

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, ¹⁸⁵¹ ~~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

annuity obligations amounted to \$4,256,152.11, leaving a balance due the Indians by reason of said annuity obligations, after deducting the offsets as aforesaid, of \$386,597.89, and judgment was entered in favor of the plaintiffs for said amount of \$386,597.89.

The deductions as offsets comprised ten items, the tenth item being denominated as "Expenditures for support, subsistence, clothing, civilization, agriculture, etc., after the treaty of April 29, 1868, from July 15, 1870, to February 19, 1921, out of annual appropriations.....\$1,903,023.22," which said amount is the amount sued for in the instance claim and was the amount sued for and recovery therefor denied by the decision of 95 C. Cls. 72.

The last mentioned decision was rendered and suit brought under the jurisdictional act of June 3, 1920 (41 Stat. 738). This jurisdictional act provided that the Court of Claims should have jurisdiction "for determination of the amount, if any, due said tribe from the United States under any treaties, agreements or laws of Congress or for the misappropriation of any of the funds or lands of said tribe or band or bands thereof or for the failure of the United States to pay said tribe any money or other property due; * * *." In the suit brought under the jurisdictional act of June 3, 1920, the plaintiffs contended that the \$1,903,023.22 had been improperly deducted from the credits due the plaintiffs on the reinstated annuity obligation and they asked for a judgment therefor. The plaintiffs contended in that litigation that they were entitled to have paid to them all of the benefits which were guaranteed under the treaty of April 29, 1868, without any offset whatsoever; that in law the said payments made to said tribe

under the provisions of the treaty of 1868 were not a proper offset; that the Court's action in the case decided in the 57 Court of Claims decision was to reimburse the defendant for the obligation that was due and owing to the plaintiffs; that the defendant was compelled to expend for them this sum of money under the terms of the treaty of April 29, 1868. Plaintiffs further urged in that litigation that "The jurisdictional act of March 4, 1917 (which was the basis for the lawsuit involved in 57 C. Cls. 357) was mandatory in its terms and compelled this court to offset * * * an amount the United States was obligated to expend and had expended for the plaintiffs under a different treaty which was not involved in that suit." The plaintiffs further urged that the jurisdictional act upon which it was then suing (resulting in the decision of the 95 Court of Claims case) removed the "injustice (of the previous act) and enables the plaintiffs to recover the money which the United States was required to expend for their benefit under the Treaty of April 29, 1868, but which sum the United States, in reality, has not spent for their benefit because it legally but unjustifiably recouped itself."

As herein previously stated, the subject matter of the previous litigation was the recovery of \$1,903,023.22 on the ground that same was not a legal nor a proper nor an equitable charge against plaintiffs' restored annuities, and the suit in the instant case is for the recovery of this same \$1,903,023.22 on the same grounds.

In passing upon the question raised in the 95 Court of Claims case as to the improper allowance of the \$1,903,023.22 item as an offset in equity and justice, the Court (95 C. Cls. pp. 82-84) says:

Even conceding that the court in the Medawakanton case did not pass upon the merits of whether the offset in question should be allowed, but merely followed the mandatory direction of the Congress, thus treating the entire question as before us anew, and considering all the equities under the jurisdictional act of 1920, we do not think that plaintiffs are legally or equitably entitled to recover.

* * *

To allow the plaintiffs to recover annuities under abrogated treaties and to retain without offset the benefits received under the treaty of 1868, would be inequitable. To permit the previous treaties and the treaty of 1868, which was entered into in lieu thereof, and which contained a provision that payments under previous treaties were barred, to nevertheless run concurrently, and to give full payment under all the treaties, would constitute double payment. But for the uprising in 1862, with the consequent cancellation of the previous treaties, the provision for payment under the treaty of 1868, would probably never have been made. Hence, to authorize full payment under the revitalized previous treaties, plus full payment under the substituted treaty of 1868, covering the same period, would be equivalent to allowing a man to take advantage of his own wrong. Neither the history of the treaties nor the language of the act of 1920 justifies such an interpretation.

As shown by the special acts, Congress evidently desired that the plaintiffs should have the benefit of the treaties that promised the larger benefits, but not both these and the treaty of 1868, at the same time.

A generous Congress has restored the benefits of treaties that had been annulled, and provided in the act of restoration that the United States should be allowed credit for all sums paid or expended for the benefit of the plaintiff tribe. It is equitable that the payments made under the treaty of 1868, in lieu of the forfeited annuities should be recognized as a just offset in the general accounting. (Underscoring supplied.)

The language quoted shows conclusively that the Court of Claims considered the equity and justice of the deduction previously made from plaintiffs' annuities and held that plaintiffs, by the application of the principles of justice and fair dealing, were not wronged by such deduction and that they therefore were not entitled to a judgment therefor.

This Commission cannot improve upon the language used by the Court of Claims as hereinabove quoted in denying the right of the plaintiffs to recover the amount sued for.

This Commission is of the opinion that the facts as herein set out, which are undisputed, show authorized decisions on the merits of plaintiffs' claim of right for the reimbursement sued for, and therefore that the plea of res judicata invoked by the defendant is good and should be sustained. However, the Commission is further of the opinion that the undisputed facts as shown by the pleadings and the evidence herein do not show that the plaintiffs have been dealt with unfairly.

The motion for summary judgment must be sustained, and the case dismissed. It is so ordered.