

BEFORE THE INDIAN CLAIMS COMMISSION

THE SEMINOLE INDIANS OF THE)
 STATE OF FLORIDA,)
)
 Plaintiff,)
)
 v.) Docket No. 73
)
 THE UNITED STATES,)
)
 Defendant.)

THE SEMINOLE NATION OF THE)
 STATE OF OKLAHOMA,)
)
 Plaintiff,)
)
 v.) Docket No. 151
)
 THE UNITED STATES,)
)
 Defendant.)

Decided: May 8, 1964

Appearances:

Charles Bragman (Washington, D. C.), Roy F. Struble (Miami, Florida) and Mrs. Effie Knowles (Miami, Florida) Attorneys for Plaintiff, Docket No. 73.

Paul M. Niebell and Roy St. Lewis (Washington, D. C.), Attorneys for Plaintiff, Docket No. 151.

Maurice Cooperman, with whom was Mr. Assistant Attorney General, Ramsey Clark, Attorneys for Defendant.

Morton H. Silver (Miami, Florida). He is the attorney for attempted Intervenor, The Everglades Miccosukee Tribe of Seminole Indians.

OPINION OF THE COMMISSION

Holt, Associate Commissioner, delivered the opinion of the Commission.

These dockets are suits timely filed against the United States, under Section 2 of the Indian Claims Commission Act of 1946 (25 U.S.C. 70a), hereinafter referred to as "the Act." The plaintiffs are tribes, bands, or other identifiable groups of American Indians residing within the territorial limits of the United States.

The plaintiffs, The Seminole Indians of Florida and The Seminole Nation of Oklahoma, claim as successors to The Seminole Nation which was in Florida prior to 1823 and which, while in Florida, allegedly sustained the injuries under which claim is made. The Seminole Nation of Oklahoma represents that segment of The Seminole Nation which removed to the Indian Territory. The Seminole Indians of Florida represent that segment of The Seminole Nation which did not remove to the Indian Territory.

On September 18, 1961, a group known as The Everglades Miccosukee Tribe of Seminole Indians filed a motion to dismiss the instant claims on the ground that the movant declined to be bound by proceedings before this Commission. Argument was heard in open court on September 18, 1961 and, on the same day, the motion was overruled on the ground that The Everglades Miccosukee Tribe of Seminole Indians had not timely filed a separate claim and hence had no standing to appear separately before this Commission.

The claims encompassed by Docket Nos. 73 and 151, having a common source, are wholly overlapping. Each is for the recovery of the value

of a parcel of land being all of the present State of Florida, excepting three enclaves. The three excluded areas were known as The Picolata Purchase on the northern Atlantic coast, The Forbes Purchase on the upper Gulf coast from Apalachee Bay to Apalachicola Bay, and The Pensacola Purchase on the northwestern Gulf Coast.

It is alleged that The Seminole Nation had Indian title to this land from time immemorial; that such Indian owners sold the lands embraced by the three enclaves identified above before United States sovereignty attached; that the rest of the State of Florida was Seminole-owned until 1823 when most of the state was ceded by the Seminoles to the United States; and that the remainder, a reservation of about four million acres, was ceded to the United States by the Seminole Indians in 1832 or 1833. A total of about 32,000,000 acres are claimed.

Florida lands were first explored by the Spanish in 1512, and Florida was first colonized in 1565 when the Spanish founded St. Augustine. The Spanish explorers encountered hostile aborigines, and it was their hostility that postponed permanent colonization for half a century. Spanish treatment of the aborigines assured their continued hostility.

The respective parties' expert witnesses agreed that as of about 1600, the twenty-five or so tribes encountered by explorers in Florida made up the aboriginal population. Working from northwest to southeast, the tribal names were Pensacola, Apalachicola, Sawokli, Chatot, Apalachee, Yustaga, Osochi, Oathequa, Saturiba, Utina, Potano, Ocale, Mayaca, Mayaguaca, Acuera, Uribia, Tocobaga, Surrunque, Mococo, Ocita, Perucho, Ulamay /all more or less geared to an agricultural life/; and the Ais,

Mayaimi, Sarrope, Guacata, Calusa, Jeaga, and Tekesta [generally nomadic hunters and fishers]. The generic term "Seminole", used to denote any and all Florida aborigines, was first used in 1765.

Spanish missions were established in the 1600's in chains radiating from St. Augustine west to the Apalachicola River [85 degrees of western latitude at the Gulf], and south along the upper reaches of the St. John's River, which flows from south to north about parallel to the east coast. The mission system penetrated inland as far as what is now Gainesville and west to the Apalachee Bay area. There was very little Spanish penetration of the southern half of the Florida peninsula. From a period early in the history of Florida, comparatively large numbers of natives lived near St. Augustine. The Spanish missions attracted numerous aborigines and, by 1725, there were sixteen missions radiating from St. Augustine which had been established for the enlightenment of over a thousand Indians. Other Spanish missions sought to minister to Indians on the east coast of Florida south all the way to what is now the Miami and Keys region. The aborigines who lived on the middle and lower east coast of Florida were among those who were eventually absorbed by the Indians ultimately becoming known as "Seminoles". The Indians who lived in the neighborhood of St. Augustine in the mid-18th Century were native and not transient, and it was about this time that the Seminoles began to be known as a distinct people and not merely as Creek outcasts.

European diseases, military expeditions mounted by the Spanish, slaving expeditions conducted by English settlers from the Carolinas, and normal warfare between Indians resulted in the destruction of a

substantial portion of the Florida aborigine population in the early 1700's. A Carolinian slaver reported in 1710-1711 that he had to penetrate the Everglades in search of suitable Indians. An anthropological report prepared by the defendant's expert witness showed an absence of Indians in Florida in 1715. This situation was characterized by Dr. Fairbanks as "a demographic void" and by Dr. Goggin as "a population vacuum." However, this testimony establishes not that there were no Indians in Florida in about 1715, but only that there were appreciably fewer Indians than there had been at the times of the first European contacts.

The scarcity of Indians in Florida in the early 1700's was a situation which did not long prevail. The Creek Indians had traditionally claimed lands in northern Florida from the mouth of the St. John's River westward to Apalachie Bay and thence northwest to Alabama (Creek Nation v. United States, 2 Ind. Cl. Comm. 98 (1952) at p. 101). Following the Yamasee War of 1715 [a Creek and Yamasee attack on settlers in South Carolina], the Spanish invited several Lower Creek groups from Georgia into Florida. These and subsequent Indians from the same stock settled in Apalachee country [Tallahassee area] and Alachua country [Gainesville area] and, by 1739, the area north of the old road from St. Augustine west to Pensacola was well-populated with Creek Indians. This was the period when the English attacked St. Augustine and Indians, fighting on both sides, moved into northern Florida. Some Indians, referred to variously as Ocheesees or Uchesez, participated in the assimilation of the remnants of the Florida aborigines in the next two decades. To the

European mind, these successive waves of Indians into Florida were all natives generically known as "Seminoles" a term first used about 1765. One theory is that this term is of Creek derivation and means "runaways" or "emigrants" (Seminole Nation v. United States, 10 Ind. Cl. Comm. 450 (1962) at p. 467). Another theory is that "Seminole" is a linguistic corruption of the Spanish "Cimarron", a wild person or animal wrought by the inability of the Florida Indians to reproduce accurately the Spanish "C" and "R".

The first Spanish period of Florida history terminated in 1763 when England accepted Florida from Spain. At that time Lower Creeks had established at least two centers which were nuclei of the emergent Seminole Nation: Alachua [modern Gainesville] where the Hitchiti speech prevailed and Apalachee [modern Tallahassee] where the Muskogee speech prevailed. These two languages or speech patterns were not mutually intelligible. Administration of the Indians by the British was characterized by better relations than the Spanish had developed. The English held congresses and conventions with the Indians leading to treaties and frequently gave them presents. An English cartographer, Lt. Pittman, was detailed to survey routes between Pensacola and St. Augustine. Pittman, described by the defendant's expert witness as "a conscientious cartographer," traced the northern [land] and southern [sea] routes from Pensacola to St. Marks, and the trails which comprised a road from St. Marks to St. Augustine. This route from Pensacola to St. Augustine was described in Boyd's Florida History, Vol. 17, No. 1, which included the Stuart-Purcell map of 1778.

The congresses and conventions first initiated by the British were attended by representatives of various Indian tribes, including Creeks who had sifted into and settled in the areas generally north and west of the route from Pensacola to St. Augustine. At the first of these conventions, held at Augusta in 1763, Creek representatives were present but there were no representatives of natives denoted by the European mind as "Seminoles." The Creek Indians purported to speak for all of Florida and stated that "the English were not to go beyond the tide level in West Florida, and that the territory of the English in East Florida was not to reach beyond the St. John's River in the neighborhood of St. Augustine." A year later, at Pensacola, this Creek statement was interpreted by the British as a commitment that "no settlement should be made by the White People at Pensacola but within the ebbing and flowing of the Tide." The Creeks' chief speaker, Wolf King, did not address his response to this interpretation but specified a grant of land to the English "Ten Miles in Depth from Deer Point due west of the present Gulf Breeze, Florida opposite to the Island of Saint Rose, quite round the Bay of Pensacola, and to Extend along the Sea Coast, to the Point of Mobile Bay, from thence up the East side of Mobile Bay, till it comes Opposite to the Town of Mobile." At the same time Wolf King on behalf of the Creek Indians granted to the British "all the Settlements formerly possessed by the Yamassas, and eight Miles round."

Another congress was held at Picolata about 17 miles west north-west of St. Augustine on the St. John's River in 1765. This was the first of the Indian-English meetings at which Seminole representatives

appeared separately from the Creeks. A Creek speaker again mentioned the Augusta agreement "that the White People should not settle beyond the Flowing of the Tide" but no mention was made of the fact that in 1763 the "tide line" was limited to West Florida.

The Picolata congress culminated in a treaty between the English and the Creek Indians dated November 18, 1765. The land therein granted to the English was described as "all the Sea Coast as far as the Tide flows . . . with all the Country to the Eastward of the River St. Johns forming nearly an Island from its source to its Entrance into the Sea, and to the Westward of St. Johns River by a Line drawn from the Entrance of the Creek Acklamaugh into said River above the great Lake [Lake George] and near to Spauldings Upper Trading Store house to the Forks of black Creek at Colville Plantation & from thence to that part of St. Mary's River which shall be intersected by the continuation of the line to the Entrance of Turkey Creek into the River Altamaha." The Seminole representatives who attended a portion of this congress did not sign the treaty and were not parties to it.

In 1771, the English and the Creeks again met at Pensacola to refine the boundaries of the 1765 cession by the Creeks. In the resultant treaty, dated November 2, 1771, the boundaries of the first Pensacola cession were amplified and ratified and additional territory was ceded to the English. Representatives of the Seminole Indians were not present although the English, in the person of John Stewart, were by 1771 aware of the existence of a separate group of Florida Indians then known as the Seminolies.

British dominion of Florida terminated in 1783 when the Floridas again passed to Spain. By about 1800 the scattered Indians of Florida to the south and east of The Old Spanish Road from St. Augustine to Pensacola had coalesced into an overall cohesive group, The Seminole Nation. Europeans observed that the Seminole Indians raised crops, hunted, fished, pastured cattle, and gathered wild foodstuffs, depending upon their location and traditional way of life. The Seminoles' hunting grounds were all of Florida south of the 28th degree of north latitude [Tampa Bay and to the east]. Late in the 18th Century the Seminoles were a relatively prosperous group who absorbed the remnants of prehistoric Floridian aborigines and inhabited Florida south to and including the Florida Keys.

From the middle of the 18th Century to late in that century, the number of Seminole villages showed a steady increase as the Seminoles established centers throughout Florida. In addition to earlier permanent settlements which were located in the northern agricultural belt, there were new villages established in north, central and southern areas of Florida.

In northern Florida, Seminole settlements appeared at Achackweithle, Wachitokha, and Picolata. In Central Florida Seminole settlements appeared at Okawahathako, Alachua [not the site of the Spanish trading post of the same name] and Chukuchatta. In southern Florida there were Seminole settlements at Hitchapukassi, Sarasota, and Caloosahatchee. In addition, there were many unnamed sites of temporary encampments at the times and places where hunting, fishing, and foraging were fruitful.

The Seminole Indians had the organizational machinery necessary to act in concert when external events threatened, but in ordinary times control of Seminole activities was fragmented and reposed in the individual villages, each of which acted on its own behalf. One event which required the concerted action of The Seminole Nation occurred in 1804 when the Seminole Indians became indebted to the trading firm of Panton, Leslie & Company. In order to satisfy this indebtedness, The Seminole Nation sold an area about forty miles square lying between the Appalachie and Appalachicola rivers. The trading firm of John Forbes & Company succeeded to the interests of Panton, Leslie, & Company and the area became known as The Forbes Purchase. This was a bona fide sale by the Seminole Indians and not as in the cases of the Pensacola and Picolata Treaties an act of Creek Indians who maintained their ties with The Creek Nation.

Even before the United States accepted Florida from Spain, raiders from the United States slashed into northern Florida in a series of hit-and-run attacks with the covert approval of the United States Government. Some of these raids were directed against the Seminole Indians and the runaway slaves whom they had harbored. Such raids resulted in impoverishment of the once-wealthy Seminoles, together with some diminution of their numbers.

The Congress of the United States continued to be alarmed at the possession by Spain of territory contiguous to the United States and, by a Resolution approved on January 18, 1811 (3 Stat. 471), approved temporary occupancy of Florida pending negotiations for its acquisition.

