

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

included payment for their one-fourth interest in 95,999 acres now sued for.

It is beyond doubt that the Choctaw and Chickasaw had a claim for the entire Leased District, the 7,713,620 acres, and that it arose from the cession of it they made by the Treaty of April 28, 1866, 14 Stat. 769. That cession was for the entire tract and it was the tract as a whole the defendant acquired by that treaty. The fact that subsequent to the treaty the defendant divided the district among other tribes did not change the Choctaw or Chickasaw claim, for the claim remained the same as it was on April 28, 1866, a single and indivisible claim for the entire district. Of course, neither the Choctaw nor Chickasaw were required to sue for the entire area and they could, as they did in the former cases, sue for only part, the 5,224,461 acres, but when they did so they were barred from asserting a claim for the part of the land omitted in the first suit.

As we have said before and as we found in the former case (Finding 7, Combined Dockets 16 and 23), the Chickasaw made no claim in that case for their interest in any of the Cheyenne and Arapaho lands, allotted or unallotted. Nor have they alleged any facts in the present petition justifying their failure to assert a claim for their interest in the Cheyenne and Arapaho lands in the former case.

They do allege in their present petition:

That cause No. 23 heretofore decided, excluded the consideration of any question was raised of a justiciable nature, covering 820,909 acres set forth in the succeeding paragraphs.

As to the lands allotted to the Kiowa et al., the Wichita and those

reserved, we have above decided they were adjudicated and payment therefor denied.

It is also alleged in the present petition that the Chickasaw received no payment for its one-fourth interest in the lands of the Leased District allotted to the Cheyenne and Arapaho. These allegations are contrary to the fact for it will be seen that the Appropriation Act of March 3, 1891, 26 Stat. 989, 1025, the Choctaw and Chickasaw, joint owners of such lands at the time of their cession in 1866, were paid for all the Cheyenne and Arapaho lands which had been set aside to them by the Executive Order of August 10, 1869, 1 Kapp. 839-841, which was later determined to contain 2,489,159 acres. Since this acreage included the 95,999 acres allotted the Cheyenne and Arapaho, the Choctaw and Chickasaw received about \$1.14 per acre for the lands the Chickasaw are now claiming compensation for. We are aware that in Finding 7 in the former case there appears language susceptible of a holding that the sum paid the Choctaw and Chickasaw for the Cheyenne-Arapaho land was for only 2,393,160 acres. We believe, however, the appropriation was for the entire area. The former finding in that respect had no bearing whatever in the determination of the former case.

The principle governing the disposition of the present claim for the Cheyenne-Arapaho allotments in the Leased District is that a party may not split a single and indivisible cause of action and try it piecemeal. There was but one transaction between the Chickasaw and defendant that could give rise to the present claim and that was the cession of the Leased District, in which such allotments were located, by the 1866 treaty and for an unconscionable consideration. Only one tract of land was involved and that

was the entire Leased District. The fact that some of the district was set apart to the Cheyenne and Arapaho subsequent to the treaty did not create a separate claim for the part set apart. The petitioner here could have included its claim for the value of the allotments, now sued for, in the former case but not having done so may not be heard in the pending case.

The rule against splitting a single cause of action is well settled and the authorities supporting the principle are legion. We shall cite a few.

Craig v. Brooks (Tex.). 127 S. W. 572

In this case Brooks claimed ownership for all of a tract of land and brought suit against an adverse claimant for the same. The adverse claimant, Craig, set up a defense claiming that the grantors of Brooks had previously sued the same defendant, Craig, for a three-fourths undivided interest in the same land and obtained judgment therefor. The trial court awarded judgment for all of said land in the second suit but the appellate court in reversing the lower court and giving Craig an undivided one-fourth interest in the land said:

The question presented by the assignment is: Can one, having title to a tract of land adversely claimed by another, split up his cause of action, by successive suits, upon the same title and the same cause of action, into two or more successive actions for undivided portions of the land? We can see no difference between such case and one where the holder of a promissory note, or other contract for the payment of a sum of money, chooses to bring successive suits for parts of his debt. In either case the cause of action is indivisible, and cannot be made the basis for successive actions, each prosecuted to final judgment. The first judgment is a bar to further recovery, not so much on the ground of res judicata, for in the present case it might be said that the title to the one-fourth interest here recovered was not in issue, and was not adjudicated

in the first suit, but upon the ground that a party cannot split up a single and indivisible cause of action, and make it a basis of successive recoveries of portions thereof.

Baird v. United States, 96 U. S. 430, also illustrates the principle.

Baird had a claim against the Government growing out of a contract for the manufacture of steam engines for which he sued and obtained judgment for part of his claim in the Court of Claims. Later a second suit was brought for the residue of the claim but it was denied by the Court of Claims.

On appeal, the Supreme Court affirmed, stating the law to be:

* * * It is well settled that, where a party brings an action for a part only of an entire indivisible demand, and recovers judgment, he cannot subsequently maintain an action for another part of the same demand. Warren v. Comings, 6 Cush. 103. Thus, if there are several sums due under one contract, and a suit is brought for a part only, a judgment in that suit will be a bar to another action for the recovery of the residue. Here was a contract by which the Government was bound to pay for the engines in accordance with terms agreed upon. The entire price to be paid was not fixed. A part was contingent, and the amount made to depend upon a variety of circumstances. When the former action was commenced in the Court of Claims, the whole was due. Although different elements entered into the account, they all depended upon and were embraced in one contract. The judgment, therefore, for the part then sued upon is a bar to this action for the "residue."

The cases on the question are legion: 1 Am. Jur. 480, sec. 96 and cases cited; Baltimore etc. v. Phillips, 274 U. S. 317; Cromwell v. Sac County, 94 U. S. 351.

The Court of Claims also recognizes and applies the principle.

In International etc. v. United States, 74 C. Cls. 132, the rule against splitting a single demand was stated thus:

As a general rule, "a single cause of action or entire claim or demand can not be split up or divided so as to be made the subject of different actions." If this is done and separate actions are brought for different parts of such a demand, a judgment upon the merits in either action will be barred in the other cases.

And as to the effect of splitting such a demand, it said (p. 141) in the same case:

* * * It is well settled that a judgment on the merits between the same parties operates as an estoppel, not only as to every matter which was offered and received to sustain or defeat the claim but as to every other matter which might with propriety have been litigated and determined in that action. 34 C. J., page 818, section 1236, and cases cited.

To the same effect see *Blackfeet et al. v. United States*, 127 C. Cls. 807, 814; *Assinboine v. United States*, 128 C. Cls. 617, 626.

From the above, the conclusion must be that by failing to assert a claim for the Cheyenne-Arapaho allotments in the former case, the petitioners here are barred, under the law, from maintaining the present action.

For the reasons stated above the defendant's motion for summary judgment must be sustained and the petition dismissed. An order to that effect will be entered.

Louis J. O'Marr
Associate Commissioner

We concur:

Edgar E. Witt
Chief Commissioner

Wm. M. Holt
Associate Commissioner