BEFORE THE INDIAN CLAIMS COMMISSION

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

Decided: June 24, 1966

Appearances:

Roy St. Lewis and Paul M. Niebell,
Attorneys for the Seminole Nation
/of Oklahoma/

Clifford R. Stearns, with whom was
Mr. Assistant Attorney General
Edwin L. Weisl, Jr., Attorneys
for Defendant.

OPINION OF THE COMMISSION

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

On August 6, 1951, the plaintiff timely filed a petition in the above-entitled suit which was duly assigned Docket No. 204. The defendant's answer was filed on June 13, 1957. The defendant filed a motion to dismiss the claim on the ground that there was a failure of cause of action and at the hearing on the motion, the additional ground of failure of evidence to support the claim was included. Rather than treat the motion, as amplified, as a motion for summary judgment, the Commission with concurrence of counsel elected to accept trial of the case on its merits.

In brief, the plaintiff contends that under the Original Seminole Agreement -- that is, the agreement made between the Dawes Commission and the Seminole Nation of Indians /of Oklahoma/ on December 16, 1897 -- which was ratified by Congress on July 1, 1898 (30 Stat. 567), the defendant promised that one-half of all coal, mineral, coal oil, and natural gas royalties derived from exploitation of lands belonging to the Seminole Nation would be deposited in the tribal treasury. The plaintiff further contends that by Section 11 of the Act of May 27, 1908 (35 Stat. 312, 316), the defendant decided to stop depositing half of all such royalties in the tribal treasury, and in fact did stop as of June 30, 1908.

The defendant contends that Congress had the power to make the complained-of change, in keeping with the policy of dissolving tribal governments and disbursing the assets among the individual members of the tribe.

In the transcript of the hearing on the defendant's motion to dismiss the following discussions occurred:

> CHIEF COMMISSIONER WATKINS: It also involves, then, the question whether the United States could, by legislation, practically set aside that agreement?
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> MR. NIEBELL: That is right.
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> CHIEF COMMISSIONER WATKINS: That is a law question.
>
> MR. NIEBELL: That is your law question, yes.

* * *

COMMISSIONER HOLT: You say that is a legal question, and I am taking this from your reply, as to whether or not that was fair and honorable?

MR. NIEBELL: That is right; it comes right down to that.

CHIEF COMMISSIONER WATKINS: That, of course, goes to the point of whether or not Congress, in passing that act, was unfair and dishonorable.

MR. NIEBELL: That is right.

The Commission decided to reserve ruling on the defendant's motion and try the case on the merits.

As the plaintiff's case developed, it was contended that the defendant, despite the intent of the Original Seminole Agreement of July 1, 1898 (supra) to confer upon Seminoles allotments equal in value, conferred allotments which were unequal in value, giving the most productive lands ". . . to the few allottees, as against the whole nation." It was further contended that the unequal distribution was actionable because it was done in the teeth of a committment to assure that half of the royalties would be reserved to the Nation, as an entity, for the benefit of all Seminoles. The plaintiff contended that there was a taking by the United States, in the sense of a divestment of tribal interest, even though the royalties remained in the hands of some Seminoles and did not pass into the Treasury of the United States.

The defendant's position, developed in argument during the trial was stated:

> COMMISSIONER SCOTT: Do you mean by that, that regardless of whether Congress might have been right, or whether it might have been wrong, there is enough here in the record to show that at least it was their intent to do right? Is that what you mean?
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> MR. STEARNS: You have put it very neatly. That is exactly what I mean.
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> The intent here was to try to follow a policy which would be best for the Seminole Indians.
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> That is what they were trying to do, and the whole series of enactments, when compared chronologically, so indicate.

This Commission has heretofore had occasion to discuss the Original Seminole Agreement in some detail. Seminole Nation v. United States (Docket No. 152), 10 Ind. Cl. Comm. 450, 461 (1962). For convenience, we now quote Finding No. 13 of that decision (id., pp. 458, 459):

> 13. By the Curtis Act (30 Stat. 495) Congress instructed the Dawes Commission to reach an agreement with each of the Five Civilized Tribes regarding allotment of tribal lands. The agreement with the Seminoles, known as the Original Seminole Agreement (30 Stat. 567), was dated December 16, 1897, ratified by the Seminole Council on December 20, 1897, and ratified by Congress on July 1, 1898. Under this agreement tribal lands were to be divided into three classes valued at $5.00, $2.50, or $1.25 per share. Each Seminole Indian -- both freedmen and natives -- would receive an equal share. Equality was to be measured by value rather than by quantity. The Original Seminole Agreement also provided that all tribal funds, after the deduction of certain items, would be divided among the Seminoles in three equal per capita installments.
>
> When the land allocations were to be made, title was to be conveyed to the individual allottees by the principal chief last elected, under his hand and the seal of the Seminole Nation. Upon approval of the deed by the Secretary of the Interior, the deed was to operate as a relinquishment of the right, title, and interest of the United States in and to the land conveyed and as a guarantee by the United States of the title to the land conveyed.

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

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

The Curtis Act (supra) authorizing the Dawes Commission to negotiate agreements with The Five Civilized Tribes provided in Section 11 thereof (30 Stat. 495, 497) that:

> . . .; but all oil, coal, asphalt, and mineral deposits in the lands of any tribe are reserved to such tribe, and no allotment of such lands shall carry the title to such oil, coal, asphalt, or mineral deposits;

Further, Section 16 thereof (30 Stat. 495, 501) provided that:

> Sec. 16. That it shall be unlawful for any person, after passage of this Act, except as hereinafter provided, to claim, demand, or receive, for his own use or for the use of anyone else, any royalty on oil, coal, asphalt, or other mineral . . . or for anyone to pay to any individual any such royalty or rents or any consideration therefor whatsoever; and all royalties and rents hereafter payable to the tribe shall be paid, under such rules and regulations as may be prescribed by the Secretary of the Interior, into the Treasury of the United States to the credit of the tribe to which they belong; * * *

Consonant with this Congressional mandate, the Original Seminole Agreement (supra) contained restrictions on mineral leases (30 Stat. 567):

> No lease of any coal, mineral, coal oil, or natural gas within said /Seminole/ Nation shall be valid unless made with the tribal government, by and with the consent of the allottee and approved by the Secretary of the Interior.
>
> 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.

Counsel for the defendant was of the impression that when Congress alluded to "oil, coal, asphalt, and mineral deposits", it had collectively in mind leases of minerals and not oil. On the other hand, counsel for the plaintiff was of the impression that oil had been discovered in 1901 -- only three years after the Curtis Act of June 28, 1898 -- in Bartlesville. Royce Area No. 481 on Plate 3, Royce Map of Oklahoma, is the Seminoles' land and it is less than a hundred miles south-southwest of Bartlesville. In 1906, the Governor of Oklahoma reported to the Secretary of the Interior:

> The developments in the Cleveland, Pawnee County (about 50 miles south-southwest of Bartlesville) 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. That portion of the record in this case pertaining to the annual reports of the Commissioner of Indian Affairs is replete with data on oil and gas development in the lands of the Five Civilized Tribes, including the Seminoles, but only for 1908 and later.

It has been demonstrated that, on the record of this case, the Dawes Commission could not have known that some allotments were rich in oil deposits. It follows that the Dawes Commission was not influenced in any way to consider oil deposits in setting up the allotment classifications by value.

The remaining question, and the central issue of this suit, is whether the defendant by terminating the Seminole Nation's fund-of-one-half-of-the-royalties dealt unfairly or dishonorably with the Seminole Nation as an entity within the contemplation of Clause 5 of Section 2 of the Indian Claims Commission Act of 1946 (25 U.S.C. 70a). If an actionable wrong was committed, the potential damages would be obvious since the fund was established to further equalize disparities between the value of various allotments, with any residue to be divided among enrolled Seminoles per capita. It could easily be assumed, arguendo, that if the fund were insufficient to equalize disparities between the value of various allotments, the Seminole Nation would have had to make up the equalization payments out of other assets of the Seminole Nation. Whether the fund was deficient and whether the Seminole Nation made up the difference out of other assets are open questions at this stage of this case, since it must be emphasized that neither this aspect of potential damages or any other theory of recovery or of computation of damages has been urged by the plaintiff to date. Hence, this Commission must proceed on the assumption that if a justiciable controversy exists,

the plaintiff will undertake to establish a viable theory of recovery and measure of damages at some future date.

The gravamen of this case is the proviso to Section 11 of the Act of May 27, 1908 (35 Stat. 312, 316) which provided:

> 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, quoted last above, was the legislative act which terminated the interest of the Seminole Nation in the fund-of-one-half-of-royalties.

Both parties have submitted fragments of the legislative history of the Bill numbered H.R. 15641 (60th, 1st) which contained the disputed Section 11 of the Act of May 27, 1908. Neither party contends that the submission is complete, and if this Commission is to have any adequate understanding of the Act which is the gravamen of this case, it must look outside of the record.

Quite a few bills were introduced into the first session of the sixtieth Congress on the subject of removing the restrictions on the power of alienation of the property of the Five Civilized Tribes. Of these, H.R. 12900, 14402, 15831, 16495, 16962, and S. 3814, 4644, 5586, and 6794 were all referred to the Houses' respective Committees on

Indian Affairs and there died, while S. 6220 and 6221 on the same subject were referred to the Senate Committee on Indian Affairs, reported out adversely, and postponed indefinitely. But H.R. 15641 on the same subject became P. L. 140 (60th, 1st) when it was approved on May 27, 1908. The tortuous history of H.R. 15641 and particularly of its Section 11 reads almost like a mystery story, a mystery which is little aided by the plaintiff's account of what happened or by the defendant's attempted correction of that account. In following the story, it should be remembered that all four-digit page citations are from Volume 42 of the Congressional Record.

H. R. 15641 as originally drafted and referred to Committee contained nine sections. No section, and no part or parts of any of the nine sections, contained any concept even remotely resembling Section 11 (supra) or the proviso thereto (supra). The subcommittee met first on Tuesday, February 25, 1908, to hear witnesses for and against the proposed measures. It is not surprising that of the numerous individuals who testified on behalf of Indian factions, not one Seminole spokesman was numbered for the Seminoles or their lands and leases were not mentioned in the original draft at all. There was then no reason why the Seminoles in particular should have been alert to this proposed legislation, and apparently in fact they were not.

The Indians' representatives who testified were concerned with provisions of the bill as drafted. They were concerned that Congress

proposed to subject to local taxation Indian allotments freed of restrictions on alienation. They were concerned that full-blooded Indians who knew little of the ways of the world would be expected to manage their own affairs prudently. They were concerned that possible enrollment irregularities might become irreparable. They were concerned that the interests of minors might not be safeguarded. But they were not visibly concerned with elimination of the Seminole Nation's fund-of-one-half-of-the-royalties because that concept comprised no part of the matters under consideration. There was testimony by representatives of the Department of the Interior. The then Assistant Attorney General of that Department expressed considerable satisfaction with the bill "as it stands", probably for reasons which will become apparent as this examination proceeds. Mr. Ward, an attorney employed by the Department of the Interior, did mention the Seminole Indians in passing, but not directly or tangentially in context of the issue which is central to the suit at bar. Mr. Zevely, who as representative of the Mid-Continent Oil and Gas Producers' Association, of Tulsa, Oklahoma, might have been expected to have some thoughts on royalty payments, did not mention the Seminole Nation's fund-of-one-half-of-the-royalties and generated no discussion of it. Oklahoma's Congressmen, Representatives Davenport and Ferris, failed to bring up the vexatious issue of the fund-of-one-half-of-the-royalties, but the latter did deem it desirable to expound at length on the remarkable accord reached on H.R. 15641:

> . . . The Oklahoma delegation, consisting of five Members of the House and two Senators, began at the beginning of this Congress to try and procure some legislation that would relieve the conditions in Oklahoma.
>
> Having in mind the wide experience and knowledge that the Department had, we at once began a series of consultations with the Interior Department and the Indian Office; and I might say that those meetings were all well attended and careful attention was paid in every particular to what was said and done, and I might say that perhaps the Department yielded some. I am sure the delegation yielded a good deal. The result of day after day and meeting after meeting in those conferences, attended by members of the Indian Office, by the Secretary himself, by attorneys of the Indian Office and attorneys of the Interior Department, and by five Members of Congress from Oklahoma and two United States Senators from Oklahoma, comprising the whole delegation, was that we came to an agreement on H.R. 15641, introduced by Mr. McGuire on January 29, 1908.
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> * * *
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> But as the result of those conferences and as the result of a unanimous and positive agreement by the Indian Office, by the Interior Department, and by every Representative from the State of Oklahoma, including the United States Senators, we agreed upon this bill.

When Chief Moty Tiger of the Creek Nation testified for the second time, on Saturday, March 21, 1908, he stated inter alia:

> CHIEF TIGER: A Drowning man will even grasp at a straw, and I wrote to my brother, John Brown, the Seminole Chief, and he answered me, and I would like to have his answer read at this time . . . and I would like to have this incorporated in the report of the committee, if it be proper.

The letter of March 18, 1908, from John F. Brown, Chief of the Seminole Nation, follows in its entirety:

> Dear Friend and Brother: I beg to acknowledge receipt of yours of the 14th instant, just received. I greatly appreciate the gravity of the situation and the strenuous efforts being put forth by the Oklahoma delegation in Congress for the removal of restrictions on Indian lands, in which those of Indian blood are the most active, if that be possible, but I hope they will be compelled to accept much less than they would like. I have lately supplemented my efforts made in Washington before the Department with letters to Secretary Garfield and Senator Curtis, and have satisfactory acknowledgments. I am assured that my representations will be made known to the committee in charge of the matter, before whom I felt sure my ideas and representations would be in consonance with those made by you and your delegation for the Creek people. I know that our appeals have gone unheeded for generations. It is a cry now from the graves of helpless thousands and ought to excite some pity; enough, I hope, to stay the executioner for a day at least.
>
> Anything, Chief, that you can and will say to me at any time along this line will meet a sympathetic chord, ready response, and hearty cooperation in any way yet open to us. You are most welcome. The word "intrusion" finds no place in my heart.
>
> Your friend and brother,
>
> John F. Brown
> Chief of Seminole Nation

Surely, if the Seminole Nation or its chieftain had had any intimation of the impending termination of the Seminole Nation's fund-of-one-half-of-the-royalties, that fact would have found expression in an unguarded communication to a discreet and sympathetic equal. We can only conclude that Chief Brown had no warning, no suspicion, and no notice.

Before leaving the hearings of the House of Representatives' Committee on Indian Affairs concerning H.R. 15641, it may be desirable to note specifically a report contained in the Appendix to those hearings.

The Committee incorporated the Recommendation of the Select Senate Committee which was appointed under a Senate Resolution of June 30, 1906, "to investigate all matters connected with the condition of affairs in Indian Territory, and specifically to report to Congress legislation necessary therefor." The scope of the investigation included the subject of removal of restrictions on alienation. The aforesaid Recommendation of the Select Senate Committee contains not one word touching upon the Seminole Nation's fund-of-one-half-of-the-royalties.

When the House Committee on Indian Affairs on April 6, 1908, reported out H.R. 15641, with amendments which did not include the section and proviso now being traced, the following discussions occurred on the floor:

> 5076 MR. SHERMAN: The amendments that are now presented to the bill are largely phraseological, to make more clear and distinct the real intent of the bill. I have discussed the bill with the Secretary of the Interior, not with the Commissioner of Indian Affairs, and I know what his attitude toward it is, and I know that the main principle as laid down in this bill meets with the unqualified approval of the Secretary of the Interior. The amendments do not change the question of who shall be given the right to alienate, nor do the amendments change any other principle of the bill . . .
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> MR. MANN: Does this bill, then, meet the approval of the Commissioner of Indian Affairs?
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> MR. McGUIRE: It does.

* * *

5077 MR. SHERMAN: Oh, no; I mean to say that the Secretary of the Interior approved this bill; in fact this bill was drawn in the Interior Department.

5078 MR. SULZER: Are the Indians in favor of this bill?

MR. CARTER: Yes, sir; they are.

* * *

5079 MR. FERRIS: Mr. Speaker, in the few moments of time that I have, I desire to acquaint the House with three or four statements that the House ought to know. In the first place, the delegation from Oklahoma, each and every member in both the House and the Senate, is in favor of this bill. When we came up here from Oklahoma we believed that the entire section of the State of Oklahoma was for the removal of these restrictions. It has been debated over the State, both among the Indians and the whites universally interested, and it has been universally asked for . . .

This bill is agreed to by the Secretary of the Interior, by the Indian Office, by the Oklahoma delegation, and has the unanimous consent of the Commissioner of Indian Affairs. These people have all agreed to the bill reported and are anxious to have it pass.

When the House debate was concluded and the bill passed with numerous amendments on the floor (42 Cong. Rec. 5080), the controversial now Section 11 with proviso was not in. The bill stopped with Section 9 and in the bill was no hint of an involvement of the Seminole Nation's fund-of-one-half-of-the-royalties.

The Senate Committee on Indian Affairs, to which the House-passed bill H.R. 15641 has been referred, reported it out with quite a few far-reaching amendments, surprising amendments considering the accord so emphatically bruited by Congressman Ferris a few weeks earlier in testimony and more recently on the floor of the House (supra, 42 Cong. Rec. 5079). Of the Senate amendments, Nos. 36 [of which more anon]

and 38 are crucial. But let us let the Senate Committee on Indian Affairs present the language (S. Rep. 575):

> 5427 The next amendment /No. 38/ was, on page 10, after line 16, to insert as a new section the following:
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> Sec. 12 * * *
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> 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.
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> The amendment was agreed to.

The bill was reported to the Senate as amended, and the controversial proviso was not there. The amendments were concurred in (42 Cong. Rec. 6190). The amendments concurred in included the Senate's Amendment No. 36 which added a proposed Section 10 (42 Cong. Rec. 5426), the language of which is immaterial.

Since the House and Senate versions of H.R. 15641 were at varience, conferees were appointed by both Houses to resolve the differences and, in due course, reported back to their respective Houses. The conferees of the House of Representatives reported:

> 6598 The Committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 15641) for the removal of restrictions from part of the lands of the allottees of the Five Civilized Tribes, and for other purposes, having met, after full and free conference have agreed to recommend, and do recommend to their respective Houses as follows:
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> * * *

6599 That the House recede from its disagreement to the amendment of the Senate numbered 38, and agree to the same with an amendment as follows: Strike out all of the proposed amendment and insert in lieu thereof:

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 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.

And the Congressmen were treated to the following explanation:

6782 MR. SHERMAN. Mr. Speaker, I will take just a moment to explain what are the changes made in the bill since it passed the House -- in other words, the changes shown by this conference report.

* * *

. . . 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 . . .

The Senate received an identical report from its conferees (42 Cong. Rec. 6781), but with this explanation:

6781 Amendment No. 38 provides for the disposal of the moneys received as royalties under mineral leases of the lands in the Seminole Nation.

1/ In the official print, 35 Stat. 312, 316, there is no comma (,) after "representative". It cannot be determined from the Record whether the omission was intentional, nor does it appear whether it is material.

At this point, it might be well to explain how the section and proviso being traced acquired the designation "Section 11". It was "12" when passed by the Senate and replaced in conference, but in that same conference the Senate receded from its Amendment No. 36 which was the Senate-sponsored Section 10 (42 Cong. Rec. 5426). When the Senate receded (id., 6598), that proposed Section 10 became a nullity, the final Section 11 was numbered "10" and the final Section 12 was numbered "11". The bill H.R. 15641 was approved on May 27, 1908 (42 Cong. Rec. 7311), and became Public Law No. 140 of the 1st Session of the 60th Congress.

At this juncture, a partial summary of the search for Section 11 and its proviso is possible. The record is clear that the Seminole Indians had no inkling during any stage of the House proceedings that anyone contemplated tampering with the Seminole Nation's fund-of-one-half-of-the-royalties. Further, it is apparent that no member of the House knew it. And if the accords heretofore set out are to be believed, that tampering was not contemplated by the Executive Branch either. No wonder no Seminoles testified in defense of the equalization fund; they did not know it was menaced.

It is equally clear from the record that whomever devised the idea in the Senate Committee on Indian Affairs did not contemplate the second step of cutting off the Seminole Nation's fund-of-one-half-of-the-royalties without warning or recourse. Nor was the idea advanced on the floor of the Senate. This Commission shall never know whether a Representative or a Senator advanced the new and radical idea in the

conference to resolve differences on H.R. 15641, for the maintenance of minutes or construction of an account would be repugnant to the "full and free conference" mentioned in the respective conference reports. It seems that the proviso could have been challenged on a point of order in either House, considering that the addition of new legislation by a conference on disagreements is contrary to Section 190 of The General and Permanent Law Relating to The Senate (e.g., S. Doc. No. 2, 87th 1st) and to Section 546 of Jefferson's Manual for guidance of the House (e.g., H. Doc. No. 459, 86th, 2d). The latter specifies:

> The managers of a conference must confine themselves to the differences committed to them, and may not include subjects not within the disagreements, even though germane to a question in issue.

That substantially the same ground rules applied in the first session of the 60th Congress and earlier is clear from an examination of Chapter CXXXV of Volume 5 (1907) of Hinds' Precedents of The House of Representatives, and particularly Sections 6417 - 6420 of that Chapter 135 (pp. 724-729).

But no point of order was raised and the new measure was passed with speed and without notice or discussion (42 Cong. Rec. 6783). No one then claimed authorship of the proviso to Section 11. However, a rather cursory explanation of Section 11 and its proviso as finally enacted was supplied by the Commissioner of Indian Affairs in his 1908 report to the Secretary of the Interior. The Commissioner reported:

> 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 /the other components of the Five Civilized tribes/, where allottees received all the royalties. So on the department's recommendation the following clause was inserted in the "restrictions act:" /quoted in Finding No. 9/

This explanation is not wholly consistent with the facts developed above. To recapitulate: When the bill was originally introduced, it was said to be the product of the Department of the Interior. It was said to have the unequivocal approval of that Department and of the Commissioner of Indian Affairs. Departmental representatives testified before the House of complete satisfaction with the bill "as it stands." The section was not contemplated in House debate. The Commissioner of Indian Affairs did not try to add the proviso during the deliberations of the Senate Committee on Indian Affairs for that Committee did not suggest such an amendment. The Commissioner of Indian Affairs waited until the conference on differences and then -- apparently -- suggested the termination of the Seminole Nation's fund-of-one-half-of-the-royalties as a mere correction of a minor inconsistency.

This conclusion is buttressed by a letter from Secretary of the Interior Garfield to Representative Sherman, dated May 16, 1908. The letter transmitted a long memorandum, also signed by Secretary Garfield, containing numerous changes which were recommended by the Department of the Interior to H.R. 15641 as amended by the Senate. Page 6 of the memorandum of recommended changes stated in part:

> Lines 22 to 25, inclusive, are changed, as indicated, in order that there may be a fixed date for termination of the one-half interest of the tribe in such leases since the lands have been, or will be, allotted to individuals. This change is also necessary to remove all doubt as to the power of the principal chief (see lines 1 and 2 of page 11) with respect to the making of such leases covering individual allotments.
>
> PAGE ELEVEN
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> Line 2. Following this line, as rewritten, and after the word "land," insert the following: "Provided, that the interest of the Seminole Nation in leases or royalties arising thereunder on all allotted lands shall cease on June 30, 1908" (See explanation in paragraph above).

The existence of the Secretary's letter and memorandum does not vitiate the Commission's basic conclusion that the Commissioner of Indian Affairs was, as he claimed, the author of the proviso at issue, for it would be only pro forma for the Secretary of the Interior to sign an important communication directed to the House of Representatives.

This Commission concluded herein (supra) that the plaintiff's contention that the Dawes Commission's division of land into unequal allotments is actionable is without merit, since the facts of the times do not support the plaintiff's allegations.

This Commission is compelled to conclude that the action of the Commissioner of Indian Affairs in securing the termination proviso, the only possible inference from the sequence of events set out above, was a deliberate effort to harm the Seminole Nation as inconspicuously and as efficiently as possible and, as such, was inconsistent with the concept of fair and honorable dealings. We do not reach the question posed in the hearing, whether Congress in passing Section 11 and its

proviso in the manner in which it was done also acted contrary to the concept of fair and honorable dealings.

In the instant Docket No. 204, the Seminole Nation is free to proceed with the effort to prove actual damages resulting from the unfair, dishonorable, and actionable dealings detailed above.

It is so ordered.

Wm. M. Holt
Associate Commissioner

We concur:

Arthur V. Watkins
Chief Commissioner

T. Harold Scott
Associate Commissioner