THE OMAHA TRIBE OF NEBRASKA, AND AMOS LAWSON, CHARLES J. SPRINGER, JOHN F. TURNER :: AND HENRY F. FREEMONT, EX REL. OMAHA TRIBE OF NEBRASKA, OMAHA TRIBE AND NATION, :: INCLUDING ALL GROUPS, BANDS AND MEMBERS OF SAID OMAHA TRIBE AND NATION, Plaintiffs ;; v. :: THE UNITED STATES OF AMERICA, Defendants ::

ORDER

On August 12, 1957, the defendant filed its motion to dismiss the amended complaint, which was filed herein on October 6, 1953, and on November 7, 1957, said motion and the plaintiffs' opposition thereto was argued before and submitted to the Commission, by the parties, and taken under advisement, and now the Commission concludes as a matter of law and in accordance with the opinion this day filed herein;

(1) That as to any claims contended for in plaintiffs' brief (although not alleged in the amended complaint, Count I) for damages resulting from trespasses committed by third persons not alleged to have been participated in by defendant, the amended complaint does not state a cause of action;

(2) That as to any claim contained in Count I of the amended complaint for damages resulting from trespasses committed by or in which the defendant participated the motion of defendant must be overruled but the allegations thereof must be made more definite and certain as hereinafter required;

(3) That Count II of the amended complaint does not state facts sufficient to constitute a cause of action against the defendant; furthermore, the cause of action attempted to be asserted by plaintiffs is barred by the decision or judgment of the Supreme Court in the case The Omaha Tribe of Indians v. United States, 253 U.S. 275, by which said court, on appeal from a judgment of the Court of Claims 53 C. Cls. 549, decided adversely to the plaintiffs herein on the claim set forth in said Count II.

IT IS THEREFORE ORDERED AND ADJUDGED:

(1) That the motion of defendant as to any claims contained in Count I of the amended complaint for damages resulting from trespasses, if any, committed by third persons and not participated in by defendant, is sustained and such claims are dismissed;

(2) That the motion of the defendant as to any claim contained in Count I of the amended complaint for damages resulting from trespasses committed by or in which the defendant participated, is overruled provided however the plaintiffs shall, within 60 days from the date of this order, amend Count I of its petition by setting forth therein the time, manner and place the alleged trespasses were committed by or participated in by defendant;

(3) That as to Count II of the amended complaint, said motion of defendant is sustained and said count is hereby dismissed;

(4) That with respect to Count III of the amended petition, said motion is overruled but the defendant may, if it so desires, present a similar motion directed at any amended Count III which may hereafter be filed herein.

Dated at Washington, D.C. this 27th day of December, 1957.

Edgar E. Witt, Chief Commissioner
Louis J. O'Marr, Associate Commissioner
Wm. M. Holt, Associate Commissioner