

BEFORE THE INDIAN CLAIMS COMMISSION

| | | |
|-------------------------------|---|----------------|
| OTTAWA-CHIPPEWA TRIBE OF |) | |
| MICHIGAN, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Docket No. 364 |
| |) | |
| THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |

Decided: April 1, 1977

ADDITIONAL FINDINGS OF FACT

The Indian Claims Commission makes the following findings of fact, which are in addition to findings numbered 1 through 9 made herein on May 9, 1973 (30 Ind. Cl. Comm. 288):

10. Claims of Plaintiff.

Plaintiff's petition, filed with the Indian Claims Commission on August 13, 1951, alleged five claims. The first and fifth have been dismissed by prior order of the Commission (35 Ind. Cl. Comm. 417). Facts pertinent to the remaining claims are found in the following findings.

11. Second Claim -- Accounting Under Articles 1 and 2 of 1855 Treaty.

The second claim is for an accounting under the last clause of Article 1 and each of the five clauses of Article 2 of the treaty of July 31, 1855, 11 Stat. 621. The defendant rendered an accounting in the form of a report of the General Accounting Office dated March 21, 1952. This report was filed herein, by order of the Commission, on February 14, 1974 (33 Ind. Cl. Comm. 142). It has been admitted in evidence by the

pretrial order, and is designated def. ex. 1. For convenience, we refer to it as "the GAO report."

12. Issues Limited by Pretrial Order.

The plaintiff filed exceptions to defendant's accounting on April 1, 1974. After various motions were filed by the parties, and preliminary adjudications made by the Commission, a pretrial conference was held, and an order was entered on April 9, 1975, with the approval of both parties, specifying the matters remaining in issue. Those matters are covered in the subsequent findings, in the same order they are discussed in the accompanying opinion.

13. Article 1, Last Clause -- Payment of Indians' Debts.

The last clause of Article 1 of the Treaty of July 31, 1855, as amended by the Senate, 11 Stat. 621, 627, provided for the payment of just indebtedness of the Indians up to \$40,000. Any of this \$40,000 which might remain after payment of such debts was to be paid to the plaintiff or expended for its benefit.

The Government's accounting under this clause showed that \$40,000 was expended for payment of debts. Plaintiff excepted to the accounting, but the exception was dismissed by the Commission (35 Ind. Cl. Comm. at 396, 418). The dismissal was reaffirmed, with plaintiff's approval, in the pretrial order. Accordingly, this portion of the second claim is no longer before the Commission.

14. Article 2, First Clause -- \$80,000 for Education.

In the first clause of Article 2 of the Treaty of 1855, the United States promised to expend \$80,000 for education purposes in ten equal annual installments. The actual amounts annually expended by the United States for education pursuant to the treaty were (GAO report 106-118):

| <u>Fiscal Year</u> | <u>Amount</u> |
|--------------------|--------------------|
| 1857 | \$ 3,972.74 |
| 1858 | 4,495.50 |
| 1859 | 3,682.81 |
| 1860 | 8,590.39 |
| 1861 | 7,825.24 |
| 1862 | 8,877.04 |
| 1863 | 8,076.48 |
| 1864 | 9,575.12 |
| 1865 | 6,601.96 |
| 1866 | 6,629.95 |
| 1867 | 4,236.00 |
| 1868 | 3,096.91 |
| 1869 | 2,022.44 |
| 1870 | 2,510.00 |
| 1871 | 897.65 |
| TOTAL | <u>\$81,090.23</u> |

The record contains no evidence of damage to plaintiff from defendant's irregular payments, as above shown.

15. Article 2, Second Clause -- \$75,000 for Agricultural Implements, etc.

In the second clause of Article 2 of the Treaty of 1855, the United States promised to expend:

Seventy-five thousand dollars to be paid in five equal annual installments of fifteen thousand dollars each in agricultural implements and carpenters' tools, household furniture and building materials, cattle, labor, and all such articles as may be necessary and useful for them in removing to the homes herein provided and getting permanently settled thereon.

The GAO report does not separately list expenditures under the second clause; but defendant's counsel prepared a schedule (def. ex. 182) listing all expenditures on Disbursement Schedule No. 12 of the report which he deemed not applicable to any other provision of the treaty. The categories and totals on the schedule so prepared are as follows:

| | |
|--|-----------------|
| *Agricultural aid | \$ 1,337.47 |
| Agricultural implements and equipment | 14,476.18 |
| *Clothing | 40,560.01 |
| *Expenses of allotting lands | 150.00 |
| *Feed and care of livestock | 72.50 |
| *Fish barrels | 136.52 |
| Hardware | 1,590.69 |
| Household equipment | 2,634.22 |
| Indian building | 36.46 |
| *Medical attention | 250.00 |
| Miscellaneous building materials | 2,740.03 |
| Pay of farmers | 1,350.00 |
| Pay of gunsmiths | 210.00 |
| Pay of other mechanics | 250.00 |
| *Provisions and rations | 5,750.45 |
| *Removal of Indians | 1,404.41 |
| Supplies for other shops | 74.06 |
| Work and stock animals | <u>6,669.26</u> |
| | \$79,692.26 |

The plaintiff has challenged the legality of the items we have marked with asterisks. These items total \$49,661.36.

The Commission finds that the above listed expenditures were made as indicated; that all were for purposes proper under Article 2, second clause, except the item of \$150.00 for "Expenses of allotting lands"; and that eliminating this item, the expenditures for proper purposes still exceed the obligation of the United States under said clause of the treaty.

16. Article 2, Third Clause -- \$42,400 for Blacksmith Shops.

In the third clause of Article 2 of the Treaty of 1855, the United States promised to expend \$42,400 ". . .for the support of four blacksmith-shops for ten years." The actual amounts expended by the United States pursuant to this clause are as follows:

| <u>Fiscal Year</u> | <u>Blacksmith Shop Supplies</u> | <u>Pay of Blacksmiths and Assistants</u> | <u>Shops and Equip. Blacksmith Shops</u> |
|--------------------|---------------------------------|--|--|
| 1857 | \$ 1,976.58 | \$ 2,730.00 | \$762.03 |
| 1858 | 158.75 | 2,716.84 | |
| 1859 | 1,470.39 | 3,550.00 | |
| 1860 | 942.22 | 2,847.35 | |
| 1861 | 561.70 | 2,005.00 | |
| 1862 | 1,126.46 | 3,779.99 | |
| 1863 | 1,010.74 | 2,401.51 | |
| 1864 | 1,176.71 | 3,600.00 | |
| 1865 | 1,271.11 | 3,015.00 | |
| 1866 | 982.49 | 2,580.00 | |
| 1867 | 1,024.73 | 2,686.00 | |
| 1868 | 4.04 | 198.90 | |
| TOTALS: | \$11,705.92 | \$32,110.59 | \$762.03 |

The total expenditure for blacksmith shops was \$44,578.54 and in excess of the \$42,400 required by the Treaty of 1855.

17. Article 2, Fourth Clause -- \$306,000 in Coin, Plus Interest, for Per Capita Distribution.

In the fourth clause of Article 2 of the Treaty of July 31, 1855, the United States promised to pay to the Ottawa and Chippewa Indians of

Michigan:

The sum of three hundred and six thousand dollars in coin, as follows: ten thousand dollars of the principal, and the interest on the whole of the last-mentioned sum remaining unpaid at the rate of five per cent annually for ten years, to be distributed per capita in the usual manner for paying annuities. And the sum of two hundred and six thousand dollars remaining unpaid at the expiration of ten years, shall then be due and payable, and if the Indians then require the payment of said sum in coin the same shall be distributed per capita in the same manner as annuities are paid, and in not less than four equal installments.

18. Usual Manner for Paying Annuities.

Between 1855 and 1872 the Ottawas and Chippewas of Michigan consisted of 49 or 50 bands of Indians living on 14 reservations scattered about the state and accessible only over primitive roads, or by water transportation when the waterways were not frozen. The distribution of the annuity moneys to plaintiff's members took several weeks at a minimum. Def. exs. 35 at 486, 488; 36 at 494; 264.

The usual manner for paying annuities was for the United States Indian agent to take the money with him to various Indian communities. Def. exs. 31, 33, 264. There he would pay it to the chiefs, headmen, heads of families, and individuals without families, who would receipt by making their marks on a payroll. ^{1/} Indians from outlying areas came to

^{1/} The following defendant's exhibits are the payrolls or parts of the payrolls for installments due in the calendar years indicated:

| | | |
|----------------------|----------------|----------------|
| 1856 - No. 238 | 1861 - No. 243 | 1866 - No. 116 |
| 1857 - No. 239 | 1862 - No. 250 | 1867 - No. 117 |
| 1858 - No. 240 | 1863 - No. 276 | 1868 - No. 118 |
| 1859 - No. 241 | 1864 - No. 277 | 1869 - No. 119 |
| 1860 - Nos. 242, 248 | 1865 - No. 279 | 1870 - No. 120 |
| | | 1871 - No. 123 |

the places of payment in boats and canoes, which involved considerable hardship when payment was delayed into November. Def. ex. 31. Some of the places of payment were Point Iroquois, Sugar Island, Grand Traverse, Little Traverse, Mackinac, Pentwater, and Garden Island. Def. exs. 36 at 494, 241.

19. Amount of Payments 1856-1862.

The following payments were made, in coin, on account of installments due in the calendar years 1856 through 1862. Citations of the acts of Congress appropriating money for the payments are included in the tabulation:

| <u>Year</u> | <u>Appropriation Act</u> | <u>Principal</u> | <u>Interest</u> |
|-------------|---|------------------|-----------------|
| 1856 | Aug. 18, 1856, c. 128, 11 Stat. 65, 73 | \$10,000 | \$14,800 |
| 1857 | Mar. 3, 1857, c. 90, 11 Stat. 169, 178 | 10,000 | 14,300 |
| 1858 | May 5, 1858, c. 29, 11 Stat. 273, 280 | 7,000 | 13,800 |
| 1859 | Feb. 28, 1859, c. 65, 11 Stat. 388, 396 | 10,000 | 13,300 |
| 1860 | June 19, 1860, c. 157, 12 Stat. 44, 52 | 10,000 | 12,800 |
| 1861 | Mar. 2, 1861, c. 85, 12 Stat. 221, 227 | 10,000 | 12,300 |
| 1862 | July 5, 1862, c. 135, 12 Stat. 512, 519 | <u>10,000</u> | <u>11,800</u> |
| | Totals: | \$67,000 | \$93,100 |

20. Times of Completion of Payments -- 1850-1862.

The annual payments shown above were completed at the following times:

| | |
|------|---|
| 1856 | Fourth quarter of calendar year (def. ex. 238). |
| 1857 | All but Indians at Mackinac, November 14, 1857. Indians at Mackinac, May 13, 1858 (def. ex. 239). |
| 1858 | December 21, 1858 (def. ex. 240). ^{2/} |

^{2/} Short payment, only \$20,800.00 paid.

1859 Indians at:

| | | |
|-----------------|---|---------------|
| Point Iroquois | - | Sept. 6, 1859 |
| Sugar Island | - | Sept. 8, 1859 |
| Grand Traverse | - | Oct. 7, 1859 |
| Little Traverse | - | Oct. 13, 1859 |
| Mackinac | - | Oct. 21, 1859 |
| Pentwater | - | Nov. 14, 1859 |

(def. ex. 241).

1860 December 31, 1860 (def. ex. 242).

1861 December 31, 1861 (def. ex. 243).

1862 December 27, 1862 (def. ex. 250).

More exact dates of payment than those stated above are not contained in the record.

21. \$3,000 Diverted from 1858 Principal Payment for Surveying and Locating Lots.

Congress appropriated a full \$10,000 for the 1858 principal payment, by the Act of May 5, 1858, c. 29, 11 Stat. 273, 280; but only \$7,000 of this sum was paid to plaintiff, \$3,000 having been diverted for the purpose of surveying and locating lots. See GAO report, pages 94, 106.

22. Paper Currency Issued Under Legal Tender Act.

By the Act of February 25, 1862, c. 33, 12 Stat. 345, known as the Legal Tender Act, Congress provided for the issuance of one hundred and fifty million dollars of United States notes, not redeemable for anything else, and made them, with certain exceptions, lawful money and a legal tender in payment of all debts, public and private, within the United States. Said notes were issued as provided by law and became the common currency of the country; and gold and silver coins ceased to be a circulating medium of exchange.

23. Obligation of Government Under Article 2, Fourth Clause, to pay Plaintiff in Coin Interpreted by Executive and Congress to Survive Legal Tender Act.

Both the Executive and the Congress acknowledged that the Government's obligation under Article 2, fourth clause, to pay in coin survived the Legal Tender Act. This acknowledgment was made by the Departments of the Treasury and the Interior in 1862 by issuing coin and distributing it to the Indians in payment of that year's annuity subsequent to enactment of the Legal Tender Act (see def. exs. 250, 255, 256); by the Department of the Interior again in 1865 (see letter quoted below in Finding 27); and by Congress in the Acts of April 10, 1869, c. 16, 16 Stat. 13, 27; July 15, 1870, c. 296, 16 Stat. 335, 337, 348; and March 3, 1871, c. 120, 16 Stat. 544, 557.

24. Appropriations 1863-1871.

Congress appropriated the following amounts under Article 2, fourth clause, in the calendar years beginning with 1863 and ending with 1871:

| <u>Year</u> | <u>Appropriation Act</u> | <u>Principal</u> | <u>Interest</u> |
|-------------|------------------------------------|------------------|-----------------|
| 1863 | Mar. 3, c. 99, 12 Stat. 774, 781 | \$ 10,000 | \$11,300 |
| 1864 | June 25, c. 148, 13 Stat. 161, 168 | 10,000 | 10,800 |
| 1865 | Mar. 3, c. 126, 13 Stat. 541, 547 | 10,000 | 10,300 |
| 1866 | July 26, c. 266, 14 Stat. 255, 261 | | 10,300 |
| 1867 | Mar. 2, c. 173, 14 Stat. 492, 504 | | 10,300 |
| 1868 | July 27, c. 248, 15 Stat. 198, 211 | 51,500 | 7,725 |
| 1869 | Apr. 10, c. 16, 16 Stat. 13, 27-28 | 51,500 | 5,150 |
| 1870 | July 15, c. 296, 16 Stat. 335, 348 | 51,500 | 2,575 |
| 1871 | Mar. 3, c. 120, 16 Stat. 544, 557 | <u>51,500</u> | |
| | Totals: | \$236,000 | <u>\$68,450</u> |

In addition, Congress made an appropriation in 1870 to pay the difference between the coin value of currency payments made in 1863 and 1864 and the amounts due in coin, with interest. The facts connected with this appropriation are stated in Finding 31, below.

25. Two-Year Interval in 1866 and 1867 Between First Ten Installments and Beginning of Final Distribution of Principal.

No appropriation, or payment, was made from principal in each of the calendar years 1866 and 1867. The ten annual installments of principal provided for in the Treaty of 1855 had been completed in 1865, with the shortages indicated elsewhere in these findings; and according to the terms of Article 2, fourth clause:

. . . [\$206,000] . . . shall then be due and payable, and if the Indians then require the payment of said sum in coin the same shall be distributed per capita in the same manner as annuities are paid, and in not less than four equal annual installments.

Concerning whether or not the Indians then required payment of the principal, the record shows the following:

Some of the chiefs at Grand Traverse and Little Traverse proposed to the "Great Father" in January of 1866 that the Government retain the balance due under the Treaty of 1855 and pay interest on it from year to year. Def. exs. 262, 263. Many, if not most of plaintiff's other members, agreed with this proposal; but those at Sault Ste. Marie wished to receive their share of the unpaid balance in cash at one payment. Def. ex. 264.

The Commissioner of Indian Affairs on February 16, 1866, ordered the U.S. Indian Agent at Detroit to canvass the Indians so they might be in position to reach a determination at a convention to be held in Michigan the coming spring, with a view to modifying the 1855 treaty or making a new treaty. Def. ex. 265. The record fails to show that the proposed convention was ever held.

The Department of the Interior did not submit an estimate to Congress for payment of any part of the remaining principal in 1866 or 1867, for the reason that it contemplated entering into a new treaty with the plaintiff Indians, in which case it was expected that they would desire the balance to be applied differently from what was stipulated in the 1855 treaty. Def. ex. 132.

On August 28, 1867, the United States Indian Agent in Michigan reported as follows (def. ex. 40 -- Report, Commissioner of Indian Affairs for 1867, at 338):

These Indians also complain of the small amount paid them as annuity last year, and of the limited sum they are to receive this year. They insist that they should have had the first instalment last year of the \$206,000 still due them by the treaty and made payable in not less than four equal annual payments, and that the second instalment should have been paid this fall, which they very much needed. . .

The record further shows that in 1869 the majority of the chiefs and members of the Sault Ste. Marie, Sugar Island and Mission bands were satisfied with the 1855 treaty provisions for payment of the principal in four annual installments in coin. Def. ex. 267. It also shows that prior to April 21, 1870, a chief stated that the Indians of the Grand Traverse

region wished the money still due them to be paid in two annual payments. Def. ex. 268.

The Commission finds the record inadequate to ascertain the wishes of a majority of the plaintiff's members in regard to final distribution of the principal due under Article 2, fourth clause. Under these circumstances the presumption of regularity attaches to the acts of defendant's Congress and agents in appropriating and paying interest only in 1866 and 1867 and in not starting to distribute the principal until 1868.

26. 1863 and 1864 Payments.

Distribution of the 1863 installment was made to plaintiff, in currency, in the face amount of the appropriation, between July 6 and December 9, 1863 (July 6 - date funds were advanced to agent per def. ex. 281; December 9 - date on completed payroll receipt, def. ex. 276).

Distribution of the 1864 installment was made to plaintiff, in currency, in the face amount of the appropriation, between July 15 and December 21, 1864 (July 15 - date of advance to agent per def. ex. 281; December 21 - date on completed payroll receipt, def. ex. 277).

The 1863 and 1864 annuities were remitted from Washington to the agent in currency rather than coin through oversight. Def. ex. 131. Some of the Indians complained bitterly about receiving the 1864 currency payment (def. ex. 37 at page 447). Agent D. C. Leach, who made the 1863 and 1864 payments, assured the Indians that the Government, as soon as the Civil War was over, would make up the difference to them between the value of the greenbacks and the gold. Def. ex. 114.

27. Policy of Selling Coin Annuities for Premium in Currency and Paying Proceeds to Indians.

In a letter dated August 25, 1865, R. B. Van Valkenburgh, Acting Commissioner of Indian Affairs, announced to Richard M. Smith, the U.S. Indian Agent at Detroit, Michigan, who had jurisdiction over plaintiff:

In cases where annuities are payable, by the terms of any treaty, in "gold", "specie", or "coin", it has been determined by this Department, that the Indians shall have the benefit of this stipulation; and the only question is, how to carry out this policy in such a manner as to insure to the Indians its full benefit.

Gold or coin is not now a circulating medium, but merely an article of merchandise and speculation; and to pay it out to the Indians would merely result in a strong additional incentive to traders and Speculators to defraud them.

It has therefore been decided to convert the coin into currency, and have the premium passed to the credit of the Indians, to be drawn by them hereafter [def. ex. 103].

The procedure stated in the letter was followed in 1865 and every year thereafter to and including 1871; and the amount appropriated by Congress in fulfillment of Article 2, fourth clause, was withdrawn each year from the treasury, in gold coin, by the Interior Department, sold, and the proceeds in currency advanced to the U.S. Indian Agent in Michigan for distribution to plaintiff. See exhibits listed in footnote 1 above, and def. exs. 126, 127, 129.

28. Gold Premiums Between 1865 and 1872.

During all the years in which sums appropriated to fulfill Article 2, fourth clause, of the 1855 treaty were paid in currency, gold coin was of

greater value than the same face amount of paper currency. The difference in value between the gold dollar and the paper dollar, expressed in cents of currency, was called the "gold premium." There was an organized, open market in gold coin during this period, and daily high and low quotations for the gold premium are in the present record (pl. ex. A-8).

During the calendar years 1865 through 1871 the highest and lowest gold premium between the date of the treasury warrant for each such appropriation and the September 10 immediately following were as shown in the following tabulation. The actual premiums obtained by the Government have been determined by dividing the proceeds of sale of the coin, expressed in paper dollars, by the number of dollars of coin sold, and subtracting 1 from the quotient. These premiums are shown in the extreme right column.

| <u>Year</u> | <u>Date of Warrant</u> ^{3/} | <u>High</u> | <u>Low</u> | <u>Actual</u> |
|-------------|--------------------------------------|-------------|------------|---------------|
| 1865 | March 18 | 67 1/4 | 28 5/8 | 43.6061 |
| 1866 | August 8 | 52 1/4 | 44 3/4 | 44.6250 |
| 1867 | March 2 | 44 1/4 | 32 3/4 | 37.8380 |
| 1868 | July 27 | 50 | 43 1/2 | 44.3755 |
| 1869 | May 1 | 44 7/8 | 31 1/4 | 35.8614 |
| 1870 | July 26 | 22 | 13 1/4 | 17.2498 |
| 1871 | April 20 | 14 1/4 | 10 1/2 | 12.5500 |

The actual sale of coin in 1869 took place on July 31. The coin was sold in New York through the agency of the First National Bank of Washington and brought a premium of 36 1/8 less commission and tax. The breakdown between the last two items does not appear. Def. ex. 127. The record does not show the exact dates of sale in other years or whether or not commissions or taxes were paid.

^{3/} Except for 1867 and 1868, where the dates of the treasury warrants are not in evidence and the dates of the appropriation acts are used.

The highest and lowest gold premium quoted during the months of May and June, 1872, when the largest part of the final principal distribution, due on September 10, 1871, was paid, were 14 3/4 and 12 1/8 respectively. It appears that little if any of said final distribution could have been paid out before May 4, on which day the lowest quotation was 13. The premium did not again fall below 13 during the months of May or June. Pl. ex. A-8, page 319.

29. Coin Sold Within Market Range Each Year Except 1866.

The coin appropriated to fulfill Article 2, fourth clause, each year starting with 1865 and ending with 1871, except 1866, was sold at a premium between the high and low given above for the year in question. In 1866 the coin was sold for a net premium of 44 5/8, or 1/8 of a percent below the lowest market quotation.

30. Payments Made, Shortages, and Overages - 1865-1872.

The actual amounts paid to plaintiff in currency are tabulated below for the years 1865 through 1872. Premiums are allocated between principal and interest in proportion to the ratio between the principal and interest due for the year in question. In order to state the account in terms of coin, the medium of payment specified in the treaty, coin equivalents of the currency payments are also given. By comparing these coin equivalents to the amounts appropriated in coin, the real shortage or overage of each payment is established. Except in 1866, 1867 and 1872, coin equivalents of the currency payments were calculated using the actual rate at which the coin withdrawn from the treasury in the same year was

converted to currency. In 1866 the coin was converted below the market rate; the minimum market rate (44 3/4 percent premium) is used for the reconversion of the currency payment to its coin equivalent. For 1872 the lowest premium rate prevailing in the month of June (13%) is used. See Finding 28, above.

The 1865 and 1866 gold premiums were withheld and paid with the following year's annuities. Also, part of the 1871 principal distribution was paid in 1872, under the circumstances stated in Finding 32, below. The value of greenbacks fell between the 1865 conversion date and the 1866 payment date, and between the 1871 conversion date and the 1872 payment date. The coin equivalents of the belated payments are calculated, and entered in the tabulation below, as of the time of payment. Consequently, shortages are shown, since the currency was worth less when it was paid out than when it was obtained. The value of greenbacks rose between 1866 and 1867; but because the trustee cannot profit at the beneficiary's expense (see opinion, page ,above) the 1866 gold premium paid in 1867 is entered in the "Interest" tabulation below at the same coin equivalent value it had when originally obtained. The 1867 entry in the "Coin Equivalent" column of the interest table was calculated as follows:

| <u>Actual Currency Payment</u> | <u>Divide by:</u> <u>(See Finding 28)</u> | <u>Coin Equivalent</u> |
|-----------------------------------|--|------------------------|
| 1866 gold premium \$ 4,596.37 | 1.447500 | \$ 3,175.39 |
| 1867 interest due 10,300.00 | 1.378380 | 7,472.54 |
| 1867 gold premium <u>3,897.31</u> | 1.378380 | <u>2,827.46</u> |
| \$18,793.68 | | \$13,475.39 |

ACTUAL PAYMENTS
1865-1872

Principal

| <u>Calendar Year</u> | <u>Actual Currency Payment</u> | <u>Coin Equivalent</u> | <u>Appropriation in Coin</u> | <u>(Shortage) Overage</u> |
|----------------------|--------------------------------|------------------------|------------------------------|---------------------------|
| 1865 | \$ 10,000.00 | \$ 6,963.49 | \$ 10,000 | \$ (3,036.51) |
| 1866 | 4,360.61 | 3,012.51 | None | 3,012.51 |
| 1867 | None | None | None | None |
| 1868 | 74,353.35 | 51,500.00 | 51,500 | None |
| 1869 | 69,968.63 | 51,500.00 | 51,500 | None |
| 1870 | 60,383.67 | 51,500.00 | 51,500 | None |
| 1871 | 9,555.88 | 8,490.34 | 51,500 | (43,009.66) |
| 1872 | <u>48,390.00</u> | <u>42,823.01</u> | <u>None</u> | <u>42,823.01</u> |
| Total: | \$277,012.14 | \$215,789.35 | \$ 216,000 | \$ (210.65) |

Interest

| <u>Calendar Year</u> | <u>Actual Currency Payment</u> | <u>Coin Equivalent</u> | <u>Appropriation in Coin</u> | <u>(Shortage) Overage</u> |
|----------------------|--------------------------------|------------------------|------------------------------|---------------------------|
| 1865 | \$ 10,300.00 | \$ 7,172.40 | \$ 10,300.00 | \$ (3,127.60) |
| 1866 | 14,791.42 | 10,218.60 | 10,300.00 | (81.40) |
| 1867 | 18,793.68 | 13,475.39 | 10,300.00 | 3,175.39 |
| 1868 | 11,153.02 | 7,725.00 | 7,725.00 | None |
| 1869 | 6,996.85 | 5,150.00 | 5,150.00 | None |
| 1870 | <u>3,019.18</u> | <u>2,575.00</u> | <u>2,575.00</u> | <u>None</u> |
| Total: | \$ 65,054.15 | \$46,316.39 | \$ 46,350.00 | \$ (33.61) |

31. Appropriation of 1870 to Make up Shortage Resulting from Currency Payments of 1863 and 1864, and Disposition Thereof.

Congress made the following appropriation by the Act of July 15, 1870,

c. 296, 16 Stat. 335, 337:

For this amount, to be paid in coin, to enable the Secretary of the Interior to fulfil treaty stipulations relative to the payment of annuities with the Chippewas of Lake Superior, the Chippewas of Saginaw, Swan Creek, and Black river, the Ottawas and Chippewas of Michigan Indians of the Mackinaw agency, in the State of Michigan, thirty-six thousand seven hundred and fifty-three dollars and forty-seven cents; being the aggregate difference

between the coin value of payments made in currency during the years eighteen hundred and sixty-three and eighteen hundred and sixty-four, at the dates of treasury warrants, and the amounts due in coin by treaty stipulations, with interest at the rate of five per centum per annum from dates of said treasury warrants, to June thirty, eighteen hundred and seventy.

The date of the treasury warrant for the original 1863 appropriation (by Act of March 3, c. 99, 12 Stat. 774, 781) was April 2, 1863. Def. ex. 281. On that date the gold premium ranged from a low of 53 1/4 to a high of 57. Pl. ex. A-8 at 291. The 1863 shortages, at a minimum, thus, were as follows:

Principal

| | |
|--|-----------------|
| Due in coin | \$10,000.00 |
| Paid in currency \$10,000-- divide by 1.5325 for gold equivalent | <u>6,525.29</u> |
| Shortage in coin | \$ 3,474.71 |

Interest

| | |
|--|-----------------|
| Due in coin | \$11,300.00 |
| Paid in currency \$11,300-- divide by 1.5325 for gold equivalent | <u>7,373.57</u> |
| Shortage in coin | \$ 3,926.43 |

Interest at 5 percent per annum, on the principal shortage only, from April 2, 1863, to June 30, 1870 (7 years and 89 days), amounts to \$1,258.51.

Therefore:

| | |
|--------------------------------|-----------------|
| Principal shortage | \$ 3,474.71 |
| Interest shortage | 3,926.43 |
| Interest on principal shortage | <u>1,258.51</u> |
| Total 1863 deficiency | 8,659.65 |

The date of the treasury warrant for the original 1864 appropriation (by Act of June 25, c. 148, 13 Stat. 161, 168) was July 11, 1864. Def. ex. 281. On that date the gold premium ranged from a low of 176 to a high of 185. The latter represented the all-time high between the suspension of specie payment in 1861 and its resumption in 1879. Pl. ex. A-8, pp. 4, 295. The 1864 shortages, on the basis of the July 11 low, were as follows:

Principal

| | |
|------------------------------------|-----------------|
| Due in coin | \$10,000.00 |
| Paid in currency \$10,000 ÷ 2.76 = | <u>3,623.19</u> |
| Shortage in coin | \$ 6,376.81 |

Interest

| | |
|------------------------------------|-----------------|
| Due in coin | \$10,800.00 |
| Paid in currency \$10,800 ÷ 2.76 = | <u>3,913.04</u> |
| Shortage in coin | \$ 6,886.96 |

Interest at 5 percent per annum, on the principal shortage only, from July 11, 1864, to June 30, 1870 (6 years minus 11 days), amounts to \$1,903.43. Therefore:

| | |
|--------------------------------|-----------------|
| Principal shortage | \$ 6,376.81 |
| Interest shortage | 6,886.96 |
| Interest on principal shortage | <u>1,903.43</u> |
| Total 1864 deficiency | \$15,167.20 |
| | |
| Plus 1863 deficiency | <u>8,659.65</u> |
| Grand total deficiency | \$23,826.85 |

Out of the total 1870 appropriation of \$36,753.47 in coin, \$23,215.32 was sold for the account of plaintiff, and the proceeds paid to plaintiff in currency. The remainder of the appropriation was disbursed for other Indians. GAO Report 102, 121; def. ex. 120. The \$23,215.32 was \$611.53 less than the amount required to be paid to plaintiff by the Act of

July 15, 1870. The reason why a larger share of the appropriation was not paid to plaintiff does not appear in the present record.

The Commission allocates the \$23,215.32 payment first to interest and the remainder to principal, as follows:

| | | |
|----------------------------------|-----------------|--------------------|
| Amount paid to plaintiff | | \$23,215.32 |
| 1863 interest shortage | \$ 3,926.43 | |
| 1864 " " | <u>6,886.96</u> | |
| Subtotal | \$10,813.39 | |
| Interest on principal shortage | | |
| 1863-1870 | 1,258.51 | |
| 1864-1870 | <u>1,903.43</u> | |
| Subtotal | \$ 3,161.94 | |
| Aggregate, allocate to interest | | <u>\$13,975.33</u> |
| Remainder, allocate to principal | | \$ 9,239.99 |

The \$23,215.32 in coin was sold at a premium of 17.255 percent, and proceeds in the amount of \$27,221.18 in currency were paid to plaintiff with the 1870 annuity. This premium was within the market range between July 15, 1870, and September 10, 1870; and the currency payment was a fair equivalent to \$23,215.32 in coin.

32. Payment of the Last Quarter of Principal in 1871 and 1872; Death of Agent Smith and Destruction of his Records; Erroneous Posting of Appropriation Ledgers.

The final distribution of principal from the Ottawa-Chippewa fund, \$51,500 in coin, fell due on September 10, 1871. The interest on this sum had been paid in advance the preceding fall. The coin was sold for a premium of 12.55 percent; and the proceeds in currency, amounting to \$57,963.88, were remitted to the Indian Agent in Detroit on August 29,

1871. The agent, Richard M. Smith, promptly distributed \$9,555.88 to plaintiff's Sault Sainte Marie bands (GAO report at 112), and then, in mid October of 1871, perished in a disaster which also destroyed his books and papers.

A balance of \$62,438.37 was found in Mr. Smith's official account in a Detroit bank after his death and was returned to the U.S. Treasury. Funds due to other Michigan Indians besides the present plaintiff were mingled in this account. The Indian Office, using its best judgment as to which appropriations should be credited, posted its books as if none of the 1871 Ottawa and Chippewa annuity had been paid. Def. ex. 122.

George J. Betts was appointed agent to succeed Smith on October 31 and entered on his duties on November 23, 1871. Def. ex. 25, 45. On December 13, 1871, Mr. Betts submitted an estimate to the Commissioner in the amount of \$57,963.88 to pay the last installment of the Ottawa-Chippewa annuities.

In the covering letter, dated at Detroit, he stated:

. . . I trust you will be as expeditious as possible in furnishing these funds as the claimants are very impatient on account of the unusual delay occasioned by the untimely death of my predecessor. [Def. ex. 128].

On February 5, 1872, the entire \$57,963.88 was sent back to Agent Betts. Mr. Betts found that part of the annuity had been paid, but because of the lateness of the season and the difficulties of assembling the Indians amid the rigors of winter, deferred paying the balance until

the months of May and June, 1872. When he finished payment, he found himself with \$9,555.88 left over, and refunded this sum to the U.S. Treasury, where it was again credited to the appropriation account "Fulfilling Treaties with Ottawas and Chippewas (Annuities)."^{4/}

Betts informed the central office of the Bureau of Indian Affairs of the earlier part payment and that he had returned the \$9,555.88 to the treasury. Def. exs. 45, 121, 122, 281.

33. Erroneous Ledger Entry Never Corrected. Double Payment of 1911-1942.

In a letter to the Secretary of the Interior dated August 31, 1873 (def. ex. 122), the Commissioner of Indian Affairs commented upon the above information received from Betts, and stated "that the late Agent [Smith] should have received credit [as for a refund] for \$48,408 under the appropriation 'Fulfilling treaty with Ottawas and Chippewas of Michigan' instead of \$57,963.88, and that the difference of \$9,555.88 should have gone to his credit under other heads of appropriation."

Despite the Commissioner's letter the ledger "Fulfilling Treaties with Ottawas and Chippewas (Annuities)" (def. ex. 281) was never corrected. An entry of August 29, 1871, debits \$57,963.88 by R. M. Smith, Agent. An entry of December 27, 1871, recredits the entire amount to the appropriation. An entry of February 5, 1872, debits the same amount by George J. Betts, Agent, and an entry of May 14, 1873, credits the \$9,555.88

^{4/} Betts paid out \$48,408.00; but \$18.00 of this sum was disallowed. Def. exs. 123, 124, note 26.

refunded by Betts. The earlier payment of this amount to the Indians by Smith does not appear. Finally, on June 30, 1877, by Surplus Warrant No. 732, the \$9,555.88 was cleared from the account.

On May 19, 1902, the Secretary of the Interior, unaware of the payment by Agent Smith in 1871, wrote to the Secretary of the Treasury requesting that the \$9,555.88 be restored to the credit of the Ottawas and Chippewas, stating it had been erroneously carried to surplus. The Secretary of the Treasury referred the communication to the Comptroller, who ruled that the money should be restored. 8 Comp. Dec. 881 (1902).

A total of \$9,786.69 was in fact returned to the plaintiff's credit, consisting of the \$9,555.88 and an additional \$230.81 said to be still owing under the 1855 treaty for agricultural implements. Id., GAO Report at 100, note (e). From the total, \$9,598.77 was paid to plaintiff's members per capita between 1911 and 1942. GAO Report, note (d), at 98, Disbursement Schedule 12 at 112-119. Payments totalling more than \$9,555.88 were disbursed between 1911 and 1922 as follows:

| <u>Fiscal Year</u> | <u>Payment</u> |
|--------------------|-------------------|
| 1911 | \$9,472.19 |
| 1912 | 15.59 |
| 1913 | 6.92 |
| 1914 | 1.73 |
| 1916 | 24.25 |
| 1918 | 3.47 |
| 1919 | 5.20 |
| 1920 | 1.74 |
| 1922 | 38.14 |
| Total: | <u>\$9,569.23</u> |

\$13.35 out of the 1922 payment was in excess of the amount necessary to exhaust the \$9,555.88 double payment.

34. Interest on Late Payments and Principal Shortages.

The plaintiff is entitled to simple interest at the rate of 5 percent per year until paid on late principal payments and shortages in principal payments under Article 2, fourth clause, of the 1855 treaty. Said late and short payments are set out below with the interest calculated to date of payment, or, where never paid, to January 1, 1977.

(a) The Mackinac bands' portion of the 1857 annuity was paid 245 days late, on March 13, 1858. The total annuity so paid to Mackinac bands was \$1,840. Def. ex. 239. Allocated between principal and interest in the ratio 10,000/14,300, the principal amounted to \$757.20. Defendant owes 245 days interest at 5 percent per annum, amounting to: \$ 25.41

(b) 1858 annuity: \$3,000 of principal never paid (Finding 21). Interest: \$150 per year for 118 years, 112 days: \$17,746.03

(c) 1863-1872 shortages and late payments (Findings 26, 30, 31, 32). The following tabulation shows coin equivalents of actual currency shortages and overages:

| <u>Sept. 10</u> | <u>Shortage</u> | <u>Overage</u> | <u>Balance</u> | <u>Interest</u> | |
|-----------------|-----------------|----------------|----------------|-----------------|-------------|
| 1863 | \$ 3,474.71 | | \$ (3,474.71) | | |
| 1864 | 6,376.81 | | (9,851.52) | \$ 173.74 | |
| 1865 | 3,036.51 | | (12,888.03) | 492.58 | |
| 1866 | | \$ 3,012.51 | (9,875.52) | 644.40 | |
| 1867 | | | (9,875.52) | 493.78 | |
| 1868 | | | (9,875.52) | 493.78 | |
| 1869 | | | (9,875.52) | 493.78 | |
| 1870 | | | (9,875.52) | 493.78 | |
| * | | 9,239.99 | (635.53) | (3,161.94) | |
| 1871 | 43,009.66 | | (43,645.19) | 31.78 | |
| 1872 | | 42,823.01 | (822.18) | <u>1,557.76</u> | \$ 1,713.44 |

*See Finding 31.

Plus 104 years, 112 days interest at 5 percent
per annum on \$822.18: \$4,287.95

The 1872 overage shown above represents payment of part of the final principal distribution which was due on September 10, 1871, but was not paid until May and June of 1872. The interest figure for 1872 is made up of 8 1/2 months' interest on \$43,645.19 shortage at 5 percent, plus 3 1/2 months' interest on the then remaining shortage of \$822.18.

Grand total interest on late and short payments, to January 1, 1977: \$23,772.83

35. Summary of Account Under Article 2, Fourth Clause, as of
January 1, 1977.

The defendant owed the plaintiff the following sums as of January 1, 1977:

| <u>Principal</u> | |
|---|-------------|
| 1858 shortage (Finding 21) | \$ 3,000.00 |
| 1865-1872 shortage (Finding 30) | 210.65 |
| 1870 shortage in amount allocated under Act of July 15, 1870 (Finding 31) | 611.53 |
| Total unpaid principal: | \$ 3,822.18 |

| <u>Interest</u> | |
|--|-------------|
| On late and short payments (Finding 34) | \$23,772.83 |
| Net interest shortage, 1865-1870 (Finding 30) | 33.61 |
| | \$23,806.44 |
| Less 1911-1922 double payment | 9,555.88 |
| | \$14,250.56 |

Interest continues to accrue on the principal only at the rate of 5 percent per year.

36. Annuity Payments to Grand River Ottawas.

In the fifth clause of Article 2 of the Treaty of 1855, the United States promised as follows:

The sum of thirty-five thousand dollars in ten annual installments of three thousand and five hundred dollars each, to be paid only to the Grand River Ottawas, which is in lieu of all permanent annuities to which they may be entitled by former treaty stipulations, and which sum shall be distributed in the usual manner per capita.

The United States made the following payments to the Grand River Ottawas under the said fifth clause:

| <u>Year</u> | <u>Coin</u> | <u>Currency</u> | <u>Provisions</u> | <u>Def. ex. Where Shown</u> |
|-------------|-------------|-----------------|-------------------|---------------------------------|
| 1856 | \$3,500 | | | 244 |
| 1857 | 3,500 | | | 245 |
| 1858 | 3,500 | | | 246 |
| 1859 | 1,500 | | \$2,000 | 247 |
| 1860 | 3,500 | | | 242, 248 |
| 1861 | 3,500 | | | 249 |
| 1862 | 3,500 | | | 250 |
| 1863 | | \$3,500 | | 276 |
| 1864 | | 3,500 | | 278 |
| 1865 | | 5,026.20 | | 280 |

The \$2,000 provision issue of 1859 was made with the approval of the Secretary of the Interior, because of the Indians' destitute condition.

Def. ex. 260. There is no evidence that the plaintiff was damaged by the distribution of provisions instead of cash.

The \$5,026.20 currency payment of 1865 represents the proceeds of sale of an appropriation of \$3,500.00, made by the Act of March 3, 1865, c. 127, 13 Stat. 541, 547, which was paid out of the treasury in coin although the United States was not obligated to make coin payment under the fifth clause. Def. exs. 257, 280.

The Grand River Ottawas received all the annuities to which they were entitled under the fifth clause of Article 2 of the 1855 treaty.

37. Plaintiff's Third Claim: Trust Funds.

Plaintiff's third claim was for "all of the trust funds on deposit or deemed by this Commission to be held on deposit in the Treasury of the United States to the credit of the Ottawa-Chippewa Tribe of Michigan or its members. . . together with interest thereon."

There were two such funds. The first consisted of the undistributed balance of the judgment of the Court of Claims in Ottawa and Chippewa Indians of Michigan v. United States, 42 Ct. Cl. 240 (1907), and the second of undistributed interest thereon, which had been credited under the Act of February 12, 1929, as amended, 25 U.S.C. § 161a. Balanced statements of the two funds follow:

"14 x 7066 Judgments, Court of Claims,
Ottawa and Chippewa Indians of Michigan"

| | <u>Dr.</u> | <u>Cr.</u> |
|---|---------------------|---------------------------------|
| Appropriated by Congress by Act of Feb. 15, 1908, c. 27, 35 Stat. 8, 27 | \$131,188.94 | |
| Attorneys' fees | | \$ 19,678.34 |
| Pay and expenses of Horace B. Durant | | 5,751.91 |
| Per capita payment | | 103,755.69 |
| Transferred to account "140969 Unclaimed Funds and Abandoned Property Not Otherwise Classi- fied" - April 24, 1956 | <u>\$131,188.94</u> | <u>2,003.00</u> \$131,188.94 |

"14 x 7566 Interest and Accruals on Interest,
Judgments, Court of Claims, Ottawa
and Chippewa Indians of Michigan"

| | <u>Dr.</u> | <u>Cr.</u> |
|--|-------------|------------|
| Appropriated by Congress | \$ 2,212.78 | |
| Per capita payments | | \$ 34.69 |
| Transferred to surplus April 30, 1956 | | 2,154.23 |
| Transferred to surplus March 28, 1957 | | 23.86 |
| | \$ 2,212.78 | \$2,212.78 |

See GAO report, pages 23, 32, 35, 72, 76-82, 130, 134; def. exs. 251, 252, 288-322.

38. Court of Claims Lawsuit of 1905-1907.

By the Act of March 3, 1905, c. 1479, 33 Stat. 1048, 1081-1082,

Congress made the following law:

Sec. 13. That the Ottawa and Chippewa Indians of the State of Michigan are hereby authorized, within ninety days from the approval of this Act, to file a petition in the Court of Claims of the United States for the purpose of settling the questions as to the ownership of the stocks, Government bonds, or moneys held in trust by the Government at the date of the treaty of July, eighteen hundred and fifty-five, between the Ottawa and Chippewa Indians and the United States (Eleventh Statutes, page six hundred and twenty-four), under the treaty of eighteen hundred and thirty-six (Seventh Statutes, page four hundred and ninety-nine), which was then deposited in the Treasury of the United States; and for the further purpose of ascertaining the amount, if any, due the Ottawa and Chippewa Indians, under a conversion made on March ninth, eighteen hundred and eighty-five, as set forth in the report of the honorable Secretary of the Interior on Senate bill numbered sixty-seven hundred and sixty-six, Fifty-seventh Congress, second session, bearing date January

seventeenth, nineteen hundred and three, and the report of the Commissioner of Indian Affairs, bearing date January fourteenth, nineteen hundred and three, thereunto attached. That said petition shall name the United States as defendant, and may be verified by attorney. That the Court of Claims is hereby granted jurisdiction in law and in equity to render judgment upon said petition, and to pass upon and find, as a matter of law, whether or not the conversion of said funds was authorized under the third article of the treaty of eighteen hundred and fifty-five above referred to. That the Court of Claims shall advance said cause upon the docket, and, if judgment be rendered for the petitioner, shall award a proper attorney fee for the attorneys of record, to be paid on separate warrants from the amount recovered.

The Ottawa and Chippewa Indians of Michigan, that is, the present plaintiff, did file and prosecute a petition in the Court of Claims (Case No. 27,537), as authorized by the language just quoted; and the Court of Claims, on March 4, 1907, decided that the plaintiff had a vested right to the stocks, bonds, and moneys in question, and that the United States had wrongfully converted the same to its own use. Among other things, the Court found as follows (42 Ct. Cl. 240, 243-244):

VIII. On or about February 2, 1885, there was released and covered into the Treasury \$4,000 in Tennessee and Virginia bonds which had been purchased for the claimant Indians and held in trust by the Treasurer of the United States. On or about March 9, 1885, a requisition was issued, and the sum of \$58,496.40, being the proceeds of the sale of stocks and bonds belonging to the Ottawa and Chippewa Indians, held by the Treasurer of the United States in trust for said Indians, was covered into the Treasury and converted to the use of the United States. Said Indians were deprived, by the reason of the acts above described, of all the stocks and bonds above mentioned, of the interest thereon, and of the increase and profit arising from the investment of the proceeds, to all of which they were

entitled under the treaty of May 27, 1836. Said stocks and bonds, at the dates of said conversions, were interest-bearing securities, and were purchased by the Treasurer of the United States under the authority of an express statute. (See language of treaty.) By reason of said wrongful conversions, said Indians have been deprived of the principal sum of \$62,496.40, with interest provided for by statute in the investment of Indian trust funds.

IX. There is due to the petitioners from the United States, by reason of the premises, the sum of \$62,496.40, with interest from the 9th day of March, 1885, at the rate of 5 per cent per annum.

The Court of Claims concluded its opinion with the following (42 Ct. Cl. at 248):

It is the decision of the court that the claimants have judgment against the defendants for the sum of \$62,496.40, and interest thereon from the 9th day of March, 1885, at the rate of 5 per cent per annum.

The complete findings and opinion of the Court of Claims, which appear between pages 240 and 248 of volume 42 of the Court of Claims reports, are here adopted by reference. There is nothing in the published report, or in evidence here, to show that the Court meant the interest to stop running as of the date of its decision.

39. Computation of Interest on Judgment and Appropriation by Congress of \$131,188.94.

On December 14, 1907, the Secretary of the Treasury transmitted to the Speaker of the House of Representatives a list of judgments rendered by the Court of Claims which had been presented to the Treasury Department and required an appropriation for their payment. Under the Department of the Interior, the list included \$62,496.40 for the Ottawa and Chippewa Indians of the State of Michigan, with interest on the said sum at the

rate of 5 percent per annum from March 9, 1885, to March 4, 1907, computed in the amount of \$68,692.54. Def. ex. 285, pages 1, 8.

The Congress appropriated \$131,188.94 for payment of the plaintiff's judgment by the Act of February 15, 1908, c. 27, 35 Stat. 8, 27.

40. The Durant Roll.

A rider on the Indian appropriation act of April 30, 1908, c. 153, 35 Stat. 70, 81, provided as follows:

That the Secretary of the Interior is hereby directed to make a complete roll of the Ottawa and Chippewa Indians of the State of Michigan entitled to participate in the funds arising from the judgment of the Court of Claims, in case numbered twenty-seven thousand five hundred and thirty-seven, decided by the Court of Claims March fourth, nineteen hundred and seven, and of any other funds to their credit in the hands of the Treasurer of the United States, and said roll, when completed and approved by the Secretary of the Interior, shall be final and conclusive: PROVIDED, That the expense thereof shall be paid out of the moneys found due said Indians in said cause.

On July 14, 1908, the Secretary of the Interior appointed Horace B. Durant of Oklahoma Special Agent to complete the roll of Ottawa and Chippewa Indians in the State of Michigan entitled to participate in the funds arising from the judgment of the Court of Claims, at a salary of \$2,000 per year and \$3.00 per day in lieu of subsistence, with actual necessary traveling and incidental expenses, including sleeping-car fare, payable from the appropriation, "Judgments, Court of Claims, Ottawa and Chippewa Indians of Michigan." At the same time, Mr. Durant was also designated a Special Disbursing Agent and required to give bond for \$2,000. Def. ex. 288.

Mr. Durant proceeded to make a roll of plaintiff's members, completing the same on October 28, 1909, when he resigned. Def. ex. 321. In making the roll, Durant earned salary and incurred expenses in the aggregate sum of \$5,751.91, which was paid out of the proceeds of the Court of Claims judgment appropriated by the Act of February 15, 1908, referred to in the preceding Finding. GAO report at 76, 82, 134; def. exs. 289-322.

There were 5,644 individuals on the approved roll. Def. ex. 251 (letter dated April 21, 1958, from Chief, Finance Section, Bureau of Indian Affairs, to Area Director, Aberdeen, South Dakota).

41. Allowance and Payment of Attorneys' Fees.

On November 4, 1907, the Court of Claims made an order allowing as attorneys' fees 15 percent of the judgment granted to claimants, 12 percent to be paid out of any funds available therefor, and the balance of 3 percent to be paid when the roll of the claimant Indians should be completed and approved. The plaintiff's attorneys at the hearing on their motion for allowance of fees had presented a contract with the claimants providing for the payment of a fee in the amount of 25 percent of the judgment, but the Court refused to take this provision into consideration. 42 Ct. Cl. 518-519.

Attorneys' fees in the amount of \$19,678.34 were paid, out of the \$131,188.94 appropriated by the Act of February 15, 1908, in fiscal year 1908. GAO report at 76. The record does not reveal why the last 3 percent of the fees was paid in advance of completion of the roll or that any damage accrued to plaintiff by such early payment.

42. Interest on Proceeds of Court of Claims Judgment.

No interest was paid on the money appropriated by the Act of February 15, 1908, to pay the Court of Claims judgment in favor of plaintiff until following enactment of the Act of February 12, 1929, c. 178, 45 Stat. 1164. Between February 12, 1929, and June 1, 1956, interest at the rate of 4 percent per annum on such money was placed to plaintiff's credit in the U.S. Treasury in the account "14x7566 Interest and Accruals on Interest, Judgments, Court of Claims, Ottawa and Chippewa Indians of Michigan." See Finding 37, above, for citations to record.

43. Disbursement Schedule, Proceeds of Court of Claims Judgment, Actual Interest Credited Thereon, and Disbursements from said Interest.

Actual disbursements from the Court of Claims judgment are tabulated below according to the fiscal years in which made. The opening balances of principal and interest are the \$131,188.94 appropriated by the Act of February 15, 1908, allocated in accordance with H.R. Doc. No. 345, 60th Cong., 1st Sess. 8 (def. ex. 285). All disbursements are charged to interest until 1911, when interest was exhausted. Disbursements subsequent to 1930 are charged to principal or interest in the actual manner defendant charged them, as shown in the GAO report. Years in which there were no disbursements are omitted from the tabulation, except for 1930, when interest was first paid, and 1949, the closing year of the GAO report. For each year tabulated, starting with fiscal year 1930, there is also shown the aggregate of all interest credited to plaintiff's account since the preceding tabulated year. Sources of the table are the GAO report at 72, 76-82, 130, 134, and def. exs. 251, 252, and 285.

| <u>Fiscal Year</u> | <u>Principal Balance</u> | <u>Interest Paid</u> | <u>Interest Balance</u> | <u>Disbursements</u> |
|--------------------|--------------------------|----------------------|-------------------------|----------------------|
| 1908 | \$62,496.40 | | \$68,692.54 | \$ 19,678.34 (a) |
| 1909 | 62,496.40 | | 49,014.20 | 4,543.93 (b) |
| 1910 | 62,496.40 | | 44,470.27 | 1,207.98 (b) |
| 1911 | 62,496.40 | | 43,262.29 | 102,414.78 (c) |
| 1912 | 3,343.91 | | -0- | 174.89 |
| 1913 | 3,169.02 | | | 77.72 |
| 1914 | 3,091.30 | | | 19.43 |
| 1916 | 3,071.87 | | | 272.05 |
| 1918 | 2,799.82 | | | 38.86 |
| 1919 | 2,760.96 | | | 58.30 |
| 1920 | 2,702.66 | | | 19.44 |
| 1922 | 2,683.22 | | | 388.66 |
| 1923 | 2,294.56 | | | 58.31 |
| 1924 | 2,236.25 | | | 38.88 |
| 1925 | 2,197.37 | | | 19.44 |
| 1927 | 2,177.93 | | | 77.74 |
| 1928 | 2,100.19 | | | 19.43 |
| 1930 | 2,080.76 | 73.65 | 73.65 | |
| 1935 | 2,080.76 | 415.92 | 489.57 | 23.71 (d) |
| 1942 | 2,061.32 | 617.73 | 1,103.03 | 88.74 (e) |
| 1949 | 2,003.00 | 520.78 | 1,593.39 | |
| 1956 | 2,003.00 | 560.84 | 2,154.23 | 4,157.23 (f) |
| 1957 | -0- | 23.86 | 23.86 | 23.86 (g) |

(a) Attorneys' fees.

(b) Durant's pay and expenses.

(c) This and all disbursements not otherwise marked represent per capita payments.

(d) From principal: \$19.44; from interest: \$4.27.

(e) From principal: \$58.32; from interest: \$30.42.

(f) Carried to surplus: Principal \$2,003.00
Interest 2,154.23
\$4,157.23

(g) Carried to surplus.

44. Interest Which Would have been Earned if Interest on Court of Claims Judgment had Continued Until Payment.

If interest at the rate of 5 percent per annum had been paid between the date of the Court of Claims judgment, March 4, 1907, and the date money was deposited in the treasury in satisfaction thereof, February 15, 1908, the plaintiff would have received the additional sum of \$2,979.28.

45. Government's Liability on Third Claim.

By reason of the premises there is due to the plaintiff from the United States on the third claim \$7,160.37.

46. No Evidence in Support of Plaintiff's Fourth Claim.

The plaintiff's fourth claim is for annuities due under treaties of earlier date than 1855. Article 3 of the treaty of July 31, 1855, 11 Stat. 621, 624, provides as follows:

ARTICLE 3. The Ottawa and Chippewa Indians hereby release and discharge the United States from all liability on account of former treaty stipulations, it being distinctly understood and agreed that the grants and payments hereinbefore provided for are in lieu and satisfaction of all claims, legal and equitable on the part of said Indians jointly and severally against the United States, for land, money or other thing guaranteed to said tribes or either of them by the stipulations of any former treaty or treaties; excepting, however, the right of fishing and encampment secured to the Chippewas of Sault Ste. Marie by the treaty of June 16, 1820.

Plaintiff contended its right to annuities under earlier treaties survived the language just quoted because of misrepresentation by defendant in procuring its assent thereto, or because the consideration for such assent was not fair or adequate.

By pretrial order herein, signed April 9, 1975, the presiding Commissioner ruled that the fourth claim would be in issue only if plaintiff submitted additional evidence in support thereof.

Plaintiff has submitted no evidence in support of its fourth claim, and the record contains no such evidence.




Jerome K. Kuykendall, Chairman



John T. Vance, Commissioner



Richard W. Yarborough, Commissioner



Margaret H. Pierce, Commissioner



Brantley Blue, Commissioner