

BEFORE THE INDIANS CLAIMS COMMISSION

SENECA-CAYUGA TRIBE OF OKLAHOMA)	
AND PETER BUCK, STEWART JAMISON,)	
RUBY CHARLOE, DAVID CHARLOE AND)	
LEWIS WHITEWING, MEMBERS AND)	
REPRESENTATIVES THEREOF,)	
)	
Plaintiffs,)	
)	
v.)	Docket Nos. 341-A and 341-B
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: December 7, 1972

ADDITIONAL FINDINGS OF FACTPreliminary Statement

These suits were brought for a specific accounting of monies due and owing plaintiff tribe pursuant to the Treaty of February 28, 1831, 7 Stat. 348, and the Treaty of July 20, 1831, 7 Stat. 351. Defendant provided a complete accounting of monies received and disbursed under the above-mentioned treaties, as well as monies received and disbursed under the Treaty of February 23, 1867, 15 Stat. 513. In our previous consideration of this case, we ordered plaintiff to file separately any objections or exceptions to defendant's accounting. Thereafter, plaintiff filed exceptions to defendant's accounting, to which exceptions defendant also filed a reply. These findings of fact are in addition to findings 1 through 13 previously entered herein on December 29, 1971. 26 Ind. Cl. Comm. 625, 635.

14. Sandusky Treaty of February 28, 1831.

The Senecas of Sandusky, by the Treaty of February 28, 1831, ceded

all their Ohio lands identified as Royce Area 163 to the United States.

Article 8 of the treaty provided:

ART. 8. The United States will expose to public sale, to the highest bidders, at such time and in such manner as the President may direct, the tracts of land herein ceded by the Seneca Indians: And, after deducting from the proceeds of such sale, the minimum price of the public lands; the cost of building the saw and grist mills and blacksmith shop for the Senecas; the cost of surveying the lands; and the sum of six thousand dollars, to be advanced in lieu of their present improvements: it is agreed that any balance which may remain, of the avails of the lands after sale as aforesaid, shall constitute a fund for the future exigencies of the tribe, on which the Government of the United States consent and agree to pay to the Chiefs of the nation, for the use and general benefit of the nation, annually, five per cent on said balance, as an annuity: And if, at any time hereafter, the Seneca Chiefs, by and with the advice and consent of their tribe in General Council assembled, shall make known to the President, their desire that the fund, thus to be created, should be dissolved and given to the tribe; the President shall cause the same to be paid over to them, in such manner as he may direct; provided he shall become satisfied of the propriety of so doing. [Emphasis in original]

15. Lewistown Treaty of July 30, 1831.

The Senecas and Shawnees of Lewistown (Mixed Band of Senecas and Shawnees), by the Treaty of July 20, 1831, ceded all their Ohio lands identified as Royce Area 164 to the United States. Article VIII of that treaty provided:

Article VIII. The United States will expose to public sale to the highest bidders, in the manner of selling the public lands, the tracts of land herein ceded by the Senecas and Shawnees; and after deducting from the proceeds of such sale the sum of seventy cents per acre, exclusive of the cost of surveying the lands, the cost of the saw mill and blacksmith shop, and the sum of six thousand dollars to be advanced in lieu of the improvements on the ceded lands; it is agreed that any balance which may remain of the lands after sale

as aforesaid, shall constitute a fund for the future necessities of said tribes, on which the Government of the United States agree and consent to pay to the chiefs for the use and general benefit of the said tribes annually, five per cent on the amount of the said balance as an annuity. Said fund to be continued during the pleasure of Congress, unless the chiefs of the said tribes, by and with the consent of the whole of their people in general council assembled, should desire that the fund thus to be created, should be dissolved and paid over to them, in which case the President shall cause the same to be paid over, if in his discretion he shall think the happiness and prosperity of said tribes would be promoted thereby.

16. Treaty of December 29, 1832.

After their arrival in Oklahoma, the Senecas of Sandusky and the Mixed Band of Senecas and Shawnees of Lewistown decided to form a confederacy and reside on a single tract. This was accomplished by the Treaty of December 29, 1832, ratified March 2, 1833, 7 Stat. 411.

17. Treaty of February 23, 1867.

(a) The Treaty of February 23, 1867, provided for the dissolution of the union between the Senecas and Shawnees. Article 5 of the 1867

Treaty provided:

ARTICLE 5. The Senecas now confederated with the Shawnees, the said Shawnees thereto consenting, agree to dissolve their connection with the said Shawnees, and to unite with the Senecas, parties to the treaty of February twenty-eighth, one thousand eight hundred and thirty-one, upon their reservation described in article second of said treaty; and the several bands of Senecas will unite their funds into one common fund for the benefit of the whole tribe; and an equitable division shall be made of all funds or annuities now held in common by the Senecas and Shawnees.

(b) Under Articles 1 and 2 of the 1867 Treaty, the Senecas ceded certain lands in Oklahoma to the United States in return for \$44,000. The consideration for the Article 1 cession was \$20,000 and the consideration for the Article 2 cession was \$24,000. Four thousand dollars of the Article 2 fund was to be paid immediately and the remainder to be invested in accordance with Article 6. Article 6 of said treaty provides in part as follows:

ARTICLE 6. Of the sum of twenty-four thousand dollars to be paid to the Senecas, as provided in the second article, the sum of four thousand dollars shall be paid to them immediately after the ratification of this treaty, to enable them to re-establish their homes and provide themselves with agricultural implements, seed, and provisions for themselves and their families: and the balance of the said first-mentioned sum, being twenty thousand dollars, shall be consolidated with the twenty thousand dollars in the first article provided to be paid, and invested for the tribe of Senecas, as constituted by this treaty, at five percent interest, to be paid per capita semi-annually: . . . [Emphasis added.]

(c) By virtue of the terms of Article 5 of the 1867 Treaty, all funds of the Senecas, including those added by Article 6, supra, were merged into one common fund. The 1867 Treaty was a modification of the 1831 Lewistown and Sandusky Treaties to the extent that it added additional monies to the 1831 trust fund. Defendant, having taken a contrary view in its interpretation of the 1867 Treaty, has not accounted for the \$40,000 addition of 1867, treating said sum as the res of a separate trust. The record, however, warrants the conclusion that by the 1867 Treaty the parties did not intend to create a new and separate trust. Defendant's schedules indicate that after the Treaty of 1867 all annuities

and cash payments to plaintiff were combined and defendant thereafter administered the merged funds as one.

The record further indicates that after 1869, no annuity rolls paying the Seneca and Shawnees of Lewistown were found by defendant, but that names similar to those previously included in such rolls were added to rolls paying the Seneca Tribe of Indians. It is a fair conclusion from the record as a whole, including the clear terms of the 1867 Treaty, and the General Accounting Office Report, dated November 28, 1962 (Def. Ex. 86), reflecting receipts and disbursements by the United States pursuant to the aforementioned subject treaties, that monies are due and owing plaintiff tribe under the modified terms of the 1867 Treaty.

18. Land Sales, and Proceeds Thereof.

(a) There appears to be no disagreement regarding the data contained in defendant's accounting report. On the basis of the report, in the case of Royce Area 163, (Sandusky Treaty of February 28, 1831), 40,805.81 acres were sold for \$65,546.04. Pursuant to Article 8 of the treaty, \$61,560.96 was deducted from said proceeds. After these deductions, \$3,985.08 was due plaintiff tribe from the sale proceeds.

(b) With regard to Royce Area 164, (Lewistown Treaty of July 20, 1831), 38,140.73 acres were sold for \$49,908.25. Pursuant to Article 8 of the treaty, \$33,192.51 was required to be deducted from said proceeds, leaving a balance of \$16,715.74 due the Mixed Band of Senecas and Shawnees. Pursuant to Article 5 of the Treaty of February 23, 1867, the principal credited to the Senecas and Shawnees was divided equally.

Accordingly, one-half of the principal of \$16,715.74, or \$8,357.87 should be attributed to the Senecas after 1867.

(c) Pursuant to Articles I and II of the Treaty of February 23, 1867, plaintiff tribe ceded to the United States two tracts of land in Oklahoma for which it received \$44,000. Of this amount, \$4000 was paid immediately, and the remaining \$40,000 was to be invested at an annual rate of 5 percent pursuant to Article 5. (See Finding 18(b), supra.) Accordingly, the principal to be credited to plaintiff under this treaty is \$40,000. This sum, when merged with the 1831 proceeds as determined in item (a) above, totals \$43,985.08, being the combined principals due under the treaties of February 28, 1831, and February 23, 1867. Funds due or owing under item (b) above are treated in Finding No. 22 herein.

19. Interest Due, Sandusky Treaty and 1867 Treaty.

Defendant's schedules indicate that \$7,917.59 in interest was disbursed under the 1831 Sandusky Treaty alone, and that between 1873 and 1904, the year the principal was distributed, interest payments on the combined principals of 1831 and 1867 totaled \$80,545.88. Plaintiff was entitled to interest at 5 percent on \$3,955.08 (principal determined in Finding No. 19(a)) from 1833, when the sale of Royce Area 163 commenced, until 1867, inclusive, when the 1831 funds were merged with the 1867 fund of \$40,000. Accordingly, there should have been disbursed to plaintiff annuities totalling \$6,973.75 for this period.

From 1868 to 1903, inclusive, plaintiff was entitled to interest at 5 percent per annum on \$43,985.08, being the merged principals of the 1831 Sandusky Treaty and the 1867 Treaty. This annuity amounts to \$2,199.25 per annum. Accordingly, there should have been disbursed to plaintiff annuities totalling \$79,074.00 for this period. The overall sum is \$86,047.75 (\$6,973.75 + \$79,074.00). Since defendant disbursed only \$80,545.88 of the combined annuity of \$86,047.75, defendant is liable to plaintiff in the amount of \$5,501.87 for undistributed annuities on the combined principals held in trust between 1833 and 1903 under these treaties.

20. Principal Due Under Sandusky Treaty and 1867 Treaty.

The disbursement schedules in defendant's accounting report show that \$40,949.60 in principal held pursuant to Article 8, Treaty of February 28, 1831, and Article 6, Treaty of February 23, 1867, was distributed to plaintiff during fiscal year 1903. However, the total principal held by defendant under the two treaties was \$43,985.08. Accordingly, we find that there remains a balance of \$3,035.48 in principal due and owing plaintiff under this item.

Since this fund was held by defendant since 1904, without any provision for credit or payment of interest, defendant is liable to plaintiff for 5 percent simple interest, or \$151.77 annually, on the undisbursed principal balance of \$3,035.48. This totals \$10,320.36 over the 68-year period 1904 through 1971, inclusive. This interest added to the principal of \$3,035.48 results in an award of \$13,355.84 due plaintiff under the aforementioned treaties.

21. Amounts Due Under Lewistown Treaty.

(a) Since monies were still due and owing the Shawnees who formed the Mixed Band of Shawnees and Senecas under the 1831 Lewistown Treaty, and since defendant was required under Article 5 of the 1867 Treaty to make an equitable division of funds held in common by these two groups, the defendant has accounted separately for the Lewistown Treaty receipts and disbursements. Whether calculated separately or combined under the merger of 1867, we find the results to be the same. In line with defendant's reported schedules, we have dealt separately with monies due hereunder.

(b) Prior to the 1867 Treaty, annual interest was paid to the mixed group of Senecas and Shawnees. Defendant's records indicate, and we so find, that the Senecas' total proportionate share of the interest paid the Mixed Band between 1838 and 1869 was \$10,067.59. After 1867, when the Shawnees parted from the Senecas, interest was paid separately to the Senecas and we find that between 1870 and 1902 interest payments totaled \$14,756.75. Thus, over the period 1833 through 1902, a total of \$24,824.34 interest was disbursed to the Senecas. As previously found (Finding No. 19(b), supra) the principal credited to plaintiff under the 1867 Treaty should have been \$8,357.87. Under Article 8 of the Lewistown Treaty, plaintiff should have received a 5 percent annuity on this amount, or \$417.89 per annum, for a total of \$28,834.41 interest over the period from 1833, when sales commenced, until 1902, the last year before distribution began. Since only \$24,824.34

interest was actually disbursed, we find that there is due and owing plaintiff \$4,010.07.

(c) Between 1903 and 1909, the sum of \$6,961.48 of the total \$8,357.87 owed the Senecas under the 1831 Lewistown Treaty was disbursed. We therefore find that the amount of principal from land proceeds due plaintiff under Article 8 of said treaty is \$1,396.39. Since said principal balance due has not been disbursed but held since 1909 without any provision for the payment of interest, defendant is liable to plaintiff for 5 percent simple interest or \$69.82 annually on \$1,396.39 or a total of \$4,328.84 for the period 1909 through 1971 inclusive. In sum, there is due and owing plaintiff a combined principal and interest payment of \$5,725.23. It appears from the record that during the payout of principal between 1903 to 1909, the defendant acknowledged failure to pay additional interest in the amount of \$926.85 on annual principal balances. Accordingly, there is due plaintiff an added sum of \$926.85. Plaintiff, under the Treaty of July 20, 1831, is entitled to a total award of \$10,662.15, consisting of \$9,265.76 in annuities and \$1,396.39 in principal.

22. Compensation Due for School and Other Lands.

(a) The record discloses that as to Royce Area 163, defendant did not credit plaintiff for the proceeds due for lands set aside by defendant for school use and for an additional 82 acres (see (d) infra). Defendant has fully accounted for these items in its accounting report, admitting liability. Accordingly, we find that land sections 16,

each containing 640 acres, in both Royce Area 163 and Royce Area 164 were set aside by defendant as school lands. The two treaties under consideration made no provision for the deduction of 1,280 acres.

