BEFORE THE INDIAN CLAIMS COMMISSION

THE UINTAH UTE INDIANS OF UTAH, Plaintiffs,	)	
v.	)	Docket No. 45
THE UNITED STATES OF AMERICA, Defendant.	)	

Decided: February 21, 1957

Appearances:

Ernest L. Wilkinson, with whom were Glen A. Wilkinson, John W. Cragun, Robert W. Barker, Carl S. Hawkins, and Donald C. Gormley, Attorneys for Plaintiffs

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.

The claim here asserted is for the value of an undivided interest in lands of the Uintah and Ouray Indian Reservation which plaintiffs allege were taken from the occupants of said reservation, the Uintah Ute Indians of Utah, by defendant when it placed thereon a band of Colorado Indians known as the White River Utes, in 1881, over the objections of the plaintiffs and without the plaintiffs receiving any compensation for the lands so occupied by the White Rivers.

The contention of the plaintiffs is that by the Executive Order of October 3, 1861 (Find. 5) and the Act of May 5, 1864 (Find. 6), the plaintiffs became the permanent and exclusive occupants of the reservation and in placing the White River Utes thereon, without their consent and without payment for the lands occupied by the latter, the defendant deprived plaintiffs of part of their lands thereby making it liable for the value thereof.

The defendant's main contentions are that the Uintah Reservation was not created for the exclusive use of plaintiffs and that they never acquired any vested rights therein, and that, therefore, the defendant could place any Indians thereon it desired without incurring liability therefor. The defendant also contends that in any event the White River Utes were Utah Utes within contemplation of the 1864 Act and therefore were entitled to occupy the reservation with plaintiffs. Another contention of defendant is that by a treaty consummated in 1868 the Utah Utes relinquished their rights to the reservation lands.

The plaintiffs in this case, Docket No. 45, and those in Docket No. 44 are the same. Since the claims in the two cases involve lands situate in the State of Utah and it was contemplated that much evidence to be offered would apply to both cases, the parties agreed at the outset of the trial to a consolidation of the cases for trial, and the evidence adduced is made applicable to each in so far as relevant. But the two cases have been briefed and submitted separately and will be disposed of separately on the limited issues of law and fact relating to the plaintiffs' right to recover. (Rule 22(f)).

The plaintiffs here, according to the allegations of the petition and the proof, are members of several groups of Utah Indians who reside in the Uintah and Ouray Indian Reservation. These Indians and their ancestors were Indians of the Territory of Utah as it existed in 1861, and they were from the several groups of so-called Ute Indians who then inhabited Utah Territory. Defendant is critical of the use of the name "Uintah Ute Indians of Utah" as party plaintiff, but when that designation is considered in connection with the proof and the allegations of the petition, it is plain that it is the Utah Indians of the Uintah and Ouray Reservation who became and are generally known as Uintah Indians. The defendant had no difficulty on the question of the identity of the claimants, as its pleadings, proof and defense show.

Plaintiffs have offered proof of the organization of the reservation under the Indian Reorganization Act of June 18, 1934, (Pltf. Exs. 1 and 2) which includes members of the Uintah Utes. Since this claim is not asserted by such entity, the purpose of such proof is not apparent. Anyway, membership in such an organization cannot prejudice this claim (25 U.S.C. 475).

Two of the main contentions of the parties center upon the question as to the rights acquired by the Indians in the Uintah Reservation and what Indians the defendant could place thereon without interfering with the possessory rights of other occupants. The plaintiffs contend that the reservation was created for the exclusive use and settlement of Utes of the Territory of Utah, while defendant, as stated above, maintains

that the act creating the Uintah Reservation did not vest in the claimants any exclusive property right in the reservation, so Congress could, as it did, make it available for any Indians it desired to place thereon, and in any event, that the White River Utes, which the defendant placed thereon in 1881, were actually Utah Utes and entitled to live thereon under the 1864 Act.

The first step in the establishment of the Uintah Reservation was an Executive Order of President Lincoln on October 3, 1861, who "set apart and reserved for the use and occupancy of Indian tribes * * the entire valley of the Uintah River within Utah Territory, extending on both sides of said river to the crest of the first range of contiguous mountains on each side, to be reserved to the United States and set apart as an Indian reservation." (Find. 5).

The next and final step in the establishment of the Uintah Reservation was the Act of May 5, 1864, 13 Stat. 63, which the parties here, and many Government officials, seem to agree was Congressional approval and confirmation of the executive action of 1861. Apparently, no survey marking the boundaries of the reservation was made, at least it is not in evidence, but the boundaries shown on plaintiffs' Exhibit 321 seem to be accepted as correct by the parties and also by Government officials, and is accepted by us.

By Section 2 of the 1864 Act (Find. 6) the Uintah valley of the Territory of Utah was expressly "set apart for the permanent settlement and exclusive occupation of such of the different tribes of Indians of said territory as may be induced to inhabit the same." Plainly, the

purpose of the section was to provide a permanent and exclusive habitation for only Indians residing in Utah Territory. No other Indians were eligible for settlement in the reserve, and the fact that permanent and exclusive settlement is provided for those Utah Indians who take advantage of the act most certainly recognizes a vesting of all rights necessary to such use. Had the Congress intended a revocable permit to use the reservation one would have expected language plainly indicating such an intention in the act.

As the text of the Executive order shows, the reservation was established for Indians generally, but the 1864 Act is more definitive in that it restricts its use and occupancy to Indians of Utah Territory "as may be induced to inhabit the same" and until the White River Utes were placed thereon no Indians except Utah Indians occupied the reserve. This legislative change would seem to justify the conclusion that use of the reserve was to be restricted to the Utah Indians. Moreover, the Government's dealings subsequent to the 1864 Act was on the basis of the Indians' exclusive possessory right to the reservation.

By the Act of May 24, 1888, 25 Stat. 157, a part of the reservation was restored to the public domain and ordered sold for the benefit of the Indians on the reservation, but such act required the ratification of the Indians to become effective. In every instance where land of the reservation was taken compensation therefor was paid by the defendant. See Act of May 27, 1902, 32 Stat. 245, 264; Act of April 4, 1910, 36 Stat. 269, 285; and Act of Feb. 13, 1931, 46 Stat. 1092, for 973,777 acres of reservation land included in the Uintah National Forest.

The Executive and Congressional actions, and the entire course of dealings by the administrative officers of the Government with the Indians of the Uintah Reservation lead to the conclusion that from its inception the reservation was established as a permanent and exclusive home for the Utah Indians who occupied it after 1864. So, in placing the White Rivers thereon, the defendant violated the rights of the plaintiffs, unless the White Rivers were actually Utah Utes and therefore entitled to share the reservation with plaintiffs.

Whether the White River Utes were actually in Utah Territory at the time of the creation of the reservation by the 1864 Act is complicated by a large number of conflicting statements contained in the documentary evidence. But out of the mass of material (over 400 documents) in this record, it is fairly evident that it was only the Utes of Utah Territory that actually and permanently settled on the reservation after 1864. The efforts of the agents were almost exclusively exerted to bring in Utah Indians. No apparent effort was made to bring in the White River Utes nor do we find that any of those Utes attempted to take advantage of the reservation privileges between 1864 and 1881. The Government quite generally considered the Utah and Colorado Utes as separate divisions of the same tribe and we learn from the evidence that there were three Ute bands in Colorado known as the Grand River, Yampa and Uintah. These bands were referred to as such in the Treaty of March 2, 1868, 15 Stat. 619, by which they and other Colorado Utes ceded all their lands except certain reservations. One reservation was provided for these three bands on the White River in Colorado, and an agency was established for

them on their reserve. These three groups thereafter became known as the White River Utes and were so described in the Agreement of June 15, 1880, 21 Stat. 199, the agreement under which the White Rivers were placed on the Uintah Reservation.

Whether, as we have said, any of the White River groups originally occupied lands in Utah is much confused by the conflicting evidence and the diametrically opposite positions of counsel with respect thereto. If the part of the White Rivers the Government describes as Yampah-Uintahs, at some time lived in Utah Territory, they voluntarily moved to Colorado after the establishment of the Uintah reserve and before 1868, and remained there until forcibly removed to the Uintah Reservation pursuant to the 1880 Agreement. At no time after the final establishment of the Uintah reserve in 1864, or prior thereto, did the Colorado Yampahs or Uintahs assert any rights to said reserve or to occupy the same. In fact, it is undisputed that the White Rivers strenuously opposed going to the reservation in 1881 and it took two or three years to complete the removal from Colorado.

The defendant asserts with much vigor that if the plaintiffs had any aboriginal claim to the Uintah Valley (this is where the reservation was established), it was extinguished by the Treaty of March 2, 1868, 15 Stat. 619. While the contention is directed to the plaintiffs' aboriginal rights in the 1864 reserve, it would seem to extend to the rights of the plaintiffs therein acquired by the 1864 act.

The 1868 treaty was executed by seven bands of Colorado Utes. They did not cede any defined territory but relinquished their "rights in and

to any portion of the United States or territories." One of the parties to this treaty was a "Uintah band," but this group was not a Utah band at the time of the treaty; it was a Colorado band which, with the Yampa and Grand River Utes, settled on the White River in Colorado and became known as the White River Utes and were under an agency of the same name established by the 1868 treaty. And even if they did cede Utah lands in 1868, as indicated by Royce (Utah 1), which is doubtful, they did not cede any part of the Uintah Reservation, as the cession shown by Royce did not extend west of the Colorado or Green rivers.

But, the defendant also contends, the plaintiffs were parties to the 1868 treaty by virtue of the fact that a chief or sub-chief by name of Anthro (Antero) signed an inconsequential amendment (see Pltf. Ex. 165) to that treaty. This Indian was a Uintah Ute from the Uintah Reservation. He did not sign the main treaty and there is no convincing evidence that he represented the Uintah Utes of Utah, or that he had any such authority when he signed the amendment. Hence, the Anthro signature in no way affected the Uintah Reservation lands.

Population ratio as between Uintah and White River Utes.

A question basic to this litigation is the part of the Uintah Reservation that was lost to the Uintah Utes as a result of placing the White River Utes thereon by virtue of the Act of June 15, 1880, 21 Stat. 199, which ratified the Agreement of March 6, 1880, between the Confederated Bands of Utes and defendant.

No proof has been offered as to the lands in the Uintah Reservation actually occupied by the White River Utes when they were placed

thereon by the defendant, beginning in 1881, so the plaintiffs would have us determine the part so taken on the basis of the respective populations of the two groups. The case Shoshoni v. United States, 299 U. S. 476, 82 C. Cls. 23, seems to provide such a method and we will be guided by it. But to apply it, the number of Uintahs and of White River Utes at the time of the latter's settlement on the reservation must be determined.

The plaintiffs claim there were 474 Uintah and 655 White Rivers on the Uintah Reservation in 1881, after White Rivers were moved from Colorado to that reservation, and would have us determine the part of the reservation lands taken for the settlement of the White Rivers on the basis of such population figures. The evidence does not support those figures.

It is obvious that if we are to determine on a population basis the part of the reservation used for the settlement of the White Rivers, it is only those Uintah and White Rivers who permanently occupied the same at the time the White Rivers were placed thereon that can be considered, since, as we have said, no proof has been offered by either party as to the reservation lands actually occupied by the White Rivers.

The White Rivers did not immediately remove to the Uintah Reservation after the conclusion of the Agreement of March 6, 1880. It was not until about August 1881, that the main band of White Rivers reached the reservation. The first authentic evidence of their numbers in the Uintah Reservation is found in the report of A. B. Meacham, a member of the Ute Commission who had been assigned by that Commission to remove the White River Utes from the Colorado to the Utah Reservation. (Pltf. Ex. 279).

Meacham reported to the Commission on November 21, 1881 (Pltf. Ex. 280), that after the White Rivers were brought to the reservation he enrolled them in accordance with the 1880 agreement (Find. 10) and entered 655 of them on the "census list." But he also stated in the same report:

> * * True, a majority of the White River Utes returned to Colorado, with their families, because of the government's failure to supply them with annuity goods and partly on account of their attachment to their old homes. If they are not molested and driven to war by misunderstanding with white men, I feel safe in saying that all, or nearly all, of them will within the next year locate permanently at Uintah, the exceptions being Colorow and one or two others.

The above report is the basis for the 655 population figure relied upon by plaintiffs, but it will be seen from the above that more than 300 of those enrolled Indians returned to Colorado after getting per capita payments in Utah of $19.00. Some later returned to the Uintah Reservation but others did not. One S. R. Martin was sent to Utah and Colorado by the Attorney General and on May 23, 1882, he made his report (Pltf. Ex. 284). He stated that the Agent of the Uintah Agency said only 275 White Rivers had come into his agency. Martin further reported that about 100 White River roaming Ute had just been started back to their agency. He, Martin, estimated that the White Rivers did not exceed over 400 and this figure included the 100 being returned by Major Bryant of Meeker, Colorado, mentioned in the report. In this report, Martin also estimated there were 460 Uintah at the Uintah Agency.

Coming now to the Uintah Ute, we find Agent Critchlow reporting on August 18, 1881 (Pltf. Ex. 281, p. 213), 474 Uintah shown by a "careful

census" made "last winter." This figure was used by the Commissioner of Indian Affairs and the Secretary of the Interior in ordering distribution of funds to the Uintah they considered payable under the Brunot Agreement of 1873, the Treaty of 1868 and the Agreement of June 15, 1880. (Pltf. Exs. 288, 289). These letters were written in July 1882, and based upon the census of 1880-1881 (winter) referred to in the agent's report of August 18, 1881 (Pltf. Ex. 281, p. 213).

The Indian population of the Uintah Reservation undoubtedly became stabilized by 1884 because of the efforts of the Government to get the White Rivers on the reservation and the fact that families from other portions of Utah Territory had settled in the reserve, as indicated by the agent's report of August 18, 1881 (Pltf. Ex. 281, p. 213). So, the census taken in 1881 and later years becomes important.

In January 1884, according to the agent's report of August 21, 1884 (Pltf. Ex. 292, p. 199), "a careful census" of the Uintah Reservation Indians was taken which showed that there were 531 White River Utes and 528 Uintah Utes there at that time.

And again, the report of the Indian Agent, dated August 20, 1885 (Pltf. Ex. 292-A) shows that as of June 30, 1885, there were, according to a "complete census," 514 White River Utes and 508 Uintah Utes on the reservation.

The above population figures are consistent with the "965 Uintah and White River Utes -- nearly half and half" reported by the Uintah Agent in his report of August 14, 1883 (Pltf. Ex. 356), and lead to the conclusion that the population of each of the two groups was about equal

from the time the White Rivers were completely settled on the reservation, unless a change in the population of the Uintah is caused by the failure to include the Pahvant and Sampitch groups as reservation Uintah in the census.

The Government contends in its brief (p. 52-3) that since the Pahvants and Sampitches are plaintiffs their numbers of 134 and 75, respectively, even though they were not living on the reservation, should be included in the Uintah population figure, thus increasing the census figure of 528 shown by the census of January 1884 (Pltf. Ex. 292, p. 199) to 737, the White River census figure of that date, 531, remaining unchanged.

The claim in this docket is by those Uintah permanently settled on the reservation at the time the White Rivers occupied a part of it. The act establishing the reservation (13 Stat. ~~1864~~ (13 (1865-67)) expressly provides that it -

> is set apart for the permanent settlement and exclusive occupation of such of the different tribes of Indians of said territory /Utah/ as may be induced to inhabit the same.

There is nothing in the act vesting rights in Utah Indians who did not permanently settle on the reservation, hence, those groups of Pahvant and Sampitch who did not take advantage of the act by settling on the reservation are not entitled to share in the recovery herein. No doubt, individual Pahvant and Sampitch settled on the reserve and were included in the census lists but those who did not do so must be excluded and must not be added to the 1884 census figures, or any others, in determining the Uintah population at the time the White River Utes were

settled thereon. Therefore, to the extent that the Pahvant and Sampitch may be considered as plaintiffs herein, representing the members of those groups who did not permanently settle on the Uintah Reservation, they are dismissed as parties plaintiff.

We, accordingly, concluded that the effect of the settlement of the White River Utes on the Uintah Reservation was to deprive the Uintah Utes of an undivided half of the lands of the Uintah Reservation.

Louis J. O'Marr
Associate Commissioner

We concur in the foregoing:

Edgar E. Witt
Chief Commissioner

Wm. M. Holt
Associate Commissioner