BEFORE THE INDIAN CLAIMS COMMISSION

PUEBLO DE COCHITI, Petitioner, v. THE UNITED STATES OF AMERICA, Defendant.	)	Docket No. 136

Decided: March 27, 1959

Appearances:

Dudley Cornell,

Attorney for Petitioner

Walter Rochow, 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 petitioner, Pueblo de Cochiti, is a tribe of Pueblo Indians recognized by the Secretary of the Interior. They live in a pueblo about 25 miles west of the city of Santa Fe, New Mexico, in the present county of Sandoval, a site so occupied since about 1700. The pueblo is near the center of a 24,256-acre tract known as the Pueblo de Cochiti Grant, clearly shown on the map Cl. Ex. 19. This grant, which is traversed by the Rio Grande River, is one of eleven Spanish grants to pueblo Indians in this vicinity made in or about the year 1689. After a favorable

report by the Surveyor-General of New Mexico (Def. Ex. 11), the United States on November 1, 1864 issued a patent (Def. Ex. 12), to the Pueblo of Cochiti for the said 24,256 acres. The present claim does not involve this land; it involves lands outside the grant and these lands will be herein referred to as "claimed area." But it should be noted that two Spanish grants to non-Indians (the La Majada Grant of 1695, patented October 26, 1908, and the Caja del Rio Grant of 1742, patented February 20, 1897) overlap both the Cochiti Grant and the "claimed area." In all subsequent litigation and transactions, the Cochiti Grant has been found to be superior to both of these private grants as to conflicting areas.

The petition in Docket 136 asks just and fair compensation for a tract of approximately 25,000 acres lying immediately east of the Cochiti Grant. The tract, marked by an orange dashed line on the map Cl. Ex. 16, actually contains 13,440 acres, as shown by the evidence and now accepted by both parties (Pet. Brief, p. 2; Def. Brief, p. 3). The petition alleges that petitioner had aboriginal title to said tract; that in protection of its aboriginal title, petitioner purchased said land on August 11, 1744, from Bartolome Fernandes de la Pedrera, as shown by copy of deed and translation marked Exhibits B and C attached to the petition; that their aboriginal rights were recognized and protected by Spanish laws and decrees and their property rights were guaranteed by the United States in the Treaty of Guadalupe Hidalgo of February 2, 1848; that at all times since the United States obtained jurisdiction over such lands from Mexico, the Pueblo Indians have been under the guardianship and protection of the United States; and that in violation of such trust, the United States has permitted

non-Indians to occupy said lands and issued patents to others, wholly depriving the petitioner of the use and possession of said land since the fencing of the La Majada Grant in 1912. The La Majada Grant will be discussed later, but it should be noted here that the petitioner's evidence shows that the fencing was done in 1933, and not in 1912 as alleged in the petition.

While the petition does not specify the clause and section of the Indian Claims Commission Act upon which its cause of action is based, petitioner's brief at page 1 states, "This claim is asserted under Section 2, Clause (5) of the Indian Claims Commission Act." The loss of petitioner's land is said to be the result of unfair and dishonorable dealings on the part of the defendant.

The defendant, in its answer, admits the capacity of petitioner to bring the action but it denies most of the material allegations of the petition. At the trial of this case in Santa Fe on December 3, 1956 (Trans. p. 110), the defendant was granted permission to file an amended answer. The amended answer, which was duly filed, set forth a new defense to the effect that in an action in partition, known as Civil Action No. 26 in the District Court of Sandoval County, Territory of New Mexico, in which the Pueblo de Cochiti was an intervening petitioner, judgments of July 16, 1913 and January 13, 1920 are res judicata, or constitute estoppel by judgment, of any rights claimed by the Cochiti under the 1918 deed. The petitioner assumes in its Reply Brief (p. 16) that the Commission, at its discretion, will consider that the amendment was untimely and prejudiced the petitioner. However, the amendment was allowed for the

specific purpose of setting up this defense.

The parties hereto agree that the principal questions presented by this case are as follows (Def. Brief, p. 39; Reply Brief, p. 11):

> 1. What right, title or interest did petitioner have in the lands here in question when the United States acquired sovereignty over this territory under the Treaty of Guadalupe Hidalgo February 2, 1848,
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> (a) by virtue of aboriginal ownership or "Indian title," and
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> (b) under its deed of August 11, 1744?
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> 2. Was there any "taking" of such lands from petitioner by the United States and, if so, when?
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> 3. Was the United States guilty of unfair and dishonorable dealings in its relations with petitioner resulting in loss of the lands herein claimed?

Because of the special defense of res judicata, or estoppel by judgment, as to any rights of petitioner by virtue of the 1744 deed, we shall treat this subject first.

DEED OF AUGUST 11, 1744

One copy and translation of this deed is attached to the petition as Exhibits B and C. A photostat copy of the deed is in evidence as Cl. Exhibit 6 and a translation by Miguel Jorrin as Cl. Exhibit 15. Mr. Jorrin testified that there is no material difference between his translation and Exhibit C attached to the petition, and that the deed has all the legal formality to make it a valid public document according to Eighteenth Century Spanish Law (Trans. pp. 7-12).

The said document, executed on the 11th day of August, 1744 in the village of Santa Fe, New Mexico, is by Juan Fernandes de la Pedrera and his son, Bartolome Fernandes and witnesseth in part as follows:

> that we sell to the Governor, people and natives of the Pueblo of San Buenabentura de Cochiti, queres nation, certain lands and site which are known as Santa Cruz Spring, together with all thereto annexed and belonging, grazing lands, waters and watering places, entrances and exits, uses and customs, rights and servitudes; which are bounded on the north as far as the hills of Santa Cruz; on the east by the house of the little spring; on the south by the boundary of the pueblo of Santo Domingo and on the west by lands of the said pueblo of San Buenabentura;

The price is set out as one thousand five hundred pesos, receipt of which is acknowledged therein. Among other provisions, it provides for the return of the above amount and payment by grantors of all costs, as well as all expenditures for certain specified improvements, in the event the grantors were unable to comply with the agreement.

Petitioners's witness Mark W. Radcliffe, who marked in orange on the map Cl. Ex. 16 the "claimed area" (Trans., pp. 17 and 18), and who testified that it contains 13,440 acres (p. 22), stated that the "claimed area" was smaller than the tract described in the 1744 deed (p. 19). He was recalled (pp. 79-86) to explain that in drawing the boundaries, he used the description in the deed itself together with the statements made to him by the Indians. (p. 84). When asked why the east line did not run due south of the stone house by the little spring (p. 83), he testified that there was an old Spanish settlement at La Bajada at the time the deed was made and therefore he ran the line so as not to include this settlement. He said the Indians showed him certain identifying marks not referred to in the deed (p. 85). In briefing their case, the petitioners have treated the deeded area as being the same as the "claimed area," and it shall be so considered in this opinion.

The entire deeded area is enclosed within the 54,404-acre La Majada Grant, shown on the surveyor's plat (Cl. Ex. 16). The United States Court of Private Land Claims established by Act of March 3, 1891 (26 Stat. 854) to determine the validity of certain Spanish and Mexican land grants, in Case No. 89 entered its decree (Def. Ex. 3) on September 29, 1894, holding that the February 10, 1695 grant by the Governor and Captain General of the Province of New Mexico, under authority of the King of Spain, to Captain Jacinto Pelaez was valid, and was revalidated in 1698, 1710 and 1728 in favor of the grantee and certain heirs. On October 26, 1908 a patent (Def. Ex. 8) was issued to the parties named in the court's decree.

The Caja del Rio Grant covers approximately the north one-fourth of the deeded area, shown on Cl. Ex. 16 by blue striping. The February 20, 1897 patent (Def. Ex. 10) is based on the court's findings in Case No. 63 which confirmed the grant made on May 30, 1742.

The defendant makes clear its position that these two actions in the Court of Private Land Claims and the patents based thereon did not affect any rights of the Cochiti in the "claimed area" (Def. Brief, pp. 78-81). Defendant points out that the 1891 Act gave the court authority "by final decree to settle and determine the question of the validity of the title and the boundaries of the grant or claim presented for adjudication" as well as "all other questions properly arising between the claimants or other parties in the case and the United States" (Sec. 7), that the United States was the defendant in these suits and their only purpose was to establish claimant's title as against the United States, that the court had

no jurisdiction to settle disputes between private claimants to the same land, and that therefore any Government patent was in the nature of a quitclaim - an admission that the rightful ownership had never been in the United States. An examination of the two decrees and patents supports this position.

The judgment, which the defendant contends estops the present petitioners from relitigating the issue of their rights under the 1744 deed, was entered in Case No. 26 in the District Court of the County of Sandoval, Territory of New Mexico, title TRINIDAD BACA, ET AL., PLAINTIFFS, v. THE UNKNOWN HEIRS OF JACINTO PALAEZ, DEFENDANTS, and THE PUEBLO DE COCHITI, INTERVENER. The action, begun on March 3, 1904, was for partition of the La Majada Grant. The AMENDED PETITION OF INTERVENER (Def. Ex. 25), filed December 11, 1909, was by F. C. Wilson, Special Attorney for the Pueblo Indians of New Mexico, "with leave of the court first had and obtained," and alleges:

> 1st. That on the 10th day of January, of the year 1710, the La Majada Grant, was revalidated and made de novo in favor of Maria Palaez, daughter and sole heir of the original grantee, Captain Jacinto Palaez.
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> 2nd. That the said Maria Palaez married Juan Fernandez de la Pedrera, the date of said marriage being unknown to your petitioner.
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> 3rd. That said Juan Fernandez de la Pedrera and his [illegible] Bartolome Fernandez on the 11th day of August, 1744, executed jointly a good and sufficient deed to the Indians of the Pueblo de Cochiti and conveyed thereby to the said Indians of the Pueblo de Cochiti in fee simple, all their right, title and interest in consideration of the sum of Fifteen Hundred Dollars ($1500), to a place called "Ojo de Santa Cruz", bounded and described in said deed, as follows, to-wit:
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> > North, they reach to the hills of Santa Cruz, and on the east to the house at the little spring, on the south by