BEFORE THE INDIAN CLAIMS COMMISSION

THE SIOUX TRIBE OF INDIANS OF THE CHEYENNE RIVER RESERVATION, SOUTH DAKOTA, Plaintiffs,	)	
v.	)	Docket No. 192.
THE UNITED STATES OF AMERICA, Defendant.	)	

Decided: June 4, 1952

Appearances:

Ralph H. Case,
Attorney for Plaintiffs.

Maurice H. Cooperman,
with whom was Mr. Assistant
Attorney General Wm. Amory
Underhill,
Attorneys for Defendant.

OPINION OF THE COMMISSION

PER CURIAM. The plaintiffs' cause of action seems to be based on a claim that the Act of Congress of May 29, 1908, providing for the sale and other disposition of a portion of their reservation, required the defendant to classify said lands and to reserve from sale and for the benefit of the tribe all coal-bearing lands found on said reservation, and that notwithstanding the fact there were such coal-bearing lands, the defendant did not reserve any such lands from sale but sold all said lands as agricultural, grazing or timber lands, and that plaintiffs were thereby made to suffer losses for which they bring suit. Plaintiffs do

not allege what amount of acreage was coal-bearing, nor the value of same, nor the amount of their damages by reason of the alleged wrongful conduct of the defendant, but ask that the defendant be required to make a showing as to these matters, and that plaintiffs have a judgment for "the sum of money which is reasonably due the plaintiffs for said loss and damage."

The defendant, on October 8, 1951, filed a motion to dismiss the petition on the grounds that as to matters respecting 1,584,571.16 acres — that same had been fully adjudicated and are now res judicata, basing said plea of res judicata on the decision in the case of the Sioux Tribe of Indians v. United States, 105 C. Cls. 725. Said motion further alleges that the matters alleged respecting the balance of the land, to-wit, 27,959.70 acres, are the subject of an action pending before this Commission in Docket No. 114, and the present suit with respect to said acreage should, therefore, be abated.

The defendant further alleges that the petition fails to state facts sufficient to constitute a cause of action. Defendant further asks that in the event the motion should be denied, that the plaintiffs be required to amend their petition by separating into paragraphs and numbering, and be required to specify the lands plaintiffs claim to have been coal lands, for the alleged wrongful disposition of which by the defendant they claim to have been damaged.

By Act of Congress of March 2, 1889 (25 Stat. 888), the Great Sioux Reservation was broken up into six small reservations and the surplus lands were opened for settlement and were to be sold as provided

by said Act for the benefit of the several tribes of the Sioux Nation. One of the six reservations provided by said Act was set apart for the Cheyenne River Sioux, the plaintiffs in this case.

By Act of Congress of May 29, 1908 (35 Stat. 460), there was set aside a described portion of the aforesaid reservation for sale except that certain allotments and reservations for schools and churches were not to be sold; and said Act also provided that the Secretary of the Interior should cause "an examination of the land to be made by experts of the Geological Survey" and "if there be found any lands bearing coal, the said Secretary is hereby authorized to reserve them from allotment or disposition until further action by Congress." In the pleading of defendant herein referred to, the tract of land which was by said Act of May 29, 1908 opened for settlement and disposition as aforesaid, aggregated 1,612,527.86 acres.

An examination of the findings of fact and decision in the Court of Claims suit which is pleaded as res judicata as respecting 1,584,571.16 acres of the tract authorized by the Act of May 29, 1908 to be sold and disposed of, discloses that the suit of the plaintiff tribe in said case is solely for an accounting of the proceeds of sales made by the defendant pursuant to this Act, and no claim is asserted in said suit based on improper classification of any of the lands involved, or on any wrongful classification, or on any loss by reason of the sale of coal lands as agricultural or other classification. Therefore, we see no basis for the plea of res judicata in defense of the claim herein asserted, or any part thereof.

An examination of this Commission's Docket No. 114 shows that said suit is for an accounting of a trust fund which was by the Court of Claims, in the case hereinbefore mentioned, found to be on deposit with defendant on July 1, 1925 — said accounting to be for the time elapsing since July 1, 1925, and said claim as set up in said Docket No. 114 has no relation whatsoever to the matters upon which the instant claim is based.

Now, with reference to the question of the sufficiency of plaintiffs' pleadings, we are of the opinion that the claims of the plaintiffs should be made more specific and definite. In this connection attention is called to the language of the Act of May 29, 1908, wherein the Secretary of the Interior is required to cause an examination of the land by experts of the Geological Survey, and if any coal-bearing lands are found he is "authorized to reserve them from allotments or disposition until further action of Congress." In connection with said survey it is further provided that the lands as a result of said survey shall be classified and appraised and five classes determined: (1) agricultural of the first class; (2) agricultural of the second class; (3) grazing; (4) timber; (5) mineral "if any, mineral land not to be appraised."

The pleadings do not disclose the details of the survey or classifications made pursuant to said direction of said Act of May 29, 1908, but it is alleged by the plaintiffs that "the reports of the Director of the Geological Survey to the Department of the Interior definitely established that substantial tracts of land within the portion of said

Cheyenne River Reservation opened under the said Act of May 29, 1908, were, in 1909, and are now, coal-bearing;" and that in total disregard of said fact the Department of the Interior classified all lands as non coal-bearing — and sold said lands as non coal-bearing to plaintiffs' damage.

We think that the plaintiffs should be required to set out in their petition at least the approximately acreage that they claim were coal-bearing — an alleged value of said lands at the time of their sale — the amount received by the Government therefor and credited to the plaintiffs — and the amount of damages resulting to the plaintiffs because of the defendant's sale of said lands as non coal-bearing.

From the above, it is obvious that we think the defendant's motion for a summary judgment of dismissal should be denied, but that defendant's motion to make more definite and certain should be sustained.

The petition in this cause is separated into five divisions designated by Roman numerals. The first four divisions relate to preliminary matters but the last and fifth division is a statement of the facts upon which the claim is founded. This division is composed of fifteen unnumbered paragraphs and a prayer. Obviously it is next to impossible to answer the allegations in these fifteen paragraphs without referring to and perhaps repeating each of the allegations the defendant desires to answer. This, it must be admitted, would be a most cumbersome procedure, not only from the standpoint of preparing an answer, but in determining which allegations are admitted, denied, or otherwise

traversed, all of which would be saved by the simple expedient of numbering the paragraphs. Since an amended petition must be filed herein, it is suggested that counsel omit the Roman numbering and number each paragraph beginning with the first paragraph of the petition as number "1" and continue the numbering consecutively to the end. This would be in accordance with Section 9(b) of our General Rules of Procedure.

EDGAR E. WITT
Chief Commissioner

LOUIS J. O'MARR
Associate Commissioner

WM. M. HOLT
Associate Commissioner