

BEFORE THE INDIAN CLAIMS COMMISSION

THE SENECA NATION OF INDIANS,)
)
 Plaintiff,)
)
 v.) Docket No. 342-I
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

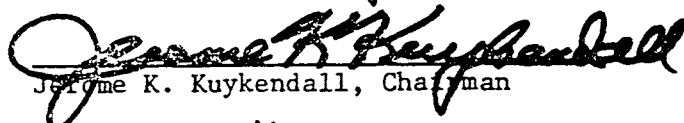
ORDER DENYING MOTION TO DISMISS

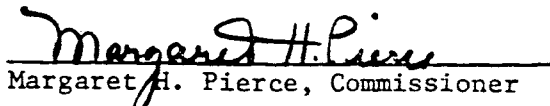
On December 17, 1970, defendant filed a motion to dismiss the petition in this case for failure to state a cause of action and for lack of prosecution, and on December 23, 1970, plaintiff filed its response. At the hearings on this claim and others, held on September 15 through 18, 1970, plaintiff presented a claim based on the alleged unconscionable consideration paid the Seneca Nation for the cession of all but 1280 acres of its Gardeau Reservation by the Treaty of September 8, 1823. While the complaint in this case did not specifically plead the 1823 Treaty, it did plead a cause of action for the taking of the lands of the Seneca Nation for an unconscionable consideration, which pleading was sufficient to include the claim presented herein and to put the defendant on notice of such claim. The claim arising under the 1823 Treaty was tried at the afcresaid hearing at which time the parties agreed that record was adequate for a final decision on the claim.

UPON CONSIDERATION of the foregoing, and it appearing that defendant's motion should be denied,

IT IS ORDERED that the defendant's motion be, and the same is hereby, denied.

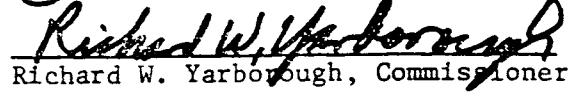
Dated at Washington, D. C., this 3^d day of May, 1972.


 Jerome K. Kuykendall, Chairman


 Margaret H. Pierce, Commissioner


 John T. Vance, Commissioner


 Brantley Blue, Commissioner


 Richard W. Yarborough, Commissioner