

BEFORE THE INDIAN CLAIMS COMMISSION

ABSENTEE DELAWARE TRIBE OF OKLAHOMA, et al.,)	Docket No. 72
)	
and)	
)	
THE DELAWARE TRIBE OF INDIANS,)	Docket No. 298
)	
Plaintiffs,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: September 10, 1969

Appearances:

Louis L. Rochmes, Attorney for Plaintiff and Stanford Clinton was on the briefs.

Lester Reynolds, with whom was Mr. Acting Assistant Attorney General Glen E. Taylor, Attorneys for Defendant.

OPINION OF THE COMMISSION

Yarborough, Commissioner, delivered the opinion of the Commission.

The claim presently before the Commission alleges that the United States violated the Treaty of May 6, 1854 (10 Stat. 1048), involving sales of the Delaware Trust Lands. Defendant concedes, and we find, that the Government did not carry out the treaty provision calling for the sale of the trust lands at public auction. At issue in this case are the amount which such lands would have brought if sold in accordance with the treaty terms and the appropriate time from which to measure damages for failure to invest the proceeds which should have been realized from such sales.

Plaintiffs, Absentee Delaware Tribe of Oklahoma, et al., in Docket No. 72, and the Delaware Tribe of Indians in Docket No. 298, brought separate identical suits for a general accounting upon all Delaware treaties with the United States. In Delaware Tribe v. United States, 2 Ind. Cl. Comm. 253 (1952), aff'd. as to parties, rev'd. on other grounds, 130 Ct. Cl. 782 (1955), it was determined that these two groups were entitled jointly to represent the entire Delaware Tribe. Therefore the two cases here were consolidated by Order of February 20, 1964.

This case is closely related factually and controlled on legal issues by two recent decisions of the Commission: Peoria Tribe v. United States, 15 Ind. Cl. Comm. 123 (1965), aff'd. 177 Ct. Cl. 762 (1966), rev'd. as to interest 390 U.S. 468 (1968); on remand, 20 Ind. Cl. Comm. 308 (1969) and Iowa Tribe v. United States, 20 Ind. Cl. Comm. 308 (1969). The United States entered into comparable treaties with the Peoria, Iowa and Delaware tribes for the sales of their lands in Kansas at public auction. All three treaties have comparable provisions for the establishment of a permanent fund for the benefit of the Indians to be invested at interest "in safe and profitable stocks". The Kansas lands which the three tribes ceded in 1854 were disposed of under comparable circumstances in 1856 and 1857.

Although originally filed as a general accounting, subsequent proceedings in this case narrowed the issue to an accounting for that part of the lands ceded by Article 1 of the Treaty of May 6, 1854 (10 Stat. 1048), known as the Delaware Trust Lands. On defendant's motion to remove the hearing on offsets in this case and to reserve the right to present such

offsets as it may have in other undetermined Delaware claims, the Commission ordered on May 28, 1969 (J-1200) that the decision on the value stage of this case shall be a final judgment.

As indicated in Finding of Fact No. 8, the valuation dates are November and December, 1856 for the Eastern trust lands except Leavenworth City; February 7, 1857 for Leavenworth City; and July and August, 1857 for the Western trust lands. The damages to be determined are those for the Government's breach of trust in failing to carry out its duties under the Treaty of May 6, 1854. Its obligations under that treaty were to offer the trust lands for sale at public auction and to invest certain of the proceeds.

Both parties have introduced evidence to show contemporaneous sales values of unimproved tracts in the Delaware Trust Lands. Plaintiffs relied primarily upon median resale values to find the value of unimproved land outside townsites. While using the median rather than the average resale price tends to de-emphasize values for small amounts of improved land, it does not completely cancel the effect of amounts paid for improvements. Likewise plaintiffs did not eliminate sales of very small tracts which would not be representative of prices of larger parcels at a public sale. Finally, plaintiffs' expert eliminated transactions for consideration equal to or less than the amount paid the government at the trust land sales, considering these to be unrepresentative distress sales. But some sales at the appraisal price could be expected to occur when those lands were sold at public auction pursuant to the treaty provisions involved in the present case.

Plaintiffs made several calculations, discussed in Finding of Fact No. 20, to determine the price which unimproved lots in Leavenworth City would

bring at a public sale. These figures are the best evidence of value available to us. Some reduction is required, however, to reflect improvements which plaintiffs' computations did not eliminate and the discount that might be necessary in disposing of such a large number of town lots at public sale. Also it must be considered likely that the resales tabulated involved better than average lots, since they were the first to be sold.

On the other hand, in light of all the evidence, we do not feel that the Government has justified the discount which its appraiser applied to the lands removed from Fort Leavenworth.

In our Findings of Fact, we have examined in detail the sales and valuation data presented by both parties. We have concluded that, had the Government carried out its treaty obligations, it could have realized \$2,443,516 from the sales of the trust lands. This is \$1,385,617.81 more than was in fact realized and credited for the sales of the lands.

In Peoria Tribe v. United States, 390 U. S. 468, 471 (1968), the Supreme Court held that "the United States was not free merely to hold the proceeds without investing them" when a treaty called for investment of the proceeds of land sales. In the present case, both parties concede that the United States is liable for damages for plaintiffs' loss of income from investment of funds. Both parties agree that simple interest at the rate of 5% is an appropriate measure of the damages. At issue is the date or dates from which such measure of damages should run.

Defendant relies heavily upon the Commission's opinion in Peoria Tribe

v. United States, 20 Ind. Cl. Comm. 62 (1968), on remand from the Supreme Court. There the Commission said:


"We have determined that July 13, 1857, should be the starting date for computing interest. This is the date upon which the sales of the Peoria trust lands were completed (Finding of Fact No. 27). Petitioners have suggested that June 30, 1857, would be a proper 'median date' to employ, while defendant would select a later date (in August or November, 1857) on a theory that the government should have a reasonable time for deposit of funds to draw interest. We cannot accept either position. This is not a case involving interest as such. There were no funds to be invested. Interest is in issue only in so far as it is being utilized as a means of measuring damages. The date upon which the sales in question were concluded is the logical and, we believe, a proper starting point for the computation of damages." Id. at 67.

The lands in Peoria were sold between June 24 and July 13, 1857. A similar computation of damages was made in Iowa Tribe v. United States, 20 Ind. Cl. Comm. 308, 318 (1969). There the sales in question took place between June 3 and June 16, 1857. In each of these cases the date upon which the sales were completed was a logical date to use in measuring damages for failure to invest the proceeds of public sales of the lands because the valuation dates for all the lands involved constituted a single comparatively short period of time.

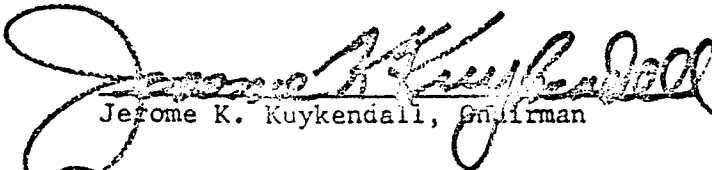
In the case before us, the trust lands sales should have taken place in three distinct sales separated by several months. The Government was not free as a trustee to allow the proceeds of the first sales to lie idle until the other groups of sales were completed. Under these circumstances we think that damages for failure to invest the proceeds of sales run from

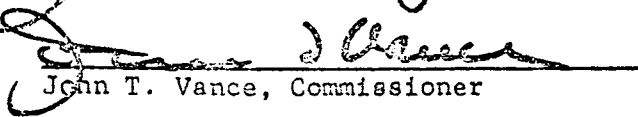
three different dates. For ease of computation we feel it appropriate to find a single average date from which interest on the entire judgment will run. On the facts of the particular case before us, we find this a proper and logical method for measuring damages. We find that the average date from which simple interest at 5% should be computed is April 30, 1857.

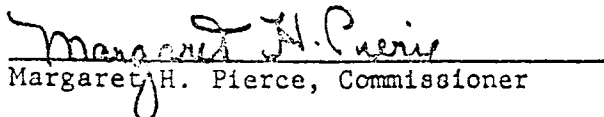
On motion of the defendant, the Commission ordered on May 28, 1969, that the decision on the value stage of this case shall be a final judgment. The Commission therefore finds that as a matter of law plaintiffs are entitled to recover as a final judgment the principal amount of \$1,385,617.81, plus simple interest at the rate of 5% per annum on the principal sum from April 30, 1857 to the date of payment of the principal sum. Computed to August 31, 1969, principal plus interest total \$9,168,171.13.


Richard W. Yarborough, Commissioner

Concurring:


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner