BEFORE THE INDIAN CLAIMS COMMISSION

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| SEMINOLE INDIANS OF THE STATE OF FLORIDA, Plaintiff, v. THE UNITED STATES OF AMERICA, Defendant. | ) | Docket No. 73 |
| SEMINOLE NATION OF OKLAHOMA, Plaintiff, v. THE UNITED STATES OF AMERICA, Defendant. | ) | Docket No. 151 |

Decided: May 13, 1970

Appearances:

Roy L. Struble, Effie Knowles, and Charles Bragman, Attorneys for Plaintiff in Docket No. 73.

Roy St. Lewis and Paul M. Niebell, Attorneys for Plaintiff in Docket No. 151.

Craig A. Decker and Jonathan U. Burdick, with whom was Mr. Assistant Attorney General Shiro Kashiwa, Attorneys for Defendant.

OPINION OF THE COMMISSION

Kuykendall, Chairman, delivered the Opinion of the Commission.

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, sustained the injuries for which compensation is sought in these suits. 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. Their claims, having a common source, are wholly overlapping. Of the four claims originally encompassed in these suits, only the first, for additional compensation for most of Florida excepting three enclaves and one reservation, and the second, for additional compensation for the reservation, are being considered in these Docket Nos. 73 and 151 consolidated. Both of these claims are brought under Section 2, clause 3, of the Indian Claims Commission Act (60 Stat. 1049, 1050). The third claim, concerning the McComb Reservation, and the fourth claim, based on transactions creating the Everglades National Park, are presently consolidated in Docket No. 73-A.

On May 8, 1964, this Commission decided that the plaintiffs had Indian title to most of Florida south and east of The Old Spanish Road, excluding the Picolata Purchase on the northern Atlantic coast, the Forbes Purchase on the upper Gulf coast, and the Pensacola Purchase on the northwestern Gulf coast, until the cession of September 18, 1823. The Commission also decided that the plaintiffs had recognized title to the reservation in the central Florida peninsula, as of the cession of May 9, 1832. Confirmed Spanish land grants were to be excluded. Seminole Indians, et al. v. United States, 13 Ind. Cl. Comm. 326, 342 (1964). In affirming, the Court of Claims set the

compensation for the 1823 cession at $152,500.00. United States v. Seminole Indians, et al., 180 Ct. Cl. 375 (1967).

Since the basic decisions on title included no findings on boundaries, and several boundaries were at issue, it was necessary to issue a separate decision on the location, in terms of modern landmarks, of The Old Spanish Road, the perimeter of the amplified Pensacola Purchase, the southern boundary of the Picolata Purchase, and the northwest corner of the reservation. Seminole Indians, et al. v. United States, 19 Ind. Cl. Comm. 179, 187 (1968). Thereafter, the Commission determined that a group known as the Miccosukee Tribe of Indians of Florida, as Seminoles, had a common and undivided interest in Docket No. 73 (and Docket No. 73-A), that the Miccosukees were adequately represented by the existing parties, that it could not be decided with certainty that their interests would be adversely affected if their intervention as separate parties plaintiff were denied, and that they would not be permitted to intervene. Seminole Indians, et al., v. United States, 19 Ind. Cl. Comm. 440 (1968). Neither of these 1968 decisions was appealed.

In June, 1969, this Commission took evidence on the remaining issues: consideration, value, and offsets. The Commission's conclusions respecting consideration and value are set forth in detail in the 24 Findings of Fact this date issued in the cases at bar. The evidence of record relating to the fair market value of the Florida cession lands (the 1823 cession) and the reservation (the 1832 cession)

was presented and considered in the light of the standard criterion, the amount of money for which a parcel of land would sell in the open market by a ready, able, and willing seller to a ready, able and willing buyer, each with full knowledge of pertinent facts and neither being compelled to act. The phrase in the concurrent Findings "a prospective buyer" is a reference to this criterion. The parties have agreed that the larger area, frequently referred to in the concurrent Findings as "the Florida cession lands", consists of 23,892,626 acres, and that the smaller area, frequently referred to as "the reservation" consists of 5,865,600 acres. Both of these acreage figures are "net" in that all necessary deductions have been made.

Florida today is a state of great and diversified potential. Since there have been no substantial physical changes to the state in the last two centuries, it is fair to say that Florida always enjoyed that extensive potential. However, in 1823 or 1832 it would have taken an impossible degree of perception for the prospective buyer or seller to anticipate the extent to which the parcels would be developed in the 20th Century. Consequently, the evidence of record has been assessed in the light of the knowledgeable man of the early 19th Century, not the knowledgeable man of today.

For instance, while an individual who, in the 1820's or the 1830's, was considering the purchase of from five to 23 million acres of land in Florida might not have worried about the weather, he would have considered long and earnestly whether he wanted to buy in an

area known for yellow fever and malaria. He would have considered, rightly, that these health hazards would tend to deter his prospective customers if he planned to resell his purchase in smaller tracts. Likewise, he would have been aware that Florida, in comparison with adjacent states,was not attracting very many permanent settlers. On the other hand, he would not have felt that his proposed purchase suffered from a lack of actual transportation due to the network of rivers and streams and the bordering oceans, but he would be aware that the rivers and streams were not the swift-rushing waters of the north and the west where one could, for instance, harvest trees and set them afloat to reach their destination with little human effort.

There were factors which might make the nearly 24 million acres of the 1823 cession more attractive to a prospective buyer than would have been an equivalent purchase in a nearby state. The trees were a distinct asset. So, to a lesser extent, were the fish and game. There were existing industries, and it would not have taken an impossible degree of perception to forecast success in citrus and in dairy-and-beef enterprises. Balanced against these and other assets detailed in the concurrent Findings were the "patchy" nature of good farm lands and the prevalence of poor farm lands, neither of which factors would be likely to attract settlers who lived by the standard of the day: a farm which would support a family and produce something extra for the market. Too, the prospective buyer would have been well aware that regardless of whether he was planning

to sell land that enjoyed a highest and best use of farming, or grazing, or timber production, or even recreation, there would be serious competition from the public land sales in Florida and in adjoining states.

This Commission found the collected evidence of both parties' expert witnesses on valuation to be of distinct aid in resolving the issue of value, although the Commission has not found it possible to agree entirely with either party's position on that issue. For instance, whether the most saleable portions are designated as townsites or choice sites, it was readily apparent that $2.50 per acre was far too pessimistic and $200 per acre was incredibly optimistic on the average. Too, while the separate assessment of allowed townsites is permissible, the Commission must reject the inference that, for instance, the salvage industry which existed on the earlier valuation date added any ascertainable amount to the value of the adjacent lands from which it operated.

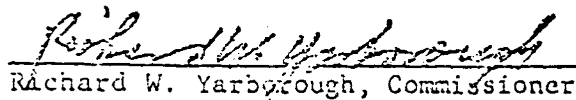
The foregoing and other points are reflected in the ultimate Findings and Conclusions of law on fair market value and consideration. The payment of $152,500.00 for land having a fair market value in excess of $12 million was clearly unconscionable and on this count the plaintiffs will recover the difference, $12,347,500.00. Equally clearly, the payment of $2,094,809.39 for lands having a fair market value of $2,050,000.00 was not unconscionable, and on this count the plaintiffs will recover nothing.

The gross recovery of $12,347,500.00 is subject to such offsets as may be allowable. This Commission's current practice is to require that offsets be scheduled in compliance with the Delaware decision (Delaware Tribe, et al., v. United States, 21 Ind. Cl. Comm. 18 (1969)), now on appeal (Ct. Cl. App. No. 6-69). Since the Delaware decision had not been issued when the offset phase of these consolidated cases was tried, claimed offsets and other deductions from the gross award will be deferred to allow the defendant to comply with this practice.

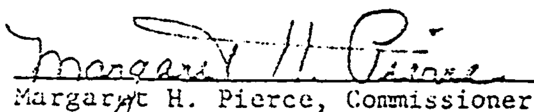
Jerome K. Kuykendall, Chairman

Concurring:

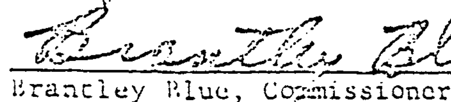
John T. Vance, Commissioner



Richard W. Yarborough, Commissioner



Margaret H. Pierce, Commissioner



Brantley Blue, Commissioner