Therefore, plaintiff must be compensated for said lands.

(b) As to Royce Area 163, the lands therein were sold pursuant to the Treaty of February 28, 1831, at an average price of \$1.61 per acre. The 640-acre school tract would therefore, at that price, have sold for \$1,030.40. We further find that a 5 percent annuity under Article 8 of the treaty must be awarded plaintiff over the entire period during which credit was withheld. We find that 5 percent on \$1,030.40 to be \$51.52 and simple interest on said principal over the 1833 through 1971 period to be \$7,109.76. Accordingly, our award to plaintiff as to this school tract is \$8,140.16, consisting of principal and interest due and owing.

(c) As to Royce Area 164, the lands therein were sold pursuant to the Treaty of July 20, 1831, at an average price of \$1.31 per acre. The 640-acre school tract would therefore, at that price, have sold for \$838.40. We further find that a 5 percent annuity must be awarded plaintiff over the period during which credit for said proceeds was withheld. We find that 5 percent on \$838.40, from 1833 to 1971, totals \$5,784.96. Thus, there is due and owing the Mixed Band of Shawnees and Senecas, parties to the Treaty of July 20, 1831, \$6,623.36, combined interest and principal. In view of the Shawnee interest, we find that plaintiff's share is one-half of said amount, or \$419.20 in principal

and \$2,892.48 in interest. Accordingly, our award to plaintiff for the withheld school lands in Royce Area 164 is for the combined amount of \$3,311.68.

(d) On its brief defendant admits of a deficiency of 82 acres in Royce Area 163, the proceeds of which have not been accounted for. On the basis of the average per-acre sale value of lands sold in Royce Area 163 (\$1.61 per acre), we find that plaintiff is entitled to \$132.02 in proceeds for these lands, plus 5 percent interest per annum during the period defendant withheld credit. This amounts to \$6.60 per year or a total of \$917.40 over the 1833 through 1971 period. The combined principal and annuity award to plaintiff is therefore \$1,049.42.

24. As summarized below, plaintiff is entitled to recover from defendant the sum of \$42,021.12, consisting of all principal and accrued interest due and owing. Plaintiff is entitled to recover additional interest at the rate of 5 percent on the unpaid principal in the amount of \$6,013.49 from January 1, 1972, until paid.

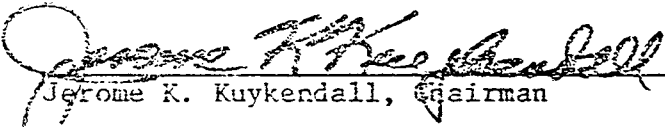
Summary:


Principal Due:

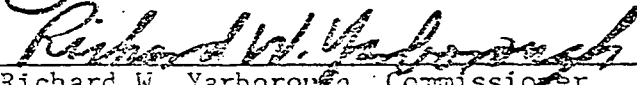
(1) Treaties of February 28, 1831 (Sandusky), and February 23, 1867:	\$3,035.48
(2) Treaty of July 20, 1831 (Lewistown):	1,396.39
(3) School lands, Royce 163 (Sandusky):	1,030.40
(4) School lands, Royce 164 (Lewistown):	419.20
(5) Eighty-two (82) Acres (Sandusky):	<u>132.02</u>
Total Principal due:	\$6,013.49

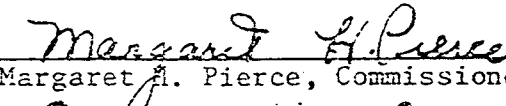
Interest Due:

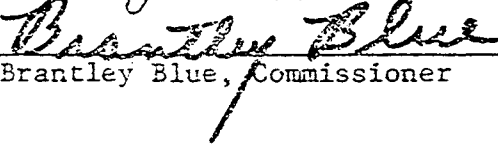
(1) Unpaid annuities, 1833-1903, on Treaty of Sandusky and Treaty of 1867:	\$ 5,501.87
(2) On principal balances due, 1904-1971, Treaty of Sandusky and Treaty of 1867:	10,320.36
(3) Unpaid annuity, 1833-1902, Treaty of Lewistown:	4,010.07
(4) On principal balance due, 1909-1971, Treaty of Lewistown:	4,328.84
(5) On principal balance due, 1903-1909, Treaty of Lewistown:	926.85
(6) School lands, Royce 163:	7,109.76
(7) School lands, Royce 164:	2,892.48
(8) Eighty-two acres:	<u>917.40</u>
Total Interest due:	\$36,007.63
Total Principal due:	<u>\$ 6,013.49</u>
Total Award:	<u>\$42,021.12</u>


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner