

BEFORE THE INDIAN CLAIMS COMMISSION

Felix McCauley, a Member of the Kaw Tribe of Indians, on the Relation of all Members of the Kaw Tribe of Indians,	)	
	)	
Plaintiff,	)	
vs.	)	Docket Nos.
The United States of America,	)	33 and 35
	)	
Defendant.	)	

Decided May 15, 1952

ADDITIONAL FINDINGS OF FACT

The Commission makes the following additional findings of fact:

- 12. Article 2, of the Kansas Indian treaty of January 14, 1846, 9 Stat. 842, provides in part:

"In consideration of the foregoing cession, the United States agree to pay to the Kansas Indians two hundred and two thousand dollars, two hundred thousand of which shall be funded at five per cent., the interest of which to be paid annually for thirty years, and thereafter to be diminished and paid pro rata, \* \* \*. One thousand dollars of the interest thus accruing shall be applied annually to the purposes of education in their own country; one thousand dollars annually for agricultural assistance, implements, &c.; but should the Kansas Indians at any time be so far advanced in agriculture as to render the expenditure for agricultural assistance unnecessary, then the one thousand dollars above provided for that purpose shall be paid them in money with the balance of their annuity; \* \* \*."

- 13. Articles 4, 6 and 8 of the Treaty of October 5, 1859, 12 Stat. 111, between the United States and the Kansas Indians read in part:

"Article 4. For the purpose of procuring the means of comfortably establishing the Kansas tribe of Indians upon the lands to be

assigned to them in severalty, by building them houses, and by furnishing them with agricultural implements, stock animals, and other necessary aid and facilities for commencing agricultural pursuits under favorable circumstances, the lands embraced in that portion (of the Kansas reservation in Kansas) not stipulated to be retained and divided as aforesaid shall be sold, \* \*, and the proceeds thereof to be expended for their benefit in such manner as the Secretary of the Interior may deem proper: \* \* ."

"Article 6. Should the proceeds of the surplus lands \* \* not prove to be sufficient to carry out the purposes and stipulations of this agreement, and some further aid be necessary, from time to time, to enable said Indians to sustain themselves successfully in agricultural and other industrial pursuits, such additional aid may be taken, so far as may be necessary from the moneys due and belonging to them under the provisions of former treaties, and so much thereof as may be required to furnish further aid as aforesaid shall be applied in such manner under the direction of the Secretary of the Interior, as he shall consider best calculated to promote and advance their improvement and welfare.

"Article 8. All the expenses connected with and incident to the making of this agreement, and the carrying out of its provisions, shall be defrayed out of the funds of the Kansas tribe of Indians."

14. The Act of May 8, 1872, 17 Stat. 85, to which the Kansas Tribe assented on June 24, 1872, provides:

"Sec. 4. That if said Kansas tribe of Indians shall signify to the President of the United States their desire to sell their diminished reserve, as indicated in said treaty, including lands held in severalty and in common, and to remove from the State of Kansas, and shall so agree in such manner as the President may prescribe, the Secretary of the Interior may cause the same to be appraised in legal subdivisions as hereinbefore provided for the appraisement of the so-called 'trust lands,' and sold \* \* \* and the residue of the proceeds of said sales shall belong to said tribe in common, fifty per centum of which shall be placed to their credit on the books of the Treasury, and bear interest at the rate of five per centum per annum, said interest to be paid to them semi-annually for the term of twenty years, after which period the principal shall be paid to the members of said tribe per capita, and the remaining fifty per centum of the proceeds of sales as aforesaid shall be used in providing and improving for them new homes in the Indian Territory, and subsisting them until they may become self-sustaining: \* \* ."

15. The Act of July 5, 1876, 19 Stat. 74, modified the terms for sale of the Kansas land remaining unsold on that date, and provided the net

proceeds, after defraying expenses of appraisement and sale, should be expended

"in providing and improving for them new homes in the Indian Territory, and in subsisting them until they become self sustaining; and the residue, not so required, shall be \* \* held as a fund for their civilization, the interest of which, and the principal, when deemed necessary by the President of the United States, may be used for such purpose: \* \*."

To this Act the tribe filed its assent with the Secretary of the Interior on May 21, 1877.

16. In August and September, 1872, the Kansas tribe selected a new home site on the Omaha reservation in the Indian Territory, and removed thereto in 1873 and 1874. The United States was reimbursed the purchase price of the new site by transfer of funds within the treasury from the proceeds of the tribal lands in Kansas in 1881.
- 17a. Under an agreement submitted by the Kansas Tribe and ratified by Congress July 1, 1902, 32 Stat. 636, all persons enrolled as Kansas or Kaw Indians on December 1, 1901, and the descendants of such persons born prior to December 1, 1902, were declared to constitute the Kansas or Kaw tribe, and after providing for the allotment of lands and division of surplus lands among the members, it was directed:

"Sec. 8. The funds of said tribe, including the one hundred and thirty-five thousand dollars (\$135,000) due said tribe under the treaty of June 14, 1846 (See Ninth U.S.S., page 842); the Kansas school fund, amounting to twenty-seven thousand one hundred seventy-four dollars and forty-one cents (\$27,174.41) (See 21st U.S.S., page 70), and the Kansas general fund, amounting to twenty-six thousand nine hundred seventy-eight dollars and eighty-nine cents (\$26,978.89), derived from the sale of lands in Kansas and all other moneys now due, or that may be received from the sale of their lands in Kansas, the money received from the sale of town lots in Oklahoma Territory, as hereinbefore provided, and all money found to be due to said tribe on claims against the United States, shall be segregated and placed to the credit of the Individual members of said Kansas or Kaw tribe of Indians on a

basis of a pro rata division among the members of said tribe, as shown by the roll of membership of said tribe, as provided, on the first day of December, 1902, said credits to draw interest, as now authorized by law, at the rate of five (5) per centum per annum \* \* \* Provided, That the amount placed to the credit (together with the accrued interest) of each member of the tribe of the age of twenty-one (21) years may be paid to such member in ten (10) equal payments, one payment each year: Provided further, That if the Secretary of the Interior deems it advisable, he may pay to any member of said tribe, over the age of twenty-one years, the full amount of the principal and interest that may be credited to such member: Provided further, That the sum ascertained to be due said tribe shall be segregated as soon as possible after December 1, 1902: \* \*."

- 17b. Under the treaty of 1859, 12 Stat. 111, the Kansas Indians assumed the expense incident to building homes, introducing agricultural industrial pursuits among the tribe and sustaining them until those industries prospered sufficiently to support the Indians. Assignment of tribal moneys for such purpose continued under the agreements of 1872, 17 Stat. 85, and 1876, 19 Stat. 74, and until December 1, 1902, at which date all tribal assets were to be divided among tribal members then in being as provided by the Act of July 1, 1902, 32 Stat. 636.
18. Between 1846 and August 3, 1947, the following expenditures exclusively for the benefit of the Kansas Indians were made from public funds appropriated for purposes other than treaty or contractual obligations, which expenditures the claimant admits are proper offsets or credits against the interlocutory award heretofore made in its behalf:

Attorneys fees.....	\$	288.00
Clothing.....		5,972.86
Expenses, care and sale of timber.....		784.47
Expenses of appraising lands.....		808.50
Hunting and fishing equipment.....		24.78
Indian dwellings.....		781.00

Indigent Indians:		
Clothing.....	\$ 8.15	
Fuel.....	2.60	
Funeral expenses.....	435.00	
Subsistence.....	<u>603.72</u>	\$ 1,049.47
Livestock, Purchase of.....		1,572.74
Mills and shops:		
Blacksmith shops.....	539.48	
Carpenter shops.....	38.65	
Flour and grist mills.....	446.09	
Tin shops.....	<u>12.00</u>	1,036.22
Payments for depredations.....		1,167.00
Pay of blacksmiths.....		5,672.88
Pay of flour and grist mill employees.....		894.99
Recording deeds.....		506.35
Surveying and allotting.....		278.00
Transportation of:		
Clothing.....	437.01	
Supplies & Equipment for mills & shops..	<u>160.41</u>	<u>597.42</u> \$ 21,434.

19. The United States expended the following sums between 1846 and August 3, 1947, exclusively for the benefit of the Kansas Indians, from appropriations of public funds for other than treaty or contractual obligations, which are in addition to those expenses listed in Finding 17 above, and which are also proper offsets on part of the United States against the award heretofore granted the claimant.

Agricultural aid:		
Clearing, breaking, and fencing land.. \$	246.35	
Digging wells and well equipment.....	27.00	
Planting and harvesting crops.....	447.25	
Pay of farm laborers.....	325.70	
Seeds, fruit trees and fertilizer.....	<u>473.10</u>	1,519.40
Agricultural implements and equipment.....		2,996.51
Expenses of Indian delegations.....		2,834.65
Fuel and light.....		1,412.35
Hardware, glass, oil and paints.....		851.44
Household equipment and supplies.....		2,035.03
Livestock: Feed and care of.....		1,102.10
Pay and Expenses of Farmers and Farm Agents.....		2,177.12
Pay of herders and stockmen.....		571.35
Pay of laborers.....		4,867.17
Pay of mechanics.....		2,233.30
Presents to Indians.....		245.05
Provisions.....		67,601.89

## Transportation of:

Agricultural implements and equipment.	\$	995.38		
Feed for livestock.....		96.85		
Fuel.....		147.19		
Hardware, glass, oil and paints.....		653.76		
Household equipment and supplies.....		524.22		
Provisions.....		<u>2,329.80</u>	<u>4,552.45</u>	\$ 94,999.83

20. During the year 1913 the United States expended gratuitously for the benefit of the Kaw, Otoe and Missouri, Pawnee, Ponca, and Tonkawa Indians the sum of \$511.30. During said period the Kansas or Kaw Indians numbered eight percent of the total Indian population benefited, and eight percent of said total or \$40.90 is allowable as an offset upon the award heretofore granted.

21. From July 1, 1919, to June 30, 1921, the Kansas Indians comprised fifteen per cent of all the Indians within the Pawnee Indian Superintendency. During that period the United States expended gratuitously from funds appropriated for other than treaty or contractual obligations, for all the Indians within that Superintendency the following:

## Transportation of:

Agricultural implements and equipment.....	.96	
Clothing.....	13.10	
Provisions.....	50.81	
Supplies and equipment for mills & shops.....	13.82	
Supplies for agricultural aid.....	1.12	
Household equipment and supplies.....	26.67	
Hardware, glass, oil and paints.....	<u>19.56</u>	\$ 126.04

The defendant is entitled to offset fifteen percent of such total, or \$18.90.

22. From July 1, 1921, to June 30, 1926, the Kansas Indians resided within and comprised 34.7 per cent of all the Indians under the Pawnee Superintendency, during which time the United States expended gratuitously the following sums from funds appropriated for other than treaty or

contractual obligations:

Pay of farm laborers.....			\$ 12.50
Transportation of:			
Agricultural implements and equipment..\$	6.26		
Automobile supplies.....	2.26		
Fuel.....	59.09		
Hardware, oil, glass and paints.....	41.23		
Household equipment and supplies.....	8.84		
Miscellaneous building material.....	1.52		
Provisions.....	248.16		
Supplies for agricultural aid.....	<u>78.90</u>	<u>446.26</u>	\$ 458.76

Of such amount, defendant may offset 34.7 percent, or \$159.18.

23. During the period from July 1, 1926, to August 31, 1947, the Kansas Indians comprised 14.8 per cent of the total Indian population of the Pawnee Indian Agency, Oklahoma, jurisdiction. All of the Indians within that jurisdiction were benefited by gratuitous expenditures of the United States made during that period from other than appropriations for treaty or contractual obligations. Such expenditures were:

Agricultural implements and equipment.....		\$ 92.25
Hardware, glass, oil and paints.....		157.51
Household equipment and supplies.....		125.11
Pay of laborers.....		1,750.10
Provisions.....		1,366.89
Indigent Indians:		
Clothing.....\$	333.29	
Subsistence.....	4,533.47	
Board.....	100.00	
Garden equipment and supplies.....	2,554.12	
Transportation of clothing.....	4.20	
Feed for livestock.....	86.86	
Funeral expenses.....	<u>130.00</u>	7,408.65
Mills and shops:		
Paint shop.....	7.38	
Tin shop.....	5.98	
Carpenter shop.....	4.74	
Machine shop.....	<u>11.54</u>	29.64

Transportation of:			
Agricultural implements and equipment.	464.94		
Feed for livestock.....	48.40		
Hardware, glass, oil and paint.....	1,720.69		
Household equipment and supplies.....	2,447.28		
Miscellaneous building materials.....	401.90		
Provisions.....	9,274.63		
Supplies for agricultural aid.....	477.50		
Automobiles and supplies.....	75.47		
Clothing.....	1,576.34		
Livestock.....	631.82		
Supplies for surveying and allotting..	.65		
Supplies & equip. for mills and shops.	1.57	\$ 17,121.19	\$ 28,051.34

Defendant may offset 14.8 per cent of said total, or \$4,151.59.

24. From September 1, 1947, to June 30, 1949, the Kansas Indians were under the jurisdiction of the Western Oklahoma Consolidated Agency at Anadarko, Oklahoma, and comprised 2.8 per cent of the total Indian population within that jurisdiction. During that period the United States made gratuitous expenditures for all the Indians within the jurisdiction from other than moneys appropriated for treaty or contractual obligations, as follows:

Agricultural implements and equipment.....		3.80	
Livestock purchased.....		37.60	
Agriculture and stockraising, miscellaneous		7,523.48	
Provisions.....		7.84	
Indigent Indians.....			
Cash.....	\$ 1,333.14		
Board.....	1,727.99		
Funeral expenses.....	139.20		
Subsistence.....	9.00	3,209.33	
Transportation of:			
Household equipment and supplies....	40.00	40.00	\$10,822.05

Defendant is entitled to offset 2.8 percent of the total \$10,822.05 or \$303.01.

25. Under Section 2, 60 Stat. 1049, it is directed that this Commission

"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 moneys 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, or for expenditures made pursuant to the Act of June 18, 1934 (48 Stat. 984), save expenditures made under Section 5 of that Act, or for expenditures under any emergency appropriation or allotment made subsequent to March 4, 1933, and generally applicable throughout the United States for relief in stricken agricultural areas, relief from distress caused by unemployment and conditions resulting therefrom, the prosecution of public work and public projects for the relief of unemployment or to increase employment, and for work relief (including Civil Works Program) shall not be a proper offset against any award."

Under the circumstances existing in the present matter, we may in good conscience allow the defendant such offsets against the award herein granted as comply with the above statute.

26. On December 4, 1934, the Court of Claims found due the Kansas or Kaw Indians, claimants herein, \$102,524.65 on claims arising under their 1825 treaty, and found due the United States offsets of \$462,045.65 representing gratuitous expenditures beneficial to the Kaw Indians made prior to June 30, 1928. Claimant's petition filed in that court under the Jurisdictional Act of March 3, 1925 (43 Stat. 1133) was dismissed without applying any particular offsets in liquidation of the amount found due claimants. Of the total offsets of \$121,108.09 herein found due the United States, \$5,560.07 were incurred subsequent to January, 1928, and \$115,548.02 thereof are included within and comprise .25008 percent of the \$462,045.65 found due the United States in Case F-64 as offsets, representing expenditures prior

to June 30, 1928. The remainder or \$346,497.63 are items not now available to defendant as offsets under the limitations of Section 2, 60 Stat. 1049.

27.. In the absence of application by the Court of Claims of any particular part or items of such offsets to satisfaction of the \$102,524.65 award granted in Case F-64, the offsets granted here will be charged with application thereto in the same ratio that they are represented in such total offsets of \$346,597.62, i.e., .25008% or \$25,649.36. The balance of \$89,908.66, together with \$5,560.07 of the present offsets arising since January, 1928, or \$95,468.73 is available as offsets against the award heretofore granted claimant in Docket 33 pending before this Commission.