

## 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: March 25, 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

The Commission has before it in this accounting action, plaintiff's motion for summary judgment, filed November 13, 1975, concerning plaintiff's exception 16 to the defendant's accounting report.

Plaintiff filed its accounting petition in 1951, asking for an accounting from July 1, 1925, of funds held by defendant pursuant to various acts of Congress. 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. 658, 64 F. Supp. 303, remanded, 329 U. S. 684 (1946), judgment reentered 112 Ct. Cl. 39 (1948), cert. denied,

337 U. S. 908 (1949); 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 (1948), cert. denied, 337 U. S. 908 (1949).

In response to plaintiff's petition, defendant filed a General Accounting Office report, certified April 26, 1957. Of the subsequent history of the case, suffice it to say that on April 24, 1970, plaintiff filed a motion for leave to file amended exceptions, and amendments to the petition, in this docket. Both the amendments to the petition and certain of the amended exceptions dealt with two acts of Congress (acts of May 29, 1908, c. 218, 35 Stat. 460, and of February 14, 1913, c. 54, 37 Stat. 675), which disposed of tribal lands.

The amendments to the petition complained that land sold under the pertinent acts was not sold competitively and for full value, and that this constituted a taking of plaintiff's lands, under the fifth amendment. The sales complained of were those revealed in that GAO report to 1925 which was the subject of the earlier litigation in the Court of Claims. All of these sales occurred prior to July 1, 1925. We decided that the proposed 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 leave to file the amended petition. 26 Ind. Cl. Comm. 92 (1971).

Plaintiff's amended exception 16, on the other hand, 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 subject acts. Plaintiff alleged that the GAO

reports 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, and defendant has filed certain supplemental accounting information in response thereto.

Although plaintiff clearly could have included in its 1970 filings a Fifth Amendment claim as to post-1925 transactions, it failed to do so. <sup>\*/</sup> Similarly, following our 1971 ruling, supra, plaintiff could have made such a fifth amendment claim, but failed to do so.

Subsequently, pursuant to a motion by plaintiff, we ordered defendant to furnish information showing acreage and prices of lands disposed of after 1925 under the aforesaid acts, and the amount of acreage, if any, remaining unsold. 34 Ind. Cl. Comm. 230 (1974). Defendant has responded to our order.

Then, on November 13, 1975, plaintiff submitted the motion for summary judgment on exception 16 which is before us now, and requested a trial date. Plaintiff's motion for summary judgment alleges that there is no genuine issue of fact concerning liability. Plaintiff argues that the tribe did not consent to the disposition of its lands under the acts

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\*/ In hindsight, it seems likely that plaintiff inadvertently limited its amended petition to the period ending June 30, 1925, instead of making it inclusive to August 8, 1946. This is suggested by plaintiff's statement in support of its amended exceptions that if the amendments to the petition were granted, the parallel amended exception would be unnecessary. Such a statement only makes sense if the amended petition were intended to include all sales pursuant to the acts, both before and after June 30, 1925. A possible explanation for the oversight might be that the amended petition was made with reference to the earlier GAO report, which included data only through June 30, 1925.

in question, and that the law is settled that where Congress disposed of tribal land without the consent of the Tribe, there is a taking under the fifth amendment. Plaintiff's argument in support of its motion is based on the language of the acts, and does not rely in any way on information that was not fully known to it in 1970.

Plaintiff requests a pretrial conference in order that the parties may agree on the land to be appraised, with the dates of appraisal to be the dates of the final certificates (unless the parties agree to a median date of valuation).

Defendant raises several defenses to plaintiff's motion. Defendant argues that the Commission has no jurisdiction over this claim because it has not been pleaded, and alternatively, that we cannot grant a motion for summary judgment because there is no claim for a fifth amendment taking before the Commission.

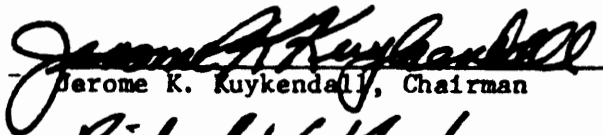
As we stated above, plaintiff's amended exception 16 complained of defendant's failure to include data concerning post-1925 sales pursuant to the 1908 and 1913 acts. The exception made no reference to fifth amendment takings. The Commission ruled that the exception was well taken, and ordered defendant to supply data. If on receipt of that supplemental accounting data plaintiff has a complaint, the proper procedure is for plaintiff to move to file amended exceptions with regard thereto. This plaintiff has failed to do.

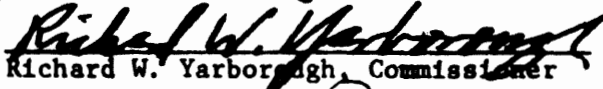
In light of the foregoing, we conclude that defendant is correct, that plaintiff has not pleaded a post-1925 fifth amendment taking in this case. It therefore is not proper for us to entertain a motion for

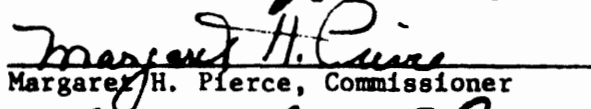
summary judgment at this time, and plaintiff's motion will be denied. This is without prejudice to plaintiff's right to file amended exceptions with regard to supplemental accounting data filed by defendant.

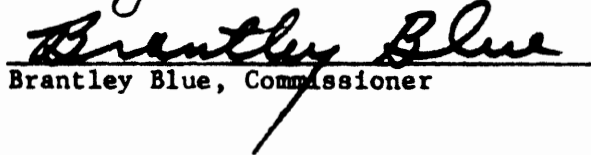
  
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John T. Vance, Commissioner

We Concur:

  
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Jerome K. Kuykendall, Chairman

  
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Richard W. Yarbrough, Commissioner

  
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Margaret H. Pierce, Commissioner

  
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Brantley Blue, Commissioner