BEFORE THE INDIAN CLAIMS COMMISSION

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

Decided: May 13, 1970

ADDITIONAL FINDINGS OF FACT

The following Findings of Fact are supplemental to the Findings of Fact numbered 1 through 38 heretofore entered in the matter of Docket Nos. 73 and 151 consolidated.

39. The reservation consists of 5,865,600 acres and is to be valued as of May 9, 1832. The remainder of the awarded land amounts to 23,892,626 acres and is to be valued as of September 18, 1823.

40. In the period from 1823 to 1832, the typical Florida climate was moderate, ranging from winter lows in the 30's to summer highs in the 90's, with occasional periods in excess of these extremes. Statistics indicated that in any given century, there was a chance that 17 hurricanes might be felt in the southern portions of the state and that two hurricanes might be felt in the northern portions thereof. Hurricane winds in excess of 150 miles per hour were not recorded. Snow in Florida

was so infrequent as to be negligible, but occasional crop-killing frosts were known particularly in the northern third of the state. Rain fell, averaging more than 52" a year occurred chiefly during the rainy season from June to September, and was adequate for crops and pasturage. From the point of view of a prospective buyer in 1823 or 1832, no portion of Florida would have been regarded as undesirable because of climatic conditions.

41. In 1823 and earlier, yellow fever, malaria, and mosquitos were chief among the health problems in Florida. While about 40 years later Florida was spoken of as "healthy", in 1823 or 1832 the diseases caused in large part by drainage problems would have been considered a detrimental factor by a prospective buyer.

42. In 1823, a prospective buyer of the awarded Florida lands, except the reservation, would view the economic state of the nation in general as favorable to investment since the country was recovering from the depression of the three previous years. He would anticipate continued prosperity which, in point of historical fact, prevailed for the next two years.

43. In 1832, a prospective buyer of the reservation would also view the economic state of the nation in general as favorable to investment since that year climaxed three continuous years of prosperity following five years which fluctuated between moderate recessions and moderate prosperity.

44. The business activity in Florida in 1823 or 1832 was modest when compared to adjacent states. Since planned banks had not been

completed by 1823, the circulation media were bank notes and paper of banks in Alabama, Georgia, North Carolina, and South Carolina. Currency, exchange, and credit were obtained by drafts on Louisiana and South Carolina banks. In part, this situation was reinforced in 1824 when the Florida Territorial Legislative Council passed an act forbidding anyone to bring into Florida, with intent to circulate, bills or notes of private or unincorporated individuals. This act precluded further participation in the Florida banking business by John Forbes Company, successor to Panton, Leslie & Company, a prominent Florida financial firm. The absence of local investment money would have been considered a detrimental factor by a prospective buyer.

45. In 1820 the entire state had a non-Indian population estimated to be between about 4,500 and about 11,000. During the next decade, the non-Indian population of Florida increased to more than 34,000, many of whom lived outside of the awarded lands, e.g., Jacksonville. During the same decade, settlers showed a distinct preference for Georgia, Alabama, and, to a lesser extent, southern Louisiana. During the decade, each of those states acquired substantially more settlers than did Florida. A prospective buyer of the Florida cession lands in 1823 or of the reservation in 1832 would have regarded the comparatively slow rate at which Florida attracted permanent residents as a detrimental factor to be considered.

46. There were no railroads in Florida in 1823, but by 1832 plans for several railroads were being developed, none of which were to

penetrate the 1832 reservation. Overland transportation was chiefly by horse or by foot, along trails which were well known to the traveler of those days and which connected settled points in northern Florida with each other and with established towns in Georgia and Alabama. Other trails skirted the reservation and there was one from Ocala, within the reservation at its northern end, to the trails to St. Augustine.

There was a substantial potential for water transportation within the Florida cession lands and within the reservation on the many lakes, rivers, and streams in Florida. For the most part, these rivers and streams were not fast-flowing, and few were suitable for navigation by ocean-going or coastal vessels, but many of them had good harbors at their mouths.

A prospective buyer of the Florida cession lands in 1823 or of the reservation in 1832 would have regarded the transportation as adequate by the standards of the day and would have regarded the rail potential and the access as favorable factors.

47. The Florida cession lands in 1823 and the reservation in 1832 were substantially forested, chiefly with yellow pine in compact stands and to a far lesser extent with scattered cypress, oak, maple, cedar, and walnut. Mangrove and some mahogany, together with some rosewood, were found in southernmost Florida, including the Keys.

The pine had some ascertainable value in 1823 or 1832, both as lumber used primarily to satisfy on-site requirements for buildings

and fences, and as a reliable source of the resinous by-products, such as pitch, tar, resin, and turpentine. The pines which were straight and unflawed were desirable for ships' masts. The pine by-products were exported before the earlier valuation date and for many years thereafter.

The only other Florida timber of substantial commercial worth was the live oak, used primarily for shipbuilding where durability was the primary concern. Live oak, always an expensive wood, was in common, if limited, demand on each of the valuation dates in the northern shipyards where skilled labor could put it to best use. In Florida, live oak grew in scattered stands, seldom as many as five full-grown trees to the acre.

The fact that there was a continuing market for live oak is shown by the shipment of some 15,000 live oak logs from the St. Johns River area from 1823 to 1829, clearing St. Augustine, by the shipment of over 30,000 live oak logs from the port of Jacksonville during the same period, and by the recorded trespasses and thefts which were known to the authorities as early as 1821. Before 1823, orders had been issued to all persons to cease and desist from timber depredations on public lands in Florida, and naval vessels were instructed to examine all outbound cargoes for stolen timber and seize the same.

In Florida, live oak was frequently found within a few miles of rivers and streams on which it could be lightered to cargo vessels.

Accessibility was a prime factor in the marketable value of live oak, for it was a comparatively heavy wood, impossible to float and difficult to transport over the moist lands where it grew best.

There was some modest exportation of cedar and cypress to foreign buyers, and the cedar which generally grew in conditions favoring live oak could be harvested simultaneously with live oak. However, live oak and pine by-products accounted for most of the value of the timber of Florida in 1823 and 1832. A prospective buyer of the Florida cession lands in 1823 or of the reservation in 1832 would have regarded the extensive pine stands as a favorable factor and would have regarded the remaining timber as a moderate plus factor.

48. The large quantity of rivers and streams in Florida offered a number of good potential mill sites in useful proximity to the trees which could be used at the mills when and if they were built. This potential was recognized by the Spanish administration of the East and West Floridas which issued at least 30 permits for mill sites to encourage settlement. Only a few such permits actually matured into confirmed land grants but over a decade before the 1823 cession there was speculation that in addition to lumber, a profitable export business could be developed for staves, pitch, tar, and turpentine. Water-powered mills, costing $4,000 or more for the initial investment, were in use in Florida before the cession date. These mills ordinarily restricted their operations to the milling of the soft yellow pine which grew so

profusely over much of Florida.

A prospective buyer of the Florida cession lands in 1823 or of the reservation in 1832 would have regarded the many good mill sites as a favorable factor.

49. The Federal Census of 1840, which reflected to some extent what Floridians were doing in Florida in the preceding decade, contained references to orange groves and orange production in the northeast segment of Florida, chiefly along the St. Johns River. Sweet oranges were introduced to Florida by the Spaniards, while sour and bittersweet types were native to Florida. Wild limes were also native to Florida. For "many years" prior to 1837, orange groves were thriving along the Florida east coast from St. Augustine and the annual export around that year was around two million oranges. Given good weather and no killing frosts, an owner of a one-acre grove, containing no more than one hundred trees, could reasonably expect a crop which he could sell for nearly four hundred dollars, and the retail price of one orange was as high as two cents.

While cultivation of an orange grove could have provided a living for the grower, an appreciable amount of time and effort was required for productivity and an individual just beginning might legitimately expect to spend more than a year of steady labor for development of the enterprise. Once the grove had been brought into productivity and the natural pests, such as scale insects which attacked wild and sweet groves alike, were controlled, the grower still had the problem of getting the crops

to market, usually over roads he had constructed to rivers and then by boat.

The Florida cession lands in 1823 evidenced receptivity for crops of oranges but the pine lands which covered so much of the state were among the best lands for orange groves which required little expenditure for clearing. These would have been considered favorable factors by a prospective buyer of the Florida cession lands in 1823. The orange industry was a substantial industry and killing frosts seldom reached south of the 28th degree of northern latitude. These would have been considered favorable factors by a prospective buyer of the reservation in 1832, but he would have been aware that the formidable problems of getting crops to markets, most of which would be to the north, would be a detrimental factor to be considered seriously.

50. Other agricultural crops which had been successfully introduced by the earlier valuation date and which were flourishing by the later valuation date, chiefly in the more northern portions of the Florida cession lands, were potatoes, sweet potatoes, squashes, peas, cotton, corn, sugar, cabbage, tomatoes, root vegetables, and peanuts, most of which were used only for local consumption. Rice was a commercial crop along some of the rivers and on some of the uplands and, to a lesser extent, so was the tobacco which required constant attention to protect it from the numerous insects and the weather. A prospective buyer of the Florida cession lands in 1823 or of the

reservation in 1832 would have regarded the fertility of the lands and the necessity for clearing them as no better and no worse than the potential of large tracts of land elsewhere in these United States.

51. The Florida cession lands that were not better suited for specialized uses, such as cultivated crops, were largely suitable for open grazing. Likewise, the pine lands which covered so much of Florida in 1823 were said to be superior grazing lands. As of 1823 or 1832, the practice in Florida was to graze wild cattle, or permit wild cattle to graze, on free range. These cattle, which were descendants of stock imported by French and Spanish settlers before United States sovereignty attached, had run wild and multiplied. While the consumption of beef and milk was commonplace, there was no ready market in 1823 or in 1832 for the large quantities of beef and dairy products which the State of Florida was capable of producing. A prospective buyer of the Florida cession lands in 1823 or of the reservation in 1832 would not have planned to lease the acreage to cattle growers for he would have known that grazing fees were not the custom in Florida at that time and that the cattle which roamed in Florida were mostly wild, belonging to no individual. That potential buyer would have regarded the prospects for a major dairy and beef industry as slightly favorable at some far distant date.

52. Other domesticated and undomesticated animal life which the

Florida climate, water, and vegetation supported included sheep, hogs, and poultry, deer, bears, and other game. A substantial portion of the business of Panton, Leslie & Company consisted of traffic in pelts. Fish abounded in the interior and adjacent waters and were exploited commercially as of the valuation dates to the extent of up to $150,000.00 per year. A prospective buyer of the Florida cession lands in 1823 or of the reservation in 1832 would have regarded the abundance of animal life and its existing commercialization as substantial assets.

53. Just as the adjacent ocean waters would have enhanced the saleability of Florida in 1823 or of the reservation in 1832 because fish could be taken therefrom, so were those waters the source of another substantial asset of Florida in 1823 and later. On July 4, 1823, the Governor of Florida approved an Act "Concerning wreckers and wrecked property" which was enacted to regulate the existing and thriving salvage industry in Florida. The act contained a number of provisions relating to the interest which the Territory of Florida had in the proceeds of wrecked or salvaged property and provided that it should be a felony, punishable by death, for any person to "make any device with intent to mislead, bewilder or decoy the mariners of any vessel on the high seas". More than 500 persons were regularly employed in Florida salvage activities in which they could secure fees ranging from half to three-fourths of the value of the property salvaged. A prospective buyer of the Florida cession lands in 1823 or of the reservation in 1832 would have regarded the operational

salvage industry as a favorable factor.

54. While the Florida cession lands and the reservation did not include an abnormally high quantity of lakes, ponds, and inland streams, most of Florida, interior and coastal, from about Township 13 south to the southernmost tip of the Florida Peninsula did include extensive areas of marshes and swamps. More than 20 million acres -- that is, more than two-thirds of the total awarded area -- of Florida lands were patented by the Federal government under the 1850 Swamp Act (the Swamp Land Act of September 28, 1850, 9 Stat. 519). The fact that such a large proportion of Florida lands consisted of swamps, bogs, and marshes did not imply that Florida lands were largely of poor quality from a purely agricultural standpoint. One standard classification system embodying five degrees of agricultural productivity disclosed that less than half of Florida, overall, was of the fifth grade, designated as essentially nonarable. Such lands would have been unsuited for conventional agriculture in farm-sized parcels although a large proportion of those fifth grade lands could be well devoted to some other productive pursuit, such as pasturage. Interspersed among many of the swamp and marsh areas were hammocks, which were a mixture or bed of marl or clay underlying vegetable mold. The hammocks were distinctly desirable and were generally regarded as productive locations. Hammocks could be recognized at sight as islands of hardwood trees surrounded by pine woods or prairie regardless of whether the hammocks were high, and well-drained, or low, and frequently inundated.

Taken together, the hammock lands of the Florida cession lands and the reservation amounted to slightly less than two million acres. A prospective buyer of the Florida cession lands in 1823 or of the reservation in 1832 would have regarded the extensive marshes, bogs, and swamps mostly as a detrimental factor. At the same times, he would have regarded the hammock acreage as slightly favorable, comparing the high fertility with the frequent inaccessibility.

55. The portion of the awarded Florida lands which were not classifiable as "essentially incapable of tillage", which was slightly more than fifty percent of the total, included 14% of good to fair land for the staple crops climatically adapted to the region in which it lies and 36.9% of poor land, measured by the same standard. The remainder was classifiable as excellent for agricultural purposes, but with respect to the awarded lands, this residue of excellent farmland amounted to a scant .2% of the total. Overall, only the fair, good, or excellent land could be considered as suitable for agriculture on a commercial scale, while the 12,893,000 acres of fourth grade land probably could not be farmed commercially with the fertilizing and crop rotation concepts common in 1823 or 1832, but were suitable for subsistence farming and more suitable for grazing. A prospective buyer of the Florida cession lands in 1823 or of the reservation in 1832 would have realized that most of the awarded lands were not particularly attractive to persons seeking land to farm, but might be particularly attractive to persons seeking extensive acreage for livestock and expecting a substantial future market for

their products.

56. When the United States took title to Florida, a number of Spanish land grants were outstanding. In order to resolve the validity of such claims, acts were passed to establish commissions for east and west Florida (Act of May 8, 1822, 3 Stat. 709, 718) and for court jurisdiction (Act of March 30, 1822, 3 Stat. 654, 659) of the anticipated controversies. The anticipated legal controversies appeared, and some of them endured for the ensuing quarter-century, making the sale of Florida lands speculative and unreliable in many instances. A prospective buyer of the Florida cession lands in 1823 or of the reservation in 1832 would have been aware of the extensive existing litigation of Spanish land grant claims which he would have regarded as a detrimental factor, not because the resultant clouded titles "depressed" land prices "far below their fair market value", but because clouded titles were a fact of land sales in Florida for which allowances had to be made.

57. Over the defendant's objection, the plaintiffs' witness on land values, Mr. Edgemon, was qualified and accepted as an expert. As an expert witness, he testified that there were forty-seven townsites within the Florida cession lands and that there was one townsite within the reservation. He supported each location with a combination of such factors as actual accounts of settlement, appearance on contemporary maps, location on navigable streams, or roads or trails, existence of mills and mill sites, soils, location of post offices or court cessions, statutes of incorporation, sales of land,

and such generalities as water, climate, and health. Cross examination elicited the fact that five of the claimed townsites were not within the stipulated boundaries of the 1823 cession. After deletion of the five townsites outside the 1823 cession boundaries -- St. Marks, Madison, Magnolia, Rock Haven, and Palatka -- and after deletion of claimed townsites for which there is no substantial evidence of their being platted before the valuation date, the townsites of Beelersville, Newmansville, and Tampa, none of which was within the reservation, remain to be considered. This witness concluded that, based upon the data available to him, the average townsite comprised 250 acres worth an average of $200 per acre. These averages have not been refuted. The defendant's expert witness on valuation, Dr. Murray, did not address his analysis to the issue of individual townsites platted on the dates of valuation, but did include the concept of "choice sites" such as towns, harbors, beaches, and points along rivers as acreage worth premium prices of $2.50 per acre on either valuation date.

58. Resales of Spanish land grants were rejected by both parties as untrustworthy indicators of fair market value. In the plaintiffs' view, Spanish land grants were at artificially depressed prices. The defendant viewed the Spanish land grant resales as not comparable due to superior locations and indeterminate improvements.

The defendant's expert witness on valuation, Dr. Murray, considered public land offerings, sales, and remainders unsold in Florida and in

three nearby states -- Alabama, Louisiana, and Mississippi -- in order to help him determine the price upon which a willing buyer and a willing seller would have agreed if the Florida cession lands were sold in one parcel in 1823 or if the reservation were sold in one parcel in 1832. These particular states were selected for the comparison because in this witness's opinion they shared with Florida the same land resources, excepting Florida's subtropical fruit, truck crop, and range region comprising the southern half of the Florida peninsula.

The statistical and historical data compiled by this witness led him to conclude that a prospective buyer of the Florida cession lands in 1823 would have been aware that, to that year, slightly over three million acres had been sold at $1.25 per acre and that nearly 21 million acres were available at the same price. A prospective buyer of the reservation in 1832 would have been aware that only about 16% of the 44 million acres offered in the three states had been sold at $1.25 per acre and that nearly 37 million acres -- about 84% of the total offered -- were unsold and available at the same price, in any size purchase a prospective buyer might consider. Dr. Murray found that in the period from 1823 through 1832, public land sales in Florida and in the three selected comparison states varied only a few cents, with none averaging as little as $1.25 per acre or as much as $1.36 per acre. At the end of 1832, only 8% of the offered public lands in Florida had been sold. These data would have suggested to a prospective buyer of the Florida cession lands in 1823 or of the reservation

in 1832 that resale of his purchase would encounter substantial competition from public land sales in Alabama, Louisiana, or Mississippi if the lands were in fact comparable.

The plaintiffs' expert witness on valuation observed that public land sales in Florida did not commence until 1825 and computed that from 1825 through 1834 such sales averaged $1.34 per acre. He concluded that such sales are not determinative of the fair market value of the 1823 cession, even though that average compared favorably with the 90¢ per acre average for reservation lands during the same period. This witness found that the average for private sales and resales varied from 70¢ per acre in Spanish land grant counties to $4.00 per acre in public land counties, with the latter figure including costs of survey, sale, and management ranging from 6.2¢ to 7.39¢ per acre. A prospective buyer of the Florida cession lands in 1823 or of the reservation in 1832 could have concluded on the basis of these data that with careful pricing he could successfully compete with offerings of comparable lands in other states and that with respect to the southern half of the Florida peninsula there would be no competition from comparable land offerings in other nearby states.

59. Dr. Murray concluded on the basis of all of his collected data that the Florida cession lands and the reservation enjoyed a diversified highest and best use of farming, grazing, timber production, and recreation. His approximate breakdown of values ranged from a high of $2.50 per acre for choice sites and $1.25 per acre for good crop lands for farming, down to 50¢ per acre for poor crop lands

for farming, 20¢ per acre for grazing as an adjunct to farming and well-located timberlands, an additional 10¢ per acre for timberlands with live oak, 10¢ per acre for other timberlands, and 1¢ to 5¢ for swamps and other nonarable lands. These computations culminated in a total fair market value of $4,300,000 for the Florida cession lands and $1,200,000 for the reservation on the respective valuation dates.

Mr. Edgemon concluded on the basis of all of his collected data that the Florida cession lands and the reservation enjoyed a diversified highest and best use of timber production grazing and agriculture plus, for the cession lands, citrus production. The approximate breakdowns were of the Florida cession lands less townsites and of the reservation less the townsite. This witness found that the townsites within the Florida cession lands had a fair market value of $200 per acre and that the fair market value of all other Florida cession lands averaged $1.50 per acre. He found that the one claimed townsite within the reservation had a fair market value of $250 per acre and that the fair market value of all other reservation lands averaged $1.65 per acre. These computations culminated in a total fair market value of $38,110,000 for the Florida cession lands and $9,850,000 for the reservation on the respective valuation dates.

60. The Treaty with the Florida Tribes of Indians, commonly known as the Camp Moultrie Treaty, was dated September 18, 1823 (7 Stat. 224), and proclaimed January 2, 1824. By this treaty, the

plaintiffs ceded the area frequently referred to above as "the Florida cession lands" and agreed to limit themselves to a reservation in central Florida. The consideration for this treaty, both monetary and other, amounted to $152,500.00.

61. The Treaty with the Seminoles, commonly known as the Treaty of Payne's Landing, was dated May 9, 1832 (7 Stat. 368), and ratified in April of 1834. By this treaty, the plaintiffs ceded their reservation in Florida in exchange for a monetary payment, an annuity, and an acceptable reservation with the Creeks west of the Mississippi. The defendant included the consideration paid under the 1832 treaty, a number of gratuitous offsets, its payments under subsequent treaties with the Seminoles in Oklahoma, and the cost to it of the acceptable reservation with the Creeks in the Indian Territory under the inclusive proposed finding "payments on the claim". However, it is apparent that the actual consideration for the 1832 treaty consisted of only three items. These were, first, the stated treaty payment of $15,400.00 which was finally made in 1846; second, payments on the 15-year annuity which, from 1847 to 1860, aggregated $41,994.77; and, finally, the fair market value of the reservation with the Creeks west of the Mississippi, in the Indian Territory. This Commission had determined that the fair market value, which the defendant actually paid to the Creek Nation, was $2,037,414.62. Creek Nation v. United States, Dkt. 276, 16 Ind. Cl. Comm. 431 (1965). Thus, the total consideration for the 1832 treaty amounted to $2,094,809.39.

62. Neither the 1823 treaty nor the 1832 treaty involved a taking by the exercise of the sovereign's right of eminent domain and in neither

instance was there a "taking" in the Constitutional sense.

CONCLUSIONS OF LAW

On the basis of the evidence of record and the foregoing Findings of Fact, this Commission concludes as a matter of law that:

1. The fair market value of the Florida cession lands on September 18, 1823, was $12,500,000.00.

2. The consideration of $152,500.00 for lands having a fair market value of $12,500,000.00 was unconscionable within the contemplation of clause 3 of section 2 of the Indian Claims Commission Act of 1946.

3. The fair market value of the reservation as of May 9, 1832, was $2,050,000.00.

4. The consideration of $2,094,809.39 for lands having a fair market value of $2,050,000.00 was not unconscionable within the contemplation of clause 3 of section 2 of the Indian Claims Commission Act of 1946.

Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner