

BEFORE THE INDIAN CLAIMS COMMISSION

THE SIOUX TRIBE OF INDIANS OF THE)	
STANDING ROCK RESERVATION,)	
SOUTH DAKOTA,)	
Plaintiff,)	
)	
v.)	Docket No. 119
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: September 23, 1976

Appearances:

Marvin J. Sonosky, Attorney for the
Plaintiff.

Richard L. Beal, with whom was
Assistant Attorney General Wallace H.
Johnson, Attorneys for the Defendant.

OPINION OF THE COMMISSION

Vance, Commissioner, delivered the opinion of the Commission.

We have before us plaintiff's motion to amend their amended exception 16 in this accounting action. The proposed amended exception to defendant's March 11, 1960, General Accounting Office accounting report in this docket, excepts to the failure of the report:

* * * to account for lands and the proceeds from lands disposed of after June 30, 1925 under the Act of May 29, 1908, supra, and the Act of February 14, 1913, supra, and for failure to pay just compensation under the Fifth Amendment for lands disposed of after June 30, 1925 under the 1908 and 1913 Acts without the consent of the Tribe.

Defendant's response to plaintiff's motion urges that it be denied on the ground that the claim for just compensation in the amended exception is

outside the scope of the original petition, and is therefore beyond the Commission's jurisdiction.

This case has had a complicated history, which we summarized at 26 Ind. Cl. Comm. 92 (1971). We will concern ourselves here with that history only insofar as it affects the instant motion.

Plaintiff's original petition, filed in 1951 herein, asked for an accounting of moneys due it from July 1, 1925, under the acts of May 29, 1908 (35 Stat. 460), and of February 14, 1913 (37 Stat. 675). Defendant had previously accounted to plaintiffs for the period through June 30, 1925, in proceedings in the Court of Claims pursuant to a special jurisdictional act. See Sioux Tribe v. United States, 105 Ct. Cl. 725, 64 F. Supp. 312, remanded, 329 U.S. 685 (1946), judgment reentered, 112 Ct. Cl. 50, 78 F. Supp. 793 (1948), cert. denied, 337 U.S. 908 (1949).

In 1970 plaintiff filed a motion for leave to file amendments to the petition. The amendments alleged that the land sold under the 1908 and 1913 acts was not sold competitively and for full value, and that this constituted a taking under the Fifth Amendment. Defendant objected that the takings all occurred prior to June 30, 1925. We concluded that the amendments, dealing with takings prior to July 1, 1925, were barred as new claims in an action for an accounting beginning July 1, 1925, and denied plaintiff's motion to file. 26 Ind. Cl. Comm., supra.

Simultaneously with plaintiff's motion to file amendments to the petition, plaintiff filed a motion for leave to file amended exceptions, which we granted. Plaintiff's amended exception 16 complained that the accounting reports in the instant dockets did not contain full data concerning

transactions occurring after June 30, 1925, involving land sold pursuant to the 1908 and 1913 acts. Plaintiff alleged that the GAO report showed proceeds from sales, but lacked specific data on the particular sales, and the number of acres unsold.

We granted plaintiff's motion to file amended exception 16. Subsequently, in response to the exception and to an additional motion by plaintiff, defendant has filed supplemental accounting information, including data showing acreage and prices of lands disposed of after June 30, 1925, under the aforesaid acts, and the amount of acreage, if any, remaining unsold. 34 Ind. Cl. Comm. 230 (1974).

On November 13, 1975, plaintiff submitted a motion for summary judgment alleging that plaintiff did not consent to the disposition of its lands under the 1908 and 1913 acts, and that there was a Fifth Amendment taking of the lands. We determined, however, that plaintiff had not pleaded a post-1925 Fifth Amendment taking claim, and denied plaintiff's motion without prejudice to plaintiff's right to file an amended exception. 37 Ind. Cl. Comm. 618 (1976). Plaintiff next filed the instant motion.

Defendant's memorandum in support of its response to plaintiff's motion argues that in an accounting action whose original petition is cast in terms of an accounting for money, the Commission is without jurisdiction over Fifth Amendment claims for disposition of plaintiff's lands.

Defendant maintains that in determining the scope of its jurisdiction the Commission may look solely to the original petition, and cites our

statement in Minnesota Chippewa Tribe v. United States, Docket Nos. 188 & 189-C, 35 Ind. Cl. Comm. 98, 100 (1974), to the effect that:

* * * In determining whether a claim relates back we consider the notice given by the general fact situation set forth in the original petition. If the claim arose out of the same conduct, transaction or occurrence, the Government was timely notified of the claim and the Commission has jurisdiction to consider it.


A similar defense has been raised by defendant in an earlier case before the Commission, and has been rejected. Fort Peck Indians of Fort Peck Reservation v. United States, Docket 184, 34 Ind. Cl. Comm. 24, 47-61 (1974). After lengthy discussion of defendant's argument, and citation of pertinent cases, the Commission determined (page 58) as follows:

We have looked in vain for authority that abuse of trust only, but not outright repudiation of the trust, may be claimed in an equitable accounting. The distinction between Fifth Amendment claims and equitable claims affects the quantum of proof and the measure of damage; but it does not affect the plaintiff's right to assert both in the same case. Fort Berthold, *supra*, 182 Ct. Cl. at 551-552. See also Klamath and Modoc Tribes v. United States, 193 Ct. Cl. 670, 686, 436 F.2d 1008, 1015 (1971); Indian Claims Commission General Rules of Procedure, Rule 7(a)(2) (25 C.F.R. 503.7(a)(a)). The ancient rule of equity is to the same effect. See McMullen Lumber Co. v. Strother, 136 Fed. 295, 305 (8th Cir. 1905):

. . . Where the court of equity thus obtains jurisdiction over any material part of the subject-matter in controversy between the parties, it brings within the compass of its jurisdiction in the single proceeding the entire adjustment of all, to put an end to the litigation. *Pomeroy's Equity*, Vol. 1, pars. 181-242; 1 Cyc. of L. & P. 418.

Plaintiff's original petition herein, and its amended exception 16 which is the subject of the instant motion, are based on defendant's conduct in administering the 1908 and 1913 acts as trustee for plaintiff. This is sufficient to meet the notice requirements cited above in

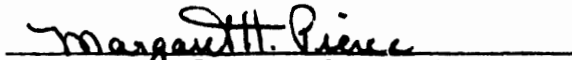
Minnesota Chippewa. ^{*/} Therefore, and for the reasons expressed in Fort Peck,
supra, we grant plaintiff's motion to file amended exception 16.

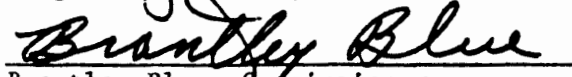

John F. Vance, Commissioner

We concur:


Jerome K. Kuykendall, Chairman


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner

^{*/} We note in passing that the Court of Claims, in its adjudication of the accounting claims pursuant to the 1925 act reported in 105 Ct. Cl., supra, at pages 759 and 763, provided an accounting of the acreage sold and remaining pursuant to the 1908 and 1913 acts, respectively.