On February 22, 1819, a treaty concluded between the United States and Spain ceded "East and West Florida and the appendages and appurtenances thereof" to the United States (3 Stat. 523, p. 524). Formal possession of Florida was taken by the United States pursuant to an Act approved on March 3, 1821 (3 Stat. 637), and a territorial government was established (Seminole Nation v. United States, 10 Ind. Cl. Comm. 450 (1962) p. 468). Article 8 of the 1819 Treaty provided in part that all grants of land [to Europeans] made by Spanish authorities before January 24, 1818, would be ratified by the United States, to those in possession, to the same extent that the grants would have been valid if Florida Territory had remained the property of Spain. This part of the treaty was implemented by an Act of Congress of May 8, 1822 (3 Stat. 709). Section 4 of the latter Act (3 Stat. 709, p. 717) provided the machinery for perfecting claims to lands in the Territory of Florida. Of course, no claim was filed under this Act by The Seminole Nation.

There is extensive material in evidence concerning those Spanish land grants which were subsequently confirmed under the machinery provided by Congress. An aggregate of 2,727,130.5 acres are comprehended by all of the confirmed grants, many of which are not in the area exclusively owned and occupied by the Seminole Indians. Determination of whether many other individual confirmed grants were within or without the Seminoles' land will necessarily await a future determination in terms of modern landmarks of the northern boundary of the Seminole lands.

On September 18, 1823, the United States and The Seminole Nation entered into a treaty (7 Stat. 224). The treaty, which was the product of recommendations of various United States authorities over the years, was intended to remove the Seminole Indians from all their traditional habitations and hunting grounds throughout Florida and to concentrate them on one compact reservation. To this end the 1823 Treaty of Camp Moultrie accepted the Seminoles' cession of their claims to Florida (Article I) while allotting to them a reservation in south-central Florida (Article II). The initial reservation was enlarged by about 15% in 1827 [Royce Area No. 173] pursuant to Article IX of the Treaty of Camp Moultrie (7 Stat. 224, 225) which authorized enlargement of the original reservation if the boundaries, as drawn in Article II, enclosed insufficient land for the needs of the Seminoles. Eventually, most of the Seminole Indians were concentrated on this reservation (Additional Article, 7 Stat. 226; 2 Kapp. 205).

Soon after the Seminole Indians were limited to their reservation, a movement to remove them entirely out of Florida gathered momentum. This movement was given impetus by the Indian Removal Act, approved on May 28, 1830 (4 Stat. 411). It provided generally that Indians residing within the limits of any state or territory might be removed to the Indian Territory [now Oklahoma]. It also provided that such Indians' lands within a state or territory would be exchanged for other lands within the Indian Territory (Seminole Nation v. United States, 10 Ind. Cl. Comm. 450 (1962) p. 469). Fifteen Seminole representatives-- less than half the number which signed the Treaty of Camp Moultrie--

signed a removal treaty at Payne's Landing on May 9, 1832 (7 Stat. 368) under which they ceded their reservation of over four million acres in exchange for lands adjacent to the Creek Reservation in the Indian Territory (Seminole Nation, supra). The year 1835 saw the expiration of the three-year period which the Seminoles were given to perfect their removal. Plans had been made but they were not satisfactory to the Seminoles. An ultimatum was given that if the Seminole Indians did not begin their immigration to the Indian Territory, Federal troops would be sent to enforce their removal. This ultimatum triggered the Seminole war which lasted almost seven years. As the Seminole tribal leaders surrendered at different times during the war, they and their followers and slaves immigrated to the Indian Territory under military escort and, ultimately, most of the Seminoles settled apart from the Creek Indians on land ceded by the Creeks in the Indian Territory (id., pp. 469, 470).

The above statement is this Commission's view of the circumstances relevant to these cases at their present state. It will be noted by both parties that some matters to which one or the other of the parties devoted large segments of the arguments, such as Spanish land grants, are mentioned only briefly. It will be further noted that some matters about which both parties presented arguments and evidence, such as consideration, are not mentioned at all.

The parties are reminded that these cases are now receiving preliminary consideration. The only issue now before this Commission is whether these plaintiffs can maintain a claim based on Florida lands, including a very general statement of extent. At a future date, counsel

will be required to devote attention to such matters as boundaries, reservations, coastal configurations, and acreage computations.

25 C.F.R. 503.22(f)(1).

The aboriginal [pre-Spanish; 1565 and earlier] population of Florida occupied in Indian fashion widespread areas of the now State of Florida. In terms of approximate location keyed to modern geography, the evidence adduced in these cases supports the following locations and identifications. Pensacola, north-northeast of the Florida city of that name. Chatot, in the southeast corner of Calhoun County, west of the Apalachicola River. Sawokli, about ten miles west of the Georgia-Florida border city of Chattahoochee. Apalachicola, on the banks of the Apalachicola River about fifteen miles north of Chattahoochee. Apalachee, in Wakulla County east of the Sopchoppy River. Yustaga, in Madison County at Madison. Osochi, forty miles south of Madison on the line between LaFayette and Taylor Counties. Onatheaqua, east of the Osochi near O'Brien in LaFayette County. Saturiba, on the banks of the St. John's River in the vicinity of Green Cove Springs in Clay County. Utina, in the southeast corner of Gilchrist County. Potano, in the vicinity of Lochloosa Lake. Ocale, near the present city of Ocala. Mayaca and Mayaguaca, around Lake George. Acuera, near and west of Lake Apopka. Uribia [Urubia], at the Atlantic Ocean near Cape Kennedy. Tocobaga, just north of Tampa. Surrunque, west of Cape Kennedy on the banks of the St. John's River. Mococo, south of Tampa at Riverview. Ocita, south of Tampa, near Parrish in Manatee County. Perucho and Ulamay, between the Atlantic Ocean and the headwaters of the St. John's

River, in the vicinity of Melbourne. Ais, inland around the Blue Cypress Lake north of Lake Okeechobee. Mayaimi and Sarrope, north-northwest of Lake Okeechobee to Lake Istokpoga. Guacata, east of the northeast shore of Lake Okeechobee near Indiantown. Calusa, in the vicinity of Lake Trafford and the Corkscrew Swamp. Jeaga, near the juncture of the West Palm Beach Canal and the Ocean Canal east of Pelican Bay. Tekesta, in the eastern sector of The Everglades west of Fort Lauderdale.

These were the known aboriginal inhabitants of Florida whose genesis stretched back into pre-historic times. If the Florida peninsula were bisected by a line arbitrarily drawn from Cape Kennedy on the east to Tampa Bay on the west, the aborigines living north or south of that line could be segregated into two different and distinct cultures. Those living north of that arbitrary line [Pensacola, Chatot, Sawokli, Apalachicola, Apalachee, Yustaga, Osochi, Onatheaqua, Saturiba, Potano, Ocale, Mayaca, Mayaguaca, Acuera, Uribia, Tocobaga, Surrunque, Mococo, and Ocita] were sedentary agricultural peoples who, in certain parts of this area, achieved a very prosperous and rich existence. Of this series of agricultural tribes, the most important numerically were the Utina [Timucua] with a population varying between ten and sixteen thousand as of 1600 A. D. The Apalachee numbered about 5,000 as of the same period. These, too, were agricultural aborigines, living in permanent villages with cultivated fields around them. Other tribes represented lesser populations. South of the arbitrary bisecting line were aborigines known to be non-agricultural peoples who depended primarily on hunting, gathering,

and fishing. They were relatively nomadic and lived in small communities of no more than a few hundred. They were highly warlike and difficult to deal with and the exploring Spanish made few efforts to civilize or control them.

The geography and ecology of Florida [fertile lands for cultivation to the north; abundant game, fish, and forage to the south] established aboriginal cultural patterns to which the Floridian Indians adhered throughout their existence in Florida.

The teeming aboriginal population of Florida was sharply reduced immediately following the introduction of European civilization. There were three primary causative factors: European diseases which were highly contagious and highly morbid of the aboriginal population; inter-Indian competition for Spanish benefits; and Spanish punitive action in retaliation for various aboriginal revolts in Florida. After settlement of South Carolina, English slaving expeditions staffed, in part, by lone Creek warriors [Uchises, Uchizes, or Ocheesee] took their toll of the aboriginal population.

The trend of a downward adjustment of Indian population continued from 1565 to 1711, at which time the bulk of the natives were concentrated in the vicinity of Spanish settlements and in the inaccessible Everglades. This resulted in what the expert witnesses characterized as a "population vacuum" or "demographic void". The aboriginal population was only reduced sharply, and not wholly exterminated. Creek slaving expeditions after that date produced slaves and large numbers of Utina aborigines were in Florida as late as 1763.

The downward population trend was halted around 1715 when, as a result of the Yamasee War [an uprising of Georgia Indians against the English], some Indian remnants, estimated at less than 200, had moved into Florida. This Yamasee revolt was Creek-instigated and, a few years later, there was an influx of Lower Creeks into northwest Florida. These were augmented by other Lower Creeks who were invited into Florida by Spanish authorities to defend Florida and furnish supplies, and by Florida aborigines who had taken refuge with the Lower Creeks and were returning to Florida under Creek protection. These Indian immigrants took root in the Tallahassee and Gainesville areas.

The European willingness to exchange goods for pelts at this time resulted in very prosperous trade for Creek Indians. Indians were trading with the Spanish at St. Marks, trading pelts for clothing and spirits, and such trade necessitated Indian use of all Florida where large animals abounded. Around 1740, Lower Creeks who maintained ties with The Creek Nation controlled the area north and west of The Old Spanish Road from St. Augustine to Pensacola.

During the same decade, Indians were settled generally in southeast Florida, along the Atlantic coast from Fort Pierce south to Miami and down along the Keys where Indians had been reported as living prior to 1700, and as late as 1763. The Indians of south and interior-south Florida were not under effective control of the Spanish at any time.

By the end of the first Spanish period of Florida, there was an appreciable trend of an upward adjustment of Indian population, with the Gainesville area Indians being largely independent of The Creek Nation

in Georgia. These Indians of Creek extraction, together with the assimilated aborigines such as the Utinas of central Florida and the remnant aborigines of the lower peninsula made up the native population of Florida which was to become known collectively as "Seminoles." The Seminoles, through the aborigine stock, were a people able to trace their ancestry beyond recorded history. The Spanish closed the first Spanish period by taking with them to Cuba some Indians, some Yamasees and some Utinas thus causing a slight downturn in the native population of Florida.

The British period of government of Florida was characterized by a greater degree of trade. Numerous trading posts were established and Seminoles were encouraged to secure the produce, primarily pelts, which the British traders would accept. Additionally, a large cattle supply and market developed, which tended to encourage hunting. The hunting areas were concentrated in the lower peninsula. During the British period there was a small but constant seepage of Creeks into Florida resulting in a surge of the fluctuating native population known to Europeans as "Seminoles."

The British period and subsequent second Spanish period trickle of new Seminoles of Creek extraction changed to a flood of emigration upon the close of the Creek war in Alabama in 1814. The defeated Creeks took refuge first in upper Florida, then in central and south-central areas. By the end of the second decade of the 19th Century, the old and new Seminoles together approximated 6,000. In addition to some of

the existing settlements, there were newer Seminole communities on the Apalachicola, Ochlockonee, Aucilla, Suwanee, St. John's and Withlacoochee rivers, on the Gulf Coast, in the central peninsula, and a few minor communities on the East [Atlantic] coast. These were all Seminoles, so regarded by themselves and by Europeans. These communities adhered to the olden pattern of agriculture to the north and extensive and widespread hunting and fishing to the south into the Big Cypress and Everglades swamps.

Following the Creek War in Alabama with its resultant increase in the numbers of Seminoles in Florida was the First Seminole War. Andrew Jackson's forces killed and destroyed Seminole communities in northern Florida and in central Florida as far as where the Suwanee River empties into the Gulf of Mexico. In the process Jackson met Seminole refugees, formerly Creek refugees who, after defeat in Alabama by 1814, had joined and merged with the Seminoles until ultimately conquered in the Seminole War of 1819. Creek Nation East v. United States, C. Cls. App. No. 4-63, decided April 17, 1964 (slip opinion, p. 3). There were from 5,000 to 6,000 Seminoles known in Florida at the end of the First Seminole War. These refugee Creeks were the last Indians to swell the Seminole population in Florida before United States sovereignty attached.

The evidence examined by this Commission, and the testimony heard in open court, establish a Florida abounding in fluctuating Indian populations. The first explorers encountered hostile aborigines and the Spanish treatment of these savages assured their continued hostility.

As a result of this continuing conflict, Spanish explorations which commenced on the coasts penetrated inland slowly and not to the interior of the lower Florida peninsula. Radiating chains of missions attracted the aborigines who soon realized that the fruits of the hunt could be exchanged for attractive items such as guns, shot, and powder. Extensive trade in pelts and skins developed.

Not all of the Indians attracted to Spanish and English civilization were Florida aborigines. Many of them were northern Indians, members of the Five Civilized Tribes, whose first encounter with European culture was made at the English settlements in the Carolinas. Many Creeks penetrated northern Florida, either at the invitation of warring European powers or to escape English slaving expeditions. These Creeks identified themselves as "Seminoles," i.e., Creek expatriates. The term was picked up by the Europeans and used to designate any and all Indians in Florida. Thus, the nucleus of The Seminole Nation was born.

There was a continuing difference of opinion as to whether these Seminoles were an arm of The Creek Nation or a separate identifiable group. In the late 1700's, the Creeks in a treaty with the Georgians committed the Seminoles to a specific course of action, but the Seminoles refused to be bound, and did not regard the treaty as valid. The Seminoles regarded themselves as a separate Floridian group or tribe.

These Seminoles ranged throughout Florida, interior and coastal, and down to the Florida Keys, hunting, fishing, planting, and gathering. Among them integrally were the remnants of the earliest Florida aboriginal tribes, now wholly assimilated and being indistinguishable from

any other Seminoles. From a point in the 18th Century, there were two Seminole nuclei, distinguishable by their language. One, Hitchiti-speaking, fanned out from the Gainesville area [northern peninsular Florida] and pervaded peninsular Florida. The other, Muskogee-speaking, spread from the Tallahassee area [northwestern Florida] through northern Florida and the Gulf [of Mexico] coast. By the mid-1700's, both groups were properly classifiable as Seminoles and not as Creeks or derivative Creeks.

The defendant suggests that use and occupancy in Indian fashion in this suit be determined by the "low tide" of Indian population around 1710 when there were fewest Indians and they were thinly spread through Florida. The inference that there can be no continuity of exclusive use and occupancy from time immemorial seems to relate to The Quapaw Tribe of Indians, et al. v. United States, 128 C. Cls. 45 (1954), affirming Court I of The Quapaw Tribe of Indians, et al. v. United States, 1 Ind. Cl. Comm. 469 (1951). The Court there held (128 C. Cls. 45, p. 49):

* * * Indian tribes, in the absence of a treaty reservation, have only an occupancy and use title, or right, the fee being in the United States, and when an Indian tribe ceases for any reason, by reduction of population or otherwise, to actually and exclusively occupy and use an area of land clearly established by clear and adequate proof, such land becomes the exclusive property of the United States as public lands, and the Indians lose their right to claim and assert full beneficial interest and ownership to such land; and the United States cannot be required to pay therefor on the same basis as if it were a recognized treaty reservation. (emphasis supplied)

The key words are "Indian tribes" and "ceases." The rule obviously relates to a situation where a stagnant, dying, diminishing native group

suffers a consistent diminution of its population, with the consequent result that it has less need of land and uses less, with never a reversal of the trend toward tribal oblivion. The Seminoles were never in such a deplorable state. Theirs was a dynamic native group, oppressed by new technology, by new diseases, and by the divisive influence of European trade. In the face of these odds, the Seminoles had a fluctuating population, flickering low in times of greatest attack, but waxing populous and prosperous, spreading more thickly over their traditional hunting, fishing, and agricultural lands, whenever European pressure permitted. Here the proof is clear and adequate that, in good times and bad, the Seminoles, few or many of them, used in Indian fashion all of Florida south and east of The Old Spanish Road. Indian use and occupancy has never been dependent upon the claiming Indians treading upon every acre every day. The Tlingit and Haida Indians of Alaska v. United States, 147 C. Cls. 315 (1959).

The plaintiffs have reposed full reliance upon an early case, Mitchel, et al. v. United States, 33 U.S. 307 (1834); id., 34 U.S. 711 (1835); id., 40 U.S. 52 (1841), involving title to land in Florida. It was a suit brought by successors to the owners of the "Forbes Purchase" (supra), and the Court determined that title from the Indian grantors was good. The defendant contends that the plaintiffs' reliance upon the Mitchel case as resolving current issues is unwarranted, and that much of the language of the Mitchel decision, being unnecessary, should be disregarded as dicta. Particularly, the defendant takes issue with a portion of the Mitchel decision limiting the "high tide" Indian boundary line

(Mitchel, et al. v. United States, 34 U.S. 711 (1835), p. 744) to a northern segment of the east coast of Florida.

To some extent, this Commission agrees with the defendant that statements in the Mitchel case are not dispositive of corresponding aspects of the instant claims. In so deciding, this Commission is fulfilling its obligation to reach the decision which the evidence before it compels. Yakima Tribe v. United States, Court of Claims No. 4-61, decided October 3, 1962 (unreported).

In the 1835 Mitchel decision, the Court found it desirable to discuss the Pensacola and Picolata congresses of 1765 between the Creeks and the English, even though the only issue was the validity of title in the area of the Forbes Purchase (34 U.S. 711, p. 749). The Court observed, inter alia, that the Creeks ceded the Picolata and Pensacola Purchases to the English (id.). As noted above, Seminole Indians were not participants in the congresses, nor signatories to the treaties of cession, nor grantors of the lands involved and, inferentially, the Court confirmed this position in limiting its reference to "Creeks." These were the same Creek Indians who had been convened at Pensacola earlier in the year, and who had traveled east all the way to Picolata to treat with the British governor of East Florida as duly authorized representatives of The Creek Nation. One Creek speaker there expressed the hope that the British would not allow whites to settle beyond "the Road leading from this place [Picolata] to our nation."

It is clear that the Creek Indians who journeyed east to Picolata were well away from their lands in West Florida when they treated with

the English at Picolata, and that the Creeks then ceded to the English lands which were not Creek-owned, but which were Seminole lands. This was another instance of the Creeks who remained Creeks unilaterally arrogating to themselves the power to speak for, and bind, the Seminoles of Creek derivation. The Indians living in the vicinity of St. Augustine were Seminoles and not Creeks and the British knew it. There were some Seminoles invited to the Picolata congress, and some appeared, but they took no active part in the congress or in the resultant treaty (supra).

The Creeks ceded to the English an area vaguely demarcated by "as far as the tide shall flow." Whether this "tide line" was intended to comprehend only the area within the stated boundaries of the cession [as the plaintiffs contend] or all around the peninsular and Gulf coasts [as the defendant contends] is unclear. It is also immaterial. There is no inference that the party who contracts to sell land owns it.

Thomason, et al. v. Rigney, 314 S.W. 2d 450 (CCA Tex., 1958). Likewise, cession of land by an Indian tribe does not establish prima facie that the tribe so ceding had Indian title to the land so ceded. Klamath and Modoc Tribes, et al. v. United States, 2 Ind. Cl. Comm. 684 (1954); The Six Nations, et al. v. United States, 12 Ind. Cl. Comm. 98 (1963).

The Seminole Indians took no steps to protect their interests at the Picolata congress, but inaction will not divest the owner of his title to his own land. Goldman v. Quadrato, 114 A. 2d 687 (S. Ct. Conn., 1955). In these suits, the plaintiffs disclaimed the Picolata Purchase, but one cannot divest himself of title to land merely by declaring that he does not own or claim any part of it. Wilson v. Wilson, 200 S.W. 2d 258

(CCA Tex., 1946), rev. in part on other grounds, 201 S.W. 2d 226 (CCA Tex., 1947). The purported cession or sale by the Creeks of land on the upper east coast of Florida was only a quit-claim deed to the British, and it did not operate to transfer Seminole lands to the British, since transfer of title from one who has no title is inoperative. Holden, et al. v. Palitz, et al., 154 N.Y.S. 2d 302 (W. Cy. S. Ct., 1956). It is the view of this Commission that the Picolata Purchase was a nullity vis-a-vis the instant claims, and that the area therein embraced would stand on no different footing than the remainder of peninsular Florida if any claim for the area of the Picolata Purchase had been timely filed before this Commission. Viewing the Picolata Purchase as a nullity, the "high tide" Indian boundary line which the Purchase allegedly supported falls.

The area of the Forbes Purchase must be viewed in a different light. The Seminole Nation incurred a major indebtedness due the trading firm of Panton, Leslie, & Company. In order to satisfy this indebtedness, The Seminole Nation sold to Panton, Leslie, & Company the area subsequently known as the Forbes Purchase. There is no doubt that in this instance the grantor, The Seminole Nation, until the sale owned and used in Indian fashion the lands comprising the Forbes Purchase. (Mitchel, et al. v. United States, 34 U.S. 711 (1835), p. 756)

The area of the Pensacola Purchase must be viewed in yet another light. This sale by Creeks to the British, initiated in 1765 and consummated in 1771, was not attended by Seminole Indians even though by the latter date the British were aware of the Seminoles' separate identity.

The area of the amplified Pensacola Purchase was traditionally claimed by the Seminoles, but Creek Indians who maintained their ties with The Creek Nation infested the area. Accordingly, the "exclusive" element of the exclusive-use-and-occupancy formula for determination of Indian title (Quapaw Tribe v. United States, 1 Ind. Cl. Comm. 469 (1951)) is absent, and the amplified area of the Pensacola Purchase was properly excluded from these claims.

This Commission concludes that until September 18, 1823, The Seminole Nation then in Florida had aboriginal title, based upon exclusive use and occupancy in Indian fashion to most of the now State of Florida.

The Seminole Nation had Indian title to an area which may be generally identified as all of Florida, including the Keys, south and east of The Old Spanish Road from St. Augustine west to its intersection with the perimeter of the amplified Pensacola Purchase and thence around the eastern edge of that perimeter to the Gulf of Mexico.

Four "areas" or classes of land are to be subtracted from the above general definition. The first three are to be completely excluded; the last carries a different date of cession and hence a different valuation date. The "areas" or classes to be subtracted from the lands to which The Seminole Nation had Indian title are (1) those Spanish land grants in the owned area which were confirmed under the machinery provided by Congress; (2) the Forbes Purchase; (3) the Picolata Purchase; and (4) the Seminole reservation.

The Spanish land grants are excluded under the Zia doctrine (Pueblo de Zia, et al. v. United States, 11 Ind. Cl. Comm. 147 (1962), at 165; rev. other grounds, Court of Claims No. 9-62, decided April 17, 1964 (unreported). The reservation is excluded from the earlier (1823) valuation date because the United States in the September 18, 1823, Treaty of Camp Moultrie recognized the Seminoles' title to the reservation as enlarged, and thereafter and until May 9, 1832, The Seminole Nation had recognized title to the reservation land.

Finally, this Commission concludes that the instant plaintiffs, The Seminole Nation of Oklahoma and The Seminole Indians of Florida, together comprise The Seminole Nation as it existed in Florida until 1823.

An order consistent with the foregoing opinion and the concurrent findings of fact will be issued.

Wm. M. Holt
Associate Commissioner

We concur:

Arthur V. Watkins
Chief Commissioner

T. Harold Scott
Associate Commissioner