

BEFORE THE INDIAN CLAIMS COMMISSION

THE CAYUGA NATION OF INDIANS,)
PETER BUCK AND STEWART JAMISON,)
MEMBERS AND REPRESENTATIVES THEREOF,)
THE SENECA-CAYUGA TRIBE OF OKLAHOMA,)

Docket No. 343

Plaintiffs,)

v.)

THE UNITED STATES OF AMERICA,)

Defendant.)

Decided: July 20, 1972

Appearances:

Paul G. Reilly, Attorney for the Plaintiff.

M. Edward Bander, with whom was Acting Assistant Attorney General Walter Kiechel, Jr., Attorneys for the Defendant.

OPINION OF THE COMMISSION

Blue, Commissioner, delivered the opinion of the Commission.

This claim, filed by the Seneca-Cayuga Tribe and the individual plaintiffs on behalf of the historic Cayuga Nation of Indians, was brought under Clauses 3 and 5 of Section 2 of the Indian Claims Commission Act, 25 U.S.C. § 70a (1970), and seeks additional compensation for lands in New York State, acquired by the State of New York by means of two transactions dated July 27, 1795, and May 30, 1807.^{1/} The plaintiffs contend that under the Trade

1/ In their petition plaintiffs also claimed additional compensation based on a 1789 sale to the State of New York. This "First Claim" was dismissed by the Commission which held that in 1789 there was no fiduciary relationship between plaintiffs and defendant. Cayuga Nation of Indians v. United States, Docket 343, 20 Ind. Cl. Comm. 70 (1968).

and Intercourse Act of 1790, 1 Stat. 137, the defendant assumed an affirmative obligation to protect the property of the Cayugas, and to insure that the Cayugas were dealt with fairly by third parties and received conscionable consideration when disposing of their lands. Plaintiffs assert that in selling their lands to New York State the Cayugas received unconscionable consideration and that therefore defendant is liable for failing to fulfill its obligations under the Trade and Intercourse Act. The defendant, on the other hand, argues first that it cannot be liable under the Trade and Intercourse Act because it neither participated in the negotiation or execution of the two treaties nor expressly approved of them, and second that the Trade and Intercourse Act does not apply at all to transactions between New York State and its resident Indians. For the reasons indicated below we hold that if the Cayuga Nation did not receive conscionable consideration for the land it sold to New York defendant is liable under the Indian Claims Commission Act.

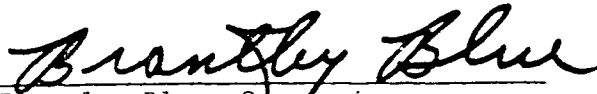
The Cayuga Nation, a member of the Six Nations, occupied territory in New York State in the vicinity of Cayuga Lake. After the Revolutionary War, in which the Cayugas had fought on the side of the British, the tribe splintered, with one group emigrating to Canada, a second group moving to Western New York State, and a third group removing to Ohio. By a series of three treaties the Cayugas ceded all of their tribal lands to the State of New York. The second and third treaties, those of 1795 and 1807, were entered into after the enactment by the United

States of the Trade and Intercourse Act of 1790. It is these two transactions which are the subject matter of plaintiffs' claim.

The plaintiffs' claim in this docket and the defenses presented by the defendant are in essence identical to those which the Commission disposed of in Stockbridge Munsee Community v. United States, Docket 300-A, 25 Ind. Cl. Comm. 281 (1971), and in Oneida Nation v. United States, Docket 301 (Claims 3-8), 26 Ind. Cl. Comm. 138 (1971), appeal docketed, App. No. 13-71 (Ct. Cl. Dec. 16, 1971). In both of those cases the Commission determined that under the Trade and Intercourse Act and the Indian Claims Commission Act the United States would be liable if an Indian tribe received unconscionable consideration in the disposition of its lands. In both of those cases we rejected the defendant's contentions that the Trade and Intercourse Act applied only when the United States participated in the land transactions and did not apply to Indian land sales to the State of New York. We are aware of nothing in the record in this docket which would not warrant following those cases. Thus, on the authority of Stockbridge Munsee Community v. United States, supra, and Oneida Nation v. United States, supra, we hold that the United States will be liable under the Indian Claims Commission Act if the Cayuga Nation received less than conscionable consideration for the lands it sold to New York in 1795 and 1807.

We need to dispose of one further matter. In 1906 the Cayuga Indians residing in New York presented a memorial to the State of New York alleging that the state had not dealt fairly with them in the 1795 and 1807 land transactions and praying that the state pay to the Cayugas any profit it had realized on this sale. In 1909 the state legislature authorized a settlement with the Cayugas resident in New York State in an amount not to exceed \$247,609.33, with the principal sum to be retained by the state and 5% annual interest paid to the Indians. In 1913 a settlement was reached with the New York State Land Commission which involved the Oklahoma Cayugas as well as the New York Cayugas and which provided basically that the award would be apportioned 2/3 to the New York group and 1/3 to the Oklahoma group. Interest on the award was paid to each group through 1918 when the Attorney General of New York ruled the payments to be illegal. A new settlement was subsequently reached with the New York Cayugas only, and the State of New York has denied requests by the Oklahoma Cayugas that they participate in the award. Plaintiffs contend that the United States had the duty to assure that when New York settled the claims against it by the Cayugas the Oklahoma group received its fair share. Plaintiffs further contend that having failed in this duty the United States is liable for the portion of the settlement the Oklahoma Cayugas should have received. The Commission reserves action on this contention at the present time.

The Commission having held that the United States will be liable under the Indian Claims Commission Act if the Cayuga Nation received unconscionable consideration for its lands, this case will proceed to a determination of questions of value and consideration.



Brantley Blue, Commissioner

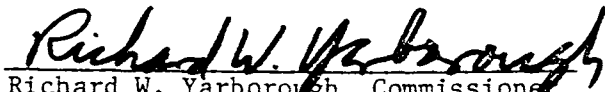
We Concur:



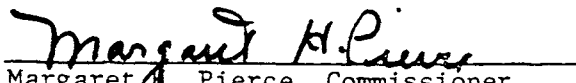
Jerome K. Kuykendall, Chairman



John T. Vance, Commissioner



Richard W. Yarborough, Commissioner



Margaret H. Pierce, Commissioner