

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: July 26, 1972

Appearances:

Allan Hull and Louis L. Rochmes,
Attorneys for Plaintiffs.

W. Braxton Miller, with whom was
Mr. Assistant Attorney General
Shiro Kashiwa, Attorneys for
Defendant.

OPINION OF THE COMMISSION

Vance, Commissioner delivered the opinion of the Commission.

On April 11, 1972, defendant filed motion for rehearing moving the Commission to amend and correct a portion of the Commission's findings of fact entered March 15, 1972 (27 Ind. Cl. Comm. 98, 115).

Defendant objects to that portion of Finding No. 15 which states

. . . that 8,884.45 acres were selected by the State of Ohio from within the reserve at Roche de Boeuf [Royce 169] and sold with other land in the vicinity for an average of \$8.60 per acre. . . . A sale was also held at Perrysburg on October 24, 1836 [November 14, 1836], which included a portion of Royce 169 and sold for an average of \$8.62 per acre.

Defendant contends that the finding that Royce 169 lands were sold by Ohio is legally and factually impossible because the facts in the record are contrary thereto, and because the Act of June 30, 1834 (4 Stat. 716), enabling the State of Ohio to select and sell certain public lands in the vicinity of its contemporaneous canal projects so as to fund the same, did not allow the State of Ohio to sell ceded lands reserved for sale for the benefit of Indians under treaty.

Plaintiffs assert that the probative value of the finding would not be diminished even if defendant's position were correct.

The Commission agrees that the finding contains an incorrect statement as contended, but the error is not sufficient to affect the Commission's holding on value. The pertinent facts are that Ohio's canal land sales in the proximity of Royce 169 and 170 averaged \$8.60 per acre, and that similar sales near Royce 167 and 168 averaged \$4.25.

In passing on this motion, the Commission notes that the error complained of is carried into its opinion entered March 15, 1972 (27 Ind. Cl. Comm. 98). The last sentence of the first paragraph on page 107 of that opinion states:

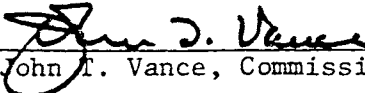
In the Commission's 1836 report of sales to the Ohio General Assembly, land near Wolf Rapids and Roche de Boeuf was shown to have sold for \$3.00 to \$6.00 per acre and some sales, actually including portions of the former reserves, sold for an average of \$8.62[0] per acre. [Emphasis added]

The underscored wording is misleading because no showing was made that Ohio sold land within the former reservations.

Accordingly, for the reasons set forth, the defendant's motion is granted to the extent herein indicated, and the Commission's Finding of Fact No. 15 is ordered amended.

The previous opinion, entered March 15, 1972, is likewise amended sua sponte to the extent indicated herein, and is to remain unchanged in all other respects.

The case will now proceed to the remaining stages of litigation.


John T. Vance, Commissioner

We Concur:


Jerome K. Kuykendall, Chairman


Richard W. Yarborough, Commissioner


Margaret L. Pierce, Commissioner


Brantley Blue, Commissioner