BEFORE THE INDIAN CLAIMS COMMISSION

PUEBLO de ISLETA, Petitioner,	)	
vs.	)	Docket No. 211
THE UNITED STATES OF AMERICA, Defendant.	)	

Decided: June 5, 1959

Appearances:

Mr. Dudley Cornell, with whom
was Mr. M. J. Claybaugh
Attorneys for Petitioner.

Mr. Walter A. 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 in Docket 211 is Pueblo de Isleta, which, by admission of the defendant, is a tribe of Pueblo Indians recognized by the Secretary of the Interior. It is also authorized under the laws of New Mexico to sue and be sued as a corporation.

The pueblo of the Isleta is located about 12 miles south of Albuquerque on the west bank of the Rio Grande River (see map, Def. Ex 26 near southeast corner). The parties hereto propose no findings as to the early history of the Isleta, but the Petition alleges that

the village has been maintained at its present site for more than 300 years. Herbert O. Brayer, in Def. Ex. 17 (pp. 56-59), gives this background. In the days of the conquistadores the pueblo ~~is~~ supposed to have been situated on an island in the Rio Grande then known as the Rio del Norte. With the changing of the river bed, Isleta had ceased to be the "little island", as its Spanish name indicates. Soon after the advent of the Spaniards a Catholic chapel was established at Isleta. The Pueblo revolt, which began in 1680, caused the pueblo to be abandoned, some of the refugees founding a new pueblo, Isleta del Sur, ten miles to the south. Sometime between 1709 and 1718 Fray Juan de la Pena re-founded the pueblo and re-established the mission. Brayer gives the Isleta population as 304 in 1760, 487 in 1809, over 750 in 1850 and 1,000 in 1880.

The Isleta Pueblo Grant, shown on Def. Ex. 26 with the pueblo at about its center, contains about 130,000 acres. Def. Ex. 23 shows it to lie in Valencia and Bernalillo Counties. A patent (Def. Ex. 10 was issued to the Isleta November 1, 1864 for a tract containing 110,080.31 acres based upon the claim of the Isleta as confirmed by the Surveyor General of New Mexico. On October 7, 1933 a supplemental patent (Def. Ex. 11) to 20,405 acres was given the Isleta because such lands were erroneously omitted in the former survey and patent. This Isleta Pueblo Grant is not directly involved in the present claims; it is mentioned because of its relationship to the lands here involved in that the latter lands adjoin the Pueblo on the south.

The Petition herein sets forth two causes of action. The first asks fair and just compensation for the loss of 14,780.745 acres known as the Peralta Tract (Ex. B of Petition), situated in the southwest corner of the Lo de Padilla Grant containing 51,940.82 acres (Pl. Ex. 5, Pet Ex. A: Def. Ex. 26). The Isleta assert aboriginal title thereto, and further allege that "in protection of its aboriginal title and to terminate the claims of non-Indian settlers, Petitioner purchased the said Lo de Padilla Grant on February 4, 1750, from the legal heirs of Diego de Padilla". They admit that Congress, by Act of May 31, 1933 (48 Stat. 108), appropriated $2.00 per acre to compensate them for the loss of said Peralta Tract.

The second cause of action seeks fair and just compensation for the loss of 2,582.78 acres constituting the Bosque de los Pinos Tract, located in the extreme eastern part of the Antonio Gutierrez and Joaquin Sedillo Grant (Pl. Ex. 6, Pet. Ex. D; Def. Ex. 26). This claim is also based both on aboriginal title and purchase of the title of the heirs of the original grant sometime prior to May 3, 1808. The Isleta have received no compensation for this land.

While the Petition does not specify the section of the Indian Claims Commission Act under which these claims are made, the Petitioner's Brief (p. 1) says that the claims are asserted under Section 2, Clause (5) of the Act, the case arising by virtue of the loss by Petitioner of its aboriginal and purchased lands as a result of the unfair and dishonorable dealings on the part of the defendant.

Each of the two causes of action presents a different fact situation and requires a separate decision by the Commission. The parties have briefed two general propositions which apply to both claims and these will be treated first.

ABORIGINAL TITLE

The first question pertinent to both claims is raised by the defendant's contention that neither Spain nor Mexico recognized aboriginal use of land by the Indians as creating any vested legal rights of ownership in the Indians (Def. Brief pp. 63-77) and that the policy of the United States as to "Indian title" based upon aboriginal occupancy applied only to lands which became a part of the public domain of the United States and neither of the tracts herein claimed by petitioner by virtue of aboriginal ownership ever became a part of the public domain under the cession from Mexico to the United States in 1848 since both tracts were within the exterior boundaries of valid Spanish land grants to non-Indians (Def. Br. pp. 57-63). The petitioner (Reply Brief pp. 23-27) argues that on the contrary, the laws of Spain prohibited the divesture of Indian title even when the same land occupied by the Indians had been given to non-Indians by official grant.

The question of the rights of Pueblo Indians to Spanish or Mexican lands based upon aboriginal use and occupancy has been discussed in our opinion in the case, Pueblo de Cochiti v. United States, Dkt. 136, 7 Ind. Cl. Com. 422, decided last March. It is

not necessary to repeat here what we said there in holding that Indian title did not attach to lands which never became a part of the public domain, that is, lands which had passed to private ownership by virtue of Spanish or Mexican grants made prior to the treaty of Guadalupe Hidalgo. (See last paragraph of 2d section of the Protocol of said Treaty).

Since it is apparent and undisputed that the lands in both causes of action, namely, the Peralta tract and the Bosque de los Pinos tract, respectively, had passed long prior to our acquisition of lands under the treaty of Guadalupe Hidalgo by Spanish grants to non-Indians, the petitioner here never acquired "Indian title" to said lands.

GUARDIAN-WARD RELATIONSHIP

The second general question involving both causes of action concerns the relationship between the Isleta and the United States since 1848 and the resulting standards of conduct required of the United States. This is material when the Commission is asked to decide whether certain actions of the United States meet the test of fair and honorable dealings.

The petitioner briefs this issue (Pet. Brief pp. 22-24) because of the defendant's denials in its Answer (par. 6 and 20). An examination of these paragraphs shows that the defendant "specifically denies that an ordinary guardian and ward relationship exists between the defendant and petitioner".

The petitioner calls attention to the June 7, 1924 Act of Congress (43 Stat. 636), commonly known as "the Pueblo Lands Act", which refers to the United States "in its sovereign capacity as guardian of said

Pueblo Indians " (Pet. Brief p. 22), United States v. Sandoval (231 U.S. 28) is cited as directly deciding that the Pueblo Indians were wards of the Government (Pet. Brief p. 23). In this 1913 decision, the Supreme Court held that Congress, in the exercise of its control over Indian tribes, could prohibit by law the introduction of intoxicating liquors into the Indian pueblos in the State of New Mexico. The court goes into the history of the pueblos, describing the Indians as "essentially a simple, uninformed, and inferior people". During the Spanish dominion the Indians were treated as wards requiring special protection. They were elevated to citizenship after the Mexican succession. As to the United States, the court concluded that "by an uniform course of action beginning as early as 1854 and continued to the present time, the legislative and executive branches of the Government have regarded and treated the Pueblos of New Mexico as dependent communities entitled to its aid and protection, like other Indian tribes".

The petitioner does not attempt to distinguish between the Pueblo Indians and other Indian tribes in this regard, stating that the Commission has "disposed of the question" in Potawatomie consolidated dockets 15-B and 11, quoting the Court of Claims in Chickasaw v. United States, 94 C. Cl. 215, 234, describing the relationship as "similar to that of guardian and ward" (Pet. Brief p. 24). The petitioner also cites United States v. Payne, 264 U.S. 446, 448, which says "the United States occupies the position and assumes the responsibilities of virtual guardianship", and Seminole Nation v. United States, 316 U.S.

286, which requires the Government's conduct in dealings with the Indians to be "judged by the most exacting fiduciary standards".

The defendant gives its position in its objection to Petitioner's Proposed Finding 4 (Def. Brief pp. 44-46), citing the Court of Claims 1956 Sioux case and the Commission's Opinion in the 1957 Omaha case(6 Ind. Cl. Com. 73,74). Defendant contends that "there is no treaty, agreement or statute spelling out a guardian and ward or any other fiduciary relationship between this petitioner and defendant".

The petitioner (Reply Brief pp. 36-39) replies that the Treaty of Quadalupe Hidalgo and the Pueblo Lands Board Act both established this relationship.

Viewing the whole argument, it appears that the petitioner would be satisfied with the Commission's description of the relationship as similar to that of guardian and ward. The frequently cited Sandoval case, in the quotation set out above, says the Pueblos are dependent communities entitled to the Government's aid and protection, "like other Indian tribes".

FIRST CAUSE OF ACTION

The so-called Peralta Tract, which has already been identified, is said by petitioner to contain 14,780.745 acres (Petition pp. 4-5; Pet. Findings 5-7). This figure is taken from the survey plat (Ex. B attached to Petition). The defendant gives the acreage as 14,710.85 acres (Def. Brief p. 47), as set forth in the Exchange Quitclaim Deed (Ex. C attached to Petition). This deed will be discussed subsequently. Our view of this claim makes it unnecessary to determine the correct acreage, but see Defendant's Exhibits 7 and 8.

The Isleta claim this tract by aboriginal use and occupancy. Evidence offered as proof thereof is weak (see Pet. Finding 6). The defendant submitted no evidence thereon. However, it is unnecessary to go into this matter because this land was purchased by the Isleta. In its objections to Pet. Finding 7 (Def. Brief pp. 48-55), the defendant admits that the Peralta Tract is within the Lo de Padilla Grant which was deeded by the legal heirs of Diego de Padilla to the Pueblo de Isleta under date of February 4, 1750. The original Spanish Grant was made by the Spanish Governor and Captain General of the Province of New Mexico to Diego de Padilla May 14, 1718.

Upon petition of the Pueblo de Isleta, the Court of Private Land Claims in Case No. 273 entered its Decree (Def. Ex. 2) on November 28, 1896, finding that the Lo de Padilla Grant, containing about 27,000 acres, was a perfect grant and that the Isleta had sufficiently connected themselves with the grantee Diego de Padilla and his lawful heirs to entitle them to have the court approve the validity of said grant. The court adjudged that said grant "is hereby established and confirmed forever to the heirs, assigns and legal representatives of Diego de Padilla, free and discharged from any and all claims and demands for or against the same on the part of the United States". The Decree also contains this final paragraph:

> It is declared by the court that the confirmation in this decree contained is made under Title XII, of Book IV, of the Recopilacion de Leyes de Los Reynos de Las Indias, the Royal Decree of the King of Spain of October 15th, 1754m, and the law of the nations.

A patent (Def. Ex. 1) was issued April 9, 1908 for said Lo de Padilla

Grant to the "heirs, assigns and legal representatives of Diego de Padilla", in acordance with and subject to the terms of the Act of Congress of March 3, 1891, which established the Court of Private Land Claims. The survey of said grant (Pl. Ex. 5) shows the acreage as 51,940.82 acres. A great discrepancy will be seen between this figure and the 27,000 acres in the 1896 Decree (Def. Ex 2); however, it is reasonably plain that the Diego de Padilla Grant was intended to be the larger acreage.

Some years later, in a quieting title action specifically involving the Peralta Tract entitled Federico Sanchez, et al. v. Pueblo de Isleta, the Valencia County District Court entered its Findings of Fact, Conclusions of Law and Decree (Def. Ex 3) on February 3, 1915, in favor of the plaintiffs and against the defendant. Finding 1 concerns the 1718 Spanish Grant to Diego de Padilla; Finding 2, the 1750 conveyance to the Isleta. The findings of fact continue:

> 3. That on the 15th day of May, 1797, Manuel Aragon, Manuel Antonio Aragon, Domingo Chavez, Vincente Chavez, Juan Aragon, Francisco Javier Aragon, Jacinto Sanchez, Felipe Montoya, Simon Sedillo, Francisco Garcia, Jose Ignacio Molina, Lorenzo Romero and Francisco Aragon purchased from the said Pueblo of Isleta and the said Pueblo of Isleta conveyed to the said persons, a portion of the grant made as afresaid to Diego de Padilla, and by his heirs conveyed to said Pueblo de Isleta, which portion so purchased by said above named persons is bounded on the north by lands of the defendant, on the south by lands of Los Lentes or Peraltas, on the east by the mountain, and on the west by the Rio Grande del Norte, measuring from south to north 2425½ varas.
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> 4. That the said purchasers of said portion of said grant to Diego de Padilla entered into possession

> of the same, and they and their descendants and assigns have remained in continuous possession thereof without any interference from anyone until just before the beginning of this suit, and that the plaintiffs herein and those whom they represent and for whom they act, are desendants and assigns of said original purchasers under the deed of May 15, 1797.

Finding 5 sets out the Court of Private Land Claims action and 1896 Decree confirming the Padilla Grant. Finding 6 finds that the defendant made no claim to the land sold in 1797 and no attempt to interfere with the possession of the plaintiffs until shortly before the beginning of this suit. In its conclusions of law, the court held that the confirmation by decree of the Court of Private Land Claims inured to the benefit of the plaintiffs as fully as to the benefit of the defendants, and that title was vested in the plaintiffs and those whom they represent. The court, therefore, ordered title to the tract described in Finding 3 quieted in the plaintiffs and those whom they represent, being the descendants or successors in title and interest of the persons named in Finding 3 who made the May 15, 1797 purchase from the defendant, the Pueblo de Isleta.

We shall discuss the questions involving these two decisions before going into subsequent events.. The first question is the legal effect of the 1896 Decree of the Court of Private Land Claims. The defendant contends that the court's decree and the patent based thereon were conclusive only as between the Isleta and the United States and did not affect the rights of any other person in the land (Def. Brief pp. 17: 81-83). Ainsa v. New Mexico and Arizona Railroad, 175 U.S. 76, 90 is cited. The patent is said to be only a quit-claim deed from

the United States and third parties would have to assert their claim of title in local courts of general jurisdiction.

The petitioner, in objecting to Defendant's Finding 19, maintains that the private rights of non-Indians most certainly were affected by the decree of the Court of Private Land Claims confirming title to the Lo de Padilla Grant and the subsequent issuance of a patent to the petitioner (Reply Brief p. 5). This is not consistent with petitioner's own statements as to the same court in the second cause of action (Pet. Brief pp. 35-36). "The Court of Private Land Claims could not adjudicate title between Indians and non-Indians. This jurisdiction was expressly forbidden under the Act that created the Court", referring to Clause 2, Sec. 13 set out in Footnote 78.

As to the effect of the patent, petitioner says "the Commission has determined that the issuance of patents to non-Indians amounted to a divesture of title clearly entitling the Indians to just compensation", citing Creek Nation v. United States, 302 U.S. 290 (Reply Brief p. 5, footnote 14). However, the 1908 patent expressly provided that it was based upon the decree of the Court of Private Land Claims and that "said grant is made subject to all the limitations and terms of the said Act of Congress of March 3, 1891" (Def. Ex 1). We therefore agree with the defendant that the court's Decree and the subsequent patent did not affect any other private rights to such land. The Decree only confirms the title "free and discharged from any and all claims and demands for or against the same on the part of the United States" (Def. Ex. 2). This is consistent with the holding in the Ainsa case mentioned above, in which the Supreme Court said:

> . . . .all decisions under this act (of March 3, 1891) shall be conclusive between the claimants and the United States only, and shall not affect the private rights of any person, as between himself and any other claimant.

Applying this to the instant case, the Decree in Case No. 273 and the patent based thereon did not affect the private rights of those who subsequently claimed title to the Peralta Tract in the Sanchez case, and the Valencia County District Court had jurisdiction to determine those rights in a quieting title action. As stated by the latter court, the confirmation in Case No. 273 inured to the benefit of all claimants, in that the original grant was held to be perfect.

The next question, then, concerns the effect of the Sanchez decision. The defendant has a section (Def. Brief pp. 77-79) devoted to the proposition that petitioner cannot recover for the Peralta Tract under a title by purchase "since it has been judicially determined by a court of competent jurisdiction that petitioner has not owned the tract since 1797". United States v. Candelaria (271U.S. 432) is cited to show that a state court had such jurisdiction. The defendant concludes that "petitioner, therefore, is estopped by that judgment (Sanchez) to claim that it owned the Peralta tract".

The petitioner first argues that the defendant's Answer does not plead a defense of estoppel by judgment (Reply Brief p. 28). An examination of the Answer indicates this to be technically true. Allegations are contained therein concerning the Sanchez case (pp. 4-5). Defendant's plea of res judicata involves rather an alleged subsequent determination by the Pueblo Lands Board that the Peralta Tract was the property of non-Indians. (Answer p. 7). As will be seen later concerning the Board's actions, its

determination was based on the court's decision in the Sanchez case.

Petitioner then argues that the Valencia County Court's decree was void, citing the Candelaria case (Reply Brief pp. 30-34). The question involved was whether a state court judgment in a quieting title action brought by the Pueblo of Laguna and a subsequent United States District Court judgment were res judicata in a third action involving the same land brought by the United States on the theory that these Indians were wards of the United States. The Supreme Court held that the Indians of the pueblo are wards of the United States and hold their lands subject to the restriction that the same cannot be alienated in any wise without its consent; that a judgment or decree which operates directly or indirectly to transfer the lands from the Indians, where the United States has not authorized or appeared in the suit, infringes that restriction; and therefore the United States is not barred by a former judgment unless the United States was a party to the suit or authorized the same. If the suit was begun and prosecuted by the special attorney employed by the United States to represent the Pueblo Indians, a position provided for by Congress in 1898, the court said this would as effectively conclude the United States as if it were a party to the suit. Although the words "begun and prosecuted" are used, it is assumed that the appearance of this special attorney to represent pueblos as either plaintiffs, defendants or intervenors would have the same effect, the vital point being that the United States was represented in the suit.

It is apparent that the United States was not a party in the Sanchez case. The petitioner does not say who represented the Isleta and it is not

shown in the court's decree (Def. Ex. 3). The decree (p. 1) indicates that the cause was argued and submitted to the court with leave to the respective parties to submit written briefs, and that the defendant failed to present a brief.

The petitioner also cites Alonzo v. United States, 249 F 2nd 189, and quotes therefrom (Reply Brief pp. 31-33). The United States, in its own behalf and on behalf of the pueblo of Laguna, had brought an action in the United States District Court to enjoin certain parties from prosecuting an action in a state court in which the Pueblo was one of the defendants. The United States Court of Appeals, Tenth Circuit, affirmed the issuance of an injunction, holding that restrictions against alienation apply to lands acquired by the Pueblo through purchase, as well as to lands acquired by the Pueblo in any other manner, and that the United States was entitled to injunctive relief, the United States not being a party to the state court suit.

Petitioner lists cases (Reply Brief p. 33) to support the statement that "though the Indians' interest is alienated by judicial decree, the United States may sue to cancel the judgment and set the conveyance aside where it was not a party to the action".

Summing up this question of the effect of the Sanchez decision, it is our conclusion that the court's decree is not void; it is significant in that it is the determination of a court of competent jurisdiction that the Isleta sold the Peralta Tract in 1797. The petitioner has produced no evidence to prove that the 1797 sale was

not made. Petitioner is content to merely argue (Reply Brief p. 16) that "the defendant's own exhibits wholly discredit the findings (of the court) as vague and indefinite, to-wit: (1) the Report of the Pueblo Lands Board and (2) Pueblo Indian Land Grants of 'Rio Abajo', New Mexico, Herbert O. Brayer". The reference is to the inability of the parties to definitely identify the tract from the description in the decree, resulting in continuous controversy between the parties as to their rights in the area. This matter becomes vital in the following discussion of the actions of the Lands Board.

Proceeding then to subsequent events, the Pueblo Lands Board was created by Act of Congress of June 7, 1924 (43 Stat. 636). The Board consisted of three members: one representing the Secretary of Interior, another the Attorney General, and the third was appointed by the President of the United States (Def. Brief p. 20). The Board was directed to investigate, determine and report upon all lands within the exterior boundaries of any land granted or confirmed to the Pueblo Indians of New Mexico under authority of the United States or any prior sovereignties, or acquired by said Indians as a community by purchase, or otherwise, title to which the Board shall find not to have been extinguished in accordance to the provisions of the Act. The Board was to make an award to the Pueblo for any loss of lands or water rights as a result of the failure of the United States seasonably to prosecute the rights of the Pueblo. The purpose of the Act was also to quiet title to lands claimed by the Indians, and the United States Attorney General was

directed to file in the District Court bills of complaint to determine adverse claims (Reply Brief p. 42).

On August 17, 1928 the Pueblo Lands Board issued two reports on the Isleta Pueblo; Report #1 on title to lands granted or confirmed to the Pueblo Indians not extinguished (Def. Ex. 7); and Report #2 concerning Indian titles extinguished (Def. Ex. 8). In Report #2 (pp. 5-7) the Board deals with the Peralta Tract as follows:

> The Lo de Padilla Grant, originally made to Diego Padilla on May 14, 1718, was purchased by the Pueblo of Isleta on February 4, 1750, from the heirs of said Padilla and patented to the said Pueblo on April 9, 1908. Said grant so patented contains 51,940.82 acres. All of the land included in this grant was conveyed to the Pueblo Isleta in 1750 by the heirs of Diego Padilla. The grant appears to have been confirmed by the Court of Private Land Claims on November 2, 1896. However, on February 3, 1915, there was handed down a decision by the Judge of the District Court for the County of Valencia in a case known as Federico Sanchez, et al. vs. the Pueblo of Isleta. It appears that in 1797 ten natives, presumably the descendants of the original grantees, purchased back from the Pueblo Indians part of the grant. The decree states that the descendants of these purchasers entered into possession and retained possession until just before the beginning of the suit. The description of the area in the decree however, which it was allaged was at that time so deeded to the Indians, is not such as to enable either the Indians or the non-Indians to definitely identify the tract, and this has resulted in continuous controversy between the interested parties as to their respective rights in the area referred to. At the town of Peralta a considerable settlement is situated near the river, toward the eastern end of the tract so deeded, and the Indians have never claimed possession of or any title to the area within and surrounding this town.
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> The situation resulted in negotiations between the people of Peralta and the heirs of the original Spanish grantee on the one hand, and the Isleta Indians through their duly appointed representatives on the other,

> looking toward an agreement whereby a fair division of the Lo de Padilla area could be arrived at. After a good deal of negotiation, an understanding was reached whereby 14,710.85 acres, comprising the Peralta settlement and adjacent lands were segregated from the Lo de Padilla Grant, and to the satisfaction of the Indians and non-Indians alike, set aside by the Board as the area to which the Peralta people are entitled. The Board therefore finds (see Report No. 1) that of the 51,940.82 acres patented as the Lo de Padilla Grant, the Indians are now entitled to 37,229.97 acres and the non-Indians to 14,710.85. acres.
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> The Board finds as to this 14,710.85 acres known as the Peralta tract, that it could not have been recovered by the United States by seasonable prosecution as defined in the Act, and that therefore the Isleta Indians are entitled to no compensation for the loss thereof.

Defendant's Exhibit 9 contains amendments to the Land Board's Reports as to the Isleta, showing that suit was filed in the United States District Court to quiet title to certain lands awarded by the Board to the Isleta and a final decree entered January 6, 1930. The court reversed the findings of the Board as to certain small tracts, for which the Board made an additional award. It does not appear that the Peralta settlement was involved in this subsequent litigation.

One other document of the Lands Board appears in the record, a Memorandum dated June 30, 1931 (Def. Ex. 19). It covers the various areas found to have been extinguished, upon which no award was recommended to the Indians. The Board said that obviously the Government could not have recovered these lands by seasonable prosecution because title had become perfect and complete in the non-Indians prior to the Treaty of February 2, 1848 (p. 3). Such an area was at Isleta. The Isleta case, however, is said to be different from the rest. "Here a voluntary agreement was

arrived at between the parties. Deeds covering the compromise were exchanged with the approval of the Secretary of the Interior". Details are given at p. 14, similar to the findings in Report #2, with the addition of certain testimony showing that the Isleta approved the settlement. Jose Padilla, governor of the pueblo, is quoted as testifying that it was a fair deal and was agreed to by the council. Pablo Abeita, Antonio Abeyta, a member of the council, and Jose Carpio, also a member, agreed to Governor Hagerman's statement as to the exact area to be included in the transaction. Hagerman was a member of the Board.

In 1931 a subcommittee of the Senate Committee on Indian Affairs began an investigation of the condition of the Indians. In the case of the Isleta, it included the Peralta settlement effected by the Lands Board. Testimony of three Isleta Indians was taken in June, 1931 (Def. Ex. 12). On January 28, 1932 Judge Richard H. Hanna, as private counsel representing the Isleta, made a statement (Def. 12 a, pp. 11155-11159) and introduced various exhibits (pp. 11159-11170) in seeking additional compensation, under the bill before the committee, for the Peralta Tract. A statement of H. J. Hagerman to the Pueblo Lands Board is included (pp. 11164-1116-), which gives further information on the Peralta settlement. A reading of this record shows some confusion, but generally indicates that the settlement was considered fair by all parties, including Walter C. Cochrane, the special attorney employed by the United States to represent the Pueblo Indians. Judge Hanna asked that the Isleta be awarded at least $2.00 an acre for the Peralta Tract, since that was the value fixed by the Board for two small parcels in the same area for which an award had been made. The Peralta Tract had been appraised at $284,132.56 in the

proceedings of the Lands Board. (Reply Brief p. 16).

In Reports of March 16, 1932 (Def. Ex. 14) and of May 10, 1932 (Def. Ex. 15), the House of Representatives Committee on Indian Affairs approved an additional award of $2.00 an acre for the 14,710.85-acre tract. Both reports state:

> The Board made no award for this tract, apparently holding in error that it could not have been recovered for the Indians. (Def. Ex. 15, p. 4).

The appropriation was made by Act of Congress of May 31, 1933 (48 Stat. 108). The defendant sets out the conditions of the Act and the acceptance of the payment by the Isleta (Def. Finding 31).

Now as to the questions argued by the parties, the first involves the defense of res judicata as made in defendant's third defense (Answer, p. 7, par. 16). The petitioner considers this defense abandoned by the defendant (Reply Brief p. 29). The situation is confusing because the Answer refers to the Land Board's determination that the 14,710.85 acres was the property of non-Indian settlers. Defendant's Brief, however, refers to the Board's decision not to make a money award for the Peralta Tract because it could not have been recovered by seasonable prosecution (Def. Brief pp. 24, 90). Defendant says "this Commission is not authorized to overrule that decision by the Fueblo Lands Board". It is the matter of an award which the 1924 Pueblo Lands Act made subject to review by the United States District Court and Circuit Court of Appeals. Since no appeal was taken, defendant contends that "such determination has the force and effect of a final judgment" (Def. Brief p. 24).

The next proposition is petitioner's claim that defendant's actions were less than fair and honorable in causing the petitioner to deed its lands known as the Peralta Tract (Pet. Finding 7, Pet. Brief pp. 25-32, Reply Brief p. 41). In the settlement negotiated by the Lands Board, the Isleta and certain non-Indian claimants executed an exchange quitclaim deed on May 1, 1928 whereby the Isleta quitclaimed all their interest in the 14,710.85-acre Peralta Tract and the non-Indians quitclaimed their interest in the balance of the Lo de Padilla Grant. The original deed was lost (Pl. Ex. 3), but photostats and copies preserved the record (see Exhibit C in Petition). The deed expresses the desire of the parties to amicably settle and dispose of the dispute and controversies between the parties as to where within the Lo de Padilla Grant the 2425½ varas of land purportedly deeded by the Isleta and involved in the Sanchez case lies.

The petitioner contends that the Lands Board should not have negotiated the settlement and the United States should have filed a bill of complaint in District Court to determine adverse claims, as provided in the first paragraph of the 1924 Act (Pet. Brief pp. 25-27). But it appears that this was a situation in which a negotiated voluntary settlement was certainly justified. The Sanchez decision established that the Isleta had sold by deed a tract in 1797 to certain non-Indians and no evidence was presented to the Lands Board to prove otherwise. The description of the land in the deed was such that its location and extent was uncertain. This was not unusual in ancient documents. And since the determining factor was the intention of the parties to the

1797 transaction, the most practical solution would be an amicable agreement between the successors in interest making certain the boundaries of the deeded tract. This is what was done, as expressed in the exchange quitclaim deed itself. After such a settlement was completed, it should be unnecessary for the UnitedStates Attorney General to file a bill of complaint to determine adverse claims to the lands involved in the settlement. After the settlement, the Peralta Tract was not land claimed by the Isleta, as required in the paragraph quoted by petitioner from the 1924 Act (Pet. Brief p. 25).

The petitioner asks that the Commission decide whether or not the defendant used unfair tactics, persuasion and undue influence in effecting this settlement (Pet. Brief p. 28). From a review of the record, we consider the proceedings fair and voluntary. Petitioner's statement that the Board "threatened dire results if the Petitioner did not execute the instrument of conveyance to the non-Indians"is not supported by evidence. The Indians being told that the settlement "would eliminate a lot of litigation" was certainly a proper appraisal of the situation. Mr. Cochrane, the special Pueblo attorney, was present to represent the Isleta and signed the exchange quitclaim deed as a witness (Exhibit C). Judge Hanna, as private counsel for the Isleta before the Senate Committee (Def. Ex. 12a, p. 11158), said "that though our representation of these Indians, as private counsel, was known and had continued for three years at that time, we were not advised of any of the negotiations or proceedings refer-ed to, and were not in any way consulted about it, or given any opportunity to advise them." However, the petitioner cannot consistently complain of their representation by the special Pueblo attorney, because elsewhere in

... the petitioner complains that in certain litigation the ... States was unfair and negligent in not providing represen-... by the United States District Attorney or the special Pueblo ... employed by the United States (Reply Brief pp. 31, 39, 40; ... Brief pp. 21-23). The settlement was generally considered fair (see Def. Finding 29). No subsequent attempt was made to void the settlement, only to obtain some compensation from the Government.

The petitioner further argues that in the exchange deed, the Indians were given nothing that they did not already have (Pet. Brief p. 26). This is in effect saying that the deed lacked mutual consideration. It assumes that the Isleta were the undisputed owners of all the land involved. This is an incorrect assumption. As has been pointed out, the record is virtually unchallenged that the Isleta made a sale to non-Indians in 1797. The Lands Board found that the Indians had never claimed possession of or any title to the area within and surrounding the town of Peralta, where a considerable settlement was situated (Def. Ex. 8, p. 6). Antonio Abeita, an Isleta Indian, testified, when asked how far back the early Spanish settlers at Peralta dated, "Apparently it dates back to the Spanish rule" (Trans. Dec. 4, 1956, p. 32). Diego Abeyta, another Isleta, said that several hundred people lived in and surrounding Peralta at the time of the quitclaim deed (p. 53). Pablo Abeita testified in 1931 (Def. Ex. 12, p. 10073). ". . . .I do not doubt there are many of them (non-Indian settlers) in good faith had acquired good title to that, so they thought", under a deed executed by Indians. Under such circumstances, there certainly

was mutual consideration for the exchange quitclaim deed. The disputed location and extent of the land purchased in 1797 made the settlement of mutual benefit to all parties.

The petitioner also questions the sufficiency of the signatures of the non-Indians on the quitclaim deed (Pet. Brief, pp. 17, 28), referring to the 1928 letter (Pl. Ex. 4) of Walter C. Cochrane in which he expresses his purpose to get the signatures of the people at Peralta and forward the same to Washington for approval, securing the signatures of people outside of the state thereafter. He adds,

> I believe if those at Peralta will execute the deed that none of the others would dare cause us any trouble. That this view is not satisfactory from a strictly legal point of view, I know - but it is not a question of what we want to do, but a question of what we can get done. (See Pet. Finding 7, Footnote 21)

Since the deed was executed to the satisfaction of the Pueblo attorney representing the Isleta and since the record does not show that any "trouble" developed from non-signers claiming an interest therein, it does not appear that the Isleta were hurt in any way by the manner in which the deed was drawn and executed.

Finally, the petitioner maintains that the exchange quitclaim deed was void because it was not approved by the Secretary of the Interior (Pet. Brief pp. 30-32). Several legal cases are cited (p. 32). Two general statutes are set out in Footnote 68, and paragraph 17 of the Act of June 7, 1924 in Footnote 69. The latter provides that no sale of lands "made by any pueblo as a community, or any Pueblo Indian living in a community of Pueblo Indians, in the State of New Mexico, shall be

of any validity in law or in equity unless the same be first approved by the Secretary of the Interior".

A June 4, 1929 letter (P. Ex. 3) from the Lands Board's records, but without signature, indicates that the deed was lost and any record of it being sent to Washington for the approval of the Department was lacking. The writer expresses his inclination that the approval of the Office was not necessary but that it would be better to find the document. Copies of the deed do not show any endorsement thereon by the Secretary of the Interior, although the text of the deed says, "by and with the consent of the Secretary of the Interior".

Although there are several other statements that the deed had the Secretary's approval (Def. Brief p. 87), the defendant admits "that there is reason to believe that the deed was never submitted to the Secretary for approval" (pp. 87-88). The Secretary of the Interior, by letter of December 10, 1931 to the honorable Dennis Chavez (Appendix D., Def. Brief pp. 116-117), advised that an examination of the files disclosed no record of the receipt of the deed. He also wrote:

> From the context of the letter (from Mr. Chavez concerning the mutual exchange deed), it appears that the deed was one executed in the settlement of claims by the Pueblo Lands Board, and does not require submission to the secretary of the Interior for approval.

It is therefore defendant's position that the approval of the Secretary was not required (Def. Brief p. 89), because "the approval of such a settlement was entirely within the function and sound discretion of the Board". Defendant also says the Peralta Tract did not

fall within the provision of paragraph 17 of the Pueblo Lands Act since it did not belong to petitioner. A "possible explanation of why the 1928 deed contained language indicating approval by the Secretary of Interior" is given in Footnote 286 which quotes the written statement of Mr. Hagerman (Def. Ex. 12a, p. 11166) as follows:

> As a member of the Pueblo Lands Board and particularly a representative of the Secretary of the Interior and knowing that this matter would be referred to me for approval I have simply taken the part of an arbiter in this matter but I told both parties that if the deal was put through on the lines agreed upon I would approve it.

It appears to us that it would have been better practice to have obtained the formal approval of the Secretary of the Interior, and certainly the loss of the original deed was regrettable. However, we are not prepared at this late date to say that the deed was void. There are no legal cases cited which determine whether such a settlement negotiated by the Lands Board would be void without such approval of the quitclaim deed involved. In 1931 the Secretary of the Interior did not think that approval was required because the deed was executed in the settlement of claims by the Board. It seems reasonable that the Lands Board, a creation of Congress with a member appointed by the Secretary of the Interior, should have that power.

It is therefore our conclusion that the petitioner has not established that the defendant's actions in regard to the Peralta settlement were less than fair and honorable. The settlement was not only fair but desirable and of benefit to all parties.

The payment by Congress in 1933 of $2.00 an acre for the 14,710.85-acre Peralta Tract, after committee hearings and recommendation, raises several additional questions. The petitioner says this Act recognized the liability of the United States and amounted to a finding by Congress that the Lands Board was wholly wrong and erroneous in holding that the land could not have been recovered by seasonable prosecution (Pet. Finding 7 p. 15) The defendant, on the other hand, says this was a determination by Congress that $2.00 an acre was a fair value for the land, and under the terms of the appropriation, the petitioner is not entitled to additional compensation (Def. Brief pp. 30-33; 90). The petitioner replies (Reply Brief pp. 14-16):

> The fact that Judge Richard H. Hanna pled for $2.00 per acre before the Senate Subcommittee in Santa Fe and Congress later awarded this exact amount totalling $29,421.70 is not material or relevant, until the Commission considers the matter of offsets. This was a gift that Congress was not required to make since the statute of limitations had long since run against the Board's action in not making an award.

We consider the appropriation by Congress something less than a recognition of liability for the loss of the Peralta Tract. From a reading of the committee hearings and reports, it appears that Congress and its committees were literally leaning over backwards to satisfy these Pueblo Indians and that the appropriation was in fact a gratuity. The statement in the House Committee Report, previously quoted, that "the board made no award for this tract, apparently holding in error that it could not have been recovered for the Indians" is not a positive statement of fact.

The defendant also points out the 1949 action of Congress in directing that title to three tracts, including 11,142.39 acres of the Peralta Tract acquired by defendant in the submarginal land program, be held in trust for the petitioner, as further evidence of the fair and honorable treatment by the defendant (Def. Brief p. 90). Thus petitioner has been given almost all of the Peralta Tract, in addition to the compensation appropriated by Congress based on the total acreage.

Accordingly, we do not believe that the petitioner has shown that the defendant is liable on its first cause of action.

SECOND CAUSE OF ACTION

Petitioner's second cause of action asks just and fair compensation for the loss of 2,582.78 acres constituting the Bosque de los Pinos, which will hereafter be referred to as the Bosque Tract. It is designated "Antonio Gutierres and Joaquin Sedillo Grant, Tract No. 1" on the survey plat (Ex D. in Petition; Pl. Ex. 6). The east boundary is the old bed of the Rio Grande River and the west boundary is the river bed after the river changed course at a time which has not been made certain in the record. The Lo de Padilla Grant lies immediately to the east and the Isleta Pueblo Grant to the north.

On September 9, 1896 two petitions were filed in the Court of Private Land Claims by J. Francisco Chavez against the United States, seeking confirmation of the Gutierrez and Sedillo grants (Def. Finding 35; Def. Ex. 18, p. 1). On November 13, 1896 the Pueblo de Isleta, represented by attorney G. L. Solignac, petitioned the court that it be allowed to join as a co-petitioner, adopting the allegations of the Chavez petitions (Def. Ex. 18,

p. 5). Upon the entry of such an order, the court consolidated the two cases, No. 274 and 275, and trial was had, as reported in the Transcript of Record (Def. Ex. 18). In its Decree of Confirmation of June 2, 1897 (Def. Ex. 4; Def. Ex. 18, p. 35), the court found that the Spanish grant to Antonio Gutierrez was made on November 5, 1716, and the grant to Joaquin Sedillo some time prior to 1734; and that in 1785 Clemente Gutierrez died in possession of and owning both tracts. The court also found:

> 4. At some time prior to the 3rd of May, 1808, the Pueblo of Isleta had acquired the title of Clemente Gutierrez to all of said land lying on the west side of the present river bed of the Rio del Norte and had entered into possession of the same and has held such possession down to the present time . . . . .
>
> 5. By a number of different deeds from the children and heirs of Clemente Gutierrez, beginning in the year 1819, Francisco Xavier Chavez acquired all of the Gutierrez title to so much of said lands as lie to the east of the present river bed of the Rio Grande del Norte which portion of said lands is known as the Bosque de los Pinos . . . .
>
> 7. After the making of the original grants the Rio Grande del Norte formed a new channel west of what was subsequently known as the Bosque de los Pinos, leaving its former river bed at a considerable distance east of the new one, and that portion of the land in question lying between the old and new river beds has since been known as the Bosque de los Pinos and is that which was acquired by Francisco Xavier Chavez.

The court therefore ordered the claim for the Bosque Tract confirmed to J. Francisco Chavez, who had inherited the title of Francisco Xavier Chavez, and the land lying west of the present river bed to the Pueblo

of Isleta. An opinion in Case No. 274 (Def. Ex. 18, pp. 37-40) discusses the two questions presented in the case: first, as to the boundaries of the land granted, and second, whether the plaintiff or his co-petitioner is so connected with the title as to authorize the proceeding. One judge dissents (pp. 40-44).

The United States appealed the decision of the Court of Private Land Claims to the United States Supreme Court. Defendant's Exhibit 5 is a copy of the opinion affirming the lower court, reported as United States v. Chavez, 175 U.S. 509, October term, 1899. Mr. Frank W. Clancy is attorney of record for the appellees (p. 518). A sketch map appears at p. 519. The essence of the opinion, delivered by Justice McKenna, is that the title asserted by the appellees is deficient in the support of direct evidence, but such deficiency is supplied by the probative force of the possession of the land. The possession of the Isleta is said to have been open and notorious "as far back as the memory of the oldest living inhabitant can extend" (p. 524). The court further makes it clear that a proceeding before the Court of Private Land Claims "is not a litigation between conflicting private interests", but "is one against the United States, and determinative only of the title against the United States" (p. 525). Confirmation is subject to all other interests and claims, and the forum for their determination is the ordinary courts (Ainsa v. New Mexico and Arizona Railroad, ante, 76; and United States v. Conway, ante, 60; both decided at the present term).

On November 15, 1909 a joint patent (Def. Ex. 6) was issued to J. Francisco Chavez and his heirs and to the Pueblo of Isleta for the