

BEFORE THE INDIAN CLAIMS COMMISSION

THE KICKAPOO TRIBE OF KANSAS,)	
THE KICKAPOO TRIBE OF OKLAHOMA, ET AL.,)	
)	
Petitioners,)	
)	
v.)	Docket No. 316
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ADDITIONAL FINDINGS OF FACTS

23. During the period between 1840 and 1864, a number of bands or groups of Kickapoo Indians left the main Kickapoo tribe. In 1868 it was reported by Commissioner of Indian Affairs Taylor that approximately 800 of these Indians were then living in Mexico. The Texans complained to Commissioner Taylor that these Kickapoos were devastating the western part of Texas and then fleeing with their plunder and captives to a base of operations in northern Mexico beyond the reach of the United States and Texas authorities.

Communicating these matters to the Secretary of the Interior, Commissioner Taylor recommended that "*** in view of the excited feelings on the part of the citizens of Texas, and of probable serious difficulties arising with Mexico should the citizens undertake to redress their grievances ***" (Def. Ex. No. 18, p. 2), these Indians should be removed from Mexico immediately. He suggested that the party which had most recently left the Kickapoo reservation in Kansas be returned to that reservation, and that the remaining Kickapoo Indians, estimated to number about 600, be moved "to some suitable locality in the Indian

country". (Def. Ex. No. 18, p. 2) He further recommended that Congress be requested to appropriate a sum sufficient for the transportation and subsistence of all the Kickapoo during the journey from Mexico to either the Kansas reservation or the Indian Country as the case may be and to subsist those brought to the Indian territory for one year.

24. By the Act of July 15, 1870, Congress appropriated funds "to enable the Secretary of Interior to collect bands of Kickapoo or other Indians roving on the borders of Texas and Mexico, and to locate and subsist them in the Indian Territory", (16 Stat. 359). Referring to this appropriation, Commissioner of Indian Affairs Parker declared in his annual report that "Perhaps the most suitable home for these Indians can be found in what is known as the 'Leased District,' west of the Chickesaw country, from which section most of them emigrated to Mexico more than twenty years ago." (Pet. Ex. No. 1-A) Commissioner Parker also stated that after these Indians were established in their new home it would be necessary to provide for their support until they were able to sustain themselves.

25. By the Act of March 3, 1871, Congress appropriated funds "for the removal of the Kickapoo and other American Indian tribes roving on the borders of Mexico and Texas to reservations within the Territories of the United States, and for their settlement and subsistence on such reservations" (16 Stat. 569). United States Indian Agent John D. Miles, pursuant to instructions dated one day after this enactment, went to Mexico with a delegation of Kickapoo Indians from the Kansas reservation, and met with the Kickapoo Indians gathered in Santa Rosa.

The agent's mission was made difficult by the residents and local officials who wished the Kickapoo Indians to remain in Mexico. Agent Miles stated that they did all they could to effect the removal of the Kickapoo and would have been successful if it had not been for the interference of the local residents and officials.

"We made use of every opportunity to present to them our friendly mission and the advantage they would derive from the acceptance of the kind offer made by the Great Father at Washington", Miles said. (Def. Ex. No. 19, p. 193)

However, though the people of Santa Rosa treated them very kindly, continued Miles,

"*** they were decidedly opposed to the removal of the Kickapoos, giving for their reason the assertion that the city of Santa Rosa and the whole community around would be invaded at once by Mescalero Apaches, Lipans, and other marauding bands of Indians; that the Kickapoos were their only defense; and not only this, but that the Kickapoo labor and the Kickapoo trade was a matter of no mean importance to them" (Def. Ex. No. 19, p. 194)

The nature of "the kind offer made by the Great Father at Washington" was not described in detail by Agent Miles. However, it probably referred to a reservation since one of the chiefs, Wah-pa-ka, said he

"*** did not like the idea of taking his people up to an unknown reservation without some assurance that the land was good, and where it was to be located, and how much was to be given them, and who their neighbors were to be, and some other questions that I was not authorized to answer." (Def. Ex. No. 19, p. 195)

It was reported by General Reynolds, after a visit to the border area, that the Mexican officials were utilizing the Kickapoo Indians as a cloak for thefts of Texas cattle by Mexicans. (Def. Ex. No. 19)

26. In 1873, Special Agents H. M. Atkinson and Col. T. G. Williams were appointed to make another attempt *** to remove said Indians to

some point within the limits of Indian Territory, where they could be kept from depredating on and annoying the inhabitants of Texas, and started in the pursuits of civilized life." (Pet. Ex. No. 3-A)

They proceeded to Saltillo, the capitol of the State of Coahuila and were there introduced to Governor Cepeda deeming it "useless to go first where the Kickapoos, Pottawatomies, and other roving bands of Indians, Lipans, and Mescaleros were reported to be encamped, because they were all, by a recent treaty or agreement with Governor Cepeda of Coahuila, under his direct protection and supervision." (Pet. Ex. No. 5-A) After stating to Governor Cepeda that the purpose of their mission was the removal of the Kickapoos and other Indians back to their proper reservation, Atkinson and Williams asked his cooperation in accomplishing this object and requested the appointment of one of his officers as a commissioner to work with them. In accordance with their requests, Governor Cepeda appointed a commissioner and "also issued a proclamation to all officials and citizens in the State, requiring them to assist us in our work; and he advised the Indians to accompany us if they thought that their condition would be improved." (Pet. Ex. No. 5-A) However, "many influential citizens of Coahuila, and members of the state legislature strongly opposed the governor's course toward us". (Pet. Ex. No. 5-A) In spite of this local opposition Atkinson and Williams felt that the governor's course was approved by the central government.

27. While on route to Santa Rose, the town nearest where the Kickapoo Indians were located, Agents Atkinson and Williams learned that a party of Americans under General MacKenzie had crossed into

Mexico and attacked the Kickapoos, killing some and taking others prisoner. General MacKenzie later explained to them in writing "that he was following a trail of Lipan Indians, and that it led to the Kickapoo camp, and that they had received a blow intended more particularly for the Lipans, who had just been depredating in Texas." (Pet. Ex. No. 5-A) However, this provided an incident which was used by the citizens of Santa Rosa to stir up and prejudice the Kickapoos against the two agents insomuch that their lives were in danger. Despite threats and intimidations Agents Atkinson and Williams persisted in trying to effect the purpose of their mission. They met in council with the Indians and explained that an immediate removal to a reservation in the United States would be to their advantage. The Mexican Commissioner endorsed these statements counseling the Indians that "it was the desire of both Governments that they should go, that they would be protected, and in all respects better off". (Pet. Ex. No. 5-A) However, even though a council had been previously held in which a large number of the Kickapoos decided to return to the United States, they now turned a deaf ear to the proposals of Atkinson and Williams because of the recent raid by General MacKenzie and would not consider returning until the Indian captives had been returned to them.

After further negotiations the Atkinson-Williams mission succeeded in inducing about 300 Kickapoo Indians to remove to the Indian Territory. These Indians settled on the north fork of the Canadian River in the early autumn of 1874. An additional 114 Kickapoo Indians left Mexico in April 1875 and arrived at the Kickapoo Agency in July 1875. Atkinson

and Williams later reported that though the attack of General MacKenzie caused them many problems "*** doubtless its results contributed largely to our final success, by exhibiting the power of the United States even outside our country, and proving to the Indians that Mexico could no longer afford them a safe harbor after their raids into Texas." (Pet. Ex. No. 5-A)

28. Reservation life and the attempt to cultivate the soil involved a great change in the habits of the Kickapoo. They were supplied with farm equipment by the United States Agent and the first year they cultivated 63 acres. However, Agent Woodard reported in 1876 that even though the Kickapoos had "raised fine crops of corn, beans, pumpkins, and melon", they were restless and hard to satisfy and threatened to go back to Mexico if certain demands were not complied with. More specifically they claimed that certain treaty stipulations or conditions upon which they agreed to leave Mexico had "not been complied with, i.e., presents to chief Che-gnaw-me-ko-ho-ko to the amount of \$500, and Mas-que-to's band, who have never received anything in the way of presents." (Pet. Ex. No. 10-A)

In 1880, the Kickapoo Agent, referring to the Kickapoo "on their reservation" reported that they had "considerable land under cultivation," and were then breaking and fencing new ground and digging wells. He estimated that they would produce that year 8,000 bushels of corn and 50 tons of hay. (Pet. Ex. No. 11-A) This was done with United States Government help but their agent constantly endeavored to impress upon their minds "that the time is not far distant when they will be

compelled to support themselves without aid from the government". (Pet. Ex. No. 11-A) This Government aid was necessary to enable the Kickapoos to subsist in Oklahoma during the years following their removal from Mexico and such aid had been promised to the Kickapoos by the Government as an inducement to persuade them to leave Mexico and settle "on their reservation".

29. In accordance with the promises of the United States Commissioners the Kickapoos had been placed on a tract of land in the Indian Territory. However, they were somewhat dissatisfied because the Government had taken no steps to secure their title to this land prior to 1883. Because of the discontent of the Indians with that situation, on August 15, 1883, the President issued an executive order which set apart the tract they were then occupying, describing said tract by metes and bounds, for the permanent use and occupancy of the Kickapoo Indians.

Said order is as follows:

It is hereby ordered that the following-described tract of country in the Indian Territory, viz: Commencing at the southwest corner of the Sac and Fox Reservation; thence north along the western boundary of said reservation to the Deep Fork of the Canadian River; thence up said Deep Fork to the point where it intersects the Indian meridian; thence south along said Indian meridian to the North Fork of the Canadian River; thence down said river to the place of beginning, be, and the same hereby is, set apart for the permanent use and occupation of the Kickapoo Indians. (Pet. Ex. No. 13-A)

Commenting on this executive order, the Commissioner of Indian Affairs, in his annual report of 1883, declared (Pet. Ex. No. 14-A):

Although lands were promised them no steps were taken to secure them in possession of the lands which they have continued to occupy. Inasmuch as the insecurity of their title was a source of uneasiness and discontent an Executive Order

was issued August 15, 1883, setting apart for their permanent use and occupation a tract of land west of the Sac and Fox Reservation in the Indian Territory, sufficient for their present and future wants.

This tract (Royce Area 650) was part of an area ceded to the United States by the Creek Nation in 1866, to comply with "the desire of the United States to locate other Indians and freedmen thereon," the lands "to be sold and used as homes for such other civilized Indians as the United States may choose to settle thereon" (14 Stat. 785, 786). In officially setting apart this tract as a reservation for the Kickapoo Indians, the President of the United States was defining the limits of the area which had earlier been authorized by Acts of Congress.

30. It is concluded that the tract so set aside by the Executive Order of August 15, 1883, was granted to the Kickapoo Indians pursuant to the fulfillment of a gratuitous promise made by the United States to the Kickapoo Indians, which promise was subject to the condition that said Indians remove from Mexico to the United States and settle on a tract so designated by the United States. This territorial gratuity became effective as of the date the Kickapoos took possession of it, that is, the early autumn of 1874. The value of said tract as of October 1, 1874 is a proper offset against the award in this case.

31. Kickapoo title to the tract described in the executive order was extinguished by an agreement between the United States and the Kickapoo Tribe in the Indian Territory concluded September 9, 1891, and ratified by the Act of March 3, 1893 (27 Stat. 557). This agreement provided for the absolute cession of all the Kickapoo's "claim, title and interest of every kind and character in and to" said tract. In

consideration of this cession the United States agreed to allot to each member of the tribe in the Indian Territory, 80 acres of land "in said tract of country", the titles to be held in trust in accordance with the provisions of the General Allotment Act of February 8, 1887. In addition "and as the only further consideration to be paid for the cession and relinquishment of title" the United States agreed to distribute among the Kickapoo Indians the sum of \$64,650, less \$50 for each allotment in excess of 300. Pursuant to this agreement, 22,166.25 acres were allotted among 279 Indians.

The 1893 Act further provided that when the lands ceded should be opened to settlement they should be disposed of only to actual settlers under the provisions of the homestead and townsite laws, subject to the payment by the homesteaders of the sum of \$1.50 per acre, (27 Stat. 563).

32. In the period 1906-1908, the Oklahoma Kickapoo asserted a claim against the United States to the effect that the United States owed them the difference between the \$1.50 per acre for which the United States sold the 183,965 acres ceded under the 1893 agreement and the \$.32½ per acre which the Kickapoo received under that agreement. This difference amounted to approximately \$215,000, (Def. Ex. No. 25, pp. 16-17). Consequently, by the Act of April 30, 1908, Congress appropriated the sum of \$215,000 for the Oklahoma Kickapoo and paid said sum to trustees for the Indians (35 Stat. 89-90; Tr. 150).

The reservation itself being a gratuity and the value thereof as of October 1, 1874 having been allowed as an offset under Finding

of Fact No. 30 herein, any sums received for said lands subsequent to that date are not proper offsets.

33. As heretofore found, under the treaty of May 18, 1854, the Kickapoo tribe retained a reservation in Kansas comprising 150,000 acres. The treaty of June 28, 1862 (13 Stat. 623) provided for the distribution of part of the reservation in severalty among those who desired it and the setting apart of part of the reservation for those who desired to hold lands in common. Under this same treaty the Atcheson and Pike's Peak Railroad Company was given the option to purchase the remainder of the Kickapoo land at \$1.25 per acre provided they constructed a railroad line from Atcheson, Kansas, to the western boundary of the Kickapoo Reservation within a specified time.

Lands still held in common by the Kickapoo Tribe in Kansas were subsequently distributed in severalty pursuant to the General Allotment Act of 1887 (24 Stat. 388). A total of 19,907.28 acres was distributed among 237 allottees. The Act provided for the United States to

*** hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom the allotment shall have been made. (24 Stat. 389)

The Act also provided that the President of the United States, in his discretion, could extend this period.

In giving the background of the situation which existed among the Kansas Kickapoo in 1938, Land Agent George G. Wren wrote as follows:

The present reservation, situated in southern Brown County, Kansas, west of Horton, was allotted under the Act of January 26, 1887 (24 Stat. L., 1069). Trust patents, with the trust period designated as twenty-five years, were issued to

237 allottees who received a total of 19,907.28 acres. Before the expiration of the trust period, policy patents in fee were issued to a number of these Indians against their wishes. This action was based solely upon the reports of government representatives, competency commissions, who visited the jurisdiction and investigated the apparent ability of the Indians to manage their own affairs comparably with whites. However, the majority of allotments alienated from Indian ownership were through voluntary fee patents. This was a result of a local policy of liberal recommendations for fee patents to Indians, whom, subsequent development has revealed, should have retained their land in trust.

This liberality in removal of restrictions on trust lands enabled the government to effect administrative economies through consolidation of the Kickapoo Agency at Horton with the Potawatomi Agency at Mayetta. As a result of this the Indians of the Kickapoo Tribe have been neglected to an appreciable extent.

The desire of local whites to have Indian lands placed on the county tax rolls unquestionably became a factor in the government policy of approving fee patented applications *** (Def. Ex. 30-B, p. 13)

Agent Wren went on to say that the desire of local whites to have the Indian lands on the tax roll was a significant factor in causing the U. S. policy of approving fee patented applications. The result of this government policy was that certain unscrupulous whites,

*** promptly negotiated with Indians to either sell their lands outright or to mortgage them for sums which, although below the actual value of the lands, can never be repaid by the Indian borrowers.

Agent Wren reported that the Kickapoos did all right during the period of prosperity after World War I but as a result of the depression they soon became destitute and many were saved from starvation by work projects started by the Indian Service during the winter of 1933-34. Wren stated that at this time (1938) very few of the Kickapoos had been able to retain any equity in patented lands and that practically all

the land in Indian ownership on the Kickapoo reservation was held in trust. Wren quotes Superintendent Bruce as saying that there are now about 25 families of Kickapoos for whom land should be purchased.

Of the 237 allotted tracts only 75, comprising 1,439 acres, were still held in trust in 1938. There were 25 landless families for whose benefit the Government proposed to acquire lands pursuant to the Act of June 18, 1934 (48 Stat. 984). Accordingly, between 1939 and 1941 the defendant purchased 8 tracts of land totaling approximately 966 acres for a cost of \$44,000. Title was taken by the United States in trust for the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas, (Def. Ex. Nos. 30b, 30d; 16, 16b; Tr. 78, 79, 81, 107, 108). This expenditure of \$44,000 is a proper offset under the Indian Claims Commission Act.

34. The defendant paid depredation judgments against the Kickapoo Tribe of Indians out of public funds appropriated for that purpose between fiscal years 1899 and 1917 in the total amount of \$49,916.00 as itemized in Schedule 5 of the GAO Report, (Def. Ex. No. 16, p. 25). However, in accordance with the earlier decisions of this Commission on this point these depredation judgments must be disallowed as offsets against the award in this case.

35. In 1875 a total amount of \$770.07 was disbursed out of an appropriation for "Civilization and Subsistence of Indians of the Central Superintendency" for the benefit of Kickapoo Indians. The items purchased are listed in Schedule 2 of the GAO Report (Def. Ex. No. 16, pp. 11-12). This disbursement was for agricultural aid, agricultural imple-

ments and equipment, hardware items, household equipment and supplies, and provisions. Disbursements in the amount of \$10.59 for harness leather, rope, nails, and household supplies indicate an individual or educational use. It is not, therefore, a proper offset. The remaining \$759.48 was expended for items purchased for the tribal use of the Kickapoo Indians and is allowable as an offsettable gratuity.

36. In 1856 the defendant expended the sum of \$200.00 in agricultural implements and equipment for Kickapoo Indians out of an appropriation for "Presents to Indians". The supporting vouchers for these items recite: "Merchandise as presents for Kickapoo Indians delivered ***." and "presents for Kickapoo Indians delivered on K. Res." (Def. Ex. 32) The vouchers show the delivery of a sufficient quantity of equipment such as hoes, axes and plows to constitute a tribal benefit. This expenditure constitutes an offsettable gratuity in the amount of \$200.00, (Def. Ex. No. 16, p. 35).

37. In fiscal year 1856, the sum of \$600.22 was disbursed out of an appropriation for "Provisions for Indians." The vouchers show that the following provisions were delivered to the Kickapoo Indians.

Bacon	3,610 lbs.	\$282.77
Coffee	365 lbs.	56.75
Sugar	509 lbs.	53.40
Flour	45 sacks	<u>207.50</u>

\$600.42

The above provisions were listed on two vouchers. The first, dated March 26, 1856, was titled "Provisions for destitute Kickapoo Inds" and in the amount of \$300.07. The second, dated May 31, 1856, was for

"Provisions for Kickapoo Indians" in the amount of \$300.15. We conclude that the expenditure for "Provisions for destitute Kickapoo Inds" was for the benefit of a certain class of Kickapoos rather than the tribe as a whole. It is, therefore, disallowed as an offset. The expenditure of \$300.15 for "Provision for Kickapoo Indians" is allowed as an offset. It is observed that there is a \$.20 error between the costs of the various provisions as itemized and the amount disbursed under the vouchers.

38. Following the fiscal year 1875 the defendant expended the total sum of \$96,817.34 for aid, services, implements, various supplies, equipment and provisions for the benefit of the Mexican or Oklahoma Kickapoos. They are itemized as follows:

Agricultural aid:	
Clearing, breaking and fencing land	\$ 6,805.49
Digging wells and well equipment	1,190.02
Farm buildings	481.52
Pay of farm laborers	553.31
Planting and harvesting crops	76.99
Seeds, fruit trees and fertilizer	670.42
Agriculture implements and equipment	13,386.05
Clothing	360.94
Expenses of Indian Delegations:	
Board and lodging	1,085.10
Transportation	578.75
Fuel and light	6.90
Hardware, glass, oils and paint	1,071.03
Household equipment and supplies	1,675.90
Hunting and fishing equipment	14.55
Indian dwellings	5,222.67
Indigent Indians:	
Funeral expenses	25.00
Livestock:	
Feed and care of	292.69
Purchase of	17,810.58
Recovery of strayed or stolen	73.00
Mills and shops:	
Blacksmith shops	1,236.41
Miscellaneous building material	478.00

Pay of blacksmiths	19,150.91
Pay of carpenters	278.00
Pay of herders and stockmen	255.84
Provisions	23,928.92
Surveying and allotting	59.00
Miscellaneous expense	49.35
Agriculture and stock raising	
	<u>\$96,817.34</u>

The details of the above disbursements by fiscal years are itemized in Schedules 3 and Schedules 11 through 16 of defendant's Exhibit 16, pp. 69-151. All of these expenditures were made out of appropriations restricted to the support of Indians or Kickapoos with two exceptions: Under Schedule 11 (Def. Ex. 16, p. 72) 8,270 pounds of flour were purchased out of an appropriation for "Civilization and Subsistence of Indians ***" and, under Schedule 12, (Def. Ex. 16, p. 73) 200 head of livestock were purchased out of the "Osage Civilization Fund." Both were important items of support and constituted tribal benefits to the Kickapoos. Photostats of all of the original accounts and records supporting the above Schedules were not introduced in evidence. However, photostats of supporting records for each Schedule of disbursements were introduced in evidence to illustrate all of the accounts and records. All of the original accounts and records are available at the General Accounting Office.

After an examination of each of the items included in the above Schedules, the Commission makes the following specific findings respecting offsets:

(a) \$9,777.75 - Agricultural Aid

The Commission finds that expenditures totalling \$9,147.45 for

clearing, breaking and fencing land, digging wells and well equipment, farm buildings, and for seeds, fruit trees and fertilizer are proper offsets. Disbursements in the amount of \$630.30 for pay of farm laborers and planting and harvesting crops were agency expenses and, therefore, not proper offsets.

(b) \$13,386.05 - Agriculture Implements and Equipment

Purchases of these items were made in substantial quantities for the benefit of the entire tribe. They constitute, therefore, proper offsets.

(c) \$360.94 - Clothing

Expenditures in the amount of \$77.19 were made for single items of clothing which were an individual rather than a tribal benefit. This amount is, therefore, not a proper offset. The remaining \$283.75 is a proper offset.

(d) \$1,663.85 - Expenses of Indian Delegations

Disbursements for a total of \$1,051.90 were for board, lodging and transportation of Indian delegations which were carrying out tribal business. This is a proper offset. The purpose of the Indian delegations for which the remaining \$611.95 was expended has not been shown. This amount, therefore, is disallowed as an offset.

(e) \$6.90 - Fuel and Light

The size of this disbursement indicates that it was not expended for the benefit of the tribe. It is disallowed as an offset.

(f) \$1,071.03 - Hardware, Glass, Oils and Paint

Purchase of these items were made in substantial quantities for the benefit of a large number of Indians. This expenditure is, therefore, a tribal benefit and is a proper offset.

(g) \$1,675.90 - Household Equipment and Supplies

Purchases of these items were made in sufficient quantities to indicate a tribal benefit. This expenditure is, therefore, a proper offset.

(h) \$14.55 - Hunting and Fishing Equipment

This expenditure indicates tribal use and is, therefore, a proper offset.

(i) \$5,222.67 - Indian Dwellings

The purchase of these items were in sufficient quantities to indicate that a large number of Indian dwellings were benefited by this expenditure. It is, therefore, a tribal benefit and a proper offset.

(j) \$25.00 - Indigent Indians: Funeral Expense

The amount and nature of this disbursement indicates that it was for the benefit of an individual Indian. It is not a proper offset.

(k) \$18,176.27 - Livestock: Feed and Care of, Purchase of, Recovery of

Three separate transactions for the purchase of two hogs, two mules, and one mule were made amounting to a total of \$258.40. These purchases were obviously for the benefit of single individuals rather than the tribe as a whole. This amount is disallowed as an offset. The remaining \$17,917.87 was expended for the benefit of the entire tribe. It is a proper offset.

(l) \$1,236.41 - Mills and Shops: Blacksmith Shops

The expenditures under this category were for supplies for the blacksmith shops. It also includes \$15.00 for an addition to the blacksmith's quarters and another \$111.65 for the erection of a blacksmith shop. These facilities were maintained primarily as an agency or administrative service. These items are, therefore, not proper offsets.

(m) \$478.00 - Miscellaneous Building Material

This expenditure was for 20,000 ft. of flooring and 5,000 ft. of lumber. It was itemized separately from the category of "Indian Dwellings" under which similar material used for building or repairing Indian homes was listed. It was, therefore, probably used for agency purposes and is not a proper offset.

(n) \$19,150.91 - Pay of Blacksmiths

The blacksmith was primarily a part of the agency administrative service. This item is not a proper offset.

(o) \$278.00 - Pay of Carpenters

These employees were primarily a part of the agency or administrative service. This expenditure is not a proper offset.

(p) \$255.84 - Pay of Herders and Stockmen

These services were primarily a part of agency or administrative services. These disbursements are, therefore, not proper offsets.

(q) \$23,928.92 - Provisions

All of these expenditures were made for substantial quantities of provisions for the support of the entire tribe, except one disbursement

for \$20.00. We find that the remaining \$23,908.92 is a proper offset. The \$20.00 purchase of one cured beef was not a tribal benefit and, therefore, not a proper offset.

(r) \$59.00 - Surveying and Allotting

We find this expense to be an administrative expense and not a proper offset.

(s) \$49.35 - Miscellaneous Expense: Agriculture and Stock Raising

The type of items purchased by these expenditures indicate a tribal benefit. It is a proper offset.

Based on the findings made above we conclude that of the \$96,817.34 expended by defendant for the benefit of the Mexican or Oklahoma Kickapoos, \$73,729.44 was expended for items which are proper offsets. The remaining \$23,087.90 is disallowed.

39. Disbursements for the transportation of various supplies itemized in Schedule 10 of defendant's exhibit 16 were made out of appropriations for "Transportation of Indian Supplies", which the records indicate were for the Kickapoo Indians. The transportation charges for sundry supplies and articles then essential to all phases of farm life are itemized in categories and cover the period from fiscal year 1881 through 1899 (Def. Ex. No. 16, pp. 49-67) for a total transportation cost of \$845,74. Transportation charges of \$193.85 were not traceable to the purchases and, therefore, are omitted. This leaves transportation charges of \$651.89 on items which were traced to their purchase. Of this amount \$636.41 were traced to items purchased out of treaty

funds of the Kickapoo Indians arising out of Article 2 of the Treaty of May 18, 1854 (10 Stat. 1078) and Articles 5 and 11 of the Treaty of June 28, 1862 (13 Stat. 623). Transportation expenditures of \$15.48 were for articles which were traced to pages 85, 87 and 95 of Schedule 14 of the GAO Report (Def. Ex. No. 16). Of this amount \$14.02 is disallowed as an offset because the items transported were disallowed as gratuities. The remaining \$1.46 is a proper offset.

- Under these treaties the United States had an implied obligation to pay transportation expenses or shipping charges on Indian supplies purchased by treaty funds or funds arising from the result of the treaties. Therefore, the \$636.41 transportation expenditure traced to treaty purchases or the four percent fund is not allowable as an offset. This makes the total offset under Schedule 10 of \$1.46.

40. The disbursements itemized in Schedule 17 of the GAO Report (Def. Ex. No. 16, pp. 152-173) were all made out of appropriations for "Transportation of Indian Supplies". The records indicate that these supplies, which are also itemized in Schedule 17 of the GAO Report, were for the Mexican Kickapocs. These transportation expenses were incurred between fiscal years 1877 and 1900 and totaled \$2,829.37. Since \$975.51 of these expenses were not traceable to the purchases, they were omitted. Of the remaining \$1,853.86 a total of \$466.88 was expended for the transportation of items purchased under Article 2 of the Treaty of May 18, 1854, and Article 4 of the Treaty of June 28, 1862. Under these treaties the United States had an implied obligation to pay transportation or shipping expenses for these items. Consequently, expenditures for these

transportation charges do not constitute a proper offset. These treaty purchases are accounted for in Schedules 1 and 6, at pages 32-35, 82 and 84 of the GAO Treaty Report, (Def. Ex. No. 17).

The remaining transportation costs and disbursements of \$1,386.98 were traced to items purchased by expenditures from non-treaty funds. Of this amount we find that \$124.58 was expended for the transportation costs of supplies for blacksmith shops which we have disallowed as offsets in Finding of Fact No. 38. Therefore, this amount is not a proper offset. We find that the sum of \$1,262.40 transportation costs for items purchased from non-treaty funds is a proper offset.

In conclusion we find that under Schedule 17 of the GAO Report transportation expenditures in the amount of \$1,262.40 are allowable as offsets.

41. In summation, the offsets herein allowed are as follows:

- (a) Finding No. 30 - The value of the Oklahoma reservation
as of October 1, 1874
- (b) Finding No. 33 - \$ 44,000.00
- (c) Finding No. 35 - 759.48
- (d) Finding No. 36 - 200.00
- (e) Finding No. 37 - 300.15
- (f) Finding No. 38 - 73,729.44
- (g) Finding No. 39 - 1.46
- (h) Finding No. 40 - 1,262.40

The total offsets comprise \$120,252.93 in cash and the fair market value of the Oklahoma reservation referred to herein as of the early autumn of 1874.

The nature of the claim and the entire course of dealings between the parties do not warrant disallowing any of the above offsets. However, before the final award can be determined in this docket, it will be necessary to have a further hearing in which the fair market value of this reservation can be determined as of October 1, 1874.

Arthur Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner