

BEFORE THE INDIAN CLAIMS COMMISSION

THE IOWA TRIBE OF THE IOWA RESER-)
 VATION IN KANSAS AND NEBRASKA, THE)
 IOWA TRIBE OF THE IOWA RESERVATION)
 IN OKLAHOMA, JAMES NORRIS, ROY)
 DeROIN, MURRAY CAMPBELL, SOLOMON)
 KENT, ELWOOD SMALL and JACOB DOLE,)
 MEMBERS OF AND AS REPRESENTATIVES)
 OF THE IOWA TRIBE OR NATION OF)
 INDIANS,)

Petitioners,)

v.)

THE UNITED STATES,)

Defendant.)

Docket No. 79

Decided May 27, 1952

Appearances:

Elroy O. Jones and
 Nicholas C. English,
 Attorneys for Petitioners.

Curtis Shears, with whom was
 Mr. Assistant Attorney General
 Wm. Amory Underhill,
 Attorneys for Defendant.

OPINION OF THE COMMISSION

O'Marr, Commissioner, delivered the opinion of the Commission.

The petitioners herein are two groups of the Iowa Tribe of Indians, one known as the Iowa Tribe of the Iowa Reservation in Kansas and Nebraska, and the other, as the Iowa Tribe of Oklahoma. These two groups compose the membership of the original group recognized and known as the Iowa Tribe of Indians. By the acts of March 3, 1885, (23 Stat. 351) and

January 26, 1887, (24 Stat. 367) the Iowa lands in the Nebraska-Kansas reservation were surveyed and such of the Iowa who wished to remain there were provided allotments and those who desired to move to a new location, which was afterward acquired for them in Oklahoma, were permitted to do so. The unallotted lands in Nebraska-Kansas reserve were to be sold and the proceeds from the sales placed to the credit of the entire tribe, less certain deductions provided for in the 1885 act; however, whether there were any unallotted lands does not appear and the General Accounting Office report (Def. Ex. 4-A, p. 46) indicates no such lands were sold.

The amended petition herein, for a first cause of action, is for a general accounting under all treaties and Acts of Congress and an accounting under each of the following treaties: August 4, 1824; July 15, 1830; September 17, 1836; November 23, 1837; October 19, 1836; May 17, 1854 and March 6, 1861; and under the Acts of March 3, 1885 and July 12, 1862. In addition to the above, there are set forth in the amended petition nine separate causes of action (numbered from "second" to "tenth") in which the petitioners pray for a complete discovery and accounting of the manner in which defendant fulfilled its obligations under the several treaties and Acts of Congress listed above.

The defendant, on February 5, 1952, filed its motion for summary judgment based upon the following grounds:

1. That all the claims set forth in the first cause of action are barred by the judgment of the Court of Claims in case No. 34,677, Iowa Tribe v. United States, 68 C. Cls. 585.
2. That the claims alleged are claims of the individual members

of the claimants over which the Commission has no jurisdiction.

3. That the Commission has no power to require defendant to compile the discovery and accounting demanded in the nine last numbered causes of action (second to tenth).

RES JUDICATA

Under the first ground of the motion defendant claims that the claims here asserted were determined by the Court of Claims in case No. 34,677, Iowa Tribe v. United States, reported in 68 C. Cls. 585, and has offered in evidence a copy of the amended petition (Def. Ex. 2) in the former action. This petition, in paragraphs II and III thereof asserts claims based on the treaties of September 17, 1836; October 19, 1838; May 17, 1854; March 6, 1861, and the Act of March 3, 1885, which are the treaties and act pleaded in the paragraphs 18, 20, 21, 22 and 23 of the amended accounting petition herein. The treaties of August 4, 1824; July 15, 1830; November 23, 1837, and the Act of July 12, 1862 (paragraphs 16, 17, 19, 25 of the amended accounting petition herein) were not involved in the former case. So, aside from the question as to whether the petitioner in the former case represented the entire tribe or only the Oklahoma branch, as the petitioners herein contend, it is apparent that three treaties and one Congressional Act are included in the pending accounting petition which were not involved in the former case.

According to Finding XV in the former case (p. 12 of Def. Ex. 5, p. 601 of 68 C. Cls. 585) the petitioner withdrew

*all claim with relation to the allegations contained in Paragraphs III and IV of the amended petition and Paragraph II, except with relation to the claim for

the value of the bonds purchased by the United States Government for the Iowa Tribe."

Paragraph IV of the amended petition in the former case did not concern any of the treaties or acts of Congress involved in the pending case, but, as we have shown above, the dismissal of part of the allegations in paragraph II and all of the allegations in said paragraph III thereby eliminated from consideration by the Court of Claims the accounting and other demands based upon the treaties of September 17, 1836; October 19, 1838; May 17, 1854; March 6, 1861, and the Act of March 3, 1885, which are treaties and an act involved in the pending accounting petition before us, hence, there was no adjudication of the rights of the petitioners in former case to an accounting or other relief as respects the last mentioned treaties and Congressional Act. As to the withdrawal of said claims, the Government points to the following language of the Court of Claims in its opinion (p. 14, Def. Ex. 5, p. 603 of 68 C. Cls.) as indicating a determination of the Court on those claims:

"The petition filed upon behalf of the Iowa Indians alleges a number of causes of action, finally in the briefs and contentions of counsel reduced to three, the report of the Comptroller General disclosing a complete defense to all the items insisted upon except the three mentioned."

We see nothing in these remarks as indicating a determination of the withdrawn claims, especially in view of the definite finding quoted above.

But the defendant maintains that the petitioner in the former case represented the Iowa Tribe — those who moved to Oklahoma as well as those who remained and received allotments in the Nebraska-Kansas reserve — and that the judgment of the Court of Claims (Def. Ex. 5) is a bar to the prosecution of the claims now asserted, or because the petitioner in the

former case had an opportunity to present them and failed to do so. To this contention the petitioners in the present case say that the former was prosecuted by that part of the Iowa who moved to Oklahoma and therefore not res judicata as to the Iowa Tribe.

There is much force to the defendant's contention that the petitioners in the former case were suing for the entire tribe. Evidently the Court of Claims thought so for the findings referred to certain treaties and acts of Congress (those withdrawn from consideration) and disallowed the claim for securities stolen by an agent of the Government. These securities belonged to the Iowa Tribe and not to the Oklahoma group. But we need not determine that question here for even if we should definitely decide that the former action was by or for the benefit of the entire tribe, we could not apply the bar of res judicata to the claims based on the treaties and Congressional acts involved in the present proceedings because none of them were determined on their merits in the former case, as we have shown above, except, perhaps, the claim for the embezzled securities which was adjudicated by the Court of Claims in the former case and which might be considered as included in the claim for a general accounting in the pending amended accounting petition.

Defendant also contends that the petitioners in the former case "had their day in court to present all their claims and that the court had said claims before it." What counsel means, we believe, is that petitioners "had their day in court" for an accounting on those treaties and acts of Congress which were set forth therein (and withdrawn) and could have had an accounting thereon and on all other treaties and acts in effect at the time of the former case.

Assuming that the petitioner in the former action had the right under the jurisdictional act to sue for an accounting under each of the treaties and Congressional acts set forth in the amended petition herein, it is plain that it pleaded only four treaties and a Congressional Act in the former petition, and such claims were withdrawn. Claims for an accounting based upon the other treaties and Congressional Acts included in the present petition were not asserted in the former case, so there was not and could not have been an adjudication of any of them in the former case. In its position, it seems that the defendant is of the opinion that the petition in the former stated a single cause of action. It is true, of course, that a determination of a cause of action precludes re-litigation of the same cause of action even though all the relief to which party is entitled is neither requested or granted. 30 Am. Jur. 917, sec. 173. But the rule does not apply to distinct and separate causes of action. The rule is stated in *Stark v. Star*, 94 U. S. 477, 485, 24 L. Ed. 276, 278, as follows:

"It is undoubtedly a settled principle that a party seeking to enforce a claim, legal or equitable, must present to the court, either by the pleadings or proofs or both, all the grounds upon which he expects a judgment in his favor. He is not at liberty to split up his demand and prosecute it by piecemeal, or present only a portion of the grounds upon which special relief is sought, and leave the rest to be presented in a second suit, if the first fail. There would be no end to litigation if such a practice were permissible. But this principle does not require distinct causes of action, that is to say, distinct matters, each of which would authorize by itself independent relief, to be presented in a single suit, though they exist at the same time and might be considered together." (Under-scoring supplied).

There were several causes of action stated in the amended petition in the former case, including suits for an accounting on four treaties and an

act of Congress — the ones withdrawn. They involved separate and distinct transactions; each could have been considered separately from the others and separately from the causes of action upon which an award was made, and independent relief granted. The petitioner in the original case was not required to sue on all the claims it was authorized to assert, in fact, it was not required to sue on any, so it could do as it did, namely, dismiss part of its claims without succumbing to the bar of res judicata as to the claims withdrawn. The time limit fixed in the jurisdictional act no doubt eliminated the claims dismissed and those not asserted, but the passage of the Indian Claims Commission Act restored the right to assert them.

We believe the plea of res judicata must be denied.

INDIVIDUAL CLAIMS

The next and second ground for a summary dismissal of the amended petition herein is that because of the separation of the Iowa into two parts — those who remained on the Nebraska-Kansas reservation and accepted allotments therein, and those who moved to Oklahoma and received allotments there — and the consequent disruption of the original tribal status of the tribe. Such a change does not in our opinion change a tribal claim into individual claims of the members of such an Indian group. It is an undisputed fact that prior to the division of the tribe the Iowa was a tribe or nation of Indians political in character and as such was dealt with by defendant. While defendant pursued a policy of gradually emancipating the Indians there is no evidence that their tribal claims were changed from one common to the tribe to individual claims of

members of the tribe. The Indian Claims Commission Act contemplates the adjudication of tribal claims arising from dealings with or acts of the defendant affecting the tribe as it existed at the time of the dealings or acts; a change in the social or political status of the tribe does not change the character of the claim from that of the tribe to an individual claim. A change in the political character of the tribe does in many cases, as it has here, affect the manner in which a claim may be asserted, so provision has been made in our act to permit claims to be presented on behalf of a tribe. cf. Creek Nation East of the Mississippi v. United States, decided by Court of Claims, Appeal Docket No. 14, May 6, 1952.

DISCOVERY AND ACCOUNTING

Defendant, as a third ground for dismissal, in its motion states:

"The amended petition fails to state a cause of action upon which relief can be granted in that the Commission has no power to require defendant to compile the discovery and accounting demanded by the ten causes of action set out in the amended petition herein."

Disregarding the question as to whether the quoted part of defendant's motion raises it, the parties appeared before the Commission, and presented, by offering evidence and argument, the question as to whether petitioners were entitled to a discovery as to any of the causes of action numbered "second" to "tenth" set forth in its amended accounting petition herein.

As part of the evidence on the question of discovery, defendant ed in evidence Exhibit 4-A and 4-B, a report of the General Accounting

Office, showing disbursements by defendant to or for the benefit of the Iowa Tribe or parts thereof. This accounting report covers the period from January 1, 1824 to June 30, 1921, and relates to the dealings of the Indians and defendant connected with each of the treaties and Congressional acts on which the petitioners are now seeking an accounting. The report was prepared and used in the trial of the case No. 34,677 in the Court of Claims in which the Iowa Tribe of Indians was plaintiff and the United States was defendant, 68 C. Cls. 585. It was filed in that case on July 28, 1927, and since said time has been available to said Indians and their counsel.

The General Accounting Office report consists of 1306 pages, numbered from 1 to 1306, and for brevity will hereafter be referred to as the GAO report.

As we have pointed out above, the amended petition is in two parts. The first part is by the entire Iowa tribe which seeks an accounting under the treaties of 1824, 1830, 1836, 1837, 1838, 1854 and 1861, the Congressional Acts of 1835 and 1862. Also one of the parties, the Iowa Tribe of the Iowa Reservation in Oklahoma, seeks an accounting growing out of the so-called Jerome Agreement of May 20, 1890, but no discovery is demanded in connection with that agreement so it will not be further considered in connection with this motion.

The other part or parts of the petition consists of causes of action numbered "second" to "tenth," inclusive, and in each the petitioners demand a discovery as to the extent to which and the manner in which defendant fulfilled its obligations under the various treaties and Congressional Acts referred to above.

The allegations of the amended petition (paragraphs 16 to 29) show a number of treaties and Congressional Acts by which the defendant in same obligated itself to the Iowa to pay certain sums of money and perform services, and furnish implements, livestock, supplies, etc. in consideration of the cessions of land, and in others, it is alleged defendant sold land for the benefit of the Iowa, to mention but a few of the obligations assumed by the defendant. While many of the obligations of defendant would seem to be contractual rather than fiduciary, the fact is that in its dealings with the tribe the defendant kept the only records of these transactions as a self-imposed duty to its illiterate and incompetent wards and thereby became accountable to them for the manner in which it discharged its treaty, other assumed and Congressionally imposed obligations. More about this later.

The petitioners treat the causes of action for discovery ("second" to "tenth") as necessary to obtain the information needed to support their claims for an accounting. It is difficult to see why this is necessary because if the Government is required to report to the petitioners the manner in which it fulfilled its several obligations there will be accomplished everything in the main action that could be accomplished by what petitioners conceive to be suits for discovery. If the claims here asserted are in the nature of an accounting in equity, as we assume them to be, all facts necessary for a determination of the rights of the parties can be made available to each party under the Indian Claims Commission Act.

Counsel for the defendant offered said GAO report as conclusively showing that an accounting has been made and, apparently, that the

right for an accounting now is concluded by the action of the Court of Claims in the former suit. (Def. Exs. 2 and 5). This report, as stated above, was in evidence in the former case in support of the claim for an accounting on the treaties of 1836, 1838, 1854, 1861 and the Act of 1885, which are included in the amended petition now before us. As we have shown above there was no adjudication of those since they were withdrawn. Therefore, the report was not considered by the Court of Claims as an accounting on said five claims. What bearing it may have on the claim of the Iowa Tribe of the Iowa Reservation in Oklahoma (par. 24 of the amended petition) we do not now decide, for it is not clear what that part of the Iowa Tribe are now claiming. The GAO report does, however, show disbursements by defendant in alleged fulfillment of its obligations under the various treaties and acts up to and including June 30, 1921, and may well be the basis for an accounting; however, it was shown by the testimony of the Chief of Indian Tribal Claims Section of the General Accounting Office (pp. 32-38 of Trans.) that there are records of transactions since June 30, 1921, so no doubt those which have any bearing on the matters here involved will be shown when the accounting is submitted. In view of the above, the defendant's third ground for summary judgment must be denied.

While the question of petitioners' right to an accounting has not been presented, the Commission is of the opinion that the proof offered at the hearing on the motion indicates the need for an accounting as to each of the transactions set forth in the amended petition herein, and

since the defendant offers no objection thereto an interlocutory order therefor will be entered.

Counsel for petitioners may prepare such order and submit it to counsel for defendant for approval.

Commissioners Witt and Holt concur in the foregoing opinion.

May 27, 1952