

BEFORE THE INDIAN CLAIMS COMMISSION

THE PONCA TRIBE OF INDIANS OF)
OKLAHOMA, AND WILLIAM OVERLAND,)
METHA COLLINS AND JOHN WILLIAMS,)
AS REPRESENTATIVES OF THE PONCA)
TRIBE AND ALL OF THE MEMBERS THEREOF,)

Petitioners, .)

v.)

Docket No. 323

THE UNITED STATES OF AMERICA,)

Defendant.)

Decided: July 26, 1966

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The petitioners are the tribal organization of Ponca Indians of Oklahoma and three individual representatives thereof, representing the Ponca tribe consisting of two branches, the Oklahoma branch and the Nebraska branch, collectively known as the Ponca Tribe of Indians. They have authority to prosecute this action.

2. By the provisions of a treaty entered into between the Ponca Tribe of Indians and the United States on March 12, 1858, 12 Stat. 997 the Ponca Tribe of Indians ceded to the United States, the land claimed or owned by them, except the tract in Nebraska set forth next below which was retained as a reservation by them:

* * * Beginning at a point on the Neobrara River and running due north, so as to intersect the Ponca river twenty-five miles from its mouth; thence from said point of intersection, up and along the Ponca River, twenty-miles; thence due south to the Neobrara River; and thence

down and along said river to the place of beginning; which tract is hereby reserved for the future home of said Indians * * *

3. Under the terms of a supplemental treaty between the Ponca Tribe of Indians and the United States, dated March 10, 1865, 14 Stat. 675, the boundaries of the reservation theretofore reserved for the use of the Ponca Tribe were revised as follows:

Article I. The Ponca tribe of Indians hereby cede and relinquish to the United States all that portion of their present reservation as described in the first article of the treaty of March 12th, 1858, lying west of the range line between townships numbers (32) thirty-two and (33) thirty-three north, ranges (10) ten and (11) eleven west of the (6) sixth principal meridian, according to the Kansas and Nebraska survey; estimated to contain thirty thousand acres, be the same more or less.

Article II. In consideration of the cession or release of that portion of the reservation above described by the Ponca tribe of Indians to the government of the United States, the government of the United States, by way of rewarding them for their constant fidelity to the government and citizens thereof, and with a view of returning to the said tribe of Ponca Indians their old burying grounds and cornfields, hereby cede and relinquish to the tribe of Ponca Indians the following - described fractional townships, to wit: township (31) thirty-one north, range (7) seven west; also fractional township (32) thirty-two north, ranges (6,) six, (7,) seven, (8) eight, (9,) nine, and (10) ten west; also fractional township (33) thirty-three north, ranges (7) seven and (8) eight west; and also all that portion of township (33) thirty-three north, ranges (9) nine and (10) ten west, lying south of Ponca creek; and also all the islands in the Niobrara or Running Water river, lying in front of lands or townships above ceded by the United States to the Ponca tribe of Indians. But it is expressly understood and agreed that the United States shall not be called upon to satisfy or pay the claims of any settlers for improvements upon the lands above ceded by the United States to the Poncas, but that the Ponca tribe of Indians shall, out of their own funds and at their own expense, satisfy said claimants, should any be found upon said lands above ceded by the United States to the Ponca tribe of Indians.

The reservation so described contained approximately 96,000 acres. The United States also agreed to protect the Poncas and their property during good behavior on their part.

4. The Ponca Tribe was peaceful and law abiding. Relations between the United States and the tribe were good. The Ponca Tribe was friendly to settlers. On numerous occasions, the tribe assisted neighboring settlements. The Poncas voluntarily helped defend the settlers against the attacks of hostile Indians, particularly the Sioux, even though the treaties of the Ponca Tribe did not require its assistance.

5. Under the terms of a treaty entered into between the Sioux Indians and certain of their allies and the United States dated April 29, 1868, 15 Stat. 635, the following described lands were set aside as a reservation for the Sioux Tribe of Indians:

Article II. The United States agrees that the following district of country, to wit, viz: commencing on the east bank of the Missouri river where the forty-sixth parallel of north latitude crosses the same, thence along low-water mark down said east bank to a point opposite where the northern line of the State of Nebraska strikes the river, thence west across said river, and along the northern line of Nebraska to the one hundred and fourth degree of longitude west from Greenwich, thence north on said meridian to a point where the forty-sixth parallel of north latitude intercepts the same, thence due east along said parallel to the place of beginning; and in addition thereto, all existing reservations on the east bank of said river shall be, and the same is, set apart for the absolute and undisturbed use and occupation of the Indians herein named, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them; and the United States now solemnly agrees that no persons except those herein designated and authorized so to do, and except such officers, agents, and employees of the government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over,

settle upon, or reside in the territory described in this article, or in such territory as may be added to this reservation for the use of said Indians, and henceforth they will and do hereby relinquish all claims or right in and to any portion of the United States or Territories, except such as is embraced within the limits aforesaid, and except as hereinafter provided.

The lands above described encompassed all the lands previously reserved to the Ponca Tribe of Indians as set forth in the Treaty of March 10, 1865, 14 Stat. 675. Following this treaty the Poncas became subject to more frequent raids from the hostile Sioux, which raids caused considerable destruction to Ponca land and property as well as some loss of life.

6. As early as 1873 the Ponca tribe was considering removing from their reservation in Dakota to some other area where they would not be under frequent attacks from neighboring Sioux. The Select Committee of the Senate, which had as its task the investigation of the removal of the Ponca Indians reported:

In 1873, however, the Poncas, troubled by their hostile neighbors of the north, entertained the idea of removing from their reservation to the Omaha Reserve, and joining themselves to that tribe of Indians with whom they were on friendly relations, and who were making commendable progress in civilization upon their reservation in the State of Nebraska. An arrangement between the United States, the Poncas, and the Omahas for that purpose during that year was well-nigh completed, on terms entirely satisfactory to both the Poncas and the Omahas as well as to the United States. For some reason this arrangement was never completed and was abandoned.

In 1875 negotiations for the removal of the Poncas were again entered into, their agent, A. J. Carrier, representing the Government of the United States in procuring from them their consent to entertain the idea of removing from their reservation either to the Omaha Agency or to the Indian Territory. A preliminary paper was signed by nearly all the representatives of the tribe, addressed to the President of the United States, signifying their willingness to remove to the Indian Territory.

There is a conflict in the testimony as to just how the Indians understood this paper. Those who participated in its execution, and who have testified before the committee, testified that they understood it to be a preliminary to a negotiation to remove to the Omaha Reservation. Mr. Carrier and other witnesses testified that they clearly understood at the time that it was a proposition to go to the Indian Territory. Mr. Carrier, however, testifies that it was understood to be merely a preliminary paper, not to be used unless further negotiations, which were never had, were carried out. The paper was forwarded to President Grant by him, as he says, preparatory to further negotiations, and never designed to be used as a paper committing them to removal to the Indian Territory. * * * (Jt. Ex. 2, p. VI)

7. By the Appropriation Act of August 15, 1876, 19 Stat. 176, 192, Congress provided that the Secretary of the Interior might use the sum of twenty-five thousand dollars for the removal of the Ponca Indians to the Indian Territory and providing them a home therein, "with the consent of said band." The Appropriation Act of March 3, 1877, 19 Stat. 271, 278, provided "That the sum of fifteen thousand dollars of this appropriation, in addition to that heretofore appropriated, may be used for the removal and permanent location of the Poncas in the Indian Territory."

8. E. C. Kemble, United States Indian Inspector, arrived at the Ponca reservation in January, 1877, under orders from the Indian Bureau to carry out the provision for removing the Poncas (Def. Ex. 14, p. VII). These orders dated January 15, 1877, signed J. Q. Smith, Commissioner of Indian Affairs, among other things directed him as follows:

You are directed to proceed to the Ponca Agency, and after a conference with the United States agent, hold a council with the Indians on the subject of their removal. You will give them to understand that their interests have been carefully considered, and that it is very desirable that they should be established in a country where the circumstances for their self-improvement and maintenance, and the protection of person and property, are more favorable

than in their present situation. * * * By every proper argument or motive you will impress the Poncas with the advantages to be gained by a change of residence; and endeavor to overcome whatever objections they may have been recently led to entertain against the Indian Territory as a suitable place for their future home.

Should you find the feeling of the tribe generally to be in favor of the proposed removal, you will, with the principal men of the tribe, select a delegation of not more than ten (a less number might be sufficient) of the most influential of its members, and proceed with them to visit the Indian Territory, by such route and mode of conveyance as shall be judged the best and most practicable.

* * *

You will report at each successive step, in the discharge of the duty hereby assigned to you, so that instructions may be sent to you for your guidance when necessary; * * * (Jt. Ex. 2, pp. 407-409)

Mr. Kemble testifying before a select committee of Congress on February 14, 1880, swore that he construed the written orders referred to above to mean that the Poncas could not be removed without relinquishing the lands upon which they were then living; and the next step after such relinquishment or agreement to relinquish was to take a delegation to the Indian Territory to select some other home for them (Jt. Ex. 2, p. 55).

9. The United States inspector proceeded to carry out the instructions (Pet. Ex. 21) given him by the Commissioner of Indian Affairs. Pursuant to these instructions he wired the Commissioner of Indian Affairs on January 26, 1877, that "Poncas consent to give up reservation if delegation of ten, after seeing Indian Territory, are pleased, and will be allowed to go to Washington to finish negotiations" (Pet. Exs. 22-25, p. 414). In reply Kemble on January 27, 1877 received from the Commissioner the following telegram:

Ponca delegation may come to Washington after visiting Indian Territory, if they are satisfied with the country, and desire settlement of minor details only. Agent can accompany them throughout.

.10. On the same day, January 27, 1877, the United States Indian Inspector E. C. Kemble received the commissioner's assurance that a Ponca delegation might come to Washington after it visited the Indian Territory. A council was held at the Ponca Agency. This council was between the Ponca chiefs and headmen and E. C. Kemble, United States Indian Inspector, the Reverend S. D. Hinman and the United States Indian Agent James Lawrence. Inspector Kemble stated to the Ponca chiefs and headmen that:

This is the third day we have counceled, and I hope you have made up your minds. I gave you the words of your Great Father, that he wanted a delegation to do down and pick out a home for your tribe in the Indian Territory; but I told you that I could not take you down there until you consented to give up your land here. You decided that you would not talk about that until I got permission of the Great Father to take a delegation to Washington after they had seen the country. This permission the Great Father has given you; but he has told you that you are to decide the question before you come to Washington. You are to go to Washington only to settle the small matters (minor details) and finish up the bargain after you have been to the Indian Territory and selected the land. This is what came over the wires from the Great Father. And now I will hear what you have to say. (Pet. Exs. 22-25, pp. 411-412)

White Eagle, first chief of the Ponca Tribe, said in reply:

* * * When one looks for a piece of land and finds a piece that suits him, he may look for another piece. I am going to look from Omaha Agency to Indian Territory. (Pet. Exs. 22-25, p. 413)

Standing Buffalo, second chief of the tribe, said:

* * * I have a great many complaints to tell the Great Father, and I want him to look upon it. I went to Washington and made a treaty, and I got papers for it,

but they sent you out here and told us to move. * * *
I thought I had a big rock in the ground, in very deep,
and hard to pull out, but the Great Father wants it, and
today we have decided to give it into his hand. I will let
him have it. There is no use talking so long; what you
wanted you get today * * * If the land down there don't
suit me I will complain to the Great Father about it. (Pet. Ex. 22-25)

Lone Chief, third chief of the Ponca Tribe, said:

* * * I agree to look from Omaha Agency to Indian Territory
until I find a piece of land to suit me.

At the time of this conference Inspector Kemble knew that Commissioner Smith had agreed to the Ponca's terms, but he never told them of the Commissioner's acceptance, but continued his attempt to get the tribe to surrender its reservation either orally or in writing. The Ponca's response was a repetition of their original proposal.

The Senate Committee Report (supra) discussed Kemble's conduct with respect to the proposal of the Poncas and the Commissioner's reaction as follows:

This proposition and answer he persisted throughout in treating as a renunciation on the part of the Indians of all title to their reservation, and an absolute consent to remove to the Indian Territory, and that all which remained was for ten of their chief men to go with him to the Indian Territory and select a place for their location and then go to Washington and arrange the details with the Indian Bureau. No comments of the Committee can put in stronger light than the language itself the utter injustice and wrong involved in such a construction of this transaction. The ten Indians were, however, selected and taken by Mr. Kemble and two of his assistants to the Indian Territory for the purpose, he said, of selecting their location, and, as they supposed, of determining whether the Indian country pleased them, and they desired after seeing it to remove with their tribe to it as a new home. (Def. Ex. 14, Sen. Rpt. p. IX)

11. E. C. Kemble left the Ponca Agency on February 2, 1877 with the Ponca Agent James Lawrence, ten Ponca chiefs and head-men and the

agency interpreter. The party arrived at the Osage Agency, Indian Territory on February 9, 1877. No preparations had been made at the Osage Agency to receive the Ponca delegation and for five days it was weatherbound and quartered in an uncomfortable cabin. The Poncas became very homesick and despondent and urged Mr. Kemble to take them home (Pet. Exs. 27-29, 31, pp. 415, 418).

The Indian delegates refused to make a final selection anywhere in the territory until they conferred with their tribe and preferred to return home. Mr. Kemble, however, did not acquiesce in the delegates' request to return home and on the 15th of February the party left the Osage Agency for the Kaw Agency, arriving there the same day. The Ponca delegates although well received by the Kaw Indians announced that even should they find a piece of land in the territory that suited them they would not select it until they returned to confer with their tribe. They expressed their wish to return home immediately and to take back any assent they might have given to the removal of their people. This being denied them, the eight full-blood members of the delegation, without permission, left the party on February 20, 1877, and started northward on foot to their reservation, and they suffered many severe hardships in making this journey.

12. Inspector Kemble in response to his inquiry as to whether the Department of the Interior would insist on the ultimate removal of the Ponca Tribe to Indian Territory even though the Poncas withdrew their consent to such removal, received the following answer from the

Commissioner of Indian Affairs on February 23, 1877:

Removal of Poncas will be insisted upon. Spotted Tail and Red Cloud must move this summer to Missouri River. Their presence will render further stay of Poncas at old location impossible.

And on February 26, 1877 he received the following telegraph instructions from the Commissioner:

Return to Ponca Agency and proceed to effect removal to Kaw Reservation. Further instructions at Ponca.

Another telegram to Inspector Kemble from the Commissioner dated February 27, 1877, directed the former as follows:

Proceed to Ponca Agency and remove Indians without delay to Kaw Reservation. (Jt. Ex. 2, p. 421)

13. Although the Commissioner of Indian Affairs had on February 27, 1877, ordered Inspector Kemble to return to the Ponca Agency and remove the Poncas to the Kaw Agency, Indian Territory, that order was replaced on March 7, 1877 by the following telegram from the Commissioner advising Kemble that:

Office of Indian Affairs
Washington, D. C. March 7,
1877

Kemble, Springfield, Dak.:

Letter from Saint Joe, March 2, and telegram of today received. You have full authority to remove Poncas to Quapaw Reserve. Forty thousand dollars applicable to their location there. Choose most economical means of removal, on ponies, if practicable; if not, by steamer to Kansas City. Claims for property necessarily surrendered will be fully considered hereafter and reported to Congress. (Jt. Ex. 2, pp. 424, 425)

14. Inspector Kemble, after he was deserted by all but two of the Ponca delegates on February 20, 1877, returned to the Ponca Agency arriving there on March 10, 1877. He had received full authority to remove the Poncas to the Quapaw Reserve in Indian Territory, on March 7, 1877, from

the Commissioner of Indian Affairs. Mr. Kemble did not, however, think it just to the tribe to begin the removal until the chiefs were once more with it. They did not arrive at the Ponca Agency in Dakota until April 2, 1877. After consultation with them and explaining the various instructions he had received from the Department of the Interior, relative to the Ponca removal to the Indian Territory, Mr. Kemble reported to the Commissioner of Indian Affairs on April 5, 1877, that "the delegation of chiefs, like the tribe, has become about equally divided on the subject of removal." (Jt. Ex. 2, p. 434)

15. Strong opposition to the removal developed within the Ponca Tribe after Kemble's return to the agency. On April 5, 1877 a full report of the conditions inimical to removal was furnished the Commissioner of Indian Affairs. A further report was furnished the Commissioner of Indian Affairs by Inspector Kemble on April 12, 1877 in which, among other things, Inspector Kemble stated that:

On the 11th instant the teams which I had engaged to haul our agency material and employes, and the families (old women and small children) of the Indians who are destitute of teams or ponies, arrived, and we have since been engaged in loading and getting ready for a start. I have heard nothing of the telegram sent by the Niobrara counsellor for this tribe, and the Indians at the lower village are understood to be waiting the issue of that dispatch. Both head chiefs, White Eagle and Standing Buffalo, are understood to have acquiesced in the necessity of removal, but are afraid to come out openly on account of the Indian soldiers. Today this soldier band came up to the agency and endeavored to entertain me with their tactics, each speaking a few ambiguous words about their purpose to remain here. I dismissed the council, after the fourth speaker, with the simple assurance that I should to-morrow start with all the tribe who would go peaceably with me. As for those who refuse to leave, I left them in no doubt that they would be required to follow, while those who should undertake

to make trouble were reminded that the commanding officer of the Great Father's soldiers was here to look after them. I then said I would hold no more councils on the subject, and would turn the rebellious members of the tribe over to the military.

Unless I receive instructions to the contrary I shall to-morrow start to cross the Running Water with all the tribe that I can draw along with me. How many will accompany me I cannot yet determine, but I have strong hopes of taking the majority of the tribe. (Jt. Ex. 2, pp. 436, 438)

In connection with this it was reported that a mounted company of troops from Fort Randall, forty-five in number, under the command of Captain Walker had been sent to the Ponca Agency to give protection to the half-breeds against the terrorizing tactics of the Indian "soldiers."

16. The more civilized portion of the Ponca Tribe consisting of the half-breeds and many full bloods favored removal, the others opposed it. The opposition portion of the tribe was constantly strengthened through the interference of outside parties. When Inspector Kemble crossed the Niobrara river he was unable to induce more than one hundred and seventy to cross with him for removal to Indian Territory. This party reached Columbus, Nebraska, enroute for the Indian Territory on April 28. It finally reached the new location selected for the Poncas on June 12, 1877.

17. After crossing the Niobrara river on the 17th of April, 1877, Inspector Kemble had turned over to the Ponca Agent Lawrence the control of the 170 Indians who had crossed with him and had proceeded to Washington for further consultation with the Commissioner of Indian Affairs. On his return to Columbus, Nebraska, which the 170 Poncas under the control of Agent Lawrence had reached on April 28, 1877, he directed

the agent to turn over the agency funds, materials and supplies to his appointed successor E. A. Howard. He further instructed Lawrence and Howard to go back to the old agency, meet with the refractory remainder of the Ponca Tribe still there and to invite them once more to consider their best interests and remove peaceably.

18. The newly appointed Ponca Agent, E. A. Howard, who succeeded Agent Lawrence, was so successful in his mission that on May 9, 1877, he was able to report to the Commissioner of Indian Affairs that:

I have the honor to report that on * * * the 7th and 8th instant, I held a council with the Indians of this agency relating to their removal to their new reservation in the Indian Territory. At first they were sullen and apparently inclined to be ugly, but after talking and reasoning with them for a time the chiefs, headmen, and young men of the tribe, consulted together and concluded to go with me to their new home without further trouble. The result of both councils were as satisfactory in every particular as I could have desired.

None of the troops reported to have been lately ordered to this agency have yet arrived, and they are not needed. I believe it to be highly important that these Indians should be moved without the use of troops, and that the presence of troops would be detrimental rather than otherwise.

I go to Springfield, Dak., today for needed supplies and transportation, and so soon as they can be got to the agency I shall at once commence a forward movement of the Poncas for the Indian Territory. (Jt. Ex. 2, p. 444)

19. The main body of the Ponca tribe under Agent Howard on May 16, 1877, crossed the Niobrara river and started for their new home in the Indian Territory. The presence of Captain Walker with his command contributed no doubt to the success of Agent Howard in inducing the remainder of the tribe to go with him. No actual force was used at this time or afterwards to move the Ponca Indians. After a tiresome march of sixty-five

days, this main body arrived at the Quapaw Reservation on July 9, 1877. This march was a terrible hardship for the Poncas. They were moved at a time when there were rain storms, floods, and high winds. It rained constantly. Two tornados destroyed much property and caused injuries. The Poncas, particularly the women and children, were not given, nor did they have, adequate clothing for such a trip. Kemble and Howard reported a number of deaths during the trip. Much of the Poncas' equipment and personal items which they had been able to carry were destroyed enroute. The whole Ponca Tribe located at the Quapaw Reservation in August, 1877, numbered 681 persons. In addition to these there were perhaps 36 members of the tribe who had not yet reported to the reservation (Pet. Ex. 74, p. 5).

20. The Ponca Indians were disappointed in their location on the Quapaw Reservation in the Indian Territory and their agent E. A. Howard reported to the Commissioner of Indian Affairs the complaints made by them on October 22, 1877 as follows:

* * * To-day they called on me in full council to make complaints and stated to me as follows: They are very homesick, many of their people and cattle have died here; that they had never made any agreement with the government that they were to remain here; that they had no secured rights to occupy this land; that no provisions had been made to reimburse them for their houses and improvements left in Dakota; that they were losing confidence in the government by reason of this delay; and that they had deliberately made up their minds to return to Dakota, be the consequences what they might. (Jt. Ex. 2, p. 416)

The agent urged that the Indians be granted permission to send a delegation to Washington to talk with the "Great Father" and to make with him some settlement of their affairs.

21. As a result of the Poncas' expressed desire to see and talk with the "Great Father" and to make some settlement of their affairs a representative delegation of them proceeded to Washington. On November 10, 1877, the President, among other things, in reply to the expressed grievances of the Ponca delegation said:

* * * You complain that on the land you now occupy you are exposed to much annoyance from bad men who steal your cattle and ponies and demoralize your people with whiskey. Mindful of your conduct, I desire to consult your wishes. There is much good land in the Indian Territory, further away from the white settlements, where you will not be exposed to such annoyances. For the land which you left on the Missouri river, you shall have a tract as large, and as fertile, with plenty of timber and many water-courses. I will permit you to send out some of your chiefs to make a selection for your people among the lands which still belong to the government in the Indian Territory. (Pet. Ex. 76, pp. 1-2)

In regard to the expressed desire of the Indians to return to their old reservation the President said:

* * * You were removed from your old reservation to guard you from collision with other Indians who are unfriendly to you. I desire that you should live in peace and security. For this reason you were taken away from the Missouri river - and for the same reason I think it would not be good for your own welfare that you should travel back so great a distance to the same place.

I want you to think over what I have said and the Indian Commissioner and the Secretary of the Interior will try and carry out what I have said I will do. The government owns a good deal of very excellent land in the Indian Territory; but there is a great deal of land there that the government does not own: and when I say that you may go and select lands in the Indian Territory, I mean that you shall select from lands which the Government still owns. (Pet. Ex. 76, pp. 1, 2)

The above statements of President Hayes made to the Ponca Indians on November 10, 1877, indicated the intention of the Government to

justly comeprnsate the Ponca Tribe for the land it was removed from in Nebraska. The promise of the President was unequivocal "for the land which you left on the Missouri river, you shall have a tract as large, and as fertile, with plenty of timber and many water-courses."

22. United States Indian Agent E. A. Howard, together with the Ponca delegates who had visited President Hayes during the early part of November, 1877, returned to the Ponca Agency on November 22, 1877. On November 26, 1877 he reported that the Indians were ready to go and look at the country offered them elsewhere in the Indian Territory (Pet. Ex. 77). Agent Howard was replaced by A. G. Boone and on December 25, 1877, the latter in company with E. C. Watkins, United States Indian Inspector, nine Ponca chiefs, two Indian women and an interpreter, set out to find a new and permanent location for the Ponca Tribe. Inspector Watkins reported in favor of a triangular piece of land formed by the Canadian and Arkansas rivers as the final location of the tribe (Pet. Ex. 78). However, the Poncas positively refused to accept any selection but that located between the Arkansas and Chickaskie (Shakaskia) rivers. Agent Boone was advised on March 3, 1878, by the Commissioner of Indian Affairs that his office had no objection to the Poncas being removed on the location desired by them, and to prepare for the tribe's removal.

Congress in the Indian Appropriation Act of May 27, 1878, 20 Stat. 63, 76, provided for the removal of the Ponca Indians from the Quapaw Reservation where they were then located as follows:

For this amount, or so much thereof as may be necessary, to be expended under the direction of the Secretary of the Interior, to be immediately available, in the removal of the Ponca Indians from their present location on the Quapaw reservation, Indian Territory, to a new one west of the Kaw or Kansas, and between the Arkansas and Shakaskia Rivers, and for their settlement thereon, preparation of land for cultivation, purchase of agricultural implements, wagons, stock cattle, and such other articles as may be required for their advancement in civilization, including the employment of such skilled labor as may be necessary to aid and teach them civilized pursuits with a view to their future self-support, thirty thousand dollars, and which amount may be immediately available * * *.

On July 3, 1878, Agent Boone was relieved from office and succeeded by William H. Whiteman, who immediately commenced preparation for the removal. The tribe left the old agency south of Baxter Springs, Kansas, on the 21st of July, 1878 and arrived at the new location, chosen by the Indians on July 28, 1878. The land chosen belonged to the Cherokee Nation but the United States had the right to locate other Indian tribes thereon under the treaty of July 19, 1866, 14 Stat. 799.

Agent Whiteman spoke highly of the new location of this tribe, but reported to the Commissioner of Indian Affairs on August 31, 1878, that the members of the tribe were restless and felt that the "Great Father" had forgotten them. He earnestly recommended that the chiefs who were very anxious to go to Washington and settle definitely the size and boundaries of their new reservation be allowed to do so. (Def. Ex. 13, pp. 64-65)

23. While the Poncas were becoming more reconciled to their new home the Commissioner of Indian Affairs reported to the Secretary of the Interior on November 1, 1878, that they were pressing payment for

the 96,000 acres they had relinquished in Dakota. They also were asking that the title to their new homes be confirmed to them by the United States. The Commissioner advised the Secretary that a bill would be introduced at the next session of Congress which would effect the desires of the Poncas and that it should receive immediate action.

The Commissioner sketched for the Secretary of the Interior the circumstances surrounding the removal of the Ponca Indians from their old reservation and in no uncertain terms informed him that:

It should be remembered that their old reservation in Dakota was confirmed to the Poncas by solemn treaty and at the time of making the treaty they received promises of certain annuities in consideration of the cession to the United States of a large tract of land. That treaty, which is still in force also recognized certain depredation claims which are still unadjusted. By a blunder in making the Sioux treaty of 1868, the 96,000 acres belonging to the Poncas were ceded to the Sioux. The negotiators had no right whatever to make the cession, and the bad feeling between the Sioux and the Poncas, which had existed for a long time, compelled the removal of the latter to the Indian Territory.

In this removal, I am sorry to be compelled to say, the Poncas were wronged, and restitution should be made as far as it is in the power of the government to do so. For the violation of their treaty no adequate return has yet been made. They gave up their lands, houses, and agricultural implements. The houses and implements will be returned to them, their lands should be immediately paid for, and the title to their present location should be made secure. But the removal inflicted a far greater injury upon the Poncas, for which no reparation can be made - the loss by death of many of their number, caused by change of climate.
(Def. Ex. 13, p. 36)

24. The Commissioner of Indian Affairs who had informed the Secretary of the Interior in 1878, that a bill in behalf of the Poncas would be introduced at the next session of Congress kept his word.

On the 3rd of February, 1879, a bill was presented by the Department of the Interior to Congress providing among other things:

That the Secretary of the Interior be, and he is hereby authorized and directed to permanently locate the said Ponca Indians on the tract of land now occupied by them, embracing in the aggregate 101,894 acres, and to purchase the same for their use from the Cherokee Nation; said purchase to be made in accordance with the provisions of the Cherokee treaty of July 19, 1876.

Sec. 2. That the sum of \$140,000 be, and the same is hereby appropriated, out of any moneys now in the Treasury of the United States not otherwise appropriated, to be disposed of for the benefit of said Ponca Indians as follows, viz, \$82,000, or so much thereof as may be necessary, shall be expended by the Secretary of the Interior in payment for the lands authorized herein to be purchased for the use of the Ponca tribe of Indians, and the balance of said \$140,000 remaining after the purchase of said lands shall be invested in the four per cent. bonds of the United States and held as a permanent investment for said tribe, the interest thereon to be expended annually in such manner as the Secretary of the Interior may direct.

Sec. 3. That the amount appropriated herein shall be in full of all claims by said Ponca tribe of Indians against the United States for the lands and property heretofore owned by them in Dakota Territory. (Def. Ex. 16, p. 14)

This legislation, proposed by the Department, was never enacted into law.

25. The complaints of the Indians and consideration of the bill presented by the Secretary of the Interior to satisfy their claims quickly brought Congressional action. A Select Committee of Congress was instructed to ascertain and report the circumstances of the removal of the Ponca Indians from their old reservation and whether said Indians were entitled to the relief proposed in a bill then pending in Congress. This Committee after a very full investigation of the subject on May 31,

1880, reported its conclusions to the Senate; both the majority and the minority of the Committee agreed that a great wrong had been done the Ponca Tribe of Indians and strongly condemned the action of the Government in moving it to the Indian Territory. At the time of this report, ordered to be printed on May 31, 1880, the Ponca Indians had not received any compensation for individual losses suffered by them during their removal to Indian Territory, nor had the tribe received any compensation, either in land or money, for the 96,000 acre reservation from which it had been removed in 1877.

26. Meddlesome persons were still endeavoring in 1880 to induce the Poncas to abandon their location in the Indian Territory and to return to Dakota. The leading men of the tribe frequently assured their agent, however, that they were now satisfied and did not want to return. The efforts of such meddlesome persons continued to create an unsettled feeling among the younger element of the Ponca tribe and had a tendency to retard their advancement. The Commissioner of Indian Affairs was of the opinion that all uneasiness among the Poncas could be removed by Congress providing for the permanent location of the Poncas by purchase from the Cherokee Nation of the land embraced in the reservation on which they were then located and for the appropriation of a sum of money sufficient to indemnify the tribe for the lands and property theretofore owned by them in Dakota (Def. Ex. 17).

The Poncas in the Indian Territory were most anxious to have all matters between the Government and themselves definitely settled and

forwarded on October 25, 1880, to the Commissioner of Indian Affairs, a petition signed by twenty of their chiefs and headmen expressing their desires as follows:

We, the undersigned, chiefs and headmen of the Ponca tribe of Indians, realize the importance of settling all our business with the government. Our young men are unsettled and hard to control while they think we have a right to our land in Dakota, and our tribe will not be finally settled until we have title to our present reservation and we have relinquished all right to our Dakota land. And we earnestly request that the chiefs of the Ponca tribe of Indians be permitted to visit Washington the coming winter, for the purpose of signing away our right to all land in Dakota and to obtain a title to our present reservation: * * *

We also desire to make this visit in order to convince the government that it is our intention of remaining where we are, and requesting the aid of the government in obtaining teams, wagons, harness, tools, &c., with which to work our land.

27. The petition of the Oklahoma Poncas for permission to visit Washington and to settle all their business with the Government was granted. We find the delegates of the Ponca tribe held conferences with the Secretary of the Interior, and as a result made the following statement to him on December 22, 1880:

We, the undersigned, Chiefs of the Ponca tribe of Indians present in Washington, D. C., hereby declare that we desire to remain on the lands now occupied by the Poncas, in Indian Territory, the same being a tract of 101,894 acres, and to establish our permanent homes thereon. We desire, further, to relinquish all our right and interest in all the lands formerly owned and occupied by the Ponca tribe in the State of Nebraska and the Territory of Dakota. In compensation for such lands, as well as for the various articles of property we left behind and lost at the time of our removal to the Indian Territory, in the year 1877, and for the depredations committed upon us by the Sioux Indians, for which indemnity

was promised us, we ask the Congress of the United States to appropriate the sum of \$140,000; the sum of \$50,000, or so much thereof as may be necessary, to be expended by the Secretary of the Interior for the purchase of the title to the land at present occupied by the Poncas in the Indian Territory, such title to be invested in the Poncas in fee-simple; \$10,000 to be distributed among the Ponca tribe in cash, in equal shares, per capita, and \$10,000 to be expended for the purchase of stock, cattle, and draught animals by the Secretary of the Interior, the said stock, cattle, and draught animals to be distributed among the several families of the Ponca tribe, and the remainder of the said sum of \$140,000 to be held as a permanent fund in the Treasury of the United States, bearing interest at the rate of five per centum per annum, the said interest to be annually distributed among the members of the Ponca tribe in equal shares per capita. This sum of \$140,000, so expended and invested as aforesaid, is to be a full satisfaction of all our claims for the lands formerly owned and occupied by us in Nebraska and Dakota, as well as for the goods and property lost by us in consequence of our removal to the Indian Territory, * * *. We declare this to be an expression of our free will and desire, as well as that of our people at present residing on the Ponca Reservation in the Indian Territory, and we ask that this declaration and request be submitted to the Congress of the United States for its favorable consideration and action. (Def. Ex. 15, p. 18)

The above statement was fully interpreted and explained to the Ponca chiefs before they signed it and they fully understood its contents (Def. Ex. 15, p. 18).

28. In compliance with the request of a large number of intelligent and benevolent citizens, and believing that it was warranted by the extraordinary circumstances of the Ponca case, the President on the 18th day of December, 1880 appointed a commission, consisting of Brigadier-generals George Crook and Nelson A. Miles, and two civilians, William Stickney and Walter Allen.

This Commission was directed to proceed to the Indian Territory and after conferences with the Ponca Tribe of Indians, to ascertain the facts in regard to the removal of the Poncas in 1877 and their present condition.

It was further directed to determine what justice and humanity required the Government of the United States to do. The Commission, pursuant to its instructions, visited the Ponca Indians in their homes in the Indian Territory and in Dakota and made a thorough investigation of all phases of the United States relationship with the Ponca Indians beginning with the first treaty between the parties in March 1858.

29. As a result of its investigation of the conditions and the desires of the Ponca Indians, both in the Indian Territory and in Dakota, the President's Committee made its report to him on January 25, 1881. Generals Crook and Miles and civilian William Stickney made the majority report which included several recommendations. An elaborate and comprehensive analysis of the circumstances surrounding the original removal of the Poncas from their homeland to the Indian Territory was made in the minority report of Walter Allen.

The Commission found and concluded that the removal was "injudicious and without sufficient cause" and that it was "also without lawful authority." They also found, insofar as the Poncas in Indian Territory were concerned, that:

* * * Their chiefs and headmen agreed to remain in that Territory. Having once committed themselves in writing to that course, they, with commendable integrity, regarded their action as sacred so far as they were concerned, and the majority of their people acquiesced and endorsed the action of their headmen. (Def. Ex. 15, p. 5)

As for the Poncas who had returned to their old homeland in Dakota and were now residing there it was an entirely different story. The Commission reported as follows concerning them:

That the Indians who have returned to their reservation in Dakota have the strongest possible attachment to their lands and a resolute purpose to retain them. They have received no assistance from the government, and, except the limited aid furnished by benevolent people, they have been entirely self-sustaining. With few agricultural implements they have cultivated a considerable tract of land for their support. They are on friendly terms with all other Indian tribes, including the Sioux, as well as with the white settlers in their vicinity. They pray that they may not again be disturbed, and ask for a teacher to aid and instruct them in the arts of industry, and for a missionary to teach them the principles of morality and religion. (Def. Ex. 15, p. 5)

30. Genuine interest in and concern for the future well being of the Ponca Indians is demonstrated by the report of the President's Commissioners. Among other things the Commission reported that:

In the settlement of the problem presented by this state of affairs, the Commission believe that the government should be controlled by the principles that would be applicable to any peaceable and law-abiding people in the same circumstances, and that not only the welfare of the Ponca Indians, but the future influence and authority of the government over other Indian tribes (who are better informed than is generally supposed concerning the circumstances of the Poncas), demand that there should be an ample and speedy redress of wrongs, thus exhibiting a conspicuous example of the government's purpose to do justice to all. It is therefore recommended - ***.

Certain concrete proposals made by the commission were intended, if followed, to fully compensate the Ponca Indians for their "injudicious" removal from their reservation in Dakota to a new one in the Indian Territory.

President Hayes submitted the report of the Commission made to him on January 25, 1881, to the Congress on February 1, 1881, and after calling Congress' attention to the fact that the commission was formed "to ascertain the facts in regard to their (Poncas') removal and present condition, so far as was necessary to determine the question as to

what justice and humanity required should be done by the Government of the United States, and to report their conclusions and recommendations in the premises," went further.

He called to the attention of Congress that on December 27, 1880, a delegation of Ponca chiefs from the Indian Territory had presented to him a declaration of their wishes, in which they stated that it was their desire "to remain on the lands now occupied by the Poncas in the Indian Territory and to relinquish all their right and interest in the lands formerly owned and occupied by the Ponca tribe in the State of Nebraska and the Territory of Dakota."

President Hayes recalled for the assistance of Congress in determining future legislation in behalf of the Poncas the various statements made by the Secretary of the Interior in 1877, Indian Agent Howard in 1877, the Secretary of the Interior in 1878 and 1879, as well as the reports made by the Select Committee of the Senate in 1880, and lastly to the report of the President's own fact finding Commission made in 1881. The consensus of these reports was that a "great wrong had been done to the Ponca Indians" by removing them from their old reservation.

31. Finally, President Hayes in sending the report made to him by his commission to the Congress on February 1, 1881, had this to say:

The report of the Commission appointed by me, of which General Crook was chairman, and the testimony taken by them, and their investigations add very little to what was already contained in the official reports of the Secretary of the Interior, and the report of the Senate Committee touching the injustice done to the Poncas by their removal to the

Indian Territory. Happily, however, the evidence reported by the commission and their recommendations point out conclusively the true measures of redress, which the Government of the United States ought now to adopt.

The commission in its conclusions omit to state the important facts as to the present conditions of the Poncas in the Indian Territory, but the evidence they have reported shows clearly and conclusively that the Poncas now residing in that Territory, five hundred and twenty-one in number, are satisfied with their new homes; that they are healthy, comfortable, and contented, and that they have freely and firmly decided to adhere to the choice announced in their letter of October 25, 1880, and in the declaration of December 27, to remain in the Indian Territory, and not to return to Dakota.

The evidence reported also shows that the fragment of the Ponca tribe, perhaps one hundred and fifty in number, which is still in Dakota and Nebraska, prefer to remain on their old reservation.

In view of these facts I am convinced that the recommendations of the commission, together with the declaration of the chiefs of December last, if substantially followed, will afford a solution of the Ponca question which is consistent with the wishes and interest of both branches of the tribe, with the settled Indian policy of the government, and as nearly as is now practicable with the demands of justice. (Def. Ex. 15, pp. 3, 4)

President Hayes further advised and especially recommended to Congress concerning the Poncas that:

It is therefore recommended that legislation be adopted in relation to the Ponca Indians, authorizing the Secretary of the Interior to secure to the individual members of the Ponca tribe, in severalty, sufficient lands for their support inalienable for a term of years, and until the restriction upon alienation may be removed by the President. Ample time and opportunity should be given to the members of the tribe freely to choose their allotments, either on their old or new reservation.

Full compensation should be made for the lands to be relinquished, for their losses by the Sioux depredations, and by reason of their removal to the Indian Territory--the amount not to be less than the sums named in the declaration of the chiefs made December 27, 1880.

In short nothing should be left undone to show the Indians that the Government of the United States regards their rights as equally sacred with those of its citizens. The time has come when the policy should be to place the Indians as rapidly as practicable on the same footing with the other permanent inhabitants of our country.

I do not undertake to apportion the blame for the injustice done to the Poncas. Whether the Executive or Congress or the public is chiefly in fault is not now a question of practicable importance. As the Chief Executive at the time when the wrong was consummated, I am deeply sensible that enough of the responsibility for that wrong justly attaches to me to make it my particular duty and earnest desire to do all I can to give to these injured people that measure of redress which is required alike by justice and by humanity. (Def. Ex. 15, p. 4)

32. As a result of the full scale investigations made by the Senate's Select Committee in 1880 of all the facts surrounding the Ponca's removal in 1877 and by the President's commission, also made in 1880, together with the President's recommendations to Congress in 1881, the scene was fully set for appropriate Congressional action to redress the wrong done to the Ponca Tribe.

Congress when fully apprised of all the facts, in its desire to do full justice to the Ponca tribe and to fully indemnify its members for losses sustained in their removal and for other purposes, passed the Act of March 3, 1881, 21 Stat. 414, 422. This Act provided:

For the purpose of enabling the Secretary of the Interior to indemnify the Ponca tribe of Indians for losses sustained by them in consequence of their removal to the Indian Territory, to secure to them lands in severalty on either the old or new reservation, in accordance with their wishes, and to settle all matters of difference with these Indians, one hundred and sixty-five thousand dollars to be immediately available and to be expended under the direction of the Secretary of the Interior, as follows:

For the purchase of one hundred and one thousand eight hundred and ninety-four acres of land in the Indian Territory where most of these Indians are now located, fifty thousand dollars.

To be distributed among the Ponca Indians in the Indian Territory ten thousand dollars.

For the purchase of stock, cattle and draught animals for Poncas in the Indian Territory, ten thousand dollars.

For the erection of dwelling-houses for Poncas now in Dakota, five thousand dollars; for agricultural implements, stock, and seed, five thousand dollars; for school purposes five thousand dollars; for general distribution among them per capita, ten thousand dollars.

To be held as a permanent fund in the Treasury of the United States, at five per centum interest, the interest to be distributed among all the Ponca Indians, in cash, seventy thousand dollars.

33. The lands on which the Ponca Indians in the Indian Territory were living in 1881 belonged to the Cherokee Nation of Indians. The United States, however, had settled the Poncas upon these lands pursuant to Article XVI of its treaty with the Cherokee Nation of July 19, 1866, 14 Stat. 799, 804, which provided that:

Article XVI. The United States may settle friendly Indians in any part of the Cherokee country west of the 96^o, to be taken in a compact form in quantity not exceeding one hundred and sixty acres for each member of each of said tribes thus to be settled; the boundaries of each of said districts to be distinctly marked, and the land conveyed in fee simple to each of said tribes to be held in common or by their members in severalty as the United States may decide.

Said lands thus disposed of to be paid for to the Cherokee nation as such price as may be agreed upon between the said parties in interest, subject to the approval of the President; and if they should not agree, then the price to be fixed by the President.

A commission had been appointed on January 30, 1877, by the Secretary of the Interior to visit the Cherokee country, to examine the above lands and to make a full report of the same. This Commission had on August 22, 1877, and December 12, 1877, made its report. (Def. Ex. 25, p. 3)

On the facts disclosed by that foregoing report the President, on June 23, 1879, fixed the value of the land embraced within the area occupied by the Ponca tribe in Indian Territory at 47 49/100 cents per acre.

34. By an indenture dated June 14, 1883, the land occupied by the Ponca Indians in Indian Territory stated to consist of 101,894.31 acres was conveyed by the Cherokee Nation in trust for the use and benefit of the Ponca tribe of Indians. The foregoing land was purchased by the United States from public funds appropriated by the Act of March 3, 1881, 21 Stat. 414, 422, for \$48,389.46 for the "use and benefit of the Ponca tribe of Indians."

At this time, not all of the Ponca Indians were living on the lands in Indian Territory. Some of them (approximately 170 or 180) had returned to the land formerly occupied by them in Nebraska prior to 1877. Those on the reservation in Indian Territory numbered about 520.

In addition to the purchase of the 101,894.31 acres as a reservation for the Ponca tribe for which \$48,389.46 was paid by the United States, the following sums were expended pursuant to the Act of March 3, 1881, supra, for the benefit of those Poncas who lived on the reservation:

Per capita payments	\$10,000.00
Purchase of stock cattle and draught animals	10,000.00
or a total including the land purchase of	68,389.46

The remainder of the \$165,000 appropriated by the Act of March 3, 1881, supra, augmented by \$19.69 in miscellaneous receipts was expended in the following manner: \$23,744.82 was disbursed for the benefit of those Ponca Indians who were living in Nebraska, \$2,885.41 carried to

the surplus fund and \$70,000.00 was transferred to the "Ponca Fund." This "Ponca Fund" of \$70,000.00 was disbursed for the benefit of Ponca Indians generally, for those in Indian Territory (Oklahoma) \$45,688.80 and for those in Nebraska \$24,311.20. (Def. Ex. 45)

35. While the concensus was that the removal of the Ponca Tribe to the Indian Territory in 1877 constituted a grave injustice, Congress by passage of the Act of March 3, 1881, supra, intended to cure and rectify the injustice, insofar as it could.

By that Act it was provided that the 101,894.31 acres in the Indian Territory selected by the Poncas themselves in 1878 should be purchased from public funds for the Ponca Tribe. This reservation was larger in area than the original Ponca reservation in Nebraska and it was claimed that it was in every way better than the old one. Not only was the Ponca Indian agent in 1879 of the opinion that the new reservation was better than the old one, but so was the principal chief of the Poncas, White Eagle. Concerning the reservation land in Indian Territory he said in 1880:

I think this land is a better land; that it is improving. Whatever we plant will come up.

* * *

In that land, original reservation in Nebraska there were insects that destroyed the crops; in this land there are no insects (grasshoppers) and no birds to hurt the crops (black birds and crows).

* * *

I put this country before the other --- find it healthier.
(Def. Ex. 15, pp. 20, 21)

Although formal title to this reservation was not vested in the Ponca Tribe until it was conveyed to the United States in trust for the Poncas on June 14, 1883, by the Cherokee Nation, the Poncas had full use of this reservation from July 28, 1878.

The 1881 Act not only provided for the expenditure of a sum, not to exceed \$50,000, for the purchase of the 101,894.31 acres of land in the Indian Territory in exchange for the old reservation of 96,000 acres in Nebraska but for other benefits to the Ponca Tribe. It provided more than \$116,000 to indemnify the entire Ponca Tribe for losses sustained by members of that tribe.

36. Those Ponca Indians who did not reside on that tribe's reservation in the Indian Territory in 1882 were known as the Poncas of Dakota. They had refused to remain in the Indian Territory where the majority of their tribe now lived and were under the leadership of Standing Bear and were regarded as a part of the Ponca tribe residing in Nebraska. They were under the care of the agent of the Santee Reservation, Nebraska, and were located on some of the best land of the old Ponca Reservation, along the Missouri River and Running Water or Niobrara River about twenty miles from the Santee Reservation which now belonged to the Sioux. The Agent, under whose jurisdiction they were, noted in 1882 that they were located, due to a change in boundary lines, properly in Nebraska and hence should be called the Poncas of Nebraska (1882 report of the Commissioner of Indian Affairs, p. 116).

By the Act of March 3, 1881, 21 Stat. 414, 422, Congress did not provide for any specific reservation for those Poncas who were living under the jurisdiction of the Santee reservation in Dakota and whose condition there is described above, but the Act did contemplate securing rights in severalty on either the old (Nebraska) or new (Indian Territory) reservation.

37. On April 30, 1888, Congress passed an Act, 25 Stat. 94, entitled "An act to divide a portion of the reservation of the Sioux Nation of Indians in Dakota into separate reservations and to secure the relinquishment of the Indian title to the remainder." Section 13 of this Act affected the Poncas who were then living on their old reservation even though it had been ceded to the Sioux under the Treaty of April 29, 1868, 15 Stat. 635. It provided:

* * * Each member of the Ponca tribe of Indians now occupying a part of the old Ponca Reservation, within the limits of the said Great Sioux Reservation, shall be entitled to allotments upon said old Ponca Reservation as follows: To each head of a family, one-quarter of a section; to each single person over eighteen years of age, one-eighth of a section; to each orphan child under eighteen years of age, one-eighth of a section; and to each other person under eighteen years of age now living, one-sixteenth of a section, with title thereto and rights under the same in all other respects conforming to this act. And said Poncas shall be entitled to all other benefits under this act in the same manner and with the same conditions as if they were part of the Sioux Nation receiving rations at one of the agencies herein named * * *. (Def. Ex. 40, p. 99)
(Emphasis supplied.)

The 1888 Act, in dividing a portion of the old Sioux reservation into six separate reservations, confirmed reservation title upon those Sioux bands who drew their rations at the several agencies located there.

At this time the Santee Sioux were living on their reservation that was now situated within the northern boundary of the new State of Nebraska. The Poncas residing on the old Ponca reservation were similarly situated. Since the 1888 Act guaranteed to the Nebraska Ponca rights equivalent to those recognized to be in the several bands of Sioux, reservation title to the old Ponca reservation was confirmed in them, said reservation to be subject to allotment in the manner prescribed in the 1888 Act.

It was further provided in the 1888 Act, that when all Ponca allotments had been satisfied within the statutory period provided in the Act, the President shall thereupon issue an executive order declaring that the Indian title to all unallotted lands shall be extinguished, said unallotted lands to be subject to entry and settlement. (1 Kapp. 946).

The Act of March 2, 1889, 25 Stat. 888, 892, substantially raised the acreage of the Ponca allotments in the Sioux Reservation provided for by the Act of April 30, 1888, 25 Stat. 94. It provided in Section 13 that each member of the Ponca Tribe living within the limits of the Great Sioux Reservation and occupying a part of the old Ponca Reservation:

* * * Shall be entitled to allotments upon said old Ponca Reservation as follows: To each head of a family, three hundred and twenty acres; to each single person over eighteen years of age, one-fourth of a section; to each orphan child under eighteen years of age, one-fourth of a section; and to each other person under eighteen years of age now living, one-eighth of a section, with title thereto and rights under the same in all other respects conforming to this act * * *.

Under the Act of March 2, 1889, supra, one hundred sixty eight (168) allotments were made to Ponca Indians aggregating 27,235.90 acres of land. So members of that tribe received, out of the old Ponca reservation

96,000 acres, over 27,000 acres as allotments. This results then in the Ponca tribal membership being permanently deprived by the United States of less than 69,000 acres of the old reservation.

38. The Ponca Indians residing in Nebraska having been provided with allotments totaling 27,235.90 acres of land from their old reservation (Def. Ex. 46), Congress proceeded to allot to those members of the Ponca Tribe who were living on the Ponca Reservation in Oklahoma the lands therein comprising 101,894.31 acres.

The allotments of the Ponca Reservation in the Indian Territory to the Poncas residing thereon was accomplished pursuant to several acts of Congress. They are the acts of February 8, 1887, 24 Stat. 388; February 28, 1891, 26 Stat. 794 and finally by the Act of April 21, 1904, 33 Stat. 189, 217, 218. Section 8 of the 1904 Act provided:

That the Secretary of the Interior be, and he is hereby authorized and directed to cause to be allotted, under the provisions of the Act of Congress approved February eighth, eighteen hundred and eighty-seven, entitled "An Act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," as amended by the Act approved February twenty-eighth, eighteen hundred and ninety-one, to each and every child born of a recognized member of the Ponca Tribe and to each and every child born of a recognized member of the Otoe and Missouri tribe of Indians since the completion of allotments to said tribes, respectively, and prior to the thirtieth day of June, nineteen hundred and four, and alive and in being on that date, eighty acres of agricultural or one hundred and sixty acres of grazing land within the reservation of the tribe to which said child belongs. That after said allotments shall have been made the remaining unallotted lands in each of said reservations shall be allotted under said Acts in such manner as to give all the members of the tribe living on the thirtieth day of June, nineteen hundred and four, as near as

may be, an equal quantity of land in acres: Provided, that before making said allotments the Secretary of the Interior may reserve for Governmental purposes, or for the common use of the tribe, not exceeding six hundred and forty acres in each of said reservations: Provided further, That the reservation lines of the said Ponca and Otoe and Missouri Indian reservations be, and the same are hereby, abolished; and the territory comprising said reservations shall be attached to and become part of the counties of Kay, Pawnee, and Noble, in Oklahoma Territory, as follows: * * *.

All of the land in the Ponca Reservation in Indian Territory except 943 acres which remained tribal lands were allotted pursuant to the foregoing acts to the individual members of the Ponca tribe. Ponca Tribe of Indians of Oklahoma v. United States, 6 Ind. Cl. Comm. 409, 410 (1958).

39. On January 31, 1962 the parties to this dispute entered into a stipulation in the following words and figures to wit:

"STIPULATION

"Whereas, the parties to this dispute are desirous of expediting the trial of the issues involved in this claim; and

"Whereas, there are questions of fact which are not in dispute but are matters of public or official record;

"Therefore, the petitioners, the Ponca Tribe of Indians of Oklahoma, et al., and the defendant, the United States of America, by their respective attorneys, hereby stipulate and agree to the following:

"1. The petitioners filed this claim under and pursuant to the Act of Congress of August 13, 1946, (60 Stat. 1049).

"2. The petitioners are the tribal organization recognized by the Secretary of the Interior as having authority to represent the Ponca Tribe of Indians of Oklahoma and three individual representatives of the Ponca Tribe and all the members thereof.

"3. The petitioners are represented herein by the law firm of Sonnenschein, Lautmann, Levinson, Rieser, Carlin & Nath, of Chicago, Illinois, under a duly approved contract. Edwin A. Rothschild, attorney of record for the petitioners herein, is a member of said law firm.

"4. By the provisions of a treaty entered into between the Ponca Tribe of Indians and the United States of America dated March 12, 1858 and ratified April 11, 1859 (12 Stat. 997), the Ponca Tribe of Indians ceded to the United States all the land owned or claimed by them, except the tract in Nebraska set forth next below which was retained as a reservation:

'Beginning at a point on the Neobrara River and running due north, so as to intersect the Ponca River twenty-five miles from its mouth; thence from said point of intersection, up and along the Ponca River, twenty ----- miles, thence due south to the Neobrara River; and thence down and along said river to the place of beginning; which tract is hereby reserved for the future home of said Indians.'

"5. Under the terms of a supplemental treaty between the Ponca Tribe of Indians and the United States of America, dated March 10, 1865, and ratified March 28, 1867 (14 Stat. 675), the boundaries of the reservation theretofore reserved for the use of the Ponca Tribe were revised as follows:

'ARTICLE 1. The Ponca tribe of Indians hereby cede and relinquish to the United States all that portion of their present reservation as described in the first article of the treaty of March 12th, 1858 /proclaimed April 11, 1859; see preceding treaty/ lying west of the range line between townships numbers (32) thirty-two and (33) thirty-three north, ranges (10) ten and (11) eleven west of the (6) sixth principal meridian, according to the Kansas and Nebraska survey, estimated to contain thirty thousand acres, be the same more or less.

'ARTICLE 2. In consideration of the cession or release of that portion of the reservation above described by the Ponca tribe of Indians to the Government of the United States, the Government of the United States, by way of rewarding them for their constant fidelity to the Government and citizens thereof, and with a view of returning to

the said tribe of Ponca Indians their old burying-grounds and cornfields, hereby cede and relinquish to the tribe of Ponca Indians the following-described fractional townships, to wit: township (31) thirty-one north, range (7) west; also, fractional township (32) thirty-two north, ranges (6) six, (7,) seven, (8,) eight, (9,) nine, and (10) ten west; also, fractional township (33) thirty-three north, ranges (7) seven and (8) eight west; and also all that portion of township (33) thirty-three north, ranges (9) and (10) ten west, lying south of Ponca Creek; and also all the islands in the Niobrara, or Running Water River, lying in front of lands or townships above ceded by the United States to the Ponca tribe of Indians. But it is expressly understood and agreed that the United States shall not be called upon to satisfy or pay the claims of any settlers for improvements upon the lands above ceded by the United States to the Poncas, but that the Ponca tribe of Indians shall, out of their own funds, and at their own expense, satisfy said claimants, should any be found upon said lands above ceded by the United States to the Ponca tribe of Indians.'

"6. The reservation so described comprised approximately 96,000 acres.

"7. Under the terms of a treaty entered into between the Sioux Indians and certain of their allies and the United States dated April 29, 1868, ratified February 16, 1869 (15 Stat. 635), the following described lands were set aside as a reservation for the Sioux Tribe of Indians.

'ARTICLE 2. The United States agrees that the following district of country, to wit, viz: commencing on the east bank of the Missouri River where the forty-sixth parallel of north latitude crosses the same, thence along low-water mark down said east bank to a point opposite where the northern line of the State of Nebraska strikes the river, thence west across said river, and along the northern line of Nebraska to the one hundred and fourth degree of longitude west from Greenwich, thence north on said meridian to a point where the forty-sixth parallel of north latitude intercepts the same, thence due east along said parallel to the place of beginning;

and in addition thereto, all existing reservations on the east bank of said river shall be, and the same is, set apart for the absolute and undisturbed use and occupation of the Indians herein named, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them, and the United States now solemnly agrees that no persons except those herein designated and authorized so to do, and except such officers, agents and employees of the government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article, or in such territory as may be added to this reservation for the use of said Indians, and hence forth they will and do hereby relinquish all claims or right in and to any portion of the United States or Territories, except such as is embraced within the limits aforesaid, and except as hereinafter provided.'

"The lands above described encompassed within its boundaries all the lands theretofore reserved to the Ponca Tribe of Indians as set forth in paragraph 5 herein.

"8. On March 16, 1877 the Poncas were removed from their reservation to a temporary location in the Indian Territory. It is stipulated that March 16, 1877 is the date upon which the United States acquired whatever interest the Ponca Indians had to said lands.

"9. On July 28, 1878 the Poncas were moved to a new reservation, located in the Indian Territory, described below in paragraph 10. It is stipulated that July 28, 1878 is the date upon which the Ponca Tribe acquired its interest in said reservation.

"10. By indenture dated June 14, 1883, said reservation, stated to consist of 101,894.31 acres, was conveyed, for a stated consideration of \$48,000, by the Cherokee Nation of Indians to the United States of America, in trust for the use and benefit of the Ponca Tribe of Indians. The reservation was described as follows:

'*** embracing the following townships and fractional townships North and east of the Indian

Meridian, the fractional townships being on the right bank of the Arkansas River.

Townships twenty four (24) and twenty five (25) North, range one (1) east; Fractional Townships twenty four (24) and twenty five (25) north, range two (2) east:

Fractional townships twenty four (24) and twenty five (25) north, range three (3) east;

Fractional townships twenty four (24) and twenty-five (25) North, range four (4) east of the Indian Meridian; according to a plat of said lands hereto annexed, marked "A" and made a part of this conveyance, containing in all one hundred and one thousand, eight hundred and ninety-four and thirty one hundredths (101,894.31) acres, hereby granted; together with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining; ***'

"11. Pursuant to the Act of April 30, 1888, section 13 (25 Stat. 94, 99) as amended by the Act of March 2, 1889, section 13 (25 Stat. 888, 892), certain allotments were given to the Ponca Indians said allotments being located in the former reservation located in Nebraska.

"12. It is stipulated that the following questions are to be tried and determined by the Commission at a future date:

(a) Whether the reservation in the Indian Territory shall be allowable as an offset to the petitioners claim.

(b) Whether the allotments of the lands in the former reservation in Nebraska are allowable as an offset against the petitioners claim.

"13. It is agreed that for the purpose of determining the petitioners' claim, the reservation in Nebraska described in paragraph 5 should be valued as of March 16, 1877.

"14. It is agreed that if the value of the reservation in Indian Territory described in paragraph 10, should be allowable as an offset to said claim, said reservation in Indian Territory should be valued as of July 28, 1878.

"15. It is agreed that if the lands allotted to Ponca Indians who returned to the former reservation in Nebraska

are allowable as an offset the same be considered as a deduction of the acreage constituting the original Ponca Reservation.

"16. It is agreed that the parties will present their evidence relating to such values of said reservations at a proceeding to be held a reasonable time after the Commission determines the questions set out in paragraph 12 of this stipulation.

/s/ Edwin A. Rothschild
Edwin A. Rothschild
Attorney of Record for Petitioner

/s/ Ramsey Clark
Ramsey Clark
Assistant Attorney General

/s/ Daniel J. O'Brien
Daniel J. O'Brien
Attorney for Defendant"

40. On August 27, 1965, this Commission rendered a final award on the general accounting claim filed by the petitioners in Docket No. 324. In that case the petitioners sought and obtained a complete accounting for all monies paid to the Ponca Indians under various treaties made by them with the United States including the treaties of March 12, 1858, 12 Stat. 997, March 10, 1865, 14 Stat. 675, and the Act of Congress of March 3, 1881, 21 Stat. 414, 422. From our examination of the Government Accounting Office report filed in that case, the Commission found that there had been appropriated and properly disbursed in satisfaction of the Ponca treaty and statutory obligations the sum of \$1,202,406.62, while only the small sum of \$1,289.99 had been improperly expended out of these funds. The following is a breakdown of these improper treaty expenditures as found by the Commission:

<u>Year</u>	<u>Description</u>	<u>Amount</u>
1860	38 American Flags	\$ 175.00
1862	1 Flag (part of \$34.50)	22.50
1860	25 military uniforms	800.00
1865	1 Buffalo robe (part of \$36.00)	11.00
1869	Stamps, stationery, etc.	35.57
1871	Year time book for Superintendent	2.25
1869	Internal revenue tax on agent's salary	12.50
1875	Stamps, office supplies, office chairs, field glasses, stationery	148.55
1882	Expense of 4 Poncas on visit to Washington (with Omahas, Winnebagoes, Sioux)	80.00
1882	Medical attention to one Ponca while on visit	<u>2.62</u>
	Total	\$1,289.99

In addition to monies appropriated to satisfy treaty obligations, Congress also appropriated and there was disbursed for the direct benefit of the Ponca Indians the sum of \$532,860.64, plus an additional \$1,735,267.26 that was paid to the Poncas jointly with other Indian tribes.

The only other Ponca money that was expended without authority and for other than tribal purpose came out of the Ponca proceeds of labor fund. The following is a breakdown of these expenditures as found by the Commission.

<u>Year</u>	<u>Description</u>	<u>Amount</u>
1916	1 Ford automobile, accessories, etc.	\$ 404.17
1915	Dictionary, 2 recitation seats, for agency office (part of \$53.00)	17.00
1926	Laundry for guest room, repair of type- writer and express on latter	19.94
1927	Laundry for guest house	.72
1928	Printing of individual Indian money state- ment forms \$25; repairing 3 typewriters \$60.24; laundry for guest room \$1.04 (part of \$174.33)	86.28

<u>Year</u>	<u>Description</u>	<u>Amount</u>
1929	One flag \$2.83; repair of 3 typewriters and 1 adding machine \$93.27; toll charges for Otoe Subagency \$5.95; telephone service and toll charges at Otoe Agency \$16.70 (part of \$314.65)	118.75
1930	Repair of typewriter \$6.00; telephone and tolls at Red Rock \$9.50 (part of \$155.06)	15.50
1931	Scrubbing office floor (part of \$91.35)	3.00
1932	Cleaning office (part of \$157.75)	2.00
1926	"unidentified items" (crediting \$660 for period from July 1, to Dec. 31, 1925, for pay of clerk)	283.05
1933	Shingles, valley, roofing nails, etc., for agency cottage (part of \$106.60)	93.00
1928	Furnishings for guest room including missing voucher for \$25.90	<u>124.90</u>
	Total	\$1,168.31

The Commission's award to the petitioners in Docket No. 324, which award is final in all respects, was \$2,458.30, being the sum total of the improper treaty expenditures and the unauthorized disbursements from the Ponca proceeds of labor fund.

The Commission concludes from the size of the final award rendered in Docket No. 324 that, apart from the issues presently before us in this case, the United States over the years has more than substantially met and satisfied its treaty obligations to the Ponca Indians. At the same time the Congress, without any obligation to do so has appropriated additional large sums of money that have been either directly or indirectly disbursed for the benefit of the Ponca Indians.

41. The Commission therefore finds and concludes as a matter of law, that, as a result of the 1868 Sioux Treaty, 15 Stat. 635, the United States deprived the Ponca tribe of Indians, consisting of the

Poncas of Oklahoma and those in Nebraska, of their former reservation of 96,000 acres in Nebraska without the payment of just compensation; and, that by the provisions of the Act of March 3, 1881, 21 Stat. 413-422, and subsequent legislation, the Ponca Tribe of Indians has received from the United States as compensation and as part payment on the claim (the 1881 Act also appropriated money for per capita payments, purchase of stock, agricultural implements, supplies, etc.) for the loss of the said Nebraska reservation the following items:

(1) The reservation consisting of 101,894.31 acres in the Indian Territory. All of this acreage was allotted to those Poncas who resided on this reservation, except 943 acres which remained tribal lands.

(2) The 27,235.90 acres of old Ponca reservation in Nebraska which were retained as allotments by members of the Ponca Tribe in Nebraska.

42. In light of the findings of fact made herein, the Commission accepts and adopts for evaluation purposes in this case, the following valuation dates as recommended in the stipulation entered into between the parties, which stipulation is set forth in toto in the Commission's Finding 38:

(1) The valuation date of the subject tract, being the former Ponca reservation in Nebraska, shall be March 16, 1877.

(2) The valuation date of the Ponca reservation in the Indian Territory shall be July 28, 1878.

The Commission also approves and adopts the agreement of the parties as set forth in the aforementioned stipulation that, in the

event the Commission should allow as an offset the 27,235.90 acres of allotted land on the old Ponca reservation in Nebraska, then this amount shall be deducted from the total acreage of the subject tract.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

Commissioner Scott concurs to the extent that these are confirmed in his dissenting opinion.