

and it does not appear that in respect of most of them there was even an attempt to comply. See and compare *Green v. Menominee Tribe*, 233 U. S. 558, 568; *Lease of Indian Lands for Grazing Purposes*, 18 Op. Atty. Gen. 235, 237; *Indian Contract, Id.*, 497.

We agree with the conclusions of the court of first instance, but are of opinion that the dismissal should have been not upon the merits, but without prejudice to a suit if properly brought. The decrees of both courts, therefore, are erroneous, and the cause must be remanded to the court of first instance with directions to dismiss the bill, on the ground that the suit was brought by counsel without authority, but without prejudice to the bringing of any other suit hereafter by and with the authority of the alleged Pueblo of Santa Rosa. Other grounds appearing from the record, which would lead to the same result, we pass without consideration.

Decree reversed.

LOUISVILLE & NASHVILLE RAILROAD COMPANY
v. UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 61. Argued January 6, 1927.—Decided February 21, 1927.

1. A land-grant-aided railroad under a duty to carry government troops at not to exceed fifty per cent. of the compensation charged private parties for like transportation must allow the government the benefit of this reduction from reduced party rates which are offered the public. P. 323.
2. Where the railroad has accepted the usual transportation request in issuing tickets for government transportation, it cannot avoid the land-grant reduction from a reduced rate offered the public upon the ground that by the tariff the rate was allowable only for cash paid in advance. P. 323.

59 Ct. Cls. 886, affirmed.

APPEAL from a judgment of the Court of Claims rejecting a claim of the Railroad on account of transportation of men of the army and navy.

Mr. Benjamin Carter for the appellant.

Assistant Attorney General Galloway, with whom *Solicitor General Mitchell* was on the brief, for the United States.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

Appellant owns and operates a system of railroads among which are two land-grant aided lines. During the period from 1911 to 1917 there were transported for the Government over these lines upon transportation requests large numbers of officers and enlisted men of the United States army and navy. Individual passenger rates to the public during that time were in force, and in addition certain party rates open to the public by which ten or more passengers were entitled to reduced rates. Some of the rate tariffs provided for cash payments when tickets were issued and that there should be no land-grant deductions made from such party rates. In other tariffs no such provisions were made. As initial carrier, appellant presented its bills on proper forms to the disbursing officers of the Government. In some of the bills individual rates with land-grant deductions were charged where ten or more persons had been transported in troop movement; and in others party rates without land-grant deductions were charged, depending upon which was the lower rate. The accounting officers of the Government in all these cases applied party rates with land-grant deductions. To these rulings appellant filed protests, and this suit to recover the amounts involved followed.

The court below denied appellant's right of recovery. 59 C. Cls. 886.

Appellant's contentions are (1) that the Government in transporting troops has no right to avail itself of party rates but that these are restricted to passengers traveling on private account and (2) that if the Government avail itself of the party rates it must pay cash in advance in accordance with the tariff provisions.

It is not disputed that in virtue of valid acts of Congress (for example, see c. 115, 36 Stat. 243, 256) appellant's land-grant aided lines were bound to carry officers and men of the army and navy at a rate, in the words of the law, "not to exceed fifty per centum of the compensation for such government transportation as shall at that time be charged to and paid by private parties to any such company for like and similar transportation" and that such amounts must "be accepted as in full for all demands for such service." That the party rates, being open to private parties, were open to the Government with a deduction of 50% under this express provision of the statute, does not admit of doubt.

Nor is there any merit in the contention that the Government may avail itself of the rate only by paying cash in advance. Appellant issued the tickets and sent in its bills therefor without asking for cash payments. It thereby waived the requirement, if any existed, for payment in cash. Moreover, as the court below pointed out, the Government from the very nature of things cannot be required to deal for transportation on a cash basis. It is not to be supposed that station agents generally are familiar with the land-grant legislation or the limits of the various land-grant lines so as to be able readily to make the necessary computations. But, in any event, the well settled practice of the Government is to issue requisitions for transportation, and to require the rendition of bills therefor to be examined and audited by its

accounting officers. This method was recognized and accepted by appellant in the present case. See *Louisville & Nashville R. R. Co. v. United States*, 58 C. Cls. 622, 631.
Judgment affirmed.

DAVIS SEWING MACHINE COMPANY *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 82. Argued January 6, 1927.—Decided February 21, 1927.

A claim for profits anticipated from the performance of a contract with the Government cannot be based on delays caused by changes made by the Government, when under the contract itself the remedy for such delays was to be an extension of time to the contractor, and when the contract was terminated by a supplemental agreement expressly releasing all claims for such profits. P. 325.

60 Ct. Cls. 201, affirmed.

APPEAL from a judgment of the Court of Claims disallowing in part a claim under a contract to make Very pistols for the Government.

Mr. Raymond M. Hudson for the appellant.

Solicitor General Mitchell and *Assistant Attorney General Galloway* were on the brief for the United States.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

This suit was brought to recover upon a contract between appellant and the United States to manufacture a large number of Very pistols. It was stipulated in the contract that the Government might terminate it in whole or in part at any time and in that event certain enumerated payments were to be made, not including, however, prospective profits upon uncompleted articles. The contract provided that upon written notice the Government