

## BEFORE THE INDIAN CLAIMS COMMISSION

|                                   |   |                 |
|-----------------------------------|---|-----------------|
| THE SEMINOLE INDIANS OF THE STATE | ) |                 |
| OF FLORIDA,                       | ) |                 |
|                                   | ) |                 |
| Plaintiff,                        | ) |                 |
|                                   | ) | Docket No. 73-A |
| v.                                | ) |                 |
|                                   | ) |                 |
| THE UNITED STATES OF AMERICA,     | ) |                 |
|                                   | ) |                 |
| Defendant.                        | ) |                 |

Decided: March 24, 1971

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. As heretofore found by the Commission in Docket Nos. 73 and 151, The Seminole Indians of the State of Florida v. United States, 13 Ind. Cl. Comm., 326, 327 (1964), the plaintiff herein is an identifiable tribe of American Indians and is authorized to maintain this action in its own behalf under section 2 of the Indian Claims Commission Act (60 Stat. 1049, 1050).

Count I

2. By Article I of the Treaty of Camp Moultrie, dated September 18, 1823 (7 Stat. 224, 2 Kapp. 203), the Seminole Nation (identified in the 1823 Treaty as "The Florida Tribe of Indians") ceded and relinquished to the United States all claim or title which they had to the whole territory of Florida, with the exception of the area specifically allotted and reserved to them under Article II of said treaty.

3. Under the terms of the Treaty of Payne's Landing of May 9, 1832<sup>40</sup> (7 Stat. 368, 2 Kapp. 344), the Seminoles relinquished to the United States all lands they then occupied in the Territory of Florida. Under this treaty the Seminole Nation exchanged the reservation granted under the terms of the 1823 Camp Moultrie Treaty for lands adjacent to the Creek Reservation in the Indian Territory (Seminole Nation v. United States, Docket No. 73, 13 Ind. Cl. Comm., 326 (1964) p. 353, 354, affirmed 180 Ct. Cl. 375 (1967)).

The 1832 Treaty of Payne's Landing required the Seminoles to emigrate or remove to Indian Territory over a three year period commencing in 1833. The controversy generated by the terms of the 1832 Treaty delayed its ratification and execution until 1834. The Act of June 28, 1834 (4 Stat. 705), provided funds to carry out certain of " . . . the stipulations of the treaty with the Seminoles of the ninth of May, eighteen hundred and thirty-two . . ." The Act of March 3, 1835 (4 Stat. 789), provided funds for the ". . . removal of five thousand Seminoles to their lands west of the Mississippi under the seventh article of the treaty with them of the ninth of May, eighteen hundred and thirty-two. . ."

4. Between 1833, the year emigration was to commence, and 1835, the expiration date for removal under the 1832 Treaty, the controversy surrounding the terms of the treaty and the authority of certain of the Indian negotiators to bind the entire Nation involved principally the various chiefs and sub-chiefs who were parties to the treaty. A

respectable number of the Seminole chiefs and a minority of the braves were decidedly in favor of emigration, not simply as an unavoidable alternative, but as a clear matter of self-interest and self-preservation. In the autumn of 1835, negotiations with the Seminoles directed toward their peaceful removal to the West were brought to a crisis. One of the principal advocates for removal, Chief Amathla, was assassinated on November 26, 1835, by a large band of dissident Seminoles opposed to what they considered to be a forced migration. The murder of Amathla precipitated open hostilities on December 28, 1835, with the near-total destruction of a military column led by Major Dade. The Second Seminole War commenced on this date.

5. The Seminole war proceeded with unrelenting ferocity until early 1838. The widespread unpopularity of the war, both in Congress and with the general public, led the Government to seek more peaceful means to terminate the conflict and to urge the remaining Seminoles to emigrate. General Thomas S. Jessup, Commander in Florida, and a number of his senior officers openly advocated a policy that would permit the Seminoles to remain permanently in Florida. The Secretary of War advised General Jessup, however, that the removal policy of the Government in the face of a ratified treaty precluded any possibility of any permanent arrangement for the Seminoles. On May 18, 1838, General Jessup was succeeded in the command of the army in Florida by Brig. Gen. Zachary Taylor. This Indian removal policy of the Government was restated in President Van Buren's message to Congress on December 3, 1838.

6. Under the Act of March 3, 1839 (5 Stat. 357), entitled "An Act making appropriation for preventing and suppressing Indian hostilities for the year eighteen hundred and thirty-nine", Congress by the so-called Everett Amendment, authorized, inter alia, the expenditure of \$5,000.00 for the purpose of negotiating a peace treaty with the Seminoles. Thereafter on March 18, 1839, Major General Alexander Macomb was ordered by the Secretary of War to proceed to Florida under the following terms of reference:

Sir; You will proceed with as little delay as practicable to Florida, and after a full examination of the State of that Territory and of the War carrying on there, you will adopt such measures as may seem to you most expedient to secure the protection of the settlers in Middle and East Florida, to prosecute the War with vigour, and to bring it to a speedy and successful termination. It is advisable that you should visit that part of the country which has so lately been the theatre of Indian depredations and murders, ascertain if possible what hostile bands were concerned in them, and take measures to prevent the recurrence of similar outrages in future. If, as it is probable, it should appear that the fugitive Creeks have committed these acts, you will take the proper steps to drive them from their fastnesses, and if practicable to induce them to come in and surrender. Whatever measures of rigour it may be necessary to adopt in order to repress the incursions of the Indians, no threats ought to be held out against them; but on the contrary, the language of all communications with them should be mild and conciliatory; the object of the government being not to punish their barbarities however enormous they may have been, but to prevent their repetition. Congress having by making an appropriation for that purpose, signified a desire that another effort should be made to treat with the Seminoles, you will use your best endeavors to open a communication with their Chiefs, and if they show any willingness to enter into a negotiation with you for their peaceful removal, you are at liberty to make a truce with them until the terms can be finally arranged, confirming them to that portion of the Peninsula south of 27° 30<sup>m</sup> latitude

until they can be finally removed according to the terms of the treaty of Payne's landing. . .(emphasis supplied) (Pl. Ex. 13: 25 National Archives, Territorial Papers of the United States 597 (1960)).

7. As a result of conferences held with the Seminoles, General Macomb issued an order dated May 18, 1839, announcing a general armistice and its terms. The full text of the order, captioned "General Orders, Headquarters of the Army of the United States, Fort King, Florida, May 18th 1839", reads as follows:

The major-general commanding in chief has the satisfaction of announcing to the army in Florida, to the authorities of the territory, and to the citizens generally, that he has this day terminated the war with the Seminole Indians, by an agreement entered into with Chitto-Tustenuggee, principal chief of the Seminoles, and successor to Arpeika, commonly called Sam Jones, brought to this post by Lieutenant-Colonel Harney, 2d dragoons, from the southern part of the peninsula. The terms of the agreement are, that hostilities immediately cease between the parties; that the troops of the United States, and the Seminole and Mickasukie chiefs and warriors, now at a distance, be made acquainted, as soon as possible, with the fact that peace exists, and that all hostilities are forthwith to cease on both sides; the Seminoles and Mickasukies agreeing to retire into a district of country in Florida, below Pease Creek, the boundaries of which are as follows, viz., beginning at the most southern point of land between Charlotte Harbor and the Sanybel or Coloosahatchee river, opposite to Sanybel Island; thence into Charlotte Harbor, by the southern pass between Pine Island and that point, along the eastern shore of said harbor to Taalk-Chopko or Pease Creek; thence up said river to Hatchee-Thloko, or Big Creek; thence up said creek to its source; thence easterly to the northern point of Lake Istokpoga; thence along the eastern outlet of said lake, called Istokpoga Creek, to the Kissimmee river; thence southerly down the Kissimmee to Lake Okee-Chobee; thence south through said lake to Ecahlahatohee or Shark river; thence down said river westwardly to its mouth; thence along the sea-shore northwardly to the place of beginning; that sixty days be allowed the Indians north and east of that boundary to

remove their families and effects into said district, where they are to remain until further arrangements are made, under the protection of the troops of the United States, who are to see that they are not molested by intruders, citizens or foreigners, and that the said Indians do not pass the limits assigned them, except to visit the posts which will be hereafter indicated to them. All persons are therefore forbidden to enter the district assigned to said Indians, without written permission of some commanding officer of a military post. (emphasis supplied) (Def. Ex. 101: J. Sprague, The Origin, Progress and Conclusion of the Florida War 228 (1848)).

The district so described in the above-quoted order and referred to by either one or both parties variously as Macomb's Arrangement, Macomb's Area, or the Macomb Reservation, comprises approximately 5 million acres, the subject matter of this portion of the present action.

8. General Macomb transmitted the truce agreement to the Secretary of War on May 23, 1839, informing the Secretary, in part, as follows:

. . . The enclosed general order, announcing the result of the conference, exhibits the terms of peace. Under existing circumstances, I did not think it necessary to enter into a formal written Treaty, such an instrument with Indians having but little binding effect. Nor did I think it politic, at this time, to say anything about their emigration, leaving that subject open to such future arrangements as the government may think proper to make with them. No restriction upon the pleasure of the government, in this respect, has been imposed, nor has any encouragement been given to the Indians, that they would be permitted permanently to remain in Florida . . . (emphasis supplied) (Def. Ex. 101: J. Sprague, The Origin, Progress, and Conclusions of the Florida War 229 (1848)).

9. On June 4, 1839, the Secretary of War issued a directive to General Zachary Taylor, Commander, Army of the South, to take appropriate steps to protect the Indians in their removal to the Macomb district. The order reads, in part, as follows:

Sir, General Macomb having succeeded in making an arrangement with the Indians of Florida, by which it is agreed that they shall retire within certain limits in the South Western corner of that territory and be permitted to remain there until other and permanent arrangements shall be made by the government, it is desirable that you adopt efficient measures to protect them in the quiet possession of the district of country thus set apart for their temporary residence. . . (emphasis supplied) (Pl. Ex. 13: 25 National Archives, Territorial Papers of the United States 614, 615 (1960)).

Thereafter, a large number of Seminoles began to move south to said territory (Macomb area). Whether from (1) a misunderstanding of the terms of the armistice, (2) a natural fear of entrapment, (3) a singular refusal to abide by the armistice, or a combination of all three elements, an equally large number of Seminoles refused to move south to the territory assigned them under the Macomb armistice agreement. The truce was broken and hostilities renewed when a Seminole band attacked a military command on July 22, 1839.

10. On November 2, 1840, the Secretary of War by letter to the new field commander in Florida, General W. K. Armistead, rejected the latter's proposal to terminate the protracted and uncertain war by granting the Seminoles the lands designated in the Macomb agreement. In response to said proposal, the Secretary of War stated:

. . . After mature deliberation it appears to me that the President has no right to give way any portion of the territory of Florida to the Indians. By a treaty made with them and ratified by the Senate they ceded their lands for a valuable consideration to the Government, and this Department cannot sanction any arrangement which in contravention of the treaty would retrocede any portion of that purchase. . . (Pl. Ex. 13a: 26 National Archives, Territorial Papers of the United States 224 (1962)).

11. With the assistance of the War Department, which maintained a delegation of Arkansas Seminoles in Florida for the purpose of influencing the dissidents to emigrate, General Armistead was able to effectuate the emigration of a substantial number of Indians in pursuance of the Government's policy of removal. General Armistead's success relating to negotiations with the Indians was acknowledged on January 9, 1841, in a letter from the Secretary of War to General Armistead, which letter also reaffirmed the Government's stand on Indian removal:

Sir. I have received your letter of the 20th ultimo, and am much gratified to learn that the Indians continue to come in at the different posts. So long as the plan now being pursued operates successfully, it would be unadvisable to change it. If, contrary to present appearances and our just expectations, any of the tribes should refuse to emigrate and you are compelled to agree to a truce upon the conditions contained in your instructions, you will be careful to give the Indians no assurances of their being allowed to remain in the country. . . (Pl. Ex. 13a: 26 National Archives, Territorial Papers of the United States, 237, 238 (1962)).

12. Congress, through a request of the War Department based on a suggestion made by General Armistead, appropriated \$100,000, ". . . for the removal, subsistence, and benefit of such of the Seminole Indian Chiefs and warriors as may surrender for emigration. . ." (Act of February 18, 1841, 5 Stat. 412).

Throughout the month of March 1841, General Armistead reported to the War Department the regular embarkation of Indians at Tampa for emigration west. The highest number was 220 Indians reported on March 22, 1841.



13. On February 14, 1842, Colonel Worth, who had replaced General Armistead reported in a special census to the Commanding General that there were 301 Seminoles remaining in Florida. He further suggested a truce designed to effect the removal of the remaining Seminoles since the war had practically ended in Florida.

On May 10, 1842, the Secretary of War directed Colonel Worth through the Commanding General to declare hostilities at an end as follows:

. . . The very reduced number of hostile Indians now in Florida, believed not to exceed two hundred and forty, including probably eighty warriors, would seem to indicate that all has been accomplished which can be effected by the employment of a large military force in offensive operations . . .

Anxious to curtail the extraordinary expenses incident to the warfare and sincerely desirous of promoting peace, the President directs that Colonel Worth be authorized, as soon as he shall deem it expedient, to declare that hostilities against the Indians in Florida have ceased, . . .

He will also use the means he possesses of communicating with the Indians yet remaining, and inducing them to consult their true interest by joining their brethren at the West . . . (Pl. Ex. 13a: 26 National Archives, Territorial Papers of the United States 471, 472 (1962)).

Pacification was further encouraged by the passage of the Act of August 4, 1842 (5 Stat. 502) which provided for the armed occupation and settlement of portions of Florida through white emigration.

14. On August 11, 1842, Colonel Worth issued Military Order No. 27 announcing the cessation of hostilities and confining the few Indians remaining in Florida to the Macomb area where they would be allowed temporarily to hunt and fish. Thereafter and until the middle of 1843, all the major Seminole chiefs (principally Tiger Tail) either voluntarily

surrendered for emigration or were captured and sent west. The last and most hostile of the "hold-outs", Chief Octiarche, was captured on December 20, 1842.

To prevent white incursions into the Macomb area and possible hostile confrontations with individual dissident Seminoles, the President, on May 19, 1845, directed that a strip of public lands in the nature of a buffer zone 20 miles wide be set aside around the Macomb district and removed from survey and public sale. After 1845, no direct negotiations between the Government and the Seminoles remaining in Florida respecting the Macomb Area are indicated in this record.

15. Between 1845 and 1856, the Government continued to negotiate and treat with the Seminole Nation in the West. The Treaty of January 4, 1845 (9 Stat. 121), creating new lands for the Seminoles west of the Creek reservation, provided for the removal of the Florida Seminoles within 12 months from ratification dates of said treaty. Provisions were made for the remaining Florida Seminoles in the Treaty of August 7, 1856 (11 Stat. 699), to join the Seminole Nation in the west.

#### Conclusion

16. Upon the basis of the foregoing Findings of Fact, the Commission concludes as a matter of law, that the plaintiff tribe has failed to establish by substantial evidence of record that it acquired a legal and compensable interest in the 5-million acre tract described herein as the Macomb

area, or "reservation" lands. Accordingly, the plaintiff tribe is not entitled to recover under our Act, and this claim should therefore be dismissed.

Count II

17. In compliance with the provisions of an Act of the Florida Legislature (12 Fla. Stat. Ann. §§ 285.01, 285.02), the Trustees of the Internal Improvement Fund, a state agency, by deed dated October 11, 1917, conveyed to the Board of Commissioners of State Institutions, another state agency, title in trust to 99,200 acres of everglades land in Monroe County as a reservation for the perpetual use and benefit of the Seminole Indians of Florida. The deed contained a reverter clause whereby the property would revert to the state in the event it was not used for the purposes intended.

18. Pursuant to the Act of March 1, 1929 (45 Stat. 1443), Congress directed the Secretary of Interior to investigate and then report back on the desirability and practicability of establishing a national park in the everglades of Dade, Monroe, and Collier counties in Florida, to be known as the Tropic Everglades National Park. On May 25, 1929, the Florida Legislature enacted a statute creating the Everglades Park Commission with the authority to acquire the title in the name of the State of Florida to any lands which the Secretary of Interior may designate for park purposes in Dade, Monroe and Collier counties (12 Fla. Stat. Ann. § 264.01). On December 30, 1930, the Secretary of Interior filed his report with the Congress detailing the results of his investigation and reporting favorably on the park project. In his report the Secretary

noted that the Seminole Indians may have a specific reservation within the proposed park area, and that the matter would be investigated further.

19. With the enactment of the National Park Act of May 30, 1934 (48 Stat. 816), Congress authorized the creation of the Everglades National Park within an area of approximately 2000 square miles in Dade, Monroe, and Collier counties, Florida, said park lands to be acquired by the United States by public or private donation and the administration, protection and development of said park to be under the exclusive jurisdiction of the United States. The 1934 Act provided further:

That nothing in this act shall be construed to lessen any existing rights of the Seminole Indians which are not in conflict with the purposes for which the Everglades National Park is created; . . . (48 Stat. 816)

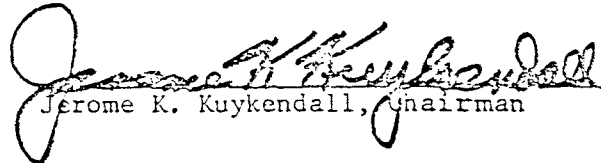
20. To provide more adequately for the needs of the Seminole Indians, the Florida Legislature, under the Act of May 30, 1935 (12 Fla. Stat. Ann. §§ 285.04, 285.06), authorized the Trustees of the Internal Improvement Fund at their discretion to exchange state lands for federally owned lands. The Trustees were further authorized to withdraw the 99,200 acre Seminole Indian Reservation in Monroe Country, as a reservation, and substitute in lieu thereof as the new Seminole reservation a comparable tract of equal size and suitable character. The substituted tract was to be located, if at all possible, adjacent to the reservation to be established by the United States. Similar authority was given to the Secretary of Interior to effect any needed exchange with the State of Florida of lands that had been reserved by the United States for the Seminole Indians (Act of June 14, 1935, 49 Stat. 339).

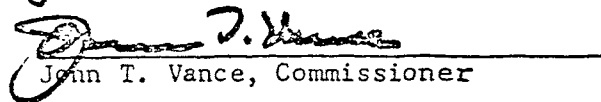
On December 23, 1936, the Trustees of the Internal Improvement Fund, withdrew the 99,200 acre Seminole Indian Reservation in Monroe County, and substituted as the new Seminole Indian Reservation 104,800 acres immediately north of the proposed Everglades National Park, in Broward County. This new reservation adjoined a goodly portion of some 80,000 acres of Federally owned land that had been set aside for the use and benefit of the Seminoles.

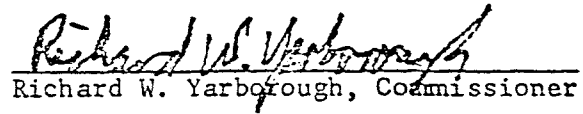
#### Conclusion

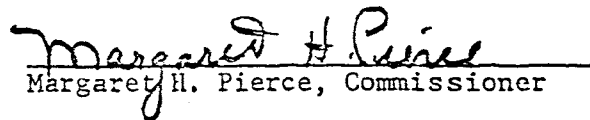
21. As a result of the aforementioned Congressionally sanctioned acts of the Secretary of Interior, in concert with similar actions taken by the State of Florida in acquiring lands for the proposed federally operated Everglades National Park, the 99,200 acre Seminole Indian Reservation in Monroe County, Florida, was exchanged for other lands in nearby Broward County, Florida. This exchange of plaintiff's lands, in which it held a compensable interest, was accomplished for the ultimate benefit of the United States and with its knowledge and consent. Under these circumstances the United States assumed a special responsibility and duty toward the plaintiff tribe to protect the Indians from disposing of their reservation lands for an unconscionable consideration within the meaning of section 2, clause 3, of the Indian Claims Commission Act (60 Stat. 1049, 1050), or in a manner that would not comport with "fair and honorable dealings"

under section 2, clause 5, of our Act.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Co Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner