

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

