

Dec. 27, 1951

BEFORE THE INDIAN CLAIMS COMMISSION

THE TEXAS-CHEROKEES, and)	
ASSOCIATE BANDS, on the)	
relation of W. W. Keeler,)	
Homer L. Smith, Frank M.)	
Carr, Paul Johnson and)	
Joe Rogers, members of its)	
Executive Committee,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 26
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Appearances:

Wilfred Hearn, with whom were
Raymond B. Thomas, Harley VanCleave
and George E. Norvell,
Attorneys for Plaintiffs.

Jules H. Sigal and Ralph A. Barney,
with whom was Assistant Attorney
General A. Devitt Vanech,
Attorneys for Defendant.

OPINION OF THE COMMISSION

PER CURIAM: The petition herein purports to state a claim on behalf of a group of Indians who style themselves "The Texas-Cherokees and Associate Bands." The claim asserted is for the value of 1,640,000 acres of land located in the present State of Texas and alleged to have been acquired from the Mexican United States and/or the Republic of Texas.

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On August 29, 1949 the Commission made an order directing that there first be determined whether the plaintiffs are entitled to sue, and that such issue be raised by formal pleading. Thereafter, defendant filed its answer and hearings were had on that limited issue, at which hearings evidence was offered by both parties on the question of plaintiffs' capacity to sue and on the character of the claim asserted in the petition. Briefs were filed and the case has been submitted on the briefs, however, the briefs were confined to the limited issue of plaintiffs' capacity to sue.

Upon consideration of the question thus raised by the pleadings and the evidence offered by the parties with respect thereto, and upon the claim set forth in the petition, the Commission is of the opinion that the question of the capacity of the plaintiffs to maintain this claim is so closely related to the character of the claim asserted that it should be considered in connection therewith so that the Commission can determine the issue of law and fact relating to the right of plaintiffs to recover. (Section 22(f) of Rules of Procedure.)

The evidence already offered by the parties may stand without re-offering it at future hearings and either party may offer such additional evidence as may be deemed necessary on the question of the capacity of plaintiffs to sue and upon the claim alleged in the petition.

We believe, further, that inasmuch as some evidence has already been received on the merits of the claim set forth in the petition, the

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merits of the claim should be raised by answer rather than a motion attacking the sufficiency of the pleading or by motion for summary judgment; also, the defendant may include in its amended answer the allegations raising the same issue now raised by its special answer, filed under said order.

Counsel must not assume that by enlarging the scope of the issues in the above case there has been a change in the policy of the Commission to first determine, in appropriate cases, the question of claimants' capacity to prosecute a claim; we simply believe that because of the special situation presented here and the unique problems which confront us both as to the claimants' capacity to sue and the kind of claim presented we should consider both problems at the same time.