BEFORE THE INDIAN CLAIMS COMMISSION

THE SEMINOLE NATION, Plaintiff,	)	
v.	)	Docket No. 247
THE UNITED STATES, Defendant.	)	

Decided: June 30, 1967

Appearances:

Roy St. Lewis, with whom was Paul M. Niebell, Counsel for Plaintiff

Maurice H. Cooperman (retired) and Milton E. Bander, with whom was Mr. Assistant Attorney General Edwin L. Weisl, Jr., Counsel for Defendant

PER CURIAM OPINION

This case is presented for decision upon the defendant's motion for summary judgment, wherein the defendant alleges:

1. The plaintiff fails to state facts sufficient to constitute a cause of action;

2. The plaintiff fails to state any claim upon which relief can be granted;

3. The issues set forth are res judicata or foreclosed by the principles of collateral estoppel; and

4. The claims, if any exist, lie against the railroad companies, not against the defendant.

The plaintiff addressed its rebuttal chiefly toward the defense of res judicata, touching only briefly upon the facts alleged in the instant suit.

The defenses of res judicata and collateral estoppel are premised upon prior litigation in the Court of Claims: Seminole Nation v. United States, 75 C. Cls. 873 (1932), and Seminole Nation v. United States, 97 C. Cls. 723 (1942), aff'd. 318 U.S. 629 (1943), reh. den. 319 U. S. 780 (1943). The earlier case sought, unsuccessfully, to impose liability upon the United States for failure to collect rentals or to take forfeitures of land which, after being granted for railroad rights of way, was abandoned for railroad purposes. The later case sought, also unsuccessfully, to impose liability upon the United States for failure to ensure that the Seminoles' quiet possession, guaranteed by treaty, included quiet possession vis-a-vis railroad operations. In each instance, the suit failed because the remedy sought was not available under the limited statutory authority conferring jurisdiction in the Court of Claims.

Taking the first and second grounds for sustaining a motion for summary judgment, the Commission must view the facts alleged by the plaintiff in the light most favorable to the plaintiff. Osage Nation v. United States, 16 Ind. Cl. Comm. 190 (1965). Viewing the allegations from this vantage point, it is arguable that railroad companies influenced the defendant to secure grants for railroad rights of way in excess of the needs of the railroads. It is also arguable that the

railroads and the defendant intended that such excess grants be used more profitably than the plaintiff would have used them. The claim which the plaintiff would invoke is the relief of revision of those portions of treaties which culminated in the grants of the rights of way. The plaintiff would also have the defendant account for rents and profits which, it is alleged, the defendant should have exacted from the various railroads. These are claims clearly comprehended by the fifth clause of Section 2 of the Indian Claims Commission Act of 1946 (25 U.S.C. 70a) and if the allegations are sustained, relief can indeed be granted.

The defenses of res judicata and collateral estopped must be considered separately. Application of the doctrine of res judicata requires unity of parties, facts, and causes of action and, as this Commission has often had occasion to state, the causes of action available under the Indian Claims Commission Act of 1946 were not available in any forum prior to passage of the Act. Creek Nation v. United States, 17 Ind. Cl. Comm. 700 (1967). It follows that the doctrine of res judicata is not available to the defendant in the suit at bar.

Collateral estoppel is the theory that facts once litigated shall not be relitigated, provided only that the facts so litigated and determined were essential to the prior judgment. Seminole Nation v. United States, 10 Ind. Cl. Comm. 450 (1962). It cannot be determined whether collateral estoppel should be applied to any particular allegation until, after trial and briefing, that allegation becomes a fact. At that point,

collateral estoppel could conceivably be available to either party, depending upon their respective positions at that point. To urge collateral estoppel now is premature.

There remains the contention that the plaintiff has chosen the wrong defendant; that if there be a claim, it lies against the railroad companies and not the defendant. The Commission can agree that if the railroad companies still existed, they might bear some onus for their participation in the joint tort of, for instance, trespass on Seminole lands (Tr. 60). But one who joins in committing a tort cannot escape liability by showing that another is also liable. Little v. Hackett, 116 U. S. 366 (1866). The rule is that joint tortfeasors are jointly and severally liable (Lovejoy, et al. v. Murray, 3 Wall. 1 (1866)) and the aggrieved party has the option of choosing whether those joint tortfeasors shall be treated as joint or several. United States v. Platt, et al., 157 U.S. 113 (1895). The suit at bar presents a joint tortfeasor aspect in that it is alleged that the defendant acquiesced in or aided the railroads' acquisition of Seminole land wrongfully and it is immaterial whether the defendant's culpability was passive or malevolent. Creek Nation v. United States, 17 Ind. Cl. Comm. 700 (1967). Here, the Seminole Nation has obviously elected to treat the United States severally and that choice is no inhibition to maintenance of the suit at bar.

In view of the foregoing discussion, it is apparent that the defendant's motion for summary judgment must be, and it is hereby, denied.

So ordered.

/s/ Arthur V. Watkins
Arthur V. Watkins
Commissioner

/s/ Wm. M. Holt
Wm. M. Holt
Commissioner

/s/ T. Harold Scott
T. Harold Scott
Commissioner