BEFORE THE INDIAN CLAIMS COMMISSION

THE SIOUX NATION, ET AL., Plaintiffs,	)	
v.	)	Docket No. 74
THE UNITED STATES OF AMERICA, Defendant.	)	

Decided: March 8, 1972

Appearances:

Arthur Lazarus, Jr., William Howard Payne, and Marvin J. Sonosky, Attorneys for Plaintiffs.

Craig A. Decker, with whom was Mr. Assistant Attorney General Shiro Kashiwa, Attorney for Defendant.

OPINION OF THE COMMISSION

Commissioner Vance delivered the opinion of the Commission.

The plaintiffs in Docket No. 74 have filed a motion requesting leave of the Commission to file amendments to their petition. The proposed amendments present an alternative theory of recovery based on the Commission's decision of December 2, 1970, Sioux Nation v. United States, Dockets 74, et al., 24 Ind. Cl. Comm. 147. In that decision the Commission held that the "Sioux or Dahcotah Nation," in which the United States recognized title to a vast tract of land west and south of the Missouri River, was composed of the Teton and Yankton divisions of Sioux; and that the Tetons held an undivided 83% interest in the Sioux Fort Laramie land, and the Yanktons held an

undivided 17% interest in that land. Under the proposed amendments, the plaintiffs claim that by its recognizing title in the "Sioux or Dahcotah Nation," as that term was interpreted by the Commission, the United States deprived the plaintiffs' ancestors of 17% of their aboriginal lands. The amendments request that the plaintiffs be compensated for these lands lost in 1851.

The defendant objects to the proposed amendments on several grounds, the primary one being that the amendments present a new claim which is barred by the Commission's statute of limitations. Section 12 of the Indian Claims Commission Act, 25 U.S.C. § 70k (1970), bars all claims existing prior to August 13, 1946, but not presented to the Commission by August 13, 1951. The claim presented in the proposed amendments can escape this statutory bar only if it relates back to the original petition filed in this docket on August 15, 1950.

The Court of Claims discussed the issue of when a claim added by amendment relates back to the original petition in Snoqualmie Tribe of Indians v. United States, 178 Ct. Cl. 570, 372 F.2d 951 (1967) (aff'g in part, rev'g in part, Docket 93, 15 Ind. Cl. Comm. 267 (1965)). The court stated that the test is whether the Government received sufficient notice of the claim. Id. at 587, 372 F.2d at 960. The Commission's inquiry should therefore "focus on the notice given by the general fact situation set forth in the original pleading." Id. The Government will have received sufficient notice if the claim in the amended petition arose

out of the conduct, transaction, or occurrence set out in the original petition. Id.[1/]

The original petition filed in Docket 74 appears to set forth the following:

(1) An allegation that the Sioux had aboriginal title to an area covering all or parts of seven states, which area included the Sioux Fort Laramie land;

(2) An allegation that the United States recognized the title of the Sioux to a portion of that area by the Fort Laramie Treaty of September 17, 1851, 11 Stat. 149;

(3) A recitation of the provisions of the Treaty of April 29, 1868, 15 Stat. 635; and

(4) A recitation of the provisions of the Act of February 28, 1877, 19 Stat. 254.

The general fact situation set forth in the original pleading is that the Sioux had title to a large area of land, and that the United States, by means of treaty and act of Congress, wrongfully deprived the Sioux of the greater portion of this land. The claim presented in the proposed amendments is that the United States, by means of the Fort Laramie Treaty, supra, wrongfully deprived the Sioux of a portion of their aboriginal lands. The transaction which gave rise to this

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1/ This notice requirement is reflected in Rule 13(c) of the Commission's General Rules of Procedure which states:

> Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. (25 C.F.R. § 503.13(c) (1968)).

claim--the Fort Laramie Treaty--was pleaded in the original petition. The conduct which gave rise to the claim--that the United States wrongfully deprived the Sioux of their land--is the same as that pleaded in the original petition. Cf. United States v. Northern Paiute Nation, 183 Ct. Cl. 321, 329, 393 F.2d 786, 791 (1968) (aff'g, Docket 87, 16 Ind. Cl. Comm. 215 (1965)). It is our opinion that the original petition in Docket 74 placed the defendant on notice that the plaintiffs might expand their claim to include lands lost under the Fort Laramie Treaty. Therefore the proposed amendments relate back to the original petition, and the claim stated in these amendments was "presented" to the Commission prior to August 13, 1951.

The defendant also asserts that the claim presented in the proposed amendments is outside the scope of the Court of Claims remand order of November 5, 1958. In that order the court vacated its judgment of affirmance of the Commission's order of dismissal of Docket 74 (Sioux Tribe of Indians v. United States, 146 F. Supp. 229 (1956) (aff'g, Docket 74, 2 Ind. Cl. Comm. 646 (1954)) and remanded the case to the Commission to determine:

> (1) whether the claimant Indian tribes are entitled on the basis of the statements made in support of the above motions to have the proof in this case reopened, and (2) if so, to receive the additional proof sought to be offered and on the basis thereof, together with the record already made, reconsider its prior decision in this matter. (Sioux Tribe of Indians v. United States, App. No. 4-55 (Ct. Cl., Nov. 5, 1958)).

See generally Sioux Tribe of Indians v. United States, 182 Ct. Cl. 912 (1958). The statements which the plaintiffs made in support of their motion in the court to vacate and remand the case to the Commission were (1) that because of ineffective and inadequate counsel their claims had been decided by the Commission on the basis of an incomplete record, (2) that the Commission erred in not independently investigating their claims, (3) that some of the Commission's findings of fact were not supported by any evidence, and (4) that plaintiffs' rights should not be prejudiced by an erroneous concession of fact by plaintiffs' prior counsel. On the basis of these statements the Commission, on November 19, 1958, reopened the proof in the case and announced that it would reconsider its previous decision. The thirteen years which have elapsed since that order, in which time the Commission has tried the title and value phases in both Dockets 74 and 74-B, make it evident that the Commission has reconsidered its order of dismissal of April 5, 1954, and has found it to be erroneous. The Commission has never considered the court's remand order to in any way limit the Commission's authority to fully adjudicate these dockets. It is clear that that order allowed this Commission to reconsider its order of dismissal not only with respect to the three claims expressly stated in the plaintiffs' memorandum in support of their motion to vacate and remand but also with respect to any other claim that was presented in the plaintiffs' petition. We have already stated that the claim asserted in the proposed amendments was presented in that petition. The proposed amendments are therefore not outside the

scope of the remand order.[2/]

The defendant further contends that plaintiffs' attempt to amend their petition to present a new theory of recovery constitutes an impermissible splitting of their cause of action. This contention is without merit. The doctrine against splitting causes of action is merely a particular application of the general doctrine of res judicata. 1B Moore's Federal Practice ¶ 0.410[2], at 1165, 1167 (1965). It arises from the rule that a valid judgment on the merits acts as a bar not only as to those matters which were actually litigated but also as to every ground of recovery which could have been presented in the suit. See id. at 1163; Restatement of Judgments § 62 (1942). A plaintiff, therefore, cannot split his cause of action and use several grounds of recovery in the same cause of action as the basis for separate suits. Judgment in the first suit would preclude him from bringing a second suit on the same cause of action. It is clear that this doctrine does not apply in this case. There is no final judgment in this docket which would bar plaintiffs from filing a second suit. Moreover, plaintiffs are not attempting to file a second suit on a cause of action upon which this Commission has already ruled. Rather they are attempting to amend their petition to present an additional cause of action which this Commission has not yet ruled upon. Therefore, the rule against splitting a cause of action does not preclude plaintiffs from amending their petition.

2/ Defendant made a similar contention in opposing the plaintiffs' motion for leave to amend their petition, which was filed May 11, 1960. In allowing the amendment, by order of November 4, 1960, the Commission impliedly rejected the defendant's attempt to limit the scope of the court's remand order.

The defendant also contends that the claim presented in the proposed amendments is totally devoid of merit on its face. It is the position of the United States that it cannot possibly be held liable twice for any portion of the Sioux Laramie land. We disagree. If the plaintiffs are able to prove that they owned 100% of this land prior to the Fort Laramie Treaty, and that after that treaty they retained less than that 100% interest, then the United States can be held liable for whatever interest the plaintiffs lost under the treaty. In other words, the plaintiffs should be fully compensated for whatever lands they lost because of the treaties they entered into with the United States.

Finally, defendant argues that the proposed amendments are inconsistent with the plaintiffs' earlier representation that they had no further aboriginal title claims to prosecute. Although this Commission is as eager to complete these cases as the defendant claims to be, we are unable to hold that plaintiffs' representation bars it from litigating aboriginal title to the Fort Laramie area. Plaintiffs' statement that they had no further aboriginal title claims was made in response to defendant's motion to dismiss any claim the plaintiffs might wish to assert of aboriginal title to lands outside of the Sioux Laramie lands. Thus it was only with respect to lands outside of the Sioux Fort Laramie lands that plaintiffs announced they had no aboriginal title claims.

For the reasons stated above the Commission shall issue an order granting plaintiffs leave to amend their petition as requested.

John T. Vance, Commissioner

We Concur:

Jerome K. Kuykendall, Chairman

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner