

Defendant claims total offsets in the total sum of \$2,111,316.03 against petitioners, of which sum defendant would have the Commission apply \$2,067,166.00 in satisfaction of the interlocutory award. The items upon which the claimed offsets are based are contained in the General Accounting Office Report (Def. Ex. 26), which was prepared by said office at the request of the defendant. From the record of disbursements made by the United States as detailed in the G. A. O. Report, defendant presents claimed offsets of two types: (1) those indicating direct charges against the petitioner tribes, and (2) charges which defendant asserts should be offset according to the proportion of the population of petitioner tribes to the total Indian population of the Kiowa Agency. The direct charges claimed by defendant consist of two categories: (1) payment of depredation judgments involving petitioner tribes -- \$1,561,368.00; (2) cash payments to indigent Indians of petitioner tribes -- \$396,844.96. The charges which defendant asserts based upon a population basis are also set forth in two categories: (1) those disbursements where the vouchers or invoices indicated that the items involved were for issue to the Indians, and (2) those disbursements where the vouchers or invoices did not on their face indicate whether the items were for the Indians or agency, educational or other use.

Depredation Judgments

The largest offset item is for \$1,561,368 (the sum originally claimed was \$1,563,548, but \$2180 was deducted by defendant because of its inability to show that the judgment in this amount was for depredations committed by the Kiowa, Comanche or Apache), being the aggregate of

1104 judgments entered by the Court of Claims against the petitioners and defendant for depredations committed by the petitioners herein prior to March 3, 1891. (Fdg. 27).

The Act of March 3, 1891, 26 Stat. 851, the so-called Indian Depredations Act, authorized suits in the Court of Claims for damages sustained by United States citizens resulting from property taken or destroyed by Indians belonging to a tribe in amity with the United States. By Section 6 of the act the amount of each judgment was to be deducted and paid in this order: (1) from tribal annuities; (2) from funds due the tribe, arising from the sale of their lands or otherwise; and (3) appropriations for the benefit of the tribe, other than appropriations for their current and necessary support, subsistence and education.

In final analysis, the questions here presented are: (1) whether the amount of the depredation judgments are subsisting charges against the petitioners and (2), if so, whether they may be paid by deducting the amount thereof from the interlocutory award we have made herein, without action of the Secretary of the Interior directing the deductions therefor under statutes hereafter to be discussed?

The first question must be answered in the affirmative. Section 6 of the Indian Depredation Act expressly provides that the amount of any judgment rendered against the tribe by which, or by the members of which, the Court of Claims shall find committed the depredations, shall be charged against such tribe and deducted from its said tribal annuities, funds or appropriations, and where the judgment is paid by the United States, as it is required to do when the tribe has no available tribal

annuities, funds or appropriation moneys of the character specified in Section 6, it is expressly further provided that the amount so paid shall remain a charge against the tribe and shall be deducted from any of the designated tribal resources that may become due thereafter from defendant. Thus, the charge for reimbursing the Government is a continuing one, but one that can only be satisfied by deductions from the particular tribal resources mentioned above. This liability was created by statute and its enforcement must be limited to the means provided by the act creating it, namely, by deductions from the designated tribal resources, and only those. 33 C. Cls. 476, 479.

While Section 6 of the 1891 Act directed the payment of depredation judgments from the Treasury of the United States, they were not paid until special appropriations therefor were made. The reason appropriations were deemed necessary was perhaps to comply with Sec. 126, 25 U. S. C. A., (R. S. 2098), which requires special appropriations to pay depredation claims.

But when the appropriation acts were passed to pay these judgments, (for list of the appropriation acts and disbursements see Pet.-Ex. 126 and pp. 78 and 181-2, G. A. O. Report, Def. Ex. 27), the acts (see Fdg. 27-c for text of a statute which is typical of the provisions of all such appropriation acts, except that of August 26, 1912, 37 Stat. 617-618) made radical changes in the method of reimbursing defendant for the judgments it paid. Instead of the mandatory reimbursement of the Government for the judgments paid by it through deduction from available tribal annuities, funds or appropriations for tribal benefit, other than for

their support and education, as was required by the 1891 act, each of the several appropriation acts (with the exception noted above) for paying the judgments provided that --

"such deductions shall be made according to the discretion of the Secretary of the Interior, having due regard to the educational and other necessary requirements of the tribe or tribes affected; * * *."

These provisions must be considered as superseding the mandatory deduction provisions of the 1891 act, or, as stated by the Court of Claims in determining the effect of a similar appropriation act on the 1891 act:

"The Act of July 28, 1892 (27 Stat. 282, 319), amended the foregoing statute [Indian Depredations Act, 26 Stat. 851], and judgments in Indian depredation cases should be paid from tribal funds in accordance with the discretion of the Secretary of the Interior." *Duwamish etc. v. United States*, 79 C. Cls. 530, p. 612.

The Attorney General on February 6, 1895, reached a similar conclusion in holding that an appropriation act, similar to those involved here, vests a discretionary power in the Secretary of the Interior to determine which depredation judgments be paid and the manner of payment. (Pet. Ex. 140).

We next consider the actions taken by the Secretary of the Interior under the various appropriation acts for payment of the judgments against these petitioners. As to each appropriation, the Secretary of the Interior certified to the Secretary of the Treasury, as required by the several acts (see Fdg. 27-c and Pet. Exs. 127 to 139), that there were no annuities or funds due the petitioners from the United States nor any appropriations for their benefit other than the appropriation for their current and necessary support, subsistence and education available for payment of the judgments rendered against them or --

"out of which the same should be paid, due regard being had to their educational and other necessary requirements."

Thus, it is plain that the Secretary of the Interior exercised his discretion as to reimbursement of the Government out of tribal annuities, funds or appropriations for the judgments it paid, and decided there were no such annuities, funds or appropriations out of which they should be paid. The implication of the above language is that there might have been annuities, funds, or appropriation moneys of the character specified in Section 6 of the 1891 act, due the petitioners at the times of the judgment appropriations and certifications of the Secretary, but if there were, would such facts make the amount of the judgments an offsettable item? For the reasons hereafter stated, we think not.

As we have before stated, the charge against petitioners for the depredation claims exists but its form has been changed. Instead of owing those who suffered the losses, the Indians owe the Government which paid them by satisfying the judgments therefor. This charge was not one that was voluntarily assumed by the Indians, but one created by an act of Congress and in so doing the Congress did as it pleased and adopted plain rules to govern the payment of the claims. The original plan, as appears from Section 6 of the 1891 act, was to deduct the amounts of the adjudicated claims from specific tribal credits or resources whenever they became due the Indians from defendant. Under the act no other tribal resources could be used to satisfy the claims and when the defendant paid the judgments therefor, the charge for reimbursing the Government remained, as the act expressly provides, charges against the specific tribal resources before alluded to, and none other.

Under the 1891 act the deductions to pay for the deprecations did not constitute a general tribal obligation, for, whether the statutory liability was to the victims of the deprecations or the Government, it was one that could only be discharged by deducting the amounts from the designated tribal credits.

An examination of the acts appropriating money for paying the deprecation judgments (Fdg. 27-c) shows that the provisions of Section 6 of the 1891 act respecting the deductions from tribal credits for reimbursement purposes has not been changed, in fact, those provisions are expressly recognized in each of the judgment appropriation acts. But in place of the direction in the 1891 act to make the deductions from the three tribal credits, the appropriation acts modify such mandatory directions respecting such deductions and provide that they may only be made "according to the discretion of the Secretary of the Interior * *." Parenthetically, it may be suggested, that if the Congress could fix the rules for reimbursing the Government, as it did in the 1891 act, it could modify those rules, as it did in the judgment appropriation acts. So such tribal funds or credits could not be made available for reimbursement purposes until the Secretary acted and made them available. True, the acts require that in exercising his discretion he shall have due regard to the educational and other necessary requirements of the tribes affected, but he was also made the sole judge of that and there is no intimation that, in not allowing the deductions to reimburse the Government, he acted other than in the best of faith, in the best interests of the petitioners or the Indian Service, and in accordance with the discretionary powers granted him by the appropriation acts under which he

acted. And, in so acting, the existence of the designated sources of tribal credits at the times he acted, or thereafter, was immaterial, for, as we have already stated, the reimbursements for defendant's outlays for such judgments could only be made from the tribal credits specified in the 1891 act, and the action of the Secretary applies to the use of these credits, and none other; he could withhold them or make them available for such purpose as he thought the interests of the Indians, or the Indian Service, required.

It is obvious that we have been granted no power to review the action of the Secretary and exercise for him, or in his stead, the discretionary powers vested in him, and none other, by plain law, a discretion, it may be remarked, that has never been questioned by the Congress during the upwards of sixty-five years the Secretary has similarly acted in thousands of depredation cases under identical statutes. Nor, as we have said before, can we treat these statutory deductions as general obligations of the petitioners.

In view of the above, we must hold that defendant is not entitled to offset any of 1103 of the judgments against the award heretofore made. The remaining judgment for \$719.00 for which an appropriation was made by the Act of August 26, 1912, will be considered later.

Counsel for defendant calls our attention to two cases in which the Court of Claims allowed offsets for depredation payments; Shoshone Tribe v. United States, 82 C. Cls. 23, 56, and Duwamish et al. v. United States, 79 C. Cls. 530, 612. In the Shoshone case, the offset for \$1100 was included with gratuity payments aggregating over a million dollars. It is not shown by the reported case that the \$1100 item was called to the attention of the court and no comment of it was made in the opinion.

The Duwamish case is inapposite, for as the Court of Claims stated in its opinion:

* * * All that appears is that no deductions for the judgments found were made by the Secretary from the annuities due the Indians under the treaty of 1855. We include the same in defendant's counterclaim under the theory that in the absence of some affirmative record from the Interior Department, some direct action with respect thereto, the act of our jurisdiction comprehends them as set-offs. The language of the jurisdictional act is broad and does, we think, intend a disclosure of all sums of money disbursed by the United States for or in behalf of the Indian claimants. The set-off is a legal one and not a gratuity.

Obviously, the facts there shown are entirely different from those here under consideration. In the instant case, the Secretary of the Interior took affirmative action (Fdg. 27-c) in accordance with the power vested in him by each of the appropriation acts and certified that there were no funds or appropriation moneys out of which the depredation judgments should be paid.

Included in the pleaded offsets of \$1,561,368 for depredation judgments is an item of \$719.00 which was for depredations committed by members of the Comanche Tribe and for which judgment was rendered in that amount and included in the Appropriation Act of August 26, 1912, 37 Stat. 595, 617, and paid by defendant.

The pertinent part of the text of this act is set forth in Finding 27-c. It will be noted that it differs from the other acts appropriating money to pay the depredation judgments only in that it does not give the Secretary the discretionary power to make deductions for the amount of such judgments paid by the defendant, or the time and proportions of such judgment payments, but it does contain this significant language in referring to the amounts of judgments paid by defendant: "and the amounts

paid shall be reimbursed to the United States: * *." This quoted language of the 1912 act merely says that the defendant must be reimbursed for the \$719 judgment it paid and nothing more; but can it be paid from any resources of the tribe, that is, from the award we have made, or must it be deducted from the tribal annuities, funds or appropriation moneys designated in Section 6 of the 1891 act for such purpose? The other appropriation acts did not affect the defendant's right to make the deductions in the manner specified in that act, they simply deferred them until the Secretary should determine that they should be made, and then only from the annuities, funds and appropriation moneys specified in Section 6 thereof. Hence it would seem to follow that by the direction to pay in the 1912 act it was not intended to do more than require payment from the tribal sources designated in said Section 6.

Since the defendant's position is that this judgment claim for \$719.00 must be satisfied by deducting it from the award we have made, it must be determined whether such award comes within any of the three categories of Section 6 of the 1891 act from which deductions can be made to reimburse defendant. The award was for additional compensation for the petitioners' lands acquired by defendant under the 1900 act. Obviously, the award is not an "annuity" or an "appropriation for the benefit of the tribe," as those terms are used in Section 6, so it would have to be considered as a fund due petitioners from defendant "arising from the sale of their lands, or otherwise." Assuming that the award is for money payable, or that should have been paid, under the 1900 act, it would be a fund made available for reimbursing defendant. In fact, unless it is such a fund, there appears no way for reimbursing defendant.

What, then, is the effect of the provisions of the 1900 act? These provisions (Fdg. 27-e) beyond question, exempt all money, or interest thereon, payable thereunder from being applied to the payment of any judgment that had been or might thereafter be rendered. Of course, all depreciation judgments, including that for \$719.00, against petitioners would be excluded from payment out of such fund, so by the express provision of the 1900 act that judgment cannot be allowed as an offset, and is disallowed.

As an alternative position to that claiming the amount of the depreciation judgments as an offset, the defendant would have us consider the amount of such judgments, \$1,561,368.00, as a payment on the claim, that is, that amount plus the \$2,000,000 the defendant paid in cash should constitute the consideration for the land it acquired by the 1900 act. Nothing in the act or the circumstances of its passage lend support to this contention.

Indigent Indians - Cash Payments

Defendant claims an offset of \$396,844.96 for cash payments to indigent Indians of petitioner tribes from fiscal year 1945 through fiscal year 1956. Petitioners admit (Pet. Req. Fdg. 28) that these payments were made to identifiable individual members of petitioner tribes. Petitioners urge, however, that these payments should be denied as offsets because, (1) these are "relief" payments specifically excluded by Section 2 of the Indian Claims Commission Act, (2) the payments were made to individuals and there was no tribal distribution, and (3) there should be a cut-off date beyond which offsets claimed should not be considered. Defendant urges the offsets be allowed, citing Quapaw Tribe

v. United States, 128 C. Cls. 45, 72, and Menominee Tribe v. United States, 118 C. Cls. 290, 316, in which cases that court allowed offsets for funeral expenses and boarding care of indigent Indians.

As stated above, petitioners contend (Pet. Br., p. 59) that these payments are within the exceptions of Section 2 of the Indian Claims Commission Act, 60 Stat. 1049, as "relief" payments. The act provides with respect to offsets and gratuities that:

* * * monies spent * * * 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 the Civil Works Program) shall not be a proper offset against any award.

The sums disbursed as cash payments were made under the provisions of appropriation acts for the Bureau of Indian Affairs, Department of the Interior, authorizing expenditures for "Health, Education and Welfare Service," "Welfare of Indians," "Support and Rehabilitation of Needy Indians" and "Education and Welfare Services." These appropriation acts are not within the exception "any emergency appropriation or allotment made subsequent to March 4, 1933, and generally applicable throughout the United States for relief * * *" as provided in the Indian Claims Commission Act.

Petitioners' counsel cites Pottawatomie Tribe et al. v. United States, 3 Ind. Cl. Comm. 540, 566-568, as authority for holding cash payments to indigent Indians not to be proper offsets. In that case, the United States claimed offsets (on a percentage basis) of \$181,377.48 for indigent Indian expenditures. Of the total amount, \$117,444.03 was

disbursed as cash payments in 1951 from the appropriation for "Health, Education and Welfare Services, Bureau of Indian Affairs." Of the 123 vouchers showing these cash payments, only six Indian recipients were identifiable as members of the Citizen Band of Pottawatomie and they received but a total sum of \$502.57. In view of the proof offered, this Commission held, with respect to offsets for the cash payments and other aid to indigent Indians, on a requested percentage basis that was a questionable estimate, that, in view of the few members receiving cash payments and the advance state of civilization of the Citizen Band of Pottawatomie, it would be unconscionable to charge such individual benefits against the Citizen Band as a tribal benefit.

In the present proceedings, however, the facts are different. In addition to cash payments, defendant seeks to offset other aid to indigent Indians on a percentage basis against petitioners. These expenditures in the amount of \$34,744.26 have been denied (Fdg. 36) because of the failure of defendant to identify the individual Indian receiving the assistance with petitioner tribes, since the record indicates such can be accomplished with respect to these items. Each and every cash payment made to individual Indians, however, has been traced to members of petitioner tribes and is claimed as a direct charge and not a percentage of the total sum. The following cash disbursements were made by the United States:

1945	296.00
1946	85.00
1947	40.00
1949	447.43
1950	25,971.97

1951	58,853.50
1952	43,179.00
1953	79,604.31
1954	46,974.75
1955	68,241.00
1956	73,152.00
Total	<u>\$396,814.96</u>

The disbursement of such large sums in cash payments to individual members of petitioner tribes, especially within the past six years, undoubtedly has resulted in a tribal benefit.

Petitioners further contend that there should be a cut-off date beyond which this Commission should not consider gratuities sought as offsets by defendant. Petitioners contend that if any of the alternative dates they propose in their brief (pp. 73-78) were taken as the cut-off date for considering gratuities, then \$311,151.06 of the cash payments claimed as offsets (for the fiscal years 1952 through 1956) would not be before the Commission for consideration. Petitioners urge, alternatively, that either the date of the Indian Claims Commission Act (August 13, 1946), or the date of the filing of the petition, or the date beyond which no claims could be filed before this Commission (August 13, 1951), should be the cut-off date for allowable offsets. Counsel for petitioners during the hearing on offsets stated he knew of no case wherein the law was set forth pertaining to a cut-off date for gratuities and conceded that the Indian Claims Commission Act itself does not provide for such a cut-off date (Tr. 1307-1308). In their brief on offsets (pp. 76-77) petitioners cite Sioux Tribe v. United States, 105 C. Cls. 725, as authority for the position that offsets should not be charged in this proceeding beyond June 30, 1951, the close of the fiscal year immediately preceding the date, August 13, 1951, which was the termination

date for the filing of claims before this Commission. In the Sioux case, supra, the G. A. O. Report includes disbursements through June 30, 1925. The petition in that case was filed on May 7, 1923 and the period within which to file claims under the jurisdictional act expired June 3, 1925. So we see that in the Sioux case the court did consider offsets beyond the date of the special jurisdictional act and the date of filing of the petition therein. In that case the court did refuse (105 C. Cls. 725, 811, 812) to order further proceedings to determine on further accounting the status of accounts between the parties beyond the date of the G. A. O. Report in that case. The court said:

* * * In other words plaintiff says that after we have decided the issues presented we should order a further accounting as to the balances and allow plaintiff another opportunity to raise further issues if it should so desire.

There must be an end to cases. We cannot keep them open indefinitely for plaintiff's convenience in order that it may have several trials and decisions in each case as to its legal right to recover on the issues presented and which may be later presented before closing the case on final accounting as to the offsets, if any, against such amounts as may be due under the decision on the issues presented when the cases were prepared, argued and submitted. Rule 39(a) was not intended to authorize or provide several trials on questions as to legal rights of an Indian Tribe to recover, or to permit piecemeal trials in chief. Plaintiff knew when it received the accounting report on April 19, 1932, that the accounting ended on June 30, 1925, and no mention was made of the matter until the briefs in the seven cases were filed. * * *

As previously stated, if a cut-off date for considering gratuities was adopted as proposed by petitioners it would result in the Commission refusing to consider the claim for offsets of \$311,151.06, representing cash payments to indigent Indians of petitioner tribes. The General Rules of Procedure of this Commission, Section 12, relating to counter-claim, cross-claim, and set-off, provide for the pleading of offsets

after the entry of the interlocutory order of liability against the United States. Paragraph (b) of said Rule 12 provides that "When the United States fails to set up a counterclaim or set-off, through oversight, inadvertence, or excusable neglect, or when justice requires, it may by leave of the Commission set up the counterclaim or set-off by amendment." In the instant case, defendant introduced the supplementary G. A. O. account of these cash payments (Def. Ex. 30-A) at the hearing on offsets and so would appear to be presented in sufficient time to permit petitioners to ascertain their authenticity.

For all the above reasons the items making up the sum of \$396,844.96 in cash payments are allowed as proper offsets.

DISBURSEMENTS UNDER VOUCHERS OR INVOICES
INDICATING ITEMS WERE ISSUED TO INDIANS

The G. A. O. Report, Part III, consists of two sections. Section A covers disbursements under vouchers or invoices indicating thereon that the items were issued to Indians of the Kiowa Agency. Indians other than members of petitioner tribes have been under the jurisdiction of this agency but in view of the findings herein made and the number of other Indians reported under the agency's jurisdiction in later years it is believed that the finding that petitioner tribes consisted of 73% of the total Indian population is fair. Petitioners admit that during the period 1901 through 1910, on the average, petitioners' ancestors constituted approximately 74 per cent of the Indians under the Kiowa Agency (Pet. Req. Fdg. 41). Under Section A of Part III, defendant claims that the United States disbursed items to the Indians of the Kiowa Agency in the amount of \$141,664.45 and requests that 73% of that sum be charged as offsets

against petitioner tribes, or \$103,415.04. The items included within the total sum in Section A are discussed herein in Findings 30 through 40 and will be briefly considered in this opinion.

Clearing, Breaking and Fencing Land - \$4,877.52

Defendant urges that \$4,877.52 be offset as having been disbursed for the benefit of the Indians for these purposes. The G. A. O. Report shows that the entire sum was expended for barbed wire and staples. The evidence shows that barbed wire was issued to the Indians (Pet. Ex. 51) at the Kiowa Agency. The defendant is entitled to an offset of 73% of said \$4,877.52, or \$3,560.59.

Seeds, Fruit Trees and Fertilizers - \$2,626.62

In 1942, the United States disbursed \$1,966.99 for 37,942 pounds of vegetable seed and 17,000 paper bags. These items can scarcely be considered for demonstration or educational purposes, and the sum of \$1,435.90, being 73% of \$1,966.99, is allowed as an offset. The items making up the balance of the \$2,626.62 are denied as offsets. Quapaw Tribe v. United States, 128 C. Cls. 45.

Agricultural Implements and Equipment - \$7,011.42

There is evidence that for the fiscal years 1901 and 1902 items of this type were furnished Indians at the Kiowa Agency and that after that period a system of credit was established for the Indians to secure these items. Defendant is entitled to offsets for the sums expended on these items, with certain exceptions (Fdg. 32), for the fiscal years 1901 and 1902 in the amount of \$1,644.08.

Clothing - \$15.00

This item has been denied as a proper offset (Fdg. 33) for the reason that the sum indicates an individual rather than a tribal benefit. Pottawatomie Tribe v. United States, 3 Ind. Cl. Comm. 567.

Expense of Indian Delegations - \$370.31

The items under this grouping are denied since it appears that the tribal affiliation of such delegations should be ascertainable.

Hardware, Glass, Oil and Paints - \$944.60
Household Equipment and Supplies - \$1,409.44
Indian Dwellings - \$1,429.16

All of the items in these groupings are denied as proper offsets. There is no evidence of receipt of these items by the Indians, and they are, with the exception of Indian dwellings, of the type that may have been for administrative or agency use. Quapaw Tribe v. United States, 128 C. Cls. 45, 63. The expenditures for Indian dwellings are denied because it would appear that the tribal affiliation in 1943 of the individuals should be ascertainable.

Indigent Indians - \$34,744.26

These items are denied as offsets on a pro rata basis since it appears that the tribal affiliations of the individual Indians receiving the items are susceptible of identification (Tr. 1352-1354).

Livestock - Feed and Care of - \$348.10, and
Purchase of - \$127.33

The items under these groupings are denied as offsets since they appear to be of the type purchased for agency use. Quapaw Tribe v. United States, 128 C. Cls. 45, 64.

Mills and Shops - \$552.94 and
Pay of Herders, Stockmen, Blacksmiths,
Butchers and Carpenters - \$667.94

The items under these groupings appear to have been mostly of the kind for agency use or educational purposes and are denied as offsets.

Provisions - \$86,509.07

The facts as found herein disclose that in the fiscal years 1901 and 1902 large quantities of provisions were issued to the Indians of the Kiowa Agency. These facts also disclose that in September 1903 they were reported to be living on their own income. Defendant has therefore been found entitled to 73% of the \$48,863.43 expended in fiscal years 1901 and 1902, or \$35,670.30. Quapaw Tribe v. United States, 128 C. Cls. 45, 66.

Transportation - \$583.68

The items making up the total sum of \$583.68 are set forth, and the reasons for denying these items under this grouping as offsets, in Finding 40 herein. Where items within certain groupings have been denied as offsets the transportation of similar items will also be denied unless issue to the Indians can be determined from the record.

DISBURSEMENTS KIOWA AGENCY WHERE VOUCHERS
 OR INVOICES DO NOT INDICATE WHETHER THE
 ITEMS WERE FOR THE INDIANS OR AGENCY
 EDUCATIONAL OR OTHER USE

Section B, Part III of the G. A. O. Report groups expenditures under the Kiowa Agency for the fiscal years 1901 through 1947 where the vouchers or invoices do not indicate whether the items were for the Indians or agency, educational or other use. The total disbursements under Section B

claimed by defendant to be proper offsets amount to \$68,065.80, and defendant asks that 73% of this amount, or \$49,688.03, be allowed in this case. These groupings are analyzed in Findings 41 through 47 herein. The groupings and amounts expended for items within each group are as follows:

Agricultural Aid.....	\$ 19.80
Agricultural Implements and Equipment.....	1,105.34
Hardware, Glass, Oil and Paints.....	75.14
Household Equipment and Supplies.....	38.85
Livestock.....	2,133.58
Mills and Shops.....	413.60
Pay and Expenses, Agency Employees.....	44,655.62
Surveying and Allotting.....	7,395.06
Transportation.....	8,767.53

The items under the groupings; Agricultural Aid; Agricultural Implements and Equipment; Hardware, Glass, Oil and Paints; Household Equipment and Supplies; Mills and Shops; and Pay and Expenses, Agency Employees (herders, stockmen, butchers, carpenters, harness makers, general mechanics), are denied as proper offsets because these items may well have been for the most part, if not all, expended for agency or administrative purposes. Defendant is allowed an offset of 73% of \$1,534.68, or \$1,120.32, under the grouping "Livestock" for the feed purchased for livestock in fiscal years 1901 and 1902, when defendant was supplying provisions to the Indians at the Kiowa Agency, and all other items for feed and care of livestock are denied.

Defendant claims offsets on a pro rata basis for surveying and allotting expenditures in the total amount of \$7,395.06. The items in this grouping are denied as offsets since there is no proof that the lands involved were those of petitioner tribes.

Of the \$8,767.53 claimed for transportation of goods and materials to the Kiowa Agency, defendant is allowed offsets of \$1,197.25, for the transportation of certain agricultural implements and equipment as set forth in Finding 47 for the fiscal years 1901 and 1902. All other items under the transportation grouping are denied for the reasons set forth in Finding 47.

To summarize, defendant is entitled to offsets in the total amount of \$441,150.41 against the award of petitioner tribes. The allowable offsets are:

Cash Payments, Indigent Indians.....	\$396,844.96
Clearing, Breaking and Fencing.....	3,560.59
Seeds, Fruit Trees and Fertilizers.....	1,435.90
Agricultural Implements and Equipment.....	1,644.08
Provisions.....	35,670.30
Feed and Care of Livestock.....	1,120.32
Transportation.....	873.99
Total	\$441,150.14

The Kiowa, Comanche and Apache Tribes are entitled to recover from the defendant the sum of \$1,626,015.86 for which sum a judgment will be entered.

Louis J. O'Marr
Associate Commissioner

We concur:

Edgar E. Witt
Chief Commissioner

Wm. M. Holt
Associate Commissioner