

BEFORE THE INDIAN CLAIMS COMMISSION

OTTAWA-CHIPPEWA TRIBE OF)	
MICHIGAN,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 364
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER

UPON CONSIDERATION of (1) the exceptions to the General Accounting Office Report of March 21, 1952, filed herein, (2) of the defendant's response to said exceptions, (3) of the plaintiff's motion for summary determination, (4) the defendant's motion to strike the same, (5) the defendant's motion to dismiss and for entry of final judgment and (6) defendant's motion for summary judgment, and of the entire record, the Commission ORDERS as follows, for the reasons and upon the terms and conditions stated in the accompanying opinion:

I

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
AND MOTION TO DISMISS AND FOR ENTRY OF FINAL JUDGMENT

1. The first and fifth claims of the plaintiff's petition herein are dismissed.
2. Partial summary judgment is granted in favor of defendant ruling out interest on any deficiencies which may be discovered in defendant's payments under any part of the Treaty of July 31, 1855, 11 Stat. 621, except clause Fourth of Article 2.
3. The Commission's ruling on dismissal of the third claim is reserved until the close of the record.
4. Except as above indicated, the aforesaid two motions are denied.
5. The plaintiff will indicate in its pretrial statement whether or not it intends to proceed on the third and fourth claims in its petition and whether it desires a trial on the issue of fraud in procurement of the release clause in the 1855 Treaty or will submit the issue for immediate decision on the basis of documentary evidence.

II
EXCEPTIONS AND RESPONSE

1. Exceptions 1, 3, and 4 are dismissed.
2. Part (b) of Exception 2 is dismissed. The plaintiff will indicate in its pretrial statement whether it intends to pursue parts (a) and (c) of Exception 2, and if so, to disclose in general terms the evidence it intends to rely upon.
3. Exception 5 is sustained on the terms stated in the accompanying opinion.

III
DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S MOTION
FOR SUMMARY DETERMINATION

The said motion is denied.

IV
PLAINTIFF'S MOTION FOR SUMMARY DETERMINATION

1. The item of \$3,000 for surveying and locating respective lots noted on page 94 and elsewhere in the General Accounting Office report of March 21, 1952, is disallowed; but summary judgment for restitution will not be entered against defendant pending future determination of whether there was a compensating overpayment in terms of coin under Article 2, Fourth, of the 1855 Treaty.
2. The plaintiff will explain in its pretrial statement how it proposes to show damages from the distribution under Article 2, Fifth, of the 1855 Treaty, of \$2,000 to the Ottawas of Grand River, in 1859, in the form of provision instead of cash; and in default of a satisfactory explanation, paragraph 2 of the Motion for Summary Determination will stand denied.
3. Paragraphs 3, 4, 6, 7, 8, and 9 of the Motion for Summary Determination are denied.
4. Ruling on paragraph 5 of the Motion for Summary Determination is reserved until the close of the record.

V
PRETRIAL CONFERENCE

Pretrial conference shall be held on April 8, 1975, at 10:00 a.m., in the hearing room of the Commission.

The hearing will be held under Rule 22(e) of the General Rules of Procedure and the pretrial instructions contained in the Commission's General Policy Statement §101, effective on July 15, 1968. At the hearing all matters will be considered which would simplify the issues and expedite the trial and ultimate disposition of the case.


The pretrial statements of the parties shall be filed with the Commission and served upon opposing counsel at least 20 days before the pretrial conference.

The same date, 20 days before the conference, is hereby fixed as the last day on which either party may file documentary evidence with the clerk and serve copies on the opposing party, in accordance with rule 23(e), subdivisions (2) through (6). Countervailing and rebuttal evidence shall be filed and served at or before the conference.

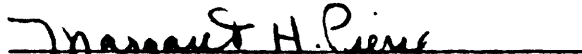
Each party shall be represented at the conference by the attorney who expects to conduct the actual trial, which attorney shall be accompanied by the party's accountant. The said attorney should familiarize himself with the Commission's pretrial rules and instructions and come with full authority to admit and stipulate undisputed facts and to waive requirements for formal proof of documents, to discuss possibilities of settlement, to furnish names and addresses of witnesses and the nature of their testimony, and to discuss points of law.

The parties shall consider whether all or part of this case can be submitted on the basis of documentary evidence without a formal trial, and if such procedure appears feasible, shall suggest a schedule for submission of proposed findings of fact and briefs.

Dated at Washington, D. C., this 27th day of January, 1975


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Margaret M. Pierce, Commissioner


Brantley Blue, Commissioner