

BEFORE THE INDIAN CLAIMS COMMISSION

THE CHICKASAW NATION,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Docket No. 268
	)	
THE UNITED STATES,	)	
	)	
Defendant	)	

Decided: April 20, 1962

Appearances:

Paul M. Niebell,  
Attorney for Petitioner

Fred C. Ward, Jr., with  
whom was Mr. Assistant  
Attorney General,  
Ramsey Clark,  
Attorneys for Defendant

OPINION OF THE COMMISSION

Holt, Associate Commissioner, delivered the opinion of the Commission.

The Chickasaw Nation of Indians has brought the subject claim to recover the value of a one-fourth interest it had acquired in a tract of land which was erroneously excluded from an area which had been ceded to the Choctaw Nation. The defendant has moved for a summary judgment on the ground that there is no genuine issue as to any material fact and that the matter is res judicata by reason of former decisions of the Court of Claims. The petitioner filed objections to defendant's motion and said motion was orally argued before the Commission and taken under advisement.

The Choctaw Nation acquired, by cession from the United States, a tract of land located in the southern part of the present State of Oklahoma (Treaty of October 18, 1820, 7 Stat. 210). Thereafter, by the Treaty of January 20, 1825 (7 Stat. 234) the Choctaw Nation ceded to the United States all that portion of the land ceded to it by the Treaty of 1820 lying east of a line beginning on the Arkansas River one hundred paces east of Fort Smith, and running thence due south to Red River.

The eastern boundary of the Choctaw land, as established by the 1825 Treaty, was surveyed and marked in November and December, 1825, and the line thus fixed was supposed to be the true east boundary. Upon a resurvey of the line, following the Treaty of June 22, 1855 (11 Stat. 611), it was discovered that the original survey was in error and that the line bore to the west from the true north-south line, leaving a triangular tract of land of 136,204.02 acres to the east of the line, which tract should have been included in the land conveyed by the United States to the Choctaw Nation.

In the meantime, by the Treaty of January 17, 1837, (11 Stat. 573) the Choctaw Nation agreed for a consideration of \$530,000.00 to sell the Chickasaws an interest in its lands. Thereafter, the Choctaw's interest in the lands was determined to be three-fourths and the Chickasaw's interest one-fourth.

Congress, by the Act of March 3, 1875, provided that the eastern boundary of the Choctaw-Chickasaw tract should be as originally surveyed and marked in 1825. That act thus ratified and made permanent the boundary line as

originally surveyed and, as a consequence, the tract of 136,204.02 acres was not included in the lands ceded by the 1820 and 1825 Treaties.

In 1886 the Court of Claims allowed the Choctaw Nation the value of the 136,204.02 acres, found to be \$68,102.00, in deciding various items of dispute between the Choctaws and the United States (The Choctaw Nation v. United States, 21 C. Cls. 59). While the case was reversed by the Supreme Court, The Choctaw Nation v. United States, 119 U. S. 1, this particular item as decided by the Court of Claims was approved and permitted to stand. The Chickasaw Nation was not a party to that suit.

Under the jurisdictional Act of June 7, 1924 (43 Stat. 537), the Chickasaw Nation, the petitioner herein, filed its claim for just compensation for its interest in the erroneous survey strip of land involved in the Choctaw Nation case. In that action the Chickasaw Nation sought to recover "the sum of \$42,798.45 (which is one-fourth of the total sum of \$171,193.81, the total value of the 136,955.05 acres <sup>1/</sup> of land now in controversy, computed upon the basis of \$1.25 per acre), together with interest at the rate of five per centum per annum from March 3, 1875, to the date of such judgment . . ." (Amended Petition, filed January 19, 1937, in the Court of Claims, No. K-334, Def. Ex. 1, p. 9). In that case the Court of Claims found that the value of the lands taken as a result of the erroneous survey was \$68,102.00 and made an award to the Chickasaw Nation

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<sup>1/</sup> In its petition the Chickasaw Nation alleged the area of the tract to be "136,955.05 acres (or the number of acres which the proof may show)" (Def. Ex. 1, p. 8).

in the amount of \$17,025.50 with interest at the rate of 5 per cent per annum from February 19, 1906, totaling \$50,128.27. The Chickasaw Nation v. The United States and the Choctaw Nation, 94 C. Cls. 215. Subsequently, upon the hearing of the defendant's counterclaim, the court held that defendant was entitled to an offset of \$57,500.00 (103 C. Cls. 45). Accordingly, the court set off against the award in favor of the Chickasaw Nation the exact amount of the award and the petition was dismissed.

In the subject case the petitioner seeks recovery of one-fourth of the value of the 136,204.02 acre tract alleging that such land had a value of \$171,193.81 and that, therefore, the Chickasaw Nation should recover the sum of \$42,798.45 together with the sum of 5% per annum from the effective date of the Act of 1875.

The doctrine of res judicata operates to bar a subsequent demand by a party based upon a claim which has previously been adjudged on its merits between the same parties. There is no dispute in this case as to the identity of the parties in this claim and the Court of Claims case. And while there is no dispute that the Court of Claims adjudicated the petitioner's claim for just compensation for the same lands involved in the subject case, it is petitioner's contention that the prior litigation involved legal and equitable claims while the instant case involves purely moral considerations. Petitioner argues that the legal defense of res judicata cannot operate to bar a claim asserted on moral grounds.

While the petition in this case asserted the claim for recovery under Clauses (3) and (5) of Section (2) of the Indian Claims Commission

Act (60 Stat. 1049; 25 U.S.C. 70a) petitioner's counsel stated at the oral argument on April 11, 1962, that the claim was brought under Clause (5) only and that there was no claim under Clause (3) (April 11, 1962, Tr. 18). The provisions of Clause (5) of Section (2) of the Act confer upon the Commission jurisdiction to hear and determine "claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity" (25 U.S.C. 70a). Section (2) of the Act also contains the provision that "all claims hereunder may be heard and determined by the Commission notwithstanding any statute of limitations or laches, but all other defenses shall be available to the United States."

In this case the Chickasaw Nation seeks to have this Commission entertain a claim which has been fully adjudicated on the merits by the Court of Claims. As frankly stated by its counsel, petitioner would have this Commission value the lands involved at a greater figure than the fifty cents per acre amount as found by the Court of Claims and, upon a finding that the United States (in this case the Court of Claims) acted unfairly and dishonorably toward the Chickasaw Nation, enter an award for a sum greater than that allowed by the Court of Claims.

We cannot agree with petitioner's contention in this case. It is clear that the claim presented here for just compensation for the taking by the United States of lands in which petitioner had a one-fourth interest was fully adjudicated by the Court of Claims on its merits between the same parties to this action, and the defense of res judicata bars this Commission from entertaining this claim.

This same question was before the Court of Claims on appeal from a decision by this Commission granting defendant a summary judgment on the defense of res judicata. In affirming the decision the Court of Claims stated, in The Western (Old Settler) Cherokee Indians, et al v. The United States, 116 C. Cls. 665, 677, 678 (Cert. denied 340 U. S. 903):

\* \* \* A study of the history of the Act of August 13, 1946, supra, particularly of Section 2, defining the jurisdiction of the Indian Claims Commission and enumerating the types of claims which the Commission should hear and determine, shows that it was not the intention of the Act to permit Indian tribes or bands or identifiable groups of Indians, to re-litigate before the Commission any claim with respect to which such tribes, bands or groups, had had their day in court. /Citing legislative history references/ We think it is clear that appellants have heretofore had their day in court upon their claims for interest on the principal sums on which they now seek to recover additional interest in these proceedings before the Indian Claims Commission. In addition, we think it is clear from the history of the Act of 1946 that Congress did not intend to confer upon the Commission jurisdiction to permit claims, such as are here involved, to be re-litigated under clause (5) of Section 2 on the basis of fair and honorable dealings. Clause (5) obviously has reference to the fundamental character of the claim rather than to the theory on which an Indian tribe or band may seek to invoke the jurisdiction of the Indian Claims Commission. Cf. Sioux Tribe of Indians v. The United States, 112 C. Cls. 39, 45, 46; Sioux Tribe of Indians v. The United States, 112 C. Cls. 50, 57. If the claims made by appellants in these cases could be again heard and determined by the Indian Claims Commission, it would be difficult to imagine a claim, even though previously considered and decided on the merits by this court, which could not be re-litigated before the Commission merely by basing the claimed right of recovery on the provision of clause (5), supra. Clause (5) was intended, as its language clearly shows, when considered in the light of its history and other provisions of Section 2, to cover only moral claims based on justice and fair dealings or broad principles of equity and justice, with respect to which no court had theretofore made a determination on the merits, or could have made such a determination under the terms of prior jurisdictional acts. See The Western (Old Settler) Cherokee Indians, et al., v. The United States, 114 C. Cls. 716.

The claim asserted herein having been adjudicated on its merits by the Court of Claims between the same parties, this Commission is without jurisdiction to entertain the subject claim. The motion for summary judgment will, therefore, be granted and the petition dismissed.

Wm. M. Holt  
Associate Commissioner

We concur:

Arthur V. Watkins  
Chief Commissioner

T. Harold Scott  
Associate Commissioner