

BEFORE THE INDIAN CLAIMS COMMISSION

THE OTTAWA TRIBE and GUY JENNISON,)	
BRONSON EDWARDS and GENE JENNISON,)	
AS REPRESENTATIVE OF THE OTTAWA TRIBE,)	
)	
Plaintiffs,)	Docket No. 305
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: March 15, 1972

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Plaintiff, the Ottawa Tribe of Oklahoma, represented by the individual plaintiffs, has the capacity to maintain this action on behalf of the bands of Ottawa Indians, known as the Ottawas of Blanchard's Fork, Little Auglaize River, Roche de Boeuf and Wolf Rapids, who were the Indian signatories to the Treaty of August 30, 1831 7 Stat. 359. ^{1/} The tribal plaintiff, under the Indian Claims Commission Act, 60 Stat. 1049, 1050, claims additional compensation for the cession of the lands to the United States under that treaty and for an accounting of the proceeds of its sale.

2. The Treaty of August 30, 1831, supra, concluded between the United States and the Blanchard's Fork, Little Auglaize River, Roche

^{1/} Ottawa Tribe v. United States, Docket 303, 8 Ind. Cl. Comm. 831 (1960).

de Boeuf and Wolf Rapids bands of Ottawa Indians, hereinafter jointly referred to as the Ottawas or the Ottawa Indians, was one of a series of treaties executed by the United States with the Indian tribes of Ohio pursuant to the Act of May 28, 1830, 4 Stat. 411, for the purpose of seeking the removal of such tribes to land west of the Mississippi River. Under the terms of Articles I and II of the 1831 Treaty, the Ottawa Indians ceded to the United States four separate parcels of land, designated herein as Royce Areas 167 through 170,^{2/} which in the aggregate, as determined from the defendant's contemporaneous surveys and accounts of land sales, amounted to 50,613.46 acres. Said treaty was ratified on April 6, 1832, which is the effective date of the treaty, and the evaluation date of the ceded lands.

3. The lands ceded to the United States were located in the extreme northwest part of Ohio and are described as follows:

Royce 167 is a tract five miles square, located near the center of Putnam County, that is traversed from the northwest to southeast by the Great Auglaize River, also known as the Blanchard River.

Royce 168 is a three miles square tract of land located near the eastern edge of Paulding County, about twelve miles south of the town of Defiance and fifty miles southwest of the present city of Toledo. The Little Auglaize River runs generally due south from the

^{2/} "Royce" refers to the area designation in the 18th Annual Report of the Bureau of American Ethnology, Part II, by Charles C. Royce. Hereinafter the subject tracts will be referred to by their Royce designation.

mid-point of the north boundary of the tract to a junction with the Blue Creek about one-half mile north of the south boundary. The tract is traversed by the Maumee-Erie Canal, which follows the general course of the Auglaize River.

Royce 167 and 168 were originally reserved to those bands of Ottawa Indians residing at Blanchard's Fork on the Great Auglaize River and at Oquanoxa's village on the Little Auglaize River by the provisions of Article 6 of the Treaty of September 29, 1817, 7 Stat. 160.

Royce 169 is a tract six miles square, fronting on the Maumee River, located in the southwest corner of Lucas County about twenty-five miles southwest of the city of Toledo.

Royce 170 is a parcel three miles square bordering on the Maumee River at the place known as Wolf Rapids and is contiguous to Royce 169, joining the latter along its southwest boundary. Approximately one half of the tract is located in each of Henry and Lucas Counties. A portion of the Wabash-Erie Canal lies within the boundaries of Royce 169 and 170. The canal begins at the Toledo near the mouth of the Maumee River and travels along the western bank of the river as it passes through the Indian reservations.

Royce 169 and 170 were among those tracts of land reserved to the Indian signatories by the provisions of Article VI of the Treaty of November 17, 1807, 7 Stat. 105 wherein such tracts were described as being:

". . .one tract of land six miles square on the

Miami of Lake Erie above the Roche de Boeuf, to include the village where Tondaganie (or the Dog), now lives. Also, three miles square on said river, (above the twelve miles square ceded to the United States by the treaty of Greenville) including what is called Presque Isle."

Subsequent to the 1807 Treaty, it was discovered that a land area three miles square which included Presque Isle would lie within the twelve miles square ceded to the United States in the Treaty of Greenville, 7 Stat. 49, and the land parcel at Wolf Rapids was substituted in lieu thereof.

4. In consideration for the cession of the subject tracts, the United States granted to the Ottawa Indians other land, which by the 1831 Treaty terms was to amount to 74,000 acres, west of the Mississippi River in what is now Franklin County, Kansas.^{3/} Articles VII and XII of the 1831 Treaty provided the United States would sell the ceded land ". . .to the highest bidder, in the manner of selling public lands. . ." and, after deducting from the sale proceeds monies to pay the debts of these bands of Ottawa Indians, seventy cents for each acre sold, and for an advance of \$2,000.00, the surplus, if any, would be invested in government stock at five per cent interest per annum. The sum of \$21,242.25 was paid in the discharge of debts and seventy cents

^{3/} The Commission has previously found in a related case involving the same parties that the amount of land granted to the Ottawa Indians under the 1831 Treaty was approximately 75,000 acres, the exact acreage being undeterminable because of the variations in the proof. (See Ottawa Tribe v. United States, Docket 303, Finding of Fact No. 2, 8 Ind. Cl. Comm. 831 (1960) and Finding of Fact No. 58, 11 Ind. Cl. Comm. 550, 556 (1962)).

times the number of acres sold amounted to \$35,429.42. According to the defendant's records, the sum of \$9,690.86 was expended in the purchase of government bonds.

By Articles IV and XI of the 1831 Treaty, the United States further agreed to defray the expenses of the Ottawas' removal and to furnish sufficient supplies to support them for one year after their arrival in the lieu land. According to the defendant's accounting records, the sum of \$38,734.52 was expended by the United States during the period of 1833 through 1845 to effect the removal of the Ottawa Indians to land west of the Mississippi River and to provide support in compliance with the said articles of the 1831 Treaty. This sum was deducted from proceeds of the sales of the treaty land.

5. The United States in the Treaty of February 18, 1833, 7 Stat. 240, authorized an additional \$18,000.00 to be paid to the Ottawas of Roche de Boeuf and Wolf Rapids for the land ceded under the 1831 Treaty. The sum of \$17,950.00 was actually disbursed and this sum is claimed by the defendant to be additional compensation for the land and deductible from the proceeds of sale under the treaty terms.

In compliance with Article XII of the 1831 Treaty, per capita payments amounting to \$11,287.50 were made from this fund, at a cost of distribution of \$311.06, to those Ottawa Indians who remained east of the Mississippi River. An additional amount of \$6,351.44 was expended from the 1833 Treaty funds in the payment of debts.

Additional debts, amounting to \$3,007.02 were paid from the sale proceeds pursuant to the Act of March 1, 1843, 6 Stat. 887, which

authorized the Commissioner of Indian Affairs to pay said sum ". . . out of any moneys due, or that may hereafter become due, from the United States to the Ottawa tribe of Indians by existing treaties. . . ." Defendant claims the above amount as additional consideration for the ceded land.

6. The offering of the ceded land was accomplished, after survey and authorization by law, by a Presidential Proclamation of public auction, made September 3, 1833, of each of the four parcels involved. Sales of land in Royce 169 and 170 was to be held for a two week period at Bucyrus, Ohio, beginning December 2, 1833, and from all parcels at Wajaukonnette, Ohio, beginning December 16, 1833. The offer of the public sale of Royce 169 and 170 were withdrawn prior to December 2, 1833, and subsequently, by a proclamation dated May 23, 1842, declared open for sale by public auction for a two week period beginning August 29, 1842.

During the period beginning December 16, 1833, proclaimed for public sale to the highest bidder of Royce 167 and 168, 5,404.03 acres were sold at prices ranging from \$1.25 to \$6.31 per acre with one sale at \$17.56 per acre. The total sales income amounted to \$10,081.31 for an average sale price of \$1.86 per acre. The public sale of Royce 169 and 170, beginning August 29, 1842, sold 15,862.16 acres for prices ranging from \$1.25 to \$9.00 per acre with one sale at \$15.00 per acre. The total sale income amounted to \$22,438.08 for an average sale price of \$1.41 per acre.

Subsequent to the two week period where the land was exposed for sale to the highest bidder, the land remaining unsold could be purchased at a "private" sale for \$1.25 an acre. The phrase "private sale" is used to denote a government sale of land to an individual

without competitive bidding and applied to the conventional method of sale of land in the public domain. Such 'private sales' were the accepted ". . . manner of selling public land . . ." pursuant to the Act of April 24, 1820, 3 Stat. 566.

Private sales of acreage in the subject parcels continued following the closing of the public sale and, by 1895, the last remnants of the subject tracts were sold. The final sales results reflect that in Royce 167, a total of 17,398.48 acres were sold for \$24,680.45, or an average price of \$1.41 per acre. In Royce 168, 5,682.72 acres were sold for \$7,498.37, or at an average price of \$1.31 per acre. The final sales results in Royce 169 and 170 show that a total of 27,532.26 acres were sold for \$37,025.65, or at an average price of \$1.34 per acre. The overall accounting of the sales show that 50,613.46 acres were sold for \$69,204.47, an average price of \$1.36 per acre.

7. The subject lands were located in the upper northwest part of the State of Ohio in the region generally referred to as the Maumee Valley. The Maumee Valley at the time of the 1831 Treaty was dominated by the Black Swamp, an immense swampy area lying parallel to the east side of the Maumee River from Lake Erie southwest to the State of Indiana. Dr. Daniel Drake, a traveler through the region in the 1840's described the Black Swamp thus:

Between the Maumee and Sandusky Rivers, south of the western extremity of Lake Erie, lies the great forest, which has received the ominous name of Black Swamp. The rock beneath the surface consists of the upper or grey Silurian limestone,

exceedingly arenaceous, which here and there swells up into gentle undulations or tuberosities, so as to present itself at the surface; but, on the main, is buried up beneath a deposit of post-tertiary clay, with gravel and pebbles. By this deposit, the inequalities of the rocky surface are made to disappear, and, of course, it is of various depths, from a few inches to one hundred and fifty feet. The lower and thicker bed is blue clay; the upper, yellow, covered with a thick layer of black vegetable mold. To the eye the Black Swamp appears level, and in traversing it in a direction parallel to the lake shore, such is no doubt the case; but the whole region has a very slight inclination toward the lake; as appears from the accumulation of water on the south side of a State road, which passes through it from east to west, while on the north or lake side, no such accumulation takes place, to the same depth. The levelness of this tract, taken in connection with the argillaceous bottom, explains the paludal or swampy character of its surface. From this surface there arises a miscellaneous forest, of greater density and loftiness than is to be found elsewhere, perhaps, in the Interior Valley of North America. 4/

Although accurate boundaries of the Black Swamp are difficult to determine, the swamp most likely covered all or most of Wood, Ottawa, Paulding and Putnam Counties, the lower parts of Henry, Seneca and Defiance Counties and the upper portions of Van Wert, Allan and Hancock Counties. Although Lucas County was technically not in the Black Swamp, its flatness and wooded nature meant there were many areas that had excessive water, especially during the wet seasons.

The lands in the Maumee Valley outside of the Black Swamp was also characterized as old lake plains which is gently undulating, its hills and valleys softened by glacial erosion. The plain area was cut

4/ Def. Ex. A-11: D. Drake, Principal Diseases of the Interior Valley of North America, 365 (1850).

by the Maumee River and its tributaries which drained to the north were used as natural courses for canals and railroads.

8. The forests of northwestern Ohio at the time of the cession were extensive and dominated the terrain, with prairie openings where the land was suitable for farming without clearing. Innumerable species of trees made up the forest stands; among these were white, red and burr oak, black, white, blue and prickly ash, beech, elm, black walnut, hickory, sycamore, horsewood and aspen. In the main, the swamp and the land west of it was too isolated from markets to support extensive commercial agriculture. The principal value of the forested areas was for use by the settlers for houses, outbuildings, fences and fuel. As a result of its limited value, much of the forests were cleared by intentional fires in order that the land could be used for subsistence farming. There is no indication from the record of the availability of minerals that would have enhanced the value of any of the the subject lands.

9. The climate of northwestern Ohio was similar to that of the state as a whole, which is classified as prevailing continental. The outstanding characteristics of Ohio weather are its changeability and unpredictability. Average precipitation is approximately 35.25 inches annually and is relatively constant throughout the region where the subject lands are located. The largest amount of rainfall occurs in the months of March through September. The number of frost free days of the counties

where the subject lands were situated averages 160 days a year.

There are no geographical divisions of the land in the Maumee Valley and the slight variations in the land have no significant influence on the climate.

10. Northwestern Ohio in 1832 was considered a rich agricultural area, albeit not highly developed. The soils of the Black Swamp were fertile and capable of a high degree of cultivation and of growing many different kinds of crops. The potential of the area for highly productive farming was recognized at an early date, but the Black Swamp was a deterrent to its development. Most acreage had to be drained before it could be used. This fact forced the early settlements to locate in the most accessible places--along the old beach ridges and glacial moraines--which had, to some degree, natural drainage. It was not until 1859 that a systematic drainage of the Black Swamp was undertaken.

11. There was only limited access to the Maumee Valley during the 1830's. The principal route was by boat through Lake Erie and then overland following the Maumee River. Penetration into the northwest Ohio areas was along the north-south trails that connected Lake Erie with the Ohio River and circumvented the Black Swamp. One of these trails was from the Maumee Bay at Lake Erie, followed the Maumee River, and connected with the Wabash via St. Mary's River by portage near Fort Wayne, Indiana.

Roads that existed in the Maumee Valley prior to 1832 were little

more than horse trails along the rivers which could be traveled by team drawn wagons. The principal road, called the Maumee and Western Reserve Road, penetrated the northern perimeter of the Maumee Valley about 10 miles west of Sandusky. This road, completed in 1827, began at the western boundary of the Connecticut Western Reserve, and terminated southwest of the rapids on the Maumee River, a short distance northeast of Royce 169 and 170. The road was considered "tolerable" during the dry season for a few years following its completion, but soon became a quagmire, nearly impassable during the winter months and wet periods. It was, however, the only road between eastern Ohio and northwest Ohio until the opening of the Cleveland and Toledo railroad in 1853.

12. Undoubtedly the greatest barrier to the settlement and development of northwestern Ohio in the 1830's was the Black Swamp. The northwest region of Ohio was well known; even before the War of 1812 it had been well traveled by trappers and traders and by settlers passing through to land in Indiana, Michigan and Illinois. Settlement, however, in the Maumee Valley was limited to land along the rivers bordering the Black Swamp. Penetration of the interior of the swamp was slowed by the lack of roads, the lack of naturally drained land and the prevalence of diseases.

About the time of the 1831 treaty date, the rate of immigration and settlement, as well as the economic viability of northwest Ohio, improved greatly. In the decade from 1830 to 1840, the population of

the state increased over 61 per cent, from 937,903 persons to 1,519,407 persons. The counties in which the subject areas were located were expanding in population, although the population density was less than the surrounding counties not located within the Black Swamp. In the counties where Royce 169 and 170 are located, the population averaged 5 to 10 persons per square mile and in the regions around Royce 167 and 168, it was less than 2 persons per square mile. By comparison, in Sandusky and Seneca Counties on the eastern edge of the Black Swamp, the population density was over 10 persons per square mile. However, of those counties which had been organized by 1830, Putnam, Paulding, Henry and Lucas Counties showed the highest percentage of population growth for the decade ending in 1840.

13. Beginning in the early 1830's, the national surge of economic growth was given additional impetus in Ohio by the prospects of building a canal network that would increase transportation facilities throughout the state. In northwest Ohio, the canal system was intended to circumvent the rapids below the Roche de Boeuf, create stable waterways through the swamp, and be the connecting link with the other canal systems that would extend trade and commerce from New York to Cincinnati and Indianapolis.

By 1832, the promotion of the canal system had greatly stimulated business speculation. The inflationary character of the economy was most obvious in land speculation, particularly in land located along the proposed or presumed canal routes. Portions of the canal routes were located within the ceded reservations which made such land desirable

for acquisition. The value of this land at the time of the cession was competitive with the prices of available comparable land under the inflated conditions.

The economic "boom" did not continue for a long period. A financial crisis, precipitated by the over extension of credit and the use of "wild-cat" currency issued by state banks, led to a depression in 1837. The speculation in land dissipated and the then current prices in land reflected the failure of the canal system to fulfill the expectations of its backers.

14. There are no allegations of fraud or manipulation relative to the advertisement and sale of the subject land, nor were there any contemporaneous assertions of misdealings by agents of the Government, or that persons in privy with the Government benefitted, by reason of their positions, in the actual handling of the sales. The evidence shows that, during the time the land was exposed to auction bids, a total of 15,600.97 acres of the four parcels was sold for \$1.25 per acre and 5,665.22 acres for varying prices from \$1.26 to \$17.56 per acre; that following the period of two weeks allowed for bids the remainder of the land amounting to 29,347.27 acres, was exposed to sale by private entry at \$1.25 per acre until it was completely sold; that the land parcels which sold for more than \$1.25 per acre were in preferred locations, such as along the principal rivers and their tributaries, the routes of the proposed canals, or the locations of proposed town sites.

15. Evidence of sales in or near the ceded reservations during

the approximate time of the cession includes the reports of sales of land selected by the State of Ohio to fund the canal projects. The land in adjacent sections, in the vicinity of the reservations at Wolf Rapids and Roche de Boeuf, were sold at prices varying from \$3.00 to \$6.00 per acre. The Governor's Report to the General Assembly in 1836 disclosed that 8,884.45 acres were selected by the State of Ohio from within the reserve at Roche de Boeuf and sold with other land in the vicinity for an average of \$8.60 per acre. The State of Ohio, additionally, held public land sales on March 3, 1834, at Defiance, which included land in proximity to Royce 167 and 168, and obtained the average price of \$4.25 per acre. A sale was also held at Perrysburg on October 24, 1836, which included a portion of Royce 169 and sold for an average of \$8.62 per acre.

16. The plaintiff presented testimony by Mr. Raymond P. Gillespie, who had conducted research of the Indian mores in northern Ohio and who testified as to the resale prices of the land ceded under the 1831 treaty. Out of the 50,613.46 acres sold, 1,016.18 acres were resold within two years of their original sale at an average price of \$5.33 per acre. The plaintiff's witness gave no opinion as to the fair market value of the land at the time of the original sales.

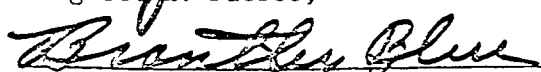
The defendant presented Mr. Richard B. Hall, a real estate consultant and appraiser, as its expert witness. He testified that the acreage sale prices of land within the Royce 167 and 168 between 1835 and 1854 was \$1.25 an acre. The average price obtained for the land at the auction in 1833 was \$1.92 for Royce 167 and \$1.63 for Royce 168. In Royce 169 and 170 between 1843 and 1862, the average sale price was \$1.25, although in the first year of sale (1842) the average was \$1.40. The witness' estimate of value of the subject land was not directed at the year 1832, but was predicated upon the prices actually obtained by their sale which began in 1833 and 1842. His fair market value estimates cover the latter two years. The appraisal report in support of his estimate covered the population movements, the effect of the Black Swamp, the public land policies and banking policies followed by the Government at the time of the treaty date. It was the opinion of the appraiser that the problems of clearing and draining the lands, the competition of other available land, and the economic conditions that prevailed at the time, were factors that are indicative that the Government sold the subject lands at prices reflecting their fair market value.

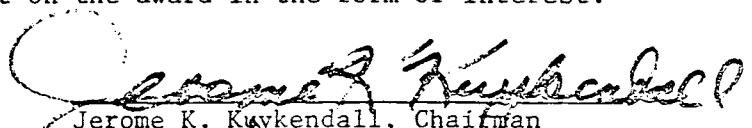
17. After consideration of all the evidence presented in this case and of the record as a whole the Commission finds that in 1832 the highest and best actual and potential use of the subject tracts was for commercial purposes related to the construction and support of a canal system for lands bordering the Maumee River, and agricultural uses for those lands further inland. As of April 6, 1832, the effective date of the 1831 Treaty, the fair market value of the subject lands was \$190,000, or approximately \$3.75 per acre.


18. As consideration for the 1831 cession of the subject lands, the plaintiff tribe received \$69,204.47, representing the gross proceeds from the sales of the subject lands, including the \$35,429.42 reimbursement to the United States as equivalent value for the 75,000 acre grant of reserved land in Kansas; \$38,734.52 for removal and relocation expenses; and \$1,475.25 in gifts and other items. The total consideration under the 1831 Treaty was \$109,414.24. The payment of \$109,414.24 for lands having a then fair market value of \$190,000 was payment of an unconscionable consideration within the meaning of Section 2, Clause (3) of the Indian Claims Commission Act. Plaintiff, on behalf of the several bands of Ottawa Indians, is entitled to recover from the defendant as additional compensation the sum of \$80,585.76, less allowable offsets.

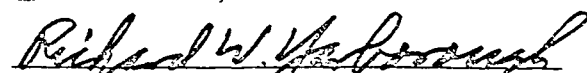
19. The Commission also finds that the defendant performed its obligations as stipulated in the 1831 Treaty by disposing of the subject lands as public lands in the manner prescribed by law, and, further, that defendant has properly accounted to the plaintiff for all the proceeds from the sales of said land. There being no breach by the defendant of its 1831 Treaty obligations to the Ottawa Indians, the plaintiff is not entitled to any additional amount on the award in the form of interest.


Margaret A. Pierce, Commissioner


Brantley Blue, Commissioner


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner