

## 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,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket No. 343
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: July 20, 1972

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Seneca-Cayuga Tribe of Oklahoma is a tribe of American Indians organized under a constitution and bylaws approved by the Secretary of the Interior and ratified June 26, 1937. The Seneca-Cayuga Tribe has the capacity to present this claim on behalf of the historic Cayuga Nation of Indians.

2. During the eighteenth century, the Cayuga Nation, a tribe of the Six Nations, occupied territory in New York State in the vicinity of Cayuga Lake. During the War for Independence, the Cayugas fought on the side of the British. After the war a large segment of the tribe emigrated to Canada, another group moved to western New York to live with the Senecas, and a third group removed to Ohio where, along with other Iroquois Indians, they became known as the Senecas of Sandusky. This last group later moved to Indian Territory in what is now the

State of Oklahoma.

3. On February 25, 1789, the State of New York entered into a treaty with the Cayuga Nation whereby it obtained a cession of all the Cayuga lands except for a one hundred square mile tract surrounding Cayuga Lake. The tract was reserved with the following language: "The Cayugas shall of the ceded lands hold to themselves and to their posterity forever, for their own use and cultivation but not to be sold, leased or in any other manner aliened or disposed of to others [description of the tract]. . . ." Pl. Ex. 4: Report of Special Committee to Investigate the Indian Problem of the State of New York, Appointed by the Assembly of 1888, at 216. By this treaty the Cayuga Nation obtained a compensable property interest in the one hundred square mile tract which was known as the Cayuga Reservation.

The consideration for this cession as stated in the treaty was an initial payment of \$500, an additional payment of \$1,625 due on the first day of the following June, a perpetual annuity of \$500 dollars, and the grant of a tract of sixteen thousand acres west of Seneca Lake to certain named individuals. The Cayugas also retained the right to hunt and fish throughout the ceded area.

4. By the Treaty of November 11, 1794, 7 Stat. 44, between the United States and the Six Nations, the United States acknowledged the Cayuga Reservation as being the property of the Cayugas and promised never to disturb the Cayugas in the free use and enjoyment of their land.

5. Under a treaty entered into on July 27, 1795, the Cayuga Nation ceded the greater part of its reservation to the State of New York. The treaty reserved to the Cayuga Nation a tract of land two miles square and another tract one mile square for its own use and occupation, and an additional tract one mile square for the use of a Sachem named Fish Carrier.

The consideration for this cession as expressed in the treaty was an initial payment of \$1,800 and a perpetual annuity of \$1,800. The treaty also stated that this \$1,800 annuity along with the \$500 annuity due under the 1789 treaty would be paid at Canandaigua, Ontario County, New York, to the United States Agent for Indian Affairs.

6. By a treaty dated May 30, 1807, the Cayuga Nation ceded to the State of New York the two tracts of land which had been reserved to it by the 1795 treaty. The treaty recited that these two tracts of land contained in the aggregate 3,200 acres. The consideration for the cession was stated to be \$4,800.

7. The lands ceded under the 1795 treaty were surveyed by the state and sold, between November 1, 1796, and November 7, 1796, for prices which totaled \$277,609.33. The two tracts which were sold in 1807 were appraised by the state and were determined to have a total value of \$14,899.41.

8. The annuity payments of \$500 and \$1,800 due under the treaties of 1789 and 1795 respectively have been paid by the State of New York to the Cayugas living in New York and to the Cayugas living in Ohio

and later in Oklahoma. The apportionment of the annuity between the two groups and the means of payment have varied depending on agreements among the two groups and the State of New York. Initially the annuities were paid to Israel Chapin and Jasper Parish, United States Indian Agents, who passed the money to and took receipts from various Cayuga chiefs. This method was extremely inconvenient to the Ohio Cayugas. Accordingly, on February 28, 1829, the State of New York and the Cayugas residing at Sandusky entered into a treaty which provided that the annuities due under the 1789 and 1795 treaties would be payable upon a draft or bill of exchange drawn on the state agent of Indian Affairs residing at Albany by at least four of the tribe's principal chiefs.

The anticipated relocation of the Ohio Cayugas west of the Mississippi River necessitated a formal division of the annuity payments. The treaty of September 8, 1831, between the State of New York and the Cayuga Indians residing in Sandusky, Ohio, and in Erie County, New York, provided that the emigrating group would receive \$1,700 of the yearly annuities and the group remaining in New York State would receive \$600.

By a treaty dated July 2, 1846, between the State of New York and the Cayugas resident in New York it was provided that the annuities due under the 1789 and 1795 treaties would be apportioned between the two groups on the basis of their respective populations. This arrangement was effectuated by an agreement dated June 24, 1850, between the

New York Cayugas and the Cayugas residing west of the Mississippi River. The agreement provided that a census should be taken of the Cayugas living in New York and of those living in the West, and that the annuities should be distributed on the basis of this census. It was also provided that beginning in 1855 a new census of the two groups would be taken every four years and the apportionment of the annuities adjusted accordingly.

The agreement entered March 27, 1871, between the New York Cayugas and the western Cayugas annulled the 1850 agreement. It recited that the New York band numbered 154 persons and the Oklahoma band 135 persons, and provided for future division of the annuities in that proportion, unless subsequent migration should alter the relative numbers of the two groups. A complaint by the New York Cayugas led to an investigation by New York State which revealed that the true ratio of population was 173 in New York to 103 in Indian Territory. Accordingly, beginning with the payments for 1877 the annuities have been paid \$1,441.67 for the New York group and \$858.33 for the western group.

9. On February 14, 1906, the Cayuga Nation of Indians residing in New York presented a memorial to the Commissioners of the Land Office of New York. The memorial recited the facts relating to the three land transactions between the Cayugas and the State of New York, noted that the State of New York had realized a substantial profit in reselling the lands obtained under the 1795 and 1807 cessions, and

prayed that the amount of profit thus realized be paid to the Cayugas or that the State's indebtedness to the Cayugas be acknowledged. In response to the memorial the state legislature enacted Chapter 255 of the Laws of 1909 which authorized the Commissioners of the Land Office to enter into an agreement with the Cayugas resident in New York settling their claim for no more than \$247,609.33. The agreement reached was to be approved by the Governor. The statute provided that the sum agreed upon, less the expenses incurred by the Cayugas in prosecuting and settling the claim, would be retained in the state treasury in trust for the Cayuga Nation and that interest at the rate of five percent per year would be paid the Cayugas.

On March 4, 1913, after a long series of negotiations, during which, in 1910, the western Cayugas intervened, the Commissioners of the Land Office decided that the settlement authorized by the legislature should be apportioned in a ratio of two to one, with the New York Cayugas being awarded \$165,072.89 and the share of the Oklahoma Cayugas being set at \$82,536.44, the latter amount being retained in the treasury pending disposition by the legislature. On April 23, 1913, the Commissioners of the Land Office allowed the claim of the New York Cayugas in the amount of \$165,072.89, less attorney's fees and expenses of \$18,215.89. The Commissioners also allowed \$9,271.78 in fees and expenses for the attorneys of the Oklahoma Cayugas to be deducted from the western group's \$82,536.44 share of the settlement.

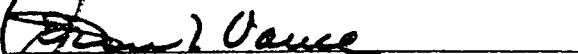
Beginning in October of 1913 the Comptroller of New York, in semiannual installments, paid the 5% interest on the respective amounts held in the treasury to the New York Cayugas and the Oklahoma Cayugas. In an opinion dated March 27, 1918, the Attorney General of the State of New York determined that these payments were unauthorized, because the 1913 settlement was not embodied in a written agreement approved by the Governor, and because the 1909 statute did not provide for any payments to the western Cayugas. Accordingly the payments were discontinued.

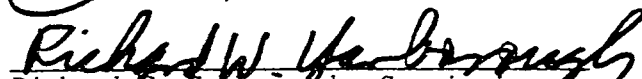
On August 26, 1930, the State of New York entered into a new agreement with the Cayugas resident in the state for the settlement of their claim against New York. Under the agreement it was determined that \$220,121.66 remained unpaid under the 1909 statute, with interest at five percent from April 23, 1919. Out of this sum, \$75,000 with interest of 5% from January 1, 1920, was set aside for the Seneca Nation of Indians, the Senecas having asserted a claim against the Cayuga award. The remainder of the award was to remain in the treasury and the Cayugas were to receive interest on that sum at the rate of five percent per year. This agreement was approved by the Governor of New York. The \$75,000 set aside for the Senecas, as well as accumulated interest, was restored to the Cayuga fund in 1957.

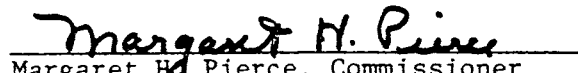
The present value of the Cayuga settlement fund is \$433,447.66. Interest of \$21,673 per year is distributed to the enrolled Cayuga Indians resident in New York State.

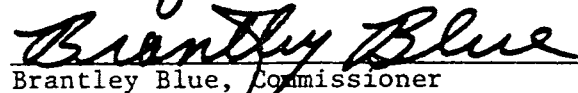
10. The United States did not send a representative to participate in the negotiations or consummation of the treaties of 1795 and 1807 by which New York acquired the remainder of Cayuga land in New York State, nor did it furnish aid, advice or assistance to either New York State or the Cayuga Nation in the execution of the treaties.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner