

BEFORE THE INDIAN CLAIMS COMMISSION

BAY MILLS INDIAN COMMUNITY, SAULT STE.)
MARIE, ARTHUR LAWRENCE LABLANC, DANIEL)
EDWARDS AND JOHN L. BOUCHER, AND OTTAWA)
AND CHIPPEWA INDIANS OF MICHIGAN, ET AL.,)

Plaintiffs,)

v.)

Docket Nos. 18-E and 58

THE UNITED STATES OF AMERICA,)

Defendant.)

Decided: December 29, 1971

Appearances:

Rodney J. Edwards, Attorney for
Docket 18-E Plaintiffs,
James R. Fitzharris, Attorney for
Docket 58 Plaintiffs

David M. Marshall, with whom was
Mr. Assistant Attorney General
Shiro Kashiwa, Attorneys for
Defendant.

OPINION OF THE COMMISSION

Kuykendall, Chairman, delivered the opinion of the Commission.

In the title phase of these consolidated cases, the Commission determined that the plaintiffs had aboriginal title to 12,044,934 acres located within Royce Area 205 in the northern peninsula of Michigan (7 Ind. Cl. Comm. 576 (1959)). Subsequently it was determined that these lands, ceded to the United States under the Treaty of March 28, 1836 (7 Stat. 491), had a value of \$10,800,000. (20 Ind. Cl. Comm. 137 (1968)).

The Commission, on January 14, 1970, deducted 1,863 allotments aggregating 121,450.75 acres (22 Ind. Cl. Comm. 372 (1970)) resulting in a net acreage of 11,923,483.25 with a value of \$10,690,694.33.

On October 28, 1970, this Commission reassessed its findings made in 7 Ind. Cl. Comm. 576 (1959), specifically modifying Findings of Fact No. 24 and 25 (24 Ind. Cl. Comm. 50, 54-55 (1970)), and found that the plaintiffs held recognized title to Royce Area 113 (1,395 acres) and sub-areas "U" and "S" of Royce Area 205 (1,209,600 acres). Since these areas were not included in the land described in the treaty, and therefore have not been valued previously, we will determine the value of these areas in this proceeding.

VALUE

The Commission, upon examination of the record, has concluded that sub-areas "U" and "S" of Royce Area 205 (which were ceded under the Treaty of March 28, 1836) have an average fair market value of \$0.90 an acre, making a total value of \$1,088,640. We note that both parties approve of this valuation.

The parties have also requested that the evaluation of Royce Area 113 be incorporated in the determination of defendant's liability under the Treaty of March 28, 1836. Royce Area 113 was ceded by the plaintiffs under the Treaty of July 6, 1820 (7 Stat. 207), and this area lies within the boundaries of Royce Area 205. The Treaty of July 6, 1820, was not proclaimed until March 8, 1821, and this Commission has held the latter date to be the date of valuation for Royce Area 113. (24 Ind. Cl. Comm. 50, 52 (1970)).

Plaintiffs contend that, since Royce Area 113 is contiguous to the

lands within Royce Area 205, which the Commission found to be worth \$0.90 per acre, Royce Area 113 should also be assigned a value of \$0.90 an acre. The difficulty in plaintiffs' position is that Royce Area 113 was ceded in 1821 and Royce Area 205 was ceded in 1836, sixteen years later. Economic conditions both in the Michigan Territory and the United States were generally less favorable in 1821 than 1836. Plaintiffs, however, justify the \$0.90 per acre evaluation on the basis that Royce Area 113 contains valuable timber and gypsum. The record shows that in 1848 the timber consisted of mediocre pine and swamp conifers mixed with hardwood, and that the timber had no commercial value until many years after 1821. (See Def. Ex. 251-V pp. 437-43). The Government purchased this land, not for its timber value, but for the gypsum which was used in the manufacture of plaster of paris. A civilian company that was interested in purchasing the gypsum was instrumental in having Indian title extinguished. (7 Ind. Cl. Comm. 576, 593 (1959)). There was a viable market for gypsum at the time of the 1821 Treaty. After consideration of the entire record we conclude that Royce Area 113 had a fair market value in 1821 of \$1,116,00, or \$0.80 per acre.

The last tracts to be evaluated are the reservations which were provided for in the amendments to the "Second" and "Third" articles of the 1836 Treaty and which comprised 401,971 acres. Originally, the parties intended that these lands would be set up as permanent reservations for the exclusive use of the Ottawa and Chippewa Indians. Prior to approval of the 1836 Treaty, these articles were amended by the Senate whereby

the duration of these reservations was limited to a period of five years from the ratification of the treaty or to any longer period which might be permitted by the United States. As consideration for these cessions (changing permanent reservations to reservations of limited duration), the "Fourth" article of the 1836 Treaty stipulated that the Indians would receive the principal sum of \$200,000 to be held in trust by the United States, and the defendant would pay interest thereon until the reservations were actually surrendered. At that time the principal amount would be paid over to the Indians.

Interest was paid annually to the Chippewa and Ottawa Tribes from 1836 through 1856, a period of 20 years. In all, the plaintiffs received \$240,000 in interest payments (\$12,000, or 6% annually, for 20 years).

The 401,971 acres of reservation lands should be valued as of the effective date of the 1836 Treaty, and since they were contiguous to plaintiffs' lands within Royce Area 205, we see no reason why they should not be valued at \$0.90 per acre, or a total of \$361,773.90.

The overall evaluation of the subject lands under the treaties of March 28, 1836 and July 6, 1820 is as follows:

1.	11,923,483.25 acres (22 Ind. Cl. Comm. 272 (1970))	=	\$10,690,694.33
2.	401,971 acres (reservation lands)	=	361,773.90
3.	1,209,600 acres (sub-areas "U" & "S")	=	1,088,640.00
4.	1,395 acres (Royce Area 113)	=	<u>1,116.00</u>
	<u>13,536,449.25 acres</u>		\$12,142,224.23 value

CONSIDERATION

I. The Treaty of March 28, 1836, provided for total payments of \$1,653,334.46, plus 6% interest on \$200,000, by defendant. The total payments made by the defendant to the plaintiffs amounted to \$1,821,628.06.^{1/} The Commission's evaluation of the 1836 cession (\$12,141,108.23) is over seven times the amount that was due under the 1836 Treaty. Therefore, we find that the consideration provided for the plaintiffs in the 1836 Treaty was unconscionable.

We will now address ourselves to the expenditures which are a subject of dispute. The first item involves the \$240,000 in interest payments the plaintiffs received pursuant to the "Fourth" article of the 1836 Treaty. As we noted earlier, the Indians had agreed under the 1836 Treaty to change their permanent reservations to ones of limited duration, and the United States agreed to pay the Indians \$200,000 "...whenever their reservations shall be surrendered, and until that time the interest on said two hundred thousand dollars shall be annually paid to the said Indians."^{2/} The plaintiffs contend that the interest paid annually by the defendant under this provision cannot be deemed to be consideration since **they were the beneficial owners** of the principal sum of \$200,000 from which the interest was theoretically derived. Therefore, the plaintiffs argue that they are entitled to the interest free of any contention that the amounts so paid are any part of

^{1/} This figure excludes the \$191,243.48 in annuities that were paid to the Grand River Ottawas from the total treaty consideration since the Grand River Ottawas are not parties in either Docket numbers 18-E or 58.

^{2/} 7 Stat. 491.

the consideration for the treaty. The defendant would have us credit the United States with both the principal and interest, or \$440,000, as consideration for the treaty.

Plaintiff's theory of the case would result in a double payment. It disregards the fact that during all the time the interest was being paid the plaintiffs had the possession and use of the reservations. The plaintiffs suffered no detriment until they lost possession of these reserves, and at that time they obtained possession of the principal sum of \$200,000 and had already received \$240,000 in interest. Plaintiffs' contention on this point must be overruled.

The second disputed item is defendant's claimed expenditure of \$21,000 for "annuity goods" under the "Fourth" article of the 1836 Treaty. The Commission finds no language in said article that would account for a \$21,000 payment to the Indians as due and owing under the 1836 Treaty. Therefore, this alleged expenditure does not qualify as a payment made under the 1836 Treaty. We will, however, deal with this payment in our discussion of gratuitous offsets.

The defendant also claims additional expenditures under the "Fourth" article of the 1836 Treaty for education in the amount of \$140,858.83. Plaintiffs contend that the 1836 Treaty provides for a maximum of \$100,000 (\$5,000 annually for 20 years) and the difference should not be allowed as consideration. Plaintiffs have ignored the fact that the section provides, not only for payment of five thousand dollars per annum for twenty years, but also "....as long thereafter as Congress may appropriate for the object." (Emphasis supplied) Congress appropriated and the

