BEFORE THE INDIAN CLAIMS COMMISSION

THE SENECA NATION OF INDIANS, Petitioner,	)	
v.	)	Docket No. 342-H
THE UNITED STATES OF AMERICA, Defendant.	)	

Decided: August 30, 1963

Appearances:

Paul G. Reilly, Attorney
for the Petitioner.

Milton E. Bander, with whom
was Mr. Assistant Attorney
General, Ramsey Clark, Attorneys
for the Defendant.

OPINION OF THE COMMISSION

Watkins, Chief Commissioner, delivered the opinion of the Commission.

In this proceeding the petitioner, The Seneca Nation of Indians, is claiming that the United States is liable to it under the Indian Claims Commission Act for the loss of 50.95 acres of land which was taken from it under eminent domain proceedings by the State of New York. The facts which form the basis of this claim are not in dispute and are set forth in the findings of fact herein. However, petitioner and defendant differ on the legal significance of these facts and their effect on the present claim.

The premise upon which petitioner bases its claim is that defendant had an obligation to act as the parental protector of petitioner's

property and interests and failed to do so. Defendant, on the other hand, denies any duty or obligation to protect the subject property from appropriation proceedings by the State of New York. In its brief petitioner has set forth a number of judicial precedents and legal conclusions in arguing defendant's liability. In answer thereto, defendant has raised a number of defenses. However, the fundamental question to which all other assertions of liability relate is whether or not defendant had an obligation or duty to petitioner to protect the subject lands from appropriation proceedings by the State of New York. Therefore, it is to this question that we now turn our attention.

As to the legal effect of the general relationship between Indian tribes and the United States, the Court of Claims has said:

> Whether or not the legal relationship of guardian and ward exists between a particular Indian tribe and the United States depends, we think, upon the express provisions of the particular treaty, agreement, executive order, or statute under which the claim presented arises. It is true that the word "fiduciary" and the expression "guardian-ward relationship" have been used by the courts to describe generally the nature of the relationship existing between the Indians and the government. However, in the absence of some language in a treaty, agreement or statute spelling out such a relationship, the courts seem to have meant merely that the relationship between the Indians and the Government is "similar to" or "resembles" such a legal relationship and that doubtful language in the treaty or statute under consideration should be interpreted in favor of the weak and dependent Indians. (Emphasis supplied) (Gila River Pima Maricopa Indians v. United States, 135 C. Cls. 180, 189)

This conclusion was also reached in Creek Nation v. United States, 7 Ind. Cl. Comm. 117, 135-136 (1959), aff'd per cur. (C. Cls. App. No. 3-59, March 1, 1961), Aff'd per cur. 370 U.S. 157 (1962); Omaha Tribe v. United States, 6 Ind. Cl. Comm. 68, 71-72 (1957).

We interpret this language to mean that there is no legal guardian-ward relationship between the petitioner and the United States based merely on the fact that petitioner is an Indian tribe. Nor does the United States have a fiduciary obligation to protect petitioner's property and interests based on this fact alone. Any fiduciary obligation owed by the United States to petitioner must grow out of the express provisions of a treaty, agreement, executive order or statute.

Petitioner asserts that the United States assumed the obligation of protecting petitioner's interest in the subject property by virtue of the treaties of October 22, 1784, and November 11, 1794, with the Six Nations, of which petitioner was a member. Article II of the 1794 treaty is particularly stressed. This article says:

> The United States acknowledge the lands reserved to the Oneida, Onondaga 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 Nation, nor their Indian friends residing thereon and united with them, in the free use and enjoyment thereof; but the said reservation shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase. (Emphasis supplied)

By way of background it is important to observe that,

> As a result of the Revolution, the people of each State became sovereign and in that capacity acquired the rights of the Crown in the public domain. . . (Massachusetts v. New York 271 U. S. 65,86 (1926)

Therefore, the subject lands never became part of the public domain of the United States.

As we pointed out in Finding 2, the Treaty of 1784 was a treaty of peace with the Six Nations which had been a hostile Indian tribe during the Revolutionary War. This treaty was an acknowledgment by both parties

that the late war was officially over and that there were to be no more hostilities between them. The United States received "them into their protection" (7 Stat. 15) on certain conditions and also agreed that "they shall be secured in the peaceful possession" (7 Stat. 15) of certain lands outlined in the treaty. However, it is clear that the above quoted language did not obligate the United States to act as the guardian or trustee of the Seneca Nation relative to the subject lands even though the subject lands were within the "boundary of the lands of the Six Nation." (7 Stat. 15) This language merely meant that the United States would cease hostilities against the Six Nations thereby allowing them to inhabit these lands in peace.

The Treaty of 1794 was entered into to correct a boundary mistake that arose because of the inexact knowledge as to the western boundary of New York State at the time of the Treaty of 1784. A further purpose was to remove all causes of complaint and to establish peace and friendship between the United States and the Six Nations. This treaty, as with the Treaty of 1784, was not a treaty of cession but a "Treaty of Peace and Friendship". (7 Stat. 44) Contrary to petitioner's claim Article II of the Treaty of 1794 did not obligate the United States to protect petitioner's lands from appropriation proceedings by the State of New York, but it acknowledged the right of the State of New York to deal with the Indians for their lands and guaranteed only that:

> . . . 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. . . (7 Stat. 44)

We think it evident that by Article II of the Treaty of 1794 the United States agreed it would not claim petitioner's lands either by conquest or right of conquest. However, the United States did not relinquish its eminent domain powers under this article (Seneca Nation of Indians v. Brucker, 262 F. 2d 27), and we cannot see that Article II limited the authority of the State of New York in any way.

But petitioner asserts that the provisions of 25 U.S.C. Sec. 177, set out in Finding 4, require the consent of the United States to make any alienation of the subject lands effective. Petitioner cites a number of cases to support the view that 25 U.S.C. 177 obligated the United States to vacate any disposition of petitioner's lands made without the consent of the United States. The foremost of these cases is Federal Power Commission v. Tuscarora Indian Nation, 362 U. S. 99, 119. We cannot agree with petitioner's application of that case to the present suit. On the contrary, this same case determined that 25 U.S.C. 177 does not apply to condemnations made by the United States. We are convinced that the State of New York falls under the same rule as the United States in this instance.

From time to time the State of New York has exercised a certain amount of control over the Seneca Nation of Indians without any interference on the part of the Federal Government (Rice v. Maybee, 2 F. Supp. 669). And it has been held that Indian reservations are subject to the exercise of state jurisdiction in the absence of a federal statute or treaty prohibiting it (Kake Village v. Egan, 369 U. S. 60, 72). The application of 25 U.S.C. 177 to the State of New York was discussed by Judge Brennan in the United States v. Franklin County, 50 F. Supp. 152,

155-156). He said:

> The history of the Act of 1802 (25 U.S.C., Sec. 177) and preceding legislation is indicative of an intent to exempt a state "having the right of pre-emption" from the provisions thereof. The first Indian Intercourse Act of 1890 invalidated by its language the sale of lands within the United States to any person or persons, "or to any state, whether having the right of pre-emption or not." The clause quoted was omitted from the Act of 1802 and from the preceding Acts of 1796 and 1799. The omission is significant when viewed in the light of the practical construction given to the Act by both the State of New York and the United States.
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> The large number of treaties or agreements entered into by the State of New York with different Indian tribes without the apparent authority of the United States, or the presence of its commissioner requires that we look beyond the language of the statute to ascertain its applicability. . .
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> The Act, by its terms, does not require the presence of a United States Commissioner at a treaty as a prerequisite to its validity, but gives an agent of a state the lawful right to negotiate with the Indians under given conditions. It is at most, regulatory, designed to prevent fraud. Here no fraud is charged.

In 1958, the New York Court of Appeals made the following observation:

> In Seneca Nation of Indians v. Christie, 126 N.Y. 122, at page 142, 27 N.E. 275, at page 280, we stated, with regard to that Act: "There is room for question whether the act of 1802 (25 U.S.C. 177) was intended to apply to treaties made by a sovereign state with tribes within the state for the extinguishment of the Indian title to lands therein." Our language in that case was the basis of a holding in United States v. Franklin County, D. C., 50 F. Supp. 152, to the effect that the provisions of the Indian Intercourse Act do not apply to the State of New York. No authority has been cited to us that would indicate a contrary result.
> (St. Regis Tribe of Mohawk Indians v. State of New York, 5 N. Y. 2d 24, 39-40, 177 N.Y.S.2d 289, 300-301)

Apparently following this rule it has been held that the United States was not a necessary party to a condemnation proceeding in which the State of New York sought to take Indian reservation land under its sovereign powers, United States v. Cattaraugus County, 71 F. Supp. 413 (1947).

The other cases cited by petitioner are distinguishable from the present one either because other federal statutes are involved or the injury was alleged to have been caused by private individuals as opposed to a sovereign state.

In conclusion, we find that defendant was under no fiduciary duty or obligation to protect petitioner's interest in the lands which are the subject of this claim. Having determined no such duty or obligation on the part of the defendant, we find it unnecessary to discuss other matters presented in the briefs of either party. We hold that petitioner is not entitled to recover and that the petition in Docket 342-H should be dismissed. An order will be entered accordingly.

Arthur V. Watkins
Chief Commissioner

We concur:

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner