

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: March 27, 1975

ADDITIONAL FINDINGS OF FACT ON REMAND

Preliminary Statement

This case is before the Commission on remand from the Court of Claims. The remand order instructs the Commission to decide the case in light of the Court's decision in United States v. Oneida Nation, 201 Ct. Cl. 546 (1973), aff'g in part, remanding in part, Docket 301, 26 Ind. Cl. Comm. 138 (1971), and specifically including the issue whether the United States had actual or constructive knowledge of the treaties between the plaintiffs and the State of New York. United States v. Cayuga Nation of Indians, 202 Ct. Cl. 1101 (1973), remanding Docket 343, 28 Ind. Cl. Comm. 237 (1972).

Trial on the issue whether the United States had knowledge of the treaties of July 27, 1795, and May 30, 1807, between the Cayugas and New York, was held on April 1, 1974. Additional documents were admitted

in evidence as Commission exhibits by orders of January 23, 1975, and January 29, 1975. After examining the evidence the Commission concludes that its finding of fact 10, entered herein on July 20, 1972, 28 Ind. Cl. Comm. at 249, is erroneous. We shall therefore vacate that finding of fact.

The Commission makes the following findings of fact, which are supplemental to findings of fact 1 through 9, previously entered herein. 28 Ind. Cl. Comm. at 242-49.

The 1795 Transaction

10. Appointment of Israel Chapin as Agent for the Five Nations.

On April 23, 1792, Israel Chapin was appointed Deputy Temporary Agent to the Five Nations of Indians. Chapin was informed that his formal instructions would be forwarded at a later date, but that in the meantime he should be aware that it was the firm determination of the President of the United States that the utmost fairness and kindness be exhibited to the Indian tribes. It was also the President's desire not only to be at peace with the Indians, "but to be their guardians and protectors against all injustice." Pl. Exhibit K-1: American State Papers, Class II. Indian Affairs, Vol. 1, p. 231.

Chapin's formal instructions were sent by the Secretary of War, Henry Knox, on April 28, 1792. He was told that he was to serve under Arthur St. Clair, Superintendent for the Northern District. Chapin was instructed to communicate to St. Clair all significant occurrences

within his agency. He was also to communicate directly to the Secretary of War in Philadelphia.^{1/}

In his instructions Chapin was firmly reminded that under the constitution the federal government had the sole power to deal with the Indians. He was cautioned not to accept instructions from anyone other than Secretary Knox or his Superintendent.

11. Death of Israel Chapin: Appointment of his son.

In early March 1795 Israel Chapin died. On April 6, 1795, his son, also named Israel (hereinafter referred to as Chapin Jr.), was appointed to succeed him as Superintendent for the Six Nations.

In his letter of appointment, Chapin Jr. was told that he was to consider all the instructions previously given to his father to be his instructions. He was also informed that, because of the distances involved, the management of the affairs of the Oneidas, Tuscaroras, and Stockbridge Indians should be delegated to someone who lived closer to them. Finally, Chapin Jr. was told that his principal concern should be to protect the tribes under his superintendency from injury and imposition by non-Indians, and to employ all possible means to promote their comfort and improvement.

12. Legislative Enactments of New York State.

On March 27, 1794, the New York State legislature enacted legislation (Seventeenth Session, Chapter LIX), which appointed trustees

^{1/} Chapin's headquarters was to be located at Canandaigua in western New York State. Secretary Knox advised him to rely on Matthias Hollenback of Wilkesbarre, Guy Maxwell of Tioga Point, or John Morris of Newton Point, to forward his communications to Philadelphia.

for the Indians residing within New York. These trustees were granted full power to make any agreement or arrangement with the Oneida, Onondaga and Cayuga tribes respecting their lands that would produce an annual income for the Indians and would insure their good will and friendship to the people of the United States. The act provided that any conveyance of land obtained by the trustees was to be in fee simple and for the use of the people of New York State.

By an act of March 5, 1795, Eighteenth Session, Chapter XVII, the legislature authorized the Governor, and such others as he might appoint, to make any agreement with the St. Regis Indians, respecting their land claims in New York, that would tend to insure their good will and friendship to the people of the United States.

By an act of April 9, 1795, Eighteenth Session, Chapter LXX, the legislature appointed the Governor, Phillip Schuyler, John Cantine, John Richardson, and David Brooks as agents for the people of New York, to make such arrangements with the Oneida, Onondaga, and Cayuga tribes, relative to their lands, that would promote the interest of the Indians and preserve their confidence in the justice of New York State. The agents were authorized to allot the land if the Indians so desired. For any residue of land, not required for allotments, the agents were to stipulate perpetual annuities to the Oneida and Cayuga tribes. The act further provided that the lands which were the basis for the annuities should be surveyed and laid out into lots not exceeding 250 acres, and subsequently offered for sale at public auction.

Also on April 9, 1795, in "An act for the payment of Certain Officers of Government, and other contingent Expenses" (see Comm. Ex. 10: Governor's Letterbook II, New York State Library), the legislature authorized the Governor, or any agents he might appoint, to treat and agree with any Indian tribe or tribes for the purchase of their claim to land in northern New York, in such form and on whatever terms the Governor or his agents might deem best for New York State.

13. Communications from Israel Chapin, Jr., to the Secretary of War, May and June 1795.

On May 22, 1795, Israel Chapin, Jr., wrote to Secretary of War Timothy Pickering concerning a proposed treaty called by the Commissioners of New York State to purchase the lands of the Oneidas, Onondagas and Cayugas. See Comm. Ex. 13: Letter, Timothy Pickering to Israel Chapin, June 29, 1795 (Henry O'Reilly Papers, New York Historical Society, Volume 11, Folio 29).^{2/}

On June 13, 1795, Chapin Jr. again wrote to Pickering. Among other things, he stated,

The Six Nations are at present in peace and harmony. Mr. Parrish is now at Buffalo Creek to bring forward the Cayugas and Onondagas to the treaty respecting their lands. [Pl. Ex. K-7: Letter, Israel Chapin to Timothy Pickering, June 13, 1795 (Henry O'Reilly Papers, New York Historical Society, Vol. 11, Folio 26)].

The "Mr. Parrish" referred to was Jasper Parrish who was employed by the United States as a standing interpreter for the Six Nations.

^{2/} The Commission has been unable to locate a copy of the May 22 letter.

14. Opinion of the Attorney General.

On June 16, 1795, in reply to an inquiry dated June 13, 1795, by Secretary of War Pickering, William Bradford, Attorney General of the United States, issued an opinion on the question whether the State of New York had a right to purchase from the Six Nations or from any of the individual tribes their lands in New York without the participation of the federal government. The Attorney General stated that under the Act of March 1, 1793 (the version of the Trade and Intercourse Act then in effect), no sale of land by an Indian tribe was valid unless effectuated by a treaty or convention entered into by the federal government. He further stated that nothing contained in the letter of inquiry by the Secretary would take the sales to New York out of the general prohibition of the law.

Bradford noted that the treaties between New York State and the various tribes of the Six Nations, entered into before the adoption of the Constitution, granted to the State the right of preemption over the lands still owned by the tribes. He concluded that

Subject to this right they are still the lands of those Nations, and their claims to them, it is conceived cannot be extinguished but by a treaty holden under the authority of the United States, and in the manner prescribed by the laws of Congress. [Pl. Ex. K-8: Opinion of the Attorney General, June 16, 1795 (Henry O'Reilly Papers, New York Historical Society, Volume 11, Folio 27)].

15. Communications Between the Secretary of War and the Governor of New York.

On June 23, 1795, Secretary of War Pickering presented to President Washington, for his approval, a draft of a letter to George Clinton, Governor of New York. Pickering informed the President that, if he approved, the letter would be sent by the next day's post. President Washington approved the draft. The letter was sent to Clinton, along with a copy of the June 16 opinion of the Attorney General. See finding 16, infra.^{3/}

In June or July 1795 John Jay replaced George Clinton as Governor of New York.

On July 3, 1795, Secretary Pickering wrote to Governor Jay concerning New York's intended negotiations with the Onondagas, Cayugas, and Oneidas for the purchase of their lands. He enclosed a copy of the Attorney General's opinion, stating that any sale of the said Indians' lands without the participation of the federal government would be illegal.^{4/}

On July 13, 1795, Governor Jay replied to Pickering's July 3 letter. Jay stated that having recently entered into his office he was not yet familiar with New York's Indian policy and thus his reply to Pickering was delayed. He continued:

Whether the Constitution of the United States warrants the Act of Congress of the 1 March 1793 and whether the act of this State respecting the business now negotiating with the Onondaga and other Tribes of Indians, is consistent with both or either of them, are Questions which on this occasion I think I should forbear officially to consider and decide.

^{3/} The Commission has been unable to locate a copy of the draft or the letter.

^{4/} The Commission has been unable to locate a copy of this letter.

It appears to me from the 37 article of the New York Constitution that every Convention or Contract with Indian Tribes meditated by this State, must be directed and provided for by Legislative Acts; and consequently that the Governor can take no measures relative thereto, but such as those acts may indicate or permit.

You will perceive from an act of this State (of which you doubtless have a Copy) passed the 9 April 1795 that the negotiations in question are therein particularly directed and specified and that it commits the management of the business to five agents viz. The Governor for the time being, General Schuyler, John Cantine, David Brooks and John Richardson, or any three of them. As to any intervention or concurrence of the United States the act is silent and I do not observe any thing in it which by implication directs or authorizes the Governor to apply for such intervention or which implies that the Legislature conceived it to be either necessary or expedient. [Comm. Ex. 5: Letter, John Jay to Timothy Pickering, July 13, 1795 (George Washington Papers, Library of Congress, Series 4, Reel 107, Folio 245)]

On July 16, 1795, Secretary Pickering answered Governor Jay's letter. He stated that he had been informed by one T. Morris, a member of the New York legislature, that the act authorizing the purchase of lands from the Onondaga, Oneida, and Cayuga tribes required an application to the federal government for a treaty to be held. Pickering stated that Jay's letter made it clear that Morris had been in error. It was on Morris' information, however, Pickering related, that he had informed Israel Chapin, Jr., that the New York commissioners were in violation of the laws both of the United States and New York.

On July 18, 1795, Governor Jay again wrote to Secretary Pickering. He stated that a tribe or nation called the St. Regis Indians had set up a claim to lands in northern New York State. In previous negotiations the state had agreed to treat with these Indians and the legislature had accordingly passed legislation authorizing the Governor to do so. Jay requested, through Pickering, that the President of the United States appoint one or more commissioners to hold a treaty with the St. Regis Indians so that the extinguishment of their claims might be conducted in compliance with the Act of Congress of March 1, 1793. Jay recommended several candidates to be commissioners on behalf of the United States.

16. Communications from the Secretary of War to Israel Chapin, Jr., June and July 1795.

On June 29, 1795, Secretary Pickering wrote to Israel Chapin, Jr., acknowledging his receipt of letters sent by Chapin on May 6, May 22, and June 4, 1795. Pickering stated:

I have now the time only to answer that of May 22d respecting the proposed treaty called for by the Commissioners of New York, to purchase the lands of the Oneidas, Onondagas & Cayugas: and I have now to instruct you, that you will give no aid or countenance to the measure; as it is repugnant to the law of the United States made to regulate trade and intercourse with the Indian tribes. The Attorney General of the United States has given his opinion that the reservations of those tribes within the State of New York form no exception to the General Law: but whenever purchased, the bargains must be made at a treaty held under the authority of the United States. Besides giving no countenance to this unlawful design of the New York Commissioner (for it seems that only one of them wrote you on the subject, & I wish to know his name--

and to have a copy of his letter) you are to tell those tribes of Indians that any bargains they make at such a treaty as that proposed to be held at Scipio, will be void; and as the guardian of their rights you will advise them not to listen to the invitation of any Commissioners unless they have authority from the United States to call a treaty.

The conduct of that Commissioner is the more extraordinary, seeing as Mr. T. Morris informs me, the act of the legislature of New York expressly directed the Commissioners they appointed, to apply to the General Government to call the treaty; but Govr. Clinton, denying the authority of that Government in this matter, would not make the application.

I have sent to Governor Clinton a copy of the Attorney General's opinion, and now enclose one to you. [Comm. Ex. 13: Letter Timothy Pickering to Israel Chapin, June 29, 1795 (Henry O'Reilly Papers, New York Historical Society, Volume 11, Folio 29)].

On July 3, 1795, Pickering wrote to Chapin in reply to Chapin's letter of June 13. Finding 13, supra. He expressed his displeasure that Jasper Parrish, a federal employee, had assisted the New York State commissioners in inviting the Cayugas and Onondagas to the treaty without Pickering's authorization. He reiterated his instruction "that unless a commissioner of the United States holds the treaty neither you nor Mr. Parrish are to give any countenance to it; but on the contrary to tell the Indians that it will be improper and unsafe." Comm. Ex. 14: Letter Timothy Pickering to Israel Chapin, July 3, 1795 (Henry O'Reilly Papers, New York Historical Society, Volume 11, Folio 30).

17. Communications Between the Secretary of War and the President of the United States, July 1795.

On July 21, 1795, Secretary Pickering wrote to President Washington, then in Mount Vernon, concerning his communications with Governor Jay. He pointed out to the President the differentiation that New York State made between its negotiations with the St. Regis Indians, and its negotiations with the Onondagas, Cayugas and Oneidas. He enclosed with his letter copies of all the communications he had received from Governor Jay.

On July 27, 1795, President Washington replied to Secretary Pickering's letter, which he had received on July 25. He stated that if the treaties with the Onondagas, Cayugas, and Oneidas had taken place at Albany on July 15, as the communications from Governor Jay had indicated, then "any further sentiment now on the unconstitutionality of the measure would be recd. too late." Pl. Ex. K-9: Letter, George Washington to Timothy Pickering, July 27, 1795, reprinted in 34 Writings of George Washington 250-51 (J.C. Fitzpatrick ed., 1931-1944). If, on the other hand, the treaties had not yet taken place, Washington instructed Pickering to "obtain the best advice you can on the case and do what prudence, with a due regard to the Constitution and laws, shall dictate." Id.

18. Treaty of July 27, 1795, and its Ratification.

On July 27, 1795, at Cayuga Ferry, New York, a treaty was entered into between the Cayuga Nation and the State of New York. See Finding 5. supra. Among those who signed the treaty as witnesses were Jasper

Parrish and Israel Chapin. Next to Parrish's name on the treaty was the designation "Interpreter." There is no indication on the treaty in what capacity Israel Chapin signed the treaty.

On March 26, 1796, the articles of agreement entered into on July 27, 1795, were recorded by a judge of the New York Supreme Court. As part of the recording process, Israel Chapin swore to the judge that he had witnessed the signing of the treaty by the agents for the State of New York and the sixteen Indian signatories.

By an act of April 1, 1796, Nineteenth Session, Chapter XXXIX, the New York legislature ratified the agreement its agents had made with the Cayuga Nation on July 27, 1795. The act instructed that all annuities promised to the Indians should be paid perpetually. The act further provided that, at the request of the Cayugas, one square mile of the land purchased by New York would be granted to Israel Chapin, Jr.

19. Communications Between Israel Chapin, Jr., and Timothy Pickering, July and August 1795.

On July 31, 1795, Israel Chapin, Jr., wrote to Secretary Pickering, informing him that commissioners for the State of New York had purchased the lands of the Cayugas. Chapin stated that unfortunately he had not received Pickering's letters of June 29 and July 3 until after he had returned from the treaty, and therefore had been unable to comply with his instructions, Chapin continued,

. . . I was knowing to the law of the United States respecting holding treaties with the Indn. Nations, and not having any directions from you, I have endeavored to not interfere in the business as I supposed the Commissioners were fully authorized by the Government of the United States as well as that of their own with full power to transact the business. . . . The Indians all requested me to go with them to the treaty which I according did, but have not used my influence with them, as I very soon see they were determined to manage the business as a separate interest from the United States. I inquired of Genl. Schuyler how he construed the law of Congress in regard to holding treaties with the Indian tribes? he made very little reply by saying it was very well where it would correspond with that of an individual State. Had I recd. your letter I could have managed the business more to your mind but as I had supposed the Government of the State of New York had applied to the General Government and had obtained sufficient power to call the Indians to the treaty, and in that it would have been an imprudent act for me to persuade the Indians not to adhere to their invitation, as the business first originated at this place and delivered to your charge in order that Commissioners properly authorized might come forward to make the purchase before recited. . . . — I have been cautious to not furnish the Indians who have been to the treaty out of the United States property or in any way to have it appear on the part of the United States as I had no special directions & therefore attended as a private individual without speaking or having any thing to do in their Council more than another individual. . . [Comm. Ex. 9: Letter, Israel Chapin to Timothy Pickering, July 31, 1795 (Henry O'Reilly Papers, New York Historical Society, Volume 11, Folio 33)].

On August 26, 1795, Secretary Pickering replied to Chapin's July 31 letter. Pickering stated,

I received your letter informing of the treaty held at Scipio where the Commissioners of New York purchased the land of the Onondagas and Cayugas; and that you proposed to go to Oneida where you supposed that tribe might be influenced to avoid a sale. Seeing the Commissioners were acting in defiance of the law of the United States, it was entirely proper

not to give them any countenance; and as that law declares such purchases of the Indians as those commissioners were attempting to make, invalid, it was also right to inform the Indians of the law and of the illegality of such purchase. But having done this much, the business might there be left. The negotiation is probably finished ere now: if not, you may content yourself with giving the Oneida the information above proposed, & there to leave the matter. [Comm. Ex. 11: Letter, Timothy Pickering to Israel Chapin, August 26, 1795 (Henry O'Reilly Papers, New York Historical Society, Volume 11, Folio 37)].

20. Complaint by the Cayugas to the United States, September 1795.

On September 7, 1795, Israel Chapin, Jr., wrote to Secretary Pickering that he had been visited by a party of Cayugas from the reservation who complained that at the late treaty the Western Cayugas had sold their land from under them. They stated that Governor Clinton of New York had confirmed the Cayuga reservation to the Cayuga who lived on it, but that commissioners had come forward from the State of New York and purchased the whole reserve, except for a small piece, which was too small for their usage. They claimed that those who had sold their lands were Canadian Indians, not residents of the reservation. The Cayugas told Chapin that they considered this to be a grievance, and requested assistance in the matter from the Secretary of War.

The 1807 Transaction

21. Communications Between the Governor of New York and Israel Chapin, Jr.

On August 28, 1799, Governor Jay of New York wrote to Israel Chapin, Jr. concerning the purchase of the remaining Cayuga land in New York. This letter was in reply to an earlier communication from Chapin. Jay stated that a considerable portion of the tribe wished to sell its land, but that a dissident group was opposed to the sale. He stated

that if it were possible to get the entire tribe to consent, and if the price was reasonable, he would be willing to purchase the Cayuga reservation. He asked Chapin to determine whether the consent of the entire tribe to the sale could be obtained, and the lowest price at which the tribe would sell.

On June 1, 1800, Governor Jay again wrote to Chapin Jr. about the sale of Cayuga land. In an earlier communication Chapin had informed Jay that the remainder of the Cayugas had moved west and were anxious to sell their reservation. Jay replied that if the Cayugas were united in their desire to sell, and if the price was reasonable, the State would be willing to purchase the land. Jay asked Chapin to determine the lowest price at which the land could be obtained, and for his opinion whether such a price was reasonable.

22. Removal of Chapin: Appointment of Jasper Parrish.

In early 1803 Israel Chapin was removed as a subagent for the Six Nations. On February 15, 1803, Jasper Parrish was appointed to replace him.

23. Treaty of 1807.

On February 26, 1807, an agreement was entered into between the Cayuga Nation and the State of New York for the sale of the Cayugas' remaining land in New York. The agreement stated that the two Cayuga delegates, accompanied by their interpreter, Jasper Parrish, United States Superintendent of Indian Affairs, were authorized by the tribe to sell its land. The land was to be purchased for \$4800, which was

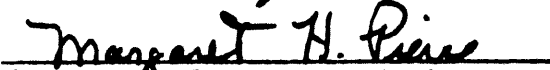
to be paid to Jasper Parrish for the use of the tribe at the time that the tribe delivered a deed, by means of Parrish, to an agent of the State. Jasper Parrish signed this agreement as a witness.

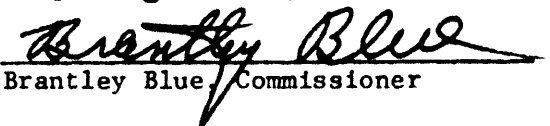
On May 30, 1807, the chief Sachems and Warriors of the Cayuga Nation deeded their remaining lands in New York to the State of New York.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner