

BEFORE THE INDIAN CLAIMS COMMISSION

THE CADDO TRIBE OF OKLAHOMA, IN ITS OWN )  
 RIGHT AND DAN MADRANO, LLOYD TOUNWIN AND )  
 ANDREW DUNLAP ON RELATION OF THE CADDO )  
 TRIBE OF INDIANS AND THE CADDO TRIBE OF )  
 OKLAHOMA EACH ON BEHALF OF OTHERS )  
 SIMILARLY SITUATED AND ON BEHALF OF THE )  
 CADDO TRIBE AND VARIOUS BANDS AND GROUPS )  
 OF EACH OF THEM COMPRISING THE CADDO )  
 TRIBE AND NATION, )

Plaintiffs, )

THE ALABAMA-COUSHATTA INDIANS OF TEXAS )  
 and the COUSHATTA INDIANS OF LOUISIANA, )

Intervenors, )

THE WICHITA INDIAN TRIBE OF OKLAHOMA AND )  
 BANDS AND GROUPS WHICH HAVE BEEN OR WHICH )  
 ARE AFFILIATED WITH THE WICHITA INDIAN )  
 TRIBE OF OKLAHOMA, INCLUDING BUT NOT )  
 LIMITED TO THE WICHITA, WACOS, KEECHIS )  
 AND TOWACONIES, )

Second Intervenors, )

TONKAWA TRIBE OF INDIANS OF OKLAHOMA )  
 amalgamated with and successors in )  
 interest to the TEXAS TONKAWA TRIBE and )  
 the TEXAS LIPAN TRIBE and the TEXAS )  
 KARANKAWA TRIBE, )

Third Intervenors, )

v. )

Docket No. 226

THE UNITED STATES OF AMERICA, )

Defendant, )

THE CHEROKEE NATION OF OKLAHOMA, for and on )  
 behalf of the Texas Cherokee Band, )

Third Applicants for )  
Intervention. )

Decided: March 8, 1972

Appearances:

Rodney J. Edwards, Attorney for the  
Plaintiffs.

Alan H. Minter and Jim D. Bowmer, Attorneys  
for the Intervenors.

Omer Luellen, Attorney for the Second  
Intervenors.

Tom Diamond, Attorney for the Third Intervenor. J. J. Bowden was on the brief.

Bernard M. Sisson, with whom was Mr. Assistant Attorney General Kent Frizzell, Attorneys for the Defendant.

Paul M. Niebell, Attorney for the Third Applicants for Intervention.

OPINION OF THE COMMISSION

Commissioner Yarborough delivered the opinion of the Commission.

The Cherokee Nation of Oklahoma for and on behalf of the Texas Cherokee Band has moved for leave to intervene in the proceedings under the above-captioned docket presently before the Commission. It is alleged that the Texas Cherokee Band is a constituent part of the Cherokee Nation of Oklahoma.

In the proceedings under Docket No. 26, 2 Ind. Cl. Comm. 516 (1953), the Commission dismissed a claim brought by "The Texas-Cherokees and Associate Bands, on the relation of W. W. Keeler, Homer L. Smith, Frank M. Carr, Paul Johnson and Joe Rogers, members of its Executive Committee." This claim was brought for the value of 1,640,000 acres of land in east-central Texas (surrounding the present city of Tyler) title to which was alleged to have been granted the Indians by the governments of Spain, Mexico and, later, the Republic of Texas, and from which it was alleged that the Texas-Cherokees and Associate Bands were driven into Oklahoma in 1839 by military forces of the Republic of Texas. The claim in Docket No. 26 was dismissed on the grounds that (1) the entity represented by the plaintiffs therein did not constitute a tribe, band or other identifiable group

within the meaning of section 2 of the Indian Claims Commission Act, 60 Stat. 1049, 1050, and (2) there could be no recovery, in any case, against the United States for the taking of Indian lands by the Republic of Texas. A notice of appeal was filed but later withdrawn. On May 25, 1954, the Commission, pursuant to section 21 of the Indian Claims Commission Act, 60 Stat. 1055, submitted its report to Congress that proceedings had been finally concluded under Docket No. 26.

The claim asserted by the third applicants for intervention in Docket 226 involves the same lands and is based upon the same acts of expulsion by the forces of the Republic of Texas. The two claims differ in two respects; first, the present claim contains allegations of aboriginal title while the former alleged recognized title and, second, the former claim was brought by the Texas Cherokee Band while the present motion is made by the Cherokee Nation on behalf of the Texas Cherokee Band.

It is the Commission's opinion that the claim of the third applicants for intervention is barred by reason of the operation of section 22(b) of the Indian Claims Commission Act, 60 Stat. 1055, which states as follows:

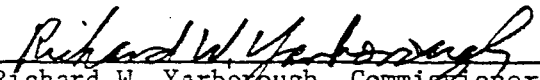
A final determination against a claimant made and reported in accordance with this Act shall forever bar any further claim or demand against the United States arising out of the matter involved in the controversy.

The term "matter in controversy" (or "matter in dispute") has been defined to mean "the subject of the litigation, the matter upon which the action is brought and issue is joined . . . ." Smith v. Adams, 130 U.S. 167, 175 (1889). The matter upon which the action was brought in Docket No. 26 was the liability of the United States for the taking by

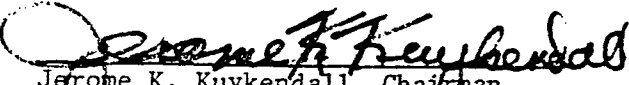
the Republic of Texas of the lands allegedly owned and occupied by the Indians. The motion for intervention in Docket No. 226 clearly involves the same subject, liability for the lands allegedly taken by the Republic of Texas. Differing allegations as to the nature of the title claimed do not alter the identity of subject matter of the two claims.


We conclude, therefore, that the matter in controversy here is the same as in the previously dismissed Docket No. 26 and that, pursuant to section 22(b) of our Act, the Commission is without jurisdiction to adjudicate the claim of the third applicants for intervention. We further conclude that the claimant parties are not different merely because the present motion is made by the Cherokee Nation on behalf of the Texas Cherokees. See Restatement of Judgments §85 (1942).


An order will be entered today denying the motion of the third applicants for intervention.

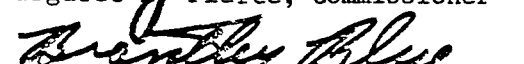
  
Richard W. Yarborough, Commissioner

We concur:

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner