

BEFORE THE INDIAN CLAIMS COMMISSION

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

Decided: November 29, 1972

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplementary to the findings of fact numbered 1 through 20, inclusive, previously entered herein and reported at 23 Ind. Cl. Comm. 140 (1970).

21. History of Treaty

Prior to December 4, 1802, the Tuscarora Indians were possessed of 41,113 acres of land in Bertie County, North Carolina. Approximately 38,351 acres had long-term leases extending for various periods of time ranging from 1874 to 1916. All the leases contained a provision that the land would revert to the state at the termination of the leases if the tribe became extinct or had entirely abandoned the property.

On December 4, 1802, a treaty was executed by and between the United States and the Tuscarora Indian Nation,^{1/} which provided for the final and permanent settlement of all claims between the State of North Carolina and the Tuscarora Nation upon fulfillment of its terms by the state and ratification by the United States. The United States

^{1/} North Carolina State Archives, Governor Williams Papers, Governor's Paper 25; Defendant's Exhibit No. 30.

Senate ratified the treaty on March 1, 1803.^{2/}

22. Provisions of Treaty

Article I of the Treaty of December 4, 1802, provided that the Tuscarora Nation was authorized to lease the undemised portions of their land as well as to renegotiate the existing leases ". . . so that the term or terms of the whole or any part thereof. . ." would extend to July 12, 1916. Article I further stated that the Indians ". . . stipulate and agree that from and after the said [July 12, 1916,] all the rights, interests, and claims of said Nation or any of the Indians thereof . . . to the use, possession or occupany of [the subject land] shall cease and determine and shall be held and deemed extinguished forever."

23. Leasing of Land Pursuant to the Treaty

Subsequent to the 1802 treaty, new leases were executed, by and between the Tuscarora Indian Nation and parties in possession under the existing leases, which extended the terms of the leases to July 12, 1916. The consideration received by the plaintiff tribe for these new leases was \$8,361.66. The leases which were extended covered 38,351 acres of land and the average time of extension was 41 years per lease.

The portion of plaintiff's land not previously leased amounted to 3,441 acres, of which 2,917.5 acres were leased at public auction under authorization of the 1802 treaty by a commission appointed in compliance with a North Carolina Act of December 16, 1802. As provided in the 1802 treaty, the leases were to terminate July 12, 1916. The sum

^{2/} See Executive Journal of the United States Senate, Vol. 1, 1828, Page 445; Defendant's Exhibit No. 32.

realized from the leasing of the 2,917.5 acres for a period in excess of 113 years was \$20,966.60, or \$7.19 per acre.

24. Value of Plaintiff's Land Unencumbered by Leases

Plaintiff and defendant agree that the said average price of \$7.19 per acre for a leasehold interest for 113 years is representative and equivalent to the average value per acre of a fee simple interest in said land. There is no other evidence of value in the record. Therefore, the Commission finds that the total number of acres in the tract multiplied by \$7.19, which totals \$295,602.47, is the fair market value of the unencumbered fee to such land at the time the 1802 treaty became effective.

25. Divestment of and Payment for the Possibility of Reverter

The Tuscarora Indian Nation, before the 1802 treaty, was possessed of the reversionary right to the land when under lease, unless it ceased to exist as a tribe or totally abandoned every part of the tract before expiration of the leases. By reason of their agreement to the terms of the 1802 treaty, the Indians conveyed every property right in their North Carolina land, including the possibility of reverter, to the state. In 1832, payment of the sum of \$3,220.71 was made by the State of North Carolina to the plaintiff as compensation for plaintiff's loss of its reversionary interest. The Tuscarora Nation gave, at that time, a release in the form of a deed which granted and confirmed to the people of North Carolina forever all the Tuscarora tribal land

in that state.

26. Valuation of Possibility of Reverter.

There is no evidence submitted by either party by which the value in 1803 of a 1916 possibility of reverter may be ascertained. ^{3/} Although a judicial evaluation cannot be made in the customary manner, the Commission can and does accept the premise that the right to repossess real property following a long-term lease of over 100 years was without significant material value at the date of valuation, and would be less valuable than the sum of \$3,220.71 paid therefor by the State of North Carolina to the Tuscarora Indian Nation in 1832.

27. Consideration For Extension of Leases.

The sum received for renegotiating the leases which extended the lessees' terms of occupancy for an average of 41 years amounted to \$0.0053 per acre for each year. This average annual rental for

^{3/} Defendant proposed the use of an annuity and compound interest table showing that the present value to obtain one dollar 113 years from date with interest compounded annually at the rate of 6 percent is \$0.00138. This factor multiplied by the agreed market value is defendant's opinion as to the maximum value of the possibility of the reversion. Plaintiff disclaims as unsuitable the device of discounting the agreed market value from the lease termination dates back to 1803.

38,351 acres of the plaintiff's land did not represent fair and adequate compensation for the relinquishment of possession for the term and was unconscionable. The fair rental value of 2,917.5 acres of similar land was \$7.19 per acre for a term of 113 years, or \$0.0636 per acre per year. In the absence of evidence justifying the difference in rental, the remainder of the tract should receive the same annual rental.

29. Calculation of Fair Rental Value.

The fair rental value of the leases for 38,351 acres of the plaintiff's land may be computed by multiplying 38,351 (acres) by \$0.636 (annual rental per acre) by 41 (years). The product of this calculation is \$99,790.46. The consideration, the sum of \$8,361.66, paid to the Tuscarora Indian Nation for such leases, was so grossly inadequate and unconscionable as to impose liability upon the United States under the Indian Claims Commission Act for its failure to protect the plaintiff from making such an improvident disposition of an interest in its land.

CONCLUSIONS

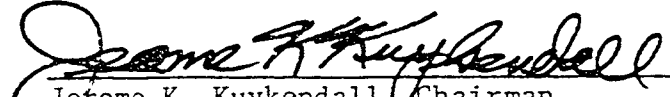
Based upon the record as a whole, the Commission concludes as a matter of law that:

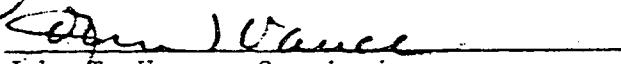
1. The Tuscarora Indian Nation received a just and adequate compensation in 1832 for the sale and relinquishment of a possibility of reverter of 41,113 acres of land in Bertie County, North Carolina in 1916. The United States therefore incurred no

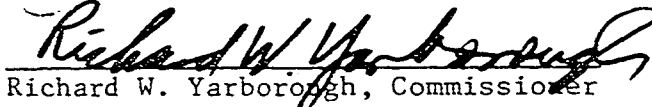
liability under the Indian Claims Commission Act for having participated in the negotiations resulting in the alienation of this interest in the plaintiff's land.

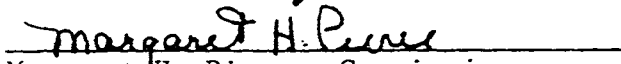
2. The fair rental value of the 38,351 acres of land in Bertie County, North Carolina, property of the Tuscarora Indian Nation, leased pursuant to the Treaty of December 4, 1802, was \$99,790.46. The rental paid, the sum of \$8,361.66, was so grossly inadequate as to impose liability upon the United States for its failure to protect the plaintiff from an improvident disposition of an interest in its real property.

3. The liability of the United States is \$91,428.80, the sum the Tuscarora would have received had the leases aforementioned been executed for the fair rental value of the property leased less the rental actually paid.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner