

## BEFORE THE INDIAN CLAIMS COMMISSION

THE SEMINOLE NATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 152
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: August 22, 1962

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The plaintiff herein is an identifiable group of American Indians, residing within the territorial limits of the United States. The plaintiff herein constitutes about two-thirds of the total population of the Seminole Nation of Oklahoma and, as such, is a part of an organized Indian tribe or band.

2. The Seminole Nation of Oklahoma was derived from Seminoles who lived in the Florida Panhandle in the 17th and 18th centuries. The Florida Seminoles, in turn, were emigrants from the Creek Nation of what is now southern Georgia.

When the Seminole Indians lived in Florida, it was their usual and accepted practice to own slaves. The slaves were individuals of African ancestry. The slaves were permitted to live apart from the Seminole Indians, but intermarriage between Seminole and slave was not unknown. Some slaves rose to positions of eminence within the Seminole Nation in Florida.

3. The Seminole Nation in Florida became a party to a removal treaty on May 9, 1832 (7 Stat. 368). Under that treaty, the Seminoles ceded their territorial claims in Florida in exchange for lands adjacent to the Creek Reservation in the Indian Territory. During the second Seminole war (ca. 1835-1842), most of the Seminoles and their slaves immigrated to and settled in the Indian Territory, now the State of Oklahoma. These immigrant Seminoles were the nucleus of the Seminole Nation of Oklahoma.

4. Up to the outbreak of the Civil War, the Seminole Nation of Oklahoma was progressing toward self-sufficiency. The Seminoles, with their slaves skilled in agriculture, were producing substantial crops and livestock. At this time, the Seminoles had a comparatively sophisticated self-government, with a principal chief and fourteen town chiefs.

5. When the Civil War began, the United States found it necessary, for tactical reasons, to divert federal troops in the Indian Territory to other locations. In the absence of federal authority, the Seminole Nation, being a tribe of slave owners, entered into a treaty of peace and friendship with the so-called Confederate States of America. The treaty was dated August 1, 1861. It was signed on behalf of the Seminole Nation by the Seminoles' principal chief and by twelve of the Seminoles' fourteen town chiefs. Acceptance of this treaty as an official act of the Seminole Nation, as an independent political entity, abrogated ante-bellum treaties between the United States and the Seminole Nation.

Many members of the Seminole Nation declined to honor the treaty of August 1, 1861. A number of Seminole Indians, estimated at one-half to two-thirds of the total Seminole Indian population, followed a Creek chieftain to Kansas. Three battles were fought by the Creek and Seminole refugees against Confederate forces in the dead of winter along the retreat route. As a consequence of the hasty exodus, the battles along the way, and the severe winter, the Seminoles arrived in Kansas impoverished and in ill health. Upon their arrival in Kansas most of the male Seminole refugees capable of fighting enlisted in the armed forces of the United States. The remaining refugees were subsisted with varying degrees of adequacy by the United States at the Seminoles' expense.

After the rebellion was suppressed the Seminoles returned to their own country in the Indian territory. This return was made too late in the year to permit them to raise crops. Their country had been ravaged and plundered during the rebellion. They were unable to support themselves and continued being subsisted until the following spring.

6. A peace commission was appointed by President Andrew Johnson in the fall of 1865. This Commission was to negotiate toward new treaties, where needed, with the several Indian tribes.

The loyal Seminoles, (i.e., those who did not honor the treaty between the Seminole Nation and the so-called Confederate States of America) appointed five delegates to act for them and "do all business that may come before the Commissioners soon to assemble at Fort Smith." The Seminole Nation, which had been allied with the Confederacy, convened a council at Armstrong Academy in Oklahoma. At that council the Seminole

Nation appointed delegates "to meet Commissioners on the part of the United States with full power to negotiate by treaty or otherwise a full and final adjustment of all questions of interest affecting our right or property."

The United States Peace Commissioners had been instructed to include among the objectives of new treaties establishment of civil government in the Indian territory and consolidation of the Indian tribes. These objectives were detailed in the Harlan Bill (S. 459, 38th Congress) which had failed of House passage.

7. Appointed representatives of the loyal segments of the Indian tribes arrived at Fort Smith prior to the arrival of the rebels' delegates. When the United States Peace Commissioners elected to not delay the proceedings, the southern factions' delegates had not arrived. For the first days of the proceedings only the loyal Indians' delegates and the United States Commissioners negotiated.

8. The opening address of the Fort Smith council was delivered by Commissioner D. N. Cooley. He remarked in part that the portions of tribes which had made treaty stipulations with the so-called Confederate States of America had rightfully forfeited all benefits under prior treaties with the United States. These statements were factually correct. Representatives of a tribe other than the Seminoles asked for an explanation of this remark. The Commissioner explained that the United States, although wronged, intended to be magnanimous. The Commissioner also explained that although forfeiture was justified and authorized by an Act of Congress, the President of the United States would not enforce

forfeiture. The Indians' representatives understood this explanation, which erased their apprehensions concerning forfeiture.

The loyal Seminoles' representatives did not commit themselves at once, but asked for time to consult among themselves. In the afternoon of the first day they expressed their intent to defer action.

On the second day of the Fort Smith council, the United States Peace Commissioners stated the premises underlying the treaty negotiations and also outlined the points which the United States would like to see embodied in the several treaties. One of the underlying premises was that specific nations and tribes had made treaties with enemies of the United States on specified dates (e.g., Seminoles, August 1, 1861), and had thus stripped themselves of the benefits of relations with the United States. New treaties were needed in those instances. The third proposed stipulation of new treaties concerned abolition of slavery, unconditional emancipation, and incorporation of freedmen into their tribes on an equal footing with original members or other suitable provision. The sixth proposed stipulation of new treaties concerned the objectives of the Harlan Bill.

The Fort Smith council was recessed for the weekend. On the following Monday (September 11, 1865), the loyal Seminoles' delegates again expressed an unreadiness for negotiation. On the following day, the loyal Seminoles' delegates stated that they fully and freely endorsed all of the Peace Commissioners' propositions, with one minor change. These delegates asked specifically that only former slaves owned by Seminoles, and free colored persons living with the Seminoles, would be adopted into the tribe. The

delegates asked specifically that their lands would not become colonization grounds for the negroes of other states and territories.

The Tuesday discussions were closed by the United States Commissioners with the information that a simple treaty of peace had been prepared for the delegates' signatures. The treaty of peace and amity was read on September 13, 1865, and signed by the loyal Seminoles' delegates on the next day. Before signing these delegates were informed that the United States Commissioners wanted the signatures of only those delegates who would sign it "willingly and cheerfully."

On September 16, 1865, the Seminole Nation's delegates arrived from Armstrong Academy where the Indians allied with the Confederacy had convened. The treaty of peace and friendship was read to the Seminole Nation's delegates, who signed it. The Seminole Nation's delegates subsequently filed a paper rescinding their approval of the third and sixth articles (adoption of slaves and territorial government, respectively), and asking that these two points stand open for future consideration.

The 1865 treaty of peace and amity was not ratified by Congress.

9. On January 30, 1866, the Commissioner of Indian Affairs was gratuitously informed by an elected chief of the Seminoles that the Seminole factions were working toward unity. In the same intelligence, the chief informed the Commissioner that the Seminoles had agreed in council to recognize the colored people who were formerly Seminoles' slaves as a part of the Seminole Nation. The former slaves were to have equal rights in property protection (i.e., equal to the rights of native

Seminole) and enjoyment of all the benefits under past and future treaties with the United States.

10. A general treaty between the Seminole Nation and the United States was concluded at Washington, D. C., on March 27, 1866 (14 Stat. 775) and ratified on July 19, 1866. The first article of that treaty granted a general amnesty to all of the Seminoles who had violated laws of the United States in the course of the rebellion. Among such Seminoles were the Seminole Nation's most competent and venerated leaders. The second article of that treaty was the one under which the Seminoles granted to their former slaves "all the rights of native citizens." The Court of Claims in The Seminole Nation v. United States, 90 C. Cls. 151, at p. 153) found that the plaintiff herein understood and knew that the rights which the plaintiff granted under this second article were equal rights in all tribal property as well as civil and other rights. The Seminoles prevailed in their efforts to restrict adoption to their former slaves and to exclude negroes of other states or territories. The ninth article of the treaty expressed the United States' voluntary resumption of the payment of benefits to the Seminole Nation under prior treaties.

11. In connection with further efforts to implement the provisions of the Harlan Bill, the Five Civilized Tribes (which included the Seminole Nation) joined in a Memorial to Congress on February 9, 1874. Among the remarks contained in that Memorial was the statement that the authors were the individuals who signed the 1866 treaties. The authors stated that they fully understood the purpose, intent, and scope of those treaties

at the time they were made. Finally, the authors stated that the treaties were repeatedly interpreted and fully explained to the delegates, and were discussed by the delegates in detail, article by article.

12. The policy of the United States, after the Civil War, toward the Indians included a program of bringing Indians under the laws of the United States as citizens. Extinguishment of tribal Indian title was deemed essential to the success of this program. Allotment in severalty of tribal lands to the individual Indians entitled thereto was selected, as to the Five Civilized Tribes, as the vehicle for extinguishment of tribal title.

Appointment of a Commission to negotiate with the Five Civilized Tribes for the objectives stated in this finding was authorized by Congress (27 Stat. 612, at p. 645). The Commission, subsequently known as the Dawes Commission and as the Commission to the Five Civilized Tribes, received extensive instructions from Congress. The Dawes Commission was to prepare rolls of all of the citizens of each of the Five Civilized Tribes and to that end was empowered to determine the application of any individual who might allege citizenship in any such tribe.

Congress provided that the rolls prepared by the Dawes Commission when approved would be considered to be the true and correct rolls of persons entitled to the rights of citizenship in any one of the tribes. A right of appeal to the federal courts for any aggrieved person or any aggrieved tribe was provided. The Seminole Nation did not exercise this right of appeal at any time.

Subsequent Congressional instructions to the Dawes Commission provided that the Commission should work with tribal authorities in the preparation of citizenship rolls. The term "rolls of citizenship" was defined by Congress as "the last authenticated rolls of each tribe which have been approved by the council of the nation, and the descendants of those appearing in such rolls." Under this definition the Dawes Commission accepted the rolls which had been verified by the Seminole band officers. At the time twelve "native" Indian bands and two "freedmen" Indian bands comprised the Seminole Nation. The rolls prepared by the Dawes Commission from these verified tribal rolls contained all of the "native" Indians and all of the "freedmen" Indians whose names had not been placed on the rolls by fraud or illegality. The Dawes Commission did not err in including freedmen citizens of the Seminole Nation, and the Court of Claims so held. The Seminole Nation v. United States, 78 C. Cls. 455, at page 468.

13. By the Curtis Act (30 Stat. 495) Congress instructed the Dawes Commission to reach an agreement with each of the Five Civilized Tribes regarding allotment of tribal lands. The agreement with the Seminoles, known as the Original Seminole Agreement (30 Stat. 567), was dated December 16, 1897, ratified by the Seminole Council on December 20, 1897, and ratified by Congress on July 1, 1898. Under this agreement tribal lands were to be divided into three classes valued at \$5.00, \$2.50, or \$1.25 per share. Each Seminole Indian - both freedmen and natives - would receive an equal share. Equality was to be measured by value, rather than by quantity. The Original Seminole Agreement also provided

that all tribal funds, after the deduction of certain items, would be divided among the Seminoles in three equal per capita installments.

When the land allocations were to be made, title was to be conveyed to the individual allottees by the principal chief last elected, under his hand and the seal of the Seminole Nation. Upon approval of the deed by the Secretary of the Interior, the deed was to operate as relinquishment of the right, title, and interest of the United States in and to the land conveyed and as a guarantee by the United States of the title to the land conveyed.

A Seminole Supplemental Agreement (31 Stat. 250) was negotiated between the Seminole Nation and the Dawes Commission and approved by Congress on June 2, 1900. The supplemental agreement authorized the inclusion on the Seminole rolls of citizenship of children born to Seminole citizens to December 31, 1899. It specified that the allotment of lands and money would be made to the Seminole Indians on the final roll and to no other persons.

The final roll was approved by the Secretary of the Interior on April 5, 1901. A supplemental roll to encompass newborn children was prepared and approved. These rolls showed 2,121 "native" Seminole citizens, 21 Seminole citizens by adoption, and 986 Seminole freedmen. Five individuals were added under a 1914 act (38 Stat. 582), making a total of 3,133 Seminole citizens sharing in the allotment.

14. The plaintiff herein brought suit in the Court of Claims for the recovery from the defendant herein of an amount equal to the aggregate value of lands and moneys allocated to Seminole freedmen. The suit was

dismissed in 1933. The plaintiff herein amended the petition and the case was heard on its merits. It was again dismissed in 1940 and the Supreme Court denied certiorari in the same year. The Seminole Nation v. United States, 78 C. Cls. 455; id., 90 C. Cls. 151; 310 U. S. 634.

Arthur V. Watkins  
Chief Commissioner

Wm. M. Holt  
Associate Commissioner

T. Harold Scott  
Associate Commissioner