

BEFORE THE INDIAN CLAIMS COMMISSION

TUSCARORA INDIAN NATION, )  
 )  
 Plaintiff, )  
 )  
 v. ) Docket No. 321  
 )  
 THE UNITED STATES OF AMERICA, )  
 )  
 Defendant. )

Decided: May 14, 1970

Appearances:

Paul G. Reilly, Attorney for Plaintiff  
Earle & Reilly were on the briefs.

Lester Reynolds, with whom was Mr.  
Assistant Attorney General Clyde O.  
Martz, Attorneys for Defendant.

OPINION OF THE COMMISSION

Chairman Kuykendall delivered the opinion for the Commission.

The plaintiff has brought the above-entitled action under various clauses of section 2 of the Indian Claims Commission Act, 60 Stat. 1049, seeking additional compensation arising from certain transactions involving lands located in Bertie County, North Carolina. The material facts in this case, concerning which there is no substantial dispute, commence with the relationship between the Colonial government of North Carolina and the Tuscarora Indians and involve transactions before the formation of the Federal Government.

At the end of the "Tuscarora War" in 1713 the hostile Tuscaroras left North Carolina and migrated to New York, where they resided with various parts of the Five Nations and eventually became the sixth nation of that confederacy. Those Tuscaroras who had been friendly to the colonists remained in North Carolina and, in 1717, were granted a tract of some 41,113 acres on the south side of the Roanoke River.

The Indians thereby held the "equivalent" of a fee simple title. The grant was subsequently surveyed and, in 1748, was confirmed by the General Assembly of the North Carolina Province. That 1748 Act also provided that any persons holding grants to the land from the late Lords Proprietor (before North Carolina became a royal colony in 1729) should become entitled to such lands if the Tuscaroras should ever desert or leave them.

The Tuscaroras resided on the lands until about 1766 when, at their request, arrangements were made for slightly more than half of the Indians to move to New York. To raise the money necessary to repay advancements made for the migration, the General Assembly approved a lease for part of the lands for a term of 150 years. Tuscaroras continued to leave North Carolina until by 1777 most of them had joined members of their tribe in New York. Other leases of the North Carolina lands had been made by the Tuscaroras which were subsequently confirmed by a 1778 Act of the North Carolina Assembly. The 1778 Act, in addition to validating long term leases, provided that at the expiration of the leases the lands would revert to the State if the Tuscarora Nation were then extinct and, further, that the lands would revert to the State at any time whenever the Tuscarora Nation should either become extinct or entirely abandon or remove themselves from every part of the tract.

The transactions and dealings to this point in the chronology of events did not in any way involve the Federal Government, and there is no basis for any responsibility on the part of the United States.

for the actions of North Carolina prior to 1790. Since the Indian Claims Commission Act, 25 U.S.C. 70a, redresses Indian grievances against the United States, not injuries done by others for which the United States had no responsibility, there would be no grounds for a recovery under the Indian Claims Commission Act based on any of the actions involving the Tuscaroras to this point in time. The Six Nations, etc., et al. v. The United States 173 Ct. Cl. 899 (1965).

However, after 1790 the United States assumed certain responsibilities with respect to the Indians. The Trade and Intercourse Act of July 22, 1790, 1 Stat. 137, 138, and successor statutes forbade the sale or conveyance of Indian lands without the consent of the Federal Government. There have been different versions of the Act, which is still in effect as section 2116 of the Revised Statutes, codified at 25 U.S.C. sec. 177, but federal consent has always been required in any disposition of Indian real property. The legislation has been interpreted as giving the Federal Government a supervisory role over conveyances by Indians to others. In Federal Power Commission v. Tuscarora Indian Nation, 362 U. S. 99, 119 (1960), the Supreme Court said: "The obvious purpose of that statute is to prevent unfair, improvident or improper disposition by Indians of lands owned or possessed by them to other parties, except the United States, without the consent of Congress..." Accordingly, under the Indian Claims Commission Act the United States could be held liable if, after 1790, there were any transactions involving the Tuscaroras' lands in which there was an "unconscionable

consideration" paid or there was a lack of "fair and honorable dealings."

In 1801 the Tuscarora Nation requested the advice and assistance of the President regarding a proposed sale of the Tuscaroras' North Carolina land in order to acquire more land in New York. In response thereto the President appointed William R. Davie Commissioner to attend negotiations in North Carolina between Tuscaroras from New York and the North Carolina representatives. Recognizing the requirements of the Trade and Intercourse Act, the President specifically authorized Commissioner Davie to give the necessary sanction and consent to terms which the Tuscarora chiefs and the legislature of North Carolina might agree on.

An agreement was reached between the Tuscaroras and North Carolina whereby all right, title, interest and claim of the Tuscarora Nation to the Bertie County lands would cease after July 12, 1916. In return North Carolina would pass legislation authorizing the leasing of the unleased lands in the tract, the existing leases would be permitted extensions until July 12, 1916, and the occupancy and possession of the tenants would be held and deemed the occupancy and possession of the Tuscarora Nation, as if the Indians actually resided on the lands. Thus the provisions of the 1778 Act calling for a reversion to the State if the Indians should ever abandon or remove themselves from the lands would no longer apply.

The terms of the agreement were included in a treaty executed on December 4, 1802, by the Tuscarora chiefs and Commissioner Davie.















