

BEFORE THE INDIAN CLAIMS COMMISSION

SENECA-CAYUGA TRIBE OF OKLAHOMA	)	
AND PETER BUCK, STEWART JAMISON,	)	
RUBY CHARLOE, DAVID CHARLOE AND	)	
LEWIS WHITEWING, MEMBERS AND	)	
REPRESENTATIVES THEREOF,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket Nos. 341-A and 341-B
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: December 29, 1971

Appearances:

Paul G. Reilly, Attorney for the Plaintiffs.

Roberta Schwartzendruber, with whom was Mr. Assistant Attorney General Shiro Kashiwa, attorneys for Defendant.

OPINION OF THE COMMISSION

Blue, Commissioner, delivered the opinion of the Commission.

These cases are currently before the Commission on the issue of the liability of defendant. Docket No. 341-A concerns the liability of the defendant arising from a treaty between the United States and a band of Seneca Indians (hereinafter referred to as the "Senecas of Sandusky") executed on February 28, 1831 (7 Stat. 348). By the terms of this treaty the Senecas ceded their reservation located near Sandusky, Ohio (Royce Area 163, hereinafter referred to as "Sandusky Reservation") to defendant.

Docket 341-B concerns the liability of defendant arising from a treaty between the United States and a mixed band of Seneca and Shawnee Indians (hereinafter referred to as the "Senecas of Lewistown") executed on July 20, 1831 (7 Stat. 351). By the terms of this treaty the Senecas of Lewistown ceded their reservation located near Lewistown, Ohio (Royce Area 164, hereinafter referred to as the "Lewistown Reservation") to defendant.

The two treaties were basically similar. Where possible we have treated them as one in the interest of brevity and simplicity. This is also desirable since the Lewistown and Sandusky bands ultimately confederated and settled in a single reservation in Oklahoma. (See treaty executed December 29, 1832, 7 Stat. 411). The plaintiffs in Dockets 341-A and 341-B are identical.

Each treaty provided for the sale of the ceded lands by "public sale, to the highest bidders. . . ." (7 Stat. 348, Art. 8; 7 Stat. 351, Art. 8). The Sandusky Reservation was to be sold "at such time and in such manner as the President may direct. . . ." (7 Stat. 348, Art. 8) and the Lewistown Reservation was to be sold "in the manner of selling the public lands. . . ." (7 Stat. 351, Art. 8). The Indians were given in return for the aforesaid cessions new lands in Indian Territory together with some improvements to be constructed by defendant and the monies received from the sale of the two reservations less certain specified deductions.

Plaintiffs claim that defendant violated the terms of the respective treaties in that it failed to sell the lands at public sale to the highest bidder and that it did not promptly credit the amounts received to the accounts of the Indians. Plaintiffs have introduced no evidence in support of their position and have made little use of the voluminous exhibits introduced by defendant.

Defendant responds that plaintiffs have failed to carry their burden of proof; that the lands were in fact sold at public sale by the procedures established by the Act For the Sale of Public Lands, 3 Stat. 566 (1820); and that they have made a full and complete accounting to plaintiffs.

The reservations were surveyed in the months of August, September, and October 1832. These surveys found a total acreage of 41,688.41 acres at Sandusky and 39,624.43 acres at Lewistown. On November 13, 1832, the President issued a Proclamation (Def. Ex. 14) announcing the public sale of the Sandusky Reservation at Bucyrus, Ohio, on the second Monday in December of that year (December 10, 1832), and the public sale of the Lewistown Reservation at Piqua, Ohio, on the fourth Monday in December of that year (December 24, 1832). Each sale was to be kept open for a period not to exceed two weeks and each sale excluded certain lands reserved by law for the use of schools, or for other purposes.

The Lewistown Treaty provided that the sum of seventy cents (\$0.70) per acre, exclusive of the costs of surveying the lands, the cost of

sawmill and a blacksmith shop to be erected on the lands granted to them in Indian Territory, and the sum of six thousand dollars (\$6,000.00) advanced in lieu of improvements, would be deducted from the proceeds of the sale (7 Stat. 351, 353). The Sandusky Treaty provided that "the minimum price of the public lands; the cost of building, saw and grist mills and blacksmith shop for the Senecas, the cost of surveying the lands, and the sum of six thousand dollars" would be deducted from the proceeds of the sale (7 Stat. 348, 349, emphasis in original).<sup>1/</sup>

Plaintiffs argue that the defendant has produced no evidence showing how the sales were advertised, how they were conducted, and under what circumstances they were advertised. We find that defendant has sustained its burden on these issues. Defendant has introduced a copy of the Presidential Proclamation offering the lands for sale, the records of the Land Offices at Bucyrus and Piqua evidencing the sales, as well as the report of the Commissioner of the General Land Office to the Commissioner of Indian Affairs, dated November 3, 1849, reporting the sale of 40,805.81 acres of the Sandusky Reservation and 38,140.73 acres of the Lewistown Reservation. Plaintiffs have made no effort to introduce any evidence supporting their claims. We recognize that where, as here, plaintiffs left the reservations before the sales were held and did not again return, it would be difficult for them to produce such evidence. Yet certainly their investigations would have borne some

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<sup>1/</sup> The Act of April 24, 1820 (3 Stat. 566) provided, in part, that "no land shall be sold, either at public or private sale, for a less price than one dollar and twenty-five cents an acre. . . ."

fruit if substantial wrongdoing occurred. Viewing the evidence before us in the light most favorable to plaintiffs we are unable to conclude that defendant violated the terms of the respective treaties as regard the actual conduct of the sales or the advertising thereof. Cf: Delaware Tribe v. United States, Docket 72, 298, 21 Ind. Cl. Comm. 344 (1969), Peoria Tribe v. United States, Docket 65, 15 Ind. Cl. Comm. 123, 142 (1965).

We nevertheless find that the two sales were not proper public sales for the following reasons: The sales were not commenced on the dates advertised in the Presidential Proclamation; and the public sales were not kept open for the requisite two-week period.

Defendant has argued, and we agree, that the Act For the Sale of Public Lands, 3 Stat. 566 (1820), set forth the requirements which governed the "public sales" of the Lewistown and Sandusky Reservations. The respective Articles 8 in each of the treaties contain language which indicates this intent, i.e., the Sandusky treaty specifying public sale "to the highest bidders at such time and in such manner as the President may direct" (7 Stat. at 349), and the Lewistown Treaty specifying public sale "to the highest bidders, in the manner of selling public lands" (7 Stat. at 352).

Although the Presidential Proclamation announced the public sale of the Sandusky Reservation for the second Monday in December 1832, (December 10), the sale was not commenced until Tuesday, December 11, 1832,

and was closed on December 20, 1832, in direct contravention of Section 5 of the Act For the Sale of Public Lands, supra, which states "that the several public sales authorized by this Act, shall respectively, be kept open for two weeks, and no longer . . ." (emphasis added).

The sale of the Lewistown Reservation was similarly deficient. Announced for the fourth Monday in December 1832, (December 24), the public sale was not held until Friday, December 28, 1832. The sale was closed on the following day, far short of the requisite two weeks.

Under the provisions of the 1831 treaties the defendant became obligated to sell the plaintiffs' lands in a certain prescribed manner. The failure of the defendant to comply with all of the requirements specified for the sale of such lands constituted a breach of defendant's duty to the plaintiff Indians. These cases will be set for hearing on the issue of the fair market value of the lands and the resulting damages, if any, caused by defendant's breach of its duties under the respective treaties.

In their petitions in the subject claims plaintiffs requested an accounting under the treaties of February 28, 1831, supra, and July 20, 1831, supra. Defendant filed such an accounting on December 4, 1962 (Def. Ex. 86). Plaintiffs have not filed any exceptions to the accounting. However, defendant has conceded that there are certain deficiencies in its accounting and has made computations of sums it admits are due and owing plaintiffs.

The land in section 16, comprising 640 acres each in Royce Area 163 and Royce Area 164, was set aside by defendant for use as school lands. These lands were not offered at the public or private sales and no compensation has been paid plaintiffs for these lands. Neither the Sandusky nor the Lewiston treaty contained any provision for the deduction of school lands from the lands to be sold. Defendant has proposed that it credit plaintiffs with the value of those withheld school lands plus 5% interest from 1833.

Defendant also concedes that it has been unable to account for 82.60 acres ceded to it by the Senecas of Sandusky. However, defendant states that it sold 436.30 acres more than was offered in the public sale of the Lewistown Reservation. While plaintiffs have asserted that some 1113.29 acres remain unaccounted for from the Lewistown Reservation sales, it appears that plaintiffs have used an 1842 sales figure rather than the 1848 total. Plaintiffs state that 37,071.14 acres were sold as of March 31, 1840. However, plaintiffs cite a letter of May 9, 1842, from J. M. Moore, Acting Commissioner, General Land Office to T. Hartley Crawford, Commissioner of Indian Affairs, for this information. (That letter indicates that 37,655.88 acres had been sold on March 31, 1842.) The final figures available indicate that on December 31, 1848, a total of 38,140.73 acres had been sold. This substantially accounts for the acreage plaintiffs state is unaccounted for.

Defendant also admits that certain sums representing both principal and interest have not been accounted for and should be awarded plaintiffs in these claims. In summary the defendant's computations are as follows:

Senecas of Sandusky

a. Value of 640 acres (school lands) withheld (\$1.61 x 640)	\$1,030.40
b. Interest on \$1,030.40 at 5% from 1833	<u>7,109.76</u>
Total	\$8,140.16

Notes:

- Defendant computes this amount by using the \$1.61 average sales price for the entire Sandusky Reservation.
- The interest has been computed for 138 years (1833 to 1971).

Senecas of Lewistown

a. Unpaid principal from proceeds of sale of Lewistown Reservation	\$1,396.39
b. Interest on \$1,396.39 at 5% from 1909 in 1971	4,328.84
c. Unpaid interest 1833-1902	4,010.07
d. Unpaid interest 1903-1909	926.85
e. Value of 640 acres (school lands) withheld	419.20
f. Interest on \$419.70 at 5% from 1833	<u>2,892.48</u>
Total	\$13,973.83

Notes:

- Computed by subtracting principal paid to Senecas of Lewistown during the period 1903-1909, \$6,961.48, as listed in disbursement schedule 28 of the Accounting Report, from the Senecas' share [the Shawnees and Senecas split the proceeds from Lewistown] of the proceeds of the sale of the Lewistown Reservation, \$8,357.87, as stated at page 74 in the Accounting Report.
- Interest computed from 1909, the last year in which principal was paid to the Senecas.
- Computed by taking the amount of interest earned on \$8,357.87 at 5% interest from 1833 thru 1902, \$28,834.41, and subtracting



from it the Senecas share of the amount of interest actually paid, \$24,824.34, as stated in disbursement schedules 24 and 25 of the Accounting Report.

d. This sum represents the difference between the annuities (interest) paid to the Senecas of Lewistown during the period 1903-1909, \$584.27, as found in disbursement schedule 24 of the Accounting Report and a sum representing 5% interest each year on the remaining principal balance for each of the years 1903 through 1909 found in disbursement schedule 28 of the Accounting Report

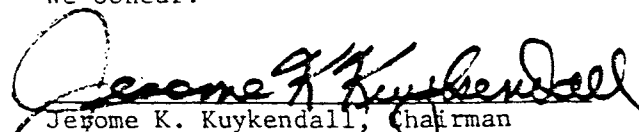
e. Defendant computes this amount by using the \$1.31 per acre average sales price for the entire Lewistown Reservation. This value times the 640 acres withheld equals \$838.40, of which the Senecas would have been entitled to one-half, or \$419.20, since the Shawnees and Senecas split the proceeds from the Lewistown Reservation sales.

f. The interest has been computed for 138 years (1833 to 1971).

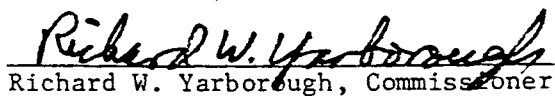
The plaintiffs did not file any reply brief or objections to any of the defendant's proposed findings of fact. Nor have the plaintiffs filed any exceptions to the accounting which has been furnished in these cases. Accordingly, the Commission will not at this time enter findings with respect to the accounting and defendant's statement of amounts due and owing the plaintiffs. Plaintiffs shall have 90 days from the date of this decision within which to file any objections or exceptions which they may have to the defendant's statement and computations of the deficiencies which it concedes exist in its accounting. The plaintiffs shall also file, within the next 90 days, any exceptions which they have respecting any other aspects of the defendant's accounting in these cases.

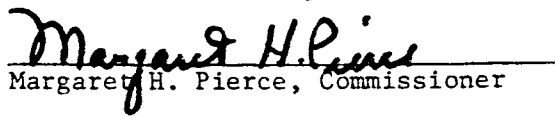
  
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Brantley Blue, Commissioner

We Concur:

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner