

BEFORE THE INDIAN CLAIMS COMMISSION

THE LITTLE SHELL BAND OF CHIPPEWA )  
INDIANS, sometimes known as the )  
TURTLE MOUNTAIN BAND OF CHIPPEWA )  
INDIANS and as the PEMBINA BAND )  
OF CHIPPEWA INDIANS, and JOSEPH H. )  
DUSSOME, HELEN THUMM, EDWARD BELGARD, )  
LUCY TURCOTTE SHARP, ELIZABETH SWAN, )  
DAVE DONEY, GEORGE ST. CLAIR, MICHAEL )  
THUMM, ALBERT GARDIPPE, GABRIEL AZURE, )  
MADLINE FAYANT, and JOHN BRIEN, members )  
and representatives of said Band, )

Petitioners, )

v. )

Docket No. 191

THE UNITED STATES OF AMERICA, )

Defendant. )

Decided: December 3, 1954

Appearances:

David Rein and Joseph Forer,  
Attorneys for Petitioners.

William D. McFarlane, with  
whom was Mr. Assistant Attorney  
General Perry W. Morton,  
Attorneys for Defendant.

OPINION OF THE COMMISSION

PER CURIAM. In the above cause the defendant has filed its motion to dismiss the petition herein on two grounds:

1. That the petitioner tribe is not such a presently existing tribe, band, or other identifiable group of Indians within the meaning of the Indian Claims Commission Act to entitle it to maintain this action.

2. That the claim herein has been presented by attorneys for the claimant who have no contract approved by the Commissioner of Indian Affairs as required by law.

As to the first ground for dismissal, the tribal claimant alleges in its petition that the petitioners are members and descendants of the Little Shell Band of Chippewa Indians, sometimes known as the Turtle Mountain Band and Pembina Band of Chippewa Indians, and claims title to and ownership of the some 15,000,000 acres of land described in the petition. The defendant by its answer alleges that the Little Shell Band "is not such a presently existing tribe, band or other identifiable group of Indians within the meaning of the Indian Claims Commission Act as to entitle them to maintain this action." It also denies the ownership of the tribal claimant to said land.

The defendant's motion to dismiss is based upon substantially the same allegations as those set out in its answer. The only proof offered by defendant in support of its motion to dismiss was an opinion by the Acting Secretary of the Interior, dated September 2, 1952, a letter from the same official dated November 3, 1952, and a copy of the report of the Commissioners who negotiated a treaty with the Turtle Mountain Band of Chippewa Indians, dated October 22, 1892. The defendant mainly relies upon the opinions of the Acting Secretary of the Interior as supporting its motion.

The Secretary was considering an appeal from the action of the Commissioner of Indian Affairs in not approving an attorneys' contract between the Little Shell Band and David Rein and Joseph Forer by which

the latter were employed to represent the Little Shell Band in the filing and prosecution of the claim here at issue.

The Commissioner of Indian Affairs, according to the Acting Secretary's opinion, refused to approve the attorneys' contract for the reason that the Little Shell Band is not, apart from the Turtle Mountain Band of Chippewa Indians, an identifiable band of American Indians within the meaning of the Indian Claims Commission Act, and since the Turtle Mountain Band is organized under a constitution and by-laws approved by the Commissioner in 1932, the latter band has, under section 10 of our act, the exclusive privilege of representing the Little Shell Indians before this Commission. A suit, it may be said, had, previous to the filing of the instant case, been filed by the Turtle Mountain Band and is now pending before this Commission, involving the same claim made by the petitioners herein.

The Acting Secretary, in affirming the Commissioner's decision, and based upon the records of the Interior Department, held that the Turtle Mountain Band is the dominant group, and that the Little Shell Band is but a component part of what has long been recognized by Executive order and Congressional enactment as the Turtle Mountain Band of Chippewa Indians, and because of the recognized organization of that band it had the exclusive right to maintain the claim.

We have great respect for the opinions of the Secretary of the Interior and the Commissioner of Indian Affairs in matters involving the administration of Indian affairs and we do not here take issue

with the conclusions those officers reached in the decisions mentioned above because they were there considering a collateral and ex parte matter and obviously they had no intention of determining the fundamental issue in the pending case raised, as we have said, by the answer of the Government.

The importance of this issue of capacity to assert the claim before us here is emphasized by the fact that three other cases are now pending before the Commission, one by the Turtle Mountain Band, Docket No. 113, another by the Chippewa Cree Tribe, with the Little Shell Band and Chippewa Cree Tribe of the Rocky Boy's Reservation, Docket No. 221, and still another by the Red Lake and Pembina Bands, Docket No. 246, in which each assert original ownership of the same lands involved in this case and each seeks recovery for the value thereof. In view of these conflicting positions, it seems plain that the only way they can be resolved is by a trial upon the merits of the rights of the various claimants.

As we have intimated above, the only proof offered by the defendant in support of its motion are the decisions of the Acting Secretary of the Interior and the Commissioner of Indian Affairs on the question of approval of the attorneys' contract, so no matter how persuasive those decisions may be on the merits of the question they were considering they cannot be accepted as barring our consideration of the capacity of the petitioners herein to maintain their claim.

As to the attorneys' contract, we had a somewhat similar situation confronting us in the Cherokee Freedmen case, 2 Ind. C. C. 231, 234,

decided September 9, 1952, in which we refused to dismiss that case because the attorneys' contract had not been approved as required by law. We there felt that to dismiss before giving the claimant a reasonable time to present a contract to the Commissioner of Indian Affairs would work an injustice and we reserved ruling on the motion to dismiss until the claimant could obtain an approved contract. We believe the situation in this case compels similar action on our part.

It follows from the above that the defendant's motion to dismiss on its first ground must be overruled, and action on the second ground will be reserved for a reasonable time to enable claimant to obtain an approved attorneys' contract. It will be so ordered.

Louis J. O'Marr  
Associate Commissioner

Wm. M. Holt  
Associate Commissioner