



Commission entered on July 14, 1950, in the case entitled "The Chickasaw Nation v. United States," Docket No. 23, 1 Ind. Cls. Comm. 291.

The petitioner has raised a question as to the propriety of the defendant's motion under our rules. We shall not stop to discuss such procedural question other than to say that the motion sufficiently raises the questions upon which the claim may be disposed of.

Res Adjudicata

The Leased District was ceded to the defendant by the Treaty of April 28, 1866, 14 Stat. 769, by the Choctaw and Chickasaw Tribes. After this cession the defendant placed the Cheyenne and Arapaho Indians on 2,489,159 acres of the Leased District and by the Act of March 3, 1891, 26 Stat. 989, paid the Choctaw and Chickasaw \$2,991,450 (less \$48,800 deducted by the Resolution of January 18, 1893, 27 Stat. 753). Deducting the acreage for the Cheyenne and Arapaho Indians there remained 5,224,461 acres in said district.

In 1947, the Choctaw Nation filed its claim (Docket No. 16) with the Commission for the value of its three-fourths interest in said 5,224,461 acres of the Leased District, and in 1948 the Chickasaw Nation filed its claim (Docket No. 23) with the Commission for the value of its one-fourth interest in said acreage. Since the two claims arose from the same transaction -- the treaty of 1866 -- we heard them together and on July 14, 1950, made joint findings of fact (1 Ind. Cls. Comm. 291-303), but entered, on the same day, separate judgments for their respective interests, that for the Chickasaw being for the sum of \$902,008.11 and based upon said findings of fact which are a part of said judgment.

In the disposition of the two cases, the part of the Leased District remaining after deducting the Cheyenne and Arapaho reserve was, for convenience, considered in separate parts:

- (1) Greer County, consisting of 1,511,958 acres;
- (2) Wichita and affiliated bands Reserve, consisting of 743,610 acres, of which 169,600 acres had been allotted to these Indians;
- (3) Kiowa, Comanche and Apache Reserve, consisting of 2,968,893 acres, of which 545,000 acres had been allotted to such Indians, and 10,310 acres reserved for other purposes, such as schools, etc.

As will be seen by reference to joint Findings 8, 9, 10 and 11 (1 Ind. Cls. Comm., pp. 300-303) made in the former cases, Dockets Nos. 16 and 23, we disallowed the claims of the Choctaw and Chickasaw for the lands, aggregating 169,600 acres, allotted to the Wichita, the lands aggregating 545,000 acres, allotted to the Kiowa, Comanche and Apache, and the 10,310 acres reserved for schools, etc., and allowed recovery only for the remaining 4,499,551 acres claimed in those cases, and the order of July 14, 1950, was plainly based upon this final determination. That said order was so understood by both petitioners in the former cases is shown by the fact that on September 28, 1950, they, including the Chickasaw Nation, the petitioner here, filed a motion asking the Commission, in effect, to allow compensation for the lands so allotted and for the lands reserved for schools etc. The Commission denied such motion on October 10, 1950, and in our memorandum accompanying the denial stated that we did not intend to make any award for said allotted lands in the prior order.

The Chickasaw Nation did not appeal to the Court of Claims from the final judgment of July 14, 1950, and said judgment remains intact. Nor did the Choctaw appeal.

What the petitioner now before us, Docket No. 267, which was the same petitioner in Docket No. 23 above referred to, is seeking is the relitigation of its former claim which included the lands allotted to the Wichita (169,600 acres), those allotted to the Kiowa, Comanche and Apache (545,000 acres) and those reserved for schools, etc. (10,310 acres). If the Chickasaw felt aggrieved by the action of the Commission in denying compensation therefor, they had recourse by appeal to the Court of Claims. This, as we have said above, they did not do and, incidentally, they have accepted the award, as we are advised.

Counsel for petitioner does not question defendant's right to rely on res adjudicata as a defense. Nor could it in the face of the decisions: Blackfeet et al. v. United States, 2 Ind. Cls. Comm. 302-25; 127 C. Cls. 807, Assiniboine v. United States, 1 Ind. Cls. Comm. 545 and 2 Ind. Cls. Comm. 272-301; 128 C. Cls. 617, and Choctaw Nation v. United States, 2 Ind. Cls. Comm. 581-616. But claims that we, (1) in the prior case, Docket 23, excluded the allotted lands and the reserved lands from consideration and allowed no compensation therefor; (2) that we decided the case under clause (3) of Section 2 of the Indian Claims Commission Act and therefore could not have adjudicated any claim under clause (5), the fair and honorable dealings clause.

We have already discussed our disallowance of compensation for the allotted lands and those reserved for schools, etc., and further reference to them is unnecessary except, perhaps, to emphasize the fact that they

were included in the area claimed in the former suit. It is hard to follow the reasoning of petitioner's counsel that because the Chickasaw were not allowed compensation for their interest in those lands such lands were excluded from the consideration of the Commission when the very fact that they were "excluded" (to use the term employed by counsel) shows they were considered by the Commission. In these circumstances the petitioner's recourse was to appeal and not having done so they are bound by the judgment. *Reed v. Allen*, 286 U. S. 191.

The second proposition urged by the Chickasaw is also without merit. It is stated that because we decided the former case under clause (3) of section 2 of the Indian Claims Commission Act -- the unconscionable consideration clause -- we "could not have adjudicated any claim based upon fair and honorable dealings as this would constitute an entirely different cause of action." The effect of that contention is that the Chickasaw had a cause of action based upon unconscionable consideration and a separate and distinct cause of action based upon unfair and dishonorable dealings, and having failed to obtain the relief expected under the first suit, could bring a second suit based upon clause (5), the fair and honorable dealings clause. Of course there is no basis for the contention. In the first place the Chickasaw had only one claim and that was for their interest in the 7,713,620 acres of land comprising the Leased District. They saw fit to sue for only part of their claim, namely, for only 5,224,461 acres thereof and, as they now claim, they predicated their claim upon clause (3) of the Act and not upon clause (5). We said in the *Osage* case (1 Ind. Cls. Comm. 85): "a claim might possibly be based upon more than one category \* \*," and the Court of Claims in the same case, 119 C. Cls. 592, 669, held

to the same effect. So the Chickasaw could have based their claim on both clauses and they evidently thought they had, for we find in their brief in the former case this statement: "However, if for the reasons hereinafter set forth and discussed in detail the Commission does not feel justified in sustaining this claim under Clause 3, then clearly it would fall under Clause 5."

But, however, that may be, the Chickasaw obtained an award under clause (3), so clause(5) has no application. *Blackfeet et al. v. United States*, 127 C. Cls. 807, 818.

It must be concluded, therefore, that the claims now presented by the Chickasaw for their interests in the lands allotted the Kiowa, Comanche and Apache, those allotted the Wichita and those reserved for school purposes, etc. were fully adjudicated in the former case, Docket No. 23 (1 Ind. Cls. Comm. 291-332, 356-357) and the judgment of July 14, 1950, is res adjudicata. *Choctaw Nation v. United States*, 133 C. Cls. 207; *Choctaw Nation v. United States*, 128 C. Cls. 195; *Assiniboine v. United States*, 127 C. Cls. 617; *Blackfeet etc. v. United States*, 127 C. Cls. 807.

#### Cheyenne and Arapaho Allotment

In the pending claim the Chickasaw include 95,999 acres of lands in the Leased District, which were allotted to the Cheyenne and Arapaho out of the 2,489,159 acres set aside for those two tribes for which the defendant paid the Choctaw and Chickasaw the sum of \$2,991,450 by the Act of March 3, 1891, 26 Stat. 959, 1025 (less \$48,800 deducted by the Resolution of January 18, 1893, 27 Stat. 753). See Finding 7 in Docket No. 23. The Chickasaw received their one-fourth of the amount paid by defendant (26 Stat. 959, 1025), which amount received by the Chickasaw









