Code. The judgment here in question meets that test. The claim against respondent on the promissory note was unrelated to the claim on the contract not to change the will. Those two claims arose out of wholly separate and distinct transactions or engagements. And the question as to Hamer's liability to account to petitioner would arise only in the event that the claim on the contract not to change the will was sustained. Hence no question is presented here as respects the appealability of a judgment dismissing a complaint as to one of several defendants alleged to be jointly liable on the same claim. See *Hunteman* v. *New Orleans Public Service, Inc.*, 119 F. 2d 465. After the entry of the judgment on Count II, the claim based on the contract not to change the will was terminated and could not be affected by any action which the Court might take as respects the remaining claims. Nothing remained to be done except appeal.

The judgment therefore was final.

Reversed.

SEMINOLE NATION *v.* UNITED STATES.*

CERTIORARI TO THE COURT OF CLAIMS.

No. 348. Argued April 1, 2, 1942.—Decided May 11, 1942.

1. A claim against the Government by the Seminole Nation, based on Article VIII of the Treaty of August 7, 1856, whereby the Government undertook to provide a certain sum annually for ten years, to be used for specified purposes, but which, in the amount claimed, was diverted to the clothing and feeding of refugee Indians, *held* to have been released by Article VIII of the Treaty of March 21, 1866, and properly disallowed by the Court of Claims. P. 290.

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*Opinion reported herein as amended by order of June 8, 1942, *post*, p. 651.

2. Payment by the Government to the tribal treasurer of the Seminole Nation, of certain amounts which, by Article III of the Treaty of 1866, the Government agreed to pay for the support of schools, satisfied the obligation of the Treaty and defeats recovery, whether payment to the tribal treasurer was authorized or not, since the schools actually received the benefit of the payments. P. 292.
3. Under § 11 of the Act of April 26, 1906, a sum due under Article III of the Treaty of 1866, was in 1907 properly paid by the Government to the United States Indian Agent for the Seminoles. P. 292.
4. A provision in Article VI of the Treaty of 1866, whereby the Government undertook to construct at a cost not exceeding $10,000 "suitable agency buildings" on the Seminole reservation, *held* not breached. P. 293.
5. In respect of a claim of the Seminole Nation based on the Government's obligation, under a provision of Article VIII of the Treaty of 1856, to establish a trust fund in a specified amount and to pay the interest therefrom to the members of the Seminole Nation per capita as an annuity, *held:*

   (a) The Court of Claims properly deducted the amount of overpayments found to have been made by the Government in certain years. P. 294.

   (b) Under the Act of 1906, which was not repealed by the jurisdictional act, payments in 1907, 1908, and 1909 were properly made to the United States Indian Agent for the Seminoles. P. 294.

   (c) As to payments made from 1870 to 1874 directly to the tribal treasurer and to designated creditors, pursuant to requests of the Seminole General Council, the Court of Claims should have made findings, since the issue was material, as to whether the General Council, during the years in question, was corrupt, venal, and false to its trust; whether, if such were the fact, it was known to the administrative officers of the Government charged with the disbursement of Indian moneys; and whether the Seminole Nation received the benefit of any of the payments. This branch of the case is remanded to the Court of Claims in order that the essential findings of fact may be made. Pp. 294, 300.
6. Certain payments made by the Government to the tribal treasurer of the Seminole Nation, after the passage of the Curtis Act of June 28, 1898, *held* not to have contravened § 19 of that Act, since that section forbade only payments to tribal officers which were to be

distributed by them to individual members of the tribe. However, this branch of the case also is remanded to the Court of Claims for further findings as to whether from 1899 to 1907 tribal officers were mulcting the Seminole Nation; if so, whether administrative officers of the Government disbursing moneys to the Seminoles had knowledge thereof; and whether the Seminole Nation received the benefit of payments made to the tribal treasurer. Pp. 301, 307.

7. In respect to amounts which were expended gratuitously by the Government for the benefit of the Seminole Nation, and which, under Act of August 12, 1935, may be offset against the Government's liability, *held* that the Court of Claims should find and designate the precise expenditures to be used as offsets, instead of finding generally all the items which the Government may ever be entitled to use. P. 308.

93 Ct. Cls. 500, reversed in part.

CERTIORARI, 314 U. S. 597, to review a judgment of the Court of Claims, as modified on motion for a new trial, in a suit by the Seminole Nation against the Government, brought under a special jurisdictional Act of August 16, 1937.

Mr. Paul M. Niebell, with whom *Messrs. W. W. Pryor* and *C. Maurice Weidemeyer* were on the brief, for petitioner.

Mr. Charles R. Denny, with whom *Solicitor General Fahy, Assistant Attorney General Littell,* and *Mr. Vernon L. Wilkinson* were on the brief, for the United States.

MR. JUSTICE MURPHY delivered the opinion of the Court.

This suit to adjudicate certain claims of the Seminole Nation against the United States growing out of various treaties, agreements, and acts of Congress is now before us for the second time. After we reversed, 299 U. S. 417, for want of jurisdiction in the Court of Claims, a previous

judgment of that court awarding the Seminole Nation $1,317,087.27,[1] the jurisdictional barrier was removed by statute,[2] and the Seminole Nation then filed a second amended petition in the Court of Claims, reasserting the six items of claim previously denied by this Court on jurisdictional grounds.[3] The Court of Claims thereupon disallowed three items in their entirety, allowed one in full, and allowed the remaining two in part, deciding that the Seminole Nation was entitled to $18,388.30, against which the United States was entitled to gratuity offsets in the amount of $705,337.33.[4] Accordingly, the second amended petition was ordered dismissed.[5] We granted certiorari on a petition challenging the correctness of the decision below on each of the five items disallowed in whole or in part, and as to numerous items which the court included in its list of gratuity offsets.

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[1] 82 Ct. Cls. 135.

[2] The Act of August 16, 1937, c. 651, 50 Stat. 650, conferred jurisdiction on the Court of Claims to reinstate and retry, on the merits, claims of the Five Civilized Tribes previously dismissed because set up by amended petition after the expiration of the time limit fixed in the respective jurisdictional acts.

[3] Seven items, amounting to $1,307,478.02, were considered by this Court in 299 U. S. 417. As to six of those items it was concluded that no jurisdiction existed in the Court of Claims, and no decision on the merits of those claims was expressed. The seventh item was examined on its merits and disallowed in large part. 299 U. S. 417, 431.

[4] The Act of August 12, 1935, c. 596, 49 Stat. 571, 596, 25 U. S. C. § 475a, provides in part:

"In all suits now pending in the Court of Claims by an Indian tribe or band which have not been tried or submitted, and in any suit hereafter filed in the Court of Claims by any such tribe or band, the Court of Claims is hereby directed to consider and to offset against any amount found due the said tribe or band all sums expended gratuitously by the United States for the benefit of the said tribe or band; . . ."

[5] 93 Ct. Cls. 500.

I

We are of opinion that petitioner, the Seminole Nation, is entitled to no additional allowance on Items One, Three, and Four of its claim.

Item One.

This item is a claim for $61,563.42, based on Article VIII of the Treaty of August 7, 1856, 11 Stat. 699, 702, whereby the Government promised the Seminole Nation:

"to provide annually for ten years the sum of three thousand dollars for the support of schools; two thousand dollars for agricultural assistance; and two thousand two hundred dollars for the support of smiths and smith shops . . ."

The Court of Claims found that Congress annually made the necessary appropriation of $7,200 to discharge this obligation during the fiscal years from 1858 to 1867, inclusive; that only $10,436.58 was actually expended for the purposes specified in the Treaty; and that the balance ($61,563.42) was diverted and disbursed by the Government prior to June 30, 1866, for the purpose of clothing and feeding refugee and destitute Indians driven from their homes during the Civil War because of their loyalty to the Union.

Petitioner's claim to the diverted balance was properly disallowed because petitioner released its claim by Article VIII of the Treaty of March 21, 1866, 14 Stat. 755, 759, which provides:

"The stipulations of this treaty are to be a full settlement of all claims of said Seminole nation for damages and losses of every kind growing out of the late rebellion, and all expenditures by the United States of annuities in clothing and feeding refugee and destitute Indians since

the diversion of annuities for that purpose, consequent upon the late war with the so-called confederate states. And the Seminoles hereby ratify and confirm all such diversions of annuities heretofore made from the funds of the Seminole nation by the United States. And the United States agree that no annuities shall be diverted from the objects for which they were originally devoted by treaty stipulations with the Seminoles, to the use of refugee and destitute Indians, other than the Seminoles or members of the Seminole nation, after the close of the present fiscal year, June thirtieth, eighteen hundred and sixty-six."

It is unnecessary to consider petitioner's contention that by this Article it did not ratify the diversions in question because they were made from the funds of the United States and not from funds of the Seminole Nation. The first sentence of Article VIII of Treaty of 1866, quoted above, constitutes a release to the United States of all expenditures of annuities diverted for the purpose of clothing and feeding refugee Indians. There is no requirement that the annuities there referred to must be derived "from the funds of the Seminole nation," and there is no indication that the releases contained in the first sentence of Article VIII are dependent upon the ratification contained in the second sentence. The payments due the Seminole Nation under Article VIII of the Treaty of 1856 clearly come within the scope of the release—being annual payments, they were annuities, and they were diverted for the purpose of clothing and feeding refugee Indians.

Item Three.

This claim for $61,347.20 grows out of Article III of the Treaty of 1866, in which the Government agreed to estab-

lish a $50,000 trust fund for the Seminole Nation and to pay thereon annual interest of 5% ($2,500) for the support of schools.

During the period from 1867 to 1874, the Government only partially discharged this annual obligation, disbursing only $16,902.80 of the $20,000 appropriated for that purpose. It is here undisputed that, as the Court of Claims held, petitioner is entitled to the deficiency of $3,097.20.

The Court of Claims correctly disallowed the balance of this Item. During the twenty-three years from 1875 to 1898, the annual payments, amounting in all to $57,500, were paid directly to the tribal treasurer. Since that official disbursed annually not less than $2,500 in excess of amounts he was otherwise obligated to expend for the maintenance of schools,[6] there is no need to inquire whether payment to that official was authorized. The schools actually received the benefit of the money. That satisfied the obligation of the Treaty and defeats recovery.

The remainder of this Item, $750, was paid to the United States Indian Agent for the Seminoles in 1907. Such payment was proper under § 11 of the Act of April 26, 1906, c. 1876, 34 Stat. 137, 141,[7] and nothing in the

[6] Petitioner does not question this finding of the Court of Claims. See Annual Reports of the Commissioner of Indian Affairs: 1876, pp. 212–213; 1877, pp. 690–691; 1878, pp. 286–287; 1879, pp. 341–342; 1881, pp. 280–281; 1883, pp. 90, 250–251; 1884, pp. 270–271; 1886, pp. 146, 154; 1887, pp. 98, 110; 1888, pp. 113, 122; 1890, pp. 89, 94; 1891, pp. 240, 250; 1892, pp. 247, 256; 1893, pp. 143, 147; 1894, p. 140; 1895, pp. 155, 161; 1896, pp. 151–158.

[7] "That all revenues of whatever character accruing to the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes, whether before or after dissolution of the tribal governments, shall, after the approval hereof, be collected by an officer appointed by the Secretary of the Interior under rules and regulations to be prescribed by him; and he shall cause to be paid all lawful claims against said tribes which may have been contracted after July first, nineteen hundred and two, or for

applicable jurisdictional act[8] indicates any intention on the part of Congress to override or repeal the Act of 1906.

Item Four.

The Government agreed in Article VI of the Treaty of 1866 to construct, "at an expense not exceeding ten thousand ($10,000) dollars, suitable agency buildings" on the Seminole reservation. In 1870 and 1872, $931.76 was expended for agency buildings and repairs. Petitioner's claims for the difference of $9,068.24 between this sum and $10,000 is without merit. In 1872, Congress appropriated $10,000 to fulfill this treaty obligation;[9] $9,030.15 of this appropriation was expended for some undisclosed purpose, as only $969.85 was returned to surplus. The Court of Claims found that an agency building was erected on the Seminole reservation in 1873.[10] Petitioner makes no claim that the building erected was unsuitable. Since the Government's promise was not to expend $10,000, but to erect suitable buildings at a cost not in excess of $10,000, it follows that there was no violation of the treaty provision, and hence no right of recovery.

II

With respect to Items Two and Five we are of opinion that the cause must be remanded to the Court of Claims for further material findings of fact.

Item Two.

This is a claim for $154,551.28 based on one of the provisions of Article VIII of the Treaty of 1856, namely, the

which warrants have been regularly issued, such payments to be made from any funds in the United States Treasury belonging to said tribes. . . ."

[8] Act of May 20, 1924, c. 162, 43 Stat. 133, as amended by 44 Stat. 568, 45 Stat. 1229, and 50 Stat. 650.

[9] Act of May 18, 1872, c. 172, 17 Stat. 122, 132.

[10] See report of the Commissioner of Indian Affairs for 1873, pp. 211–212.

Government's promise to establish a $500,000 trust fund (originally two funds of $250,000 each), the annual interest therefrom ($25,000) to be paid over to the members of the Seminole Nation per capita as an annuity. The findings of the Court of Claims show that, although Congress appropriated $25,000 annually for each of the fiscal years in controversy (1867–1898, 1907–1909), the Government did in fact fail to make direct per capita disbursements of a portion of the funds appropriated in 1867–1874, 1876, and 1879, the underpayments for those years totalling $92,051.28, and that one-half the appropriation in 1907 and the entire appropriation in 1908 and 1909 ($62,500 in all), instead of being paid directly to the individual Seminoles, was paid to the United States Indian Agent for the Seminole Nation.

The Court of Claims reduced petitioner's claim for $154,551.28, based on these underpayments and alleged mispayments, to $13,501.10, allowing the Government three setoffs, consisting of (a) overpayments of $12,127.54 made in 1875, 1877, 1880, 1882, and 1883; (b) payment of $62,500 made to the United States Indian Agent for the Seminoles in 1907, 1908, and 1909; and (c) payments of $66,422.64 made pursuant to requests of the Seminole General Council during the period from 1870 to 1874.

The overpayments were rightly deducted, cf. *Wisconsin Central R. Co.* v. *United States,* 164 U. S. 190, and petitioner does not contend otherwise. Nor is petitioner entitled to any part of the $62,500 paid directly to the Indian Agent, for such payments were proper under the Act of 1906, 34 Stat. 137, 141, which, as pointed out in the discussion of Item Three, *ante,* was not repealed by the jurisdictional act, 43 Stat. 133. There is thus left for consideration only the payments from 1870 to 1874 made pursuant to requests of the Seminole General Council and totalling $66,422.64; of this amount, $37,500 was

paid directly to the tribal treasurer, and the remaining $28,922.64 to designated creditors.

The Government contends that, since those payments were made at the request of the tribal council, the governing body of a semiautonomous political entity, possessing the power to enter into treaties and agreements with the United States, the tribe is not now entitled to receive payment a second time; and that, despite the fact that the Treaty of 1856 provided that the payments were to be made per capita for the benefit of each individual Indian, these payments at the request of the General Council discharged the treaty obligation, because the agreement was one between the United States and the Seminole Nation and not one between the United States and the individual members of the tribe.

The argument for the Government, however sound it might otherwise be, fails to recognize the impact of certain equitable considerations and the effect of the fiduciary duty of the Government to its Indian wards. The jurisdictional act, 43 Stat. 133, expressly confers jurisdiction on the Court of Claims to adjudicate "all legal and equitable claims," arising under treaty or statute, which the Seminole Nation may have against the United States, and the second amended petition avers:

"That since the passage of said Act of April 15, 1874, it was reported by the officers of defendant [the United States] that the Seminole tribal officials were misappropriating the Seminole tribal funds entrusted to them, and robbing the members of the tribe of an equal share of the tribal income. That the reports of the Dawes Commission show conclusively that the governments of the Five Civilized Tribes were notoriously and incurably corrupt, that every branch of the service was infested with favoritism, graft and crookedness, and that by such methods the tribal officers acquired large fortunes, while the other

members entitled to share in the tribal income received little benefit therefrom."

It is a well established principle of equity that a third party who pays money to a fiduciary for the benefit of the beneficiary, with knowledge that the fiduciary intends to misappropriate the money or otherwise be false to his trust, is a participant in the breach of trust and liable therefor to the beneficiary. Cf. *Duncan* v. *Jaudon,* 15 Wall. 165; *Manhattan Bank* v. *Walker,* 130 U. S. 267. See Bogert, Trusts and Trustees (1935), vol. 4, §§ 901, 955; Scott, Trusts (1939), vol. 3, § 321.1; American Law Institute, Restatement of the Law of Trusts (1935), § 321. The Seminole General Council, requesting the annuities originally intended for the benefit of the individual members of the tribe, stood in a fiduciary capacity to them. Consequently, the payments at the request of the Council did not discharge the treaty obligation if the Government, for this purpose the officials administering Indian affairs and disbursing Indian moneys, actually knew that the Council was defrauding the members of the Seminole Nation.

Furthermore, this Court has recognized the distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people. E. g., *Cherokee Nation* v. *Georgia,* 5 Pet. 1; *United States* v. *Kagama,* 118 U. S. 375; *Choctaw Nation* v. *United States,* 119 U. S. 1; *United States* v. *Pelican,* 232 U. S. 442; *United States* v. *Creek Nation,* 295 U. S. 103; *Tulee* v. *Washington,* 315 U. S. 681. In carrying out its treaty obligations with the Indian tribes, the Government is something more than a mere contracting party. Under a humane and self imposed policy which has found expression in many acts of Congress[11] and

[11] There is no better example of this than the facts of the instant case. Despite the lapse of time and the bar of the statute of limitations, Congress authorized the Court of Claims to adjudicate all legal

numerous decisions of this Court, it has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by the most exacting fiduciary standards. Payment of funds at the request of a tribal council which, to the knowledge of the Government officers charged with the administration of Indian affairs and the disbursement of funds to satisfy treaty obligations, was composed of representatives faithless to their own people and without integrity would be a clear breach of the Government's fiduciary obligation.[12] If those were the circumstances, either historically notorious so as to be judicially noticed or otherwise open to proof, when the $66,422.64 was paid over at the request of the Seminole General Council during the period from 1870 to 1874, the Seminole Nation is entitled to recover that sum, minus such amounts as were actually expended for the benefit of the Nation by the Council.

Having formulated the proper rule of law, we must examine the facts of this case. Although the Court of

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and equitable claims, arising under statute or treaty, which the Seminole Nation may have against the United States. And after an adverse decision by this Court on jurisdictional grounds, 299 U. S. 417, Congress again removed the bar. 50 Stat. 650.

[12] As was well said by Chief Judge (later Mr. Justice) Cardozo in *Meinhard* v. *Salmon*, 249 N. Y. 458, 464, 164 N. E. 545, 546:

"Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the 'disintegrating erosion' of particular exceptions. . . . Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd."

Claims had jurisdiction of this issue, for such an action for breach of fiduciary duty growing out of treaty obligations is clearly an equitable claim within the meaning of the jurisdictional act, 43 Stat. 133, the court did not consider, and hence made no findings on this issue. We think the issue material. During the period in question, 1870–1874, the administration of Indian affairs and the disbursement of Indian moneys were lodged with the Department of the Interior. The Commissioner of Indian Affairs, under the general supervision of the Secretary of the Interior, actively supervised these matters.[13] There are ample indications in the record before us that the Seminole General Council was mulcting the Nation and that the proper Government officials may well have had knowledge thereof at the time some, at least, of the payments were made. For about this time the Commissioner of Indian Affairs received several warnings from his subordinates that "injustice to the majority" of the Seminoles existed,[14] that the chiefs were in the habit "of taking out what amount they

[13] See R. S. §§ 441, 444, 445, 463, 464, 2089. Cf. Act of April 15, 1874, c. 97, 18 Stat. 29.

[14] On December 6, 1869, the United States Indian Agent for the Seminoles wrote to the Commissioner of Indian Affairs as follows:

"I would state that they are in the habit of calling Councils, for any little thing that may arise, and spending from 2 to 15 days without effecting anything whatever, which would be of the least service to the nation [Seminole], except in expending the funds; which are taken out of those ordered paid per 'capita' to the nation.

"I find that it has been the custom heretofore for the Chiefs to order how the payment should be made, but at the same time making return to the department, upon rolls as if it had been paid per 'capita'.

"I think that it is an injustice to the majority of the people, comprising this nation and the only way to avoid unnecessary expenditure of money for Councils, etc. which are of but little benefit to the nation (for example the last council held cost the nation $700.00 for edibles alone and did no business) is for the department to give special orders in reference as to what amount shall be turned over to the chiefs and the balance paid to heads of families in person."

chose" from the annuities,[15] that the Seminoles were "in bad hands," [16] and that the chiefs intended "to 'gobble' the next money for the purpose of keeping up their government." [17] And the Acting Commissioner of Indian Affairs was evidently aware, in 1872, of the possibility that the Council was faithless, for he declined to change the method of payment at the request of the Seminole Chiefs "until the

[15] In his annual report to the Commissioner of Indian Affairs, dated September 1, 1870, the United States Indian Agent for the Seminoles said:

"*Per capita* payments are, in some instances, I think, a great evil; but as the system cannot be abolished, this nation [Seminole] having no constitutional government, and until such a form of government be adopted, I would recommend that the provisions of the treaty be rigidly enforced, and no moneys allowed to be paid except to the heads of families. Heretofore, as I have reported, the chiefs have been in the habit of taking out what amount they chose, allowing the balance to be paid *per capita*. This is an injustice, as few receive the bulk of their annuities." Report of the Secretary of the Interior, 41st Cong., 3d Sess. (1870-71), vol. 1, pp. 766-767.

[16] The report of John P. C. Shanks, Special Commissioner, to the Commissioner of Indian Affairs, dated August 9, 1875, states:

"These claims are enormous in amount, and show too clearly that the Seminoles are in bad hands. These parties who had these claims (except Harjo, who is an assignee) are or have been officials in the Nation. Robert Johnson is a negro, and is interpreter to the Chief; Chupco is present chief; John Jumper was former chief; James Factor, a half breed, is treasurer; E. J. Brown is a white man, formerly U. S. Indian Agent of the Seminole Nation, since has had the address to procure his admission as a member of the tribe.

"These men have evidently stood together in the wrong, of procuring such allowances, and did stand together in refusing to relinquish the claims, or a part of them, except a deduction for present payment upon claims which did not bear interest."

[17] On November 20, 1878, special agent Meacham wrote the Commissioner of Indian Affairs that "Some of the Band Chiefs are tyrants and despots, holding their people under abject fear and in some instances of actual servitude." The letter also referred to the intention of the Chiefs "to 'gobble' the next money for the purpose of keeping up their government."

Department shall be fully satisfied that a proper disposition will be made of the funds if paid in the manner proposed by the Chiefs." [18]

We do not say that all this establishes liability on the part of the Government, for it is not our function, in reviewing judgments of the Court of Claims, to make basic findings of fact. When the Court of Claims fails to make findings on a material issue, it is proper to remand the case for such findings. Cf. *Universal Battery Co.* v. *United States,* 281 U. S. 580, 584–585. We do think, however, that the matter outlined above was sufficient to require the Court of Claims to make findings on this material issue, that is, findings as to whether the Seminole General Council, during the years 1870 to 1874, was corrupt, venal, and false to its trust; whether the appropriate Government officials, charged with the duty of administering Indian affairs and disbursing funds to the Seminoles, knew of that corruption, venality, and faithlessness, if such in fact existed, when any of the payments in question were made at the request of the Council; and, if so, whether the Nation received the benefit of any of those payments. Accordingly, this phase of the case must be remanded so that the Court of Claims can consider such relevant evidence and other data as may be brought to its attention, make the necessary findings of fact, and thus determine whether this case fits into the rule which we have enunciated.

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[18] On January 5, 1872, the Acting Commissioner of Indian Affairs wrote the United States Indian Agent for the Seminoles:

"In reply to your letter of the 20 Dec. last, and to the request of the Seminole Chiefs that their National funds be hereafter paid to the Treasurer of the Nation instead of per capita, I have to say that it is not deemed advisable to change the manner in which payment of annuities to these Indians has heretofore been made until the Department shall be fully satisfied that a proper disposition will be made of the funds if paid in the manner proposed by the Chiefs."

Item Five.

This is a claim for the moneys, $864,702.58 in all, paid to the Seminole tribal treasurer after the passage of the Curtis Act of June 28, 1898, c. 517, 30 Stat. 495, 502. The payments were made during the fiscal years 1899 to 1907 and consisted of the following items: (a) $212,500 paid to discharge the per capita obligation under Article VIII of the Treaty of 1856 (see Item Two, *ante*); (b) $29,750 paid to discharge the obligation of Article III of the Treaty of 1866 providing for the support of schools (see Item Three, *ante*) and for the support of the Seminole Government; (c) $622,156.87 paid pursuant to § 12 of the Act of March 2, 1889, c. 412, 25 Stat. 980, 1004, providing for the payment of interest at five per centum per annum on $1,500,000 "to be paid semi-annually to the treasurer of said nation"; and, (d) $295.71, the "proceeds of labor."

Section 19 of the Curtis Act, 30 Stat. 495, 502, provides:

"That no payment of any moneys on any account whatever shall hereafter be made by the United States to any of the tribal governments or to any officer thereof for disbursement, but payments of all sums to members of said tribes shall be made under direction of the Secretary of the Interior by an officer appointed by him; and per capita payments shall be made direct to each individual in lawful money of the United States, and the same shall not be liable to the payment of any previously contracted obligation."

Petitioner insists that this section prohibited the Government from making the payments in question to the Seminole treasurer, and that it is entitled to recover the sums illegally so paid.

Assuming, without deciding, that § 19 is applicable to the Seminole Nation and that an action could be brought by the Nation for payments made in violation thereof, there can be no recovery here because none of

the payments contravened § 19. The text of that section and its legislative history demonstrate that it prohibits only payments to tribal officers which are "for disbursement"—*i. e.*, payments to be distributed by them to members of the tribe. If the first clause of § 19 is construed as prohibiting all payments to the tribe or its officers, then the later clauses, providing only for payments to members and per capita payments, are inadequate to dispose of the problems raised by the first clause. For then no provision is made for the expenses of maintaining and conducting the tribal government, despite the fact that the Seminole tribal government was not only to continue after the Curtis Act but was in fact relieved of the necessity of securing Presidential approval of its legislation [19] by an agreement ratified three days after the passage of that statute. See 30 Stat. 567, 569. Section 19, as originally introduced in the House, provided that payments of "all expenses incurred in transacting their business" were to be made under the direction of the Secretary of the Interior.[20] The deletion of this clause is persuasive that Congress intended that tribal officers should retain the right to disburse their funds for the expenses of their respective tribal governments. For these reasons we think § 19 prohibits payment by the Government to the tribal

[19] Act of June 7, 1897, c. 3, 30 Stat. 62, 84.

[20] Section 19, as originally introduced, was as follows:

". . . that no payment of any moneys on any account whatever shall hereafter be made to any of the tribal governments or to any officer thereof for disbursement, but payments of *all expenses incurred in transacting their business and of* all sums to members of said tribes shall be made under direction of the Secretary of the Interior by an officer appointed by him; and per capita payments shall be made direct to each individual in lawful money of the United States, and the same shall not be liable to the payment of any previously contracted obligation." [Italics supplied.] H. R. 8581, 55th Cong., 2d Sess., 31 Cong. Rec. 3869.

treasurer only when such payments are to be distributed by him to members of the tribe. It has no application to money earmarked for educational or tribal purposes, and money intended for any purpose the tribe may designate.

None of the payments in question were for disbursement to the individual members of the Seminole Nation. While the sum of $212,500 was paid pursuant to Article VIII of the Treaty of 1856, and while that obligation was originally an annuity payable per capita to the individual Seminoles, the character and purpose of this interest payment were by agreement changed into a payment for the benefit of the Seminole Nation itself, and this before the payment of the $212,500 from 1899 to 1907. The Act of April 15, 1874, c. 97, 18 Stat. 29, authorized the Commissioner of Indian Affairs, with the sanction of the Secretary of the Interior and the President, to pay this annuity into the treasury of the Seminole Nation, provided $5,000 was annually appropriated out of the annuity by the General Council for the school fund, and provided "that the consent of said tribe to such expenditures and payment shall be first obtained." By act of the Seminole General Council on April 2, 1879, the Seminole Nation accepted the provisions of the Act of 1874, and consented that all annuities due or to become due under Article VIII of the Treaty of 1856 should be paid into the Seminole treasury, to be used as the tribal council should provide. This was a consensual conversion of the Government's obligation from payments to individuals to payments to the tribe, and § 19 of the Curtis Act is inapplicable to the $212,500 paid pursuant to this converted agreement.

While none of the payments were in violation of § 19 of the Curtis Act and there can therefore be no recovery on that score, the Government is not necessarily relieved of all liability for this $864,702.58 claim. There remains

for consideration the fiduciary duty of the Government, as discussed in Item Two, *ante*. During this period, 1899 to 1907, as from 1870 to 1874, the Secretary of the Interior and the Commissioner of Indian Affairs supervised Indian matters and the disbursement of Indian moneys. Apparently, it was the practice of the Department of the Interior to deposit the Seminole funds with the Assistant Treasurer of the United States at St. Louis to the credit of the tribal treasurer; the Indian agent for the Five Civilized Tribes did not disburse the Seminole payments although he did distribute moneys to the other tribes.[21] Shortly before the payments in question were made, the Commission to the Five Civilized Tribes[22] pointedly described in its annual reports to the Secretary of the Interior and Congress the unbridled corruption of the various tribal governments, without singling out any particular government for unenviable distinction. Thus:

"Corruption of the grossest kind, openly and unblushingly practiced, has found its way into every branch of the service of the tribal governments. All branches of the governments are reeking with it, and so common has it become that no attempt at concealment is thought necessary. The governments have fallen into the hands of a few able and energetic Indian citizens, nearly all mixed blood and adopted whites, who have so administered their affairs and have enacted such laws that they are enabled

[21] Letter of Assistant Attorney General Van Devanter to the Secretary of the Interior, dated July 12, 1898; H. Doc. vol. 23, 57th Cong., 1st Sess. (1901–1902), p. 231.

[22] Commonly known as the Dawes Commission. It was created by the Act of March 3, 1893, c. 209, 27 Stat. 612, 645, to negotiate with the Creeks, Cherokees, Choctaws, Chickasaws, and Seminoles for the extinguishment of tribal titles to land, the allotment of their lands in severalty, and the division of their funds equally among the members of those tribes.

to appropriate to their own exclusive use almost the entire property of the Territory of any kind that can be rendered profitable and available." [23]

And again:

"The Commission is compelled by the evidence forced upon them during their examination into the administration of the so-called governments in this Territory to report that these governments in all their branches are wholly corrupt, irresponsible, and unworthy to be longer trusted with the care and control of the money and other property of Indian citizens, much less their lives, which they scarcely pretend to protect." [24]

While these warnings were of a general nature, specific complaints of misgovernment, venality, and fraudulent conduct on the part of the Seminole leaders were brought to the attention of the Secretary of the Interior and the Commissioner of Indian Affairs. By a letter to the Secretary of the Interior, dated January 24, 1898, certain Seminoles remonstrated against the ratification of the agreement concluded with the Seminole leaders on December 16, 1897. The remonstrance alleged misgovernment and the participation by these leaders in a land swindle at the expense of the tribe. The Secretary laid this protest before Congress.[25] During much of the period

[23] Report dated November 20, 1934, Appendix B. H. Ex. Doc., vol. 14, 53d Cong., 3d Sess. (1894–95), p. LXVIII. See also pp. LXIX–LXX.

[24] Report dated November 18, 1895, Exhibit A, H. Doc., vol. 14, 54th Cong., 1st Sess. (1895–96), p. XCV. See also pp. LXXXVII, XCIII–XCIV.

And see report dated October 11, 1897, Exhibit B, H. Doc., vol. 12, 55th Cong., 2d Sess. (1897–98), pp. CXIX, CXXI.

[25] See S. Doc. 105, 55th Cong., 2d Sess., (1898), pp. 2–4. This remonstrance stated in part:

"There was the sum of $191,294.20 which never entered the treasuries of the United States or the Seminoles. The reply given to us about the disposition of this money by our authorities was that during the

in question, 1899–1907, and for some time prior thereto, two half-breed brothers were principal chief and treasurer, respectively, of the Seminole Nation. Together they ran a trading store in the Seminole country and extended credit by giving due bills, good only in trade at their store, to individual Seminoles in the amount of annuities or other payments owing those individuals. The activities of these brothers, and their system of credit in particular, were attacked on the floor of Congress in 1896 and 1897,[26] and severely criticized by an investigator for the Department of Justice in 1905, part of whose report was set forth in a letter from the Acting Commissioner of Indian Affairs to the Secretary of the Interior, dated November 11, 1905.[27]

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transfer of these lands to the United States there was a lawyer who negotiated the agreement and took that amount for his pay. The name of the lawyer was never mentioned and no receipt of the alleged deal was ever shown. We call your attention to this. We ask that you take note of the town-site laws of Wewoka and see to whom only these laws are beneficial and whom they oppress. . . .

"We beg leave to state further that we have no law regulating the bond of our treasurer or chief, and according to the Seminole law no action or bill can be placed before the council without the consent of the chief. Our laws do not admit of an auditor, and our people are entirely ignorant of the condition of our finances. . . . We ask that any disposition of moneys belonging to the Seminoles and the management of their schools be made with the approval of the Secretary of the Interior. . . ."

[26] See 28 Cong. Rec. 2070; 29 Cong. Rec. 1261.

[27] This report stated in part:

"It is not too much to say that, in view of the ignorance of these Indians, this system of credit is dishonest. It should be condemned because it keeps these Indians in a constant state of poverty. They do not realize that these due bills are in fact money, and the result is that they are squandered without care. I am not informed as to whether the Department of the Interior has knowledge of this state of affairs. It should be brought to its attention, so that, if possible, it may take steps looking to the breaking up of the system, which can

All this tends to show that the Seminole tribal officers might have been faithless to their trust during the period in question, and that the Government officials administering Indian affairs and disbursing Seminole funds might have been aware of that faithlessness at the time payments were made to the Seminole treasurer. Here again the Court of Claims did not address itself to, and made no findings on, this material issue. As we said in the discussion of Item Two, *ante*, it is not our function to make basic findings of fact. Again, we do not say that the showing with respect to this Item establishes breach of the Government's fiduciary obligation, but we are of opinion that it is sufficient to justify remanding this branch of the case to the Court of Claims for further findings, in the light of such evidence as may be brought to its atten-

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be done by having the appropriations distributed in some other manner."

Wm. L. Bowie, Special Investigator for the Interior Department, reported to the Superintendent for the Five Civilized Tribes in 1916 that:

"Governor Brown and his brother have been in the mercantile business in the Seminole Nation for many years. It is a fact much commented upon by those acquainted with Seminole tribal affairs, that for a number of years Governor Brown held the dual relationship to the members of the Seminole tribe of governor and paymaster on the one hand, and Indian trader on the other hand."

". . . In my opinion, Governor Brown has shown in his transactions with John Smith and Lizzie Yahola, that he has little regard for the welfare and protection of the Indians in general, and it is unfortunate that he occupies a position which enables him by reason of the confidence placed in him as such official to impose upon them."

On the basis of reports from subordinates Assistant Commissioner of Indian Affairs Merrit recommended to the Commissioner of Indian Affairs, by a letter dated July 20, 1916, that the Seminole tribal government be abolished as "the only way to prevent Brown and Crain from continuing to use their official positions to advance their personal interests at the expense of the Indians under their authority."

tion, as to whether the Seminole tribal officers were mulcting the Nation from 1899 to 1907; whether, if such were the case, the appropriate Government officials administering Indian affairs and disbursing moneys to the Seminoles had knowledge thereof at the time any of the payments to the tribal treasurer were made; and, if so, whether the Seminole Nation received the benefit of any sums expended by the tribal treasurer. On the basis of these findings, the Court of Claims can then determine whether there was a breach of the Government's fiduciary obligation, as defined in the discussion of Item Two, *ante,* and if there was a breach, the resultant liability.

III

Petitioner asserts that the Court of Claims committed numerous errors with respect to the items which it included in the list of gratuitous offsets, and the Government admits that the court erred in a few instances. However, since the case must be remanded to determine whether the Government has any further obligation on Items Two and Five, we deem it unnecessary to consider in detail the challenged offsets.

One phase of this question does require attention. In *Seminole Nation* v. *United States,* No. 830, *post,* p. 310, petitioner asserted that the Court of Claims gave the Government credit there for an offset which it had employed in the instant case, thus allowing a double credit. To avoid this confusion the Court of Claims should find and designate the precise gratuitous expenditures to be offset against the Government's liability, instead of finding generally all the items which the Government may ever be entitled to use. Gratuity offsets resemble a fund in a bank, to be drawn upon by the Government in successive Indian claims cases until exhausted. Since they may be needed in future cases, it becomes important to know pre-

cisely what items have been employed to extinguish liability in a particular case, as the instant case and No. 830 demonstrate. The disadvantage of the alternative, to treat as binding in subsequent suits involving the same parties the findings of the Court of Claims that the Government has total offsets in a certain amount, is evident because it may require this Court to do a vain thing, that is, to examine offsets which might never be needed and which, even if disapproved, would not change the result reached by the Court of Claims.

The judgment below is reversed, with the exception of the disposition of Items One, Three and Four which is in all respects affirmed, and the entire cause is remanded to the Court of Claims with directions to make further findings with respect to Items Two and Five; to determine the additional liability of the Government, if any, thereon; and, to find and designate the particular gratuitous expenditures to be offset against the Government's total liability.

Upon the remand the Court of Claims will be free to consider any legal or equitable defenses which the Government may interpose to the claims asserted there by petitioner.

So ordered.

MR. JUSTICE REED took no part in the consideration or decision of this case.

MR. JUSTICE JACKSON dissents.

SEMINOLE NATION *v.* UNITED STATES.*

CERTIORARI TO THE COURT OF CLAIMS.

No. 830. Argued April 2, 1942.—Decided May 11, 1942.

1. The acquisition from the Creek Nation and the transfer to the Seminole Nation, by the United States in 1882, of a 175,000 acre tract, *held* unrelated to an alleged deficiency in a tract previously transferred to the Seminoles pursuant to Article III of the Treaty of March 21, 1866, since at the time of the 1882 transfer no suggestion of a deficiency in the treaty grant had been advanced. P. 315.
2. Under the Act of August 12, 1935, which, in the settlement of claims against the United States by an Indian tribe, authorized offsets of sums expended gratuitously by the United States for the benefit of the tribe, the Court of Claims is required to find the amount of the liability, if any, of the United States on the claim of the tribe, and to designate and find the exact amount of the gratuitous expenditures which may be utilized to extinguish, in whole or in part, that liability. P. 315.

94 Ct. Cls. 240, reversed.

CERTIORARI, 315 U. S. 791, to review a judgment dismissing the petition of the Seminole Nation in a suit against the United States under a special jurisdictional Act.

Mr. C. Maurice Weidemeyer, with whom *Messrs. Paul M. Niebell* and *W. W. Pryor* were on the brief, for petitioner.

Mr. Charles R. Denny, with whom *Solicitor General Fahy* and *Assistant Attorney General Littell* were on the brief, for the United States.

MR. JUSTICE MURPHY delivered the opinion of the Court.

The question presented for decision is whether the United States remains under any obligation to the

*Opinion reported herein as amended by order of May 25, 1942, *post,* p. 647.

Seminole Nation with respect to Article III of the Treaty of March 21, 1866, 14 Stat. 755, 756, which provides in part:

". . . The United States having obtained by grant of the Creek nation the westerly half of their lands, hereby grant to the Seminole nation the portion thereof hereafter described, which shall constitute the national domain of the Seminole Indians. Said lands so granted by the United States to the Seminole nation are bounded and described as follows, to wit: Beginning on the Canadian river where the line dividing the Creek lands according to the terms of their sale to the United States by their treaty of February 6, 1866, following said line due north to where said line crosses the north fork of the Canadian river; thence up said north fork of the Canadian river a distance sufficient to make two hundred thousand acres by running due south to the Canadian river; thence down said Canadian river to the place of beginning. In consideration of said cession of two hundred thousand acres of land described above, the Seminole nation agrees to pay therefor the price of fifty cents per acre, amounting to the sum of one hundred thousand dollars, . . ."

Petitioner's claim is for just compensation for the alleged taking by the United States of an asserted deficiency in the tract granted by this Article.

Late in 1866, before the boundaries of the Seminole domain had been located, the Seminoles moved to what was assumed to be their treaty land.[1] The first survey

[1] Although negotiations were in progress with the Creeks at the time the Seminole treaty was made and a treaty was signed with them on February 6, 1866, the Creek treaty was not concluded until June 14, 1866. See 14 Stat. 785. The dividing line between the two halves of the Creek country was not settled until the Bardwell survey was approved in 1872.

of the line dividing the Creek and the Seminole territories, made by one Rankin, in 1868, under a contract with the Superintendent of Indian Affairs, was not approved by the Department of the Interior. In 1871 one Bardwell re-surveyed the dividing line and placed it seven miles west of the Rankin line. Two months later, at the direction of the Government, one Robbins ran the western boundary of the Seminole lands so as to include 200,000 acres from the Bardwell line. According to Robbins' calculations, 200,000.03 acres were included between the Canadian river on the south, the north fork of the Canadian river on the north, the Bardwell line on the east and the Robbins line on the west. The Bardwell and Robbins surveys were both approved by the Secretary of the Interior on February 5, 1872.

Meanwhile, pursuant to Article I of the Treaty of February 27, 1867, 15 Stat. 531,[2] the Pottawatomie tribe selected a tract bounded "by the West line of the Seminole lands," and on November 9, 1870, the Secretary of the Interior approved that selection. In 1872, after the location of the Robbins line, the Pottawatomies occupied the territory immediately west of that line. Subsequently, the Government allotted and patented the lands west of the Robbins line to the Pottawatomies in severalty, or sold and

[2] By that Article the United States agreed that a delegation from the Pottawatomies should accompany a government commission to the Indian country ". . . in order to select, if possible, a suitable location for their people without interfering with the locations made for other Indians; and if such location shall be found satisfactory to the Pottawatomies, and approved by the Secretary of the Interior, such tract of land, not exceeding thirty miles square, shall be set apart as a reservation for the exclusive use and occupancy of that tribe; and upon the survey of its lines and boundaries, and ascertaining of its area, and payment to the United States for the same, as hereinafter mentioned and set forth, the said tract shall be patented to the Pottawatomie nation."

patented them to settlers and turned the purchase price into the Treasury as public money.[3]

The Bardwell survey disclosed that a considerable area east of the Seminole-Creek dividing line had been occupied by the Seminoles, who had made substantial improvements on this land. In order that the Seminoles might retain the lands which they had improved, Congress authorized negotiations for the purchase of these lands east of the Bardwell line. Act of March 3, 1873, 17 Stat. 626. An agreement was entered into on February 14, 1881, with the Creek Nation whereby that Nation ceded land east of the Bardwell line to the United States, the agreement providing that the eastern boundary of the land ceded was to be drawn so that the tract would aggregate 175,000 acres. *Creek Nation* v. *United States,* 93 Ct. Cls. 561, 566. The Creeks received $175,000 for this tract. Act of August 5, 1882, 22 Stat. 257, 265. This land became a part of the Seminole domain and was disposed of either by allotment to members of the tribe or by sale for the account of the tribe.

The possibility of a deficiency in the original 200,000 acre tract was first suspected in 1900.[4] By an amended

[3] Provision was made for allotting the lands to the Pottawatomies in severalty by Act of May 23, 1872, 17 Stat. 159, and Act of February 8, 1887, 24 Stat. 388. By an agreement ratified by Act of March 3, 1891, 26 Stat. 989, 1016–1017, the Pottawatomies ceded to the Govenment the tract assigned to them. It was stipulated in the agreement that all allotments in severalty, made or to be made, should be completed and confirmed, and that other allotments in severalty could be made until February 8, 1891. The ratifying act provided that the remaining lands were to be opened to settlement as public lands. 26 Stat. 1026.

[4] Letter from the Commissioner of Indian Affairs to the Secretary of the Interior, dated February 5, 1900.

Letter from the Acting Secretary of the Interior to the Commission to the Five Civilized Tribes, dated October 16, 1900.

petition filed in the Court of Claims in 1937,[5] the Seminole Nation alleged that, owing to an error in the location of the Robbins line, the territory enclosed between the Robbins and Bardwell lines was 11,550.54 acres short of 200,000 acres, and that the United States took from the Seminoles 11,550.54 acres west of the Robbins line when the Government patented that land to individuals in 1892 and subsequent years. Judgment was prayed against the United States for value at the time of taking of the 11,550.54 acres, with interest at the rate of five percent per annum. The Court of Claims made no finding as to whether a shortage in fact existed in the tract between the Bardwell and Robbins lines, but held that, in any event, the Seminole Nation was more than compensated for the alleged shortage by the Government's purchase for the Seminoles of 175,000 acres of land from the Creek Nation. The court also stated that, even if petitioner were entitled to recover for any deficit in the 200,000 acre tract, the Government would be entitled to offset the value of the 175,000 acre tract as a gratuitous expenditure under the Act of August 12, 1935, 49 Stat. 571, 596, a value assumed to be far in excess of the value of whatever deficit there may have been. We granted certiorari because of the close connection between this case and *Seminole Nation* v. *United States*, No. 348, *ante*, p. 286.[6]

The judgment of the Court of Claims cannot be sustained on either of the grounds advanced. The Government in this Court agrees to this proposition and

[5] The original petition was filed in 1930. The amended petition was filed after the amendment to the jurisdictional act. 43 Stat. 133, as amended by 50 Stat. 650.

[6] Petitioner has here limited its claim to 10,351.82 acres, adopting the shortage given in the report, dated March 18, 1941, of Arthur D. Kidder, District Cadastral Engineer of the General Land Office, who surveyed the area after the original petition was filed.

suggests that the cause be remanded to the Court of Claims.

I

Underlying the denial of recovery for any deficit in the 200,000 acre tract because petitioner was compensated therefor "fifteen-fold" by the receipt of an additional 175,000 acres, is the theory that the acquisition of land by the Seminoles under the Treaty of 1866 and the acquisition of additional land to the east by transfer from the Creeks in 1882 were but two parts of an integral transaction, intended to give the Seminoles 200,000 acres of land and thus discharge the obligation of the Treaty of 1866. However, the facts do not support that theory, for in 1882 the suggestion that a shortage existed in the supposed 200,000 acre tract between the Bardwell and Robbins lines had not yet been advanced. There was therefore no thought at the time the transfer of the 175,000 acre tract was made that the Government thereby fulfilled its treaty obligation by compensating the Seminoles for a deficiency in the original tract.

II

The Act of August 12, 1935, 49 Stat. 571, 596, directs the Court of Claims, in suits by an Indian tribe or band, "to consider and to offset against any amount found due the said tribe or band all sums expended gratuitously by the United States for the benefit of the said tribe or band." This language plainly requires the Court of Claims to find, first, that money is due from the United States, to consider then whether the United States has gratuitously spent sums for the benefit of the tribe and, if it finds such gratuitous expenditures, to offset them against the amount found due.

In allowing the gratuity offset here, the Court of Claims fell short of complying with the requirements of the offset

statute. There was no finding that the United States was under any liability to the Seminole Nation; the Court stated only that the value of the 175,000 acre tract was "far in excess of the value of whatever deficit there may have been." The shortcomings of this approach are evident. As we said in *Seminole Nation* v. *United States*, No. 348, *ante*, p. 286, gratuity offsets resemble a fund in a bank, to be drawn on by the Government as needed. If the Government owes nothing, it is entitled to a dismissal on that ground, and should not be compelled to use its gratuity offsets. If liability exists on the Government's part, the exact amount of gratuitous expenditures utilized to extinguish that liability, in whole or in part, should be precisely found and designated. The Government should not be held to satisfy its liability by the use of gratuity expenditures in excess of the liability. Conversely, the Indian tribe is entitled to have an exact determination of the amount owed it by the United States in order that an amount of gratuity expenditures equal to the liability may be exhausted, or that, if the available offsets are insufficient, it receive a money judgment for the difference. Otherwise, confusion and the possibility of a double credit for a single offset arise, as this case and No. 348 abundantly demonstrate. In the latter case, a gratuity offset in the amount of $165,847.17 on account of the purchase of the 175,000 acre tract from the Creeks was allowed, and here the assumed value of that tract is the offset employed by the Court of Claims.

The judgment is reversed and the cause remanded to the Court of Claims with directions to consolidate it with No. 348; to determine whether a shortage exists in the 200,000 acre tract; to determine whether the Government is liable therefor, and the amount of such liability, if a shortage exists; and, to find and designate the precise gratuitous expenditures used to offset the total liability,

if any, arising from this claim and from Items Two and Five of No. 348.

Reversed.

MR. JUSTICE REED took no part in the consideration or decision of this case.

MR. JUSTICE JACKSON dissents.

SIOUX TRIBE OF INDIANS *v.* UNITED STATES.

CERTIORARI TO THE COURT OF CLAIMS.

No. 798. Argued April 10, 1942.—Decided May 11, 1942.

1. Orders of the President, in 1875 and 1876, withdrawing areas of public lands from sale and settlement and setting them apart for the use of the Sioux Indians as additions to their permanent treaty reservation, conveyed no interest to the tribe for which it was entitled to compensation from the United States when, by subsequent executive orders, the lands were restored to the public domain. Pp. 325, 330.
2. Since the Constitution places the authority to dispose of public lands exclusively in Congress, the Executive's power to convey any interest in these lands must be traced to Congressional delegation of its authority. P. 326.
3. The basis of decision in *United States* v. *Midwest Oil Co.*, 236 U. S. 459, was that, so far as the power to withdraw public lands from sale is concerned, such a delegation could be spelled out from long-continued Congressional acquiescence in the executive practice. P. 326.
4. The answer to whether a similar delegation occurred with respect to the power to convey a compensable interest in these lands to the Indians must be found in the available evidence of what consequences were thought by the Executive and Congress to flow from the establishment of executive order reservations. P. 326.
5. There was no express constitutional or statutory authorization for the conveyance of a compensable interest to the tribe by the executive orders of 1875 and 1876, and no implied Congressional delegation of the power to do so can be inferred from the evidence of Congressional and executive understanding. P. 331.