BEFORE THE INDIAN CLAIMS COMMISSION

THE OTTAWA TRIBE and GUY JENNISON,
BRONSON EDWARDS and GENE JENNISON,
As Representatives of THE OTTAWA TRIBE,

vs.

THE UNITED STATES OF AMERICA,

Petitioners,

Docket No. 303

Defendant.

Decided: June 29, 1960

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Ottawa Tribe of Oklahoma, petitioner herein, a tribe organized in that name under the Oklahoma Welfare Act (49 Stat. 1967), has the capacity to maintain this action. It comprises and represents the bands of Ottawa Indians which entered into the treaties of August 30, 1831 (7 Stat. 359, II Kapp. 335), June 24, 1862 (12 Stat. 1237, II Kapp. 830) and February 23, 1867 (15 Stat. 517, II Kapp. 963). In the 1862 and 1867 treaties, the Indians were described as the Ottawas of Blanchard's Fork and Roche de Boeuf. All references in Kansas to the Ottawa Tribe or to Ottawa Indians relate to the same group.

2. For the purpose of removing these Ottawa Indians west of the Mississippi from reservations in Ohio, the United States conveyed to them by the 1831 treaty certain lands in what is now Franklin County, Kansas, but which was then Indian country, containing approximately 75,000 acres. By the Act of March 3, 1853 (10 Stat. 226) negotiations were authorized to be conducted "with the Indian tribes west of the States of Missouri and
Iowa for the purpose of securing the assent of said tribes to the settlement of the citizens of the United States upon the lands claimed by said Indians and for the purpose of extinguishing the title of said Indians in whole or in part to said lands; * * *.

3. The Kansas-Nebraska Act, approved May 30, 1854 (10 Stat. 277), established Kansas and Nebraska Territories, and provided for territorial governments. It also provided for the survey, for the purpose of sale, of the public lands acquired from Indian tribes, setting aside two sections, or 1,280 acres, in each township, for the benefit of the public schools.

Lands acquired from Indian tribes were opened to immediate settlement under the Act of July 22, 1854 (10 Stat. 308) which authorized preemption of the public lands in Kansas. Ceded Indian lands bordered the Ottawa lands on the north, east and south.

4. Although the Ottawas were reported to be "far advanced in civilization," their chiefs knew no English, and only a few of the Indians could understand the language. The great majority were not sufficiently advanced to cope with the white man's civilization (Pet.'Ex. 31). While many of the tribes in Kansas in 1854 agreed to sell part of their lands, the Ottawas decided not to part with any. They reportedly considered dividing their reservation equally among themselves and becoming as soon as possible citizens of the United States. In 1859 the Ottawas proposed to enter into a treaty whereby each individual would be allotted a quarter section, and, after certain grants were made "to give the balance in trust with the United States to sell for us to the highest bidder of highest bidders - to a company or companies - or to individuals - as may best promote the sales so as to realize the most and make the
quickest sales." The Ottawas also proposed to set apart $40,000.00, the interest on which would be used to support a school for the benefit of the Ottawa children for 25 years and longer, if thought advisable by the Secretary of the Interior; that the Ottawas become citizens five years after ratification of the proposed treaty; and that their lands be appraised but no lands sold for less than $1.25 per acre (Pet. Ex. 33). The Ottawas again in March 1860 requested a treaty whereby allotments would be made for the members of the tribe and the balance sold for their benefit (Pet. Ex. 35-a).

5. In December 1860, a letter was addressed to Commissioner of Indian Affairs Greenwood by John T. Jones and William Herr, for the Ottawas, and I. S. Kalloch, for the Board of Trustees of "Roger Williams" University and "Company." This letter proposed a treaty (which proposal was not acted upon by the Government) be entered into by which the Ottawa lands, after the distribution in severalty of 160 acres to each member of the tribe, and additional acreage to the chief and councilmen, and the sale of 1000 acres to Jones at $1.00 per acre, would be disposed of as follows:

I. The principal desire of the Ottawas in making a treaty is to secure the education of their children. They therefore propose to give the Trustees of "Roger Williams University" 20,000 acres of their land of average quality and advantages:

Provided that within two years from the ratification of the Treaty they (the Trustees) shall have expended $10,000 in buildings and otherwise towards the proposed object (the education of the Ottawa children); -- and provided also that from and after that time they (the Trustees) shall board, clothe, and educate a number not exceeding fifty of the Ottawa children annually for thirty years; -- and provided also, that from and after the expiration of the 30 years ten scholarships shall be furnished the Ottawas in the said University forever.
The remaining portion of their reservation they offer to sell to a company who agree to work with the Board of Trustees, and for the same object, -- by L. A. Alderson; C. H. Gruber; Jesse Connell; Bery. Trice; I. S. Kalloch; C. C. Hutchinson and J. M. Bodine: -- for two dollars per acre to be paid in equal payments in one, two, three and four years from the ratification of the Treaty. The lands sold to this company are to be fairly proportioned to the rest, the spot selected for a Town site, and the eight contiguous sections (aside from that reserved for the College) to be owned one half by the Trustees, and one half by the Company.

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*** It is the intention of those taking this land, and in the strongest manner they wish to obligate themselves, to provide to the fullest extent for the education and civilization of the Ottawas. This, of course, they cannot do by the mere value of the land. They have a large amount conditionally promised, and an Agent in the field securing donations to endow the University, in case of the passage of the Treaty. They feel confident of securing $100,000 aside from the lands towards the fulfillment of their obligations. Some of the most responsible men in Boston, aside from those in Kansas, are interested in the enterprise.

The persons named as members of the company included C. C. Hutchinson, who in 1861 became United States Indian Agent for the Ottawas.

So far as appears, "Roger Williams University" was an institution on paper only, with no tangible assets, and with expectations arising only from the possibility of obtaining lands from the Ottawas, and from the hope, with the lands as a start, of subsequently obtaining money contributions. (Def. Ex. 132)

6. In 1862, the Government authorized an Ottawa delegation, consisting of the Chief, Pem-ach-wung, and three councilman, John T. Jones, William Hurr and James Wind, to come to Washington accompanied by their agent, C. C. Hutchinson. On June 24, 1862, a treaty was concluded with the Commissioner of Indian Affairs, William P. Dole, representing the United States.
The preamble to the treaty, asserting that the Ottawas had become "sufficiently advanced in civilization" provided that their tribal relations with the United States should be terminated five years from the ratification of the treaty, after which all of them should become citizens of the United States.

After making provisions for special grants, amounting to 3,370 acres, the treaty provided for the lands of the Ottawas as follows:

First: Allotments were to be made to all members of the tribe;

Second: 20,640 acres were to be set aside for the permanent endowment of a school for the benefit of the Ottawas. These are referred to hereinafter as the "school lands";

Third: The remaining lands were to be sold for the benefit of the tribe under the direction of the agent. These comprised approximately 30,000 acres and are referred to hereinafter as the "trust lands".

One paragraph of the preamble to the treaty as originally agreed to, granted citizenship to John T. Jones and gave him an option to purchase any of the trust lands at $1.25 per acre, without depriving him of "any of the pecuniary benefits of this treaty as an Ottawa Indian". This paragraph was stricken by the Senate prior to the ratification of the treaty.

7. Under the treaty the school was to be organized as follows:

(a) UTILIZATION OF ENDOWMENT

One section of land was to be set aside for the location of the school. It was guaranteed inalienable and perpetually tax-free. This section is hereinafter referred to as the school section.
The trustees were authorized to sell 5,000 acres for the construction of buildings and improvements on this section.

The trustees were authorized to sell the remaining 15,000 acres, to invest the proceeds in loans secured by real estate, and to apply the interest to the support of the school, keeping the principal intact.

(b) APPOINTMENT OF TRUSTEES

The treaty provided for seven trustees. Five were named: John T. Jones, James Wind, William Hurr and Joseph King, Ottawas, and John G. Pratt. Provision was made for the election of two citizens of Kansas as additional trustees.

(c) POWERS OF THE SCHOOL BOARD

The Treaty provided for the board of trustees to have the "control and management of the school, and the funds arising from the sales of lands set apart therefor", subject to the condition that the board should always include three white citizens. The trustees were empowered to fill vacancies in the board. The presence of two white trustees was required for the transaction of business by the trustees. Contracts were to be in the name of the treasurer, who, together with the secretary, was authorized to be paid "from time to time, such sum, as the trustees in their judgment shall think just."

(d) OBJECT OF THE SCHOOL

The treaty provided:

And to the end that the Ottawas may derive the greatest advantage from said school, the pupils shall be instructed and practised in industrial pursuits suitable to their age and sex, as well as in such branches of learning as the means of the institution and the capacity of the pupils will permit.
The privileges of and rights to the school were extended to "the children of the Ottawas and their descendants, no matter where they may emigrate."

8. The Ottawa Indians named in the treaty as trustees were three members of the Ottawa tribal council, John T. Jones, William Hurry and James Wind, and a fourth, Joseph King, who had been employed by Jones as a clerk. Hurry, Wind and King were Ottawas by descent. Jones was an Ottawa by adoption.

John G. Pratt, the white trustee named in the treaty, was the United States Agent in charge of the Delaware Indians.

9. Under the provisions of the 1862 treaty the lands of the Ottawa Reservation were allocated as follows (acreages are approximate since documentary proof for some vary):

<table>
<thead>
<tr>
<th>Description</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allotted (to 221 Indians)</td>
<td>21,600</td>
</tr>
<tr>
<td>Children of Rev. Meeker (Art. VII)</td>
<td>160</td>
</tr>
<tr>
<td>Baptist Church (Art. VII)</td>
<td>10</td>
</tr>
<tr>
<td>Selected Individuals (Art. III)</td>
<td>3,200</td>
</tr>
<tr>
<td>School Lands (Art. VI)</td>
<td>20,640</td>
</tr>
<tr>
<td>Trust Lands (Art. IX)</td>
<td>30,137</td>
</tr>
</tbody>
</table>

10. The treaty was ratified by the Senate July 16, 1862, and proclaimed by the President July 28, 1862. On August 20, 1862, the Indian Trustees named in the treaty (Article VI) met with their agent C. C. Hutchinson, and his father-in-law, John W. Young, and elected Hutchinson and Young as the two additional trustees. Officers of the board elected were James Wind, President; John T. Jones, Treasurer; and Joseph King, Secretary. Following the election of Hutchinson and Young, the school board so constituted, with Pratt, the other white trustee, absent, transacted only one item of business: the board contracted to sell to Young, the newly elected trustee, 5,000 acres of the school lands,
at a price of $1.25 per acre, to be paid by him, at his option, either in cash or by "ereccting such school buildings as shall be acceptable to this Board of Trustees."

11. (a) C. C. Hutchinson, Indian Agent for the Ottawas and member of the Board of Trustees of Ottawa University, was placed in charge of preparing the lists of school land selections and allotment selections provided for in the 1862 treaty with Edward Wolcott as surveyor (Pet. Ex. 45). The school lands list, certified by Hutchinson and Wolcott, December 28, 1863, identified 1,348.79 acres as having been sold to John W. Young by the school board. On December 31, 1863, John T. Jones, as Treasurer of the school board, executed a warranty deed to John W. Young, identified therein as "late of the State of Kansas but now of ... the State of Illinois." This deed conveyed to Young a 640 acre tract in consideration of the sum of $800 (Pet. Ex. 51). On March 9, 1864, the Secretary of the Interior approved the allotments and school land selections (Pet. Ex. 47, 49). The following day the Secretary approved the sale by the Trustees to Young (Pet. Ex. 60). The deed for 640 acres had been transmitted to the Secretary by Hutchinson. A patent for the 640 acres dated May 7, 1864, was issued by the General Land Office and delivered to Hutchinson (Pet. Ex. 62, 63). A deed conveying the 640-acre tract to Hutchinson for $800 was executed by Young on January 19, 1864, which was two months before approval of the original transaction by the Secretary of the Interior (Pet. Ex. 275-a, p. 52). The 640 acre tract, which was the town-site, was conveyed to the Ottawa Town Company by a deed dated September 15, 1864, recorded on June 16, 1865, for a stated consideration of $10,000.00 (Pet. Ex. 275-a, page 3). Whether
Hutchinson actually received $10,000.00, or only interests in the Town Company, is uncertain (Def. Ex. 108 and Pet. Ex. 27\(d\), page 1). Hutchinson was an officer of the Town Company (Pet. Ex. 27\(d\)).

(b) Young's participation in the affairs of the school ended with negotiation of the sales contract for the 5,000 acres of school lands. He did not attend the second meeting of the School Board held May 1, 1865, at which he was presumed to have tendered his resignation (Pet. Ex. 44).

I. S. Kalloch, signer of the "Roger Williams University" letter (see Fdg. 4), who was also an officer in the Ottawa Town Company, was elected in Young's place on the Board of Trustees of Ottawa University (this name was substituted for Roger Williams University). On January 7, 1865, Kalloch, in his capacity as President of the School Board wrote to the Commissioner of Indian Affairs urging the immediate issuance of a patent for "the 5,000 acres of our land sold" in order "to give the title to the men to whom we have promised it." A General Land Office patent for the remaining 4,348.79 acres (a patent having been issued for 640 acres) issued to Kalloch, February 24, 1865, recited that the Secretary of the Interior had approved the application of the school board for the issuance to Kalloch, as assignee of Young, of a patent for the said 4,348.79 acres.

(c) The 640 acre tract was developed as a town site by the Ottawa Town Company. The tract was divided into lots which were sold at varying prices, conveyed for other consideration or given away to aid development.

(d) Records of the Register of Deeds in Franklin County, Kansas, show conveyances by Kalloch of school lands patented to him as assignee of Young. These lands were located adjoining or near the school tract.
and town site for the most part. These sales of record were made at varying prices, generally higher than $1.25 per acre (Pet. Ex. 275-a, 275-b, and see description of lands conveyed Pet. Ex. 93) during the period 1865 through 1870. Kalloch in June 1865 had sold an undivided half interest in these assigned lands for $4,000.00. Sales of record range in price from $1.25 to over $100 per acre with many of the sales being of small acreages of from 5 to 10 acres which may have been timber-lands since some 200 acres of timber-lands were included in the assigned lands. Some sales of record were undoubtedly improved lands.

(e) Kalloch by deed dated in April 1865, and recorded in September 1865, conveyed 380 acres to Senator Samuel C. Pomeroy at $1.25 per acre. In June 1868, a 320 acre tract of these lands was resold for $3,000.00. Agent Hutchinson in 1864 sold two 160 acre tracts adjoining this Pomeroy land on the north for $2.60 per acre which tracts had been appraised in 1864 at $2.25 and $2.50 per acre respectively. The remaining 60 acres in the Pomeroy lands were sold in 1869 at a price of $25.00 per acre. The bulk of the Pomeroy lands were in Sec. 11, Township 17, Range 19 east. The remaining unallotted or unassigned lands in this Section being 160 acres were appraised in 1864 at $2.25 per acre and sold by Hutchinson in 1864 for $2.50 per acre.

(f) In April 1865 Kalloch conveyed to Senator James H. Lane of Kansas 400 acres of land of which 80 acres were located on the edge of the town of Ottawa for $1.25 per acre. The remaining 320 acres were the North half of Section 24, Township 17, Range 19 East. Both these tracts were resold, together with 90 lots in the town of Ottawa, in 1866 for $2,000.00. Two tracts adjoining (to the north) the Lane
320 acre property were appraised at $2.25 and $2.50 per acre respectively in 1864 and in 1864 Hutchinson sold these adjoining tracts at the rate of $2.60 per acre. The land adjoining the 320 acre Lane tract on the east was appraised in 1864 at $2.25 per acre.

12. (a) In 1864 a petition was forwarded to the Department of the Interior signed by 28 Ottawa Indians assertedly representing 121 of the total membership of the tribe. The petition charged that Hutchinson had through the framing and ratification of the 1862 treaty arranged that through a few men he would control the care, disposal and disbursement of the proceeds of the school land. It was further charged among other things that Hutchinson in many instances disregarded the interests of the Indian in locating the lands under the treaty; that a large amount of the best timber and other lands were taken as school lands; that the Agent spent most of his time engaged in private speculations; and that the 5000 acres sold to Young contained the "very choicest in our reservation" and the transaction was with the view to enrich Hutchinson and Young (Pet. Ex. 73 and see Pet. Ex. 78, 80). A letter which stated full satisfaction with the handling of the lands under the treaty was thereafter sent to the Commissioner of Indian Affairs by the tribal council. The letter stated that the council was directed to so inform the Commissioner at a tribal meeting at which four fifths of all members of the tribe were present. Hutchinson certified that the action was taken in full council (Pet. Ex. 74).

(b) The Commissioner of Indian Affairs directed Superintendent of Indian Affairs W. M. Albin to investigate the charges against Hutchinson. Albin's report in January 1865 cleared Hutchinson and
stated the cause of dissatisfaction was due to the fact that a few Indians did not get the allotments they wanted especially one who wanted the town-site which selection was opposed by the council and headmen of the tribe. Albin's report did not mention Young, or his relationship with Hutchinson. He discussed Hutchinson's relations with the school board as though the agent were not himself a trustee. His investigation did not disclose that Young had sold the town-site to Hutchinson on January 19, 1864, for a stated $800.00, or that Hutchinson was an officer of the Ottawa Town Company (Pet. Ex. 274) which was developing the "flourishing village."

(c) In addition to the complaints of the Indians, a question was raised with respect to the Young sale by John G. Pratt, the citizen member of the board of trustees named in the treaty. Pratt in January 1864, stated he had been asked to sign a petition asking the Secretary of the Interior to grant patents to Young. This trustee said he had never attended any meetings of the board since he had received no notification and the sale was made without his knowledge. He signed the petition only for the purpose of permitting the Secretary to proceed if he thought the transaction correct and proper. Otherwise, Pratt said "I would not lend my name to such document, but as the Indians, and Mr. Hutchinson, are apparently satisfied, I do not wish to interpose objections, especially as you will see to the whole matter. * * *"

13. Following the surveys of the Ottawa lands and the submission of rolls showing the lands allotted to the members of the tribe, the special grants to individuals and the lands set apart as school lands, the Indian agent wrote the Commissioner of Indian Affairs on March 10,
1864, requesting him to appoint commissioners to appraise the remainder of the unlocated lands (Trust Lands). Edward Wolcott and Stephan A. Cobb appraised said Trust Lands and reported on May 9, 1864, to the Commissioner of Indian Affairs that the remainder of said Ottawa lands amounted to 30,137.56 acres and appraised these lands at from $1.25 to $3.50 per acre for a total of $60,322.57, or an average of approximately $2.00 per acre. In 1866 it was reported that over 22,000 acres of these trust lands had been sold at an average price of $2.21 or $2.40 per acre with some 7000 acres remaining unsold (Pet. Exhibits 110 and 111-b). Sales in 1864 and 1865 of record show a price range from $1.40 per acre to $3.70 per acre (Pet. Ex. 101).

14. In his annual report of October 1, 1864, Indian Agent Hutchinson stated that the Ottawa lands had been offered for sale and many farms had been taken by settlers. He reported a thriving settlement named after the tribe had been commenced in the center of the reservation and was the county seat. Hutchinson said that 5000 acres of the school lands had been sold to secure building funds to erect a school building and that "a handsome basement, forty feet wide and sixty-five feet long, built of dressed blue limestone" was nearing completion. He stated it was proposed to make it an institution where not only the Ottawas, but children from other tribes could be educated, with a college for the thorough training of advanced Indian pupils together with whites.

15. Of the trust lands there remained unsold some 7,651 acres in 1866. The 1862 treaty provided in Article 9 that the trust lands not disposed of within two years from ratification of the treaty could,
upon the request of the Ottawa council, be offered for sale at not less than $1.25 per acre, upon a credit of one year, under the direction of the Secretary of the Interior; and if any land thereafter remained unsold they should be sold upon such terms as the council and the Secretary should mutually agree on. Kalloch in 1866, as President of Ottawa University, with the approval of Agent Hutchinson, requested that he, subject to the approval of the Ottawa council, be given the power to sell the residue lands (found to be 7,691.83 acres) at its appraised value for a period of time. He urged that if the lands were so sold the Government would get all it could for the Indians which was the appraised value and the University which he said was for the benefit of the Indians might make a profit (Pet. Ex. 105-a). The Ottawa Tribe wrote to the Commissioner of Indian Affairs and requested permission to sell the remaining trust lands to the University at $1.50 per acre (Pet. Ex. 106-b). At the direction of the Commissioner the question of the sale of these lands was investigated by Superintendent Thomas Murphy who recommended the sale. Murphy stated he believed the price was fair, satisfactory to the Ottawas and that the lands would thus be disposed of in a body where otherwise it would take years to dispose of the lands (Pet. Ex. 110). The Secretary of the Interior and the Commissioner of Indian Affairs had recommended the sale subject to modification of the time granted for payment and the finality of the transaction (Pet. Ex. 108, 109). Provisions for the sale of these lands to the University were included in the 1867 treaty (Finding 19).

16. Agent Hutchinson, in a letter to Commissioner of Indian Affairs Van Valkenburgh in September 1865, reported the Ottawa Indians
were much divided about the question of making a new treaty and removing south. He reported a "few of the ignorant portion of the Tribe have expected or hoped to make a new Treaty, whereby they could have the remaining 15,000 acres of college lands sold, and the proceeds thereof divided among the tribe in money annuities." Hutchinson stated in his letter that Commissioner of Indian Affairs Cooley on a recent visit had informed them that such a thing was impossible in that the school lands had passed out of their hands as a tribe and were wholly under control of the college trustees (Pet. Ex. 102).

17. In his annual report for 1866 the Superintendent of Indian Affairs for the Central Superintendency urged that treaties be made with all the Indian tribes in Kansas providing for the sale of their reservations in the State and the removal of the Indians south to Indian country. He ascribed the need of such a move to the rapidity with which the state was being settled by emigration with the resulting hemming in and mixing with the Indians "who cannot be made to understand why their laws and those of the State are constantly clashing, by which the white man always gets the advantage of the Indian; * * *." (Pet. Ex. 115)

The Commissioner of Indian Affairs in his annual report to the Secretary of the Interior for 1866 recommended the removal of the Indians from Kansas. Later in December 1866 the Commissioner wrote to the commissioners sent to negotiate with the Kansas Indians that "My object is now to make a treaty with all these tribes and get them out of the state, where they are in constant conflict with the whites, to a new home better adapted to their conditions and where I believe they would be much happier. * * *."
18. Prior to ratification of the 1867 treaty Kalloch wrote to the Secretary of Interior in April 1867 stating that the University was willing to pay the appraised value of the residue of the trust lands which was found on checking the list to be somewhat more than $1.50 per acre, a price the Ottawa Council agreed to sell for. Kalloch observed that these were the refuse lands of the reserve and felt that at least half of them could not be sold at all by the ordinary method. He said the Board of Trustees planned to give these lands as a bonus for subscriptions to backers of the University and in this way would bring a good price and would be sold without expense to the Government. The President of the University reported that since some settlers had come in wanting to purchase some of the lands and there had been opportunities to sell some at good rates to non-resident friends of the school, the Board of Trustees had sold lands giving their bond for deed. Kalloch said the trustees held the proceeds of sale sufficient to cover the appraised value of the sold lands for the Government subject to issuance of patents and the profits had been devoted to the support of the Indian school. Accompanying Kalloch's letter was a letter from the Ottawa Council urging the sale of the residue trust lands to the Trustees of Ottawa University (Def. Ex. 51 and 52).

19. On February 23, 1867 (15 Stat. 513, 517) a treaty was concluded with ten eastern Kansas Tribes of Indians, including the Ottawa tribes of Blanchard's Fork and Roche de Boeuf. This treaty was ratified with amendments, June 18, 1868, the amendments were accepted September 1, 7, 8 and 15, 1868, and the treaty proclaimed on October 14, 1868. The treaty provided in part as follows with respect to the Ottawas:
Article 16. The west part of the Shawnee reservation, ceded to the United States by the third article, is hereby sold to the Ottawas, at one dollar per acre; and for the purpose of paying for said reservation the United States shall take the necessary amount, whenever the area of such land shall be found by actual survey, from the funds in the hands of the Government arising from the sale of the Ottawa trust-lands, as provided in the ninth article of the treaty of one thousand eight hundred and sixty-two, and the balance of said fund, after the payment of accounts provided for in article five of the treaty of one thousand eight hundred and sixty-two, shall be paid to the tribe per capita.

Article 17. The provisions of the Ottawa treaty of one thousand eight hundred and sixty-two, under which all the tribe were to become citizens upon the sixteenth of July, one thousand eight hundred and sixty-seven, are hereby extended for two years, or until July sixteenth, one thousand eight hundred and sixty-nine; but any time previous to that date any member of the tribe may appear before the United States district court for Kansas, and declare his intention to become a citizen, when he shall receive a certificate of citizenship, which shall include his family, and thereafter be disconnected with the tribe, and shall be entitled to his proportion of the tribal fund; and all who shall not have made such declaration previous to the last-mentioned date shall still be considered members of the tribe. In order to enable the tribe to dispose of their property in Kansas, and remove to their new homes and establish themselves thereon, patents in fee-simple shall be given to the heads of families and to all who have come of age among the allottees under the treaties of one thousand eight hundred and sixty-two, so that they may sell their lands without restriction; but the said lands shall remain exempt from taxation so long as they may be retained by members of the tribe down to the said sixteenth of July, one thousand eight hundred and sixty-nine; and the chiefs and council of the said tribe shall decide in the case of disputed heirship to real estate, taking as a rule the laws of inheritance of the State of Kansas.

Article 19. The sixth article of the treaty of one thousand eight hundred and sixty-two shall remain unchanged, except as provided in this article. The children of the tribe between the ages of six and eighteen (6 and 18) shall be entitled to be received at said institution, and to be subsisted, clothed, educated, and attended in sickness, where the sickness is of such a nature that the patient promises a return to study within a reasonable period; the children to be taught and practised in industrial pursuits, suitable to their age and sex, and both sexes in such branches of learning, and to receive such advantages as the means of the institution
will permit; these rights and privileges to continue so long as any children of the tribe shall present themselves for their exercise. And the Secretary of the Interior and the senior corresponding secretary of the American Baptist Home Mission Society shall be members ex officio of the board of trustees, with power to vote in person or by proxy, it being the special intention of this provision to furnish additional supervision of the institution, so that the provisions of this article may be carried into effect in their full spirit and intent.

Article 20. It is further agreed that the remaining unsold portion of trust-lands of the Ottawas, amounting to seven thousand two hundred and twenty-one and twenty one-hundredths acres, shall be sold to the trustees of Ottawa University, to be disposed of for the benefit of said institution at the appraised value thereof, and that the said trustees shall have until July sixteenth, one thousand eight hundred and sixty-nine, to dispose of the same and pay to the Government the value of said lands: Provided, That the said trustees shall furnish, within thirty days after the ratification of this treaty, to the Secretary of the Interior, a satisfactory bond for the fulfilment of their obligations.

20. Of the 30,137 acres of Trust Lands, provisions for the sale of which were set forth in Article IX of the 1862 treaty, there remained unsold as of April, 1867, some 7691 acres. Following complaint by the Ottawas that Hutchinson, who as agent was in charge of the sale of the Trust Lands, had received large sums from said sales which had not been accounted for, the Secretary of Interior ordered a special investigation by W. R. Irwin. The special investigator reported on May 7, 1867, in part as follows as to the sales by Hutchinson:

Mr. Hutchinson has received from purchasers as 1st payments for said lands ................ 13,089.87
As final or 3/4 payments ............. 31,932.23
Total 45,022.10
Mr. H. has accounted to the Dept. for $13,818.16

Mr. H. paid to me Apr. 9th, 1867 .......... 100.00 13,918.16

Leaving a balance unaccounted for of $31,103.94

Irwin forwarded a letter from Hutchinson admitting the collection of the amount stated and Hutchinson tendered two deeds executed by him and his wife covering certain real estate which Irwin stated if judiciously sold would realize $15,000.00. The special agent also reported that the securities on Hutchinson's bond had made transfers of their property during the investigation, but he thought any deficiency could be recovered from them (Pet. Ex. 128). The Secretary of the Interior declined to accept the deeds from Hutchinson.

21. (a) On April 22, 1869, the Government brought suit in the United States District Court for Kansas against Hutchinson and his bondsmen alleging a balance due the Government on account of $41,993.71 (Def. Ex. 227). This sum consisted of (Pet. Ex. 266):

- Fund from sale of trust lands unaccounted for $30,603.94
- Interest charged on undeposited funds collected to date of stating of account 4,599.52
- Payroll funds of Govt. employees 2,178.00
- Treaty funds 3,354.75
- Miscellaneous Receipts (interest charges) 1,257.50

(b) At the trial, defendant offered in evidence a release dated April 15, 1869, from the Ottawa Indians which provided as follows (Pet. Ex. 160; Def. Ex. 101):
Whereas C. C. Hutchinson as Special Agent of the United States for the Ottawa Tribe of Indians of Blanchards Fork and Roche de Boeuf, did at various times have placed in his hands as such agent, and as such Agent did receive, for the use and benefit of said Tribe of Ottawa Indians, certain sums of money: And whereas, the sum of forty one thousand nine hundred and ninety three & 71/100 Dollars ($41,993.71) of said sum of money have not been accounted for by the said Hutchinson, in the usual and ordinary channels of the Government: And whereas, it Satisfactorily appears that, the said last mentioned sum of money was, by the said Hutchinson expended and used for the benefit of the said Indian Tribe, in the erection of school buildings, in the improvement of their lands, and for other beneficial purposes: Now therefore we, John Wilson (Chief) William Hur and James Wind members of said tribe and delegates thereof duly authorized and empowered hereto, do hereby acknowledge to have received of the United States of America by the hand of C. C. Hutchinson Special Agent as aforesaid, the said sum of Forty one thousand nine hundred and ninety three dollars and Seventy one cents ($41,993.71) in full of all demands against the United States or said Hutchinson, on account of Trust, School or other monies of said Tribe, received by the said Hutchinson as Special Agent and hitherto unaccounted for.

Judgment was rendered for defendant and the case was dismissed by the Court. The Attorney General of the United States ordered United States Attorney Riggs to move for a new trial. This motion was overruled and the United States attorney who handled the case was suspended from office. A new United States Attorney who charged collusion on the part of Riggs was appointed and he filed a motion for a new trial. On September 15, 1869, he inquired of the Secretary of Interior "whether any arrangement or compromise had been closed, or attempted in this cause" as Hutchinson had informed him the matter had been presented to the Secretary.

22. On September 3, 1869, the Commissioner of Indian Affairs instructed Superintendent of Indian Affairs Hoag at Lawrence, Kansas, to make a thorough investigation of the administration of the trust
created by the 6th article of the 1862 treaty. Later the Commissioner again wrote Hoag on November 12, 1869, with additional instructions as to his investigation. In writing of the Hutchinson case and the release given him by representatives of the Indians, the Commissioner observed "This receipt or acquittance has never been considered binding or valid by the Department nor has it ever been admitted to its files as an authenticated or official paper, *, *." Hoag was instructed to investigate all the facts and circumstances under which the receipt (release) was signed and given to Hutchinson to determine "whether there are grounds for at least presumption of or fact of fraud connected with the transaction." The Commissioner informed Hoag that there had been obtained a continuance in the Hutchinson case until the next term of court.

23. Superintendent Enoch Hoag on January 13, 1870, sent in his report to the Commissioner of Indian Affairs. The extensive report covered the administration of Hutchinson's handling of land matters under Articles 6 and 9 of the Treaty of 1862 and the conduct of the Board of Trustees under the 1862 and 1867 treaties. With respect to the receipt given Hutchinson by the Ottawa Indians, Hoag reported the whole tribe was familiar with the facts and wanted the Government to accept it. Hoag stated in part:

That C. C. Hutchinson was extravagant in his expenditures, and loose and unguarded in his management of his business, and of the trust confided to him, is quite evident;--but it does not appear that, in the disposition of his funds, that he appropriated any part thereof to his personal benefit, or use, or that they were expended elsewhere than in the disbursements as represented in his testimony, and in that of the Indians. *, *, *
It is apparent from the evidence that the Ottawa Indians believed Hutchinson had expended the funds from the sale of the trust lands in erecting the University building and improving the grounds and that Hutchinson had assured them that their interest in the funds so expended would be secured by their rights in the University (Def. Ex. 103, 106; Pet. Ex. 178).

24. Superintendent Hoag's report was presented to Secretary of the Interior J. D. Cox for his information by the Commissioner of Indian Affairs. In speaking of the release former agent Hutchinson relied upon to account for his shortage, the Secretary of Interior in a letter of March 20, 1870, to the Commissioner of Indian Affairs, observed in part as follows:

The report of the Superintendent, and the testimony, appear to me to show conclusively that the paper presented as a receipt, was given to Mr. Hutchinson by the chief men of the tribe with the confident expectation, in which they were assured by him, that the amount so receipted for, would be made secure to the tribe, by placing them in absolute possession and control of the school itself, with all the property, and buildings pertaining thereto, in the erection, and improvement of which, it has been claimed that the greater part of the money was expended by Hutchinson. Assuming that the whole amount for which Hutchinson is in default has been, in fact, expended as he declares it to have been, either for the benefit of the school or in some other form directly for the benefit of the Indians, I am still unable to see how it is possible for this Department to recognize the expenditures so made as forming any part of a legal settlement of his accounts with the Government. **

It is not pretended that the paper purporting to be a receipt given by the Indians to Hutchinson is based upon any accurate statement of items expended by him for the tribe in any form, but is rather a general admission on the part of these headmen, acting in the name of their tribe, though with what authority does not fully appear, that they
believe Hutchinson to have used the funds for which he is in default, for the support, improvement, and general advantage of the school. As a question of settlement with the Indians, I am obliged to conclude that the acceptance of such a paper as a valid voucher in the hands of an agent of the United States would be every way contrary, both to the laws for the settlement, and disbursement of moneys put into the hands of agents or coming into them by authority of law, and would also be contrary to every sound rule of policy in regard to the dealings of Agents with Indian tribes, opening the door to so great abuses as to make it impossible for the Department to accept such a mode of settlement. The moneys collected by the Agent under the ninth article of the treaty of 1862 must come into the control of the Government, and be disbursed, whether to the tribe or to claimants against the tribe, only in the modes prescribed by law, and by treaties.

The Secretary was of the opinion that legal steps should be continued to obtain judgment against Hutchinson and his bondsmen and to continue the investigation into the relations between the trustees of the school and the tribe with respect to the moneys expended by Hutchinson as a trustee and as agent and with respect to the legal rights of the tribe in the school itself.

25. On December 19, 1871, Hutchinson submitted to the Solicitor of the United States Treasury an offer to settle the suit against him for the payment of $1,000.00 and costs (Def. Ex. 142). United States Attorney Horton on January 10, 1872, in answer to a letter of the Secretary of the Treasury stated that in view of the fact that the Government in accepting the release would sustain no loss and that the previous United States Attorney had failed to take an exception after one motion for a new trial was overruled and there was some question as to the legality of said last order, he would recommend the immediate acceptance of the compromise offer of settlement (Def. Ex. 126). The Secretary of the Interior advised the Treasury Department
he would be satisfied with whatever action that Department decided to take and settlement was thereafter made with Hutchinson by which the Government accepted a cash payment of $1,000.00 as well as $153.90 costs (Def. Ex. 129, 130, 131).

26. The administration of the school lands by the Board of Trustees was also investigated by Superintendent Hoag. In reporting on January 13, 1870, of the action taken by those in charge of the trust created by the 6th Article of the 1862 treaty, Hoag stated that two white members of the board, Hutchinson and Kalloch, were in almost exclusive charge of the affairs of the board while they served on it. Hoag found that all the proceeds of the sale of 5,000 acres of school lands as provided in the treaty, or $6250.00, had been expended in building a basement for a school building. Although the Indian members expressed dissatisfaction with the plan for a large building sixty-five feet by 45 feet, they were assured by Kalloch and Hutchinson that white friends in the east would aid them in finishing the building by contributing $100,000.00. Hutchinson and Kalloch failed to secure any such aid although large sums were expended attempting to procure such assistance and the Indians had received but 7 months schooling. Hoag reported that during the tenure of Hutchinson and Kalloch on the board "timber school lands" were sold in small lots with prairie trust lands although this was in violation of the instructions of the trustees. The report indicates that Hutchinson had sold nearly 3000 acres of school lands and that Kalloch sold some 2872 acres of the same land and held the proceeds to secure the amount which he contended the University was indebted to him. The board settled Kalloch's account by ratifying
the sales (Pet. Ex. 176). The action of the trustees in not securing
the funds from the sales of the school lands sold by Hutchinson was a
violation of the 6th Article of the Treaty of 1862 which required that
the money received by the sale of school lands (except the 5000 acres)
was to be invested and the interest only used to support the school
so that the principal sum should never be diminished. The lands sold
by Kalloch were from the trust lands which had been sold to the trustees
by the 1867 treaty.

Kalloch resigned from the Board of Trustees in February, 1868,
while Hutchinson had resigned in April, 1867. Superintendent Hoag
was of the opinion that the trustees had:

**transcended their duties and violated this trust, and that the Department has been too tardy in checking this wrong, is quite evident, and the time has fully come when steps should be taken to restore to these Indians their property, that they may remove to their new homes in the Indian Territory, where they are anxious to go, that the honor and integrity of the Government may be vindicated.**

I recommend that such action be taken by the U. States Government without delay, as will secure the benefits of said trust, permanently, to its true and only beneficiaries, the individual members of the Ottawa tribe. As I believe, in honor and equity it belongs to them.

27. During the fall of 1869, the Ottawas began moving from Kansas
to the Indian territory (now Oklahoma), and by the spring of 1870, their
removal to their new location was nearly complete. By May of 1870, they
had built a school building at their new location and were maintaining
a school. The Ottawas, their attorney and Superintendent Hoag continued
to write the Secretary of the Interior and the Commissioner of Indian
Affairs requesting funds for the support of their school and for settle-
ment of their rights in the school property at Ottawa, Kansas. (Pet. Ex.
195, 201, 206; Def. Ex. 69, 114)
28. On February 26, 1872, the Ottawa Indian Council and 52 other members of the tribe forwarded a petition to the Commissioner of Indian Affairs requesting that "all the funds - lands - accrued interest - or property of any kind now in charge of the Trustees of the Ottawa University, rightfully belonging to the Ottawa Nation, shall be taken from the said Trustees and turned over to the Ottawa Nation, * * *." The Secretary of the Interior on May 28, 1872, forwarded to Congress (Pet. Ex. 218) a draft of a bill designed to give the relief desired for the Ottawa Indians and urged its enactment. The Secretary also forwarded the Commissioner of Indian Affairs' report recommending the legislation and a letter from Superintendent Hoag urging the rights of the Indians in the University property. The bill became law on June 10, 1872 (17 Stat. 388). It required the Secretary of the Interior to have made an inventory and appraisement of all unsold lands and assets arising from the sales of lands mentioned in Article 6 of the 1862 treaty including any lands, formerly trust lands, purchased and held by the trustees. The Act provided for three Commissioners to inventory and appraise the lands and assets and they were authorized to then advertise and sell the same and distribute the proceeds to the Indians after deducting the pay and necessary expenses of the Commissioners.

29. A three-man commission, headed by Walter R. Irwin, who had made the special investigation of Agent Hutchinson (Fdg. 20), was appointed by the Secretary of the Interior (Pet. Ex. 220). Robert Atkinson (who as District Secretary for Kansas of the Baptist Home Mission Society informed the Board of Trustees of the support of the Society toward the completion and success of the University as a Baptist institution)
became a member of the Board in January 1868, and was elected secretary and treasurer. Atkinson refused to turn over the school property to the Irwin Commission in 1872. The Commission's report (Pet. Ex. 224) was transmitted to the Commissioner of Indian Affairs on August 23, 1872, and was based on such records as were made available to it. With respect to land sales, after the original transaction involving 5000 acres with Young and Kalloch, the Commission obtained most of its information from the county records. The Irwin Commission appraised the following property:

School Section (640 acres
without improvements .................. $22,600.00

Unsold school Lands - 11,982.52 acres
(Being Balance of 20,000 acres
set aside by Article 6 of the
1862 treaty) ......................... 57,686.97

Unsold Trust-Lands of 444.13 acres
(Being balance of 7,691.83 acres
sold to Board of Trustees by
1867 treaty) ......................... 1,485.70

Notes held by Board of Trustees
secured by mortgages and accounts .. 14,099.88

The Irwin Report showed the sales by the Board of Trustees of the following acreages of the 20,000 acres set aside by Article 6 of the 1862 treaty:

5,000 acres to Young and Kalloch ..... $ 6,250.00

3,032.24 acres (in a few cases
deeds did not show consideration) .. 22,685.13

Irwin reported that of the 7,691.83 acres of trust lands sold to the Board of Trustees for $14,547.41 by the 1867 treaty, the Board had re-sold 7,247.70 acres for $34,018.17.
30. Following passage of the 1872 Act, the Secretary of the Interior was approached by a number of people who urged that he withhold seizure of the property mainly for the reason "that it was unjust to the Baptist denomination of Christians, because it was alleged that they had, through their organization, contributed a considerable amount of money toward the establishment of a school ...." In November 1872, the Secretary of the Interior requested the opinion of the Attorney General as to what steps might be taken by him to obtain possession of the school property and carry out the provisions of the 1872 Act. The Attorney General, in an opinion rendered November 27, 1872, recommended that the Government institute a suit in equity in the United States District Court against the trustees of the University and other parties who might be claiming equities in the property, so that a receiver might be appointed and the Court take action for "the protection of the interests of the United States and the Indians, and of all other parties having legal or equitable rights in the property ...." (Pet. Ex. 224)

31. On December 7, 1872, the Secretary of the Interior wrote to the Speaker of the House of Representatives in which he outlined the existing situation leading up to the Act of June 16, 1872 (17 Stat. 388) requiring the inventory, appraisement and sale of the Ottawa University school lands, etc., and transmitted a copy of the Commission's report and other necessary documents showing the manner in which he had discharged his duties under the 1872 Act and left the decision to Congress as to what further steps should be taken in the matter. The Secretary forwarded copies of his letter to the Attorney General of the United States and the reply to that letter (Fdg. 31). He also forwarded a
copy of an agreement dated November 13, 1872, which was entered into between W. W. Nevison, Attorney for the Ottawa Indians, J. S. Emery, President of the Trustees of Ottawa University, and S. S. Cutting, Secretary of the American Baptist Educational Committee, representing the American Baptist Home Mission Society. This agreement provided for the parties joining in seeking the enactment by Congress of a law which would set up a commission to ascertain the equitable interests of the parties in the property; that, if the findings of the commission so warranted, the building and section of land on which the University was located would be among that distributed to the trustees; and that the expenses of the commission should be chargeable upon the property as a whole.

32. The Act of March 3, 1873, 17 Stat. 623, followed the general lines of the preliminary agreement. It established a commission with authority to take possession of the school property, to hear and determine the rights and equities of the three parties to that agreement, and to fix the amount of the fees of counsel for the Indians. In the event the parties should agree upon a settlement with the approval of the Secretary of the Interior, the Secretary was authorized to carry the settlement into effect.

By agreements dated September 6, 1873, executed by Ottawa Indian representatives as well as by Riggs and Nevison, their attorneys, a settlement was concluded which provided:

(a) The school section and an additional 1,280 acres to be selected from the school lands would be patented to the school board.
(b) Notes and mortgages held by the school board on account of lands sold, stated to amount to "at least $15,000", would be delivered to a designee of the attorneys for the Indians.

(c) The remainder of the school lands would be patented to persons to be selected by the Indians for their use and benefit, subject to the approval of the Secretary of the Interior.

(d) The expenses of the Commission provided by the 1872 and 1873 Acts would be charged equally to the school board and the Ottawa Indians.

(e) The Ottawa Indians would give up all their rights to the school, and make no claim to any other property held or claimed by the trustees.

A further agreement, dated October 21, 1873, was concluded between the school board and Riggs and Nevison, described as "Attorneys and Agents" for the Ottawa Indians, which after setting out a procedure for the selection of the 1,280 acres for the school board, designated Enoch Hoag, George J. Barker and Washington Hadley as the trustees for the Indians to whom the remaining school lands would be patented. Under this agreement, the trustees were required to sell the lands and utilize the proceeds as follows:

First: to pay the expenses of the sales;

Second: to pay to the Ottawa attorneys any sum found due over and above the value of the notes and mortgages, such sum to be fixed by the judge of the United States District Court for the District of Kansas;

Third: to pay half the expenses of the two commissions;

Fourth: to invest half the balance as an educational fund which was eventually to be distributed among the Ottawa Indians, and to distribute the residue among the Indians, per capita.
The trustees (hereinafter sometimes referred to as the trustees in liquidation) were required to give a bond for $50,000, running to the Secretary of the Interior for the benefit of the Indians, "conditioned for the faithful performance of their duties ..."; and to make an annual report to the Secretary of the Interior on the status of the educational fund. They were subject to removal for cause by the Secretary. They were also required to settle their accounts annually before the judge of the United States District Court for the District of Kansas.

On October 29, 1873, Secretary Delano approved the settlement embodied in the two agreements, subject to his understanding that if the fee of the Ottawa attorneys was fixed at a sum less than the value of the notes and mortgages, the difference was to be turned over to the trustees in liquidation.

33. The school lands, consisting of 10,702 acres, turned over to the trustees named in the settlement agreement had an appraised value of $50,196.97. On these lands, the Ottawa Indians eventually realized less than $13,000.00, and no part was invested in an educational fund. On the notes and mortgages of the value of $14,099.88 given up by the school board, the Indians realized nothing. Most of the value of the Ottawa lands, and the entire value of the notes and mortgages were dissipated in three ways: (a) in attorney fees collected as a result of the negotiated settlement; (b) in the payment of various administrative expenses connected with the trust in liquidation; and (c) as a direct result of mismanagement of their trust by the trustees in liquidation.
34. **Attorney Fees** - As noted in Finding 31, the Ottawa Indians were represented during the settlement negotiations by attorneys Riggs and Nevison. Riggs was the United States Attorney in the unsuccessful first trial against Hutchinson for recovery of the funds for the sale of the trust lands and he was removed from office because of the questionable way he had handled that suit (Def. Ex. 116, 158; Pet. Ex. 170). According to a report (Def. Ex. 158) made by Inspector Haworth of the Indian Bureau in 1881, the Indians told him Riggs was retained to represent them in the settlement matter and they agreed to pay him $16,000.00 after he had informed the Indians he was instrumental in securing passage of the 1872 Act (Finding 28). Following the approval of the settlement, Riggs and Nevison, in association with another attorney, Wilson Shannon, and an independent attorney, T. C. Sears, applied to a judge of the United States District Court in Kansas for an order allowing their fees. The applications were made without notice either to the Ottawa Indians or to the trustees in liquidation (Pet. Ex. 250). The Ottawa Indians later asserted that they had never retained Sears. On November 10, 1873, Judge Delahy fixed the fee payable to Riggs and Nevison, and Shannon, at $20,325.00, and the fee payable to Sears at $3,000.00. He assessed the interest paying notes and mortgages amounting to $14,099.88 at the time of settlement, which had been earmarked in the agreement for payment of attorney fees, at $8,793.47, and found the balance due Riggs, Nevison and Shannon to be $11,531.53. The attorneys collected some of their fees in land from the trustees (Def. Ex. 158). With respect to the fees allowed the attorneys and the large discount made on the notes and mortgages by
the judge of the United States District Court in Kansas, the Commissioner of Indian Affairs observed, in a letter to the Secretary of the Interior on June 5, 1882, outlining the history of the trust in liquidation, that "The responsibility for this part of the swindle perpetrated upon the Indians would seem to rest upon Judge Delahay alone" (Def. Ex. 159, page 40).

35. Administrative Expenses - Expenses charged to the Ottawa Indians included half the expenses of the 1872 and 1873 commissions, amounting to some $1,200.00; trustees' fees; advertising and selling costs; and similar expenses never adequately recorded or accounted for (Pet. Ex. 243, 249, 256; Def. Ex. 158, 159).

36. The trustee charged with the responsibility of the sale of the 10,702 acres of Ottawa school lands for the benefit of the Ottawa Indians under the settlement agreement were required by the terms of their appointment to make an annual report to the Secretary of the Interior and to settle their accounts before a United States Judge. Although the trust had not yet been fully liquidated by 1882, they had made only two reports, one in 1875 (Pet. Ex. 249), and one in 1878 (Pet. Ex. 256) and had never settled their accounts. An investigation (Def. Ex. 158 - Haworth Report) conducted in 1882 showed that they had sold lands at far below market value, and had not carried out any of their obligations to create an educational fund. In commenting on this investigation, the Commissioner of Indian Affairs, in a letter to the Secretary of the Interior recommended, in order that all proper steps should be taken to secure to the Indians what had been lost through mismanagement, that the Attorney General of the United States be asked
to take the necessary measures to compel a settlement by the trustees and their sureties. The trustees were required to, and did, post bond of $50,000.00 under the provisions of the settlement agreement approved October 29, 1873, by the Secretary of the Interior. With respect to the management of the trust, the Commissioner of Indian Affairs wrote in part as follows (Def. Ex. 159):

As to the second question, I reply that the facts hereinbefore recited show very clearly to my mind that the trustees have not properly managed their trust. The mismanagement however does not appear to have been in the misapplication of funds or in the allowance of improper claims and fees, but in disposing of the lands for one half their market value, in keeping the accounts in a negligent manner, and in their failure to make proper reports and settlements. It would appear that they refused or neglected to give the Indians proper information regarding their affairs, and in this manner may be partly responsible for the iniquitous settlement made with Riggs and Nevison before Judge Delahay.

The evidence fails to establish any collusion between the trustees and the purchasers of the lands, but the fact is beyond question that they disposed of them at prices far below their value.

At the time of the investigation, the Indians had received a total of $4,934.25, of which $4,507.25 was not paid until 1881, when they were represented by two attorneys who claimed half the payment. The trustees did not honor the claim of the attorneys but some Indians apparently paid them from their shares. As of June 1882, all the lands having been sold, the trustees in liquidation had available for distribution the further sum of $7,962.27 (Def. Ex. 158, 159).

37. The Secretary of the Interior on July 14, 1882, recommended to the Attorney General of the United States that the Department of Justice should instruct the United States Attorney for the District of Kansas to take necessary measures to compel a settlement by the trustees
in liquidation and that a suit be brought against them and their sureties to have judicially determined whether or not they should be held responsible for unfaithful performance of their trust. The Attorney General so instructed the United States Attorney for the District of Kansas on July 17, 1882. The Attorney General on February 2, 1883, notified the United States Attorney that the Secretary of the Interior had informed him that the Ottawa Indians had assigned to attorneys all their interest in funds in the hands of the trustees amounting to over $7,000.00. The United States Attorney was instructed to appear at the hearing apparently brought by these attorneys and to take such steps as necessary to protect the interest of the Indians in the matter (Def. Ex. 160-163). According to the United States Attorney, these attorneys had a petition purporting to be signed by about two thirds of said Indians addressed to the Judge of the District Court of the United States in Kansas, in which it was asked that the trust be settled and the trustees ordered to transfer to the attorneys all funds in the hands of the trustees. The United States Attorney refused to recognize the right of the attorneys to represent the Indians since their contract with the Indians did not have the approval of the Secretary of the Interior. When the petition was presented to the Court, the United States Attorney objected on the same ground. The attorneys who presented the petition contended that the Indians were citizens of the United States by virtue of the 1862 and 1867 treaties and thus entitled to contract as they saw fit (Def. Ex. 164). The Secretary of the Interior advised the Attorney General that it was his opinion the earlier rulings of his predecessors in office holding that the Ottawas had become citizens
and their wardship had ceased were very broad in their terms and based on the assumption that these Indians elected to become citizens, complied with the provisions of the 1868 treaty on the subject, and did so become citizens. The Secretary was further of the opinion that the tribal relations of the Ottawa continued to exist and had been recognized by the Congress in 1873 and by the action of the Department of Interior since 1869. For these reasons, the Secretary concluded that any contract made by them as a tribe or by individual Indians recognized as members of the tribe which affected their lands or funds would require the approval of the Department of Interior. The United States Attorney in March 1883, however, reported that the Judge of the United States District Court for Kansas District had rejected the Government's position and held the Ottawas were citizens and entitled to make the contract. The Judge found the amount due the Indians to be $7,280.88 but he made no order for the transfer of said fund (Def. Ex. 165-169).

38. The Commission, based upon the findings of fact herein made and the record as a whole and in view of the then dependent status of the Ottawa Indians, finds that the United States failed in its duty to protect the property of the Ottawas of Blanchard's Fork and Roche de Boeuf (1) by not requiring strict supervision and accountability of the trustees who managed the educational trust established by Article 6 of the Treaty of June 24, 1862, supra; (2) by not requiring strict supervision and accounting of the trust land funds which resulted in the mishandling of said funds by Indian Agent Hutchinson; (3) by not proceeding to the fullest against Hutchinson and his sureties; (4) by permitting the Ottawa Indians to become the prey of attorneys who
received large fees for allegedly protecting the property rights of the
Ottawas which should have been fully undertaken by the United States;
(5) by permitting the settlement under the Act of March 3, 1873, between
the Ottawa Indians, the Board of Trustees and the Baptist Home Mission
Society which was not fair or just to the Indians; and (6) by not pro-
viding the supervision and control necessary to protect the property
rights of the Ottawa Indians in the trust in liquidation set up by the
Act of March 3, 1873.

39. The Young-Kalloch Sale - (a) The trustees in permitting the
sale of the 5,000 acres, allowable under the provisions of Article 6 of
the 1862 treaty for the purpose of securing building funds, to one of their
own board members violated the trust. The United States knew, or should
have known, that Young was a member of the board at the time of the
sale. The sale was questioned by a letter signed by Ottawa Indians repre-
senting 121 members of the tribe and the Government alerted by Trustee
Pratt, and an investigation of the sale by Superintendent Albin was
ordered by the Commissioner of Indian Affairs. Although Albin's report
found nothing wrong with the sale, it did not show that Young was
Hutchinson's father-in-law, that Young was a member of the board when
he purchased the land, that Agent Hutchinson was a member of the Board
of Trustees that made the sale to Young, or that Young had already deeded
the town-site to Hutchinson.

(b) It may clearly be inferred from the evidence that Hutchinson
and Kalloch even prior to the 1862 treaty were part of a planned real
estate speculation (Finding 5). Hutchinson was already a member of the
Board of Trustees of Roger Williams University, the ethereal institution,
prior to the Treaty of 1862. He was also interested in the "company" which prior to the 1862 treaty proposed to buy Ottawa lands. He managed to become Indian Agent for the Ottawas prior to the treaty. It is clearly shown by the evidence that there were other interests, in addition to the founding of a University, which motivated Hutchinson prior to the 1862 treaty. It is a fact too that I. S. Kalloch who later became the assignee of Young was interested in the "company" trying to purchase Ottawa lands.

(c) All of these facts were known, or ought to have been known, to the officials of the United States before the issuance of patents to Young for the town-site of 640 acres and to Kalloch as assignee of Young of 1,348.79 acres. The United States is therefore liable to petitioner for whatever profit petitioner may show was made by Hutchinson and Kalloch in the re-sale of these lands.

40. Hutchinson's Sale of Trust Lands - An investigation of the accounts of Indian Agent C. C. Hutchinson revealed he had not turned over to the Government $30,603.94, which sum he had received from the sale of some 22,000 acres of trust lands under Article 9 of the 1862 treaty. By the provisions of this article the United States assumed the duty of trustee in disposing of the Ottawa trust lands. The defendant failed to provide the necessary supervision and control over the agent in the handling of these funds which resulted in the loss to the Indians. The receipt given Hutchinson (Finding 21(b)) was obtained from the Ottawas on the assurances given by Hutchinson that the Indians would be secured in said amount by their interest in the school property. The receipt was for $41,993.71. The figure included funds for pay of
Government employees and interest charges claimed by the defendant in its suit against Hutchinson which the Ottawa Indians could not receipt for. The Department of Interior did not recognize the validity of the receipt (Finding 22). Prior to the making of the receipt the defendant had been tendered deeds to Hutchinson property, estimated to be worth $15,000.00, which were not accepted. Careless prosecution, or possibly collusion between the United States Attorney and Hutchinson, resulted in the dismissal of the Government's case against Hutchinson. This caused the defendant to later agree to a compromise with Hutchinson by which he paid $1,000.00 and court costs. The failure to competently and fully proceed against Hutchinson resulted in the loss to the Ottawa Indians of these funds from the sale of their trust lands. The United States is therefore liable to the petitioner for the sum of $30,603.94, with accrued interest thereon at the rate of 5 percent from March 22, 1869, the date of the stating of the account (Pet. Ex. 266), until March 22, 1934, and 4 percent thereafter (Art. IV, Treaty of June 24, 1862; see also Def. Ex. 57; Pet. Ex. 233 and G.A.O. Report, pp. 78-79).

The sum of $1,257.50, which petitioner claims was interest apparently paid by land purchasers on deferred payments of principal, was not part of the proceeds of land sales according to the evidence. The $1,257.50 was interest the defendant sought to recover from Hutchinson on his failure to account for money he received for payroll of Government employees and fulfilling treaty obligations (Art. 10 of the 1862 treaty). See page 198 of Def. Brief and Pet. Ex. 266.

41. Sale of School Lands by Hutchinson - While a member of the Board of Trustees, Hutchinson sold 3,032.24 acres of school lands. An
investigation (Pet. Ex. 224) of these sales showed the sum of $22,685.13 as the consideration received but for several tracts the consideration could not be ascertained. These funds were not invested by the Board of Trustees as required by Article 6 of the 1862 treaty. Failure of the United States to provide adequate supervision and control of the Board of Trustees in the 1862 treaty resulted in the loss of the use of these funds as required by the treaty. The United States is therefore liable to the petitioner for the value of the 3,032.24 acres in an amount to be determined by taking the average value of the sales prices of the recorded sales.

42. Unsold Trust Lands - (a) The residue of the trust lands placed on sale under Article 9 of the 1862 treaty amounting to 7,691.83 acres were sold to the Trustees of Ottawa University under the provisions of the Treaty of February 23, 1867, 15 Stat. 513, 517, II Kapp. 960, 963 (see Findings 15, 18 and 19). The Treaty of 1867 provided that these lands were to be sold at their appraised value to said trustees. The appraised value, based on the 1864 appraisal of said lands, was $13,532.22 (Def. Ex. 55). These lands were patented to the trustees of Ottawa University on May 12, 1871. The Irwin Report (Dec. 1872) shows said trustees sold 7,247.70 acres for $374,014.17 and the Irwin report appraised the remaining 444.13 acres at $1,485.70 (Pet. Ex. 224). Hutchinson had sold some 479 acres of these residue trust lands for $1200 before he resigned in April, 1867. Kalloch disposed of some 140 acres for $1,850.00 before he resigned from the board in February, 1868. The board later ratified these sales by Kalloch who had held on to the funds to settle the claim he contended he had against the University.
(b) The Commission finds that there is no substantial evidence that the United States failed to protect the rights of the Ottawa Indians in the sale of the residue of the trust lands. The Ottawa council approved the sale as required by Article 9 of the 1862 treaty and the United States investigated the proposed sale before approving the transaction. Furthermore, there is no substantial evidence that the value of the unsold trust lands as a block at the time of sale was greater than the consideration paid to the Indians by the University. The increase in value received by the University may well have been reflected in donations to the school.

43. Settlement under Act of March 3, 1873 (17 Stat. 63). -

(a) By this settlement made pursuant to the 1873 Act by the Ottawa Indians and their attorneys, the Trustees of Ottawa University and the American Baptist Home Mission Society, the Ottawa Indians, who had received little benefit from the educational trust, agreed that title to the school section and an additional 1280 acres would be vested in the trustees of Ottawa University. The Ottawas also relinquished all their interest in the University and agreed to pay half the expenses of the Commissions set up by the Acts of June 10, 1872 and March 3, 1873. The Indians also agreed that the notes and mortgages and interest thereon held by the Trustees of the University for lands sold amounting to at least $15,000 would be turned over to whomever their attorneys directed. The Indians, who had in the first instance set aside the 20,640 acres for an educational trust, received (in addition to the notes and mortgages and interest earmarked for their attorneys) 10,702 acres of the school lands. This settlement approved by the Secretary
of the Interior was not fair or just to the Ottawa Indians. Management of the educational trust and the failure of the Government to properly supervise the trust and protect the rights and interests of the Indians were the primary causes which forced the Indians to accept such a settlement.

(b) The United States is therefore liable to petitioner for the value of the 640 acre school tract appraised by the Irwin Commission at $22,600.00 and the value of the 1280 acres also given to the University which were appraised by the Irwin Commission at $7,490.00. The United States is also liable to petitioner for $1,202.42 the sum charged the Indians for half the expenses of the Commissions (Pet. Ex. 243, 249).

44. Trust in Liquidation - The 10,702.52 acres which under the settlement agreement were to be sold by trustees for the benefit of the Ottawa Indians were appraised by the Irwin Commission at $50,196.97. Due to mismanagement of this trust due to lack of supervision and control the Indians received not over $13,000.00 from the proceeds of sale. The petitioner is therefore entitled to recover from defendant the difference between the appraised value, $50,196.97, and the sums that may finally be shown to have been paid them from the proceeds of sale, and less the expenses of the trustees (Pet. Ex. 249) for advertising, etc., in the amount of $245.55; for expenses and services of trustee $100.00; (Pet. Ex. 256) - expenses of $260.90; paid on order of Indians - $65.00; and services of trustees - $900.00.

45. Hutchinson Shortage of $3,354.75 - The statement of account made by the United States Treasury in March 1869 showed that Hutchinson
as agent for the Ottawas did not account for $3,354.75 transferred to him under the heading "Fulfilling Treaty with the Ottawas of Blanchard's Fork and Roche de Boeuf," which sum was appropriated March 3, 1863, 12 Stat. 792, for payment of damages sustained by the Indians in compliance with the provisionary clause of the 10th article of the Treaty of June 24, 1862 (Appendix A - Def. Br.). Article 10 of said treaty reads as follows:

Art. 10. And it is stipulated that the United States shall pay to the said Ottawas the claims for stolen ponies, cattle, and timber, already reported and approved by the Secretary of the Interior, amounting to $13,005.95/100. And also other claims for damages within two years, or since the taking of testimony for the above-mentioned damages, upon the presentation of sufficient proof: Provided, Such last-mentioned claims shall not exceed $3,500.

By the above-mentioned appropriation act the sum of $13,005.95, provided for in said Article 10, was also appropriated for payment for ponies, cattle, and timber stolen from the Ottawas. The General Accounting Office Report (for treaties with the Ottawas to be used in Dockets 68, 302, 303, 304 and 305) shows $13,006.95 disbursed in 1864 "Cash payments to chiefs" under Article 10 of the 1862 treaty (G.A.O. Report, page 82). The petitioner is entitled to recover from the defendant the sum of $3,354.75.

Edgar E. Witt
Chief Commissioner

Wm. M. Holt
Associate Commissioner