BEFORE THE INDIAN CLAIMS COMMISSION

COLORADO RIVER INDIAN TRIBES, et al.,	)	
Plaintiffs,	)	
v.	)	Docket No. 283-B
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

Decided: September 23, 1976

Appearances:

I. S. Weissbrodt, Howard L. Sribnick, Attorneys for Plaintiffs. Weissbrodt and Weissbrodt were on the briefs.

James M. Upton, with whom was Assistant Attorney General Wallace H. Johnson, Attorneys for Defendant.

OPINION ON PLAINTIFFS' MOTIONS FOR DETERMINATION OF ISSUES OF LAW, FOR PARTIAL SUMMARY JUDGMENT, AND FOR SUPPLEMENTAL ACCOUNTING, AND ON DEFENDANT'S MOTION TO DETERMINE SCOPE OF SUPPLEMENTAL ACCOUNTING

Vance, Commissioner, delivered the opinion of the Commission.

In this proceeding the Commission must resolve two issues stemming from the opinion and order entered herein on July 10, 1975, 36 Ind. Cl. Comm. 217, 231-32, on the plaintiffs' motion for a proper accounting and for a determination of issues of law in the above-captioned docket. These are: (1) whether the plaintiffs' account, "Proceeds of Townsites, Colorado River Reservation, Arizona" represented proceeds of sales of Indian trust lands within the meaning of the Act of April 1, 1880, 25 U.S.C. § 161, and (2) the meaning of the term "other payments"

as used in § 27 of the Act of May 18, 1916, 25 U.S.C. § 123. We must also rule on the plaintiffs' motions for partial summary judgment and supplemental accounting, and on the defendant's motion for determination of the scope of supplemental accounting.

I.

We consider first the plaintiffs' request in the prior proceeding that the Commission rule (1) that the account entitled "Proceeds of Townsites, Colorado River Reservation, Arizona", referred to hereafter as the "Proceeds of Townsites" fund, represented proceeds of sales of Indian trust lands within the meaning of the Act of April 1, 1880, 25 U.S.C. § 161, and (2) that the amounts in the fund should have been invested or the plaintiffs otherwise credited with interest of 5 per cent, in accordance with the 1880 Act requiring payment of interest semi-annually from the date of deposit of all sums, inter alia, received on account of the sale of Indian trust lands in the United States Treasury, "at the rate per annum stipulated by treaties or prescribed by law."

In its decision of July 10, 1975, supra, the Commission deferred ruling on this issue until after receiving the briefs of the parties thereon. These briefs have now been filed. For the reasons discussed below, we conclude that the plaintiffs' Proceeds of Townsites fund is subject to the Act of April 1, 1880, and that interest is owing on these deposits in accordance with that act. We consider first certain general aspects of the 1880 act before discussing the meaning of the phrase, "Indian trust lands" as used therein.

The Act of April 1, 1880 provides:

> That the Secretary of the Interior be, and he is hereby, authorized to deposit, in the Treasury of

> the United States, any and all sums now held by him, or which may hereafter be received by him, as Secretary of the Interior and trustee of various Indian tribes, on account of the redemption of United States bonds, or other stocks and securities belonging to the Indian trust-fund, and all sums received on account of sales of Indian trust lands, and the sales of stocks lately purchased for temporary investment, whenever he is of the opinion that the best interests of the Indians will be promoted by such deposits, in lieu of investments; and the United States shall pay interest semi-annually, from the date of deposit of any and all such sums in the United States Treasury, at the rate per annum stipulated by treaties or prescribed by law, and such payments shall be made in the usual manner, as each may become due, without further appropriation by Congress. [25 U.S.C. § 161.]

The power of the Secretary of the Interior in managing Indian funds is limited to that granted or necessarily implied in Congressional authorizations. Creek Nation v. United States, 78 Ct. Cl. 474 (1933). Prior to the enactment of the 1880 Act, the funds of Indian tribes were not deposited in interest bearing accounts in the Treasury in the absence of a specific treaty or statutory provision authorizing the practice.[1/] For some time before the 1880 Act became law, the Secretary of the Interior recommended legislation which would permit him to deposit funds in the Treasury for the benefit of the Indians or otherwise change investments from the requirements of existing treaty or statute when it was in the

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1/ The Treasurer of the United States acted as custodian in holding Indian securities for safekeeping, in collecting interest due from investments, in purchasing and selling investments when requested by the Secretary of the Interior, and in transferring, by certificates of deposit, the proceeds from investments of Indian funds to the Secretary of Interior for the credit of the Indian tribes to whom the funds belonged, pursuant to the Act of June 10, 1876, 25 U.S.C. § 160. This statute did not affect the Secretary's management functions over Indian funds. It exemplifies the detailed requirements directed by Congress in the handling of these funds.

interest of the Indians to do so. The legislative history of the 1880 Act indicates that it was intended to increase the Secretary's flexibility in handling the three types of tribal funds designated in the act by permitting either their investment or their deposit in the Treasury at interest. The operation of the act is limited to the three categories of funds specified therein which the Secretary held or received as trustee of various tribes. Of the three categories of funds which the Secretary was authorized to deposit in the Treasury at interest under the 1880 Act, only one, namely all sums received on account of sales of Indian trust lands, is involved in this proceeding. The statute permits the Secretary to deposit these funds in the Treasury whenever he is of the opinion that the best interests of the Indians will be promoted by such deposits in lieu of investments. The statute further provides that upon deposit the United States shall pay interest semi-annually, from the date of deposit of all such sums in the Treasury, at the rate per annum stipulated by treaties or prescribed by law, such payments to be made without further appropriation by Congress.

Congressional sponsors of the 1880 Act believed that the 5 per cent rate of interest was applicable generally to Indian tribal funds unless otherwise provided by treaty or specific statute. The legislative history of the act indicates that the requirement that interest be paid at the rate per annum stipulated by treaties or "prescribed by law" meant, in cases where interest was not specified by treaty or special statutory provision, the 5 per cent rate designated in the Act of January 9, 1837,

5 Stat. 135, Rev. Stat. § 2096, 25 U.S.C. § 158 (requiring the Secretary to invest at the rate of not less than 5 per cent amounts received under treaties requiring payment of interest on moneys received from the sales of Indian lands), and also in the Act of September 11, 1841, 5 Stat. 465, Rev. Stat. § 3659, 31 U.S.C. § 547a (requiring that all funds held in trust by the United States and the annual interest thereon, when not otherwise required by treaty, be invested in stocks of the United States bearing a rate of interest of not less than 5 per cent).2/

The syntax of the 1880 Act, authorizing the Secretary to deposit several types of funds in the Treasury whenever he is of the opinion that the best interests of the Indians will be promoted by such deposits in lieu of investments, indicates that a determination not to use the funds for investments is required before the funds may be deposited in the Treasury at interest under the act. This follows from the use of the word "whenever" (i.e., at whatever time) as a limitation on the authority to deposit the designated funds. That is, the Secretary may deposit trust funds in the Treasury under the 1880 Act only after he determines (or when he has determined)

2/ See S. Rep. No. 186, 46th Cong., 2d Sess. (1880), containing correspondence between the Secretary of the Interior and officials of the Treasury Department indicating that responsible administrative officials believed that a 5% interest rate must be paid on Indian funds that were required by treaty or statute to be invested or on which interest at an unspecified rate was to be paid by statute or administrative rule.

See also the Act of October 1, 1890, 26 Stat. 658-9, directing that a fund from the sale of Round Valley Reservation lands was to be deposited in the Treasury for the credit of the Indians and to ". . .draw such rate of interest as is now or may be hereafter provided by law. . . ." Five per cent interest was paid on that fund, indicating that 5 per cent was the rate of interest then "provided by law" when the rate was unspecified by statute. Annual Report of Department of the Interior for fiscal year ending June 30, 1903, def's. ex. 87, Docket 22-G, at 484.

that such action will promote the best interests of the Indians, the determination being a prerequisite to depositing the funds for interest. Thus, if in fact the Secretary deposits such funds in the Treasury, it must be presumed that he has determined such act to be in the best interest of the Indians. This interpretation of the 1880 Act was used in the defendant's brief, discussed below, in Confederated Salish and Kootenai Tribes v. United States, 186 Ct. Cl. 947 (1968) (Docket 50233, Brief for defendant at 8).

We conclude that the words and the syntax of the 1880 Act indicate an intent of Congress that funds of the Indians, which were within the scope of the act, were to be interest bearing if in fact they were deposited in a Treasury account consisting of funds of one of the three categories named in the 1880 Act. Interest under the statute presumably began to accrue when such funds were deposited in the Treasury. Cf. Menominee Tribe v. United States, 107 Ct. Cl. 23 (1946).

Of course, if the Secretary received the proceeds of sales of Indian trust lands under a later particular statute or a specific agreement, such as the kind contemplated in § 5 of the General Allotment Act of February 8, 1887, 25 U.S.C. §348, which provided for the payment of interest on different terms from those of the 1880 Act, the provisions of the later specific statute or agreement supersede and control, or are an exception to the 1880 Act. See Sutherland, Statutes and Statutory Construction, § 23.16 (4th ed. 1972). However, there was no statute or agreement governing the proceeds of the townsite sales here under consideration other than the 1880 Act. Accordingly, the defendant's argument, that the proceeds of sales of all Indian trust lands were not subject to the statute because later special statutes governing particular Indian lands (but having no applicability to the plaintiffs' townsite

lands) contained interest rate provisions which differed from the 1880 Act, does not affect a determination of the applicability of the 1880 Act to the plaintiffs' Proceeds of Townsites fund.

We turn now to a consideration of the phrase, "Indian trust lands". In support of the position that funds deposited in the Proceeds of Townsites account are proceeds of sales of "Indian trust lands" as the phrase is used in the 1880 Act, plaintiffs pointed out that the Proceeds of Townsites account arose from sales pursuant to the Acts of April 30, 1908, 35 Stat. 70, 77, and May 11, 1910, 36 Stat. 879-80. In part here relevant, the Act of April 30, 1908, authorized the Secretary of the Interior to:

> . . . reserve and set apart lands for town-site purposes in the Yuma Indian Reservation, California, and the Colorado River Indian Reservation in California and to survey, plat and sell the tracts so set apart in such manner as he may prescribe, the net proceeds to be deposited in the Treasury of the United States to the credit of the Indians of the reservations, respectively. . . .

The Commission discussed the meaning of the phrase "Indian trust lands" as used in the 1880 Act in connection with the sale of surplus reservation lands in Fort Peck Indians v. United States, Docket 184, 28 Ind. Cl. Comm. 171, 179-80 (1972), 34 Ind. Cl. Comm. 24, 26 (1974), rev'd on other grounds, App. No. 18-74 (Ct. Cl., October 30, 1975). The phrase was held to refer not to absolute sales of Indian reservation lands to the United States, but to transfers involving an agreement that the United States would sell or dispose of designated Indian lands, proceeds thereof to be held for or applied to the benefit of the Indians. The Commission concluded that where the United States acted as trustee to sell or dispose of Indian reservation lands, and the

proceeds of such sales were to be deposited in the Treasury for the benefit or credit of the Indians, the lands were "Indian trust lands" within the meaning of the 1880 Act.

The plaintiffs assert that where the United States by statute, treaty, or agreement was authorized as trustee to sell Indian lands to third parties and directed to deposit the proceeds to the Indians' credit in the Treasury, such proceeds are "sums received on account of sales of Indian trust lands" within the 1880 Act. In support of this contention plaintiffs cite Ash Sheep Co. v. United States, 252 U.S. 159 (1920). In that case, the Supreme Court held that under a statutory provision for the sale or disposition of Indian reservation lands, proceeds of the sale to be deposited in the Treasury to the credit of the Indians of the reservation (similar to the provision in the Act of April 30, 1908, creating the "Proceeds of Townsites" fund here involved), the lands available for sale but undisposed of remained tribal property until disposed of as provided by law. The plaintiffs' beneficial title to the lands subject to sale continued until the lands were actually sold by the United States to third parties. After sale, the Indian interest in the title became the beneficial interest in the proceeds of the sale. According to the plaintiffs, lands held in trust for sale, like those involved in the Ash Sheep Co. case, and in our Fort Peck case, supra, were "Indian trust lands" as the term has been used in the administration of Indian lands by the United States. See also pages 334 through 336 in Felix Cohen's Handbook of Federal Indian Law (1945).

The defendant contends that the Proceeds of Townsites account does not constitute proceeds of sales of "Indian trust lands" within the

meaning of the 1880 Act, relying in the main on the argument that the 1880 Act applies only to proceeds of sales of land on which interest is required to be paid by specific treaty or statute separate from the requirements of the 1880 Act. The 1880 Act makes no such limitation as to the funds arising from sales of Indian trust lands which are entitled to interest. It encompasses "all sums received on account of sales of Indian trust lands", along with two other types of funds, which the Secretary of the Interior is authorized to deposit in the Treasury in lieu of investment and upon which the United States is required to pay interest. The statute authorizing the sale of townsite lots here involved, proceeds to be credited to the plaintiffs, did not require that interest be paid. 35 Stat. 70, 77; 36 Stat. 879-80. As discussed above, the requirement in the 1880 Act that interest be paid at the rate per annum stipulated by treaties or prescribed by law meant 5 per cent in the absence of a specific statutory provision.

We have considered the material cited in support of the defendant's position and conclude that over a long period of years administrative practice has not been consistent in the payment of interest on funds covered by the 1880 Act. Some of the material indicates that before the 1880 Act became law investment income was paid, and after 1880 interest on deposits was paid, on some funds or parts thereof, although neither income from investment nor interest was required by separate specific statutory or treaty provision.[3/] In addition, the Commission

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3/ Defendant's memorandum, "The Status of Indian Trust Funds and the Tribes' Right to Interest on Particular Funds" with Appendix Vols. I, II, (cont.)

has heretofore found that interest under the 1880 Act was paid on proceeds deposited in the Treasury after other Indian lands were sold by the United States under statutory provisions similar to those here involved, i.e., where no interest was required, other than by the 1880 Act, to be paid on proceeds which were held for the Indians. Southern Ute Tribe v. United States, Docket 328, 17 Ind. Cl. Comm. 28, 37, rev'd. on other grounds, 402 U. S. 159 (1971). The administration of the 1880 Act is not a conclusive basis for determining the matter.

Moreover, the plaintiffs have pointed out that the order of the Court of Claims in Confederated Salish and Kootenai Tribes, supra, is dispositive of the question raised here. The order was entered pursuant to the motion of plaintiffs therein for instructions respecting interest on the plaintiff's trust fund "Proceeds of Flathead Reservation, Montana" on which no interest had been credited from the time it was established in 1909, under the Act of April 23, 1904, 33 Stat. 302, until February 1930, when interest was paid under the Act of February 12, 1929, 45 Stat. 1164. The plaintiffs argued that the fund consisted of proceeds of the sale of Indian trust land and that 5 percent interest under the 1880 Act should have been paid from the inception of the "Proceeds of Flathead Reservation, Montana" fund.[4/] No

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Footnote 3/ (cont'd)

and III thereto, filed September 13, 1972, in Mescalero Apache v. United States, Docket 22-G. See ex. D-41, third and fourth paragraphs, at 279, and the listing of the Pottawatomie mill fund as one of the funds held in trust by the Government in lieu of investment and on which 5 per cent interest was paid under the 1880 Act, Def's ex. 87 at 484, Dkt. 22-G.

4/ Under the 1904 Act, providing for the sale and disposal of surplus lands after allotment of the Flathead Reservation, the United States acted as trustee for the Indians to dispose of reservation lands and to expend and pay over the proceeds of the sales thereof as received.

treaty or particular act of Congress required that the proceeds be invested or interest be paid although proceeds were to be expended for the benefit of the Indians, 33 Stat. 305. We have considered the briefs of the parties in the Confederated Salish and Kootenai proceeding, in which the defendant argued, as in the instant proceeding, that, generally, the 1880 Act was applicable only where a treaty or specific Act of Congress required that a particular rate of interest was to be paid on the proceeds of the sale of Indian land. The Court rejected the defendant's position. It read the Act of April 1, 1880, as requiring that interest be paid on the deposits in question and granted the plaintiff's motion that interest of 5 per cent be paid thereon until the effective date of the Act of February 12, 1929, 25 U.S.C. § 161a, and thereafter at 4 per cent when the balance was not less than $500. We consider the Court of Claims order in Confederated Salish and Kootenai Tribes, supra, controlling here and conclude that the plaintiffs are entitled to interest on their Proceeds of Townsite fund in accordance with that order. 5/

II

In the opinion of July 10, 1975, in this docket the Commission also deferred decision on the plaintiffs' contention that expenditures of funds representing "Proceeds of Townsites", and "Interest on Proceeds of Townsites",

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5/ We note that there is nothing in the Court of Claims decision in United States v. Mescalero Apache Tribe, 207 Ct. Cl. 369, 518 F.2d 1309 (1975), cert. denied, U.S. , 47 L Ed 2d 761 (1976), which conflicts with our conclusion in this proceeding that the Act of April 1, 1880, 25 U.S.C. § 161, applies to the plaintiffs' fund known as "Proceeds of Townsites, Colorado River Reservation, Arizona."

from and after the effective date of section 27 of the Act of May 18, 1916, 25 U.S.C. § 123, and expenditures from the accounts designated "Proceeds of Labor" and "Interest on Proceeds of Labor" were unauthorized by law unless within one of the exceptions permitted by § 27 of the 1916 Act. That section provides, in part here pertinent, that:

> No money shall be expended from Indian tribal funds without specific appropriation by Congress except as follows: Equalization of allotments, education of Indian children in accordance with existing law, per capita and other payments, all of which are hereby continued in full force and effect: Provided, That this shall not change existing law with reference to the Five Civilized Tribes.

The Commission observed in the July 10, 1975, opinion that the meaning of the term, "other payments", which were exempted from the requirement of specific appropriation under the above-quoted provision, had not been considered by the parties, and therefore decision on the plaintiffs' assertions as to unauthorized expenditures was deferred until the parties briefed the question. 36 Ind. Cl. Comm. at 227.

In support of their position, the plaintiffs' submitted a copy of the hearings before the House Committee on Indian Affairs on the proposal which became § 27 of the 1916 Act. Testimony at the hearings indicated that the proposal was intended to limit the expenditure of tribal trust funds to the amounts and purposes for which Congress made appropriations. Hearings on Senate Amendments to H.R. 10385 Before the House Committee on Indian Affairs, 64th Cong., 1st Sess., (1916), Part V at 183-188.

In Sioux Tribe of the Standing Rock Reservation v. United States, Docket 119, 37 Ind. Cl. Comm. 122, 23 (1975), the Commission considered this phrase. We found that if the rule of ejusdem generis (that where general words follow a list of specific things, the general words refer to the same types or classes of items as those specifically mentioned) were applied to the 1916 Act, it would effectuate the intent of the act, i.e., to limit expenditure of tribal funds without congressional authorization. We adopt that rule here and conclude that the phrase "other payments" means payments like per capita or individual payments.[6/] The defendant does not disagree. Accordingly, we conclude that the phrase does not substantially enlarge, beyond the kinds of payments expressly named in the 1916 provision, the purposes for which tribal funds may be used without specific appropriation by Congress. Neither party herein

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6/ This view is strongly reenforced by the opinion of the Court of Claims in Creek Nation v. United States, supra, 78 Ct. Cl. 474 which interpreted a nearly identical limitation in the Indian Appropriation Act for the fiscal year beginning July 1, 1912, 37 Stat. 518, prohibiting expenditures from tribal funds of the Five Civilized Tribes without specific appropriation by Congress excepting "[e]qualization of allotments, per capita and other payments authorized by law to individual members of the respective tribes, tribal and other Indian schools for the current fiscal year under existing law ....", and salaries of certain tribal employees. (Underscoring added.) The phrase "other payments" in § 27 of the 1916 Act here under consideration, similar to that interpreted in the Creek case, appears to be an abbreviated version of the other payments phraseology, underscored above, in the above-quoted limitation on expenditures from tribal funds of the Five Civilized Tribes. See Indian Appropriation Bill Hearings on Senate Amendments to H. R. 10385 Before the House Committee on Indian Affairs, supra, Part V at 183-188.

asserts that any expenditures involved in this proceeding come within the "other payments" provision in the 1916 Act. Accordingly, no further definition of its meaning is needed here. However, the effect of the above-quoted restrictions in the 1916 Act on expenditures of tribal funds must be considered in ruling on the plaintiffs' motion for partial summary judgment.

III

Plaintiffs have moved for partial summary judgment as follows:

Fiscal Year	Amount
1919	$4,304.82
1924	233.55
1929	2,737.50

Plaintiffs allege that these amounts were expended from their trust funds in excess of the amounts appropriated or for purposes other than those specified in the annual appropriation act, in violation of § 27 of the 1916 Act.

As explained below, we conclude that the plaintiffs may be entitled to amounts claimed for fiscal years 1919 and 1924; that the amount claimed for 1929 involves unresolved questions of fact, and that additional amounts referred to by the parties need further consideration before disposition on the merits of plaintiffs' claim is appropriate.

The Act of May 25, 1918, 40 Stat. 561, making appropriations for the Bureau of Indian Affairs for the fiscal year ending June 30, 1919, authorized the expenditure of $4,600 from the Indian Monies, Proceeds of

Labor (IMPL) funds of the plaintiffs.[7/] The defendant's accounting report shows that for fiscal year 1919 $8,904.82 of plaintiffs' IMPL funds were spent for purposes other than the equalization of allotments, the education of Indian children, or per capita or other payments excepted under the 1916 Act from the requirement of specific appropriation. The plaintiffs stated that there was no appropriation of trust funds other than the $4,600 in the 1918 legislation, although they mentioned an appropriation of public funds for irrigation projects on the plaintiffs' reservation, reimbursable from specific funds. The latter appropriation will be considered below. The plaintiffs request partial summary judgment for $4,304.82, the amount by which the expenditure of IMPL funds during 1919 exceeded the $4,600 appropriated for that fiscal year.

Similarly, $4,000 of tribal funds were authorized for expenditure during fiscal year 1924 under the Act of January 24, 1923, 42 Stat. 1174, appropriating Bureau of Indian Affairs funds for fiscal year 1924. The total expenditure of tribal funds during that year was $4,233.94 as shown by the defendant's accounting report, indicating that expenditures for that year exceeded the authorization by $233.55. (A minimal amount, $.39, of the 1924 expenditures, having been used for education, was regarded as within one of the exceptions to the requirement of specific appropriation in the 1916 Act.)

7/ Specific amounts authorized were set forth in a schedule submitted by the Secretary of the Interior and shown in H. R. Doc. No. 499, 65th Cong., 2d Sess. (1917). Of the $4,600 of plaintiffs' IMPL funds authorized to be spent, $600 was for paying employees and $4,000 was for support and civilization.

The defendant denies that the expenditures relied on by the plaintiffs were unauthorized and refers to directives from Bureau of Indian Affairs representatives approving the use of tribal funds which seem to authorize some of the expenditures in issue. However, administrative orders do not validate expenditures prohibited by statute, and none of the cases relied on by the defendant sanctions the expenditure of tribal funds in violation of § 27 of the 1916 Act. In Chippewa Indians v. United States, 88 Ct. Cl. 1, 42, (1939), which the defendant cites as authority for its opposition to plaintiffs' motion for partial summary judgment, the court held that the use of tribal funds to purchase beneficial goods and services for the Indians was not wrongful under the statutes controlling disposition of that case. But a limitation such as that in § 27 of the 1916 Act was not involved in the Chippewa case, and that case is not apposite here. Moreover, the Chippewa case is distinguishable from the instant case for other reasons, discussed more fully below, relating to indications that the plaintiffs herein did not benefit from certain expenditures of tribal funds.

The Court of Claims decision in Creek Nation v. United States, supra, 78 Ct. Cl. 474, construed the language of § 18 of the Act of August 24, 1912, 37 Stat. 518, 531 involving a statutory limitation very like § 27 of the 1916 Act (see n. 6, supra), and ruled against the position which the defendant urges. Section 18 of the Act of August 24, 1912, provided in part here pertinent:

> . . . That during the fiscal year ending June thirtieth, nineteen hundred and thirteen, no moneys shall be expended from the tribal funds belonging to the Five Civilized Tribes without specific appropriation by Congress, except as

> follows: Equalization of allotments, per capita and other payments authorized by law to individual members of the respective tribes, tribal and other Indian schools for the current fiscal year under existing law, salaries, and contingent expenses of governors, chiefs, assistant chiefs, secretaries, interpreters, and mining trustees of the tribes for the current fiscal year, and attorneys for said tribes employed under contract approved by the President, under existing law, for the current fiscal year. . . .

The provision was carried in each annual Indian Appropriation Act until May 24, 1922, when a permanent provision of law prohibiting the expenditure of tribal funds belonging to the Five Civilized Tribes without specific appropriation by Congress was enacted (25 U.S.C. § 124). The Court held that the limitation in the 1912 Act, and corresponding provisions in subsequent appropriation acts, invalidated expenditures which were made in contravention of these provisions. All expenditures of tribal funds after the effective date of the 1912 Act without specific appropriation by Congress, that were not within the exceptions in the above-quoted proviso and similar provisions of succeeding statutes, were made without authority of Congress and in violation of limitations imposed by Congress on the expenditure of funds. The court expressly rejected the argument that the Secretary of the Interior had the legal right to expend tribal funds in contravention of the specific appropriation requirement of Congress. 78 Ct. Cl. at 491. The decision in the Creek case permitted the plaintiffs to recover tribal funds spent in excess of the limitation imposed in the 1912 Act and subsequent statutory provisions similar to § 27 of the 1916 Act here involved. In our view, this decision governs disposition of the question raised in

the plaintiffs' motion for partial summary judgment for unauthorized expenditures for the years 1919 and 1924.

Different considerations from those just discussed determine our conclusion on plaintiffs' motion for partial summary judgment on unauthorized expenditures of tribal funds during fiscal year 1929.

The Appropriation Act of March 7, 1928, 45 Stat. 200, 203, making appropriations for the Bureau of Indian Affairs for the fiscal year ending June 30, 1929, authorized the expenditure of $4,500 from the plaintiffs' tribal funds for the support of Indians and the administration of Indian property of plaintiffs' reservation, 45 Stat. 222. The accounting report shows that during fiscal year 1929, $6,199.70 was spent from the plaintiffs' IMPL funds and $1,117.80 was spent from the plaintiffs' "Proceeds of Townsites" fund, amounting in all to $7,317.50 in expenditures from plaintiffs' tribal funds during the year. This exceeded the amount appropriated under the Appropriation Act for fiscal year 1929 by $2,817.50. However, the defendant points out that the Appropriation Act of March 4, 1929, 45 Stat. 1562, 1571, for fiscal year 1930 included an appropriation of $25,000 from plaintiffs' tribal funds, made immediately available for industrial assistance, the amount to be expended in the discretion of the Secretary of the Interior to enable the Indians to become self-supporting. The statute designated the following purposes for which the funds might be spent:

> . . . For the construction of homes for individual members of the tribes; the purchase <u>for sale to them</u> of seeds, animals, machinery, tools, implements, building material, and other equipment and supplies and <u>for advances</u> to old, disabled, or indigent Indians for their support.

The provision authorized loans to individual Indians from tribal funds, such loans to be repaid subject to conditions approved by the Secretary of the Interior. Both the purpose of the loans and the time for repayment are specified in the statute. The provision authorized expenditures only for the benefit of individual Indians. The statute specified repayment to the United States (for eventual repayment to the tribal funds charged for the expenditures), but amounts repaid during 1930 were made available for further appropriation for industrial assistance.

Details of expenditures and repayments of tribal funds for industrial assistance are not shown in defendant's accounting report. If any industrial assistance funds were loaned between March 4, 1929, when the funds were first made available, and June 30, 1929 (the end of fiscal year 1929), such expenditures would have been within the specific appropriation requirement of the 1916 Act. If loans during that period equalled or exceeded the amount by which expenditures from tribal funds exceeded amounts appropriated under the Appropriation Act for fiscal year 1929, the plaintiffs' motion for partial summary judgment would have to be denied. However, the $25,000 in tribal funds for industrial assistance was not available for any purposes except those named in the above-quoted provision. Defendant's accounting report lists no disbursements for loans to Indians in 1929 in the schedules of disbursements from plaintiffs' tribal funds, although disbursements for such loans are shown for other years from plaintiffs' Proceeds of Townsites fund. Because of the possibility that industrial assistance funds were disbursed between March 4 and

June 30, 1929, and were listed as disbursements under some heading other than "Loans to Indians", we conclude that the defendant should be allowed to show, if it can, that expenditures during fiscal year 1929 complied with the limitation in § 27 of the 1916 Act. Consequently, we must deny the plaintiffs' motion for partial summary judgment for 1929 expenditures at this time.

Inasmuch as the defendant relied on the industrial assistance authorization in the fiscal year 1930 Appropriation Act to justify expenditures from tribal funds during fiscal year 1929 exceeding those appropriated in the 1929 Appropriation Act, the defendant has the burden of showing that the excess was spent pursuant to the industrial assistance provision of the 1930 Act or other specific appropriation available for expenditure during fiscal year 1929.[8/]

We turn now to the matter referred to by both parties of the provisions in the Bureau of Indian Affairs Appropriation Acts for 1919, 1924, and 1929 appropriating public funds for the costs of the irrigation system on plaintiffs' reservation, the costs to be reimbursed from designated tribal funds. (The discussion here of reimbursement of public funds from tribal funds must be distinguished from the very different type of repayment,

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8/ Appendix C, submitted with the defendant's motion for determination of the scope of supplemental accounting, is a copy of a schedule of collections for the month of May 1939 at the Colorado River Agency. Loans from tribal funds to individuals were not listed on this schedule, but information showing the amount, if any, spent from the plaintiffs' tribal funds for industrial assistance loans between March 4 and June 30, 1929, must be as readily obtainable as was Appendix C and should be furnished to the plaintiffs.

mentioned in the immediately preceding paragraphs, involving the reimbursement of tribal funds for industrial assistance loans made to individual Indians.) The irrigation costs here involved were based on statutory provisions appropriating specific sums from public funds (general funds of the Treasury) and requiring reimbursement from specified tribal funds. An appropriation of this kind is regarded as a specific appropriation by Congress of the designated tribal funds within the requirements of § 27 of the 1916 Act, as no additional appropriation by Congress is necessary to permit reimbursement of the public funds from the tribal funds. Consequently, the appropriation of public funds reimbursable from specified tribal funds of plaintiffs during 1919, 1924, and 1929 amounted to the appropriation of the specified tribal funds, and expenditures therefrom within the amounts appropriated should be considered in determining whether expenditures of tribal funds were authorized during these years.

The plaintiffs stated that the Appropriation Act for fiscal year 1919 appropriated $70,000 of public funds for irrigation work on the Colorado River Indian Reservation, $20,000 of which was to be reimbursed to the United States from proceeds of the sales of reservation lands which the plaintiffs described as "non-IMPL funds". However, the plaintiffs did not mention that disbursements for irrigation construction and maintenance costs were paid for from IMPL funds in 1919, 1924, and 1929.

The defendant also noted that the Appropriation Act for 1919 included a reimbursable appropriation of $70,000 for the irrigation system on

plaintiffs' reservation, asserting that the United States was not obligated by statute, treaty, or agreement to bear the expenses of construction and maintenance of that system. The defendant referred to irrigation costs as an example of expenditures of tribal funds which benefited the Indians and therefore were not recoverable.

The accounting report shows that the following disbursements for the construction and maintenance of irrigation systems on the plaintiffs' reservation were made from plaintiffs' IMPL funds during the three years affected by the motion for partial summary judgment:

1919.	$6,304.08
1924.	253.16
1929.	1,800.00
Total	$8,357.24

We did not separate these expenditures from disbursements of tribal funds for other purposes during the three years here involved because the parties did not do so and the question of adjusting these amounts can be handled in subsequent proceedings. However, the accounting report shows that more than $10,000.00 for irrigation construction and maintenance was disbursed from the plaintiffs' IMPL funds after the effective date of § 27 of the 1916 Act, although expenditures of tribal funds for these purposes were required by statute to be charged against a different tribal fund. The appropriations for irrigation costs in 1919, 1924, and 1929 indicate the questions to be resolved in charging the plaintiffs' IMPL fund for these expenditures.

As explained in detail below, 9/ we conclude that irrigation costs totaling $6,304.08 were charged against the plaintiffs' IMPL funds for fiscal year 1919 which should have been charged against another fund, i.e., proceeds of sales of surplus lands, to comply with the applicable statutory requirement. Neither the accounting report nor anything in

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9/ The Appropriation Act for fiscal year 1919, 40 Stat. 561, 568, authorized the expenditure of $70,000 for irrigation purposes on plaintiffs' reservation. Of the total, $20,000 was available for construction, operation, and maintenance costs, and was reimbursable as provided in the Act of April 4, 1910, 36 Stat. 273. The latter act required that irrigation costs be reimbursed from proceeds of the sale of surplus lands of the Colorado River Reservation. The remaining $50,000 available for irrigation costs on plaintiffs' reservation during fiscal year 1919 was to be used for securing water and for making surveys and plans for a complete irrigation system. This $50,000 was made reimbursable from the proceeds of the sale of town lots under the Act of April 30, 1908, 35 Stat. 77, i.e., from the tribal fund "Proceeds of Townsites, Colorado River Reservation, Arizona." The accounting report shows that no disbursements for irrigation survey and planning were made from public funds or from the plaintiffs' "Proceeds of Townsites" fund. None of the $50,000 appropriated for fiscal year 1919 surveys and plans for a complete irrigation system appears to have been spent that year and the accounting report indicates that no funds have been disbursed from the "Proceeds of Townsites" fund for reimbursing the United States for such costs. However, as indicated above, disbursements for construction and maintenance costs of irrigation systems on the plaintiffs' reservation were made from the plaintiffs' IMPL funds in the amount of $6,304.08 for fiscal year 1919. We noted previously that the appropriation act for that year provided that amounts spent for construction, operation, and maintenance of irrigation systems were to be reimbursed from the proceeds of the sale of surplus reservation lands.

this record mentions a fund consisting of or related to the proceeds of sales of surplus reservation lands. The plaintiffs' IMPL fund has not been repaid the amount disbursed for these irrigation costs.

The amounts appropriated for irrigation costs in appropriation acts for fiscal years 1924 and 1929, like the irrigation construction, operation and maintenance costs for fiscal year 1919, were made reimbursable from the proceeds of sales of plaintiffs' surplus lands.[10/] As indicated above, the plaintiffs' IMPL funds were used for irrigation costs during 1924 and 1929 as in 1919. The IMPL funds have not been repaid for the $253.16 disbursed for construction and maintenance costs in fiscal year 1924 or the $1,800.00 for such costs disbursed in fiscal year 1929.

Irrigation costs which were made reimbursable from tribal funds and which had not been reimbursed became subject to adjustment and cancellation after enactment of the Leavitt Act of July 1, 1932, 25 U.S.C. § 386a. There is substantial evidence that the plaintiffs may have been adversely affected by the failure to repay their IMPL funds for the expenditures for irrigation construction and maintenance costs on their reservation during fiscal years 1919, 1924, and 1929, as some or all of the costs might have been canceled or otherwise adjusted under the Leavitt Act if they had not been reimbursed from the IMPL fund which was improperly charged permanently for them.

10/ 42 Stat. 1174, 1187, 45 Stat. 202, 212.

In accordance with the provisions of the Leavitt Act, certain reimbursable construction, operation, and maintenance costs of irrigation, totalling $550,907.62 on plaintiffs' reservation, were canceled as recommended by the Secretary of the Interior and approved by Congress. H. R. Doc. No. 501, 72d. Cong. 2d Sess. (1932). Other such costs may have been canceled by similar reports to Congress under the Leavitt Act after 1932.[11/] Had the plaintiffs' IMPL funds not been used to pay irrigation construction, operation, and maintenance costs, and had the amounts remained charged against proceeds of the sale of surplus land of plaintiffs' reservation as directed by Congress, the costs might have been canceled or otherwise adjusted under the Leavitt Act, erasing or diminishing the debt for these charges.

The plaintiffs' IMPL funds which were charged for reimbursement of these irrigation costs had been in existence for many years when Congress directed in appropriation acts that the charges be reimbursed

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11/ The irrigation project on plaintiffs' reservation was described in H.R. Doc. No. 501 as a serious problem because of the tendency of the irrigated lands to become alkalied for lack of a drainage system. More land was under ditch than could be used because new areas were brought in to replace tracts on which the accumulated alkali made further farming impossible. The report stated that approximately one-third of the land under ditch was so badly alkalied as to be useless for tillage in its present condition; that in the remaining two-thirds, alkali was beginning to show in many places, and that in from three to five years most of it would be useless for farming unless drainage were provided immediately.

In accordance with the recommendation in H.R. Doc. No. 501, construction charges for all irrigation works before 1910 were canceled as the works had been unsuccessful and were virtually useless. Further recommendation about construction charges was postponed until a decision was made about drainage for plaintiffs' lands. Operation and maintenance charges had not been assessed against most Indian-used lands. These costs were also canceled by H. R. Doc. No. 501.

from proceeds of the sale of surplus reservation lands. Since Congress might have but did not make these irrigation costs reimbursable from IMPL funds, it seems clear that IMPL funds were not intended to be used for reimbursement of the costs. Had the plaintiffs' IMPL funds been repaid at a later date for the unauthorized disbursements, it might be argued that the plaintiffs were not harmed. But since the IMPL funds were not repaid such a view is unconvincing. The action of the United States in canceling substantial amounts of these irrigation costs under the Leavitt Act suggests the objections to charging any tribal funds therefor. See n. 11 , supra.

We conclude that the unauthorized disbursements from the plaintiffs IMPL fund, which were not repaid to that fund, were tribal funds which, without regard to § 27 of the 1916 Act, were spent improperly during the years involved.[12/] The accounting report shows that more than $40,000 was disbursed from IMPL funds for construction and maintenance of irrigation systems, some of which was spent before the effective date of the 1916 Act. Consequently, the plaintiffs may choose to separate these expenditures from disbursements which appear to be improper only because they exceeded the specific appropriation limitation in the 1916 Act. In any event, some important aspects of the disbursement of

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12/ A trustee is obligated to use the trust funds in its hands in the way most beneficial to the plaintiffs. Menominee Tribe v. United States, 102 Ct. Cl. 555 (1945). In considering a statute permitting withdrawals from a trust fund to carry on a business for the plaintiff, the court held that amounts withdrawn for permanent improvements should have been restored over a reasonable period of time to the fund for operating expenses from which withdrawn.

plaintiffs' tribal funds regarding irrigation costs have not been considered by the parties. Thus, a decision on the plaintiffs' motion for summary judgment would be premature at this point.

We turn next to the plaintiffs' request for a supplemental accounting of tribal funds disbursed under the industrial assistance provisions of appropriation acts. The motion will be granted, as already discussed, for the period between March 4, and June 30, 1929. The plaintiffs contend that, to determine whether expenditures of tribal funds for industrial assistance were within the limits set by Congress, they are entitled to a supplemental accounting of all tribal funds spent pursuant to the industrial assistance provisions of the Appropriation Act of March 4, 1929, and of similar provisions in subsequent statutes. According to the plaintiffs, they need to know in particular the amount by which tribal funds spent for industrial assistance were reimbursed. The defendant's accounting report does not show this information.

We agree that the plaintiffs are entitled to know whether their tribal funds appropriated for industrial assistance were spent as required by statute and to know also the amount by which the funds were reimbursed. However, the plaintiffs have not cited the statutes involved other than the Act of March 4, 1929. To avoid uncertainty and delay, the plaintiffs should furnish the defendant with the citations of the appropriations of tribal funds for industrial assistance for which they want a supplemental accounting. The defendant will be directed to furnish accounting data showing the use and reimbursement of tribal funds for industrial assistance upon citation by the plaintiffs of the statutes involved.

The plaintiffs have also requested supplemental accounting of their "tribal IIM accounts" without identifying the accounts referred to, and a supplemental accounting of their trust funds generally after the effective date of section 27 of the Act of May 18, 1916. In our opinion, this request is not sufficiently definite to grant at this time. Part IV of the accounting report lists the names and titles of appropriations or funds under which disbursements were made and either the warrant number and date or the statutes authorizing the disbursements. If the plaintiffs are unable to determine the statutory provisions authorizing particular disbursements of tribal funds listed in the accounting report, they may use interrogatories or except to specific items. We conclude that other than furnishing the data specified above on tribal funds appropriated for industrial assistance, the plaintiffs' motion for supplemental accounting should be denied as of this time.

Finally, we consider the defendant's motion for a determination of the scope of supplemental accounting. The plaintiffs' reply to this motion indicated that the motion for supplemental accounting applied only to tribal funds, a restriction which the defendant had, in effect, requested. Accordingly, the motion of the defendant will be denied.

To recapitulate, the Commission has determined that the plaintiffs are entitled to interest under the Act of April 1, 1880, on their Proceeds of Townsites fund. The Commission has determined further that the term "other payments" in § 27 of the Act of May 18, 1916, means payments like per capita or individual payments to members of Indian tribes. In addition,

we have concluded that action at this time on the plaintiffs' motion for partial summary judgment would be premature. The motion for partial summary judgment will, therefore, be denied without prejudice. The motions discussed in the immediately preceding paragraphs will be denied with the exception of a supplemental accounting of tribal funds appropriated for industrial assistance.

The attorneys and accountants for the respective parties will be requested to meet with Commissioner Vance for an informal accounting conference within thirty days of the date of this decision. At that conference the current status of this case, the possibility of settlement, and the need, if any, for additional supplemental accounting will be discussed and a trial date will be set. An order consistent herewith is this day being issued.

John T. Vance, Commissioner

We concur:

Jerome K. Kuykendall, Chairman

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner