

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

FINDINGS OF FACT

1. The Seneca-Cayuga Tribe of Oklahoma is a recognized group of American Indians now residing in Oklahoma and organized under a Constitution and By-Laws approved by the Secretary of the Interior and ratified on June 26, 1937. It is composed of descendants of Seneca-Cayuga and other Iroquois Indians who after 1817 lived on two reservations in Ohio, one at Sandusky, and one at Lewistown where they resided with some Shawnees.

2. The Ohio reservations involved in this case are:

a. Docket 341-A. By a Treaty of September 29, 1817 (7 Stat. 160), there was reserved by Article 6 to the Senecas of Sandusky:

 . . . a tract of land to contain thirty thousand acres beginning on the Sandusky river, at the lower corner of the section heretofore granted to William Spicer; thence, down the said river, on the east side, with the meanders thereof at high water mark, to a point east of the mouth of Wolf creek; thence, and from the beginning,

east, so far that a north line will include the quantity of thirty thousand acres aforesaid,

and by a Treaty dated September 17, 1818 (7 Stat. 178), there was reserved by Article 2 to the Senecas of Sandusky an additional:

. . . ten thousand acres of land, to be laid off on the east side of the Sandusky river, adjoining the south line of their reservation of thirty thousand acres of land, which begins on the Sandusky river, at the lower corner of William Spicer's section, and excluding therefrom the said William Spicer's section.

The combined tracts are designated as Royce Area 163, and cover parts of Seneca and Sandusky Counties. The combined tract is located about 85 miles north of Columbus, Ohio, and about 20 miles from the Lake Erie Shore.

b. Docket 341-B. By the Treaty of September 29, 1817, supra, there was reserved to the Mixed Band of Senecas and Shawnees at Lewistown a tract of 48 square miles:

. . . to begin at the intersection of the line run by Charles Roberts, in the year one thousand eight hundred and twelve, from the source of the Little Miami river to the source of the Sciota river, in pursuance of instructions from the commissioners appointed on the part of the United States to establish the western boundary of the Virginia Military Reservation, with the Indian boundary line establish the western boundary of the Virginia Military Reservation, with the Indian boundary line established by the Treaty of Greenville, in one thousand seven hundred and ninety-five, from the crossings above for Lawrence to Loramie's store, and to run from such intersection, northerly, with the first mentioned line, so as to include the quantity as nearly in a square form as practicable, after excluding the section of land hereinafter granted to Nancy Stewart.

By the treaty dated September 17, 1818, supra, there was reserved to said Senecas and Shawnees an additional

. . . eight thousand nine hundred and sixty acres of land, to be laid off adjoining the west line of the reserve of forty-eight square miles at Lewistown.

The combined tracts are designated as Royce Area 164. The tract is located 55 miles northwest of Columbus at the headwaters of the Miami River, located primarily in northwest Logan County, with the remainder in northeastern Shelby and southern Auglaize Counties, Ohio.

3. By separate treaties executed in 1831 (see Finding Nos. 4 and 5 infra) the Sandusky Reservation (Royce Area 163) and The Lewistown Reservation (Royce Area 164) were ceded to the United States with provisions for the public sale of the lands and the payment of the proceeds to the Indians, less certain specified deductions.

4. The Sandusky Reservation (Royce Area 163) was ceded by the Seneca Indians residing on the Sandusky River to the United States pursuant to the treaty of February 28, 1831 (7 Stat. 348). The total acreage ceded was 41,688.415 acres. Out of this land a quarter section (160 acres) was granted to the Seneca's sub-agent, Henry C. Brisher, leaving a net amount of 41,528.415 acres which were to be sold at public sale. Article 8 of the treaty provided in part:

ART. 8. The United States will expose to public sale, to the highest bidders, at such time and in such manner as the President may direct, the tracts of land herein ceded by the Seneca Indians: And, after deducting from the proceeds of such sale, the minimum price of the public lands; the cost of building the saw and grist

mills and blacksmith shop for the Senecas; the cost of surveying the lands; and the sum of six thousand dollars, to be advanced in lieu of their present improvements: it is agreed that any balance which may remain, of the avails of the lands after sale as aforesaid, shall constitute a fund for the future exigencies of the tribe, on which the Government of the United States consent and agree to pay to the Chiefs of the nation, for the use and general benefit of the nation, annually, five per cent on said balance, as an annuity. . . .

5. The Lewistown Reservation (Royce Area 164) was ceded by the Seneca and Shawnee Indians residing at and around Lewistown to the United States pursuant to the treaty of July 20, 1831 (7 Stat. 351). The lands thus ceded totalled 39,624.43 acres. Out of these lands there were certain grants which reduced the acreage which was available for public sale. Article VIII of that treaty provided in part:

ARTICLE VIII. The United States will expose to public sale to the highest bidders, in the manner of selling the public lands, the tracts of land herein ceded by the Senecas and Shawnees; and after deducting from the proceeds of such sale the sum of seventy cents per acre, exclusive of the cost of surveying the lands, the cost of the saw mill and blacksmith shop, and the sum of six thousand dollars to be advanced in lieu of the improvements on the ceded lands; it is agreed that any balance which may remain of the lands after sale as aforesaid, shall constitute a fund for the future necessities of said tribes, on which the Government of the United States agree and consent to pay to the chiefs for the use and general benefit of the said tribes, annually, five per cent on the amount of the said balance as an annuity.

6. The two 1831 treaties also granted to the Senecas of Sandusky and the Senecas of Lewistown separate reservations west of the Mississippi River. Upon their removal to the new reservations the two bands confederated forming the United Nation of Senecas and Shawnees.

7. The two reservations ceded in 1831 (Royce Areas 163 and 164) were surveyed in the months of August, September, and October 1832. At that time the sale of public land was governed by the Act For the Sale of Public Lands, 3 Stat. 566 (1820). That statute provided, in part, that "no lands shall be sold, either at private or public sale for a less price than one dollar and twenty-five cents," and that public lands:

. . . shall be offered at public sale to the highest bidder, who shall make payment therefore, in half quarter sections, at the land office for the respective districts, on such day or days as shall, by proclamation of the President of the United States, be designated for that purpose. . . .

The statute further provided:

That the several public sales authorized by this act, shall, respectively, be kept open for two weeks and no longer

8. On November 13, 1832, the President of the United States issued a proclamation declaring the public sale of certain former Indian lands. The sale of the Sandusky Reservation was set for the second Monday in December at the land office at Bucyrus, Ohio. The sale of the Lewistown Reservation was set for the fourth Monday in December at the land office at Piqua, Ohio.

The proclamation provided that "the lands reserved by law for schools, or for other purposes, will be excluded from sale." In addition it provided that "the sales will be kept open for a period

not exceeding two weeks, and no longer than necessary to offer the whole of the lands."

We take notice that the second Monday in December 1832, fell on December 10, 1832, and that the fourth Monday in December 1832, fell on December 24, 1832.

9. The public sale of the Sandusky Reservation was opened on December 11, 1832. The public sale was closed on December 20, 1832. At the time of the close of the public sale 18,449.34 acres, or approximately 44.4 percent of the available Sandusky Reservation lands, had been sold. The average price of the lands sold during the period of the public sale was \$2.09 per acre. There were no sales over the minimum price of \$1.25 per acre thereafter. During the period December 20, 1832, through December 24, 1832, an additional 2,130.93 acres were sold. By the end of the year, 1832, a total of 21,747.03 acres had been sold at public sale and by private entry. By the end of 1848, a total of 40,805.81 acres had been sold and \$65,546.04 had been received in payment therefor. This constituted an average price per acre of \$1.61.

10. The public sale of the Lewistown Reservation was opened on December 28, 1832. The public sale was closed on December 29, 1832. At the time of the close of the public sale, 3,553.22 acres, or approximately 9.15 percent of the available Lewistown Reservation lands had been sold. The average price of the lands sold during the period of the public sale was \$1.74 per acre. There were no sales over the minimum price of \$1.25

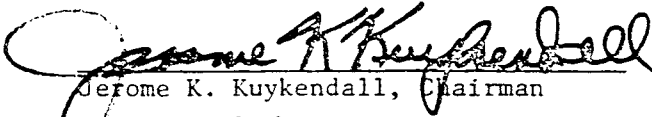
per acre after the close of the public sale on December 29, 1832, with the exception of 459.52 acres sold to James McPherson at an average price of \$2.30 per acre and 135.85 acres sold to Henry Crawford at an average price of \$1.40 per acre, both sales occurring on June 24, 1833. The private entry sales continued at a slow pace. By the end of 1848, 38,140.73 acres had been sold and \$49,908.25 had been received in payment therefor. This constituted an average price per acre of \$1.31.

11. The evidence indicates that neither of the sales were commenced on the dates advertised in the Presidential Proclamation and the sales were not kept open for two weeks. The public sale of the Sandusky Reservation was kept open for ten days. The public sale of the Lewistown Reservation was kept open for two days. This was in contravention of Section 5 of the Act of April 24, 1820, supra, which governed the sale of public lands and which provided "that the several public sales authorized by this Act, shall respectively, be kept open for two weeks, and no longer. . . ." (emphasis added).

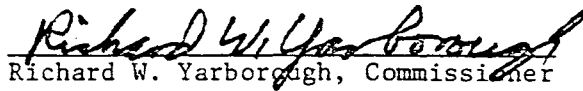
12. The provisions of the 1831 treaties relating to the public sale of the plaintiffs' reservation lands required that the sales be conducted in compliance with the Act of April 20, 1820, supra. The failure of the United States to comply with all the provisions of that act constituted a breach of defendant's duty to the plaintiff Indians.

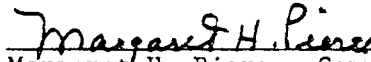
13. The United States withheld 640 acres from each of the reservations for school lands. The lands were not offered at the public or private sale. Neither treaty provided for such withholding, and the plaintiffs

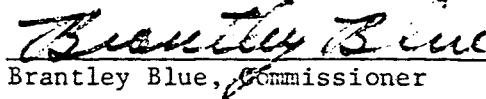
have never been compensated for these lands. The failure of the United States to offer these lands for sale or to compensate the plaintiffs therefor was a breach of defendant's obligations under the 1831 treaties.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner