

BEFORE THE INDIAN CLAIMS COMMISSION

THE STOCKBRIDGE MUNSEE COMMUNITY,
 THE STOCKBRIDGE TRIBE OF INDIANS
 AND THE MUNSEE TRIBE OF INDIANS
 BY ARVID E. MILLER AND FRED L.
 ROBINSON,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 300-A

Decided: February 24, 1978

ADDITIONAL FINDINGS OF FACT

On April 28, 1971, 25 Ind. Cl. Comm. 281, the Commission entered its opinion, findings of fact and order, wherein it was determined that the Stockbridge Tribe of Indians had a compensable property interest in the lands the tribe sold to the State of New York under fifteen separate transactions during the years 1818 to 1847 and that the defendant would be liable under the Indian Claims Commission Act and the Trade and Intercourse Act if the Stockbridge Tribe of Indians did not receive conscionable consideration for its lands.

Subsequently, in the case of Oneida Nation v. United States, Docket No. 301, 26 Ind. Cl. Comm. 138 (1971), the Commission reached the same conclusions in a similar case. The Oneida case was appealed. The Commission then entered an order in the instant case on February 16, 1972, suspending proceedings herein pending the disposition of the appeal in the

Oneida case. Later the Court of Claims remanded the Oneida case, holding that with respect to each individual land transaction a fiduciary relationship existed only if the federal Government had either actual or constructive knowledge of that particular transaction. On remand the Oneida case was tried together with the instant case on May 6 and 7, 1974, with respect to the issue of actual or constructive knowledge of each individual transaction between each of the tribes and New York State.

The Commission now makes the following findings of fact which are supplemental to the findings of fact, numbered 1 through 7, previously entered herein on April 28, 1971, 25 Ind. Cl. Comm. 281, 293.

8. How the Stockbridges Acquired Lands in New York State. On September 22, 1788, the State of New York and the Oneida Nation entered into a treaty at Fort Schuyler. Under that treaty the Oneidas ceded certain of their lands to New York and certain other of their lands were reserved for their use. A tract six miles square and located within the boundaries of the lands so reserved was set aside for the Stockbridges in Madison and Oneida Counties, New York. In 1813, the New York State Legislature enacted a law which officially named the Stockbridges' tract "New Stockbridge," and declared that the tract "be and remain to the said Stockbridge Indians and their posterity forever, but without any power of alienation, or right of leasing or disposing of the same, or any part thereof."

9. How the State of New York Subsequently Acquired the Stockbridges' Lands.

In a series of fifteen treaties, the first dated July 14, 1818, and the last September 24, 1847, the Stockbridge Indians ceded piecemeal to

the State of New York their interests in New Stockbridge. The details of the acquisition and subsequent cession by the Stockbridges of these lands are set forth in findings of fact Nos. 3 and 5 of the Commission's previous decision in this docket, 25 Ind. Cl. Comm., at 293, 295-99, supra.

10. Relationship of the Stockbridges to the Six Nations.

From the late 1780's on the Stockbridge Tribe was treated by the United States as a tribe of the Six Nations Confederacy. Certain treaties reflected this fact. By the Agreement of April 23, 1792, 2 Kapp. 1027, the United States agreed to expend \$1,500 annually for the benefit of the Senecas, Oneidas, Stockbridges, Tuscaroras, Cayugas and Onondagas. By the Treaty of December 2, 1794, 7 Stat. 47, the United States acknowledged that the Oneida, Tuscarora and Stockbridge Indians had adhered faithfully to the United States during the war with Great Britain, and agreed to pay \$5,000 to compensate these tribes for losses sustained during the war.

The Treaty of November 11, 1794, 7 Stat. 44, between the United States and the Six Nations, related to the lands of the Stockbridges. Article II of that treaty stated:

The United States acknowledge the lands reserved to the Oneida, and Cayuga Nations, in their respective treaties with the state of New-York, and called their reservations, to be their property; and the United States will never claim the same, nor disturb them or either of the Six Nations, nor their Indian friends residing thereon and united with them, in the free use and enjoyment thereof; but the said reservations shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase. (7 Stat. 45.)

The Stockbridges being "Indian friends" of the Oneidas, residing within the boundaries of the reservation created by the Treaty of September 22, 1788, with New York, Article II pledged the United States never to disturb them in their free use and enjoyment of New Stockbridge.

When, in 1803, Secretary of War Henry Dearborn commissioned Jasper Parrish as a sub-agent of the United States to the Six Nations, Parrish was instructed to spend at least three months of the year with the Oneidas, Cayugas, Stockbridges, Onondagas and those tribes living along the Genessee River. All of these tribes were considered a unit by the Federal Government.

11. Early Knowledge by United States of Six Nations' Land Cessions to New York State.

On May 22, 1795, Israel Chapin, Jr., then United States Indian Agent to the Six Nations, advised Secretary of War Timothy Pickering that treaty commissioners of New York State were planning to call a treaty council for the purpose of purchasing Oneida, Onondaga and Cayuga lands. On June 29, 1795, Pickering advised Chapin that the proposed treaty would be in violation of federal law and that Chapin was to ". . . give no aid or countenance to the measure" On July 3, 1795, Pickering wrote to Chapin of his displeasure that Jasper Parrish, a federal employee, acting without Pickering's authorization, had invited the Onondagas and Cayugas to participate in the treaty talks. He repeated his instructions that ". . . 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."

Chapin advised Pickering on July 31, 1795, that he had met with the New York commissioners, explained to them the Trade and Intercourse Act and questioned their right to treat with the Indians. Pickering, on August 26, 1795, answered that the New York commissioners were in violation of federal law and he instructed Chapin to inform the Oneidas that any treaty

they made under such circumstances would be invalid. However, Pickering's final advice was as follows:

But having done this much, the business might there be left. The negotiation with the Oneida is probably finished ere now: if not, you may content yourself with giving the Oneida the information above proposed, & there to leave the matter.

12. Appointment of Jasper Parrish as Federal Indian Agent to Six Nations.

On February 15, 1803, Henry Dearborn, Secretary of War, wrote Jasper Parrish, commissioning him a sub-agent of the United States to the Six Nations, under the general superintendence of federal agent Callender Irvine. Dearborn instructed Parrish that:

. . . Of your proceedings while among the Indians you will keep a correct journal noting and remarking such circumstances as in your judgment are important to the United States, a copy of which you will forward to this office and a duplicate to Mr. Irvine, at least once a year.

* * *

You will be careful and vigilant in reporting every circumstance and event which may occur that is important to the government of the United States to be acquainted with.

Parrish served in this post until, on May 8, 1818, he was appointed Subagent-in-charge of the New York Tribes. In this capacity his supervision was expanded but continued to include the Six Nations. He served in the latter post until 1829.

13. Federal Knowledge of Payment by New York of Annuities to Tribes of the Six Nations.

As early as 1804, federal Indian agents were aware of and participated in payments of annuities by New York State to tribes of the Six Nations. On October 15, 1804, Parrish advised Secretary of War Dearborn of certain annuities due the Indians from the State of New York for the purchase of certain of their lands and asked Dearborn for authority to handle disbursement of these annuities.

In 1807 Parrish served as an interpreter during treaty talks between the Cayugas and New York State in connection with which the State purchased Cayuga lands.

On January 15, 1808, Indian Agent Erastus Granger proposed to New York Governor Daniel D. Tompkins (who later served as Vice President of the United States from 1817 to 1825) that federal agents disburse state annuities to the Oneidas, Onondagas and Cayugas. Granger offered to have Sub-agent Parrish receive the annuities in Albany and pay the Indians because Parrish had ". . . often to visit the different tribes. . . ." Parrish was to receive \$350 per year for his services in handling the annuity payments, in contrast to the \$500 it cost the State annually to handle the payments. Each spring from 1808 through 1816, New York State Indian Agent Isaac Denniston traveled to Canandaigua and paid to Jasper Parrish the State annuities due the Cayugas and Onondagas and (in 1816) the Senecas for transmittal by Parrish to these tribes.

14. Federal Knowledge of and Participation in Removal Policy.

On December 21, 1808, federal Indian Agent Granger wrote to Secretary of War Dearborn first suggesting that it would be in the Indians' best interests to remove west of the Mississippi River. Granger expressed confidence in his ability to persuade the Indians to move. In a letter dated April 20, 1811, Parrish wrote to New York Governor Tompkins that he would solicit the Senecas to sell some of their lands to New York.

In 1815, leaders of the Six Nations addressed a memorial to President James Madison asking if the federal Government would approve their removal to the West, acknowledge Indian title to any western lands to which they might move and continue annuity payments and other benefits. On January 22, 1816, Secretary of War William Crawford wrote to New York Governor Tompkins on this subject in part as follows:

Your letter and the memorial of the sachems of the six nations of Indians, communicating the desire of the latter to sell the reservations of lands upon which they at present reside in the state of New York, and to remove and settle upon lands in, or west of the state of Ohio, have been regularly received and submitted to the consideration of the President.

The letter further indicates awareness by the federal Government that New York State favored removal. On February 12, 1816, Crawford wrote the Six Nations expressing approval of westward removal, guaranteeing title to any new lands acquired and promising continuation of annuities and benefits.

On February 1818, David Ogden (a prominent New Yorker whose Ogden Land Company was constantly encouraging Indian removal and white settlement

in New York) outlined to President James Monroe, at the latter's request, the history of removal efforts to that time. In that report Ogden informed the President that the Six Nations were receiving approximately \$16,000 per year in annuities from New York State and unidentified individuals. In August of 1818, Secretary of War Calhoun wrote to Ogden regretting that the Six Nations were hesitating to remove from New York. He stated in that letter that the policy of the United States was ". . . to induce as many of the tribes of Indians as may be disposed to change their residence, to emigrate to the west of the Mississippi."

In September of 1818, a general council of the Six Nations decided to remain for the present on their reservations, as Jasper Parrish informed Secretary Calhoun on September 23, 1818. In November of the same year, the Oneidas wrote a memorial to President Monroe explaining their position, in pertinent part, as follows:

. . . after the peace your petitioners settled in tranquility under the government & protection of the United States - on the lands reserved by them in the State of New York - where your petitioners have contentedly resided until within a few years past - during which latter time much pains has [sic] been taken by sundry individuals to poison the minds of your children, and to make them discontented with their present residence and desirous of removal to the lands of their brethren [sic] in the west - that under the influence of their insinuations this nation in conjunction with the other nations of the confederacy did sign a memorial to you our great father praying the sanction of government to any donation of land our brethren [sic] of the west might make to us - but your petitioners assented to the said memorial, not intending or understanding that they had in any way committed themselves as to the time they might elect to remove to the west - for your petitioners considered the western lands more as a retreat for their children than as a present residence for themselves.

. . . Your petitioners have sold to the State of New York a great proportion of their reservation

. . . We are given to understand (we believe untruly) that the government of the United States has determined on our removal from our present abodes whether we are willing or not -

Now therefore great & much respected father we your humble & dependent children intreat that you will not permit any steps to be taken for our immediate removal without our full and explicit assent to that effect. And also that no person be importuning us on that subject -

15. Renewed Efforts at Removal, Government Knowledge and Participation.

In December 1819, Secretary of War Calhoun was informed by David A. Ogden that Jedidiah Morse, a well-known minister and geographer, was advocating a policy of improving the civilization of the Six Nations by removing them to the west. Ogden wrote Calhoun that;

It is his [Morse's] intention to be at the Meeting of [the New York State] Legislature early the next month to obtain a Law authorizing the Executive of this State, to co-operate with that of the United States, in adopting such measures as may promote his Benevolent views; he then proposes visiting Washington to develope [sic] his plan and to solicit the aid & patronage of the General Government.

Morse did go to Washington in February in 1820 and discussed his plans with both Calhoun and President James Monroe. He was subsequently commissioned by the Secretary of War to visit various tribes in the Michigan Territory, to report on conditions among them and to recommend measures for their civilization and improvement. Among the purposes for which Morse made this trip was to explore the possibility of securing lands in the Michigan Territory to which the Six Nations might remove.

In January of 1820, Eleazer Williams, a St. Regis religious teacher of mixed ancestry who lived with the Oneidas and Stockbridges, went to Washington as representative of the Six Nations council to discuss removal with representatives of the War Department. Williams was authorized and was provided with funds by the War Department to assemble a delegation of Six Nations Indians:

to explore certain parts of the North Western territory, and to make arrangements with the Indians residing there, for a portion of their Country to be hereafter inhabited by such of the Six Nations as may choose to emigrate thither.

This trip, which Secretary of War Calhoun informed Governor Lewis Cass of the Michigan Territory was made with the approbation of President Monroe, also took place during the summer of 1820. Williams' party, however, went only as far as Detroit on their way to Green Bay, Wisconsin. At Detroit they learned that the lands near Green Bay which they desired to inspect had recently been ceded to the United States by the Menominee Indians. This treaty, however, was never sent to the Senate for ratification because, according to Secretary Calhoun, it was made by the United States Agent at Green Bay without proper authority.

In April of 1821, Calhoun wrote to the Six Nations explaining to them that the treaty was a nullity and expressing his pleasure that the Six Nations' representatives intended to revisit the area of Green Bay during the summer of 1821. He indicated that they would be given ". . . the civilities of the officers of Government and the necessary supplies on

your journey . . ." but that the Government could not grant them any funds.

Shortly before he communicated with the Six Nations, Secretary Calhoun had written as follows to Governor Cass:

The President did not think it necessary to lay the treaty made by Col. Bowyer with the Menomeenee Indians before the Senate, which leaves the country ceded by the treaty precisely in the same situation it was before it was made. It is proper that this should be early communicated to the Indians concerned, as the Stockbridge Indians, who now reside in New York, contemplate emigrating to the neighborhood of Green Bay, and with that view intend to send, in the course of the Spring or Summer, a deputation to explore the country and make such arrangements with the Indians claiming it as may be necessary.

16. Communications between the Stockbridges and the United States.

On June 9, 1821, the Stockbridge Chief, Solomon Hendricks, wrote to Secretary Calhoun, in pertinent part, as follows:

I have been requested by my Chiefs and Headmen to write few lines unto you, and to inform you that my Nation have agreed to send at least four of our men to go to Green Bay before this month will be expired with a view (if possible) to procure or obtain another fine place in that country for our nation,

We were informed at Albany that the Legislature of this State had passed a law, granting our Nation One Thousand dollars of the principal of the money remaining there belonging to us by reason of lands sold to the State few years ago. As we had petitioned to the Legislature for this money to defray the expenses of our said delegates to Green Bay. . . .

I have lately recd. the copy of the act passed by the Legislature last Spring relative to the \$1,000 [sic], wherein we were extremely disappointed to find it had passed in such a manner that we cannot obtain any part of it for this expedition unless our whole tribe were actually to remove.

It would be ridiculous in the highest degree for our Nation to emigrate to other country before we obtained a place to remove to, which is not the case at present.

17. Acquisition by Six Nations of Wisconsin Lands. On October 22, 1821, Governor Cass wrote Secretary of War Calhoun advising him that the Wisconsin tribes at Green Bay and the Williams mission had agreed upon a cession of lands to the Six Nations and that the Six Nations would gradually remove to Green Bay. Calhoun wrote Cass on November 22, 1821, that this treaty between the Wisconsin tribes and the Six Nations had been approved by the President. On the same date, Calhoun wrote to Stockbridge Chief Solomon Hendricks congratulating Hendricks on his services in concluding a treaty with the Wisconsin tribes and informing Hendricks that the President had ratified the treaty.

Dissatisfaction arose among the Six Nations regarding the size of the cession necessitating a third expedition to Green Bay in December, 1822, led by Williams. A new treaty was negotiated but the extent of lands ceded thereunder was not resolved until late in 1823 when President Monroe agreed to ratify the treaty.

18. Further Statement of Federal Policy on Removal. On January 24, 1825, Calhoun wrote Monroe advocating the removal of the eastern tribes to the West. Three days later, in a message from Monroe to the Congress, the President advised Congress that he advocated removal.

19. Federal Government Informed of Progress of Stockbridges' Removal to Green Bay.

On February 11, 1825, Stockbridge Chief Solomon Hendricks informed Secretary of War Calhoun that some members of the Stockbridge Tribe had

already emigrated to Green Bay and that more were expected to emigrate over the remainder of 1825 and early 1826. Hendricks went on to state as follows:

I have been appointed by the nation (with several others) to present a petition to the Legislature of this state from our Tribe praying the Legislature to afford the full value of the lands we claim in this State, whenever we are ready to emigrate to Green Bay, as the State has heretofore allowed us only two dollars per acre for our said lands; a bill to that effect is now before the house, and I have not the least doubt will ultimately pass.

20. Actual Removal of the Stockbridges. The actual removal of the Stockbridges to Wisconsin took place over several years after 1823. Hendricks' letter of February 11, 1825, finding of fact No. 19, supra, indicates that in February of 1825 some Stockbridges were already living in Wisconsin. On November 21, 1825, the Stockbridges advised Governor Cass that they were dissolving their tribal authority in New York and reestablishing it at Green Bay.

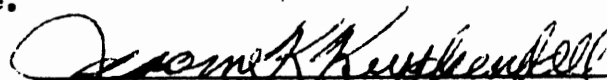
Commissioner of Indian Affairs McKenney informed Congress on January 25, 1827, that the War Department had knowledge that Stockbridge tribal authority had been established at Green Bay. On February 7, 1827, Secretary of War Barbour wrote New York Governor DeWitt Clinton advising him of the difficulty of paying Stockbridge annuities as most of them had moved to Green Bay. On October 16, 1827, Secretary Barbour was informed by Robert Troup of the Ogden Land Company that the Oneida, Stockbridge and St. Regis Indians had sold a large part of their respective tribal lands to New York and that the Stockbridges had moved en masse to Green Bay.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact and all the evidence of record, the Commission concludes as a matter of law that:

1. The United States is chargeable with constructive knowledge of each of the fifteen treaties entered into between 1818 and 1847 by the Stockbridge Indians and the State of New York.

2. The defendant will be liable under the Indian Claims Commission Act and the Trade and Intercourse Act if the Stockbridge Indians did not receive conscionable consideration under any of said fifteen treaties for its lands ceded to New York State.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner