BEFORE THE INDIAN CLAIMS COMMISSION

FELIX McCARLEY, A MEMBER OF THE KAW TRIBE OF INDIANS, ON THE RELATION OF ALL MEMBERS OF THE KAW TRIBE OF INDIANS,

Plaintiff,

vs. DOCKETS Nos. 33, 34, 35.

THE UNITED STATES OF AMERICA,

Defendant.

Decided: June 24, 1954

The controversy herein decided is that between:

Claimants and Attorneys
Wilfred Hearn, George E. Norvell, and Charles L. Tyler, Denominated herein as the "Hearn Group,"

and

Claimants and Attorneys

OPINION

WITT, Chief Commissioner, delivered the opinion of the Commission:

Dockets 33, 34 and 35 were consolidated by the Indian Claims Commission for trial, and on September 17, 1951, an interlocutory opinion of this Commission, together with findings of fact, was entered awarding the plaintiff a judgment subject to offsets in Dockets 33 and 35, and the claim made in Docket 34 was dismissed. Thereafter, on May 15, 1952,
the Commission rendered an opinion together with additional findings of fact allowing offsets and rendering final judgment for plaintiff. Thereafter, the attorneys representing the plaintiff took an appeal to the Court of Claims and all three cases were carried to that Court for a review of the findings and the decision of the Commission therein.

The said three cases were filed originally by Keenan Pappan and Felix McCauley, as members of said Kaw Tribe of Indians, under Sec. 10 of the Indian Claims Commission Act, alleging that said tribe had ceased to maintain a tribal organization. The Commission was later advised of the death of Keenan Pappan and the claims were prosecuted thereafter on the relation of Felix McCauley alone.

Subsequent to the filing of the record on said appeal, in the Court of Claims, one Arthur B. Honnold, purporting to be the only duly authorized and approved attorney for the Kaw Tribe of Indians, filed in that Court a motion for leave to intervene and to file a motion to dismiss the appeal. The intervening motion to dismiss the appeal, which accompanied the motion for leave to file, was signed on behalf of the "Kansas or Kaw Tribe of Indians" by Joseph L. Cross, who styled himself as "the duly elected, qualified and acting chairman of the Council of the Kansas or Kaw Tribe of Indians," said intervening motion to dismiss being also signed by Arthur B. Honnold, as the "authorized and approved attorney for the Kansas or Kaw Tribe of Indians."

The Court of Claims in remanding the case to this Commission states:

The record shows that a contract entered into between a Committee of Kaw Indians and Arthur B. Honnold, attorney, and a contract entered into by Felix McCauley, and others, on behalf of the Kaw Tribe, with Dennis Bushyhead, attorney were both approved by the Commissioner of Indian Affairs.
The Court of Claims had then before it the question of whether or not to consider the appeal that had been brought to review the findings and decision of the Commission, or to permit the motion presented by attorney Honnold to intervene and file a motion to dismiss the appeal. With reference to said question the Court, in its opinion remanding, said this:

We do not deem it necessary to discuss and pass upon the various contentions made by the Cross and Honnold group in their motion for leave to intervene and to dismiss the appeal, and the contentions and arguments advanced by the appellant McCaulley and the Hearn Group of attorneys under the Bushyhead contract in opposition to the intervening motion to dismiss, for the reason that in our opinion the question of which group of Indians is entitled to represent said tribe is one which should be decided, in the first instance, by the Indian Claims Commission.

The Court made the further comment, to-wit:

* * * Apparently, the Indian Claims Commission recognized Felix McCaulley as the proper representative of the Kaw Tribe of Indians, and the Hearn Group of attorneys under the Dennis Bushyhead contract as the proper group of attorneys to represent the tribe and, on the record here, we are inclined to the view that the Commission's position was the correct one. But the Commission made no findings, entered no opinion, and made no order or decision specifically with reference to this matter.

The Court further held that the Indian Claims Commission clearly had jurisdiction to determine the question of representation as involved in the Honnold motion to intervene, and it was remanded to this Commission for its consideration and decision and the entry of such findings and opinion as this Commission should deem warranted.

Therefore, it is the opinion of this Commission that under the opinion remanding the case to this Commission, the sole question now before this Commission is the determination of which group of Indians
is entitled to prosecute the claim herein involved on behalf of the tribe, and which group of attorneys having a contract approved by the Commissioner of Indian Affairs is entitled to represent said tribe.

We will hereafter refer to the parties to the controversy herein as the Hearn Group and the Honnold Group. Although the Honnold Group in the original petition in Docket 38 before this Commission brought claims in the name of the Kansas or Kaw Tribe of Indians, it also made individuals parties plaintiff in behalf of the members of said tribe presumably on the theory that if it should not be established that a tribal organization existed which was recognized by the Secretary of the Interior as having authority to represent the tribe, that it would be in Court by reason of the individual plaintiffs having joined in said petition. The Hearn Group in its petition in Dockets 33, 34, and 35 asserted that the plaintiff tribe had ceased to maintain a tribal organization but that it was an identifiable group and that members of said tribe filed its claim in behalf of said tribe as provided by Sec. 10 of the Indian Claims Commission Act. Among the findings of fact made by this Commission in its original decision in Dockets 33, 34, and 35 it found the Kaw Tribe of Indians was an identifiable Indian Tribe but that it did not maintain a tribal organization. It is contended by the Honnold Group that the evidence produced in the hearings with reference to the question now before the Commission establishes the fact that a tribal organization did exist which was recognized by the Secretary of the Interior as having authority to represent the tribe and that therefore such organization had the exclusive right to represent the tribe in the prosecution of
the claims asserted in Dockets 33, 34, and 35, and that the Honnold Group had been authorized as a recognized tribal organization and tribal selected attorneys to represent said tribe in the matters involved in said Docket numbers, and that therefore the Hearn Group had no authority to prosecute said claims.

In view of our decision and findings of fact in determining the issues now before us, it becomes unnecessary to make a finding as to whether or not the evidence now before us establishes that the Kaw Tribe had such tribal organization as contended for by the Honnold Group, and this because we find that if such tribal organization existed it had lost its exclusive privilege of representing the tribe by reason of its failure to properly represent the interests of said tribe.

Prior to the filing of Dockets 33, 34, and 35 and Docket 38, to which more reference will be made later, attorney Arthur B. Honnold had filed a petition with the Indian Claims Commission on behalf of the Pawnee Tribe of Indians (Docket No. 10) wherein a claim was asserted in behalf of said tribe of Indians based on their alleged one-time ownership of a large body of land, a part of which was located within the present State of Kansas and west of the Big Blue and Smoky Hill Rivers; and the eastern boundary of that part of said lands located within the present State of Kansas was stated in the petition to be "the Big Blue River * * * to its mouth on the Kansas River, then following the Kansas River and the Smoky Hill River southeasterly to the most southerly point, and then southwesterly to the nearest northerly point on the Arkansas River, below Great Bend, Kansas."
At the time the petition in the Pawnee case was filed, attorney Honnold knew that the Kaw Tribe of Indians had asserted ownership to lands located in the present State of Kansas west of the Big Blue and Smoky Hill Rivers because by Treaty of June 3, 1825, (7 Stat. 270) a reservation had been created for the use and occupancy of the Kaw Indians containing approximately 6,500,000 acres, and that approximately 5,500,000 acres of said reservation lay west of the Big Blue River and in the present State of Kansas; he knew of the conflicting claims between the Pawnees and the Kaws as to lands in Kansas lying west of the Blue and Smoky Rivers because prior to his making a contract with the Kaws to represent them, he had discussed with members of the Kaw Tribe the fact of said conflicting claims and that he was interested in getting an agreement between the Pawnees and the Kaws as to a common boundary.

In conference with the so-called Council of the Kaws said controversy as to the boundary between the two tribes was discussed and Honnold stated that he could not accept employment to represent the Kaws, as was mentioned by some members of the Council present, without the consent of the Pawnee Tribe. Thereafter Honnold got the consent of the Pawnee Tribe to represent the Kaws and the contract with the Kaws was thereafter entered into without any agreement having been effected as to what would be the common boundary between the two tribes, and without any agreement on the part of said Honnold to waive the claims he had already filed in behalf of the Pawnee Tribe to lands that had theretofore been claimed by the Kaws and which subsequent development showed they had the better claim thereto.
The so-called Council of the Kaw Tribe, either without understanding its effect, or with gross disregard of the rights of the Kaws, approved the following language of the petition filed by attorney Honnold in said Docket 38 as follows:

The land thus guaranteed to the Kaws, and which they owned and occupied in 1811, 1815, and on June 3, 1825, comprised between 8,546,000, 10,800,000 and 14,800,000 acres of land in northwestern Missouri, southwestern Nebraska, and northeastern Kansas, as those states are now constituted, with the western boundary line being the eastern boundary line of the land then owned and occupied by the Pawnees. There is no controversy between the Kaws and the Pawnees as to the location of this boundary line, the Kaws agreeing that the location is as shall be determined by the Commission on evidence introduced by and on behalf of the Pawnees in Cause No.10, now pending and on trial before the Commission, and in which Arthur B. Honnold, the attorney employed by and representing the Kaws with the knowledge and consent of the Pawnees, is attorney for the Pawnees. (Emphasis supplied).

The said so-called Council, by the approval of the petition in Docket 38, thereby approved the failure of said petition to sue for the claim made in Docket 33 upon which recovery was allowed and an award made of $1,695,688.75 for said Kaw Tribe of Indians.

Said Docket No. 10 filed in behalf of the Pawnee Tribe by attorney Arthur B. Honnold sought compensation for lands described as follows:

Less the strip 10 miles wide on which the first claim is based, the tract on which this claim is based includes a tract bounded on the north by the Platte River; on the east by a line starting at a point on that river south of the present City of Fremont, Nebraska about midway between the old Pawnee towns and the Otoe village, and extending southwesterly to a point on the Big Blue River near the present City of Seward, Nebraska, and following that river to its mouth on the Kansas River, then following the Kansas River and the Smoky Hill River southwesterly to the most southerly point, and then southwesterly to the nearest northerly point on the Arkansas River, below Great Bend, Kansas, including the northern part of Rice County in the Pawnee Country; on the south by the Arkansas River from the last named point to near
the 102d Meridian (Kansas-Colorado line); and on the west by a line curving northeasterly and crossing the Kansas-Nebraska line at a point approximately 12 miles east of a point due south of the junction of the North and South Platte, and extending northwesterly to said junction, as shown by No. 191 on Maps A and B attached hereto as part hereof.

Flat 191, to which reference is made in the above description, was delineated on maps which were attached thereto and showed (as claimed by the Pawnee Tribe) the entire acreage in Kansas west of the Blue River amounting to several million acres. A large portion of which said land so claimed by the Pawnee Tribe as belonging to it was thereafter determined by the Indian Claims Commission in Docket 33 to have been the property of the Kaws, and an award of $1,695,688.75 was made by reason thereof.

Hearings and the taking of evidence in the Pawnee claim, Docket 10, were conducted in behalf of the plaintiff by attorney Honnold and were begun on January 29, 1948, and completed in April, 1949, and judgment and findings of fact by the Indian Claims Commission were entered on July 14, 1950. Hearings and the taking of evidence were begun in Dockets 33, 34 and 35 in September 1949 and were completed in July 1950, and interlocutory judgment was entered in September 1951, and final judgment in May 1952.

Upon conclusion of the hearings of the Pawnee Tribe claims (Docket 10), as to the acreage involved in Claimant's Second Claim, (being that which involves the acreage herein previously described as Tract 191 on maps attached to Claimant's petition), Claimant's attorney, Honnold, requested a finding of fact that the Pawnee owned either 17,025,920 acres or 14,604,800 acres in Kansas, depending upon the location of the
common boundary line between the territories of the Pawnees and the Kaws." (Claimant's Requested Finding No. 8). It was also requested that the Commission find that in including a cession of the land west of the Blue "The Pawnees had no idea that they were relinquishing anything except their claim to land east of the Blue River.* * *; * * * that Major Dougherty, U. S. Agent to the Pawnees * * * knew that the Pawnees owned the land extending westward from the Blue River * * *." 

In Claimant's brief in said Pawnee Tribe claim (Docket 10), in support of Claimant's contention that it should be found that it owned and was entitled to compensation for lands in Kansas west of the Blue River, and that the Kaws were not the owners of the same, (which lands as we have previously stated were found by this Commission in Docket 33 to belong to the Kaws), argument after argument was made, as set out in the findings of fact made herein, which said arguments were concluded on page 37 of said brief wherein almost the entire page is devoted to the same.

The contract entered into by the Kaws with Arthur B. Honnold bears date January 30, 1948. Copies of the petition later filed by Arthur B. Honnold under Docket 38 got into the hands of some of the Kaw Indians before it was filed and they discovered that said petition prepared by said Honnold in behalf of said Kaw Tribe did not assert claims for lands which they thought the Kaw Tribe had a claim to; and by reason of the further fact that attorney Honnold had already filed a claim in behalf of the Pawnee Indian Tribe for compensation for lands which these Indians thought the Kaw Indians had a better claim to, they as individuals in behalf of the Kaw Tribe, entered into a contract with one
Dennis Bushyhead, an attorney, to prosecute the Kaw claims, under which contract Dockets Nos. 33, 34, and 35 were filed. The Commissioner of Indian Affairs approved the contract entered into with attorney Honnold and also the contract entered into with attorney Bushyhead. The findings of fact made herein set out the reasons given by the Commissioner of Indian Affairs for his approval of both contracts.

As hereinbefore stated, the hearings and introduction of evidence in Docket No. 10 in behalf of the Pawnees before the Indian Claims Commission began in January, 1948, and were concluded in April, 1949. Dockets 33, 34, 35 and 38 in behalf of the Kaws were set for trial for September 19, 1950. At the time of the setting for trial of the claims of the said Kaw Indians, this Commission being aware of the conflicts between the said Pawnees and the Kaws as to lands claimed in Kansas west of the Blue and Smoky Rivers, as evidenced by the claim asserted in Docket 33, and the evidence introduced in Docket 10 in behalf of the Pawnees and the claim therein made by said tribe and its attorney Honnold for lands that were claimed by the Kaws in Docket 33 by the petitioners therein and the attorneys filing said docket number, which said claim was not being made by the claimants and attorney Honnold in Docket 38 — this Commission concluded that it should recognize the petitioners in Dockets 33, 34 and 35 and the attorneys in said docket numbers so that the Kaw Indians would get presented the claim asserted in Docket 33 by attorneys in sympathy with such claim — in other words, it was the opinion of this Commission that the Honnold petitioners and their attorney, Arthur B. Honnold, were not in position to properly represent said Kaw Tribe, but that on the contrary Felix McCauley was
the proper representative of the Kaw Tribe of Indians and the Hearn Group of attorneys under the Dennis Bushyhead contract were the proper attorneys to represent the tribe. Hence, this Commission struck from the trial docket Docket 38 and proceeded with the trial of Dockets 33, 34 and 35 at that time.

The record will show that the said Honnold was in attendance upon the hearing on September 19, 1949, and that neither he nor the petitioners in Docket 38, or anyone representing them, made any protest to the striking of Docket 38 from the trial docket of the Commission or the action of said Commission in proceeding with the trial of Dockets 33, 34 and 35.

On September 17, 1951, awards were made by the Indian Claims Commission in favor of the Kaw Tribe of Indians in Dockets 33 and 35, and on November 21, 1951, a document was filed under said docket numbers bearing the following heading, to-wit: "Recognition, Adoption, and Ratification of Proceedings and Services Rendered, and matters Relating thereto." The document was signed as follows: "Kansas or Kaw Tribe of Indians, plaintiff by Joseph L. Cross, Chairman of Council. Arthur B. Honnold, 1846 E. 15th St., Tulsa 4, Okla., Attorney for Kansas or Kaw Tribe of Indians." As previously stated, the Indian Claims Commission had prior to November 21, 1951, denied ownership of the Pawnees to the lands in controversy.

The claim set forth in Docket 33 which was based on the claim of Kaw ownership of lands, which lands were claimed by the Pawnees as herein previously set out in Docket 10, were not claimed in the
Honnold file in Docket 38 in behalf of the Kaws. This Commission found that these lands had been owned by the Kaws and not by the Pawnees and an award was made in said Docket 33 in behalf of the Kaw Tribe in the amount of $1,823,616. It is obvious from the record referred to in this opinion and the findings of fact we make in support of same, that a recovery for this land was not sought in behalf of the Kaws by said Honnold, and he could not have introduced evidence in support of the same and been true to his Pawnee client, and an award therefor to the Kaws would not have been made had Docket No. 38 and the petitioners therein, and the attorneys therein, been recognized as the exclusive representatives of the Kaw Tribe.

In addition to the grounds as hereinabove urged as reasons for the recognition of the right of the Hearn Group to represent the Kaw Tribe in the proceedings herein involved, the fact that the Honnold Group was represented by Mr. Honnold himself in person at the time the Indian Claims Commission in official session struck Docket 38 from the trial docket and proceeded to trial of Dockets 33, 34 and 35, and made no protest as to the trial of said dockets by the Hearn Group of attorneys, and permitted said Docket numbers to proceed to trial and to the conclusion of said trials, and to a judgment in behalf of the Kaw Indians as a result thereof, constituted such acquiescence in said proceedings as in the judgment of this Commission would preclude the Honnold Group now at this time from asserting that said docket numbers were prosecuted by the Hearn Group without authority or right; and if such conduct did not have that result, certainly the filing by the Honnold Group on November 21, 1951, in Dockets 33 and 35 of the document headed
"Recognition, Adoption, and Ratification of Proceedings and Services Rendered, and matters Relating thereto" would so ratify and adopt said proceedings as to preclude any subsequent attempt to repudiate the same.

For the reasons herein set forth, and the findings of fact herein made, this Commission was of the opinion and is now of the opinion that Felix McCauley and associates, and the Hearn Group of attorneys under Dennis Bushyhead contract were, and are, entitled to represent and prosecute the claims asserted in Dockets Nos. 33, 34, and 35 on behalf of the Kaw Tribe; and we were of the opinion, and are now of the opinion, that Joseph L. Cross and others constituting the so-called Council of the Kansas or Kaw Tribe of Indians, and the said Honnold and attorneys associated with him, were guilty of laches and were not properly prosecuting all the claims of the Kaw Tribe of Indians — and regardless of whether said Kaw Tribe had a tribal organization recognized as having authority to represent it, the facts as herein delineated show that said Honnold Group as plaintiffs and attorneys were not the proper group to represent said tribe in the claims herein involved.

Edgar E. Witt  
Chief Commissioner

Concurring:

Wm. M. Holt  
Associate Commissioner

Attached is a separate opinion by Commissioner O'Marr.
This case (our consolidated docket Nos. 33, 34 and 35 were filed as separate claims but were joined by order of the Commission and considered as a single case involving three causes of action) is on appeal to the Court of Claims. Appeals Dockets Nos. 7-52, 8-52 and 9-52.

The claims were presented by Felix McCauley, a member of and for and on behalf of the Kaw Tribe. The title of the petitions is somewhat confusing but the Commission and the parties understood the claims as being made for the Kaw Tribe and by order of May 15, 1952, entered judgment for that tribe for two of the claims and dismissed the third. At the trial of this case the Kaw was represented by attorneys Wilfred Hearn, George E. Norvell, Charles L. Tyler and Dennis Bushyhead, under an attorneys' contract, dated November 22, 1948, between Bushyhead and "Nettie Cooper Glen and Felix McCauley, duly authorized members of an Executive Committee, acting for and on behalf of the Kaw Tribe of Indians." (Honnold Ex. 7). At the end of the contract, immediately following the signatures, appears a resolution, purporting to have been adopted on September 6, 1948, "at a general meeting of the Kaw Tribe of Indians" which states that an executive committee was elected, Dennis Bushyhead employed as attorney and Nettie Cooper Glen and Felix McCauley were authorized to execute the contract with Bushyhead, which they did on November 22, 1948, and the contract was approved by the Commissioner of Indian Affairs.

Whether the contract was the result of action of "a general meeting of the Kaw Tribe of Indians" held on September 6, 1948, may be
doubtful, at least it has been questioned, but as I view the matter it is immaterial whether the employment of Bushyhead was the result of a "general meeting" of the tribe or not, for it is certain that a group of the Kaw Indians authorized the employment of Bushyhead to present the claims of the Kaw Tribe to the Indian Claims Commission. It is equally certain that through the sole efforts of McCauley and Bushyhead and his associated attorneys, a substantial award, $2,398,220.02, was obtained for the Kaw Tribe, (Final Order of May 15, 1952). That McCauley had the right under section 10 of the Indian Claims Commission Act (25 U. S. C. A. 701) to assert and prosecute the claims of the Kaw cannot be denied.

McCauley, not being satisfied with the award we made, appealed, as he had the right to do, to the Court of Claims.

On February 2, 1953, and after the appeal was perfected, a motion for leave to intervene and to file motion to dismiss the appeals was filed in the Court of Claims accompanied by a motion to dismiss the appeals mentioned above. The motion to intervene was made by "Kansas or Kaw Tribe of Indians, by Arthur B. Honnold, its duly authorized and approved Attorney of Record." The motion to dismiss was in the name of the same tribe "By Joseph L. Cross, chairman of the Tribal Council." McCauley opposes these motions in said court.

It may here be stated that Arthur B. Honnold also had an attorney's contract (Honnold Ex. 5), dated January 30, 1948, executed by himself and the chairman and secretary of the Kansas or Kaw Tribe. This contract was also approved by the Commissioner of Indian Affairs, but the claims
for which the award was made were prosecuted under the Bushyhead contract and not the Honnold contract.

The Court of Claims has not passed upon either the motion to intervene or the motion to dismiss, but on July 13, 1953, rendered an opinion in which it is stated that it did not deem it necessary to pass upon the contentions of the group of Kaw, referred to as the "Cross and Honnold Group" in the opinion, or the contentions of the group, referred to as the "McCauley and the Bearn Group" in the opinion, with respect to said motions, "for the reason that in our opinion the question of which group of Indians is entitled to represent said tribe is one which should be decided in the first instance by the Indian Claims Commission." Later in the opinion, the court said:

* * * The court is not in a position and should not undertake, in a case on appeal, to decide in the first instance which group of Indians is entitled to prosecute claims on behalf of the tribe or which group of attorneys having a contract approved by the Commissioner of Indian Affairs is entitled to represent said tribe, without findings, opinion and judgment of the Indian Claims Commission on the matter.

The opinion closed with this language:

For the reasons mentioned, the entire case, together with the exhibits and briefs filed by both Groups in connection with the motion of Arthur B. Honnold, Attorney for Joseph L. Cross, et al., to intervene, is remanded to the Indian Claims Commission for consideration and decision, and the entry of such findings and opinion as it deems warranted. After such further consideration by the Commission, further proceedings by appeal may be had.

It is so ordered.

While no mandate has been issued by the court, I consider the last quoted language an order to the Indian Claims Commission to find and definitely determine whether those making the motions represent the Kaw, or those opposing the motions, the McCauley Group, represent
the tribe.

There is only one judgment and that is for the Kaw Tribe, with all members of that tribe beneficiaries. It cannot be said that all the members of the Kaw Tribe belong to the two contesting groups, so the importance to the court of determining whether either of the two groups represents the tribe is obvious.

In my opinion the Commission has not met this requirement. This is its ultimate finding (22):

We find that Felix McCauley is the proper representative of the Kansas or Kaw Tribe of Indians entitled to prosecute the claims here involved on behalf of said Tribe, and that the Ream Group of attorneys under the Bushyhead contract is entitled to represent the Tribe in the prosecution of the claims asserted in its behalf in Dockets Nos. 33, 34 and 35.

Taken literally, this finding simply says that McCauley and his counsel were entitled to prosecute the claims of the tribe and, although the language is somewhat enigmatic, I would think the taking of an appeal would be part of such representation. I agree that McCauley and his counsel were representing that tribe before this Commission and in taking the appeal. About this there can be no doubt in my opinion. But the Court of Claims is confronted with motions purporting to be made by the judgment creditor, the Kaw Tribe, seeking permission to file a motion to dismiss the appeals to that court, so the court is asking us to decide whether the motions are in reality those of the Kaw Tribe. Obviously, only the Kaw would have the right to present such motions.

I do not think the Commission's finding has met the court's order to determine "which group of Indians is entitled to represent the tribe" in considering the motions and since the Commission has made no order
on the finding the court must look to the finding only for its answer.

If the court should accept the finding as determining that the motions are not those of the Kaw Tribe, then I say the Commission's finding is contrary to the undisputed evidence in the record on the motions, evidence, by the way, which is completely ignored by the Commission in its findings of fact and opinion. I shall now consider that evidence.

As shown above, the final award of the Commission was made on May 15, 1952. On September 17, 1952, a meeting of the "Tribal Council and Business Committee of Kansas or Kaw Tribe of Indians" was held at Kaw City, Oklahoma. According to the minutes of the meeting "a quorum and other representative members of the tribe" were present. (Honnold Ex. 2). At that meeting the tribal council passed a resolution adopting the judgment and directing attorney Arthur B. Honnold to take steps to dismiss the appeals from the judgment.

Following the above meeting and pursuant to the resolution, Honnold, on February 2, 1953, filed the motions in the Court of Claims.

Following the filing of the motions to intervene and dismiss a general meeting of the members of the Kaw Tribe was held pursuant to posted and published notices of the meeting to be held at Washina, Okla., on May 19, 1953 (the year is not stated in the notices but there seems to be no complaint about that or showing that any member of the tribe was misled by the omission), and according to the minutes of the meeting (Honnold Ex. 12), 109 members of the tribe were present and eighty-four voted. The stated purpose of the meeting was to "determine by a vote of the members of the Tribe whether to accept the awards
[Of $2,398,220.02] and approve the action of the tribal officials and committee in directing Arthur E. Honnold, attorney for the Tribe • • in moving for the dismissal of the unauthorized appeals, or • • approve the taking of the appeals with the resulting risk and delay in receiving the money awarded." (Honnold Ex. 12).

As to the tribal status of the Kaw, it was stated on December 12, 1952 (Hearn Ex. 1) by the Commissioner of Indian Affairs, who should know, as follows:

Our records indicate that the Kaw Tribe has no formal tribal governmental organization. The tribal members elected a business committee which is not active. Whenever an expression of the Kaw Tribe is needed, it is necessary to hold a general meeting of the adult tribal members. The records reveal no information concerning the position of a tribal chief in the present-day affairs of the Kaw Tribe.

The Commissioner was misinformed when he wrote that the Business Committee was inactive, for W. W. Head, area director of the Indian Service, testified on September 17, 1953, (Trans. p. 37), that there was an active business council on October 7, 1948, and following. Moreover, the undisputed evidence shows meetings of the council held October 7, 1947, October 16-17, 1948, March 3, 1948, and September 17, 1952. Also, the evidence conclusively shows that a new council was elected at a general meeting of the Kaw Indians held on October 7, 1948. (See Honnold Exs. 2, 3, 5, 6 and 4, 4-a, respectively).

Referring again to the minutes of the general meeting of the tribe (Honnold Ex. 12), it appears the Indians discussed the issue of dismissing the appeals or continuing with the litigation and decided the issue very definitely by passing this resolution:
"BE IT RESOLVED, that it is the desire of the Kansas or Kaw Tribe of Indians, officially determined by this general meeting of the members of the Kansas or Kaw Tribe of Indians, that the tribe accept the awards rendered it in the total sum of $2,398,220.02 in satisfaction of its claims against the United States, and that the appeals now pending in the Court of Claims (Appeals Nos. 7-52, 8-52, and 9-52) be dismissed.

"BE IT FURTHER RESOLVED, that the action of the tribal officials and business committee in directing Arthur B. Honnold, attorney for the tribe, and his associates, Wheeler & Wheeler, in moving for dismissal of the appeals, be and it is hereby approved and ratified.

"BE IT FURTHER RESOLVED, that the wishes and desires of the members of the tribe be made known to the Court of Claims."

At this meeting 84 voted for the resolution and 12 absent members expressed their approval of the award and desire of dismissing the appeals. (Honnold Ex. 12). No member voted against the resolution.

Thus, it will be seen, the tribe acted in the only way it could act, first, through its elected business committee, and secondly, through a general meeting of the members of the tribe, when it directed its attorney to take action on behalf of the tribe for the dismissal of the appeals. Furthermore, the procedure followed was that accepted by the Government in its dealings with the Kaw. As I look at the undisputed evidence in this record I think it is conclusively to the effect that the motions now before the Court of Claims are those of the Kaw Tribe, and a finding and an order to that effect should have been made.

It is argued that only the Kaw Tribe could employ counsel to prosecute its claims and for that purpose it employed Honnold. I consider the contention unimportant here because it is quite plain that the officials of the tribe sat back and without objection permitted McCauley and his counsel to prosecute the tribal claims, and it was not until the
interlocutory order was entered that they - the tribal officials - became active, and then only for the devious but clear purpose of obtaining for Honnold a share of the attorneys' fee that may be allowed McCauley's counsel. (See ratification of award, approval of attorneys' fees etc., Finding No. 14). It is true a claim was presented on behalf of the tribe after the McCauley petitions were filed but the tribal officials seemed satisfied to allow McCauley to continue the work and, through no apparent efforts of theirs, obtain a large award for the Kaw tribe. Be this as it may, it was with tribal approval or ratification at a meeting regularly called under the direction of a Government officer, the District Agent, that the motions were filed for and on behalf of the Kaw Tribe, and not the Cross group.

Louis J. O'Marr
Associate Commissioner