BEFORE THE INDIAN CLAIMS COMMISSION

THE SEMINOLE NATION, Petitioner,

v. Docket No. 205

THE UNITED STATES OF AMERICA, Defendant.

Decided: November 7, 1963

Appearances:

Paul M. Niebell and Roy St. Lewis, Attorneys for Petitioner.

Clifford R. Stearns, 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.

This suit was brought by the petitioner under two separate causes of action. By the first cause of action petitioner seeks to recover certain Seminole annuities which were paid by the defendant to loyal Seminole refugee Indians and other Indians during the Civil War. These annuities are more fully described in Findings 4 and 5. By the second cause of action petitioner seeks to recover $50,000.00 appropriated by the defendant, the United States, after the Civil War to pay for losses suffered by the loyal refugee Seminole Indians during the Civil War. The said $50,000.00 was deducted from payment made to the Seminole Nation under Article III of the Treaty of March 21, 1866, referred to in Finding 12. With regard to the first cause of action it should be noted here

that the petitioner claimed in its petition no specific amount owed by the defendant, alleging only that the petitioner be awarded judgment against the defendant for the amount of annuities which defendant failed to pay under the terms of the Treaty of 1856. Petitioner alleged said failure occurred during the years 1862-1866, both dates inclusive. However, in its brief, on page 42, the petitioner stated that the defendant was indebted to the petitioner in the specific amount of $218,926.72. However, as set forth in Finding 4, this amount is far in excess of the amount owed to the Seminole Nation under the terms of the Treaty of August 7, 1856. As shown in said Finding 4, the amount of $61,563.42 was disbursed by the United States for the purpose of clothing and feeding refugee and destitute Indians who had been driven from their homes during the Civil War on account of their friendship to the United States Government, and from this sum $31,599.68 was spent for the benefit of loyal refugee Seminole Indians. (Seminole Nation v. United States, 93 C. Cls. pp. 506, 516)

To both of petitioner's causes of action the defendant interposed the defense of res judicata. This same defense had heretofore been plead in a suit before the Indian Claims Commission involving the same parties (Seminole Nation v. United States, 10 Ind. Cl. Comm. 450, Dkt. No. 152)

No purpose other than repetition would be served by quoting in detail the pleadings, arguments and citations in that case. It is sufficient to set out that in the case last referred to, the Commission held that the defense of res judicata was not applicable and included in its opinion the following language:

> * * *The final judgment of a court of competent jurisdiction, on the merits, bars another suit involving the same cause of action before the same or any other tribunal. Williamson v. Columbia Gas & Electric Corporation, 186 F. 2d 464 (CA 3, 1950), cert. den. 341 U. S. 921 (1951). The Court of Claims has expressed the view that Congress in passing the Indian Claims Commission Act was, to a certain extent, exercising its political function of creating new causes of action. Otoe & Missouri Tribe of Indians v. United States, 131 C. Cls. 593 (1955), cert. den. 350 U. S. 848 (1955). Furthermore, the Court has held that its prior decision is not res judicata if revision of a treaty or agreement is necessary to a decision in favor of the Indian tribe. Choctaw Nation v. United States, 128 C. Cls. 617 (1954), cert. den. 348 U.S. 863 (1954); Crow Tribe of Indians v. United States, 284 F. 2d 361 (C. Cls. 1960), cert. den. 366 U. S. 924 (1961). This Commission concludes that the decisions of the Court of Claims on the cause of action predicated upon the interpretation and effect of the treaty and agreements as drawn are not res judicata as to the plaintiff's instant suit, predicated upon a dissimilar cause of action. * * *

The Commission is of the opinion that the same decision should be reached in the present case.

There then remains the question, did the decision of this Commission in Seminole Nation v. United States, (10 Ind. Cl. Comm. 450) quoted immediately above have the effect of making defendant's pleading of res judicata valid in the instant case? The Commission is of the opinion that it did not since the present case, while involving the same parties, has a dissimilar subject matter. In the Seminole case quoted above, the cause of action was brought to recover the funds and the value of lands distributed to certain members of the Seminole Nation. These members were slaves owned by the Seminole Nation prior to 1866 or were descendants of such slaves. The question presented in that case was whether such former slaves or descendants of slaves should participate in the allotment of tribal funds and land.

As set forth above, the petitioner in the present case is bringing suit to recover monies allegedly owed the Seminole Nation as a whole by the defendant, the United States.

