

Memorandum re Offsets Claimed by
United States in Osage Civilization
case.

The Court of Claims (66 Ct. Cl. 61) divided the offsets claimed by the United States into 9 different items, number 1 to 9 inclusive. As to item 4, the court held that the excess cost of transporting goods, the basis of the claim, was not proved. This excess is now calculated to be \$13,678.24. Item 7, related to certain joint expenditures, the amount of which was not stated by the court, and as to which Mr. Stormont now admits " lack of proff. " The item involved, as per report of the Comptroller General, is \$104,454.34.

Eliminating Item 7, the amounts involved in the other items are as follows:

No. 1 -----	\$19,500.00
No. 2 -----	150.00
No. 3 -----	1,963.43
No. 4 -----	13,678.24
No. 5 -----	37,601.47
No. 6 -----	278,130.95
No. 7 -----	excluded
No. 8 -----	76,139.45
No. 9 -----	<u>122,312.89</u>
Total -----	<u>\$549,476.42</u>

These claimed offsets are now being considered in the light of the provisions of Sec. 3 of the Act of August 12, 1935, (49 Stat.590), which reads:

" In all suits now pending in the Court of Claims by an Indian tribe or band which has not been tried or submitted, and in any suit hereinafter filed in the Court of Claims by any such tribe or bands, the Court of Claims is hereby directed to consider and to offset against any sums found due the said tribe or band all sums gratuitously expended by the United States for the said tribe or band: **** provided, that expenditures made prior to the date of the law, treaty or agreement or executive order under which the claim arises shall not be an offset against the claim or claims asserted. "

All claims ~~next~~ for offsets arising prior to the Treaty of September 29, 1865, must therefore be excluded.

All claims for offsets where the expenditure is personal and not tribal, under the interpretation given by Congressman Cochran, the father of the said provision, must also be excluded, namely, such items as education, clothing and provisions and gifts to individuals. The statement of Mr. Cochran was made on the floor of the House February 10, 1938, as recorded page 2368 of the Congressional Record for that date, as follows:

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" In order to protect the Government against these (Indian) suits, there was added to the deficiency bill in 1935, following that testimony (of Asst. Atty. genl. Blair), a paragraph giving the Government the right to charge off as offsets gratuities and advances made to tribes of Indians, not individual Indians. "

This interpretation is in accord with the statement of the Court of Claims in this case (opinion page 82) where that Court said:

"The special act directs consideration only to counterclaims of the Osage tribe and not against individuals of the tribe. In this view of the matter, counterclaims Nos. 8 and 9, being for expenditures for individual Indians at schools, are not within the meaning of the special act, and could not be considered in any event as an offset against the Osage Indians as a tribe. "

In the light of these provisions consider the offsets claimed as reported by the Comptroller General, upon which report the United States solely relies. First, expenditures prior to the Treaty of 1865, under which the Osages make their claim; and, second, that portion which is individual and not tribal expenditures.

OFFSETS ACCRUING PRIOR TO TREATY OF 1865

Item No. 1 Court of Claims:

These expenditures were all made between the years 1825 and 1839, under Treaty of Nov. 10, 1808 (7 Stat. 107), as shown by the report of the Comptroller General, and as stated by the Court of Claims ----- \$19,500.00

Item No. 2 Court of Claims:

This expenditure, under Treaty of June 2, 1825, (7 Stat. 240) was made in 1826, as per same sources of information as Item No. 1 ----- 150.00

Item No. 3 Court of Claims:

These expenditures, from same sources of information as foregoing, were made between 1826 and 1839, under Art. 4 said treaty 1808 (item 1) ----- 1,963.42

Item No. 4 Court of Claims:

These expenditures under Treaty June 2, 1825 (see item 2) were all made between the years 1835 and 1840, as per same sources of information ----- 14,398.22

Note: Dept. Justice is now claiming additional items, expended during the same period, as per memo with Congressman Disney, of ----- 8,570.64

Item No. 5 Court of Claims:

These expenditures, as shown by same records, were made between the years 1840 and 1860, under the provisions of Art. 2, Treaty Jan. 11, 1839 (7 Stats. 576) ----- 37,601.47

Item No. 6, Court of Claims:

These expenditures includes numerous items, as set out by the Court as being made from April 28, 1910 to June

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June 30, 1932, the Court stating: " That the Osage Tribe received benefit from these expenditures and to what extent, does not satisfactorily appear. " Of the total sum stated by the Court, namely, \$278,130.95, an examination of the report of the Comptroller General shows that the items expended prior to the Treaty of 1865 totaled -----

\$139,838.77

Total expenditures in Items 1 to 6 made prior to the Treaty of 1865 and excluded as offsets by the Act of 1935 -----

\$222,022.52

INDIVIDUAL AND NOT TRIBAL EXPENDITURES

Item No. 6 Court of Claims:

As above stated, \$139,838.77 of this item were expenditures prior to the Treaty of 1865. In the remaining portion of this item are expenditures for individuals and not for tribal purposes, as follows:

Education -----	\$48,845.73	
Clothing -----	7,165.70	
Provisions -----	235.58	
		<u>\$56,347.01</u>

Item No. 8 Court of Claims:

These expenditures are for Carlisle School for educational of individual Indians, shown by the report of the Comptroller General to vary from 3 or 4 individual per year to as high one year as 37, with an average of about 16 students per year. The Court of Claims, as above set out, did not regard these as tribal expenditures, thus in accord with the Act of 1935 -----

76,139.45

Item No. 9 Court of Claims:

These items relate to education of a small number of individuals each year at Indian schools at Chillicothe, Oklahoma, Genoa, Nebraska, and Lawrence, Kansas. The same conditions prevail as to Item no. 8. -----

122,312.89

Total individual and not tribal expenditures ----- \$254,799.35

COMBINED EXPENDITURES NOT PROPER OFFSETS

For expenditures prior to the Treaty of 1865 -----	\$222,022.52	
For individual and not tribal purposes -----	254,799.35	
Total -----		<u>\$476,821.87</u>

Possible offsets in items 1,2,3,4,5,6,8 and 9 ----- \$72,654.55

Item No. 7, Court of Claims, sum not stated, for which joint expenditures of \$104,454.34 now claimed, and of which apparently