

BEFORE THE INDIAN CLAIMS COMMISSION

THE SIOUX TRIBE OF INDIANS OF THE	)	
CROW CREEK RESERVATION, SOUTH DAKOTA,	)	Docket No. 115
	)	
THE SIOUX TRIBE OF INDIANS OF THE LOWER	)	
BRULE RESERVATION, SOUTH DAKOTA,	)	Docket No. 116
	)	
THE SIOUX TRIBE OF INDIANS OF THE	)	
ROSEBUD RESERVATION, SOUTH DAKOTA,	)	Docket No. 118
	)	
THE SIOUX TRIBE OF INDIANS OF THE STANDING	)	
ROCK RESERVATION, SOUTH DAKOTA,	)	Docket No. 119
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: August 6, 1971

Appearances:

Marvin J. Sonosky, Attorney for the Plaintiffs.

Richard L. Beal, with whom was Mr. Assistant Attorney General Shiro Kashiwa, Attorneys for Defendant.

OPINION OF THE COMMISSION

Commissioner Vance delivered the opinion of the Commission.

These cases are before the Commission on motions by plaintiffs for leave to file amended exceptions and amendments to accounting petitions. Plaintiffs filed their accounting petitions in 1951, asking for an accounting from July 1, 1925, of "residual funds" held by defendant

pursuant to various acts of Congress.<sup>1/</sup> An accounting for the period up through June 30, 1925, had been adjudicated by the Court of Claims, Sioux Tribe v. United States, 105 Ct. Cl. 725, 64 F. Supp. 312, petition for cert. dismissed, 329 U.S. 680, vacated, 329 U.S. 685 (1946), reaff'd on remand, 112 Ct. Cl. 50, 78 F. Supp. 793 (1948), cert. denied, 337 U.S. 908 (1949), under a jurisdictional act passed in 1920 (41 Stat. 738).

In response to plaintiffs' petitions defendant filed a General Accounting Office report on March 11, 1960. Defendant moved on March 25, 1962, for plaintiffs to file a more definite statement, or for summary judgment.

Plaintiffs in turn filed on May 1, 1963, a motion for further accounting facts. The Commission issued an order on August 29, 1963, 12 Ind. Cl. Comm. 541, denying both motions, and ordering plaintiffs to file their exceptions. The opinion set forth the proper procedure to be followed thereafter in accounting cases before the Commission.

Plaintiffs then filed on January 8, 1964, exceptions to the General Accounting Office report. Defendant moved to strike the exceptions, and for summary judgment. After argument, the Commission issued an order on April 2, 1964, striking all but one or two of the various exceptions in each docket, and ordering the plaintiffs to file further exceptions within 90 days.

In early 1970 the Commission set a date for trial on the remaining

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<sup>1/</sup> In Docket No. 115, the Act of March 2, 1895 (28 Stat. 876); in Docket No. 116, the Act of April 21, 1906 (34 Stat. 124); in Docket No. 118, the Acts of April 23, 1904 (33 Stat. 254), and of March 2, 1907 (34 Stat. 1230); in Docket No. 119, the Acts of May 29, 1908 (35 Stat. 460), and of February 14, 1913 (37 Stat. 675).

exceptions, and on April 24, 1970, plaintiffs filed their motions for leave to file amended exceptions and amendments to the petition. Defendant filed responses to plaintiffs' motion, plaintiffs filed replies, and the Commission heard arguments on the motions September 18, 1970.

#### AMENDED EXCEPTIONS

Defendant contends that the plaintiffs have forfeited any right to file amended exceptions by failing to act within the 90 days given them by the Commission's order of April 2, 1964. While we seek an early end to litigation, we are guided by the necessity of deciding claims on the fullest possible record so that no injustice be done to the Indian plaintiffs. The Commission accordingly rejects defendant's argument in order to allow plaintiffs an opportunity to present their claims in the instant cases.

Defendant objects that some of the amended exceptions are virtually identical to some of the exceptions which were stricken by the Commission's 1964 order. While the Commission will not look with favor on rescission of decisions already made, our primary duty is to a correct decision, free from reversible error. Caddo Tribe v. United States, 19 Ind. Cl. Comm. 385, 386 (1968). Since the 1964 order by the Commission, denying, with one or two exceptions in each docket, the proposed exceptions of plaintiffs, the question of accounting procedures has been treated in greater detail by the Commission and the Court of Claims.

In Southern Ute Tribe v. United States, 17 Ind. Cl. Comm. 28, 57 (1966), aff'd., 191 Ct. Cl. 1, 423 F.2d 346 (1970), rev'd on other grounds, 400 U.S. 915 (1971), the Commission determined that the plaintiff "as cestui que trust, ' . . . is entitled to demand of the trustee all information about the trust for which he has any reasonable use.' (Bogert, Trusts & Trustees, 1961)."

In three accounting cases, Southern Ute, supra, Te-Moak Bands v. United States, 23 Ind. Cl. Comm. 70 (1970), and Mescalero Apache Tribe v. United States, 23 Ind. Cl. Comm. 181 (1970), the Commission dealt with a number of exceptions of a nature very similar to those that the plaintiffs have moved in the instant case. The opinions in Southern Ute, Te-Moak, and Mescalero Apache were favorable with respect to allowing consideration on the merits of the requested exceptions. The Commission therefore, in line with foregoing decisions and Caddo, rejects the defendant's argument based on the theory that certain of the amended exceptions have already been disposed of by the Commission.

However, although the above objections of the defendant are surmountable, the limitation of time for presenting claims in Section 12 of the Indian Claims Commission Act (25 U.S.C. §70k) is applicable as a bar to certain of the plaintiffs' amended exceptions.

The plaintiffs request an accounting for "Indian Moneys, Proceeds of Labor" funds prior to July 1, 1925.<sup>2/</sup> The defendant objects that this clearly falls outside of the accounting requested in this petition  
"\* \* \*beginning July 1, 1925\* \* \*".

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<sup>2/</sup> Amended Exception Number 8 in each docket.

While the spirit of the Indian Claims Commission Act intended full determination of claims held by Indian tribes, effect must be given to express limitations for the filing of claims. Clearly this claim when filed was designed to pick up where the accounting concluded by the Court of Claims left off, i.e., June 30, 1925. It is too late now for the plaintiffs to attempt to introduce amended exceptions based on occurrences prior to July 1, 1925. These amended exceptions are therefore barred.

Plaintiff Sioux Tribe of the Standing Rock Reservation moved on September 4, 1970, for leave to file "additional exception number 22" in Docket No. 119. The exception complains of a "taking without compensation", but makes no reference to the General Accounting Office report, and does not even indicate the dates of the alleged taking. The exception is therefore barred as a new claim by Section 12 of the Indian Claims Commission Act (25 U.S.C. §70k).

#### AMENDMENTS TO THE PETITIONS

The plaintiffs seek to amend the petitions in Docket Nos. 116, 118, and 119. The amendments relate to the disposition of tribal land under the acts of Congress with regard to which this accounting action was brought. See Footnote 1, supra.


The plaintiffs complain that land sold under the pertinent acts was not sold competitively and for full value, and this constitutes a taking under the Fifth Amendment. The actions complained of all occurred prior to July 1, 1925.

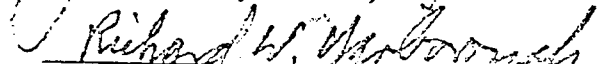
The defendant objects that the proposed amendments, dealing with takings prior to 1925, are outside of the instant accounting petition, which is for an accounting commencing July 1, 1925, and are hence barred as new claims by Section 12 of the Indian Claims Commission Act (25 U.S.C. §70k). The Commission concludes that these amendments cannot be permitted for the same reasons specified above with regard to the amended exceptions dealing with "Indian Moneys, Proceeds of Labor" funds prior to July 1, 1925. That is, these amendments, dealing with takings prior to July 1, 1925, are barred as new claims in an action for an accounting "\* \* \* beginning July 1, 1925\* \* \*".

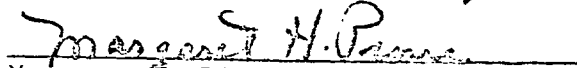
We thus do not face the issue of whether the takings complained of were Fifth Amendment takings on the part of the Government, or whether, if there was a Fifth Amendment taking, the plaintiffs can properly complain of it in an accounting action.

  
John T. Vance, Commissioner

We Concur:

  
Jerome K. Kuykendall, Chairman

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

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Brantley Blue, Commissioner