

BEFORE THE INDIAN CLAIMS COMMISSION

THE BLACKFEET AND GROS VENTRE)
 TRIBES OF INDIANS, etc.)
)
 Petitioners,)
)
 THE ASSINIBOINE TRIBES OF)
 INDIANS, etc.)
)
 Intervenors,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant)

Docket No. 279-A

8-21-68

FINAL AWARD TO ASSINIBOINE TRIBES, INTERVENORS

THIS CASE came on for hearing before this Commission on the matter of offsets on July 22, 1968 and was argued by the attorneys for petitioner and for defendant, and

IT APPEARING to the Commission that on March 31, 1967 there was entered an interlocutory award to the Assiniboine Tribes in the amount of \$3,108,506.40, subject to consideration under the agreement and gratuitous offsets, if any, and that in prior litigation between the parties hereto in the U. S. Court of Claims under a jurisdictional act and as reported at 77 C. Cls. 347 (1933), certiorari denied 292 U. S. 606, there was credited to defendant against the recovery had by the Assiniboine, petitioners therein, certain expenditures previously made by defendant on behalf of petitioner, and that among such expenditures credited to defendant were included a large amount of monies belonging to said Assiniboine Tribe, and that the total expenditures, including said Assiniboine monies, allowed defendant by the Court as a credit against the Assiniboine's recovery was sufficient to offset the amount of the recovery had in the case, and

IT FURTHER APPEARING that among the monies allowed as a credit to defendant against the award was the sum of \$1,242,796.18, being the share of the Assiniboine of the purchase price paid by defendant for the subject land under the Act of May 1, 1888.

The award to the Assiniboine in 77 C. Cls. 346 (1933) amounted to \$3,238,970 and the credit allowed defendant as an offset against said award was \$4,227,474.56. Since the credit exceeded the amount of the award the Court did not specify which particular items making up the total of \$4,227,474.56 were used to offset the award. The Court did

state at page 377 of 77 C. Cls. 347 that the payment under the Act of 1888 was to be included with the other monies in the gross amount of \$4,227,474.56 allowed defendant as a credit against the award made therein.

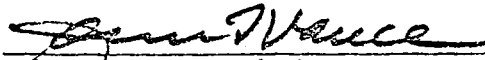
The \$1,242,796.18 paid the Assiniboine by defendant under the 1888 Act was expended for their benefit between the fiscal years of July 1, 1888 through June 30, 1900 along with an additional amount constituting a total of \$2,372,284.82. The balance of the \$4,227,474.56 was expended after July 1, 1900. The consideration under the 1888 Act must therefore be treated as the oldest of the obligations of the Assiniboine to defendant.

Under the law when payment on debts is made by the debtor and neither debtor nor creditor designates the payment to a specific debt, then the law will determine the application of such payments in accordance with the justice of the case, Standard Surety & Casualty Co. v. United States, 154 F 2d 335, 337 (C.A. 10, 1946). Based upon this principle it must be deemed that the consideration paid the Assiniboine by defendant under the 1888 Act was extinguished by its use as a credit against the award to the Assiniboine in 77 C. Cls. 347.


UPON CONSIDERATION of the above facts and law it is the opinion of this Commission that the course of dealings and accounts between petitioners and defendant is such as to preclude the allowance to defendant of any of the claimed gratuitous expenditures and that any consideration paid petitioners by defendant for the subject land under the Act of May 1, 1888 previously has been credited to defendant under the decision of the Court of Claims in the Assiniboine Indian Tribe v. The United States, 77 C. Cls. 347 (1933); and it is therefore

ADJUDGED, ORDERED AND DECREED that intervenors, The Assiniboine Tribe of Indians residing upon the Fort Belknap and Fort Peck Reservations, Montana, do have and recover of and from defendant the sum of \$3,108,506.40.

Dated at Washington, D. C., this 21st day of August, 1968.


John T. Vance, Chairman


Jerome K. Kuykendall, Commissioner


Richard W. Yarborough, Commissioner