BEFORE THE INDIAN CLAIMS COMMISSION

BAY MILLS INDIAN COMMUNITY, SAULT STE. MARIE, ARTHUR LAWRENCE LABLANC, DANIEL EDWARDS AND JOHN L. BOUCHER, AND OTTAWA AND CHIPPEWA INDIANS OF MICHIGAN, ET AL.,	)	
Plaintiffs,	)	
v.	)	Docket Nos. 18-E and 58
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

Decided: December 29, 1971

Appearances:
Rodney J. Edwards, Attorney for
Docket 18-E Plaintiffs,
James R. Fitzharris, Attorney for
Docket 58 Plaintiffs

David M. Marshall, with whom was
Mr. Assistant Attorney General
Shiro Kashiwa, Attorneys for
Defendant.

OPINION OF THE COMMISSION

Kuykendall, Chairman, delivered the opinion of the Commission.

In the title phase of these consolidated cases, the Commission determined that the plaintiffs had aboriginal title to 12,044,934 acres located within Royce Area 205 in the northern peninsula of Michigan (7 Ind. Cl. Comm. 576 (1959)). Subsequently it was determined that these lands, ceded to the United States under the Treaty of March 28, 1836 (7 Stat. 491), had a value of $10,800,000. (20 Ind. Cl. Comm. 137 (1968)).

The Commission, on January 14, 1970, deducted 1,863 allotments aggregating 121,450.75 acres (22 Ind. Cl. Comm. 372 (1970)) resulting in a net acreage of 11,923,483.25 with a value of $10,690,694.33.

On October 28, 1970, this Commission reassessed its findings made in 7 Ind. Cl. Comm. 576 (1959), specifically modifying Findings of Fact No. 24 and 25 (24 Ind. Cl. Comm. 50, 54-55 (1970)), and found that the plaintiffs held recognized title to Royce Area 113 (1,395 acres) and sub-areas "U" and "S" of Royce Area 205 (1,209,600 acres). Since these areas were not included in the land described in the treaty, and therefore have not been valued previously, we will determine the value of these areas in this proceeding.

VALUE

The Commission, upon examination of the record, has concluded that sub-areas "U" and "S" of Royce Area 205 (which were ceded under the Treaty of March 28, 1836) have an average fair market value of $0.90 an acre, making a total value of $1,088,640. We note that both parties approve of this valuation.

The parties have also requested that the evaluation of Royce Area 113 be incorporated in the determination of defendant's liability under the Treaty of March 28, 1836. Royce Area 113 was ceded by the plaintiffs under the Treaty of July 6, 1820 (7 Stat. 207), and this area lies within the boundaries of Royce Area 205. The Treaty of July 6, 1820, was not proclaimed until March 8, 1821, and this Commission has held the latter date to be the date of valuation for Royce Area 113. (24 Ind. Cl. Comm. 50, 52 (1970)).

Plaintiffs contend that, since Royce Area 113 is contiguous to the

lands within Royce Area 205,which the Commission found to be worth $0.90 per acre, Royce Area 113 should also be assigned a value of $0.90 an acre. The difficulty in plaintiffs' position is that Royce Area 113 was ceded in 1821 and Royce Area 205 was ceded in 1836, sixteen years later. Economic conditions both in the Michigan Territory and the United States were generally less favorable in 1821 than 1836. Plaintiffs, however, justify the $0.90 per acre evaluation on the basis that Royce Area 113 contains valuable timber and gypsum. The record shows that in 1848 the timber consisted of mediocre pine and swamp conifers mixed with hardwood, and that the timber had no commercial value until many years after 1821. (See Def. Ex. 251-V pp. 437-43). The Government purchased this land, not for its timber value, but for the gypsum which was used in the manufacture of plaster of paris. A civilian company that was interested in purchasing the gypsum was instrumental in having Indian title extinguished. (7 Ind. Cl. Comm. 576, 593 (1959)). There was a viable market for gypsum at the time of the 1821 Treaty. After consideration of the entire record we conclude that Royce Area 113 had a fair market value in 1821 of $1,116,00, or $0.80 per acre.

The last tracts to be evaluated are the reservations which were provided for in the amendments to the "Second" and "Third" articles of the 1836 Treaty and which comprised 401,971 acres. Originally, the parties intended that these lands would be set up as permanent reservations for the exclusive use of the Ottawa and Chippewa Indians. Prior to approval of the 1836 Treaty, these articles were amended by the Senate whereby

the duration of these reservations was limited to a period of five years from the ratification of the treaty or to any longer period which might be permitted by the United States. As consideration for these cessions (changing permanent reservations to reservations of limited duration), the "Fourth" article of the 1836 Treaty stipulated that the Indians would receive the principal sum of $200,000 to be held in trust by the United States, and the defendant would pay interest thereon until the reservations were actually surrendered. At that time the principal amount would be paid over to the Indians.

Interest was paid annually to the Chippewa and Ottawa Tribes from 1836 through 1856, a period of 20 years. In all, the plaintiffs received $240,000 in interest payments ($12,000, or 6% annually, for 20 years).

The 401,971 acres of reservation lands should be valued as of the effective date of the 1836 Treaty, and since they were contiguous to plaintiffs' lands within Royce Area 205, we see no reason why they should not be valued at $0.90 per acre, or a total of $361,773.90.

The overall evaluation of the subject lands under the treaties of March 28, 1836 and July 6, 1820 is as follows:

1.	11,923,483.25 acres (22 Ind. Cl. Comm. 272 (1970))	=	$10,690,694.33
2.	401,971 acres (reservation lands)	=	361,773.90
3.	1,209,600 acres (sub-areas "U" & "S"	=	1,088,640.00
4.	1,395 acres (Royce Area 113)	=	1,116.00
	13,536,449.25 acres		$12,142,224.23 value

CONSIDERATION

I. The Treaty of March 28, 1836, provided for total payments of $1,653,334.46, plus 6% interest on $200,000, by defendant. The total payments made by the defendant to the plaintiffs amounted to $1,821,628.06.[1/] The Commission's evaluation of the 1836 cession ($12,141,108.23) is over seven times the amount that was due under the 1836 Treaty. Therefore, we find that the consideration provided for the plaintiffs in the 1836 Treaty was unconscionable.

We will now address ourselves to the expenditures which are a subject of dispute. The first item involves the $240,000 in interest payments the plaintiffs received pursuant to the "Fourth" article of the 1836 Treaty. As we noted earlier, the Indians had agreed under the 1836 Treaty to change their permanent reservations to ones of limited duration, and the United States agreed to pay the Indians $200,000 "....whenever their reservations shall be surrendered, and until that time the interest on said two hundred thousand dollars shall be annually paid to the said Indians."[2/] The plaintiffs contend that the interest paid annually by the defendant under this provision cannot be deemed to be consideration since they were the beneficial owners of the principal sum of $200,000 from which the interest was theoretically derived. Therefore, the plaintiffs argue that they are entitled to the interest free of any contention that the amounts so paid are any part of

1/ This figure excludes the $191,243.48 in annuities that were paid to the Grand River Ottawas from the total treaty consideration since the Grand River Ottawas are not parties in either Docket numbers 18-E or 58.

2/ 7 Stat. 491.

the consideration for the treaty. The defendant would have us credit the United States with both the principal and interest, or $440,000, as consideration for the treaty.

Plaintiff's theory of the case would result in a double payment. It disregards the fact that during all the time the interest was being paid the plaintiffs had the possession and use of the reservations. The plaintiffs suffered no detriment until they lost possession of these reserves, and at that time they obtained possession of the principal sum of $200,000 and had already received $240,000 in interest. Plaintiffs' contention on this point must be overruled.

The second disputed item is defendant's claimed expenditure of $21,000 for "annuity goods" under the "Fourth" article of the 1836 Treaty. The Commission finds no language in said article that would account for a $21,000 payment to the Indians as due and owing under the 1836 Treaty. Therefore, this alleged expenditure does not qualify as a payment made under the 1836 Treaty. We will, however, deal with this payment in our discussion of gratuitous offsets.

The defendant also claims additional expenditures under the "Fourth" article of the 1836 Treaty for education in the amount of $140,858.83. Plaintiffs contend that the 1836 Treaty provides for a maximum of $100,000 ($5,000 annually for 20 years) and the difference should not be allowed as consideration. Plaintiffs have ignored the fact that the section provides, not only for payment of five thousand dollars per annum for twenty years, but also "....as long thereafter as Congress may appropriate for the object." (Emphasis supplied) Congress appropriated and the

defendant paid the stipulated sum for more than twenty years as authorized by the treaty. Therefore all sums paid pursuant to this provision represent consideration for the treaty.

Under the "Fifth" and "Sixth" articles of the 1836 Treaty defendant claims expenditures in the amount of $4,975.65 for investigation of debt claims and half-breed reservation claims. We find no provision in either of these articles for this type of expense. Because of the absence of evidence to substantiate this claim, it must be disallowed. We will, however, consider this item as a possible gratuitous offset.

There remains the question of whether the Treaty of July 31, 1855 (11 Stat. 621), was for the most part additional consideration for the cessions made by the plaintiffs in the Treaty of March 28, 1836.

During the period from 1785 to 1871, the United States entered into forty-four treaties with the Ottawa and Chippewa Indians of which thirty-three treaties were concluded prior to the Treaty of July 31, 1855. By the language of Article 3 of the 1855 Treaty, the United States was released and discharged from all liability on account of the thirty-three former treaty stipulations including the Treaty of

June 16, 1820.[3/] This release and satisfaction of all claims was a new consideration bargained for by the defendant in an effort to immunize itself from future claims and suits. The Court of Claims in Ottawa and Chippewa Indians v. United States, 42 Ct. Cl. 240 (1907), considered the relationship of the 1836 and 1855 Treaties in regard to a trust fund established prior to the 1855 Treaty as a part of the cash consideration for the Treaty of 1836. The court did not accept the Government's interpretation of Article 3 of the 1855 Treaty and stated at page 248:

> . . . It is possible that the parties to the treaty meant as contended for by the Government, but in the language which was used they did not say so . . . .

The 1855 Treaty was not additional consideration for the cessions made pursuant to the 1836 Treaty, but was new consideration for the discharge from all liability of former treaty stipulations which defendant was legally responsible to perform.

II. The Commission, in the instant case, has determined that Royce Area 113 (ceded under the Treaty of July 6, 1820) had a fair market value of $1,116.00 or $0.80 per acre in 1821. Defendant has disbursed

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3/ The text of the 3d Article of the 1855 Treaty reads:

Article 3. The Ottawa and Chippewa Indians hereby release and discharge the United States from all liability on account of former treaty stipulations, it being distinctly understood and agreed that the grants and payments hereinbefore provided for are in lieu and satisfaction of all claims, legal and equitable on the part of the said Indians jointly and severally against the United States, for land, money or other thing guaranteed to said tribes or either of them by the stipulations of any former treaty or treaties; excepting, however the right of fishing or encampment secured to the Chippewas of Sault Ste. Marie by the Treaty of June 16, 1820.

$599.46 in payment for Royce Area 113 (See Def. Ex. 251-V, pp. 431-43). We find this consideration to be unconscionable.

The defendant's expenditures as consideration under the Treaty of March 28, 1836, and July 6, 1820, total $1,822,227.52. Subtracting the consideration paid ($1,822,227.52) from the total valuation ($12,142,224.23), the plaintiffs are entitled to a judgment of $10,319,996.71 less any allowable gratuitous offsets. 4/ We now turn to offset expenditures claimed by defendant under the Treaty of March 28, 1836.

OFFSETS

Defendant claims gratuitous offsets in the sum of $37,170.73 against any award made herein. Additionally, the Commission will consider payments in the amount of $25,975.65 which were disallowed as treaty consideration expenditures but are possible gratuitous offsets. In Red Lake, Pembina and White Earth Bands, v. United States, Dockets 18-A, et al., 9 Ind. Cl. Comm. 457, 517, 519 (1961), aff'd 164 Ct. Cl. 384 (1964), and in Suquamish Tribe of Indians v. United States, Docket 132, 24 Ind. Cl. Comm. 35, 36 (1970), this Commission developed certain criteria for determining whether a given gratuity is for the benefit of the tribe or for individual members thereof. Among other things the amount and character of the offset in light of the tribal population among whom the expenditures were disbursed and the period of time over

4/ One small drafting error on the part of the defendant should be corrected to compute the exact consideration of the Treaty of March 28, 1836. Defendant claims, under Article 7 of the Treaty, expenditures totalling $142,005.91 for blacksmith shop, supplies, dormitories, salaries, equipment, etc. The actual amount is $143,005.91 (See Def. Ex. 152-V, pp. 25-26.)

which the disbursements were made were considered.

Precise statistics of tribal population are unavailable and unascertainable in many instances. Representative figures show, however, that the Chippewas and Ottawas totalled approximatly 6,500 members or about 61% of the Mackinac Agency, during the years from 1874 to 1877. (See Def. Ex. 0-1, Sec. 5, p. 201) Disbursements were made by the defendant during the years 1836 to 1884, and from 1939 to 1943. It is only reasonable to conclude that the claimed subsistance expenditures for provisions, clothing, transportation, feed, care and purchase of livestock, hardware and accessories, agricultural aid and implements totalling $4,324.00 should be disallowed for the reason that they were miscellaneous small payments made over a long period of time and constituted a benefit to individuals rather than to the tribe. We so hold.

Defendant's claimed expenditures for presents to the Indians ($1,369.00) are also disallowed as they constitute individual benefits rather than tribal benefits. Disbursements made by defendant for expenses of Indian delegations ($636.05) are also disallowed because the record does not disclose whether the Indian delegations were sent at the request of the United States or on the volition of the Indians.

Defendant claims an expenditure of $10,092.00 in excess of the amount required under the "Ninth" article of the Treaty of 1836 as payments to half-breeds in lieu of reservations. These payments are denied because they benefitted individuals and not the tribe.

During the period from 1938 to 1942 defendant expended $19,749.68 under the Experimental Land Acquisition Project, to acquire title to

land in Chippewa County, Michigan. This acquisition was for the sole benefit of the Bay Mills Indian Community, and the expense thereof will be allowed as a gratuitous offset.

Two additional "excess" payments under the Treaty of March 28, 1836, should be considered. One of these is the expenditure of $21,000 under the "Fourth" article entitled "Annuity goods." There is no provision under this article calling for the payment of $21,000 for "Annuity goods."

This payment was allegedly made in 1837, but there is no record of this single $21,000 expenditure in defendant's disbursement schedule. Additionally there are no notations, as there are in other instances, showing which tribes received the goods and in what proportions. Therefore this amount will not be allowed as a gratuitous offset.

Lastly, defendant claims, under the "Fifth" and "Sixth" articles of the 1836 Treaty, expenditures in the amount of $4,975.65 for investigation of debt claims and half breed reservation claims. We find no provision in either of these articles for this type of expense and it is unclear from the record what sums of monies were being allocated for which investigation. Because of the absence of evidence to substantiate this claim, it must be disallowed.

Therefore, the Commission will allow gratuitous offsets against the award herein in the amount of $19,749.68.

CONCLUSION

Accordingly, the plaintiffs are entitled to recover on behalf of the respective entities entitled thereto a final award in the sum of $10,300,247.03.

Jerome K. Kuykendall, Chairman

Concurring:

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner

BEFORE THE INDIAN CLAIMS COMMISSION

BAY MILLS INDIAN COMMUNITY, SAULT STE. MARIE, ARTHUR LAWRENCE LABLANC, DANIEL EDWARDS AND JOHN L. BOUCHER, AND OTTAWA AND CHIPPEWA INDIANS OF MICHIGAN, ET AL.,	)	
Plaintiffs,	)	Docket Nos. 18-E and 58
v.	)	
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

Decided:

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplementary to those numbered 1 through 26 (7 Ind. Cl. Comm. 576), 27 through 50 (20 Ind. Cl. Comm. 137), and 51 through 53 (22 Ind. Cl. Comm. 372) heretofore entered in this case.

54. On October 28, 1970, the Commission, at 24 Ind. Cl. Comm. 50, 54-55, entered an "Order Amending Findings of Fact of May 20, 1959". The Commission found that the plaintiffs held recognized title to sub-areas "U" and "S" comprising 1,209,600 acres which were not included in the Commission's original determination of the overall acreage of Royce Area 205 that was ceded under the Treaty of March 28, 1836 (7 Stat. 491). These areas which should have been included in the overall area previously valued by the Commission are found to have a

value of $1,088,640 or $0.90 per acre, as of the effective date of the 1836 Treaty.

55. Also excluded from the Commission's original determination of overall acreage in Royce Area 205 is Royce 113, which contains 1,395 acres and was ceded by the plaintiffs under the Treaty of July 6, 1820 (7 Stat. 207). The valuation date is March 8, 1821, when the treaty was formally proclaimed. The area's true commercial value was in its gypsum deposits. Timber found upon the land had a nominal value, but would no doubt become more valuable at a future time. The acquisition of gypsum to manufacture plaster of paris was of prime interest to the defendant, and unlike timber, a viable market for gypsum did exist at the time of the treaty. For these reasons, the Commission finds that, in 1821, Royce Area 113 had a fair market value of $1,116.00, or $0.80 per acre. The defendant paid $599.46 for this land. We find that the disparity between the value of the land and the consideration paid is unconscionable.

56. Under the Treaty of 1836, plaintiffs reserved two tracts for their own use, to be held as their reservations for a period of five years or possibly longer at the discretion of the defendant. These areas were almost adjacent to each other, one being in the upper peninsula and the other in the lower peninsula of Michigan. They were separated by the Straits of Mackinac. The defendant agreed to pay to plaintiffs two hundred thousand dollars in consideration of the plaintiffs changing these reservations from permanent ones to reservations for five years only, said amount to be paid whenever the reservations were surrendered.

Until that time 6% interest on the two hundred thousand dollars was to be paid annually to the Indians. These lands were finally relinquished to the United States in 1875.

The northernmost tract contained 259,971 acres and the other contained 142,000 acres. All of this land is within Royce Area 205 and has the same general characteristics and qualities as the other land in Royce Area 205.

This Commission has placed a value on most of the land within Royce Area 205. See 20 Ind. Cl. Comm. 137,138,139 (1968). While rejecting the ultimate conclusions of both plaintiffs' and defendant's expert appraisals, the Commission found the average value of lands located in both the Upper and Lower Peninsulas to be $0.90 an acre. Since the reservation lands are contiguous and homogeneous to the lands valued by the Commission in that opinion, the Commission finds that the 401,971 acres of reservation land had a fair market value of $361,773.90, or $0.90 per acre, as of the effective date of the 1836 Treaty.

57. The total consideration that was promised or owed by the defendant and the total consideration that was paid by the defendant under the Treaty of March 28, 1836, are as follows:

Article	Total Promised	Total Paid
Fourth		
Annuity-cash	$388,756.52	$388,756.52
Treaty Amendment	200,000.00, plus 6% interest annually	440,000.00
Annuity - $1,000/20 yrs.	20,000.00	20,000.00
Education	140,858.43	140,858.43
Missions	3,000.00	-

Article	Total Promised	Total Paid
Fourth (Cont'd)		
Agri. Implements	10,000.00	8,797.00
Medicine	5,390.70	5,390.70
Pro./Salt, Tobbaco, etc.	63,674.90	63,674.90
Provisions	150,000.00	139,300.00
Fifth		
Debt claims	300,000.00	244,934.23
Sixth		
Payment to half-breeds	150,000.00	148,262.37
Seventh		
Blacksmiths, shops, salaries	143,005.91	143,005.91
Ninth		
Payment to half-breeds in lieu of reservations	48,148.00	48,148.00
Tenth		
Payment to chiefs	30,000.00	30,000.00
Eleventh		
Payment to chiefs	500.00	500.00
	$1,653,334.46, plus 6% interest on $200,000	$1,821,628.06

Comparing the above figure of what was owed under the 1836 Treaty ($1,653,334.46) to the fair market value of the ceded lands ($12,141,108.23), the Commission finds that the consideration was unconscionable.

58. Article 3 of the Treaty of July 31, 1855 (11 Stat. 621), was an accord and satisfaction of the liabilities of and claims against the United States under the stipulations of all former treaties (except the

Treaty of June 16, 1820, providing for fishing rights). In the years from 1785, when the first treaty was made with the plaintiffs, until the Act of March 3, 1871 (16 Stat. 556), when the United States abandoned the policy of making treaties with the Indian tribes, the United States entered into forty-four treaties with the plaintiffs, of which thirty-three were concluded prior to the Treaty of July 13, 1855. The defendant's obligations under these thirty-three treaties were not exclusively and strictly legal obligations but involved other matters such as protection of the Indians' life and property, protection of the Indians' hunting and fishing rights and recognition of their boundary lines. These and other future obligations were the liabilities from which the United States sought to be released. Therefore the provisions made for the plaintiffs under the Treaty of July 31, 1855, do not constitute either new or additional consideration for the land cessions made pursuant to the Treaty of March 28, 1836.

59. Following the fiscal year 1836, the defendant claims gratuitous expenditures in the sum of $37,170.73 for aid, services, implements, supplies, equipment, provisions, presents payments to halfbreeds, and land for the benefit of the plaintiffs. These expenditures are itemized as follows:

Presents to Indians	$ 1,369.00
Expenses of Indian delegations	636.05
Provisions	2,870.79
Clothing	345.92
Transportation of clothing	9.27
Purchase of livestock	614.14

Feed and care of livestock	22.50
Hardware, glass, oils, and paint	58.76
Agricultural aid -- seeds, fruit trees, and fertilizer	231.78
Agricultural implements and equipment	942.26
Transportation of agricultural implements and equipment	228.58
Purchase of land	19,749.68
Payments to halfbreeds in lieu of reservations (1836 Treaty excess, Def. Ex. 152-V, pp. 49, 127)	10,092.00
Total	$37,170.73

60. After an examination of each of the items included in the above list, the Commission makes the following specific findings respecting gratuitous offsets based upon the General Accounting Office report and vouchers submitted by defendant.

a. $1,369.00 - Presents to Indians

Expenditures of $1,369.00 for presents to the Indians were made over a thirty-one year period (1836-1867), and ranged in any given year from $8.00 to $435.00. There is no indication, either in the GSA report or the vouchers, of the nature of the items purchased and the proportion of the expenditure disbursed for the benefit of the plaintiffs in relation to the total Indian population at the Mackinac Reservation. Therefore, these expenditures should not be allowed as an offset.

b. $636.05 - Expenses of Indian Delegations

Disbursements in the above amount for expenses of Indian delegations were made during the period from 1857 to 1866. Defendant has presented no evidence upon which the Commission can determine whether the delegations acted at the request of and on behalf of the Indians or were required by actior

of the United States. Accordingly, the above amount should be disallowed.

c. $2,870 - Provisions

Expenditures in the above amount for provisions were made over a thirty-year period from 1844 to 1873, and ranged from $12.50 to $1,000.00 in any one year. Defendant has failed to meet the burden of establishing which portion of these expenditures were made on plaintiffs' behalf and whether the benefit conferred, if any, was tribal and not individual. This claim should be disallowed.

d. $345.92 - Clothing

Defendant expended $345.92 for clothing over a period of twenty years commencing in 1862 and ending in 1882. Disbursements ranged from $18.00 to $178.42 in any given year. Available population figures indicate that there were approximately 6,000 members of the plaintiff tribes living on the reservation during this period. Vouchers indicate that the largest single expenditure ($178.42) was an emergency disbursement to care for destitute Indians residing near Northport, Michigan. Defendant's exhibit 0-6, which shows a $50.00 expenditure in 1875 to purchase 6 men's coats and 3 men's pants, is a typical voucher for clothing. In light of the tribal population figures provided by defendant, such expenditures cannot be considered a tribal benefit and should be disallowed as an offset.

e. $9.27 - Transportation of Clothing

Since disbursements made for clothing were disallowed as an offset, transportation of clothing expenses must also be disallowed.

f. $614.14 - Purchase of Livestock

Purchases totalling $614.14 for livestock were made by defendant in 1875 ($264.00) and 1880 ($350.14). These disbursements were made for 6 oxen, 5 steers and 7 heifers. At the time the purchases were made, plaintiffs tribal membership was estimated to be 6,500. Under these circumstances the Commission finds that this small amount of livestock could not serve a tribal population of this size. These disbursements did not confer a tribal benefit and should be disallowed as an offset.

g. $22.50 - Feed and Care of Livestock

This expenditure was made by defendant in 1856. There is no evidence presented by defendant upon which the Commission could determine what proportion of it, if any, was spent on livestock which may have belonged to plaintiffs. Therefore, this expenditure should be disallowed as an offset.

h. $58.76 - Hardware, Glass, Oils and Paint

These expenditures were made in two different years. In 1878, $38.66 was spent and $20.10 was spent in 1943. In 1878, 6,000 Chippewa Indians resided on the Mackinac Reservation. The evidence indicates that the 1943 expenditure was for Chippewas residing in the Bay Mills Indian Community. There are no 1943 population figures available for the Bay Mills Indian Community. These amounts are so small that the conclusion that they conferred an individual and not a tribal benefit is inescapable and they should not be allowed as an offset.

i. $231.00 - Agricultural Aid

Disbursements by defendant for seeds, fruits, trees and fertilizer were expended over a period of four years from 1878 to 1881. Defendant's vouchers (0-10, 0-11) show two purchases in 1880 in the amounts of $67.00 and $52.37 expended for small quantities such as 1/2 pint of peas and 1/2 ounce of turnip seeds. At the time these amounts were expended, there were 6,000 members of plaintiff tribes, comprising 61% of the population of the reservation. None of these purchases were made in quantities large enough to indicate a tribal benefit. This claimed offset should be disallowed.

j. $942.26 - Agricultural Implements and Equipment

This equipment consisted of 25 wagons and accessories. The transportation of these wagons can be traced only from the seller in Jackson to the purchaser in Detroit, but there is no evidence that they ever were delivered to the Mackinac Agency. In view of the failure of proof the above disbursement should be disallowed as an offset.

k. $228.58 - Transportation of Agricultural Implements and Equipment

These claimed expenses for transportation of agricultural implements and equipment should be disallowed because of failure of proof that delivery was made.

l. $19,749.68 - Purchase of Land

In the fiscal years 1939 through 1942, the defendant expended $19,749.68 for the purchase of approximately 1300 acres of land in Chippewa County, Michigan. These purchase were made for the benefit of

the Bay Mills Community of Indians as provided by section 5 of the Act of June 18, 1934 (48 Stat. 984, 985), under the appropriation acts of June 22, 1936 (49 Stat. 1757, 1763, 1765, 1766), May 9, 1938 (52 Stat. 291, 300), May 10, 1939 (53 Stat. 685, 695), June 18, 1940 (54 Stat. 406, 414, 415), and June 28, 1941 (55 Stat. 303, 312, 313). It is therefore a proper offset. Having considered the nature of the claims asserted herein, and the entire course of dealings and accounts between the parties, we find nothing that would deny to the defendant credit for this offset. Accordingly, it should be allowed.

m. $10,092.00 - Payment to Halfbreeds in lieu of Reservations

These payments were "excess" disbursements made under Article 9 of the Treaty of March 28, 1836. The total required expenditure under this article was $48,148.00, which has been credited as consideration. The "excess" sum of $10,092.00, which was paid to halfbreeds in lieu of individual reserves, conferred individual benefits, and, therefore, is not a proper offset and should be disallowed.

n. $21,000.00 - Annuity Goods

The defendant claimed that the above sum was expended in 1837 for "annuity goods" under Article 4 of the 1836 Treaty. Article 4 makes no provision for such a payment. There is no record of this single expenditure in the defendant's disbursement schedule, and no basis for the allowance of this item as an offset has been shown. It therefore should be disallowed.

o. $4,974.75 - Investigation of Debt and Halfbreed Claims

The defendant claims the above expenditure was incurred in the investigation of tribal debts and halfbreed reservation claims under Articles 5 and 6 of the 1836 Treaty. There is no provision in the 1836 Treaty for this type of expense, and there is no evidence in the record upon which to qualify the above expenditure as a gratuity. Therefore this claim should be disallowed.

CONCLUSIONS

61. The total evaluation of cessions made by plaintiffs under the Treaties of March 28, 1836, and July 6, 1820, is as follows:

1.	11,923,483.25 acres (22 Ind. Cl. Comm. 372 (1970))	=	$10,690,694.33
2.	401,971 acres (reservation lands)	=	361,773.90
3.	1,209,600 (sub-areas "U" & "S")	=	1,088,640.00
4.	1,395 acres	=	1,116.00
Total acreage	13,536,449.25	Total Value	$12,142,224.23

Total consideration and gratuitous offsets paid by defendant in fulfillment of the Treaties of March 28, 1836, and July 6, 1820, is as follows:

Consideration paid (Treaty of Mar. 28, 1836)	$ 1,821,628.06
Consideration paid (Treaty of July 6, 1820)	599.46
Gratuitous Offsets (Treaty of Mar. 28, 1836)	19,749.68
TOTAL	$ 1,841,977.20

Therefore, final judgment shall be entered in the sum of $10,300,247.03.

Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner

BEFORE THE INDIAN CLAIMS COMMISSION

BAY MILLS INDIAN COMMUNITY, SAULT STE. MARIE, ARTHUR LAWRENCE LABLANC, DANIEL EDWARDS AND JOHN L. BOUCHER, AND OTTAWA AND CHIPPEWA INDIANS OF MICHIGAN, ET AL., Plaintiffs,	)	
v.	)	Docket Nos. 18-E and 58
THE UNITED STATES OF AMERICA, Defendant.	)	

FINAL AWARD

Based upon the findings of fact and opinion this day entered herein which are hereby made a part of this order,

IT IS ORDERED that the plaintiffs have and recover from the defendant on behalf of the "Ottawa and Chippewa Nations of Indians" who negotiated the Treaties of July 6, 1820, 7 Stat. 207, and March 28, 1836, 7 Stat. 491, as a final award in these dockets the sum of $10,300,247.03.

Dated at Washington, D. C., this 29th day of December 1971.

Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner