IN THE

Court of Claims of the United States

No. L-51.

THE SEMINOLE NATION, *Plaintiff*,

v.

THE UNITED STATES, *Defendant*.

BRIEF OF PLAINTIFF ON DEFENDANT'S MOTION FOR A NEW TRIAL.

Should we attempt to answer the specific points raised by defendant in its motion for a new trial filed herein, we would be forced to reargue the same matters presented in briefs upon which the court decided this case originally.

The defendant has presented no new evidence, or pointed to any mistakes or errors in the computations found by the court and included in the special findings of fact, but has presented again practically the same points with a few variations. The request to have the court amend Finding VI (R. p. 306) sets forth practically the same items that were presented in defendant's brief (R. pp. 99, 105), which were rejected by

the court. The request to have the court amend Finding XII (R. pp. 306-307) presents again matters which were before the court when this case was submitted, and had the court deemed them material it would have included them in its opinion. This requested finding is open to the further objection that the demand made upon the Secretary was not made by the plaintiff *tribe,* but was made by the unscrupulous tribal officers. In fact, defendant's motion is merely an attempt to reargue the whole case.

It is a well settled principle of law that motions for a new trial will not be granted for the purpose of arguing the same issues again. Calhoun's Case, 14 C. Cls. 193; Rhine's Motion, 15 C. Cls. 59. Such an attempt was made in *Roche* v. *The District of Columbia,* 18 C. Cls. 289, in which case this Court, in refusing a new trial, said (pp. 289, 290):

> "As to the facts, it is not alleged that there has been discovered any new evidence bearing upon them. Pages of the printed record are referred to as all that is relied upon in support of the alleged errors. The evidence thus referred to was all before the court at the hearing, was commented upon by claimant's counsel, and was carefully and fully considered by the court in making up its judgment. The case was not hastily tried, nor in its consideration did the court fail to examine and weigh, with great deliberation, every part of the evidence and all the points and arguments of the claimant's counsel.
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> "In point of fact the claimant's motion is simply that he may have a new trial in order to reargue his whole case upon the law and the facts exactly as they were before us at the other hearing, without the slightest indication that he has anything new to offer.
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> "The reargument of cases cannot be permitted upon the sole ground that one side or the other is dissatisfied with the conclusions reached by the court, otherwise the losing party would generally, if not always, try his case a second time, and litigation would be unnecessarily prolonged, with no more satisfactory results, as there would still be a losing party in the end."

To answer specifically defendant's contentions we would be virtually rearguing the whole case, and would thus be guilty of the same error into which defendant has fallen. The best answers to them may be found in the carefully considered opinion of the court, which sets forth a thorough analysis of the contentions of both sides. It would be needless for us to quote from this opinion the court's answers to defendant's contentions.

Many of the points raised by defendant are founded upon pure conjecture, and no proof is offered in support of them. We shall not attempt to lend dignity to them by further argument. However, we will comment briefly upon several points raised by defendant in its reargument of plaintiff's claim under Section 19 of the Curtis Act.

Section 19, Curtis Act.

Let us point out to the court that defendant formerly contended that Section 19 had no application to the Seminole Nation, and stood squarely on that contention. Now this contention seems to have been abandoned, and defendant argues that the Seminole moneys turned over to the tribal treasurer in violation of Sec-

tion 19 were paid under a mistake of law and therefore, can be recovered back under Section 3 of the jurisdictional act; and that if this theory is wrong, then the plaintiff is estopped to deny that payment to the unscrupulous tribal officers in violation of Section 19 was not payment to the tribe, because these officers requested the Secretary to continue payments to them.

By advancing the theories of mistake of law and estoppel in pais, grounds for equitable relief, defendant is again presenting the theory that it is entitled to an equitable counterclaim under Section 3 of the jurisdictional act. This contention was twice presented to this court, and it was twice refused.

In the Creek case, 78 C. Cls. 474, 501, this court said:

> "It may be said in answer to this suggestion that the Government has not asserted or plead a counterclaim, equitable or otherwise, against the plaintiff, growing out of the disbursement of the tribal funds. The court, under the jurisdictional act, is authorized to 'hear, examine, adjudicate, and render judgment in any and all legal or equitable claims * * * which said Creek Nation or Tribe may have against the United States', and to also 'hear, examine, consider, and adjudicate any claims which the United States may have against said Indian Nation.' * * * The court is without jurisdiction to make the award suggested, and is not concerned with the question whether as a matter of equity and good conscience the plaintiff, having once received the benefit of the payments, ought now be permitted to have the benefit of them again. Congress disposed of that question when it waived the statute of limitations and permitted the plaintiff to assert in this court whatever legal claims it might have against the United States. The sole question before the court on this phase of the case is: Does the plaintiff have a legal claim against the United States for the amount of the expenditures from its tribal funds made by the Secretary of the Interior without authority of Congress? That question, we think, must be answered in the affirmative."

Again, in this case (Opinion pages 10 and 11) under Item 3, Finding VI, the court rejected this contention of defendant.

Assuming, for the sake of argument, that the contentions of defendant were not open to the above objection, let us comment upon them briefly.

To uphold either of defendant's contentions the court would have to decide that Section 19 of the Curtis Act, an act passed by Congress within its plenary power over the administration of Indian affairs, was not binding upon the Secretary of the Interior, or the tribal officials. As was said in the Creek case, *supra*, p. 491, "To hold that the Secretary of the Interior had the legal right to expend such funds, in the face of positive prohibition against their expenditure without specific appropriation would be equivalent to holding that the Secretary of the Interior, not Congress, had full administrative control and power over the property of the plaintiff tribe." Thus the Secretary and the tribal officials, by their own acts, could defeat the very purposes which Section 19 was intended to accomplish. These purposes are clearly set forth in the court's opinion at page 16.

Whatever relief defendant may now desire under the mistake of law theory could not be against the plaintiff tribe, but in a suit against the unscrupulous tribal officials to whom this money was illegally paid. Section 3 of the jurisdictional act permits "legal" counterclaims against plaintiff *tribe* only. To attain

the result defendant now contends for the court would have to hold that payment to the unscrupulous tribal officials in violation of Section 19, with knowledge that these officials were stealing the moneys of the tribe, would be proper payment to the tribe. These moneys did not belong to the tribal officials only, but to the tribe as a whole.

The efforts of the tribal officers to prevent the application of Section 19 as to them could not bind the tribe for under this section these officials ceased to be representative of the tribe in the matter of disbursement of the tribal income. Therefore, their acts would not work out an estoppel in pais against the tribe. This doctrine is applied to prevent fraud and not to cover it; and it could not be used by defendant as excusing its violation of the law as laid down in Section 19, in aiding the continuation of frauds committed upon the tribe by the tribal officers. It must be remembered that all efforts to prevent the application of Section 19 to Seminole moneys were made by the unscrupulous tribal officials, and not the tribe. In fact, the tribe, through its delegate, protested as best it could the illegal action by the Secretary in turning over to the tribal officers Seminole moneys in violation of Section 19 (Ptf's Brief, R. p. 255).

As the court has said (Op. p. 17), "The Secretary of the Interior was therefore without legal authority to pay Seminole tribal funds into the Seminole tribal treasury. More than that he was plainly prohibited by law from doing so". In the face of this positive prohibition by Congress, and the history behind it, defendant cannot say that it lacked knowledge of the facts, or was misled by the acts of plaintiff tribe. It is a well established principle of law that:

> "As a corollary to the proposition that the party setting up an estoppel must have acted in reliance upon the conduct or representations of the party sought to be estopped, it is as a general rule essential that the former should not only have been destitute of knowledge of the real facts as to the matter in controversy, but should have also been without convenient or ready means of acquiring such knowledge. One relying on an estoppel must have exercised such reasonable diligence as the circumstances of the case require. If he conducts himself with a careless indifference to means of information reasonably at hand or ignores highly suspicious circumstances which should warn him of danger or loss he cannot invoke the doctrine of estoppel." 21 C. J. 1129-1130.

Defendant also contends that under Section 19 the Secretary had the right to disburse Seminole moneys per capita only. This contention was overruled in the Creek case, *supra,* pp. 489-490, in which case the court held that under Section 19 the Secretary had the power to disburse all tribal moneys directly for the benefit of the tribe as well as for per capita payments. (R. pp. 47-48.) It should be noticed that in Section 19 per capita payments were provided for separately in the second clause of this provision, this authorization being separated from the first part of this section by a semicolon. The first part of the section 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". In the light of the history of this legislation and the

scheme of the government to divide the property of the tribe so as to insure to the members of the tribe an equal share of the whole tribal estate, it is obvious that the protection intended by Congress to be afforded the tribe covered all tribal moneys, and not only per capita payments.

Therefore—to sum up—it is respectfully submitted that Section 3 of the jurisdictional act does not authorize the court to consider equitable counterclaims against plaintiff tribe; and assuming that it did, yet the tribal officers because of Section 19 were not thereafter representative of the tribe in the matter of the disbursement of Seminole tribal funds, and no acts of theirs subsequent to its passage could bind the tribe in this respect; or could the illegal acts of the Secretary in violation of Section 19, coupled with the unauthorized acts of the unscrupulous tribal officers, defeat the purposes intended to be accomplished by Congress by the passage of Section 19 of the Curtis Act.

Gratuities.

The defendant asks the court to reopen this case to permit gratuity offsets against plaintiff's claims, and cites Section 2 of the Second Deficiency Act, approved August 12, 1935, 49 Stat. 596, as authority for this contention. Here again defendant asks the court to misconstrue a law.

This provision reads in part as follows:

> "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; * * *" (Italics ours).

Then follow certain exceptions and limitations.

The language of this section is plain; it affects only cases pending in the Court of Claims, and would not affect cases already tried or submitted and before the Court when this act was passed.

A history of the enactment of this provision would be enlightening to the court. Evidently the House Committee on Appropriations had been informed that the Five Civilized Tribes *might* have some good legal claims against the United States. An effort was made to defeat them by legislation, rather than trust these claims to the legal principles as applied by this court. A closed hearing was held, at which hearing the representatives of the Department of Justice alone appeared. The record of this hearing is now available (Hearings before Sub-Comm. of House Committee on Approps., Sec. Defic. bill for 1935, 74 Cong., 1 Sess., p. 677), and in it appears figures presented to the committee by the Department of Justice, showing an amount of saving to the Government should the proposed legislation be enacted, that look like our national debt. As this was an ex parte hearing these figures were not disputed. The provision of law to effect this saving was prepared by the Department of Justice, and was hidden by the Committee in the middle of the large Second Deficiency Bill, without the knowledge of the Chairman of the House Indian Affairs Committee, the Department of the Interior, or plaintiffs whose rights were greatly affected. Under a "gag" rule this bill was rushed through the House, and no objection could be made to the provision as being new legislation on an appropriation bill.

When the bill reached the Senate side considerable opposition arose to this provision, and the manner in which it was passed by the House. Realizing the injustice of it, and at the request of the Chairman of the House Committee on Indian Affairs, and the Commissioner of Indian Affairs, the Senate struck out this provision in toto.

The matter then went to conference and resulted in the compromise provision which was enacted into law. The conferees realized that it would be doubly unfair to apply the provision in cases that were then under the consideration of the court, thus causing further delay and expense to the plaintiffs after they had relied for over ten years upon the terms of the original jurisdictional acts, so the conferees excepted from the operation of this provision any cases "tried or submitted" and then being considered by the court.

As defendant admits, this case was submitted on June 4, 1935, at a time when there was no thought of the passage of the above provision, and it would have been presented to the court at a much earlier date had not the defendant taken over eight months in which to reply to our brief.

Conclusion.

We respectfully submit that there is no merit to the contentions of defendant presented on its motion for a new trial, and that it should be overruled.

Respectfully submitted,

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(E. J. VAN COURT, Deceased),
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