BEFORE THE INDIAN CLAIMS COMMISSION

MAKAH INDIAN TRIBE, a corporation, Plaintiff, vs. UNITED STATES OF AMERICA, Defendant.	)	Docket No. 60

Appearances:

J. Duane Vance, with whom were
John Geisness and Samuel B. Bassett,
Attorneys for Plaintiff

Maurice H. Cooperman, with whom was
Mr. Assistant Attorney General
A. Devitt Vanech
Attorneys for Defendant.

JAN 4 1951

O P I N I O N

PER CURIAM. The defendant, on October 25, 1950, filed its motion for an order to require plaintiff to separately state and number its several causes of action.

The petition consists of ten consecutively numbered paragraphs. As we read the petition, there are two, and perhaps three, separate and distinct occurrences, namely:

(1) A cause of action based upon the gross inadequacy of the consideration paid by the defendant for the cession of the 300 square

miles of territory relinquished by the treaty of January 28, 1855. 12 Stat. 939. The allegations which would seem to apply to this cause of action are those contained in paragraphs numbered III, IV and VI (a paragraph numbered V does not appear in the petition).

It cannot be seriously contended that the claim based upon unconscionable consideration is not a separate "transaction or occurrence," in fact, counsel for plaintiff, in their brief, do not really question the propriety of making the allegations respecting unconscionable consideration the subject of a separate count. We are of the opinion that that claim is one which should be set forth in a separate count and the paragraphs thereof numbered, as required by section 9(b) of our rules.

Concerning the allegations relating to unconscionable consideration, we find the naked statement that "the consideration therefor (the treaty) was unconscionable." There is no allegation as to the value of the cession when made, nor are there any facts stated upon which we can determine value. It is necessary to know the value of the cession in order to determine whether the alleged consideration was unconscionable. A mere statement that an alleged consideration is unconscionable is little more than a conclusion of the pleader. The value of the cession should be stated in the pleading.

(2) The allegations in paragraphs VII, VIII and IX, and perhaps allegations in other parts of the petition, charge the violation of provisions of the 1855 treaty by destroying the Indians rights of sealing,

halibut and salmon fishing secured them by said treaty. The breaches so alleged do not constitute separate causes of action but are several breaches of the same treaty and may be included in a single count and numbered as required by said section 9(b).

In paragraph VII the plaintiff pleads that the defendant by international agreements and the enactment of laws pursuant thereto have abrogated the rights of the Indians to take seal. Surely the plaintiff knows what the agreements and laws are upon which the allegations are based. We see no reason why the agreements and laws relied upon should not be definitely identified and the pertinent parts thereof pleaded.

Likewise, the plaintiff should definitely identify the international agreements restricting and limiting halibut fishing and plead the pertinent parts of such agreements relied upon. And as to paragraph IX the plaintiff should set forth the pertinent part of the Laws of Washington and the orders of the Director of Fisheries relied upon.

(3) As to the allegations contained in paragraph X of the petition it may be said that it is difficult to see what bearing they have upon the breaches complained of, nor does the explanation of them in the brief help much. However, since there must be an amended petition herein we need not pass upon the defendant's motion to strike this paragraph.

January 4, 1951