BEFORE THE INDIAN CLAIMS COMMISSION

THE SEMINOLE NATION, Plaintiffs, v. THE UNITED STATES OF AMERICA, Defendant.	)	Docket No. 204

Decided: May 31, 1972

PRELIMINARY STATEMENT

The Commission previously entered findings of fact in this case on June 24, 1966. Thereafter, on March 10, 1969, a hearing on the issue of damages was held before Chairman Kuykendall and then Commissioner McKeldin. At that hearing defendant presented an oral motion to dismiss, which motion was denied. Following the conclusion of the hearings on the issue of damages, defendant filed a written motion to dismiss the plaintiff's petition for failure to prove damages. The motion was subsequently denied.

The Commission has now determined, upon reconsideration of the entire record, that its previous findings of fact, opinion, and interlocutory order of June 24, 1966, should be vacated. An order to that effect being entered, the Commission now has before it the issues of defendant's liability to the plaintiff Seminole Nation arising from the alleged wrongful action of the Dawes Commission in the allotting of Seminole land, and the actions of the United States in terminating the interest

of the Seminole Nation in an "equalization fund" to be financed by one-half of all oil or mineral royalties accruing to the allotments.

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. This suit was timely filed on August 6, 1951, by the Seminole Nation (of Oklahoma), an Indian tribe or other identifiable group of American Indians residing within the territorial limits of the United States within the contemplation of Section 2 of the Indian Claims Commission Act of 1946 (60 Stat. 1049, 1050). The instant plaintiffs have heretofore been found to have the capacity to maintain suits before this Commission. Seminole Nation v. United States, 10 Ind. Cl. Comm. 450, 461 (1962).

2. The Seminole Nation was one of the Five Civilized Tribes, all of which were removed from their aboriginal lands in the eastern part of the United States to lands purchased and set apart for them in Indian territory, in what is now the State of Oklahoma. The Seminole Nation acquired its lands pursuant to the provisions of Article 3 of the Treaty of March 21, 1866 (14 Stat. 755), and the Act of August 5, 1882 (22 Stat. 265). Previously, the United States had agreed that the Seminole lands would never be included in any territory or state, and the Seminoles would be "secured in the unrestricted right of self-government, and full jurisdiction over persons and property, within their . . . limits" (Article 15, Treaty of August 7, 1856, 11 Stat. 699, 703-704).

3. In 1893 the United States found it necessary to change its policy of isolating the Five Civilized Tribes in Indian Territory. It was determined that the tribal governments should be extinguished and that the Indian Territory should be subjected to the laws of the State of Oklahoma upon the admission of that state to the union. By section 15 of the Act of March 3, 1893 (27 Stat. 612, 645), the United States, in an effort to encourage the Five Civilized Tribes to voluntarily end their communal system of land ownership, gave its consent

> . . . to the allotment of lands in severalty not exceeding one hundred and sixty acres to any one individual within the limits of the country occupied by the Cherokees, Creeks, Choctaws, Chickasaws, and [S]eminoles; and upon such allotments the individuals to whom the same may be allotted shall be deemed to be in all respects citizens of the United States . . . . and upon the allotment of the lands held by said tribes respectively the reversionary interest of the United States therein shall be relinquished and shall cease.

By section 16 of the same Act provision was made for the appointment of a commission to enter into negotiations with each of the Five Civilized Tribes

> . . . for the purpose of the extinguishment of the national or tribal title to any lands within that territory now held by any and all of such nations or tribes, either by cession of the same or some part thereof to the United States, or by the allotment and division of the same in severalty among the Indians of such nations or tribes, respectively, as may be entitled to the same, or by such other method as may be agreed upon between the several nations and tribes aforesaid, or each of them, with the United States, with a view to such and [sic] adjustment, upon the basis of justice and equity, as may, with the consent of such

> nations or tribes of Indians, so far as may be necessary, be requisite and suitable to enable the ultimate creation of a State or States of the Union which shall embrace the lands within said India[n] Territory.

This was the origin of the Commission to the Five Civilized Tribes, familiarly known as the Dawes Commission.

4. After three years of unfruitful negotiation, Congress directed the Dawes Commission to begin formulating citizenship rolls, preliminary to mandatory allotment (§1 of the Act of June 10, 1896, 29 Stat. 321, 339). The Dawes Commission and the Seminole Nation's negotiating committee entered into serious discussion, and, on December 16, 1897, an agreement was signed. That agreement was ratified by the Seminole General Counsel on December 29, 1897, and approved by Congress without amendment by the Act of July 1, 1898 (30 Stat. 567). The Seminole Agreement provided:

> All lands belonging to the Seminole tribe of Indians shall be divided into three classes, designated as first, second, and third class; the first class to be appraised at five dollars, the second class at two dollars and fifty cents, and the third class at one dollar and twenty-five cents per acre, and the same shall be divided among the members of the tribe so that each shall have an equal share thereof in value, so far as may be, the location and fertility of the soil considered; giving to each the right to select his allotment so as to include any improvements thereon, owned by him at the time; and each allottee shall have the sole right of occupancy of the land so allotted to him, during the existence of the present tribal government, and until the members of said tribe shall have become citizens of the United States. Such allotments shall be made under the direction and supervision of the Commission to the Five Civilized Tribes in connection with a representative appointed by the tribal government; and the chairman of said Commission shall execute and deliver to each allottee a certificate describing therein the land allotted to him.

> Any allottee may lease his allotment for any period not exceeding six years, the contract therefor to be executed in triplicate upon printed blanks provided by the tribal government, and before the same shall become effective it shall be approved by the principal chief and a copy filed in the office of the clerk of the United States court at Wewoka.
>
> No lease of any coal, mineral, coal oil, or natural gas within said 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.

Since it was then anticipated that the Seminole tribal government would be terminated shortly, the agreement stipulated that the allottees should receive their deeds from the principal chief "[w]hen the tribal government shall cease to exist." Such deed would convey

> . . . all the right, title, and interest of the said Nation and the members thereof in and to the lands so allotted . . .; and the acceptance of such deed by the allottee shall be a relinquishment of his title to and interest in all other lands belonging to the tribe, except such as may have been excepted from allotment and held in common for other purpose. (Id. at 568)

5. The Act of March 3, 1903 (32 Stat. 982, 1008), provided that the Seminole tribal government should not continue past March 4, 1906.

However, before that date was reached, Congress extended, with certain limitations, the tribal governments of the Five Civilized Tribes, including the Seminole Nation (Joint Resolution of March 2, 1906, 34 Stat. 822; Act of April 26, 1906, 34 Stat. 137, 148). Congress also provided in Section 6 the Act of April 26, 1906 (34 Stat. 137, 139), for the execution of deeds to allottees "prior to the time when the Seminole government shall cease to exist."

6. The Seminole equalization fund, which had been created by the Seminole Agreement of 1898, was abolished pursuant to §11 of the Act of May 27, 1908 (35 Stat. 312, 316), which reads as follows:

> 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.

Conclusions

7. The Commission, having considered all the evidence of record and the briefs and arguments of the parties and for the reasons set forth in the opinion this date entered herein, finds and concludes that the creation of the Seminole equalization fund pursuant to the Seminole Agreement of 1895 did not create or vest any compensable property interest in the Seminole Nation. Hence the subsequent termination of the Seminole

equalization fund pursuant to the Act of May 27, 1908, supra, did not divest the plaintiff Seminole Nation of any property right on which an action for compensation may be maintained.

8. The Commission further finds and concludes that there was nothing in the actions of the United States or any of its officials in connection with the passage of the 1908 Act which could give rise to a cause of action under Clause 5, Section 2 of the Indian Claims Commission Act.

9. The Commission further finds and concludes that the Dawes Commission did not act wrongfully in its division of the Seminole land allotments by value.

10. Finally, the Commission concludes that the petition brought by the Seminole Nation in the matter of Docket No. 204 should be dismissed.

Jerome K. Kuykendall, Chairman

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner