BEFORE THE INDIAN CLAIMS COMMISSION

KLAMATH AND MODOC TRIBES AND YAHOOSKIN BAND OF SNAKE INDIANS,	)	
Petitioner,	)	
v.	)	Docket No. 100
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

Decided: April 9, 1954

Appearances:

Wilkinson, Boyden, Cragun & Barker, with whom were Donald C. Gormley and John M. Murray, Attorneys for petitioner.

Leland L. Yost, with whom was Mr. Assistant Attorney General, Perry W. Morton, Attorneys for defendant.

OPINION OF THE COMMISSION

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

We have before us a motion by petitioner (filed March 24, 1954) seeking an order "excusing petitioner * * from the burden of proof and burden of proceeding first with evidence as to the occupancy or ownership" of the tract of land involved in the case.

The nature of the claim stated in the petition seems necessary for a clear understanding of the motion and its effect on the conduct of the trial of the claim.

By the treaty of October 14, 1864, 16 Stat. 707, a large area of land was ceded by petitioners to defendant. This land, at the time of the cession, was "claimed, used and occupied by petitioner in the accustomed Indian manner," according to the allegations of the petition; in other words, the petitioner had aboriginal title to the land when ceded. They further allege that the consideration paid them by the government was unconscionable and they seek recovery for the difference between the value of the land as of the date ceded and the amount they were paid for it.

The petitioner maintains in its motion and supporting brief that in this proceeding it will make a prima facie case by proving the treaty and by establishing that at the time of the cession the lands described in the treaty had a market value so much greater than the consideration paid for them as to constitute an unconscionable consideration. The practical effect of a ruling on the motion favorable to the contentions of petitioner, would be that the burden of proving that the petitioner did not have original Indian title, that is, Indian right of occupancy based upon aboriginal possession, would be placed upon defendant in all such cases where the government denies Indian title to all or a part of the lands ceded, as it has done here.

Heretofore we have proceeded in the trial of cases such as this on the theory that where original Indian title is pleaded and must be proved as a basis for a claim for additional consideration for a cession the burden was on the claimant to show such facts. Counsel in other cases have quite generally followed this procedure without

objection and we have dismissed claims because of the failure of the claimants to prove original Indian title to the lands ceded. Until now the procedure we have followed has never been seriously questioned, at least, never before pressed upon us for determination, so it seems necessary to give the matter further consideration.

Petitioner's argument is based on the concept that a treaty is a contract and that the traditional rules governing suits on contracts for the purchase price of property sold, which places the burden on the buyer to prove a defense that the seller had no title to the property sold, should apply. Is the analogy valid in Indian cases like this?

The applicable provision of the Indian Claims Commission Act is as follows:

> "(3) Claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of * * unconscionable consideration * *."

Here, obviously, is a statute permitting Indian claimants to sue for loss resulting from selling their lands at a grossly inadequate consideration. The statute does not create a liability but merely permits the assertion of a claim on an existing liability.

In passing the Indian Claims Commission Act the Congress had in its collective mind the objective of finally disposing of claims for sales of Indian lands based upon grossly inadequate consideration. The extended hearings on the act, and similar hearings on bills between 1930 and 1946 amply support this statement. Such hearings also show that the Congress was aware of the fact that the subject-matter of

practically all treaties, contracts and agreements of sale had passed beyond recall, as had the considerations paid; that it was dealing with engagements long ago fully executed.

The remedy for unconscionable dealings is rescission of the contract with the prerequisite condition of placing the defendant in status quo. Obviously, such equitable procedure cannot and was not intended to apply in a case like that under consideration here; the very nature of the transaction, coupled with the radical change in conditions in the eighty-eight years that have elapsed since its consummation, shows the impracticability of applying the traditional equitable remedies to cases like this. Clause (3), considered in the light of the pruposes to be accomplished, provides a direct and realistic remedy in cases where the Government acquired land from Indians for a price so low as to shock the conscience.

True, the ground is for "claims which would result if the treaties ** were revised**." To revise a treaty connotes a change in terms. But why must there be a change (revision) of terms in order to grant relief where unconscionable consideration is the basis for relief? The clause in effect, if not expressly, permits a recovery for the difference between the value and the unconscionable price paid. So why should we judicially direct the useless ceremony of revising a contract long since performed in an attempt to bring our acts within the scope of applicable rules of equity jurisprudence. At best, such judicial action would be fictional and not in keeping with the purpose and intent of the remedy provided. Of course, a treaty (or

contract or agreement) must be involved to bring it within the scope of clause (3) and, in most cases, to show the consideration, but a claim for the difference between the value and an unconscionable consideration is not here based on the treaty but upon the statute, clause (3), and the claimant would make out a prima facie case by showing it had Indian title to the lands, that it ceded them by treaty, the consideration paid and proof that the value of the property, at the time of the cession, was so greatly in excess of the purchase price as to make the consideration unconscionable. No doubt the act is based upon equitable principles, including the meaning of unconscionable consideration, but such would not bar Congress from eliminating equity routine or fictional revisions in order to arrive at the designed remedy through direct approach to problem presented. As indicated above, the claim here pleaded does not come within the "contract context" of law, but is bottomed on the permissive statute quoted above.

We are not to be understood as construing the statute with respect to claims predicated upon any of the other equitable grounds set forth in clause (3) for the obvious reason that none of those grounds is involved here and therefore are not considered.

In view of what has been said above, we are of the opinion that the burden of proof and the burden of proceeding first with evidence as to ownership of the lands rests upon the petitioner.

We, accordingly, find it necessary to enter an order denying the motion insofar as it asks to be excused from the burden of proof and burden of proceeding first with evidence as to ownership of the lands involved in above-entitled cause.

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner