BEFORE THE INDIAN CLAIMS COMMISSION

BAY MILLS INDIAN COMMUNITY, SAULT STE. MARIE BANDS, Arthur W. LaBlanc, Daniel Edwards and John L. Boucher,	)	
Plaintiffs,	)	
v.	)	Docket No. 18-R
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

Decided: December 26, 1973

Appearances:

Rodney J. Edwards, Attorney
for Plaintiffs.

Craig A. Decker, with whom
was Mr. Assistant Attorney
General Kent Frizzell,
Attorneys for Defendant.

OPINION OF THE COMMISSION

Kuykendall, Chairman, delivered the opinion of the Commission.

In this case plaintiffs seek additional compensation, under Clause 3, Section 2 of the Indian Claims Commission Act, 60 Stat. 1049, 1050, for lands which were ceded to the United States by the Treaty of June 16, 1820, 7 Stat. 206. The lands, described in Article I of the treaty, have been delineated as Area 112 by Charles C. Royce on his Michigan Map No. 1 in the 18th Annual Report of American Ethnology, Part II, Indian Cessions. The Commission has previously determined that the Sault

Ste. Marie Band of Chippewas, plaintiffs' ancestors, held Indian title to Area 112 until the land was ceded by the 1820 treaty. 22 Ind. Cl. Comm. 85, 90 (1969). The Commission has also found that the ceded area contained 10,240 acres and that it should be valued as of March 2, 1821, the effective date of the 1820 treaty.

Area 112 was a strip of land one mile wide by 16 miles long located on the western shore of the St. Mary's River in the Upper Peninsula of what was then Michigan Territory. The tract extended southerly from the Falls of St. Mary's to a point down river about two and one-half miles below the confluence of the Charlotte and St. Mary's Rivers.

The St. Mary's River was the natural water link which connected Lake Superior with the lower Great Lakes. Travel on the river was obstructed by the Falls of St. Mary's which, with its attendant rapids, required a portage of about one mile. This portage area was in the northern part of Area 112, at the location of the present city of Sault Ste. Marie, Michigan.

The area around the falls was of strategic importance. Long before the coming of white men, the Indians maintained a permanent encampment there, and the fish taken at the falls were their main source of food. The first permanent white settlers came to the area around 1750, when the French were developing a thriving fur trade in the northwest. The settlers were involved in serving the fur trappers, whose main trading routes converged at the portage. In early summer voyageurs, traders, trappers, and Indians came from wintering places as far distant as the

Arctic Circle to sell furs and to obtain supplies for the next trapping season. The United States recognized the strategic significance of the area, which had become the crossroads and meeting place for explorers, fur traders, and Indians. Control of the straits, which connected Lake Superior with the lower lakes, meant control of the United States' interests in the entire northwest. In 1820 it was decided that a military outpost should be established there.

In 1822 Fort Brady was built, and in 1823 an Indian agency, with jurisdiction over the entire Northwest, was opened near the fort. Immediately after the 1820 treaty the ceded area became part of Michilimachinac County. A U. S. District Court was established at Sault Ste. Marie in 1823.

In 1821 the village of Sault Ste. Marie had a white population of about 25 persons. It grew with the building of Fort Brady, and by 1826 there were 152 white residents of the village. The population grew to 623 by 1830. At the valuation date there were about 15 to 20 buildings in Sault Ste. Marie.

The fourteen miles of Area 112 below Sault Ste. Marie were virtually unoccupied in 1821, and that area did not become settled until public land sales began in 1848. Most of the land was poorly drained and sloped gently to a sandy bank along the St. Mary's River. The soil was moderately fertile. Most of the area was covered with a forest of mixed conifers and swamp hardwoods. The timber was valuable only for local use as firewood, building material, and corduroy for roads. The winters were rigorous and the summers were short and relatively mild.

On March 2, 1821, the highest and best use of the upper two square miles (1,280 acres) was as a townsite. The balance of the area, amounting to 8,960 acres, was best suited for agricultural uses including the growing of crops, such as hay, oats, barley, and potatoes, and the grazing of cattle.

Plaintiffs have contended that the ceded area included only four miles of frontage on the St. Mary's River but extended farther inland to include a total of sixteen square miles, encompassing what is now much of the city of Sault Ste. Marie. This is contrary to the Commission's determination that the lands described in Article I of the 1820 treaty were those delineated as Area 112 by Charles C. Royce, i.e., a strip of land one mile wide by 16 miles long extending down the St. Mary's River from the falls. In any event the 1821 value of a 16 square mile tract shaped and located as plaintiffs have proposed would not have been greater than the value of Area 112. */

Plaintiffs did not present any expert opinion on the value of the ceded lands. Their expert was an historian, Mr. Robert Warner, who prepared a report dealing with the historical phase of the case. Based on that report and relying on documentary evidence presented by

---

*/ A tract extending more than one mile inland (as plaintiffs propose) would have overlapped Royce Area 205, which was ceded by the Ottawa and Chippewa under the Treaty of March 28, 1836, 7 Stat. 491. Those lands were involved in the claims under Dockets 18-E and 58, for which the Bay Mills Indian Community, Sault Ste. Marie Bands, et al., recovered, on behalf of the Ottawa and Chippewa Nations of Indians, a final award of $10,109,003.55, 27 Ind. Cl. Comm. 97 (1972).

defendant, plaintiffs' counsel has proposed a valuation of $512,000 for the ceded lands. This figure is based on an 1815 sale of a 500 acre farm, including the house, on the outskirts of Detroit for an average per acre price of $24.00. Contending that the lands in this case would have had a higher fair market value in 1821, plaintiffs' counsel has placed an average per acre value of $50.00 on the subject area, resulting in a total figure of $512,000. We cannot accept counsel's contention. Detroit in 1816 had a population of 850. It was located far to the south of Area 112 and closer to the Nation's population and trade centers. We find no basis for relating the price paid for an improved farm in the Detroit area to the fair market value of the subject lands.

Defendant's expert witness was Mr. Gordon E. Elmquist, who prepared an extensive and informative report on the various factors which affected the 1821 fair market value of Area 112. Among the factors which Mr. Elmquist weighed were the location of the land, the historical background, the townsite's potential for development, the remoteness of the area, its population, climate, precipitation, soils, terrain, and agricultural potential. He also considered sales of other tracts but concluded that none of them were comparable to Area 112 insofar as time, character of land, location, size, and other economic conditions were concerned.

In his valuation Mr. Elmquist considered that an area of 200 acres along a one mile frontage of the St. Mary's River just below the falls would have been of special importance for commercial enterprises and

community development. He valued that area at $4,000 or $20.00 per acre. The remaining 10,040 acres were usable for agricultural purposes, although most of that land was either low, wet, or both, or consisted of second and third class soils. He found that the demand for such land would be minimal and therefore valued it at $4,016, or 40 cents per acre.

In reaching a determination of fair market value the Commission has relied on many of Mr. Elmquist's conclusions. While we agree that there was an area around the falls which was valuable for commercial and community development, we believe that the area was larger than the 200 acres which Mr. Elmquist ascribed for such use. We find that the upper two square miles (1,280 acres) had a highest and best use as a townsite. This land would include an area along the St. Mary's River, below the falls, which could accommodate docks, warehouses and other river related facilities. Inland from the waterfront there was land upon which trading posts, storage facilities, commercial shops, hotels, taverns, and general businesses could be located. An area between the portage trail and the falls provided a suitable location for a mill. There was also a potential site for a canal. The availability of good fishing at the falls and in the rapids was also a factor to be considered. The land farther inland could be used for residential purposes and for farming. We have valued this 1,280 acre townsite at $10,000.

We agree with Mr. Elmquist that the remaining lands were not in great demand in 1821. While the climate and soil were adequate for the growing

of some crops, the land was wet and would have required drainage. The timber was used locally for building and as firewood. However, we believe that Mr. Elmquist was too conservative in his 40 cent per acre valuation and that he gave too little weight to the tract's 14 mile frontage along the St. Mary's River. This made the entire area readily accessible to water transportation. The land was also adjacent to a developing town which could provide an expanding market for agricultural products. We have valued the 8,960 acres of agricultural land at $5,000 or an average value per acre of about 55 cents.

In consideration for the cession the United States delivered "a quantity of goods" to the Indians. The defendant asserts that the goods had only a nominal value and claims no credit for them. We therefore conclude as a matter of law that the payment by defendant of a nominal consideration for the cession of land worth $15,000 was unconscionable within the meaning of Clause 3, Section 2 of the Indian Claims Commission Act.

Defendant, having received credit for gratuitous offsets in the matter of Dockets 18-E and 58, makes no claim for gratuitous offsets in this case. Accordingly, plaintiffs are entitled to a final award.

One other matter requires our comment. In its brief defendant renewed a motion to dismiss this case on the ground that plaintiffs were unjustified in their delay in the prosecution of this case and that they failed to prove their case at the trial on April 24, 1972. However,

additional documentary evidence was introduced by the plaintiffs at a hearing on May 25, 1972. We have considered defendant's contentions but have concluded that the record is sufficient to support our decision herein. Therefore we will not grant the motion and will enter a final award in accordance with this opinion.

Jerome K. Kuykendall, Chairman

We concur:

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner