BEFORE THE INDIAN CLAIMS COMMISSION

THE QUAPAW TRIBE OF INDIANS
AND PAUL GOODEAGLE, LOUIS A.
IMBEAU AND SAM DOUTHIT, as
the representatives as far
as permitted by law of all
members of said tribe and all
persons who shall be found
entitled to participate in
any judgment which may be
rendered herein, same being
members of a class too numerous
to be joined herein,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Decided: December 12, 1951

Appearances:

Vern E. Thompson, Lloyd E. Roberts
and Byron B. Hoffman,
Attorneys for Plaintiffs

Leland L. Yost, with whom was
Assistant Attorney General
A. Devitt Venech,
Attorneys for Defendant.

OPINION OF THE COMMISSION

O'Marr, Commissioner, delivered the opinion of the Commission:

OFFSETS

By interlocutory order of the Commission made on the 14th day of
March, 1951, the plaintiffs were found entitled to an award in the sum
of $367,092.00, subject to deductions for offsets to which the de-
fendant may be entitled under the provisions of section 2 of the act

The defendant's offsets are now to be considered by the Commission. These offsets are set forth in defendant's Amended "Amended Answer," which will hereafter be referred to as the Amended Answer.

LAND CEDED QUAPAW - TREATY OF 1833

After the Quapaw moved to the Caddo country on the Red river, pursuant to the treaty of November 15, 1824, 7 Stat. 232, and found the conditions there detrimental to health, destruction of crops, and the Caddo antagonistic, they requested the defendant to restore at least a part of their lands ceded in 1824. This, the defendant would not do (see Plts' Ex. 63, p. 139), but finally agreed to convey 150 sections of land to be "selected and assigned by the Commissioners of Indian Affairs, west." Article II of treaty of May 13, 1833, 7 Stat. 424. The treaty provision was carried out by selecting 82,808.23 acres of land in northeast Oklahoma and southeast Kansas, and paying the Quapaw $39,423.03, to compensate them for the difference between the 150 sections (96,000 acres) the defendant agreed to convey and the 82,808.23 acres it did convey, such deficiency in acreage being 13,191.77. Act of March 3, 1891 (25 Stat. 929, 996). It is for the value of the land actually conveyed plus the amount paid for the deficiency that the defendant claims as an offset and which the plaintiffs strenuously oppose. The $39,423.03 was accepted in lieu of that part of the 150 sections (96,000 acres) not conveyed so must be considered as though the 13,191.77 acres had actually been conveyed.

As respects the 82,808.23 acres of land actually conveyed pursuant
to Article II of the 1833 treaty and the payment of $39,423.03 for the 13,191.77 acres of the 150 sections not conveyed, it is the position of defendant, as disclosed by its Amended Answer and its brief, that in agreeing by said article to convey the land it was merely fulfilling its legal obligation under the 1824 treaty, which was to provide the Quapaw with a permanent home, and therefore, the value of the 82,808.23 acres actually conveyed to the Quapaw, plus the $39,423.03 paid for the deficiency, should be considered as a payment on the claim and deductible as authorized by section 2 of the Indian Claims Commission Act.

As we indicated in our opinion of March 14, 1951, the 1833 treaty was an entirely new transaction, complete in itself and, so far as the obligations of the parties are concerned, was entirely independent of the 1824 treaty and derived and needed no support from the earlier treaty to make it a complete and binding obligation of the parties. The purpose of the 1833 treaty was, as respects the land exchange, to provide the Quapaw a suitable location in place of the uninhabitable one they obtained from the Caddo on the Red river. No doubt, when the government learned of the condition of the Quapaw resulting from their location in the Caddo country, it acted to alleviate the sufferings of the Indians (see statement of Commissioners on p. 141, Pltfs. Ex. 63) by agreeing to give them a permanent home in a new location, and this was done by the 1833 treaty. But such action lends no substance to the defendant's claim that the 1833 treaty (made some nine years later) was simply carrying out an obligation of the 1824 treaty to provide the Quapaw with a permanent home and thereby make the value of the Oklahoma-Kansas land deductible as a payment on the claim. Moreover, the government
gave the Quapaw no land in 1824; the land assigned to them by the
1824 treaty was intended to be and was given them by the Caddo.
About this there is no question. What the boundaries of this land
were are not shown by the evidence but it is referred to in Article
I of the treaty of 1833 "as lands given them (Quapaw) by the Caddo
Indians on the Bayou Treache of Red River," and Sub-agent Richard
Hanum, who was a witness on the 1833 treaty, in a letter to the
President, dated May 13, 1833 (the day the treaty was signed by the
Quapaw) referred to the location as "a piece of land on Red River."
That the land was of substantial value is shown by this statement
contained in the same letter:

** * * On the score of policy the Government will
profit by the exchange, and their removal west of the
Missouri line or Territorial line, or into the country
set apart for the permanent settlement of the Indians,
for the reason that the Red River country is well adapted
to the raising of cotton, and when reclaimed by the re-
moval of the Raft will afford a dense white population."  
(Pfifs.' Ex. 61.)

The value of the Red river land is not shown, so we must assume
that it at least equalled the value of the Oklahoma-Kansas land, con-
veyed or paid for.

Counsel for defendant calls our attention to Article V of the
1833 treaty which reads:

"It is hereby agreed, and expressly understood, that
this treaty is only supplementary to the treaty of 1824,
and designed to carry into effect the views of the United
States in providing a permanent and comfortable home for
the Quapaw Indians; * * *.*"

This provision, it is asserted by defendant, shows the 1833 treaty
was in reality a part of the 1824 treaty and intended to carry out
the obligations thereof as to providing a permanent home for the
Quapaw. There is no substantial difference between the above provision
and that contained in Article II wherein it is provided that the con-
vveyance of the 150 sections of land is "expressly designed to be in
lieu of their (Quapaw) location on Red River and to carry into effect
the treaty of 1824, in order to provide a permanent home for their
nation." Both provisions show a purpose to give the Quapaw a permanent
home, one that was habitable, and in that sense might be considered as
supplemental to the 1824 treaty, but the defendant by the 1824 treaty
assumed no obligation in that respect for it fulfilled its obligation
when it moved the Quapaw to the Caddo country at a location given them
by the Caddo. The defendant was not legally responsible for the con-
ditions that prevailed on the Red river and the fact that it later
recognized the intolerable situation the Quapaw found themselves in,
and relieved them of, did not change the defendant's contractual
obligations under the 1824 treaty. Had the defendant given the
plaintiffs land by the 1824 treaty it perhaps would now be entitled
to the value thereof, or the value of the land later substituted
therefor, as a credit on the claim, but, as the undisputed evidence
shows, the lands the Quapaw got were given them by the Caddo, as was
clearly contemplated by the 1824 treaty.

As an alternative basis for the credit for the land defendant
pleads and argues that it made the promises contained in the 1833
treaty under the mistaken conviction and belief that it was obligated
by the 1824 treaty to provide the Quapaw a permanent and safe home,
and since it did not succeed in so doing it is entitled in equity to
credit for the value of the 82,808.23 acres of land it conveyed, plus the amount paid for the deficiency in the quantity of land it agreed to convey, and other payments to the Quapaw under the 1833 treaty.

This argument is based upon the equity rule (Pomeroy's Equity Jurisprudence (2d Ed.) Sec. 849) to the effect that where a person, ignorant or mistaken as to his antecedent and existing private legal liabilities, enters into a transaction for the purpose of carrying out such assumed liability, equity will grant him relief. The rule is, of course, founded upon mistake as to, or ignorance of, private liabilities. There is no evidence indicating that the government was either mistaken as to or ignorant of its obligations under the 1824 treaty, or that the 1833 conveyance was made on the assumption it was legally required to do so by the earlier treaty. The proof appears to be to the opposite effect and was to relieve the Indians from a condition that neither the government nor the Indians had anticipated or was in anywise responsible.

We see no basis for allowing defendant credit as a payment on the claim for the value of the Quapaw's Red river land, or for the land and money it received in lieu thereof.

It is further pleaded and contended by defendant that it is entitled to offset the value of the 82,808.23 acres and the $39,423.03 paid for the deficiency under that part of section 2 of the Indian Claims Commission Act which permits deductions from an award,

"for all other offsets, counterclaims, and demands that would be allowable in a suit brought in the Court of Claims under section 145 of the Judicial Code (36 Stat. 1156; 25 U.S.C. sec. 250) as amended."
Section 145 of the Judicial Code, referred to above, permits deductions for:

"all offsets, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the government of the United States against any claimant against the government."

This section was amended in 1948 (62 Stat. 942) and is now section 1503 of Title 28, U.S.C.A., but there appears to have been no change in the effect of the former section.

Defendant's pleading and argument with respect to the application of section 145 is somewhat involved, but it seems to be based upon the existence of a mistake on the defendant's part as to its obligations under the 1824 treaty, that is, it mistakenly assumed that that treaty obligated the government to provide a habitable and permanent location for the Indians, and not having done so, was required to do what it did to remedy the violation of the obligation and therefore, on equitable principles, is entitled to an offset for the value of the land conveyed by the 1833 treaty and the amount it paid plaintiffs for the deficiency.

What we have said above concerning the equitable defense there discussed, applies here. There is no evidence sustaining the claim that the government's action in conveying the Oklahoma-Kansas lands by the 1833 treaty was the result of ignorance or mistake as to its liabilities under the 1824 treaty, therefore, the credits cannot be allowed as an offset under said section 145.

OFFSETS - OTHER THAN LAND

Before considering the specific items claimed by the defendant as
gratuitous expenditures and therefore offsets against the award, we will first consider the law pertaining to offsets generally. The provisions of section 2 of the Indian Claims Commission Act (Act of August 13, 1946, 60 Stat. 1049), in so far as applicable here, is as follows:

"In determining the quantum of relief the Commission shall make appropriate deductions for all payments made by the United States on the claim, and for all other offsets, counterclaims, and demands that would be allowable in a suit brought in the Court of Claims under section 145 of the Judicial Code (36 Stat. 1136; 28 U.S.C. sec. 250), as amended; the Commission may also inquire into and consider all money or property given to or funds expended gratuitously for the benefit of the claimant and if it finds that the nature of the claim and the entire course of dealings and accounts between the United States and the claimant in good conscience warrants such action, may set off all or part of such expenditures against any award made to the claimant, except that it is hereby declared to be the policy of Congress that monies spent for the removal of the claimant from one place to another at the request of the United States, or for agency or other administrative, educational, health or highway purposes, or for expenditures made prior to the date of the law, treaty or Executive Order under which the claim arose, * * * shall not be a proper offset against any award."

These provisions fix the kind and character of the offsets which the defendant is entitled against an award, and these offsets, when pleaded and proven by the defendant, are allowable against all awards made by the Commission and it makes no difference whether they are based upon legal or equitable principles, or on fair and honorable dealings.

Passing for the present, deductions for payments on the claim and those allowable under section 145 of the Judicial Code, we shall consider the so-called gratuities defined above as "money or property
given to or funds expended gratuitously for the benefit of the claimant," excluding, however, certain excepted expenditures which will be considered later.

The Court of Claims in Sioux Tribe v. United States, 105 C. Cls. 725, 793, adopted this rule:

"An expenditure by the Government, in order to be a gratuity or a legal or equitable offset chargeable against the Indians, must be one with respect to which the United States has not assumed any obligation, direct or incidental, as a party to the treaty or in its sovereign capacity pursuant to the intention of the treaty."

The Court has consistently held that expenditures made pursuant to treaty or contract obligations are not gratuities and cannot be offset as such, and it makes no difference, it seems, whether the treaty obligations may be enforceable by the Indians (given the right to sue) or are merely gratuitous promises, at least we find no cases making such a distinction. See Warm Springs Tribe v. United States, 103 C. Cls. 741, 747; Seminole Nation v. United States, 93 C. Cls. 500, 525-532; Seminole Nation v. United States, 102 C. Cls. 565; Sioux Tribe v. United States, 105 C. Cls. 725; Choctaw v. United States, 91 C. Cls. 320; Sisseton and Wahpeton v. United States, 42 C. Cls. 416, 208 U.S. 561. In these cases, except Sisseton etc. v. United States, which we will consider separately, the gratuity offsets were either allowed because they were not treaty or contractual obligations, or disallowed because they were.

We now discuss Sisseton etc. v. United States, supra, because much reliance is placed upon it by the government, and for the further reason that it appears upon its face to be in conflict with the decisions
of the Court of Claims cited above.

On July 23, 1851, 10 Stat. 946, the Sisseton and Wahpeton Bands of Sioux Indians concluded a treaty under which they were to receive for 50 years annuities in the sum of $73,600. On February 16, 1863, 12 Stat. 652, Congress declared the annuities forfeited because of a sanguinary war carried on against the whites by the Indians. On March 3, 1901, 31 Stat. 1078, an act was passed directing the Court of Claims to report to Congress what annuities would be due the loyal members of the bands if the act of forfeiture had not been passed. That court was

"further authorized to further consider, ascertain, and report to Congress what lands, appropriations, payments, gratuities, or other provisions have been made to or for said bands or to any of the members thereof since said act of forfeiture was passed. . . And if said court shall find that said bands preserved their loyalty to the United States, they shall ascertain and state the amount that would be due to said Indians on account of said annuities had said act of Congress of February sixteenth, eighteen hundred and sixty-three, not been passed, stating in connection therewith what credits should be charged against said annuities on account of the lands, appropriations, payments, gratuities, or other provisions as heretofore stated."

The court, being unable to make the report requested by Congress, Congress passed an act (June 21, 1906, 34 Stat. 372) extending or enlarging the 1901 act and authorizing that court to determine and render judgment for any annuities that would be due the Indians under the 1851 treaty if they had not been declared forfeited in 1863. The court was also required—

"to ascertain and set off against the amount found to be due to said Indians, if any, all payments or other provisions of every name or nature made to or for said bands by the United States, or to or for any members thereof,
since said act of forfeiture was passed, which are properly chargeable against said unpaid annuities."

By treaty of February 19, April 22, 1867, 15 Stat. 505, the Indians ceded rights of way through their land and in consideration of the cession the government purported to set aside for them certain reservations. The treaty also contained this article:

"Article 6. And, further, in consideration of the destitution of said bands of Sisseton and Warpeton Sioux, parties hereto, resulting from the confiscation of their annuities and improvements, it is agreed that Congress will, in its own discretion, from time to time make such appropriations as may be deemed requisite to enable said Indians to return to an agricultural life under the system in operation on the Sioux reservation in 1862; including, if thought advisable, the establishment and support of local and manual-labor schools; the employment of agricultural, mechanical, and other teachers; the opening and improvement of individual farms; and generally such objects as Congress in its wisdom shall deem necessary to promote the agricultural improvement and civilization of said bands."

Pursuant to this provision the government spent $464,953.40 for the benefit of the Indians and claimed the amount as an offset against the reinstated annuities.

The Court of Claims allowed the offset for the following reasons stated in its opinion, 42 C. Cls. 416, at page 431:

"It should be remarked that Article VI above was added by the Senate as an amendment to the treaty as completed by the Commissioner, and that the original treaty made no reference to the matters therein mentioned as to the consideration, etc.

The above amendment is a clear indication to our minds that the Senate thereby intended that the sums so agreed to be paid should be in lieu of the annuities 'confiscated' by the treaty of 1851. This opinion is strengthened by the fact that by a subsequent treaty, June 7, 1872, the United States paid the claimants $300,000 for a cession of the lands over which the right of way was given. (17 Stat. L., 261.)"
On appeal, The Supreme Court, in affirming the Court of Claims, first said concerning the offsets generally:

"There are no general rules of law established for deciding what payments properly are chargeable against Indian annuities. The fact that payments of certain kinds, or gratuities, have been granted in time of peace in addition to annuities is not conclusive. There had been an Indian war. The United States, in passing these acts, was doing what it pleased. In the earlier statute it plainly indicated that the most sweeping deductions, including gratuities, were to be made from its possible bounty. In the later one it qualified the deduction of payment by the words, 'which are properly chargeable against said unpaid annuities,' it is true. But the careful particularity of the direction to set off all payments or other provisions of every name and nature, even if qualified as to the bands as well as to the particular members to whom some payments properly left out of consideration had been made, shows that large set-offs still were expected. It is said that the court was to proceed 'as if the act of forfeiture had not been passed.' But that was only in ascertaining the amount of annuities that would be due in that case, and in rendering a judgment that otherwise would be unauthorized. Those words do not require the court to treat all payments upon the fiction that nothing had happened, or to give them a different complexion from that which they had when they were made. Common sense, the then recent decision of the court of claims as to the general conduct of the bands, and the position of the words in the section, show that they could have had no such intent."

And after holding that the words "in consideration of" as used in Article 6 of the 1867 treaty did not import a technical consideration but a "gratuitous promise induced by consideration of the Indians' want," the court said:

"By the words of the treaty, then, the 6th article promised the payments in question because the claimants were in want because their annuities had been confiscated. Or, striking out the middle term and looking to the result, the payments were made because the annuities had been confiscated; that is to say, so far as appears, they would not have been made except for that cause. But, if so, then, when the annuities are restored, the sums paid on the footing that the annuities were lost must be taken into the account. It does not matter whether the Indians had
And closed the discussion in these words:

"The act of 1901 cannot be left wholly out of sight in construing that of 1506, and as has been said, that act contemplated that every gratuity should be brought in. We are not prepared to overrule the decision of the court of claims on this point."

Thus, it seems plain to us that both the Court of Claims and the Supreme Court based the allowance of the offset on the fact that the jurisdictional act definitely required the allowance. It is true that the Supreme Court discussed the effect of the words "in consideration of" appearing in said Article 6 and held that they did not create a treaty obligation, but this was in connection with the Indians' argument that the expenditures under Article 6 really constituted the consideration for the cession because the recited consideration, namely, the reservations, consisted of lands already owned by the Indians. So while the Supreme Court decided the expenditures were pursuant to a gratuitous promise, they were allowed because of the special facts of that case, and the construction by both courts of the jurisdictional act. But for the requirements of the jurisdictional act the expenditures under said Article 6 would, we believe, have been disallowed because they were treaty obligations, therefore, we do not consider that case authority for defendant's position here.

DEDUCTIONS FOR PAYMENTS ON THE CLAIM

As set forth in the above-quoted part of section 2 of the Indian
Claims Commission Act, the Commission, "In determining the quantum of relief * * * shall make appropriate deductions for all payments made by the United States on the claim." Payments on the claim, since they are treated specifically and separately from the other offsets, namely, offsets, counterclaims and demands allowable under section 145 of the Judicial Code and certain gratuities, must be something different from the last-named classes of offsets. So, we are required to determine what expenditures made by the government come within the phrase, "payments on the claim."

It would seem that all expenditures the government agreed to make in a transaction with Indians involving a cession of land should be considered "payments on the claim." Otherwise, in cases where an award is made, for the full value of the land, as is the situation here, it would be unjust not to allow credit for what has been paid to or expended for the Indian grantors as required by the treaty or agreement. If such were not the intention the Indians would receive the full value of the land plus all payments made by the defendant in fulfillment of its promises. We conclude, therefore, that all payments made to or expended for the Indian grantors by the government in fulfilling its 1824 treaty or contractual obligations must be considered "payments on the claim" and deductible from the quantum of the award.

Treaty of 1824, deductions under.

As shown by finding No. 13, the defendant paid, pursuant to Article 2 of the treaty of November 15, 1824, 7 Stat. 252, §7, $1,550 on the annuities and $4,000 for merchandise and goods. These items plaintiffs concede to be proper offsets as payments on the claim, and we agree.

But the payments, aggregating $2,000 to four Indian chiefs, are
objected to by plaintiffs on the ground that the payments were not made for the benefit of the tribe and should not be chargeable to it. However, the payments were made as required by the treaty, and formed part of the consideration. We believe they are payments on the claim and must be allowed.

The defendant claims offsets in the amount of $3,558.73 for pay of interpreters, $500 as pay to the sub-agent, $1,307.98 for removal of Indians to the Caddo country, and $7,349.46 for subsistence (corn, meat and salt), as payments on the claim. (Finding No. 14).

The plaintiffs oppose the allowance of the items for sub-agent and interpreters because there was no treaty obligation of defendant to provide a sub-agent and interpreters, and are, therefore, non-allowable gratuities under section 2 of the Indian Claims Commission Act. Plaintiffs overlook the last sentence of Article 5 which required that "An Agent, Sub Agent, or Interpreter, shall be appointed to accompany said Tribe, and to reside among them." The G.A.O. report shows that appropriations were made to pay such expenses beginning in the calendar year 1825 and extending through 1833. (See Disbursement Schedules of G.A.O. Report, Nos. 9, 11, 12, 13 and 14). These items must be allowed as payments on the claim.

The removal item in amount of $1,307.98 is claimed as a deduction. The treaty expressly limited the cost of transportation to a "sum not exceeding one thousand dollars," so any expenditure over $1,000 was a gratuity and within the exception of section 2 of the Indian Claims Commission Act, since the evidence indicates that the Indians were moved to the Caddo lands at the request of the defendant. The $1,000
must be allowed and deducted as a payment on the claim.

There remains the item of $7,329.46 for corn, meat and salt. In the treaty (Finding No. 14) defendant agreed to provide the Quapaw with said food for six months from January 1, 1826. This time was evidently fixed because the Quapaw were required to commence moving before January 20, 1826. (Article 3.) However, by the act of March 3, 1825, 4 Stat. 92, 93, the sum of $15,372 was appropriated "For the purchase of provisions (for the Quapaw tribe) for six months, as provided by the fifth article of said treaty "(1824), and the C.A.O. Report shows that of the amount appropriated, $6,950.29 was expended in 1825, and other sums aggregating $399.17 in the years 1832, 1833 and 1834, were expended for the same purpose but under different acts. See Disbursement Schedules 7 and 14 of C.A.O. Report, Defendant's Exhibit 90. This item is also allowed as a deduction as a payment on the claim.

We, therefore, allow defendant as an offset, deductible from the award, for the expenditures made to or for the plaintiffs under the provisions of the treaty of 1824, the total sum of $25,858.19.

Treaty of 1833, deductions under.

Under the provisions of Article III of said treaty of May 13, 1833, the defendant made certain expenditures aggregating $94,702.76 which the defendant claims were gratuitous expenditures and is therefore entitled to credit therefor. (Par. 24(a) Amended Answer.) The article is set forth in Finding No. 16 hereof. We shall now consider the several items making up said total.
Under the heading of Agricultural Aid is an item of $138.00 for clearing, breaking and fencing land. Under said Article III the defendant agreed to provide a farmer to "aid and instruct them (the Quapaw) in their agricultural pursuits." In the absence of a showing to the contrary we believe this expenditure was made in pursuance of a treaty obligation and is not, therefore, a proper offset.

The defendant expended $240.11 for axes, hoes, and a wagon. These items are expressly provided for by said Article III, and the expenditure therefor cannot be allowed as an offset.

Defendant claims credit for $540.36, listed in G.A.O. Report as agricultural implements and equipment furnished during the years from 1869 to 1900. Said Article III required defendant to provide 25 plows and 4 ox carts, with all their necessary rigging. These items might well come within the description of agricultural implements and equipment. Certainly they were necessary to conducting farming. They are not allowed as offsets.

Rifles and shotguns were supplied at a cost of $727.25; said article expressly required defendant to furnish the Indians with 50 rifles and five shotguns, powder and lead. These items were furnished in 1834 and must be presumed to be in fulfillment of the agreement, and therefore the cost thereof cannot be allowed as a credit.

Under the heading "Blacksmith and Shops" are listed in the G.A.O. Report expenditures by defendant aggregating $61,962.32 for erection and repair of shops, fuel, furnishing shop and tools, iron and steel, pay of blacksmith, supplies and equipment, and tools. These expenditures were made as to some items beginning in the year 1834 and
continued until as late as 1928, and all were made at various times during those years. In the 1833 treaty the defendant agreed to provide "a blacksmith to do their (Quapaw) necessary work, with a shop and tools and iron and steel not exceeding one ton per year." We find nothing in the listed items that does not come within the quoted provisions of the treaty, and for aught that appears to the contrary all expenditures were made pursuant to those provisions. The claimed offset for these items must, therefore, be denied.

Said Article III required defendant to furnish plaintiffs with 100 blankets. According to the G.A.O. Report, page 179, defendant expended in 1834 the sum of $311.85 for blankets for Quapaw pursuant to the 1833 treaty, so this item in said amount cannot be allowed as an offset.

According to the G.A.O. Report, pages 120 and 121, "cash payments to chiefs and council in lieu of farmer" were made in a total sum of $2,400 during the years 1869, 1870 and 1871, and this sum is claimed as an offset. We believe this sum must be allowed because it no doubt was to compensate the Quapaw chiefs and council for their services in representing the tribe, which services were presumably of benefit to those Indians. The defendant was under no obligation to pay them and should be reimbursed for the outlay.

The defendant by said Article III agreed to furnish plaintiffs with twenty iron hand cornmills. In 1834 defendant expended $279.36 for these mills. Obviously, this disbursement was pursuant to the treaty obligation and cannot be allowed as an offset.

The defendant was also required by said Article III to furnish
plaintiffs with 100 head each of cows, hogs and sheep, and 10 yoke of working cattle. In 1834 defendant purchased livestock for plaintiffs to the amount of $2,869.08, in compliance with said article, therefore, that amount cannot be allowed as an offset.

Likewise, defendant, by said Article III agreed to furnish plaintiffs looms, wheels, reels and wool-cards, so the expenditure therefor in the sum of $165.79 may not be allowed defendant as an offset.

The defendant by said Article III agreed to provide plaintiffs with a farmer to reside with them and to aid and instruct them in their agricultural pursuit. This the defendant did, and in the years from 1835 to 1863 expended for this purpose $15,072.01. The claim of the defendant to offset this amount against the award must be denied.

A small item of $43.00 for pay of laborer is shown. This expenditure was made in 1835 and appears to have been disbursed pursuant to Article IV of said treaty, which required defendant to expend up to one thousand dollars in hiring laborers to build and aid in the building of comfortable cabins and houses for the Quapaw. The item is not allowed.

Another expenditure in the sum of $5,552.36 for "provisions" is claimed as an offset. When we break this amount down we find that in 1836 defendant expended $4,097.85 for provisions for the Quapaw (page 141, G.A.O. Report). Under said Article III defendant agreed to "supply them with one year's provision from the time of their removal, which shall be as soon as they receive notice of the ratification of this treaty." The date the plaintiffs received notice of the ratification of the treaty is not shown; however, the treaty was proclaimed
April 12, 1834, so taking this date as the beginning of the period during which provisions are required to be supplied under the treaty it is not even probable that the provisions supplied in 1836 were provided under the treaty provisions. Likewise, the items making up the total claimed being that of $300 provided in 1831, and that for $1,154.51 expended in 1832 (G.A.O. Report, p. 145), being for provisions, cannot be considered as paid under the treaty. So defendant is allowed a credit in the sum claimed, $5,552.36, as a gratuity.

During the years 1867, 1869 and 1872-1875, defendant expended a total of $1,558.35 for "provisions in lieu of farmer." (G.A.O. Report, pp. 121 and 122). Just why the expenditures were thus carried is difficult to understand because there were apparently no farmers employed after the year 1863, at least no expenditures for that purpose are shown in the report. It may be fairly concluded, however, that the expenditure was for subsistence and not required by the treaty after the year 1835. We, therefore, allow the amount as a gratuity.

An item in the sum of $2,185.00 expended by defendant in 1835-1837 for removing the plaintiffs to their new home, is claimed by defendant as an offset. The removal of the Indians was in pursuance of the 1833 treaty and Article III thereof expressly provided that "they shall be removed to their new homes at the expense of the United States." The expenditures having been made for an expense contracted for by the United States excludes it as a gratuitous offset. See also section 2 of Indian Claims Commission Act, supra.
Said treaty also required defendant to furnish plaintiffs with "tools of different description to the amount of two hundred dollars." The expenditure in the amount of $160.68 for tools in 1834 cannot be allowed as an offset since it was expended pursuant to an obligation of the treaty.

The last of the items listed in paragraph 24(a) of defendant's amended answer and claimed as an offset is $497.24, disbursed for transportation of treaty goods. All but $34.79 of this sum was disbursed during the three years following the execution of the 1833 treaty. That treaty provided that "the United States will also furnish and deliver to them (the Quapaw), after their arrival at their new homes," the treaty goods described in Article III thereof. The requirement that the defendant furnish and deliver the treaty goods to plaintiffs after their arrival at their new homes clearly burdens defendant with the cost of delivering the goods to the Indians and is, therefore, a treaty obligation of defendant and cannot be allowed as a credit on the award.

Expenditures by defendant in the total sum of $93,756.28 for education is claimed (par. 25 of Amended Answer) as a deduction. The items making up this total are set forth in statement No. 7, pages 88 and 89 of the G.A.O. Report, Defendant's Exhibit 90. Included in the amount are the following items: clothing, $1,612.97; feed and care of livestock, $5.85; funeral expenses, $24.00; livestock, $321.00; provisions, $1,910.06 and unidentified items, $390.00; total, $4,753.88. Just how these items can be considered expenditures for education is
not shown, and we cannot so consider them. In any event, the defendant, by said Article III agreed to "appropriate one thousand dollars per year for education purposes" and beginning with the year 1833, and continuing as late as 1931 the defendant expended the sum stated above in apparent fulfillment of its obligation, although the amount expended did not completely satisfy the obligation, even if the above-questioned items are included, as being for "education purposes." Accordingly, the amount claimed cannot be allowed as a gratuity because it is a treaty obligation; on the other hand, if it were considered a gratuity, it is barred by section 2 of the Indian Claims Commission Act.

Expenditures from November 15, 1824 to June 30, 1946.

By paragraph 26 of its Amended Answer, defendant claims as offsets a number of alleged non-treaty expenditures aggregating $45,304.77, expended during the period from November 15, 1824 to June 30, 1946, inclusive. Included in the listed items are the following:

- Digging wells and well equipment: $122.00
- Seeds, trees and fertilizer: 5.40
- Hunting and fishing equipment: 67.12
- Pay and expenses of farmers: 22.47
- Pay of blacksmiths: 321.75
- Supplies for agricultural aid: 90.05
- Blacksmith shops: 166.38

We have discussed the defendant's obligations under Article III of the 1833 treaty, and it is not necessary to repeat what we have said. We believe each of the above expenditures was made pursuant to defendant's agreement set forth in said article, and they cannot, therefore, be allowed as an offset.
There is also listed in the offsets claimed for the period 1824-1946 an expenditure of $128.93 for "maintaining law and order" and one in the sum of $9,967.95 for "pay of interpreters." These items are for agency expenses and must be disallowed under the authority of the cases of Sioux Tribe v. United States, 105 C. C1s.725, and Menominee v. United States, 118 C. C1s. 290, 326, and said section 2 of the Indian Claims Commission Act. Furthermore, Article 5 of the 1824 treaty required the defendant to provide an interpreter to accompany said tribe and reside among them. This provision does not appear to be restrictive as to either time or place.

Items for expenditures, totaling $34,413.72 are listed in finding No. 17. These items were for the exclusive benefit of plaintiffs, between the date of the 1824 treaty and June 30, 1946. All were given the Quapaw and none was provided under either of the treaties involved here, so defendant is entitled to credit for the total thereof. The item amounting to $1,653.28 included in said list, for agricultural implements and equipment, was for disbursements made in the years 1879 to 1901. No part of this sum was disbursed, according to the C.A.O. Report, in fulfillment of any treaty obligation but was disbursed out of the Civilization Fund to the extent of $1,201.55 in the years 1880-1882, and the other items were disbursed from other funds in small amounts. The items which can reasonably be considered agricultural implements and equipment defendant agreed to supply in said Article III, were provided and accounted for by name except a disbursement of $540.36 for "agricultural implements and equipment" which we have discussed above, and decided it was for plows and ox carts. So it would seem that the
expenditure of $1,653.28 was for implements and equipment not contemplated by the 1833 treaty, and as we have said, the defendant is entitled to credit therefore as set forth in said list.

**Expenditures for years 1826 to 1834.**

During the years 1826 to 1829, inclusive, and 1834, plaintiffs were under the jurisdiction of the Red River Agency. No satisfactory evidence is shown as to the number of Quapaw or of other Indians at that agency during those years, and in which the government expended the $4,125.13 for the benefit of all Indians under the jurisdiction of that agency. The G.A.O. Report at pages 283-284 discloses the inadequacy of the information concerning the numbers of the several tribes at that agency during the years in question. Under the circumstances, we must disallow the offset claimed.

**Expenditures for the years 1837 to 1867.**

For the period from January 1, 1837 to June 30, 1867, the defendant expended for the Indians, including the Quapaw, the sum of $870.55. On a population basis, defendant claims the proportionate share of that sum chargeable to the Quapaw is $161.31, that is, 18.53 per centum of the total. The items making up the total are, according to the G.A.O. Report, the following:

- Expenses of Indian delegation in the year 1867 (G.A.O. report, p. 304) $51.00
- Pay of blacksmiths, $300.00 in each of the years 1864 and 1865 (G.A.O. reports, pp. 303 and 304) 600.00
As to the charge for blacksmiths there is no evidence whatever to justify even an assumption that the Quapaw received any benefit from this expenditure other than the fact these Indians were, with many others, attached to the Neosha Subagency, but even if it were assumed that the Quapaw received their proportionate part of the benefits derived from the $600 expended, they could not be allowed as an offset because under the provisions of Article III of the treaty of 1833, defendant was obligated to provide a blacksmith for the Quapaw and it did so by expending through the years 1835 to 1930 the total sum of $52,158.67. While there appears to have been no expenditures for a blacksmith for the Quapaw, exclusively, in the years 1864 and 1865, whatever benefit they may have received from the $600 claimed above would have to be considered a fulfillment of the treaty obligation and not a gratuity, so no part thereof can be deducted. We also deny credit for any part of the $51.00 for expenses of Indian delegations and the $219.55 for provisions because we find no basis, in the absence of evidence, upon which those amounts may be appropriated between the three groups under the Neosho Subagency.

Expenditures for years 1867 to 1870 - Neosho Agency.

The sum of $3,736.98 must also be denied as an offset for lack of proof even remotely indicating the Quapaw received any part thereof. The principal item of this amount was $3,521.56 for "subsistence of Friendly Indians." This expenditure was from an appropriation of
$300,000 "to enable the Secretary of the Interior to subsist such friendly Indians as may have separated or may hereafter separate themselves from the hostile bands or tribes and seek the protection of the United States." Act of July 20, 1867, 15 Stat. 17. While the expenditure was no doubt made at the Neosho Subagency, we must presume it was made in accordance with the act, and since there is no evidence that the Quapaw or any part of them was hostile to the United States, or separated from hostile bands of Indians, we must conclude that they received no part of the $3,521.56 and, therefore, cannot be charged therewith.

**MISCELLANEOUS EXPENDITURES FOR BENEFIT OF INDIANS, INCLUDING QUAPAW, UNDER JURISDICTION OF QUAPAW AGENCY, FOR YEARS 1870 TO 1846, PARAGRAPHS 30(a) TO 30(c) INCLUSIVE, OF "AMENDED ANSWER."**

Defendant claims offsets in the aggregate sum of $161,407.01 for expenditures made for the benefit of a number of Indian tribes, including the Quapaw, between the years from July 1, 1870 to June 30, 1946. (Statement No. 27, pp. 321-322, G.A.O. Report). There has been no showing as to the part expended for the Quapaw, and the defendant asks that the various amounts be prorated on the basis that the number of Quapaw under the Quapaw Agency bears to the total of all Indians under such agency. We will now consider the various items making up the total.

**Interpreters, and maintaining law and order.**

- Pay of interpreters...................... $4,763.22
- Maintaining law and order.............. 37,668.39
- Supplies for maintaining law and order.......................... 342.21
These three items are agency expenses and are denied on the authority of Sioux Tribe v. United States, 105 C. Cls. 725, and Menominee Tribe v. United States, 118 C. Cls. 290, 326, and section 2 of the Indian Claims Commission Act.

Provisions.

In the statement No. 27, G.A.O. Report, page 322, are two items for "provisions." The first is in the amount of $5,055.57 and is made up of expenditures made through the years from 1871 to 1890, inclusive. The second is in the amount of $3,636.60 and is made up of expenditures made through the years from 1878 to 1945, inclusive. These items total $8,692.17 and cover the cost and the transportation of food for the use of the Indians of the Quapaw Agency. Providing food would seem to be for general benefit of all Indians of the agency, and in which the Quapaw should be charged with their proportionate part.

Pay and expenses of farmers.

Pay and expenses of farmers, $55,328.99. By Article III of the 1833 treaty, defendant agreed to provide a farmer to reside with the Quapaw and to aid and instruct them in their agricultural pursuits, such farmer to be continued only so long as the President deemed necessary. In a breakdown of the item of $15,072.01 for "pay of farmers" (p. 89, G.A.O. Report), heretofore considered, we find that beginning with the year 1835 and ending with the year 1863, defendant spent about $500 a year, on the average, for "pay of farmers," and according to the report, the expenditures were made in "fulfilling treaties with the Quapaw." Since no expenditures of this character are shown to have been
made expressly for the Quapaw after the year 1863, we presume defendant fulfilled its obligation in that respect, under the 1833 treaty. Therefore, no part of the said $55,328.99 can be considered a treaty obligation of defendant to the Quapaw. This item is disallowed, however, on the authority of the Menominee case, supra, which holds such expenditures to be educational on the absence of proof to the contrary, and therefore within the exception of section 2 of the Indian Claims Commission Act.

Pay of blacksmith.

For "pay of blacksmith" an offset in the amount of $27,243.31 is claimed by defendant. (G.A.O. Report, p. 321). A breakdown of this total shows that the expenditures began in the year 1895 and extended through the year 1932. We have shown, in discussing expenditures made under the 1833 treaty that between the years 1835 and 1932 defendant had expended, pursuant to treaty obligations, $52,158.67 for blacksmiths, and this sum was expended for the sole benefit of the Quapaw. Of this sum over $17,000 was expended between the years 1895 and 1932. It does not seem that the Quapaw would have derived any benefit from the agency expenditures during the period they were receiving direct and independent aid of the same character from defendant under the 1833 treaty. There is, therefore, no way of determining what, if any, part of the $27,243.31 the Quapaw received. We must, therefore, disallow this item. See Menominee case, supra, page 326.

Clothing.

In 1880, defendant purchased for the Indians clothing in the sum
of $3.90, and between the years 1875 to 1945, defendant furnished clothing in amounts ranging from eight cents to as high as $74.80, in different years, aggregating $365.70. These items, it seems to us, because of the smallness thereof in the various years, were for individual Indians rather than for tribal benefits, so, we are disallowing the clothing items.

**Miscellaneous Items.**

The following items are listed and claimed by defendant as offsets (par. 30(a), (b) and (c); G.A.O. Report, pp. 321-322):

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clearing, breaking and fencing</td>
<td>$28.00</td>
</tr>
<tr>
<td>Digging wells and well equipment</td>
<td>$21.00</td>
</tr>
<tr>
<td>Planting and harvesting crops</td>
<td>$51.91</td>
</tr>
<tr>
<td>Seeds, fruit trees, fertilizer</td>
<td>$291.05</td>
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<tr>
<td>Agricultural implements and equipment</td>
<td>$1,332.63</td>
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<tr>
<td>Transportation of &quot; &quot;</td>
<td>$460.77</td>
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<tr>
<td>Expenses of Indian delegations</td>
<td>$2.87</td>
</tr>
<tr>
<td>Hunting and fishing equipment</td>
<td>$9.00</td>
</tr>
<tr>
<td>Indigent Indians, board and funeral expense</td>
<td>$54.44</td>
</tr>
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</table>

**Livestock:**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Feed and care of</td>
<td>$2,976.96</td>
</tr>
<tr>
<td>Feed of</td>
<td>$357.74</td>
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<tr>
<td>Recovery of strayed or stolen</td>
<td>$14.50</td>
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<tr>
<td>Livestock</td>
<td>$61.50</td>
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<tr>
<td>Herders and stockmen</td>
<td>$2,215.22</td>
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**Mills and Shops:**

<table>
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<tr>
<th>Item</th>
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<tbody>
<tr>
<td>Blacksmith shops</td>
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<tr>
<td>Carpenter shops</td>
<td>$40.00</td>
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<tr>
<td>Machine shops</td>
<td>$95.75</td>
</tr>
<tr>
<td>Saw mill</td>
<td>$851.89</td>
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<tr>
<td>Supplies and equipment for</td>
<td>$378.62</td>
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<tr>
<td>Sawmill watchmen</td>
<td>$941.97</td>
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<tr>
<td>Sawyer</td>
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<tr>
<td>Woodworker</td>
<td>$582.90</td>
</tr>
<tr>
<td>Wagonmaker</td>
<td>$1,850.00</td>
</tr>
</tbody>
</table>

| Surveying and allotting                                             | $5.00      |
| Indian supplies                                                     | $132.70    |
Supplies for agricultural aid................. 45.12
Hardware, glass, oils, paints.................. 250.36
Household equipment and supplies............. 829.45
Building material................................ 194.79
Pay of carpenter................................ 664.19
Pay of laborers.................................. 6.85
Fuel.............................................. 675.01
Total............................................. $26,999.12

The above items can fairly be said to have been provided for the Indians, generally, under the jurisdiction of the Quapaw Agency, and that the various tribes governed by that agency benefited by such expenditures in proportion to their respective numbers.

The Court of Claims has in a number of cases held that where public funds have been expended gratuitously for the benefit of a number of tribes, and the records of the expenditures do not show the part expended for a particular tribe, the amount may be determined on a population basis. Seminole Nation v. United States, 93 C. Cis. 500; Sisseton et al. v. United States, 42 C. Cis. 416; Kaw Indians v. United States, 30 C. Cis. 296; Duwamish et al. v. United States, 79 C. Cis. 611; Alcea Band of Tillamooks et al. v. United States, 103 C. Cis. 562. See also, Sisseton et al. v. United States, 208 U.S. 561, 567, 52 L. ed. 621, 624.

The defendant has made a painstaking tabulation of the Indian population and gratuitous disbursements made for the Indians under the Quapaw Agency for the years from 1871 to 1945, inclusive, and reached the result that during that period the Quapaw Tribe constituted 16.41 per centum of the population of Indians under that agency. (See Ex. D,
page 19 of Amended "Amended Answer"). While this percentage is the average for the period we believe it fairly represents the proportion of Quapaw in that agency.

To summarize: There is allowed, of the expenditures from 1871 to 1946 for the Indians under the Quapaw Agency, the sum of $8,692.17 for provisions, and $26,999.12 for miscellaneous expenditures, a total sum of $35,691.29 of which the plaintiffs are chargeable with 16.41 per centum thereof, or $5,856.93.

RECAPITULATION

1. The first cause of action, designated as Count I in the petition, shall, as stated in the interlocutory order made and entered on March 14, 1951, be dismissed.

2. The plaintiffs shall recover of the defendant the sum of $987,092.00, as stated in said interlocutory order, less the following offsets, aggregating the sum of $75,638.55:

<table>
<thead>
<tr>
<th>Finding No.</th>
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<tbody>
<tr>
<td>13</td>
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</tr>
<tr>
<td>14</td>
<td>12,408.19</td>
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<tr>
<td>16</td>
<td>5,552.36</td>
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<td>16</td>
<td>1,558.35</td>
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<td>17</td>
<td>34,412.72</td>
</tr>
<tr>
<td>19</td>
<td>1,426.38</td>
</tr>
<tr>
<td>20</td>
<td>4,430.55</td>
</tr>
</tbody>
</table>

3. And plaintiffs are entitled to a final award of $911,453.45.

Commissioner Holt concurs in the above opinion.

Dec. 6, 1951.