BEFORE THE INDIAN CLAIMS COMMISSION

THE SEMINOLE NATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 204
	)	
THE UNITED STATES,	)	
	)	
Defendant.	)	

Decided: June 24, 1966

FINDINGS OF FACT

The Indian Claims Commission makes the following findings of fact:

1. The suit at bar was timely filed on August 6, 1951, by the Seminole Nation (of Oklahoma), an Indian tribe or other identifiable group of American Indians residing within the territorial limits of the United States within the contemplation of Section 2 of the Indian Claims Commission Act of 1946 (25 U.S.C. 70a).

The instant plaintiff has heretofore been found to have the capacity to maintain suits before this Commission (Seminole Nation v. United States, 10 Ind. Cl. Comm. 450, 461 (1962)) and it does not yet appear that the instant claim is an aggregation of wrongs suffered by individuals.

2. The plaintiff's two causes of action are contained in allegations that the Dawes Commission erred actionably in dividing Seminole land allotments by value without taking into consideration the value of

oil deposits within some of the allotments and that the defendant generally failed to meet the standard of fair and honorable dealings when it unilaterally terminated the interest of the Seminole Nation in an equalization fund financed by one-half of all oil royalties paid.

3. By the Curtis Act (30 Stat. 495) Congress instructed the Dawes Commission to reach an agreement with each of the Five Civilized Tribes (Seminoles, Creeks, Cherokees, Chickasaws, and Choctaws) regarding allotment of tribal lands. The agreement with the Seminoles, popularly 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 would receive an equal share. Equality was to be measured by value rather than by quantity. The Original Seminole Agreement contemplated some disparity between allotment values and contained a provision to rectify the situation (30 Stat. 567):

> Should there be discovered on any allotment any coal, mineral, coal oil, or natural gas, and the same should be operated so as to produce royalty, one-half of such royalty shall be paid to such allottee and the remaining half into the tribal treasury until extinguishment of tribal government, and the latter shall be used for the purpose of equalizing the value of allotments; and if the same be insufficient therefor, any other funds belonging to the tribe, upon extinguishment of tribal government, may be used for such purpose, so that each allotment may be made equal in value as aforesaid.

This solution was substantially consonant with Sections 11 and 16 of the Curtis Act (30 Stat. 495, 497, 501) relating to mineral leases.

4. Royce Area No. 481 on Plate 3, Royce Map of Oklahoma, is the Seminole reservation in Indian Territory and it is less than one hundred miles south-southwest of Bartlesville, Oklahoma, which was the site of a major oil discovery early in the 20th Century. Between Bartlesville and the Seminole reservation, just about midway on a straight line, was the Pawnee County oil development.

In 1906, the Governor of Oklahoma reported to the Secretary of the Interior:

> The developments in the Cleveland, Pawnee County, oil field, show a marked falling off for the year just ended, as compared with the intense activity of the two previous years.

The Annual Report of the Secretary of the Interior for 1906 shows oil and gas development in Creek and Cherokee lands of the Indian Territory. The annual reports of the Commissioner of Indian Affairs for 1908 and earlier are replete with data on oil and gas development in the lands of all of the Five Civilized Tribes.

On the evidence adduced in the case at bar, the Dawes Commission could not have known that any Seminole land allotments included oil deposits and no onus can be assigned to the defendant by reason of its creature, the Dawes Commission, not considering all deposits in setting up the allotment classifications by value.

5. An act of Congress was passed to remove restrictions from part of the lands of allottees of the Five Civilized Tribes (35 Stat. 312) and as approved by the President on May 27, 1908, Section 11 thereof pertained to oil royalties (id., p. 316):

> Sec. 11. That all royalties arising on and after July first, nineteen hundred and eight, from mineral leases of allotted Seminole lands heretofore or hereafter made, which are subject to the supervision of the Secretary of the Interior, shall be paid to the United States Indian Agent, Union Agency, for the benefit of the Indian lessor or his proper representative to whom such royalties shall thereafter belong; and no such lease shall be made after said date except with the allottee or owner of the land: Provided, That the interest of the Seminole Nation in leases or royalties arising thereunder on all allotted lands shall cease on June thirtieth, nineteen hundred and eight.

The proviso to the said Section 11, quoted last above, was the legislative act which terminated the interest of the Seminole Nation in the fund-of-one-half-of-the-royalties which the Seminole Nation was going to use to equalize the value of the several Seminole land allotments.

6. The act of Congress mentioned in Finding No. 5 hereof (supra) was introduced into the House of Representatives in the first session of the 60th Congress and assigned Bill No. H. R. 15641. Hearings were held on that and several other bills intended to accomplish the same purpose, i.e., removal of restrictions from land allotments of the Five Civilized Tribes. As drafted and introduced, neither H. R. 15641 nor any of the other bills on the same subject contained any language alluding to Seminole allotments or to mineral leases of allotted Seminole lands, nor did the bills contain any reference whatsoever to the Seminole Nation's fund-of-one-half-of-the-royalties.

The House Committee on Indian Affairs held extensive hearings at which numerous Indians' representatives testified. No one testified for the Seminole Nation but a letter from its Chief, John F. Brown,

was read into the record. The letter from Chief Brown contained no suggestion of knowledge that the Seminole Nation's fund-of-one-half-of-the-royalties was to be considered, and it was not considered by the House Committee on Indian Affairs.

When H. R. 15641 was reported out with amendments, it still contained only nine sections and nothing pertaining to mineral leases of allotted Seminole lands. That situation remained unchanged as the House passed the bill and sent it to the Senate. House passage of the bill was preceded by testimony from Oklahoma Congressmen and from spokesmen for the Department of the Interior, attesting that Indians, whites, the Oklahoma Congressional delegation, the Department of the Interior, and the Commissioner of Indian Affairs were fully in accord with the bill.

7. The Senate Committee on Indian Affairs reported out H. R. 15641 with numerous recommended amendments, including the addition of recommended new sections numbered 10, 11, and 12 (Senate Amendment Nos. 36, 37, and 38 respectively). Amendment No. 38 contained the following language:

> The next amendment was, on page 10, after line 16, to insert as a new section the following:
>
> Sec. 12 * * *
>
> And all royalties heretofore accrued or hereafter arising from mineral leases by Seminole allottees heretofore or hereafter made shall be paid to the United States Indian Agent, Union Agency, for the benefit of the Indian lessor or his proper representative to whom such royalties shall hereafter belong; and all royalties accrued or hereafter accruing under any oil lease made under Section 13 of the act of Congress approved January 28, 1898, entitled "An act for the protection

> of the people of Indian Territory, and for other purposes," shall be paid to allottees of the land included in such lease pro rata according to the respective holdings, or to their lawful assigns.

The Senate Committee on Indian Affairs did not recommend, or mention, anything in the nature of the proviso now being traced (supra, Finding No. 5). The bill was reported to the Senate as amended, and the amendments were concurred in.

8. Since the House and Senate versions of H. R. 15641 differed, conferees were appointed by both Houses to resolve the differences. When the conferees of the House of Representatives reported back that the differences had been resolved ". . . after full and free conference . . .," it was said that the Senate receded from its Amendment No. 36 which proposed to add a new section numbered 10. This concession on the part of the Senate had the effect of utterly eliminating the proposed Section 10 from the bill, H. R. 15641.

The House conferees also reported back that the House receded from its disagreement to the amendment of the Senate numbered 38, but with an amendment to strike the proposed Section 12 in its entirety and substitute the following:

> Sec. 12. That all royalties arising on and after July 1st, nineteen hundred and eight, from mineral leases of allotted Seminole lands heretofore or hereafter made, which are subject to the supervision of the Secretary of the Interior, shall be paid to the United States Indian Agent, Union Agency, for the benefit of the Indian lessor or his proper representative,[1/] to whom such royalties shall

---

1/ See note in opinion.

> thereafter belong; and no such lease shall be made after said date except with the allottee or owner of the land: Provided, That the interest of the Seminole Nation in leases or royalties arising thereunder on all allotted lands shall cease on June thirtieth, nineteen hundred and eight.

The explanation tendered to the House of Representatives anent Senate Amendment No. 38 was:

> . . . The main changes are as follows . . . Another provision provides for the disposal of the moneys arising from the rental of mineral lands in the Seminole Indian Reservation for the benefit of the Seminole Indians . . .

While the explanation tendered to the Senate was:

> Amendment No. 38 provides for the disposal of the moneys received as royalties under mineral leases of the lands in the Seminole Nation.

Neither House was informed of the effect of the proviso upon the Seminole Nation's fund-of-one-half-of-the-royalties. No minutes of the House - Senate conference being available, it is not possible to identify the Representative or Senator who advanced the termination proviso, or to determine the motive behind it.

9. The bill was passed without material discussion and without any debate whatsoever on the proviso, no Congressman claiming credit for it.

In his 1908 report to the Secretary of the Interior, the Commissioner of Indian Affairs claimed the credit, saying:

> The agreement with the Seminole Nation, ratified by Congress on July 1, 1898 . . . provided that of all royalties produced from allotted lands in that tribe, one-half shall be paid to the allottee and the remaining half into the tribal treasury until the extinguishment of the tribal

> government. This differed from the rule in force in the other four nations /Creeks, Cherokees, Choctaws, and Chickasaws/, where allottees received all the royalties. So on the department's recommendation the following clause was inserted in the "restrictions" act:
>
> > Sec. 11. That all royalties arising on and after July 1, 1908, from mineral leases of allotted Seminole lands heretofore or hereafter made, which are subject to the supervision of the Secretary of the Interior, shall be paid to the United States Indian Agent, Union Agency, for the benefit of the Indian lessor or his proper representative to whom such royalties shall thereafter belong; * * *

The material omitted, and so indicated in the Commissioner's report, hints that the Commissioner of Indian Affairs advanced the entire Section 11 with proviso and this Commission so finds. The fact that the Secretary of the Interior signed the letter and memorandum of May 16, 1908, recommending the proviso with an explanation that could only be characterized as specious does not absolve the Commissioner of Indian Affairs. Further, the Commissioner of Indian Affairs did not advance the entire Section 11 as whole before the Senate Committee on Indian Affairs, but offered the proviso separately and surreptitiously at a stage in the proceedings where no minutes were being maintained and where consequent debate was unlikely. And finally, the section and proviso were apparently offered as a mere correction of a minor inconsistency and not as a major and far-reaching unilateral change in an existing agreement of treaty stature.

10. This Commission concludes that the Commissioner of Indian Affairs must bear the onus for the sequence of events set out above

and in the concurrent Opinion this day issued, and that the defendant is ultimately responsible for the actions of its servant, the Commissioner of Indian Affairs. The acts of the Commissioner of Indian Affairs which underly the liability include the sequential offering of Section 11 and its proviso upon occasions when the Seminole Nation would be least able to counteract the offer; failure to afford the Seminole Nation any opportunity to be heard on the subject; and misrepresentation of the measure as a mere correction of a minor inconsistency. These acts were inconsistent with the concept of fair and honorable dealings contemplated by Clause 5 of Section 2 of the Indian Claims Commission Act of 1946.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner