

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

Appearances:

Paul G. Reilly, Attorney for the Plaintiff. Earle and Reilly were on the brief.

M. Edward Bander, with whom was Assistant Attorney General Wallace H. Johnson, Attorneys for the Defendant.

OPINION OF THE COMMISSION

Blue, Commissioner, delivered the opinion of the Commission.

This case is before the Commission on remand from the Court of Claims. The court was reviewing the Commission's holding that the United States would be liable to the plaintiffs if the Cayuga Nation received less than conscionable consideration for the lands it sold to New York State under treaties dated July 27, 1795, and May 30, 1807. Cayuga Nation v. United States, Docket 343, 28 Ind. Cl. Comm.

237 (1972). In its remand order, the court instructed the Commission "to decide the case in light of the standards delineated 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)], including whether the federal government had knowledge of the applicable treaties between the Indians and the State of New York." United States v. Cayuga Nation, 202 Ct. Cl. 1101 (1973). For the reasons indicated below we conclude that the United States had actual knowledge of the treaties of July 27, 1795, and May 30, 1807, between the State of New York and the Cayuga Nation, and further that a representative of the United States was in attendance at the latter treaty.

In the Oneida case, mentioned in the court's remand order, the Commission held that, with respect to 25 land sale treaties between New York State and the Oneida Nation, the United States would be liable to the plaintiffs if the plaintiffs received unconscionable consideration for their land. On appeal, the court affirmed the Commission's rulings as to two of the treaties "because there were federal government representatives clearly in attendance at these treaty signings." 201 Ct. Cl. 549. With respect to the remaining 23 treaties, the court ruled that the United States would be potentially liable only if it had actual or constructive knowledge of the transactions and still failed to protect the plaintiffs' rights. Id. at 554. The court accordingly remanded the Oneida case for a determination of the scienter issue. In this case we are faced with a similar remand order.

In our earlier decision we found that

The United States did not send a representative to participate in the negotiations or consumation of the treaties of 1795 and 1807 by which New York acquired the remainder of Cayuga land in New York State, nor did it furnish aid, advice or assistance to either New York State or the Cayuga Nation in the execution of the treaties. [Finding 10, 28 Ind. Cl. Comm. at 249.]

The evidence presented to the Commission at the trial held April 1, 1974, indicates that this finding was erroneous. We shall therefore vacate it.

The 1795 Transaction

In our findings of fact, entered today, we have found that on May 22, 1795 -- more than two months prior to the 1795 treaty, -- Israel Chapin, Jr., the United States agent for the Six Nations, which included the Cayuga Nation, wrote to Timothy Pickering, United States Secretary of War, concerning a treaty called by agents of New York State to purchase the lands of the Oneidas, Onondagas, and Cayugas. Finding 13, infra. In another letter, dated June 13, 1795, Chapin informed Pickering that Jasper Parrish, an interpreter employed by the federal government, had gone west to bring back some Cayugas and Onondagas "to the treaty respecting their lands." Id.

We have further found that on June 13, 1795, Secretary Pickering requested an opinion of the Attorney General of the United States whether New York could purchase land from any of the Six Nations without the direct participation of the federal government. The Attorney General answered this question in the negative. Finding 14, infra.

We have also found that on June 23, 1795, Secretary of War Pickering submitted to President Washington, for his approval, a draft of a letter to New York Governor George Clinton. Washington approved the draft, and the letter was sent to Clinton.^{1/} Finding 15, infra. Our findings also indicate that on July 3, 1795, after Clinton had been succeeded as Governor of New York by John Jay, Secretary Pickering wrote to Jay informing him that under federal law New York could not purchase Indian land without the direct participation of the federal government. Id.

These findings force us to the inevitable conclusion that the United States had actual knowledge of the intention of New York State to purchase land from the Cayugas. Its agent for the Six Nations had actual knowledge no later than May 22, 1795, when he wrote to Secretary Pickering concerning the proposed treaty. Its Secretary of War had actual knowledge no later than June 13, 1795, when he requested of the Attorney General an opinion on the legality of the proposed purchase. Its President had actual knowledge no later than

^{1/} Although the Commission has been unable to locate a copy either of the draft or the letter, the timing of the letter (only one week after the Attorney General issued his opinion), together with Secretary Pickering's statement to Israel Chapin in his June 29 letter that he had sent a copy of the Attorney General's opinion to Governor Clinton (Finding 16, infra), leads the Commission to infer that the draft and letter concerned the proposed New York treaties with the Onondagas, Oneidas, and Cayugas, and that the letter was actually sent.

June 23, 1795, when he approved the draft of Secretary Pickering's letter to the Governor of New York.^{2/}

Our findings also indicate that six weeks after the 1795 treaty the Cayugas complained to their agent, Israel Chapin, Jr. that, in effect, their land had been taken from them without their consent. They charged that the Indians who sold the land to New York were not residents of the reservation, and thus not its lawful owners. They stated that the land now left to them was insufficient for their continued usage. They requested assistance from the Secretary of War. The record does not indicate that the Secretary of War or any other federal officer came to their assistance.

In sum, with respect to the 1795 treaty, we conclude that the United States had actual knowledge of the intention of New York to purchase land from the Cayugas, and that the Cayugas complained to the United States about the fairness of the treaty, but the federal

^{2/} Our findings also indicate that Israel Chapin, Jr., the federal government's agent to the Cayugas, was present during the negotiation and signing of the 1795 treaty. Findings 18 and 19 infra. The defendant argues that Chapin attended the treaty, and witnessed it, as a private citizen rather than as an official representative of the United States. There is some support in the record for defendant's position--Chapin's instructions that he not participate in the treaty (Finding 16, infra), and his statement to Secretary Pickering that he "attended as a private individual without speaking or having anything to do in their Council more than another individual" (Finding 19, infra). However, because our conclusion that the United States had actual knowledge of the treaty is sufficient to establish the potential liability of the defendant, it is unnecessary for us to determine in this case whether presence without participation can establish such liability, and we shall refrain from making any determination whether or not Chapin attended in his official capacity.

government did not come to their assistance. We restate our holding that the United States will be liable if the Cayuga Nation did not receive conscionable consideration for the land it sold to New York under the treaty of July 27, 1795.

The 1807 Transaction

The defendant acknowledges that it had actual knowledge of the 1807 treaty. Our findings confirm that the United States had actual knowledge of the treaty. We have also found that a representative of the United States participated in the negotiations leading up to the treaty, and was present at the treaty signing. We therefore restate our holding that the United States will be liable if the Cayuga Nation did not receive conscionable consideration for the land it sold to New York under the 1807 treaty.

The Valuation Issue

The plaintiff has also proposed findings of fact and briefed the question of the value of the lands acquired by New York under the two treaties. The plaintiff relies primarily on the resales and the appraisal described in our Finding of Fact 7, 28 Ind. Cl. Comm. 237. The defendant, on the other hand, argues that the valuation issue is not now before the Commission. We must agree. In this opinion we are concerned only with deciding the issues specified in the remand order of the Court of Claims.

This case shall now proceed to a determination of the extent of the defendant's liability to the plaintiffs, if any, under the 1795 and 1807 treaties.

Brantley Blue
Brantley Blue, Commissioner

We Concur:

Jerome K. Kuykendall
Jerome K. Kuykendall, Chairman

John T. Vance
John T. Vance, Commissioner

Richard W. Yarborough
Richard W. Yarborough, Commissioner

Margaret H. Pierce
Margaret H. Pierce, Commissioner