaintiffs of \$150.

10. Of the \$4,950 appropriated for the years 1851 through 1856 to meet the annuity payments under Article 9 of the 1848 Treaty, the record shows a total "Cash payment to Indians" of \$4,710, leaving a balance due and owing of \$240. By Article 1 of the Treaty of February 5, 1856, infra, the Stockbridge and Munsee Indians ceded the perpetual annuity provided for under Article 9 of the 1848 Treaty.

11. In order to carry out the provisions of Article 8 of the 1848 Treaty, the Congress, by the Act of July 31, 1854, 10 Stat. 315, 328, appropriated \$7,000 which was set up under the heading "Removal and Subsistence of Stockbridges west of the Mississippi". However, no disbursements were made pursuant to the 1848 Treaty. By the Act of August 18, 1856, 11 Stat. 65, 76, this \$7,000, plus other money that had been appropriated to carry out the provisions of the 1848 Treaty, was made available for disbursement in fulfilling the defendant's obligations under the 1856 Treaty, infra.

Treaty of February 5, 1856, 11 Stat. 663

12. On February 5, 1856, the United States concluded a treaty with the Stockbridge and Munsee Tribes of Indians wherein under Article 1 of the treaty the Indians ceded and relinquished to the defendant certain lands in Wisconsin and Minnesota as well as the \$20,000 stipulated to be paid to them under the amendment to the 1848 Treaty, supra, and "...the sixteen thousand five hundred dollars invested

by the United States in stocks for the benefit of the Stockbridge tribe in conformity to Article 9 of said treaty, . . ."

In consideration of the "cession and relinquishment" made by the Stockbridge and Munsee Tribes, the United States agreed, among other things, to pay (1) the sum of \$41,100 (Art. 2) to be spent for improvements for the benefit of the Indians as provided in Article 4; (2) \$20,550 for removal expenses (Art. 2); (3) \$18,000 for the purchase of stock and necessaries, the discharge of debts and the settlement of the Indians' affairs (Art. 2); (4) \$150 remaining unpaid under a prior treaty for the value of a schoolhouse (Art. 8); and (5) to pay the appraised value of the improvements on the ceded lands, not to exceed in the aggregate the sum of \$5,000 (Art. 15). The 1856 Treaty was ratified and became effective on April 18, 1856.

13. Under Article 2 of the 1856 Treaty the defendant was obligated to expend the sum of \$38,550 to cover removal expenses of the Stockbridge and Munsee Indians, the purchase of stock and necessaries, the discharge of national or tribal debts, and to enable the Indians to settle their affairs. The record herein shows total expenditures of the above items in the amount of \$35,598.03, leaving a balance due and owing the plaintiff of \$2,951.97.

Under Article 2 of the 1856 Treaty the defendant was also obligated to expend for the plaintiff tribe the sum of \$41,100 for improvements in the manner specified under Article 4. The record herein shows total

expenditures for improvements in the amount of \$41,059.20, leaving a balance due and owing the plaintiff of \$40.80.

Under Article 8 of the 1856 Treaty the defendant was obligated to expend \$150 for a schoolhouse. The record herein shows that the defendant failed to expend this sum, and there is due and owing the plaintiff \$150.

Act of August 15, 1894, 28 Stat. 286, 307

14. The Act of August 15, 1894, 28 Stat. 286, 307, reads in part as follows:

"To enable the Secretary of Interior to pay the Stockbridge and Munsee Indians in Wisconsin the amount received by the United States and covered into the Treasury, collected by the Government in certain suits for timber cut and removed from the reservation of said Indians, three thousand five hundred and fifty seven dollars and sixteen cents. Said sum to be paid said Indians per capita."

Congress appropriated \$3,557.16 pursuant to the 1894 Act, of which amount \$3,483.36 was paid per capita, leaving a balance due and owing the plaintiff of \$73.80.

Counterclaims

15. Under Article 9 of the Treaty of November 24, 1848, supra, the defendant was obligated to invest the sum of \$16,500 in stock bearing an interest rate of not less than 5% per annum, which interest was to be paid annually to the plaintiff tribe as other annuities are paid by the United States. By virtue of Article 1 of February 5, 1856, supra, the plaintiff tribe ceded this annuity to the United States. The record herein shows total expenditures of \$5,775 chargeable to Article 9 of the 1848 Treaty, consisting of \$4,710 as "Cash payment

to Indians", and \$1,065 as "Expenses of Indian delegations", and "Payment to estate of John W. Quinney".

The defendant is not entitled to recoup as a claimed legal offset against any award herein to the plaintiff tribe the sum of \$5,775, or any other amount paid to the plaintiff tribe under Article 9 of the 1848 Treaty prior to April 18, 1856, the effective date of the 1856 Treaty. Article 1 of the 1856 Treaty, under which the plaintiff tribe ceded its permanent annuity, contains no retroactive language that would require the Indians to disgorge to the defendant those annuity payments already received.

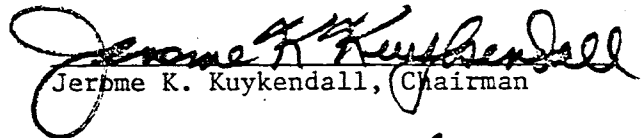
16. Under Article 13 of the Treaty of February 5, 1856, supra, it was agreed that the Secretary of Interior, if he deemed it expedient and proper, may examine into the sales of allotted lands made by the Stockbridge Indians and to disprove and set aside any sales found to have been improperly made or without proper consideration. A subsequent examination of the sales of allotted lands was conducted by the Secretary of Interior. Expenses incurred by the defendant as a result of the action taken by the Secretary of Interior pursuant to Section 13 of the 1856 Treaty amounted to \$1,848.31. The obligations assumed by the defendant under Article 13 of the 1856 Treaty formed part of the overall consideration agreed to by the defendant in order to procure the intended land cessions and removal of the Stockbridge Indians as provided for under the terms of the 1856 Treaty. Defendant is therefore not entitled to credit, counterclaim, or offset against any monies due and owing the plaintiff

tribe under the 1856 Treaty, or any other treaty or statute, the \$1,848.31 in expenses incurred by the defendant in carrying out the stipulation of Article 13 of the 1856 Treaty.


Conclusion

17. The plaintiff is entitled to recover from the defendant the sum of \$4,203.09 itemized as follows:

1. Treaty of August 11, 1827	\$ 204.86
2. Treaty of September 3, 1839	391.66
3. Treaty of November 24, 1848	390.00
4. Treaty of February 5, 1856	3,142.77
5. Act of August 15, 1894	<u>73.80</u>
Total	\$4,203.09


Jerome K. Kuykendall, Chairman


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner