

## BEFORE THE INDIAN CLAIMS COMMISSION

THE SIOUX INDIANS OF THE  
SANTEE RESERVATION IN THE  
STATE OF NEBRASKA,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 104.

Decided: October 17, 1952.

Appearances:

Ralph H. Case,  
Attorney for Plaintiffs,

Maurice H. Cooperman and Joseph G. Burke,  
with whom was Mr. Acting Assistant Attorney  
General, Ralph J. Luttrell,  
Attorneys for Defendant.

OPINION OF THE COMMISSION

PER CURIAM. This case was submitted to the Commission upon the motion of the defendant, pursuant to Section 11 (b), General Rules of Procedure, Indian Claims Commission, for a summary judgment in favor of the defendant dismissing the petition upon the following grounds:

There is no genuine issue of any material fact, and the defendant is entitled to judgment as a matter of law in that the issues contained in the petition have been heretofore judicially determined and the matter is res judicata by reason of the former decisions of the United States Court of Claims in the cases of Medawakanton Indians, et al., v. United States, 57 C. Cls. 357, and Sioux Tribe of Indians v. United States, 95 C. Cls. 72. No appeal from either decision was taken to the Supreme Court.

In support of said motion, the defendant says:

1. Pursuant to the Act of Congress approved March 4, 1917, 39 Stat. 1195, the plaintiffs filed their petition in the Court of Claims (Case No. 33728) in which they sought to recover from the defendant the amount of the annuities due them under the treaties of 1837 (7 Stat. 538) and 1851 (10 Stat. 954), as if the Act of forfeiture approved February 16, 1863 (12 Stat. 652) had not been passed. Following a trial upon the merits, the court in 57 C. Cls. 357, rendered judgment against the defendant, after the allowance of offsets, in the total amount of \$386,597.89. Item No. 10, one of the offsets allowed by the court in that action was the sum of \$1,903,023.22. This item is now sought to be relitigated in the present action.

2. Pursuant to the Act of Congress approved June 3, 1920, 41 Stat. 738, the plaintiffs brought suit (Case No. C-531(12)) seeking again to recover the amount of this offset. The court, following a trial upon the merits, rendered judgment dismissing the petition, 95 C. Cls. 72.

3. The issues now sought to be litigated have been fully tried and determined and are now res judicata between the parties.

The plaintiffs plead that they and the defendant "are in substantial agreement as to the facts" in the case; that the question before the Commission is whether or not (under the admitted facts) the rule of res judicata is applicable in the case. The plaintiffs contend that it is not.

The plaintiffs, in support of their contention that the rule of res judicata is not applicable, contend that the decisions of the Court of Claims in the cases of Medawakanton Indians, et al v. United States, 57 C. Cls. 357, and Sioux Tribe of Indians v. United States, 95 C. Cls. 72, were not the result of "a trial upon the merits," the plaintiffs contending that the jurisdictional acts upon which the Court of Claims rendered the decisions relied upon by the defendant did not authorize

the Court of Claims to determine whether or not it was "unfair for the Congress to require the Santee Indians to repay to the United States the amount of benefits they had received under the treaty of 1868"; that only in the instant case under the Act creating the Indian Claims Commission have the plaintiffs had opportunity to have considered by any Court the question of the fairness or unfairness of requiring the Indians to repay said benefits.

Plaintiffs further contend that a violation of the Constitution is involved in this lawsuit as to which there was no authority in previous jurisdictional acts, under which the decisions relied upon were made, to consider.

It is undisputed that the parties to the present lawsuit are the same as those involved in the previous lawsuits which are urged by the defendant as res judicata, and that the subject matter in the previous lawsuits and in the instant case is the same.

Briefly stated, the history of the transaction involved is as follows:

Under treaties of September 29, 1837 (7 Stat. 538) and August 5, <sup>1851</sup> ~~1851~~ (10 Stat. 954) the plaintiff Indians ceded all their right, title and interest to all lands to which they claimed ownership and became entitled by reason of such cessions to annuities as under said treaties provided. Thereafter, because of the participation of the plaintiff Indians in ~~the war between the States~~ against the United States, Congress by the act of February 16, 1863 (12 Stat. 652) declared forfeited all

annuities and claims of every kind to which the Indians were previously entitled.

Thereafter, however, on April 29, 1868, plaintiffs, together with bands of Sioux Indians, entered into a treaty of amity with the United States (15 Stat. 653) by the terms of which treaty the plaintiff Indians promised to keep the peace and the United States agreed to supply the treaty Indians with buildings, money, clothing, food, and other benefits. Under this treaty, however, the plaintiff Indians ceded no land to the United States, however, reservations were provided for the treaty Indians, including the plaintiff Indians.

Thereafter, by special jurisdictional act of March 4, 1917 (39 Stat. 1195) jurisdiction was conferred upon the Court of Claims to hear and determine and render judgment for any amount that might be found due the plaintiff Indians by reason of the previous forfeiture of annuities, and said forfeiture was in effect set aside and declared a nullity; it being provided, however, that there should be "set off against any amount found due under said treaties all moneys paid to said Indians or expended on their account by the Government of the United States since the treaties were abrogated by the Act of February sixteenth, eighteen hundred and sixty-three." Pursuant to this act the plaintiffs instituted suit and the Court determined that the Indians were entitled to credits on the basis of the said treaties and the annuities therein provided (on the theory that their abrogation had been cancelled and held for naught) in the total amount of \$4,642,750.00. The Court further held that the offset as required by said jurisdictional act to be set off against said







