

## BEFORE THE INDIAN CLAIMS COMMISSION

THE SEMINOLE NATION,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

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Docket No. 150

Decided: December 5, 1955

FINDINGS OF FACT

The Commission makes findings of fact as follows:

1. The plaintiff, the Seminole Nation of Indians, is an identifiable group of American Indians residing within the territorial limits of the United States, and has a tribal organization representative of said Seminole Nation, recognized as such by the Secretary of the Interior.

Defendant admits.

2. The 320 acre tract, known as the Emahaka tract, involved in this suit, was the property at the time of its sale and conveyance, of which complaint is made, of the Seminole Nation as established by Article III of the Treaty of March 21, 1866.

Defendant admits.

3. The following described tract of 320 acres of Seminole domain was reserved and set aside for the Emahaka School:

The South Half of the North East quarter and the South East quarter of Section Seven (7) and the South Fifteen and 78/100 (15.78) acres of Lot Three (3) and Lots Six (6) and Seven (7) of Section Eight (8) East, of the Indian Base and Meridian containing Three Hundred Twenty (320) acres more or less, as the case may be according to the United States Survey thereof, all in Seminole County, Oklahoma, and the land within T. 7N., R. 8E.

Defendant admits.

4. In 1919 the 320 acre Emahaka School tract was appraised by the United States Department of the Interior officials for \$16,700.00, which included \$6.00 an acre for oil and gas, and \$2,000.00 for improvements for that part of the school building resting on the Seminole domain.

In letter dated January 23, 1920, to the Superintendent of the Five Civilized Tribes, Muskogee, Oklahoma, the United States Oil Inspector stated in relation to this Emahaka School tract:

"\* \* \* Should a well be completed by the Producers and Refiners Corporation at the above specified location, this tract would probably sell, at public auction, for \$25.00 per acre, or even more, depending upon conditions at the time."

The test well of the Producers and Refiners Corporation, above referred to, was being drilled one and one-quarter miles north of the Emahaka School tract in the southwest corner of NE<sup>4</sup> SW<sup>4</sup> of Section 31-2N.-2E., on the Phiney Bowlegs allotment.

Defendant admits.

5. On May 26, 1920, authority was granted by the Interior Department to the Superintendent of the Five Civilized Tribes at Muskogee, Oklahoma, to sell the Emahaka School tract at public auction to the highest bidder under the provisions of the Act of April 30, 1908, 35 Stat. 70, 71, at not less than the appraised value. The original appraisal of 1919 was revised and the mineral value of this land was increased from \$6.00 an acre to \$25.00 an acre, so as to make a total appraisal of \$22,780.00. On July 31, 1920 this tract was sold at public auction after the giving of public notice of said sale to Walter Ferguson for \$27,280.

The terms of said sale, as disclosed by the notice of sale, dated June 15, 1920 and other evidence in the record was as follows:

"TERMS: Twenty-five per cent of the purchase price must be paid on the date of sale, 25% in one year, and the balance in two years from date of sale; deferred installments to draw 5% interest, provided that the entire amount may be paid at any time before the expiration of one year, if so desired. Patent will be issued immediately upon full payment. Should any payment be not made when due, the sale thereof may be canceled and the rights of the purchaser therein declared forfeited, in the discretion of the Secretary of the Interior."

Defendant admits.

6. Ferguson made the one-fourth cash payments of \$6,820.00 at the time of the sale, and made no further payments, although he had been repeatedly requested to remit to the United States officials the balance due on said purchase price.

Defendant admits.

7. Although the sale was subject to cancellation for non-payment of the balance of the purchase price, the Interior Department officials failed to cancel said sale. In the meantime, oil activity in the vicinity of this property greatly increased, and the value of this property for oil and gas also increased.

EVIDENTIARY FINDINGS UPON WHICH BASIC FINDING NO. 7 IS MADE

The witness Collier testified that he lived for many years in the vicinity of the land involved herein and lived there in the 1920's when oil activities began and knew of the consideration payed for leases on land within the vicinity and, in fact, himself leased land in the vicinity of this tract. He testified to having leased 80 acres for oil for a bonus of \$100.00 per acre and he sold the surface of the same land for \$100.00 per acre. He said this leasing was done in 1922 or 1923. He said at the time he did this leasing there was a great deal of excitement and activity in and near the property involved in buying leases for oil and gas.

Mr. Collier was not sure of the dates he made the leases, he testified about, but said it was 1923 or 1924, "somewhere there." He testified that the land for which he got \$200.00 per acre for the lease and the royalty was situated one mile distant from the land involved herein. He testified that, in his opinion, the land involved herein including minerals and surface was worth \$200.00 per acre in 1923.

The witness Criswell testified that he had lived near and had been acquainted with the land involved since 1904 and had been a practicing attorney in that section of the State for 33 years. He testified that he and an associate bought all the surface and mineral rights in 10 or 20 acres, located about one-half mile North of the property involved, either in the fall of 1923 or spring of 1924 and that he paid \$210.00 per acre for same. This witness testified that immediately after the discovery well (Betsy Foster well about one mile or two from the property involved), brought in on March 17, 1923, that the minerals and surface of the land involved herein was worth \$150.00 an acre. The witness testified that the tract involved before the bringing in of the Betsy Foster well, minerals and surface, was worth \$100.00 per acre and that was the valuation he gave for the minerals and surface in 1920. He conceded, however, that the auction sale of the land in 1920 for \$27,280 was probably at the market value of said land at that date.

The witness, N. F. Jacobs, testified that he had lived in the vicinity of the land involved practically all of his life. He testified that he made mineral leases on a section just North of the land involved herein in the years 1923 and 1924, getting \$150.00 for some and \$200.00 per acre

for others. The witness testified that oil activities and leasing within the vicinity of the Betsy Foster well between 1922 and 1924 were very, very active; that he leased land adjoining the tract involved herein for \$50.00 per acre before this well came in and afterwards for \$100.00 per acre. Witness testified to selling mineral rights in an adjoining section at \$500.00 per acre, but he couldn't recall the year.

8. Walter Ferguson, the purchaser, could not make the payments in accordance with the terms of sale, and on November 28, 1922 notified the Interior Department officials that he was transferring his interest in the Emahaka School tract to V. V. Harris, of Oklahoma City, Oklahoma, a banker.

On February 5, 1923, V. V. Harris made final payment of the principal and interest on this tract due on the July 31, 1920 sale.

Defendant admits.

9. On May 31, 1923, a Principal Chief of the Seminole Nation was appointed to execute the deed necessary to convey the title of this Seminole property to V. V. Harris.

On June 26, 1923, the Principal Chief of the Seminole Nation protested said sale and refused to sign the patent transferring title of this tract to V. V. Harris on the grounds that the Seminole Tribe had never agreed to the sale of this property; that the purchaser had neglected the payments on the property and failed to carry out the terms of the purchase; that the price received was inadequate; that the property had great oil value and should be retained for the benefit of the Seminole Nation and further stated in part that

"I am informed a purported purchaser who had neglected the payments, was intending not to carry out the terms of his

purchase of this property, and was going to permit the same to go back to the rightful owners thereof, the Seminole Nation, a Tribe of Indians."

Defendant admits, but says immaterial.

10. On May 22, 1924, V. V. Harris wrote the Commissioner of Indian Affairs in part as follows:

"\* \* \* I was interested with Mr. Ferguson and before the next payment became due, he and I practically decided to forfeit what we had paid, as it was our judgment that the land was not worth the balance of the three-fourths that was not paid. We, however, got an extension of time within which to pay, by paying interest, and oil was discovered several miles away which gave the land a speculative value for oil. We then paid the property out.

"For agricultural purposes the land is worth \$50.00 per acre, or \$16,000. The speculative value of the land for oil at this time would run between \$30,000.00 and \$75,000.00. There is a well being drilled on the property now. If it should come in good, the property would be valuable. If it comes in dry, it would be practically dead as an oil proposition. \* \* \*"

In this letter Harris requested that a patent to this Emahaka School tract be issued to him, irrespective of the protest of the Principal Chief of the Seminole Nation.

Defendant admits but says immaterial.

11. On December 22, 1924, a patent was issued and delivered to V. V. Harris, signed by the Secretary of the Interior under the provisions of Section 6 of the Act of April 26, 1906, 34 Stat. 137, and the Act of April 30, 1908, 35 Stat. 70, 71, notwithstanding the protest of the Principal Chief of the Seminole Nation, and without the signature of said Principal Chief.

This document bears the following indorsement and approval, to-wit:

"DEPARTMENT OF THE INTERIOR  
Office of the Secretary

Approved December 22, 1924, under Section 6 of the Act of Congress, approved April 26, 1906 (34 Stat. L., 137) on refusal of the Principal Chief of the Seminole Nation to sign this instrument.

Hubert Work  
Secretary EPM<sup>H</sup>

Defendant admits.

12. Thereafter, V. V. Harris had difficulty in disposing of said lands because the patent had not been signed by the Principal Chief of the Seminole Nation under the provisions of the Seminole Agreement (30 Stat. 567), and he requested the Interior Department to furnish him with a patent properly signed by the Principal Chief of the Seminole Nation. However, although another Principal Chief of the Seminole Nation was appointed to execute a conveyance of the title of this property to Harris, said Principal Chief refused to sign such a patent.

The patent to V. V. Harris was never signed by the Principal Chief of the Seminole Nation.

Defendant admits but says immaterial.

13. Protests by the plaintiff Indians were made to the sale of the property at the time its sale was contracted in 1920. They thereafter protested to the extension granted by the defendant to the purchaser for the payment of the deferred installments agreed to be paid by him. They refused to join in the execution of the deed that was finally executed by the defendant. The defendant at all times refused to consider the claimed increase in the value of the land as a reason for cancellation of the 1920 purchase contract. The defendant in its refusal and failure to cancel said purchase contract gave consideration solely to the treatment it thought should be accorded the purchaser.

The defendant by its conduct failed to discharge its duty to the plaintiff.

EVIDENTIARY FINDINGS OF FACT UPON WHICH BASIC FINDING 13 IS MADE

Charles H. Burke, Commissioner of Indian Affairs, by letter to Senator Robert L. Owen, dated September 24, 1923, advises that a protest against the sale of the property involved herein, prior to its sale in 1920, was made by Mr. Burgess and other members of the Seminole Tribe because of its possible oil value and urged that it should be retained for the benefit of the tribe. Mrs. Alice B. Davis while Principal Chief of the Nation in 1923 refused to execute the conveyance of the property to V. V. Harris, who had been permitted to complete payment therefor. The grounds of her refusal that Seminole Tribe had never agreed to sale of the property; that the purchaser had neglected the payments on the property and failed to carry out the terms of the purchase; that the price received was inadequate; that the property had great oil value and should be retained for the benefit of the tribe. The Superintendent of the United States Indian Service by letter dated November 6, 1923 advised the Commissioner of Indian Affairs with reference to the sale of the land involved to V. V. Harris and with reference to the protest made by Mr. Burgess and other members of the Seminole Nation; that said protest had been considered by the Department "and a conclusion reached that there was no reason why this property should not be sold"---that is, why the sale to Harris should not be confirmed and Deed executed. The letter further states that the question of the advance in the value of the land on account of its probable oil and gas value by reason of prospective developments in the vicinity "does not enter into the transaction so far as this sale is concerned"; that the objections of



Mrs. Davis were not well taken "in view of the fact that everything connected with the sale was regular" and the same was thereafter approved by the Acting Secretary of the Interior.

In the letter of Mrs. Alice B. Davis, Chief of the Seminole Nation and Tribe of Indians of June 26, 1923 to Mr. Clark Wasson, Acting Superintendent for the Five Civilized Tribes, with which letter she returned the Deed to the property which she had been asked to sign, she stated that the Seminole Tribe had never agreed to the sale of the property-- that the land at the time was of great value and before the next twelve months might be worth millions of dollars--that an oil well was then producing at the rate of 650 barrels a day within two and one-half miles of the land and that other wells were being drilled in close proximity to the land involved and that for her to sign the Deed would be a grave injustice to the tribe and not in the keeping of the trust imposed in her as Chief. In a communication addressed to the Secretary of the Interior of August 1, 1924 by a group of Indians who advised that they had been appointed as spokesmen for the entire tribe after a meeting of members of the tribe were called together for the purpose of considering the matter of sale of the property involved to V. V. Harris and executing a Deed to him--"that we desire to formally protest against execution of a Deed by the Secretary of the Interior to the said property." This letter further stated that though it might be urged as reason for confirmation of the sale that the property was worth no more at the time of sale than the amount it was sold; that because of default thereafter made in at least two deferred payments when they were due and that in equity and justice to the purchaser and to the tribe that the payments

received by the Government should be restored to him and the title to the property be permitted to remain in the tribe.

By letter of Charles H. Burke, Commissioner of Indian Affairs, to the Secretary of the Interior, Hubert Work, of December 22, 1924, the said Commissioner discussed this sale in great detail, advised of the protest to its consummation by the Indians at various times and the reason for said protest; that the sale should be confirmed and that a deed to the purchaser should be executed. This letter called attention to the fact that the Government in many instances exercised leniency towards purchasers of Indian lands which it was within the discretion of the Secretary of the Interior to do. With reference to the protest of the Indians that the property was worth more than the consideration and that the extension for payment should not have been granted, the letter indicates that only the complaint by reason of the extensions for payment were considered and that the protest because of inadequate consideration was not even considered and was based on an incorrect conception of valuations.

14. The value, including surface and minerals, of the 320 acre tract known as the Emahaka School Tract between July 31, 1920 and February 5, 1923, and December 22, 1924 was \$200.00 per acre.

(See Evidentiary Findings of Fact supporting under Finding No. 7).

15. (a) The Secretary of the Interior and the other officials of the Department of the Interior during the period of time between January 23, 1920 and December 22, 1924 knew or should have known of the market value of the tract involved herein and of their opportunity to obtain a substantial increase for same over and above the amount for which it sold in 1920.

(b) The failure of the Secretary of the Interior and other officials of the Government having the responsibility of handling the sale of the land to cancel the sale of 1920 and re-advertise and re-sell said land for the benefit of said Indians was a failure to discharge the duty owed by the Government to said Indians.

Edgar E. Witt  
Chief Commissioner

Wm. M. Holt  
Associate Commissioner