Petitioner stated further as to its second cause of action that defendant's allegation of res judicata is not valid and quoted the following argument in support of its position:

> * * * plaintiff's claim for $50,000 is res judicata because of the holding of the Commission in Burden, et al as Loyal Seminoles v. United States, 6 Ind. Cl. Comm. 127. An analysis of the claim presented in that case does not support defendant's contention. In that case the claim was for $213,888.95, the total amount of the losses sustained by the loyal Seminoles as determined by U. S. Commissioners on November 26, 1867, plus interest, less payments made by the United States totaling $236,000 (made up of the payments of the $50,000 paid from Seminole tribal funds under the Seminole Treaty of 1866, herein claimed, and the additional amount of $186,000 awarded by action of the United States Senate acting as an arbitrator). In other words, the claim therein advanced was for an additional amount over and above the amounts which had previously been paid and awarded by the Senate. That is not the claim herein presented. Here we /petitioner/ seek recovery of the $50,000 of Seminole tribal funds, which were deducted from the consideration of $325,362 paid by the United States for the cession of Seminole lands in the Seminole Treaty of 1866, on the ground that this treaty provision should be considered as if revised for unconscionable consideration, or any other equitable ground cognizable by a court of equity; or, in the alternative, upon the ground of fair and honorable dealing. Plaintiff contends that this $50,000 should not have been taken from Seminole tribal funds belonging largely to the loyal Seminoles, to pay the loyal Seminoles for losses incurred by them as an ally of the United States during the period of the Civil War -- an obligation which should have been borne by the United States * * *

The Commission is therefore of the opinion that the subject matter of the instant claim is so dissimilar from the suit brought in Seminole Nation v. United States, 10 Ind. Cl. Comm. 450, that the decision in the latter case should not constitute a defense of res judicata in the instant suit.

The Commission now proceeds to the merits of petitioner's claim. Petitioner in its brief makes the following statement as the basis of its claim:

> * * * Again the plaintiff must state that it has not advanced the ground of duress in this case, but has relied upon the consideration of the provisions of the Seminole Treaty of 1866 as if revised on the grounds of unconscionable consideration, or other ground cognizable by a court of equity; or, in the alternative, fair and honorable dealing.* * * (Pet. Reply Brief p. 45)

However, it must be noted that while the petitioner specifically denies duress as one of the grounds of its action, its pleadings do not bear out this argument. In paragraph XII of its complaint petitioner alleges as follows:

> That plaintiff did not agree to such treaty provisions by the use of its own free will and consent, but was forced by defendant to accept such terms because of said threats of forfeiture of all of its lands and funds, and by the dire necessities of said Seminole Indians. That at the time said treaty of 1866 was executed the majority of the Seminoles were living in Kansas and in the Cherokee Nation; that all of their property and cattle had been destroyed, stolen, or burned; that they were in an utterly helpless and destitute condition and were driven to accept such terms by the sheer necessity of their people, in order to provide the means to rehabilitate themselves in their new country, purchased in said Treaty of 1866.

Similarly, throughout petitioner's brief statements of alleged force were made. On page 50 of said brief petitioner states:

> Yet the officials of the United States wholly disregarded the loyalty of two-thirds of the Seminole Nation, and the many promises made by the officers of the United States that in any adjustments that were to be made at the close of the Civil War by treaty their rights would be respected, and imposed upon them the harsh terms of the Seminole Treaty of March 21, 1866, which are herein specifically complained of.

Again, on page 53 petitioner states:

> However, on the second day of the Council Commissioner Cooley forgot that he was addressing the delegates of the loyal portions of the tribes, who alone were present, and indiscriminately accused all of the Five Civilized Tribes of treason, stating that they had "forfeited and lost all their rights to annuities and lands"; and laid down the "must" provisions which these tribes were required to agree to in any treaties which were to be executed between them and the United States.

In its reply brief petitioner makes numerous references to force and threats of force. On page 49 petitioner states:

> * * * So Commissioner Cooley's statements to the Loyal delegates at the Fort Smith Council that "they had forfeited all right to annuities, lands and protection by the United States," and that "they are left without any treaty whatever, or treaty obligation for protection by the United States," and that "under the terms of the treaties with the United States, and the law of Congress of July 5, 1862, all these nations and tribes forfeited an lost all their rights to annuities and lands," were false, and untrue. Who can honestly say, after reading the protest of the loyal Seminole delegates at the Fort Smith Council, that these delegates were not frightened by the threats of forfeiture made by Commissioner Cooley at this Council, and that these loyal delegates did not continue to be frightened by these remarks which, as to them, were wholly false?
>
> Who can honestly say, upon the record before the Commission, that the Seminole Treaty of 1866 was not imposed upon the loyal Seminole Government, then controlled by the loyal Seminoles, when the preamble to the treaty required these loyal delegates to agree that "they threw off their allegiance to the United States and unsettled their treaty relations with the United States, and thereby incurred the liability of forfeiture of all lands and other property held by grant or gift of the United States;" * * *

And on page 50 petitioner further states:

> Certainly the Seminole delegates who negotiated the Seminole Treaty of 1866, understood the treaty terms, but could do nothing to prevent the demands of the United States from being imposed upon them. They were in a destitute and helpless state, having lost everything during the war because of their unflinching loyalty to the United States, and were

not in a position to assert their rights or force the United States to respect them.

Bouvier's Law Dictionary gives, among others, the following definition for duress:

> In its broad sense duress is now said to include all instances where a condition of mind of a person caused by fear of personal injury or loss of limb, or injury to such person's property, wife, child, or husband, is produced by the wrongful conduct of another, rendering such person incompetent to contract with the exercise of his free will power; Williamson v. Ackerman, 77 Kan. 502, 94 Pac. 807, 20 L.R.A. (N.S.) 484, * * *

From the foregoing the Commission is of the opinion that the petitioner has made allegations of duress and fraud and that defendant not only had the right but duty to answer said allegations.

The background and historical facts leading to the Treaty of March 21, 1866, were thoroughly discussed in The Seminole Nation v. The United States (10 Ind. Cl. Comm. 450). There, as in the present case, the petitioner alleged that the defendant, the United States, imposed harsh terms upon the petitioner by duress and intimidation. There, as here, it was also alleged that the Seminole Nation was threatened with forfeiture of benefits accruing under former treaties if it failed to accept the terms of the proposed peace treaty of March 21, 1866.

After a complete review of all the evidence and historical documents leading to the signing of the Treaty of March 21, 1866, the Commission stated in The Seminole Nation v. The United States (supra, p. 488) the following:

> In the case at bar, the principal chief and the twelve town chiefs constituted most of the governmental machinery of the Seminole Nation. They were "in the seats of power and in the public offices." In other words, they were the regularly constituted authorities of the Seminole Nation. These chiefs

> negotiated the treaty. They honored the treaty during the Civil War. The only possible conclusion is that the Seminole Nation, as a political entity, was a party to the treaty, and not a group of individuals who happened to be Seminoles. It follows that the United States Peace Commissioners, in their negotiations with Seminole representatives, were not using duress, intimedation, or falsehood. On the contrary, they were stating simple facts, viz: The Seminole Nation did enter into a treaty with enemies of the United States and, under the law, did subject itself to forfeiture of treaty benefits; and the President of the United States did not propose to enforce forfeiture. The Seminole delegates understood these statements, as they were intended, to mean that the United States, though wronged, intended to be magnanimous. That the Seminoles who heard these facts had not alligned themselves with the Seminole Nation during the war does not change these facts. The United States Peace Commissioners were discussing the consequences of the official acts of a nation, not the acts of a group of individuals.

The Commission is of the opinion that this statement should and does apply to the instant case and the defendant is therefore without guilt as to the charge of duress and intimidation.

There is one statement in petitioner's reply brief that should be disposed of before proceeding with the interpretation of the Treaty of March 21, 1866. On page 53 of the reply brief petitioner states:

> Defendant claims further that the ratification of the Seminole Treaty of 1866 by Congress is a further bar to this claim. However, Congress did not ratify this treaty -- only the United States Senate did.

This statement may have been made as a result of defendant's statement on page 69 of defendant's brief wherein it is stated:

> When Congress ratified the treaty of 1866, Congress approved the expenditures of the Seminole annuities and the annuities of other members of the Five Civilized Tribes for loyal refugee Indians. (Underlining supplied)

Lest there be any doubt that the Treaty of March 21, 1866, was a valid, enforceable treaty, the Commission now points out that Article II, Section 2 of the United States Constitution provides that the President

shall have the power to make treaties by and with the consent of the Senate, providing two-thirds of the Senators present agree. The Commission has held from its inception that this was the rule to be followed. Indeed, this point is so well established and settled that the Commission is somewhat surprised that any question should be raised on this issue at this late date.

In Seminole Nation (supra) this same treaty was found by the Commission to be properly ratified. However, to make its position absolutely clear, the Commission is of the opinion that the Treaty of March 21, 1866, was properly ratified by the United States Senate on July 19, 1866, and is therefore a valid treaty in all respects.

Petitioner in its pleadings and particularly in its reply brief alleges that the Treaty of March 21, 1866, was unconscionable and violated the rules of fair and honorable dealings (Pet. Reply Brief, p. 45). The details of the negotiations of the Treaty of 1866 leading to the signing of said treaty do not support petitioner's claim that there was any lack of fair and honorable dealings with the Seminole Nation in negotiating and ratifying the Treaty of March 21, 1866. As was pointed out in the Seminole Nation (supra) the criteria for determining the question of fair and honorable dealing was enumerated by the Court of Claims in The Snake or Piute Indians et al., v. United States, 125 C. Cl. 241 (1953). In this case the Court stated:

> A determination of whether or not a course of dealing by the United States with and in relation to bands or a tribe of Indians was in the last analysis fair and honorable, can be made only after a very thorough and careful consideration not only of what was actually done, but also of that which was not done and of the motives and circumstances surrounding and

> underlying the overt acts of the parties, and their intentions, etc. It is often the case that an action which, on its face, appears to be cruel or shocking to the conscience, may, when examined and analyzed in its complete context, be found to have some moral justification which either mitigates or eliminates entirely the apparent cruelty of the action. The evidentiary facts based on the curcumstances establishing such justifications, or the lack of it, are facts as indispensable on the issue of fair and honorable dealings, as the bare facts of the dealings themselves.

It should be noted that petitioner advanced the same arguments in the case of the Seminole Nation (supra) as they are alleging here, notably (a) wrongful withdrawal of federal troops from the Seminole country, which made defendant wholly responsible for the Seminole Nation's defection to the rebel forces at the beginning of the Civil War, (b) evidence presented, through the writings of Annie Abel (Pet. Exs. 36, 37, 38), that the United States Commissioners were selected for their intent to do the defeated Indians no good.

After thoroughly discussing both the above allegations, in the case of Seminole Nation (supra) and after weighing all the evidence presented, the Commission concluded that there were no grounds for revision of the Treaty of March 21, 1866. Exactly the same reasoning applies here as in the Seminole case. The same two allegations are presented in the instant case and the Commission is of the opinion that the petitioner has advanced no additional evidence or substantiated any arguments that would show that the defendant was guilty of less than fair and honorable dealings. Nor has the petitioner established, whether it intended to plead it or not, that the defendant was guilty of force, duress, or intimidation in securing the signing of the Treaty of March 21, 1866.

Petitioner has interjected an additional factor in the present case by alleging that petitioner should be awarded a judgment against defendant on its second cause of action in the amount of $50,000. Article III of the Treaty of March 21, 1866, provided that the sum of $50,000 should be deducted from the amount paid to the Seminole Nation. This $50,000 was to be and was in fact awarded to Seminole Indians who had remained loyal to the United States during the Civil War.

Petitioner contends that under Article III of the Treaty of 1866, the Seminole Nation authorized the United States to distribute $50,000.00 to the loyal Seminoles to compensate the loyal Seminoles for losses sustained during the Civil War. (Pet. Br. p. 62) Petitioner argues that this was a diversion of Seminole funds because the United States was morally obligated to reimburse the individual loyal Seminoles as a reward for their loyalty during the Civil War. (Pet. Fdgs. p. 62)

Defendant states that the answer to this allegation is that the Seminole Nation by the Treaty of March 21, 1866, agreed that the money was to be expended to reimburse the loyal Seminoles, and this treaty has been held to be fair to the Seminole Tribe as a whole. (Seminole Nation v. United States, 10 Ind. Cl. Comm. 450)

In addition, when the money so appropriated was found insufficient, the United States appropriated $186,000.00 more for the purpose of making payment to loyal Seminole Indians. This was pursuant to an adjudication of the United States Senate and has been held res judicata of the loyal Seminole claim. (Loyal Seminole Nation v. United States, 6 Ind. Cl. Comm. 127) The payment of $186,000.00 as additional consideration or gratuity by the United States is far more than this claim under the Treaty of 1866.

As to this sum the evidence shows that the money was appropriated by the Act of July 28, 1866 (14 Stat. 310, 319) and a further sum of $5,597.21 was appropriated on April 10, 1869 (16 Stat. 13, 30) to pay interest thereon until disbursed. The records of the General Accounting Office disclose that these amounts were paid in cash to loyal Seminole Indians for their losses. (Def. Ex. 1)

In addition, further payments were made to the Seminole Indians and their descendants for damage arising from losses to the loyal Seminole Indians during the Civil War. By paragraph 14 of the Act of July 1, 1898 (30 Stat. 567, 568), provision was made for the submission of the loyal Seminole claims to the United States Senate for final determination. Pursuant to this statute an award was recommended. By Act of May 31, 1900 (31 Stat. 231, 240), $186,000 was appropriated for the purpose of making payment of the awards to the loyal Seminole Indians. This sum was paid in cash to loyal Seminoles or their heirs in full settlement of said awards. By the Act of April 26, 1906 (34 Stat. 137, 140), these payments to loyal Seminole Indians were confirmed by Congress.

It is the opinion of the Commission that when the United States paid $50,000 under the Treaty of 1866 and paid an additional consideration of $186,000 from United States funds for damages suffered by the loyal Seminole Indians, as a result of the Civil War activities of the Seminole Nation, the United States acted according to the highest principle of fair and honorable dealing with the Seminole Nation. The Seminole Nation ratified the treaty under which the procedure for setting up $50,000 for damages to the loyal Seminoles was provided.

It is the Commission's further opinion, as stated above, that there was no duress used against the petitioner in securing their ratification to the Treaty of March 21, 1866.

The Treaty of March 21, 1866, contained a release of all claims for annuities spent on loyal refugee Indians as well as for damages and losses suffered. Article VIII provided:

> The stipulations of this treaty are to be a full settlement of all claims of said Seminole Nation for damages and losses of every kind growing out of the late rebellion, and all expenditures by the United States of annuities in clothing and feeding refugee and destitute Indians since the diversion of annuities for that purpose, consequent upon the late war with the so-called confederate states. And the Seminoles hereby ratify and confirm all such diversions of annuities heretofore made from the funds of the Seminole nation by the United States. And the United States agree that no annuities shall be diverted from the objects for which they were originally devoted by treaty stipulations with the Seminoles, to the use of refugee and destitute Indians, other than the Seminoles or members of the Seminole nation, after the close of the present fiscal year, June thirtieth, eighteen hundred and sixty-six (14 Stat. 755, 759).

Petitioner states that the ratification and release in Article VIII is not a bar to the claim; that while the release would be and is a legal defense, the present claim is based upon the new and broad provisions of the Indian Claims Commission Act which authorized the determination of claims which would result if the treaties between claimant and the United States were revised on the ground of unconscionable consideration, or any other ground cognizable by a court of equity; or, in the alternative, claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity. (Clause 5)

However, as stated before, there was nothing presented in the evidence that shows the defendant guilty of something less than fair and honorable dealings. Nor can the treaty be revised upon the grounds of unconscionable consideration for, as the Commission found in Seminole Nation (supra) there was substantial and adequate consideration. In addition, as defendant herein points out, many things were accomplished by the Treaty of 1866 (14 Stat. 755), which were beneficial to the Seminole Indians. No monetary value can be set upon the general amnesty for all past offenses against the laws of the United States which was granted to every member of the Seminole Nation. However, this concession made by the United States to the Seminoles was certainly to the advantage of all those Seminoles who had diligently sought to destroy the United States. Instead of being called to account and punished for their disloyalty, they were generously granted, in Article V of the treaty, "general amnesty for all past offenses against the laws of the United States."

In Article IX of the treaty, the United States reaffirmed and reassumed all treaty obligations entered into before the treaty of the Seminoles with the Confederacy of August 1, 1861. It further agreed to renew all payments of annuities from the close of the fiscal year 1866. From the foregoing it is crystal clear that the Treaty of March 21, 1866, was not a one-sided treaty made without consideration as the petitioner would have it.

The Commission is therefore of the opinion that the Treaty of March 21, 1866, was a valid treaty; that petitioner was not coerced into signing said treaty; that the defendant was fair and honorable in dealing

with the petitioner in the events and transactions leading to and including the signing of said treaty; that the consideration for signing and entering into said treaty was not unconscionable; that all terms and provisions of the treaty were carried out by the defendant; and therefore there are no grounds for revising or altering the terms of said treaty.

An order dismissing this suit will be entered.

Arthur V. Watkins
Chief Commissioner

We concur:

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner