

Copy of copy.

Ottawa, April 29, 1926.

Dear Mr. Chisholm,-

I am sending you herewith copies, of letters which I have sent to Henry Jackson and Mr. L. Gregoire, our Indian Agent at Christian Island. I do not think you should acknowledge Jackson's letter.

Yours very truly,

" Duncan G. Scott "

Deputy Superintendent General.

A. G. Chisholm, Esq., K.C.,
Barrister & C.,
Canadian Bank of Commerce Chambers,
London, Ont.

Department of Indian Affairs,
Ottawa, April 29, 1926.

Sir:-

I have received copy of " communication signed by you and addressed to A. G. Chisholm, Esq., K.C., at London, Ont. You signed this letter Secretary Canadian Branch Pottawatonic Claim, and have the presumption to endeavour to dispose of Mr. Chisholm's services.

I have to inform you that your action is without any effect or authority whatever, and, unless you and Mr. Manley Chew cease unsettling the minds of the Pottawatonic Indians, I will take some pretty strong measures to put a stop to your agitation. The Dominion Government is acting in the interests of this Indian claim and will not consent to any interference.

Yours truly,

" Duncan G. Scott "

Deputy Superintendent Gener.

Henry Jackson,
Christian Island,
Ont.

Department of Indian Affairs
Ottawa, April 28, 1926

Sir:-

The original of a letter which you wrote Mr. Manby of March 20th., 1926, has come into my possession. I am sending a copy of it herewith.

I have to reprimand you for writing this letter, and to point out that if you again undertake to write letters or other action in matters in which you have neither interest or concern, I shall recommend your suspension.

Yours very truly,

L. Gregoire, Esq.,
Indian Agent,
Christian Island, Ont.

" Duncan G. Scott "

Deputy Superintendent

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

156610

[Signature]
Onislian Island June 5th 1933
To the Dept. of Indian Affairs, Ottawa.
Sir. I want to ask the Dept.
What had become of the Pottawatmie
How Jackson got it in his hands.
When he set for the Illegal Claimants.
The members of the said claim.
Is still waiting to hear from the
Dept. to advised the people interested
How the claim stand now.
I am sending the two letters
which shows why I ask the Dept.
that I don't understand how it can
be done. To cancel the contract
and handed to some one else
without the consent of the
Principle members of the said claim.
The secret movements of Jackson
should have been stopped long ago.
I want to have an idea what
is to my people.
Let me have an early reply
I am yours very truly
M.J. Sandy

RE
DEPT. OF INDIAN AFFAIRS
JUN 7 1933

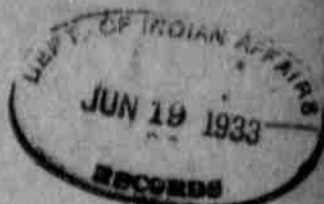
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PUBLIC ARCHIVES
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CANADA

C O P Y.

156610-4
Midland, Ontario.
June 15 - 1933.

A.G. Chishola
A.G. Chishola, Esq., K.C.
Bank of Nova Scotia Chambers,
Richmond St.
London, Ontario.



Dear Sir: Re: Pottawatamie Claim.

Your letter of the 27th. ultimo to hand and contents noted.

You seem to me to be talking in riddles when you say " I am in complete ignorance of what are the facts of the claim to date " and also state you are debarred by someone else to state what the actual status of claim is, because it is a secret. Well, I am really glad you finally did come out with the truth of this matter and admit that you yourself are doing nothing to help this claim along.

You certainly hit the nail on the head when you said I was in complete ignorance of what has been going on. Naturally I could not be otherwise, as you have never intimated for years what you have been doing, if anything, as there is absolutely no proof at Washington or Ottawa to show any progression, on your part.

Relative to the secrecy which you say exists in this prosecution or persecution as it were, I hereby demand a statement from you - showing why and what you obtained money for, from the Treaty Indians, also a large sum of money thru the Indian Department at Ottawa.

Also for your information, please be advised that this is an honest and just debt owing to my people, by the United States Government, therefore secrecy does not enter into a proposition of this nature - only when there is wrong-doing in the splitting of commission fees etc.

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

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If this is what you call meddling with, it is high time that a complete show-down was had right now, and not let this idiotic farce continue along forever, with you as Chief Jester at the helm of this derelict ship!!

All that my people are looking for is the truth and honesty - and not this sordid secrecy and forever fooling them with false promises from year to year.

Relative to intimidative letters on your part, you might just as well keep them to yourself or throw them to the four winds, as there is no man-made law that would uphold your idea of justice.

Awaiting a reply to this letter, I am,

Yours truly,

W. M. Tobey

Chairman of Pottawatonic Claimants.

Wm. Tobey,
Box 1205,
Midland, Ont.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
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CANADA

Ottawa, 6th July, 1933.

Sir,

The Department has received a letter from M.J.Sandy asking what has become of the Pottawatomie Claim and how Jackson got it in his hands. Kindly advise Mr. Sandy that we are unable to report any progress in this matter notwithstanding the fact that every effort is being made and also advise him that Mr. A.G.Chisholm, K.C., is acting with the Department in conjunction with the Department of Justice and External Affairs.

Your obedient servant,

[Handwritten signature]
Secretary.

H.J.Eade, Esq.,
Indian Agent,
Christian Island, Ont.

JEM
ESQ.
[Handwritten initials]

CHERRY 9088

756610-4
LAW OFFICES

DORR E. WARNER
101 HIPPODROME BUILDING
CLEVELAND



Mr. W. W. ...
[Signature]
November 1, 1933.

Superintendent of Indian Affairs,
Ottawa, Canada.

Dear Sir:

A number of Indians now residing in Canada have, or claim to have, claims against the United States for lands formerly belonging to their ancestors then residing in the United States. They say these claims are about a hundred years old.

I became acquainted with some of the Indians on a hunting and fishing trip, and have made some investigation for the purpose of determining whether or not a liability exists against the United States, or any of the States of the Union, and as a result, I am willing to act as attorney to prosecute their claims on a contingent fee, as they are probably unable to pay regular attorney's fees. However, before undertaking this work, I would like to know if you will consent thereto, and of course would like to have your cooperation so far as you can consistently give it.

Please let me hear from you on the subject.

Very truly yours,

Dorr E. Warner

Dorr E. Warner.

DEW
C

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

PUBLIC ARCHIVES
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CANADA

156610-4A

Ottawa, 4th November, 1933.

Dear Sir,

I have to acknowledge your letter of the 1st instant, with reference to a claim of a number of Indians now residing in Canada against the United States for lands formerly belonging to their ancestors then residing in the United States, and note that you are prepared to act as attorney to prosecute their claim on a contingent fee.

In reply I beg to say that the claim to which you refer is in all probability what is known as the Pottawatomie claim. This claim has been under way for many years having been undertaken by Mr. A.G. Chisholm, K.C., of London, Ontario. Subsequently the assistance of the Department of Indian Affairs was invoked and we had the matter referred to the Department of Justice. The claim was formally filed some years ago with the United States Government through the office of the Canadian Minister to Washington and it is felt that everything that can be done is being done on behalf of these Indians by this Department.

Yours truly,

A. J. ...
Secretary.

a.s.w.
[Signature]
Dorr E. Warner, Esq.,
Law Offices,
1101 Hippodrome Bldg.,
Cleveland,
U.S.A.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

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CANADA

COPY/WDJ

Re Claim of Pottawatomies of Wisconsin in
Canada against the United States

A great many inquiries have been made of me regarding the position of the above matter which I have hesitated to reply to till more fully assured of the status of the negotiations on the subject between Canada and the United States.

Claimants will of course recognize that a Sovereign State, as is each of these countries, cannot be sued for a debt without its own consent. Sometimes for such consent, a quid pro quo - what may be thought an equivalent - from the other, is sought by the consenting State. When such a situation occurs, difficulties are bound to arise which can only be settled by diplomatic action, often occupying much time.

Till such settlement is attained the position of Counsel for a claimant is a secondary one entirely, and beyond aiding as he can such negotiations till, if possible, some adjustment is arrived at, there is nothing he can do before any court.

This is the position under such circumstances of any Counsel for a claimant, his efforts are circumscribed by the above conditions. For instance, in the matter of your claim, so long as these negotiations are in progress, the restrictions referred to apply equally to United States or Canadian Counsel who might represent you.

I would not have you discouraged however by such difficulties, or the time required for their removal; for, I can assure you our Canadian Government has your case in hand and is making every effort to some agreement leading to their solution. I have knowledge of this and hope claimants will accept this statement as explicit.

I trust this explanation will appeal to you and that it may have the effect of quieting any apprehension that may exist as to what attention is being given to this very important matter by those seeking to advance the same. Claimants may also perceive from the above the futility of any present

Indian Affairs. (RG 10, Volume 2791, File 156,610,
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attempt by private endeavour to intervene in a
matter still involved in international nego-
tiation.

Respectfully,

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

**PUBLIC ARCHIVES
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CANADA**

COPY/WDJ

London, Canada,
May 30, 1934.

W. Stuart Edwards, Esq., K.C.,
Deputy Minister of Justice,
Ottawa, Ont.

Dear Mr. Edwards:-

A-864-3
Re Pottawatomes

You may recollect when I saw you in Ottawa last March regarding the above you referred me to Dr. Skelton. Unfortunately when I called at his office he had just returned there after an illness and was very busily engaged at the time. I had to leave the next morning. Mr. Reid also, happened to be out of town.

However, I took the matter up with Dr. Skelton after reaching home and as a result of our correspondence, understand much better than I did, how this matter stands.

I thought of sending a circular letter to claimants stating shortly some reasons why they can be assured their matter is being attended to (for I understand many of them believe the case has been abandoned) and drafted out the enclosed. It was my idea to have a hundred or so copies printed and send some to each reserve where claimants reside.

I am submitting the matter to you as matter of course, to say whether you would approve of such step and, of the terms in which my draft is couched. I would appreciate your views.

Faithfully yours,

A. G. CHISHOLM.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

156610-4A

W.D.F.
[Handwritten signature]

DEPT. OF INDIAN AFFAIRS
JUN 8 1934
RECORDS

PLEASE ADDRESS
THE DEPUTY MINISTER OF JUSTICE
OTTAWA

OTTAWA 5th June, 1934.

[Handwritten mark]

A-864-3
Re Pottawatomies

Dear Sir:-

I enclose herewith copy of a letter dated the 30th ultimo together with the enclosure mentioned therein, which I have received from A. G. Chisholm, Esq., K.C., of London, Ontario.

I should be pleased to hear from you if you desire to make any comment on the matter for my information in replying to Mr. Chisholm.

Yours truly,

Enc.

[Handwritten signature: W. Stewart Edwards]
Deputy Minister.

H. W. McGill, Esq., M.D.,
Deputy Supt. General,
Dept. of Indian Affairs,
O T T A W A .

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
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CANADA

London, July 3, 1934.

Harold W. McGill, Esq.,

Deputy Superintendent General Indian Affairs,

Ottawa, Ont.

Dear Sir:-

re Pottawatomies.

I am in receipt of a letter from Mr. Dorr E. Warner, an attorney of Cleveland, Ohio, stating that your Department advises him that many years ago I undertook to represent the Pottawatomie Indians claim. He is coming to London to see me about the matter on Saturday, July 7th, so he states.

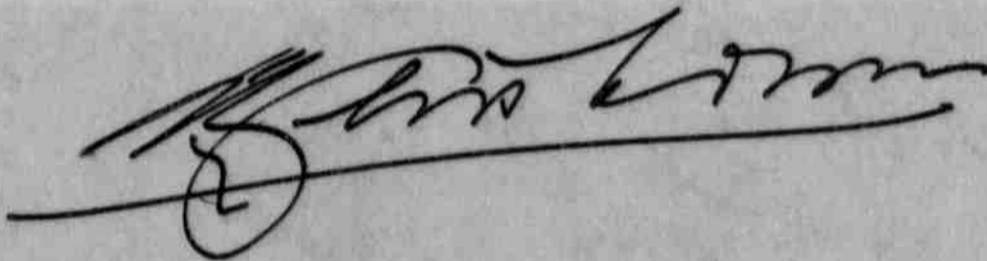
Were it not that you had apparently referred him to myself, I would have written him that there would be little use in his coming.

However, I would be grateful if you would instruct me what I am to state to Mr. Warner in case he comes here. He states he had "done considerable work on this claim" before learning I was "interested".

I should think all I can tell him is that I am acting under instructions from the Department and that at present any negotiations on the subject are being carried on between the Canadian Legation at Washington and the State Department, the latter refusing to recognize anyone not authorized by the Canadian Government to represent claimants.

I would be grateful to you if this meets the views of your Department, that you would write me accordingly.

Faithfully yours,



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pt. 6)

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156610-4

July 5, 1934.

Dear Sir:-

Re: Pottawatonic Claim.

I have to acknowledge your letter of the 3rd instant, with reference to the prospective visit from Mr. Warner of Cleveland, Ohio, in connection with the Pottawatonic Claim.

I may say that when Mr. Warner wrote the Department in November last we replied to him as follows -

"In reply I beg to say that the claim to which you refer is in all probability what is known as the Pottawatonic claim. This claim has been under way for many years having been undertaken by Mr. A. G. Chisholm, K.C., of London, Ontario. Subsequently the assistance of the Department of Indian Affairs was invoked and we had the matter referred to the Department of Justice. The claim was formally filed some years ago with the United States Government through the office of the Canadian Minister to Washington and it is felt that everything that can be done is being done on behalf of these Indians by this Department."

ASW.
I should think that all you could tell him is that you are acting under instructions from the Department and that at present any negotiations on the subject are being carried on between the Canadian Legation at Washington and the State Department, the latter refusing to recognize anyone not authorized by the Canadian Government to represent the Canadian claimants.

Yours very truly,

A.G. Chisholm, Esq., K.C.,
Bank of Nova Scotia Chambers,
London, Ontario.

Acting Deputy Superintendent General

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
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CANADA

156610-4

July 7, 1954.

Dear Sir,-

Re Pottawatomes

I have to acknowledge your letter of the 5th instant enclosing copy of a communication from Mr. Chisholm, K.C., of London, with copy of a circular letter which he suggests might be sent out to various claimants for their information as to the present situation of their claim. In reply I beg to say that Mr. Chisholm's proposal and his circular, as drafted, is quite satisfactory to this Department.

Yours very truly,

C. S. Williams

Acting Deputy Superintendent General.

The Deputy Minister of Justice,
O t t a w a.

C.S.W.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

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CANADA

Records file

156610-4

FR

ADDRESS TO THE



DEPT. OF INDIAN AFFAIRS

IN YOUR REPLY REFER TO

DEC 4 1935

10-230

TORONTO, FRIDAY, NOVEMBER 29, 1935—52 PAGES

TORONTO DAILY STAR

INDIANS FIGHT AGAIN FOR \$1,500,000 CLAIM

(Continued from Page One) States ruled that Indians who left the United States did not forfeit their right to treaty money promised them. Senator Owen tried to get the appropriation through in 1923 but failed. It hasn't gone through congress yet. The department of Indian affairs at Ottawa can no longer negotiate a settlement because more than 20 years have elapsed since 1906, and the Pottawatamies think their chance of success lies in "fighting out" the claim themselves, Red Hawk said.

In 1833 when the Pottawatamies settled in Wisconsin with the Chipewas and ceded five million acres of land to the United States government in return for the same amount of land in Iowa and a money payment. The Indians were given three more years to remain in Wisconsin.

Wouldn't Leave Land

When the time came to move, nearly half of them refused, and in the mix-up that ensued when United States troops tried to move them, 1,500 fled to Canada, making new homes around the shores of Georgian Bay and on the islands offshore.

When congress investigated the case in 1906, 1,500 descendants of the original Pottawatamies were counted in Ontario. Red Hawk himself is a claimant through his mother, who was a full-blooded Pottawatamie.

Five years ago, the former chief explained, \$256,000 was placed to the credit of the Christian Island Indians by the Dominion government from the sale of timber and treaty money promised by the government. Income from this fund is sufficient to pay each Indian \$12 every six months.

On the other hand, he said, Indians are prohibited from receiving relief because they are recipients of treaty money, and they may not accept jobs away from the reservation. "The standard of living of the Pottawatamie Indians on Christian Island to-day is lower than it was before the white man came to America," Red Hawk declared.

Tided Over by Priest

"It was only through the aid of a priest on the mainland who sent over flour and meat that some of the Indians didn't starve last winter. It looks as though conditions will be as bad, if not worse, this winter," he said.

Not more than 10 per cent. of the Indians are engaged in farming, he said, and last winter there was no relief granted from any source. "The Pottawatamies progressed well up to 1930," Red Hawk continued, "but any sign of progress among my people is lost to-day. They are isolated from outside communication, since crossing to the mainland is uncertain all the year around. What they do raise cannot be sold because the Indians cannot compete with farmers operating large farms. The cost of transportation eats up the profit.

"Since the last election," said Red Hawk, "there is hope of an adjustment on the Canadian side of the question. Under a Liberal administration, the Red Man has had a fair deal. Indian claimants who had a vote have always cast it for a Liberal government. Great hopes are entertained that an arrangement granting the wishes of the Pottawatamies will be made in the near future."

"That wish is, to be given the right to make a legal contract that is binding, the one weapon necessary for the Pottawatamies to carry on their fight for what they believe to be their rightful heritage.

INDIANS TRY FRESH FIGHT TO GAIN \$1,500,000 LEGACY

Georgian Bay Tribe in Dire Need, Says Chief Red Hawk

CAN'T GET RELIEF

A \$1,500,000 legacy, allegedly owed by the United States government to 1,500 descendants of the Pottawatamie Indians living in the Georgian Bay area, is soon again to become a legal bone of contention as the poverty-stricken Indians, some of them nearly destitute, make one more attempt to recover what they claim to be "treaty money" promised to them in 1906.

Henry Jackson, known to his Indian relatives as Chief Red Hawk, and former chief of the 300 Indians on Christian Island, visited Toronto this week to make arrangements for the next move of the 1,500 claimants to the alleged debt.

The Indian claim rests on a congressional decision in 1906 that the United States owes to descendants of the Pottawatamie Indians who fled to Canada 100 years ago a total

TO PRESENT TROPHY TO ST. MARY'S BAND

Winners of the provincial championship for the past two years at the Ontario musical festival held in Waterloo, the boys' band of St. Mary's school, Hathurst St., will be presented with the provincial trophy in the armories, University Ave., this evening. The hundred young buglers and drummers will also receive gold medals for their outstanding performance.

Established by the late Brother Lewis in 1929, the band is under the direction of Rev. Brother Harold, while the bandmaster is William Jordan. The band's natty little mascot is Cyril Langevin.

A varied program of races, drills, games, tumbling and music add to the entertainment.

of \$1,517,236. But congress did not appropriate the money and successive efforts of the Indians to secure payment have failed.

The supreme court of the United

(Continued on Page 3, Col. 8)

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DEPT. OF INDIAN AFFAIRS

IN YOUR REPLY REFER TO

DEC 4 1935 TO THE DATE OF

INDIANS FIGHT AGAIN FOR \$1,500,000 CLAIM

(Continued from Page One)
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In 1833 when the Pottawatomies settled in Wisconsin with the Chippewas and ceded five million acres of land to the United States government in return for the same amount of land in Iowa and a money payment. The Indians were given three more years to remain in Wisconsin.

Wouldn't Leave Land

When the time came to move, nearly half of them refused, and in the mix-up that ensued when United States troops tried to move them, 1,500 fled to Canada, making new homes around the shores of Georgian Bay and on the islands offshore.

When congress investigated the case in 1906, 1,550 descendants of the original Pottawatomies were counted in Ontario. Red Hawk himself is a claimant through his mother, who was a full-blooded Pottawatomie.

Five years ago, the former chief explained, \$236,000 was placed to the credit of the Christian Island Indians by the Dominion government from the sale of timber and treaty money promised by the government. Income from this fund is sufficient to pay each Indian \$12 every six months.

On the other hand, he said, Indians are prohibited from receiving relief because they are recipients of treaty money, and they may not accept jobs away from the reservation. "The standard of living of the Pottawatomie Indians on Christian Island to-day is lower than it was before the white man came to America," Red Hawk declared.

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"The Pottawatomies progressed well up to 1870," Red Hawk continued, "but any sign of progress among my people is lost to-day. They are isolated from outside communication, since crossing to the mainland is uncertain all the year around. What they do raise cannot be sold because the Indians cannot compete with farmers operating large farms. The cost of transportation eats up the profit."

"Since the last election," said Red Hawk, "there is hope of an adjustment on the Canadian side of the question. Under a Liberal administration, the Red Man has had a voice. Indian claimants who have had a vote have always cast it for a Liberal government. Great hopes are entertained that an arrangement granting the wishes of the Pottawatomies will be made in the near future."

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The supreme court of the United States has ruled against the Indians. (Continued on Page 3, Col. 8)

TORONTO, FRIDAY, NOVEMBER 29, 1935—52 PAGES

TORONTO DAILY STAR

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DEPT. OF INDIAN AFFAIRS
OCT 14 1938

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of \$1,517,236. But congress did not appropriate the money and successive efforts of the Indians to secure payment have failed.

The supreme court of the United States ruled that Indians who left the United States did not forfeit their right to treaty money promised them. Senator Owen tried to get the appropriation through in 1922 but failed. It hasn't gone through congress yet. The department of Indian affairs at Ottawa can no longer negotiate a settlement because more than 20 years have elapsed since 1906, and the Pottawatamies think their chance of success lies in "fighting out" the claim themselves, Red Hawk said.

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B

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CANADA

156610-4

DEPT. OF INDIAN AFFAIRS
MAY 14 1938

INDIANS TRY FRESH FIGHT TO GAIN \$1,500,000 LEGACY

Georgian Bay Tribe in Dire
Need, Says Chief Red
Hawk

CAN'T GET RELIEF

A \$1,500,000 legacy, allegedly owed by the United States government to 1,500 descendants of the Pottawatamie Indians living in the Georgian Bay area, is soon again to become a legal bone of contention as the poverty-stricken Indians, some of them nearly destitute, make one more attempt to recover what they claim to be "treaty money" promised to them in 1906.

Henry Jackson, known to his Indian relatives as Chief Red Hawk, and former chief of the 300 Indians on Christian Island, visited Toronto this week to make arrangements for the next move of the 1,500 claimants to the alleged debt.

The Indian claim rests on a congressional decision in 1906 that the United States owes to descendants of the Pottawatamie Indians who fled to Canada 100 years ago a total

of \$1,517,226. But congress did not appropriate the money and successive efforts of the Indians to secure payment have failed.

The supreme court of the United States ruled that Indians who left the United States did not forfeit their right to treaty money promised them. Senator Owen tried to get the appropriation through in 1922 but failed. It hasn't gone through congress yet. The department of Indian affairs at Ottawa can no longer negotiate a settlement because more than 20 years have elapsed since 1906, and the Pottawatamies think their chance of success lies in "fighting out" the claim themselves, Red Hawk said.

In 1833 when the Pottawatamies settled in Wisconsin with the Chippewas and ceded five million acres of land to the United States government in return for the same amount of land in Iowa and a money payment. The Indians were given three more years to remain in Wisconsin.

Wouldn't Leave Land

When the time came to move, nearly half of them refused, and in the mix-up that ensued when United States troops tried to move them, 1,500 fled to Canada, making new homes around the shores of Georgian Bay and on the islands offshore.

When congress investigated the case in 1906, 1,559 descendants of the original Pottawatamies were counted in Ontario. Red Hawk himself is a claimant through his mother, who was a full-blooded Pottawatamie.

Five years ago, the former chief explained, \$256,000 was placed to the credit of the Christian Island Indians by the Dominion government from the sale of timber and treaty money promised by the government. Income from this fund is sufficient to pay each Indian \$12 every six months.

On the other hand, he said, Indians are prohibited from receiving relief because they are recipients of treaty money, and they may not accept jobs away from the reservation. "The standard of living of the Pottawatamie Indians on Christian Island to-day is lower than it was before the white man came to America," Red Hawk declared.

Tided Over by Priest

"It was only through the aid of a priest on the mainland who sent over flour and meat that some of the Indians didn't starve last winter. It looks as though conditions will be as bad, if not worse, this winter," he said.

Not more than 10 per cent. of the Indians are engaged in farming, he said, and last winter there was no relief granted from any source. "The Pottawatamies progressed well up to 1930," Red Hawk continued, "but any sign of progress among my people is lost to-day. They are isolated from outside communication, since crossing to the mainland is uncertain all the year around. What they do raise cannot be sold because the Indians cannot compete with farmers operating large farms. The cost of transportation eats up the profit.

"Since the last election," said Red Hawk, "there is hope of an adjustment on the Canadian side of the question. Under a Liberal administration, the Red Man has had a fair deal. Indian claimants who have had a vote have always cast it for a Liberal government. Great hopes are entertained that an arrangement granting the wishes of the Pottawatamies will be made in the near future."

That wish is, to be given the right to make a legal contract that is binding, the one weapon necessary for the Pottawatamies to carry on their fight for what they believe to be their rightful heritage.

R

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

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156610-4

Indians to Start Action Collect \$1,500,000 Legacy From the U.S. Government

22 19

Special to The Evening Telegram
Barrie, Dec. 17.—Descendants of the Pottawatamie Indians living in the Georgian Bay district are starting a movement to collect a legacy, allegedly owed them by the United States Government.

This has been a legal bone of contention for some time. Henry Jackson, known to his Indian relatives as Chief Red Hawk and former chief of the 300 Indians on Christian Island, declared yesterday on passing through Barrie.

Some of the Indians are poverty-stricken and others are destitute, he said, and we are making one more attempt to recover the treaty money promised to us thirty years ago. Chief Red Hawk said that he was just returning from Toronto, where he had completed arrangements for the next move of the 1,300 claimants to the alleged debt. He stated that the legacy due is over \$1,500,000.

CONGRESSIONAL DECISION.

The Indian claim rests on a congressional decision of 30 years ago that the United States owes to descendants of the Pottawatamie Indians, who fled to Canada a century ago, a total of over \$1,500,000. At that time Congress did not appropriate the money and successive efforts of the Indians to secure payment have failed.

Continuing, Chief Red Hawk, or Mr. Jackson, said that the Supreme Court of the United States ruled that Indians, who left the States did not forfeit their right to treaty money promised them, adding that Senator Owens tried to get the appropriation through in 1922, but failed. It has not gone through Congress yet.

The Department of Indian Affairs at Ottawa can no longer negotiate a settlement, the chief stated, because more than 20 years have elapsed since the treaty money was promised. The Pottawatamies think their chance of success lies in "fighting out" the claim themselves, Red Hawk said.

CEDE FIVE MILLION ACRES.

In 1833 when the Pottawatamies settled in Wisconsin with the Chippewas and ceded five million acres of land to the United States Government in return for the same amount of land in Iowa and a money payment, the Indians were given three more years to remain in Wisconsin.

When the time came to move, stated Red Hawk, nearly half of them refused, and in the mix-up that ensued, when United States troops tried to move them, 1,500 fled to Canada, making new homes around

the shores of Georgian Bay and on the islands offshore.

He said that when Congress investigated the case 30 years ago, 1,550 descendants of the original Pottawatamies were counted in Ontario. Red Hawk is a claimant himself through his mother, who was a full-blooded Pottawatamie.

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Five years ago, the former chief explained, \$250,000 was placed to the credit of the Christian Island Indians by the Dominion Government from the sale of timber and treaty money promised by the Government. Income from this fund is sufficient to pay each Indian \$12 every six months.

On the other hand, he said, Indians are prohibited from receiving relief because they are recipients of treaty money, and they may not accept jobs away from the reservation. "The standard of living of the Pottawatamie Indians on Christian Island to-day is lower than it was before the white man came to North America," declared Red Hawk.

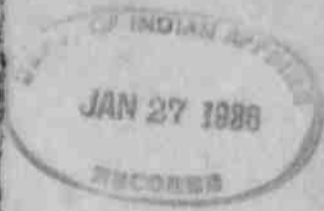
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A FEW FARMERS.

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BY ELECTRIC PRESS



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Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

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COPY (MJS)

A. G. CHISHOLM, K.C.
Barrister, &c.

Bank of Nova Scotia Chambers
Richmond Street
Met. 3700.

London, Canada June 22/36.

O. D. Skelton, Esq., M.A., Ph.D., &c.,
Under-Secretary of State for External Affairs,
Ottawa, Ontario.

Dear Dr. Skelton:

Yours of May 29th re the case of the Pottawatomie Indians was duly received and has given me considerable thought as to my own position in this matter, as I take it from your letter, Canada has, at any rate for the time being, abandoned any prosecution of the claim.

My retainer in the case is regulated by an agreement made between the Superintendent General of the Indian Affairs and myself dated the 8th of August 1918. I had previously been retained by some fifteen hundred or more of the claimants and hold individual Powers of Attorney from each of them. Under the agreement between the Superintendent General and myself it is provided;-

1. The Part of the Second Part is recognized by the Party of the First Part as Solicitor for said Pottawatomie claimants and as such entitled to receive compensation for his services on their behalf.

7. The Party of the First Part agrees to recommend the early passage of an Order in Council by

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

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his Excellency the Governor General in Council directing that a Petition signed by the Party of the Second Part as Solicitor for said claimants, setting out the nature and grounds of their claim against the United States, be forwarded through the proper diplomatic channels for presentation to the United States Government, and which Petition will ask for payment of said claim or in the alternative, a reference of the same to the said Court of Claims of the United States for adjudication thereon, and will further use diplomatic or other proper means at Washington on behalf of the Canadian Government to secure the granting by the American Government of the prayer of said Petition.

The Order in Council referred to was duly passed and the Petition signed and forwarded from the British Embassy at Washington. I was actively engaged thereafter in the prosecution of the claim and visited Washington several times and saw the competent official at the State Department in connection with the matter. At this time the State Department raised no objection to the case going to the Court of Claims if our Government granted a fiat to a Petition of right filed in the Exchequer Court of Canada by the Eisenberg heirs which had theretofore been refused by our Government. Subsequently the Canadian Government granted a fiat to this Petition, but then the State Department reneged and refused the necessary legislation. The whole matter is referred to in the somewhat voluminous despatches between the two countries which I suppose you have in your office, and of which I have copies. For the purpose of my letter it would seem not necessary to do more than mention these-

In July, 1934, I received a letter from Mr. Dorr E. Warner, an Attorney at Cleveland, Ohio, stating that the Department of Indian Affairs advised him that I had undertaken to represent the Pottawatomie Indian claim and that he would like to come to London and see me about the matter. Upon receipt of this letter I wrote the Indian Department on the subject and was advised in reply that I could tell him I was acting under instructions from that Department and that at present any communications on the subject were being carried out between the Canadian Legation at Washington and

the State Department, the latter refusing to recognize anyone not authorized by the Canadian Government to represent the Canadian Claimants. Mr. Warner saw me at my office on July 7th, 1934, and I duly informed him of the position of matters as instructed by the Indian Department. On July 10th, 1934, I advised Mr. Edwards, D.M.J., of Mr. Warner's call and what he had communicated to me stating "Mr. Warner claims to have some very influential political friends at Washington and desires their influence with the Department of the Interior of the United States to secure its recommendation of an appropriation by Congress to pay the Pottawatomie Indian claimants. He is very sanguine of the result of such an effort, at my suggestion Mr. Warner on his arrival home, sent me a letter embodying his views of which I enclose you copy for your information".

Mr. Warner was very earnest in seeking my collaboration with him in the matter and offered me very attractive inducements if I would only enter into such an agreement with him. Subsequently, I had a number of letters from Mr. Warner on the matter pressing me for a decision to which I could not definitely reply as I had not received information from Ottawa to letters on the subject. Finally, after hearing from Ottawa, I wrote Mr. Warner on November 3rd, 1934, "in view of the above it would seem impossible to come to any arrangement along the lines suggested in our correspondence and until the apparently inflexible attitude of the State Department to these claims is modified, it would seem the only possible thing to do is to carry on with the negotiation for the reconvention of the Tribunal to try claims between Canada and the United States. I much regret the position of the matter and under other circumstances would have been delighted to collaborate with you in the furtherance of the claim".

Should the situation have developed as I understand it, as you will quite perceive my position is rather unenviable as there is nothing further that I can do under instructions from the Government and I am cut off from any prospect of collaboration with Mr. Warner, which if Mr. Warner's hopes are realized, would mean some very profitable business for myself. I might interject, though

it is a little out of place, that under date of 6th of March, 1933, I received a letter from the Deputy Superintendent General of Indian Affairs advising me "with respect to your status in the case I have to say that while the Minister had directed that you incur no further costs in the case for the time being, your status as counsel has not been disturbed."

I have recently been advised by correspondents in Manitoulin Island, Christian Island and other localities where these claimants dwell, that Mr. Warner has been visiting them, meetings have been called of claimants which were largely attended, and that resolutions have been passed and documents signed by claimants appointing Mr. Warner as their sole Attorney to represent them at Washington in the prosecution of their claim, also revoking any authority given me for this purpose and these documents have been very largely signed by claimants, in fact if Mr. Warner's authority is recognized, I am completely out of the case.

I have no idea that either your Department, the Indian Department or the Justice Department would have any object in letting me down in the matter, and I would suggest and urge that some immediate action be taken through the Canadian Legation at Washington to state the circumstances and have the State Department notify their Interior Department that I am the only legal agent for claimants recognized by the Canadian Government. I might state that long ago when Sir Auckland Geddes was British Ambassador at Washington, he so notified the State Department, but how this phase of the matter now stands I am not quite certain. Such a step would I think put a spoke in Mr. Warner's activities, but would leave the way open for him in case our Government wished to withdraw from the case, to renew his effort to secure my collaboration in the matter. I understand the State Department will deal with no Attorney claiming to represent these people not recognized by the Canadian Government as their legal agent. I think under all circumstances of the case I am only asking what is the fair thing for our Government to do.

It only remains for me to acknowledge your courtesy in our correspondence and to apologize for a letter which I fear you will find rather tedious.

Very sincerely yours,

" A. G. Chisholm"

Mr. Williams

156610-4



Ottawa, June 29, 1936.

Dear Dr. McGill,-

Jun. 22

I am enclosing copy of a letter dated the 22nd June, 1936, received from Mr. A.G. Chisholm, K.C., concerning the Pottawatomie claim.

There were two possible ways of disposing of this claim.

The first way was by a reference to the Court of Claims in the United States. Every effort was made to induce the State Department to refer this claim to the Court of Claims, but without success. I do not think that there is any prospect of making any further progress along these lines.

The second possible course involved the establishment of a Second Schedule and the reconstitution of the Pecuniary Claims Commission. The Governments of the United Kingdom and of the United States have mutually abandoned their claims against one another. The only part of the list available for the constitution of a Second Schedule would be the claims between Canada and the United States both ways.

The real question is whether it is desirable that the Second Schedule should be constituted to deal with the Umbrina and Pottawatomie claims against the United States and of the Atlin Mining claims against Canada.

Deputy Superintendent General of Indian Affairs,

Ottawa,

Ontario.

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

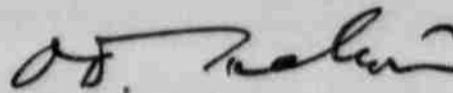
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There had formerly been the possibility of the reconstitution of the Commission in order to deal with the "I'm Alone" claim, or in order to deal with other smuggling cases under the Convention of 1924. The agreement of the Commissioners in the "I'm Alone" case, obviated the necessity of reconstituting the Pecuniary Claims Commission, and it is unlikely now that an occasion will arise which will create an incidental opportunity to establish the Second Schedule on a restricted basis.

With regard to the possibility of disposing of the Pottawatomie claim by the establishment of a Second Schedule and reconstitution of the Commission, it is necessary to obtain your views as well as those of the Department of Justice. There may be some difficulty in inducing the United States Government to co-operate in bringing the Commission to life again, and before taking any action, it is desirable that we should have a conference of the interested departments.

Accordingly, I should be obliged if you would give some consideration to this matter; but I shall arrange for a meeting with Mr. Edwards, shortly.

Yours sincerely,



Under-Secretary of State
for External Affairs.

Ottawa, September 17, 1936.

Dear Mr. Chisholm,-

Referring to your letter dated the 28th August, 1936, and to the previous correspondence concerning the present position of the Pottawatomie case, I may say that the matter has been the subject of a conference by the representatives of the various departments of the Canadian Government which are interested in this matter.

The present position of this case is that, while it is listed for inclusion, in the event of the constitution of a second schedule, under the Pecuniary Claims Agreement, there is no immediate likelihood of such a schedule being settled, or of the tribunal being reconstituted. Consequently, I do not think that it is likely that any progress will be made in the near future.

With regard to the question of seeking adjudication by domestic tribunals in the United States, and referring particularly to Mr. Warner's activities, described in your letter of the 22nd June, I may say that this aspect of the question does not come within the province of the Department of External Affairs. Some years ago, as you know, and largely at your request, this Department commenced and carried through negotiations with the Government of the United States, with a view to

A. G. Chisholm, Esq., K.C.,
Bank of Nova Scotia Chambers,
Richmond Street,
London, Canada.

releasing the case from the Pecuniary Claims Agreement and submitting it to the Court of Claims. These negotiations were unsuccessful, the United States Government definitely refusing to consider the possibility of submission of the case to that tribunal. The Department has no information with regard to the negotiations to which you refer, but I think that it is unlikely that the Government of the United States will be prepared to recognize independent lawyers claiming to represent the Indians in this matter.

Yours sincerely,

Laurent Beaudry

Actg. Under-Secretary of State
for External Affairs.

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pt. 6)

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156610-4
DEPARTMENT OF MINES AND RESOURCES

D.M. 7-8

~~Department of Mines~~

Mr. Skelton
Memorandum:

Dr. McGill



R

Mr. Skelton
I am sending herewith a communication dated December 28 from Dr. O.D. Skelton, Under-Secretary of State for External Affairs, Ottawa.

Subject Note No. 19, from the High Commissioner for the United Kingdom, dated 24th December 1936, re the position of the Pecuniary Claims Commission.

Kindly prepare a draft reply for the signature of the Deputy Minister.

If the information desired is not available within the next 3 days, will you be good enough to advise me when it may be expected.

*Letter from Dr. Skelton
copy of note no. 19
from High Commissioner
returned to Mr. McGill
December 31 1936.*

Charles Cassell
DEPUTY MINISTER

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

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CANADA

156610-4.

EX'D.

January 20th, 1937.

Dear Dr. Mallon:-

I have to acknowledge your letter of the 25th ultimo enclosing a copy of Note No. 19 from the High Commissioner for the United Kingdom dated the 24th December, 1936, concerning the position of the Advisory Claims Commission.

It is noted that the position of this Commission depends largely upon the disposition of the claim of the Pottawatomi Indians and that it will be desirable that the action to be taken should be considered by the Deputy Minister of Justice and representatives of your Department and of this Department in the near future.

In reply I have to say that if you will kindly advise us as to the time when you are prepared to take this matter up I shall arrange to have representatives of this Department meet you for a discussion of this matter.

Yours sincerely,

Deputy Minister of Mines and Resources.

Dr. O. D. Mallon,
Under Secretary of State
for External Affairs,
OTTAWA, Ontario.

*a.s.w.
Kivulley*

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

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SECRET

Office of the High Commissioner
for the United Kingdom,
Ottawa.

No. 19.

The High Commissioner in Canada for His Majesty's Government in the United Kingdom presents his compliments to the Secretary of State for External Affairs and has the honour to inform him, under instructions from the Secretary of State for Dominion Affairs, that the United Kingdom Government are particularly anxious, if possible, to dispose of the long-standing question of the mutual cancellation of claims under the Pecuniary Claims Agreement with the United States of America of the 18th August, 1910.

It will be recollected that, in his third-person communication No. 38 of the 3rd November, 1933, Sir William Clark set forth the position in regard to the claims in question and enquired whether His Majesty's Government in Canada, who are extensively affected, would be prepared, so far as concerned the claims in which they are interested, to consent to the closing of the question once and for all by an agreement with the United States Government that the claims contained in the lists exchanged in 1912 should be mutually barred.

On the 25th January, 1934, the Secretary of State for External Affairs replied that, while the course suggested appeared to be entirely satisfactory in so far as His Majesty's Governments in the United Kingdom and in the Dominions, other than Canada, were concerned, His Majesty's Government in Canada were not then in a position to participate in a general mutual cancellation of claims, and suggested that, under such an arrangement, the claims as between the Canadian Government and the United States Government should be reserved for further consideration between those Governments.

The United Kingdom Government then obtained the views of His Majesty's Governments in the Commonwealth of Australia, New Zealand and the Union of South Africa, between whom and the United States certain claims under the Agreement of 1910 were still outstanding. All three Governments agreed to the suggestion that the United States Government should be approached with a view to the mutual cancellation of outstanding claims except those between Canada and the United States.

Steps were accordingly taken to ascertain whether the United States Government would agree to this course, but it transpired that they were unwilling to do so while the claims between Canada and the United States remained excluded.

His Majesty's Government in the United Kingdom are particularly anxious to clear away possible outstanding points of difference by making a formal settlement with the United States of this long-standing question, but feel that it would serve no useful purpose to approach the Government of that country for a final settlement of the matter so long as the present Canadian

reservation stands. In the opinion of the United Kingdom Government there is no chance whatever of the United States Government agreeing to arbitrate any of the claims in question, and in these circumstances His Majesty's Government in the United Kingdom would greatly appreciate it if His Majesty's Government in Canada could now see their way to withdraw their reservation and enable steps to be taken for a general cancellation of all the claims outstanding under the Agreement of the 18th August, 1910.

24th December, 1936.

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Department of
EXTERNAL AFFAIRS
Canada

COPY

SECRET

Ottawa, December 28, 1936.

Dear Dr. Camsell,-

I am enclosing a copy of note No. 19, from the High Commissioner for the United Kingdom, dated the 24th December, 1936, concerning the position of the Pecuniary Claims Commission.

The position of this Commission depends largely upon the disposition of the claim of the Pottawatonic Indians. This matter was discussed some months ago by the Deputy Minister of Justice and by Dr. McGill, with this Department. It will, no doubt, be desirable that the action to be taken, as a result of the present request from the Government of the United Kingdom, should be considered by Mr. Edwards and representatives of your Department with this Department, in the near future. Meanwhile, I am furnishing you with a copy of the note, in order that you may be in a position to deal with the matter.

Yours sincerely,

G. D. Skelton, (signed)

Under-Secretary of State
for External Affairs.

Dr. Charles Camsell,
Deputy Minister of Mines,
Ottawa, Ontario.

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The United Kingdom Government then obtained the views of His Majesty's Governments in the Commonwealth of Australia, New Zealand and the Union of South Africa, between whom and the United States certain claims under the Agreement of 1910 were still outstanding. All three Governments agreed to the suggestion that the United States Government should be approached with a view to the mutual cancellation of outstanding claims except those between Canada and the United States.

Steps were accordingly taken to ascertain whether the United States Government would agree to this course, but it transpired that they were unwilling to do so while the claims between Canada and the United States remained excluded.

His Majesty's Government in the United Kingdom are particularly anxious to clear away possible outstanding points of difference by making a formal settlement with the United States of this long-standing question, but feel that it would serve no useful purpose to approach the Government of that country for a final settlement of the matter so long as the present Canadian

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

**PUBLIC ARCHIVES
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CANADA**

reservation stands. In the opinion of the United Kingdom Government there is no chance whatever of the United States Government agreeing to arbitrate any of the claims in question, and in these circumstances His Majesty's Government in the United Kingdom would greatly appreciate it if His Majesty's Government in Canada could now see their way to withdraw their reservation and enable steps to be taken for a general cancellation of all the claims outstanding under the Agreement of the 18th August, 1910.

24th December, 1936.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

**PUBLIC ARCHIVES
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CANADA**

*Letter for
Skelton
Sept. 2nd off.
Dec 28, 1936*

Department of
EXTERNAL AFFAIRS
Canada

Copy

SECRET

Ottawa, December 28, 1936.

Dear Dr. Camsell,-

I am enclosing a copy of note No. 19, from the High Commissioner for the United Kingdom, dated the 24th December, 1936, concerning the position of the Pecuniary Claims Commission.

The position of this Commission depends largely upon the disposition of the claim of the Pottawatomie Indians. This matter was discussed some months ago by the Deputy Minister of Justice and by Dr. McGill, with this Department. It will, no doubt, be desirable that the action to be taken, as a result of the present request from the Government of the United Kingdom, should be considered by Mr. Edwards and representatives of your Department with this Department, in the near future. Meanwhile, I am furnishing you with a copy of the note, in order that you may be in a position to deal with the matter.

Yours sincerely,

O. D. Skelton, (signed)

Under-Secretary of State
for External Affairs.

Dr. Charles Camsell,
Deputy Minister of Mines,
Ottawa, Ontario.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
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CANADA

TRM
Mr. MacLennan

EX'D.

January 28, 1937.

Memorandum.

Deputy Minister.

I am returning herewith letter from the Under-Secretary of State for External Affairs of December 28 last with enclosure with regard to the claim of the Pottawatomie Indians against the Government of the United States.

In accordance with a verbal request received from your office I shall review the circumstances of this claim briefly in the paragraphs which follow:-

This is a claim arising out of several treaties made between the Indians and the United States Government including in particular one made on the 26th September, 1838, under which the Pottawatomie Nation sold its lands to the Government and agreed to remove to a tract of land west of the Mississippi River. About 2000 removed to the State of Kansas and about an equal number went to northern Michigan and Wisconsin and to Canada.

In 1906 it appears that the Secretary of the Interior at Washington caused an investigation to be made of the claims of the Wisconsin band of Pottawatomies and submitted to Congress a census roll of the members of this band residing in the United States and those residing in the Dominion of Canada. Following this Mr. A. G. Chisholm, K.C., of London, Ontario, interested himself in this claim on behalf of the Canadian Pottawatomies and secured powers of attorney from the greater number of these Indians with respect to the prosecution of their claim. Some years after this Mr. Chisholm invoked the assistance of the Department of Indian Affairs in the prosecution of this claim, and the department entered into an agreement with Mr. Chisholm retaining his services and providing for the manner in which he was to be compensated.

The petition of the claimants was filed with His Majesty's Ambassador at Washington in October 1919, with a formal request that the claim as now put forward might be

File 1137
ASW.
TRM

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

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CANADA

presented to the Government of the United States for determination under the Pecuniary Claims Agreement, or, if that course were not feasible, that the petition be referred to the Court of Claims of the United States or to some other appropriate tribunal for adjudication. On the appointment of the Honourable Vincent Massey as Minister to Washington he personally took up this claim with the United States Government, and these negotiations were continued by the Honourable W. D. Herridge.

The claimants are naturally disappointed that no substantial progress appears to have been made and some of them have suggested that the Government abandon the claim and allow them to prosecute it on their own behalf. This suggestion, in conjunction with other phases of this claim, in 1933, was the subject of a conference at which were present the Honourable T. G. Murphy, Superintendent General of Indian Affairs, the Honourable W. D. Herridge, Dr. O. D. Shelton, Under-Secretary of State for External Affairs, Mr. John E. Read, Legal Advisor of External Affairs, Mr. W. Stuart Edwards, K.C., Deputy Minister of Justice, and Mr. A. S. Williams, Departmental Solicitor of Indian Affairs. The consensus of opinion at that time was that there was little or no prospect of this claim being referred by the United States Government to its Court of Claims, and further that the Indians on their own behalf could not meet with any better success than the Government had done and that the Government would not be justified in abandoning the claim as requested by some of the Indians.

There has been no material development in the interim, and the department has had no occasion to alter its opinion as above mentioned. It may be, however, that having regard to general international policy the Government may deem it inexpedient to proceed with the claim. I expect that with Mr. Williams I shall have an opportunity of discussing the subject in the near future with the Deputy Minister of Justice, the Under-Secretary of State for External Affairs and other interested officers, following which I shall advise you further.

Howes

Director of Indian Affairs.

W. D. H.

C
o
p
y

JER/S
Feb. 22/37

Draft Note to Sir Francis Floud

S E C R E T

Sir,-

I have the honour to refer to your note No. 19, dated the 24th December, 1936, and to the secret communication from Mr. Coverley-Price to the Legal Adviser of the Department, of the same date, relating to the disposition of claims under the Pecuniary Claims Agreement with the United States of the 18th August, 1910.

I have had an opportunity of conferring with the interested Departments of the Governments of Canada and, consequently, I am now in a position to inform you that the Government of Canada would be prepared, so far as Canadian claims are concerned, to consent to the closing of this question once and for all by an Agreement with the United States Government, that the claims contained the lists exchanged in 1912 should be mutually barred.

With regard to the procedure to be followed, a somewhat difficult question emerges. The Agreement itself contains no separate provision in respect of the Canadian claims. It, of course, followed the practice that was appropriate at the time when it was negotiated. Since the establishment of Canadian diplomatic representation at Washington, different aspects of the Agreement have been dealt with independently between the Canadian Legation and the State Department, upon the same basis as if the Agreement, in so far as Canadian claims are concerned, had originally been a separate Agreement. Consequently, it would be necessary to arrange for an exchange of notes by the Canadian Minister, as well as by the British Embassy at Washington, to deal with this matter.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

**PUBLIC ARCHIVES
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CANADA**

It would, therefore, seem to be desirable to adopt a common basis for the approach to the Government of the United States. It might be helpful if the Legation and the Embassy conferred with regard to this matter, and possibly the form of the exchange of notes might be settled on the next occasion when the Legal Adviser of this Department is in Washington, which will probably be within the next few weeks.

In providing for a mutual cancellation of claims, it will be necessary to draft the Canadian exchange of notes so as to reserve the position of Canadian claimants, in so far as any remedies under the United States law are concerned. This, of course, could be done upon a reciprocal basis, so that the cancellation of the international claims would not prevent either the Canadian or the United States claimants from pursuing any remedies available in the other country, whether ex gratia or ex jure. I am confident that the State Department, as well as this Department, would desire to have such a reservation included.

I have the honour to be, &c.

C
O
P
Y

Mrs Churchill

DEPARTMENT OF EXTERNAL AFFAIRS

Ottawa, February 22, 1937.

Dear Dr. Camsell,-

I am enclosing copy of a draft note to Sir Francis Floud, dealing with the Pecuniary Claims Agreement problem, in order to ascertain whether it meets with the approval of your Department.

Yours sincerely,

(Sgd.) O.D. Skelton

The Deputy Minister of
Mines and Resources,
Ottawa, Ontario.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
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CANADA

DEPARTMENT OF MINES AND RESOURCES

D.M. 7-8

~~Department of Mines~~

Memorandum:

Dr. McGill

R



I am sending herewith a communication dated
February 22 from ^{Dr.} O.D. Skelton, Dept. of External Affairs,
Ottawa.

Subject Pecuniary Claims Agreement.

Kindly prepare a draft reply for the signature of the
Deputy Minister and return the correspondence to this office

If the information desired is not available within
the next 3 days, will you be good enough to
advise me when it may be expected.

Charles Connors
K

DEPUTY MINISTER

..... February 25 19 37.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

N-6610-4

Ottawa, 27th February, 1937.

Dear Dr. Skelton,

I have to acknowledge your letter of the 22nd February enclosing a copy of a draft note to Sir Frances Floud, dealing with the Pecuniary Claims Agreement problem.

In reply I have to say that we have no comment to make except that the suggestions are acceptable to the Indian Affairs Branch.

Yours sincerely,

Deputy Minister.

Dr. O.D. Skelton, F.R.S.C.,
Under-Secretary of State for External Affairs,
Ottawa.

*Stowell**that - 1/27*

A. T. Young
Barrister & Solicitor, Etc.

Handwritten signature

Mr. Young's letter
June 28th.

156610-4

Office at
Meaford and Owen Sound
Owen Sound Phone 336 J

Meaford, Ont.,
June 28th, 1937.

Minister of
JUN 30 1937
Minister of

Superintendent General of Indian Affairs,
Parliament Bldgs.,
Ottawa, Ont.

Department of Mines & Resources
Indian Affairs Branch
JUL 3 1937
RECORDS

Dear Sir: Re: Pottawatomie Indian Claim

Sometime ago I was approached by several members of this band of Indians to act for them regarding an alleged claim which they have against the Government of the United States for a sum of money exceeding one and a half million dollars.

Acting on my own initiative and without any obligation whatever on the part of the Indians who interviewed me I investigated the merits of their claim, being assisted by an Attorney in Washington with whom I am acquainted.

The principal facts are as follows:- By the Treaty of September 26, 1833 (7 Stat. L., 431) the Pottawatomie Indians sold their lands to the United States and agreed to remove west of the Mississippi River. Thereafter, about two thousand went to Kansas, and an equal number fled to Wisconsin, Michigan, and Canada. Subsequent to this migration their proportion of all funds due the tribe under the treaty were paid to those who removed to Kansas.

As a result of a memorial presented to Congress by the "refugees" who had thus been deprived of their annuities Congress, by the Act of June 21, 1906, (34 Stat. L., 380)

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

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CANADA

Superintendent General of Indian Affairs

Directed that an investigation be made of their claims by the Secretary of the Interior. The report to Congress thereunder (House Document No. 830, 60th Congress, First Session) found that 457 of the Indians resided in Wisconsin and Michigan and 1,550 in Canada; and that to equalize the payments would require the sum of \$447,339.00 for the United States branch and \$1,517, 226.87 for those who resided in Canada, making a total of \$1,964,565.87.

The \$447,339.00 has been appropriated and paid to the United States branch, or used for their benefit; but no appropriation has yet been made for the Canadian Pottawatomies.

A very large amount of time and expense will be involved if I am to proceed further with their claim. It has been suggested that my fees and costs be placed on a contingent basis depending upon whether the whole or any part of the claim is realized.

Personally I look upon the sum in question as a debt owing by the United States Government and not as a claim or cause of action.

Would you kindly give this matter your kind consideration and advise me if such an agreement for fees and costs would meet with your approval.

Yours truly,

A. J. Young



CANADA
DEPARTMENT
OF
MINES AND RESOURCES
INDIAN AFFAIRS BRANCH

72-13.

Ottawa, July 6, 1937.

156610-4

T.R.L. MacInnes
Memorandum.

Mr. Cory.

I am enclosing our file No. 156610-4 with reference to the Pottawatomie Indian Claim, and I would be glad if you would review the correspondence in connection with this matter and let me have the benefit of your views.

I have read the correspondence on file herewith regarding the Pottawatomie Indian Claim - and there does not appear to be anything further that can be done at the present

T.R.L. MacInnes
T.R.L. MacInnes.
Secretary.

Wm Cory

*To Mr. Young:
get copy of
Dr. Shelton's
letter from
D.M.'s office*

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

EXD.

Ottawa, July 16, 1937.

Dear Sirs

Re Pottawatonia Indian Claim

I have to acknowledge receipt of your letter of June 28th last with reference to the above and in reply thereto I have to advise you that this matter is under advisement and I am unable to give you any advice in connection therewith at the present time.

Yours very truly,

TRLM

T. R. L. MacInnes,
Acting Director of Indian Affairs.

BSI

A. T. Young, Esq.,
Barrister, Solicitor, Etc.,
Meaford, Ontario.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

*Original
returned to D.H.'s office
P. 1.*

Copy

House of Commons,
Owen Sound, Ont.

Oct. 4/37.

Hon. T. A. Crerar,
Minister of Indian Affairs, Ottawa.

Dear Mr. Crerar: Attention T. R. L. MacInnes.

Mr. A. T. Young, barrister of Meaford, Ont., has been interesting himself in a claim of the Potawattamie Indians against the United States Government.

I need not go into the details, as Mr. Young has had some correspondence with your department.

May I ask your dept to grant authorization to Mr. Young to pursue his efforts to secure for this band of Indians their share of the funds to which they are entitled?

Mr. Young is willing to follow this matter up if authorized by your dept to do so, on the understanding that he shall be paid his disbursements and that compensation for his services will be contingent on his being successful in his efforts to have these claims paid.

I will appreciate it very much if you will give this matter your earliest attention and advise Mr. Young, whose address is Meaford, Ont, direct.

Yours faithfully,

(Sgd) W. P. Telford,
M. P. North Grey

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

**PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA**

152610 4

Minister's Office

MEMORANDUM

Oct. 7, 1937



DR. MCGILL

Re: Pottawattamie Claim

B

With a return of the attached letter from Mr. W.P. Telford, M.P., will you please furnish a full report for the Minister's information.

W.J.F. Pratt
W.J.F. Pratt
Secretary.

Encl.

Oct. 4.

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

Ottawa, October 12, 1937.

Memorandum.

EX'D.

The Deputy Ministers

I have to refer to Mr. Pratt's memorandum of October 7, with regard to the Pottawattamie Claim, wherewith was enclosed a letter from Mr. W.P. Telford, M.P., of Owen Sound, dated October 4, which is returned herewith.

This Branch already has had correspondence with Mr. Young on this subject.

On the general question of the Pottawattamie Claim I would refer you to my memorandum of January 28, 1937, in which the circumstances of this claim were reviewed, and also to my draft letter for your signature, dated February 27, 1937, to Dr. Skelton, in reply to his letter of February 22, wherewith he enclosed a draft (Secret) to Sir Francis Flood, relating to the disposition of claims under the Pecuniary Claims Agreement with the United States of the 18th August, 1910.

Subsequently this matter was referred to Mr. Cory, Departmental Solicitor, on July 6, 1937, following receipt of a letter from Mr. Young, dated June 28, 1937. Mr. Cory replied as follows:-

"I have read the correspondence on file herewith regarding the Pottawattamie Indian Claim, and there would not appear to be anything further that can be done for the present".

In the circumstances it would not appear that we are as yet in a position to give Mr. Young any advice, and he was so advised in letters dated July 16, August 9, and October 5.

T.R.K.M.
~~AM~~

Oct. 17/37

Alouet

Director of Indian Affairs.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

Ottawa, 18th October, 1937.

Dear Sir -

Re - Pottawatonic Indian Claim.

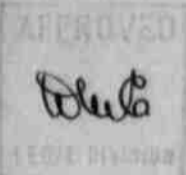
Enclosed herewith please find copy of a letter received from A. T. Young, Barrister, Solicitor, etc., Meaford, Ontario, in connection with the above. I beg to state that this letter has been acknowledged and Mr. Young advised that this matter is being given consideration.

I would be very glad if you would intimate just what reply should be given Mr. Young.

Yours very truly,

Deputy Minister.

The Deputy Minister,
Department of Justice,
O t t a w a.



Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

Ottawa, 18th October, 1937.

Dear Sir -

Re - Pottawatonic Indian Claim.

Enclosed herewith please find copy of a letter received from A. T. Young, Barrister, Solicitor, etc., Meaford, Ontario, in connection with the above. I beg to state that this letter has been acknowledged and Mr. Young advised that this matter is being given consideration.

I would be very glad if you would intimate just what reply should be given Mr. Young.

Yours very truly,

Deputy Minister.

The Under-Secretary of State
for External Affairs,
Ottawa.



Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

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CANADA

DRAFT.



CANADA

DEPARTMENT
OF
MINES AND RESOURCES

LEGAL DIVISION

~~GENERAL ADMINISTRATIVE OFFICES~~
INDIAN AFFAIRS BRANCH

OTTAWA. 18th October, 1937.

Dear Sir -

Re - Pottawatomie Indian Claim.

I wish to acknowledge the receipt of your letters of the 1st and 22nd ultimo in connection with the above and wish to advise you that the subject matter of your communications has been placed before the Department of Justice and as soon as a reply has been received from that Department I will communicate with you forthwith.



Yours very truly,

T.R.L. MacInnes,
Secretary.

A. T. Young, Esq.,
Barrister, Solicitor, etc.,
Meaford, Ontario.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

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CANADA



CANADA

DEPARTMENT
OF
MINES AND RESOURCES

GENERAL ADMINISTRATIVE OFFICES

LEGAL DIVISION

B

OTTAWA. 18th October, 1937.

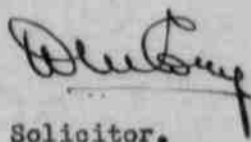
MEMORANDUM:

T.R.L. MacInnes, Esq.,
Secretary,
Indian Affairs Branch.

Re - Pottawatonic Indian Claim.

I enclose herewith draft letter for your signature to Mr.
A. T. Young, Barrister, Solicitor, etc., Meaford, Ontario.

If this meets with your approval would you kindly have it
re-written and forward to Mr. Young.



Solicitor.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

EX'D.

156610-4

Ottawa, Ontario,
October 20th, 1937.

Dear Sir:-

Re - Pottawatonic Indian Claim.

I wish to acknowledge the receipt of your letters of the 1st and 22nd ultimo, in connection with the above and wish to advise you that the subject matter of your communications has been placed before the Department of Justice, and as soon as a reply has been received from that Department I will communicate with you forthwith.

Yours very truly,



For Secretary.

A. T. Young, Esq.,
Barrister, Solicitor, Etc.,
MEAFORD, Ontario.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

De [unclear] [unclear]

156610 4

Brockville
Times & Recorder
21/10/27

Globe & Mail
22/10/37

200 Pottawatamie Indians Lose Interest-Money, Returns Low

Wallaceburg, Oct. 21.—For the first time in nine years at least, the Pottawatamie tribe of Indians on the Walpole Island Reserve did not today receive their regular half-yearly interest emolument, while more than 500 of their confederates of the Chippewa tribe lined up to receive their \$1.50 per capita from Indian Agent Charlie Highfield. Explanation for the default in payment was given as being the low ebb of interest on the monies held in trust for the tribe by the Department of Indian Affairs, unusually heavy call upon the treasury

for relief purposes, hospitalizations and contributions toward funerals. It is expected that ere the next half-yearly interest payment comes due next spring the funds will have become replenished to enable the Pottawatamies to draw their regular allowances. By treaty, following their surrender, it was pointed out, the Chippewas were guaranteed an annuity for ever, while no such agreement is understood to apply to the Pottawatamies, who did not locate here until several years later. There are approximately 200 members of the latter tribe who usually draw interest pay.



INDIANS ARE INCREASING.

It begins to look as if we would have to revise our estimate of the Indians as a vanishing race. At any rate, the census returns prepared at both Ottawa and Washington indicate very clearly that, instead of declining, the Indian population of the two countries is actually increasing.

The last enumeration taken by the Indian Affairs branch at Ottawa in 1934 shows a population increase among the Indians looked after by that government department, from 104,894 in 1924, to 108,012 in 1929, and to 112,510 in 1934.

The Dominion Bureau of Statistics in its 1931 census showed a total Indian population in Canada of 122,920, the highest since 1901, when 127,941 were recorded. There was a drop of 22,000 in 1911. The discrepancy of the two sets of census figures is caused by the fact that the Indian Affairs branch only looks after Indians who remain wards of the government; the Bureau of Statistics covers the entire population, those on reserves, in the bush, and those Indians who have become full-privileged citizens of the Dominion.

While most of Canada's Indians live on reserves, many still live in the northland, where they hunt and trap for fur, help at trading posts, do work at police posts, missions and the mines. Those on the reserve farm do industrial work near their reserves. When they are in need of food or clothing, through bad crops, or a bad fur year, government aid is given them.

The new generation is learning at 79 boarding schools and 270 day schools, with an enrollment of more than 18,000 children. In addition to the usual curriculum the boys are taught trades and the girls household science. They are also taught to live in white men's ways, so that as many as possible will be able to take out full citizenship papers. About \$2,000,000 a year is spent on Indian education.

Under the Indian Act an Indian can shake off the protection of the state which treats him as a ward. He can become a full citizen, and in the older provinces of the Dominion he is taking advantage of that clause in the Act. But he has to meet pretty stiff government examination before he can take his place in the world as a Canadian citizen, and the government has to be assured that he can take care of himself. Then, when he meets all requirements, he ceases to be a ward of the Indian Affairs branch, no longer receives annual treaty money or any of the advantages accorded to the reserve Indians.

Indians have some 2,000 reserves varying in size from a few acres to five hundred square miles. Indians are estimated to have a stake of \$71,000,000 in the Dominion in real property, while at Ottawa the government holds in trust for the various tribes about \$14,000,000.

While no figures are available on how many Indians roamed the Dominion in the long ago, records go back to 1871, when it was estimated that there were 102,353 in the country. While his present total numbers are not many tens of thousands more, the fact that the Indian is holding his own, and in recent years has even shown an increase in numbers, is a fact little known to those who now live where the Indian once camped.

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

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CANADA

See on file

156610 4

*Brockville
Tennant Records
21/10/37*

*Globe & Mail
22/10/37*

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Under the Indian Act an Indian can shake off the protection of the state which treats him as a ward. He can become a full citizen, and in the older provinces of the Dominion he is taking advantage of that clause in the Act. But he has to meet pretty stiff government examination before he can take his place in the world as a Canadian citizen, and the government has to be assured that he can take care of himself. Then, when he meets all requirements, he ceases to be a ward of the Indian Affairs branch, no longer receives annual treaty money or any of the advantages accorded to the reserve Indians.

Indians have some 2,000 reserves varying in size from a few acres to five hundred square miles. Indians are estimated to have a stake of \$71,000,000 in the Dominion in real property, while at Ottawa the government holds in trust for the various tribes about \$14,000,000.

While no figures are available on how many Indians roamed the Dominion in the long ago, records go back to 1871, when it was estimated that there were 102,358 in the country. While his present total numbers are not many tens of thousands more, the fact that the Indian is holding his own, and in recent years has even shown an increase in numbers, is a fact little known to those who now live where the Indian once camped.

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

**PUBLIC ARCHIVES
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CANADA**

A.T. YOUNG

REGISTER, SOLICITOR, ETC.

WEAVER, ONTARIO

June 28th, 1937.

Superintendent General of Indian Affairs,
Parliament Buildings,
Ottawa, Ont.

Dear Sir -

Re - Pottawatomic Indian Claim.

Sometime ago I was approached by several members of this band of Indians to act for them regarding an alleged claim which they have against the Government of the United States for a sum of money exceeding one and a half million dollars.

Acting on my own initiative and without any obligation whatever on the part of the Indians who interviewed me, I investigated the merits of their claim, being assisted by an Attorney in Washington with whom I am acquainted.

The principal facts are as follows:- By the Treaty of September 26, 1833 (7 Stat. L., 431) the Pottawatomic Indians sold their lands to the United States and agreed to remove west of the Mississippi River. Thereafter, about two thousand went to Kansas, and an equal number fled to Wisconsin, Michigan and Canada. Subsequent to this migration their proportion of all funds due the tribe under the treaty were paid to those who removed to Kansas.

As a result of a memorial presented to Congress by the "refugees" who had thus been deprived of their annuities Congress, by the Act of June 21, 1906, (34 Stat. L., 380) directed that an investigation be made of their claims by the Secretary of the Interior. The report to Congress thereunder (House Document No. 830, 60th Congress, First Session) found that 457 of the Indians resided in Wisconsin and Michigan and 1,550 in Canada; and that to equalize the payments would require the sum of \$447,339.00 for the United States Branch and \$1,517,226.87 for those who resided in Canada, making a total of \$1,964,565.87.

The \$447,339.00 has been appropriated and paid to the United States Branch, or used for their benefit; but no appropriation has yet been made for the Canadian Pottawatomes.

A very large amount of time and expense will be involved if I am to proceed further with their claim. It has been suggested that my fees and costs be placed on a contingent basis depending upon whether the whole or any part of the claim is realized.

Personally I look upon the sum in question as a debt owing by the United States Government and not as a claim or cause of action.

Would you kindly give this matter your kind consideration and advise me if such an agreement for fees and costs would meet with your approval.

Yours truly,

A.T. Young.

November 18, 1937.

MEMORANDUM WITH REGARD TO PRESENT POSITION
OF POTTAWATOMIE INDIANS
CLAIM.

(1) The Canadian Charge d'Affaires, in a letter to Mr. Hackworth, Legal Adviser of the Department of State, dated 26th August, 1937, with regard to the position of claims outstanding under the Pecuniary Claims Agreement of 1910, stated that the Canadian Government would be prepared, in so far as Canadian claims are concerned, to consent to the closing of this question by agreement with the Government of the United States that the claims contained in the lists exchanged in 1912 should be mutually barred, with a reservation which would protect the position of the Canadian claimants, in so far as any remedies under the laws of the United States are concerned. This, he presumed, could be arranged on a reciprocal basis, so that the cancellation of the international claims would not prevent either the Canadian or the United States claimants from pursuing any remedies available in the other country, whether ex gratia or ex jure.

(2) Mr. Hackworth was asked whether he would consider it possible to settle this matter by an exchange of notes rather than by an agreement or convention. Consequently, the present position is that substantially the claims have been cancelled in so far as their international aspects are concerned, although, technically, the actual agreements have not been concluded whether by formal instrument or by exchange of notes.

(3) In the circumstances, it would appear to be appropriate that the Indians, if they so desire, should take such steps as may be available either ex gratia or ex jure to assert such rights as they may have in Washington.

(4) We have communications on file with regard to two lawyers who want to represent the Indians' claims. The one is Mr. Chisholm, who has been engaged in this matter over a long period of years. The other is Mr. A.T. Young of Neaford, Ontario, who has, apparently, had some contact with the claim in the past.

(5) Mr. Chisholm has been in touch with a Washington firm and particularly with Mr. Robert C. Bell, Jr., with a view to cooperation in presentation of this case. I do not know Mr. Robert C. Bell, Jr. His father was a Judge of the United States District Court for Minnesota and while I am not certain that I met him personally, I know a good deal about him through his connection with the Lake of the Woods Flowage Easement Litigation. The father is a man of great ability and integrity, a good example of the best type of Judge with which one comes into contact in any country. The son is a member of the firm, one of the partners of which is known to me. He was a former Attorney General of Minnesota and Assistant Attorney General of the United States and I think that one could safely assume that it was a reliable firm. Mr. Chisholm wants to go ahead with this claim. All that he is asking is that we should assure the United States Government that he and his associates were the only lawyers authorized to represent these Indians.

(6) Mr. Young's request is indicated by the annexed copy of his letter to the Superintendent General of Indian Affairs. Apparently he wants to be retained by the Superintendent General on a contingent basis.

(7) The question that requires to be decided is one which depends upon the approval of the Department of Mines and Resources and of Justice. Assuming that Mr. Chisholm's

request is approved, the Canadian Government could inform the State Department of the fact that he and his associates are to be regarded as the sole representatives of the Indians. If, on the other hand, Mr. Young's request is approved, this obviously could not be done. Mr. Young, of course, has made no corresponding request.

Young

Department of Mines & Resources
OTTAWA
NOV 19 1937
DEPUTY MINISTER



OTTAWA, November 18, 1937.

Dear Sir:-

I have received Mr. Jackson's letter of the 18th October, 1937, with enclosure dealing with Mr. Young's request to represent the Pottawatomie Indians in their claim against the United States Government.

I am enclosing a memorandum on the present situation. Obviously this matter depends upon the decision by the Director of Indian Affairs, as to whether or not Mr. Chisholm's request is approved.

Chisholm's request was made in Sept. 12/17 to Road asking for a definite ruling - letter not on file.

The approval depends upon circumstances which concern the Indian Affairs Branch and Justice. If approved, it disposes of the matter raised by Mr. Young.

If disapproved, the question of disposition of Mr. Young's request must be decided by Justice and not by this Department.

Yours sincerely,

J. St. Laurent
Acting Under-Secretary of State for External Affairs.

The Deputy Minister,
Department of Mines and Resources,
OTTAWA.

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

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R

Ottawa, 23rd November, 1937.

EX'D.

Dear Sir -

Re - Pottawatonic Indians Claim.
Your file A. 884-3.

With reference to your letter of the 22nd ultimo in connection with the above, I beg to enclose herewith copy of a letter received from J. S. Read, Acting Under-Secretary of State for External Affairs, together with a memorandum on the same subject of the same date. This communication is in reply to my letter of the 18th idem, forwarding copy of a letter received from A. T. Young, Barrister, Solicitor, etc., Newford, Ontario, in connection with the above claim.



Yours very truly,

C. W. JACKSON

for Deputy Minister.

The Deputy Minister,
Department of Justice,
Ottawa.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

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OFFICE OF THE
DEPUTY MINISTER

SP


CANADA
DEPARTMENT
OF
MINES AND RESOURCES

156610 ⁴



Ottawa, January 4th, 1938.

MEMORANDUM:

B

Dr. McGill.

Re - Pottawatomie Indians Claim.

With reference to your memorandum of the 31st ultimo re the above, to date no reply has been received from the Department of Justice. However, that Department has been approached on the subject once more and I think a reply should be forthcoming shortly.

Acting Deputy Minister.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

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WSE/ELJ.



PLEASE ADDRESS
THE DEPUTY MINISTER OF JUSTICE
OTTAWA

OTTAWA January 21, 1938.

A. 864-3.

Re: Pottawatomie Indians Claim.

Dear Sir,

I am in receipt of a letter dated the 12th instant from Mr. J. E. Read, K.C., Acting Under-Secretary of State for External Affairs, in which he states that he had received a letter from the Indian Affairs Branch dated 8th January, in which it was pointed out that they were awaiting a reply to a reference to me by Mr. Jackson of the 23rd November.

The letter from Mr. Jackson above referred to, and the enclosures mentioned therein, were duly received by this Department, but I have not been under the impression that it called for any action by this Department. If you desire to be advised with regard to any aspect of the matters mentioned in the enclosures referred to I should be glad if you would let me know specifically what advice is required, and I shall be glad to give the matter immediate attention.

Yours truly,

Deputy Minister of Justice.

The Deputy Minister of Mines and Resources,
O t t a w a.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

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January 10,

38.

A. 564-3.

Dear Mr. Read,

Referring to Mr. A. G. Chisholm's letter to you of the 22nd ultimo with regard to the claim of the Pottawatamie Indians, I may say that there is nothing before me at present calling for any decision or advice by this Department. I have received copies of the correspondence which has taken place recently, but I have assumed that no action is required by this Department until the Superintendent General of Indian Affairs has decided the question of policy involved. I am forwarding a copy of this letter to the Department of Mines and Resources.

Yours sincerely,

W. STUART EDWARDS

Deputy Minister of Justice.

J. E. Read, Esq., K.C.,
Acting Under-Secretary of State
for External Affairs,
O t t a w a.

ELJ.

PLEASE ADDRESS
THE DEPUTY MINISTER OF JUSTICE
OTTAWA



OTTAWA January 10, 1938.

R

A. 864-3.

Re: Pottawatomie Indians Claim.

Dear Sir,

I enclose herewith for your information copy of a letter which I am today writing to the Acting Under-Secretary of State for External Affairs in this matter.

"ENC."

Yours truly,

W. Stuart Edwards
ild

Deputy Minister of Justice.

The Deputy Minister,
Department of Mines and Resource,
O t t a w a.

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

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LEGAL DIVISION


CANADA
DEPARTMENT
OF
MINES AND RESOURCES
GENERAL ADMINISTRATIVE OFFICES

OTTAWA 13th January, 1938.

MEMORANDUM;

C. W. Jackson, Esq.,
Chief Executive Assistant,
Dept. of Mines & Resources.

R

Re - Pottawatomie Indian Claim.

Please see the letter from the Deputy Minister of Justice dated the 10th instant in connection with the above and your notation hereunder requesting what action, if any, we should take in this matter. The following is, in brief, a short history of this case -

A. T. Young, Barrister, Solicitor, etc., Meaford, Ontario, wrote the Department on the 28th June last requesting to be allowed to represent the Pottawatomie Indians in their claim against the United States Government. His letter is on file hereunder and marked for ready reference and gives a short history of the facts of this claim. Mr. Young's request was considered by the Department for some-time but no satisfactory reply could be furnished him as another Solicitor, viz., A. G. Chisholm, K.C., of London, Ontario, had been active in this claim for many years and I understand the Deputy Minister of Justice, Dr. McGill and Dr. Skelton had conferences with respect to these two Solicitors in relation to the said claim.

In order to bring this matter to a conclusion on the 18th day of October a communication was addressed to the Deputy Minister of Justice forwarding a copy of Mr. Young's application - a copy of which is tabbed on the office file also herewith. At the same time I discussed this matter with Mr. Edwards personally and he advised me that he was dealing with it himself and as it was one which necessitated a great deal of consideration he instructed that a copy of Mr. Young's communication to the Department be submitted for the consideration of the Department of External Affairs. This letter went forward to the Under-Secretary of State for External Affairs on the same date.

On November 18th a reply was received from J. E. Read, Acting Under-Secretary of State for External Affairs - a copy of his letter to the Department is also marked on the office file for ready reference - which stated therein that he

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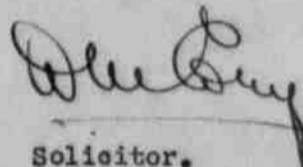
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was enclosing a memorandum of the present situation with the observation that this matter depends upon the decision of the Director of Indian Affairs and is of concern both to that Branch and the Department of Justice. A copy of Mr. Read's letter and memorandum attached was submitted to the Deputy Minister of Justice on the 23rd November and we have been awaiting advice from that Department.

In the letter from the Department of Justice just received, Mr. Edwards encloses a copy of a letter dated the 10th instant which he has written to the Acting Under-Secretary of State for External Affairs and it might be noted therein that Mr. Edwards' remarks that it is assumed that no action is required by the Department of Justice until the Superintendent General of Indian Affairs has decided the question of policy involved. To date this matter seems to have remained more or less at a standstill due entirely to the fact that as we had submitted this matter to the Department of Justice it was not felt that the advice contained in the letter referred to from the Acting Under-Secretary of State of the 18th November last should be acted upon until a further communication from the Department of Justice was received.

From the recent correspondence it will be seen that Mr. Edwards apparently concurs with the Acting Under-Secretary of State for External Affairs and before anything further can be done in the matter a question of policy will have to be decided by our Minister.

I would be very glad if you would return this office and Indian Affairs file when you are through with them, also Mr. Edwards' letter. Copies will be made of this letter and the Indian Affairs Branch file and the original letter from the Department of Justice will be forwarded to Dr. McGill.


Solicitor.

1/ see memo of Mac Gill re Chesholm's claims
Jan 28/37

2/ see Chesholm letter June 22/36

3/ What is our position with Chesholm

4/ Suggest matter be discussed with
DMJ if he would have any
objection to ~~approving~~ either
Chesholm or Garry to act on
their own in presenting claims

LEGAL DIVISION



CANADA
DEPARTMENT
OF
MINES AND RESOURCES
GENERAL ADMINISTRATIVE OFFICES



OTTAWA 28th January, 1938.

MEMORANDUM:

Dr. McGill.

Re - Pottawatomie Indian Claim.

Herewith please find your file 156610-4 A dealing with the above together with two letters from the Department of Justice dated the 10th and 21st instant and a memorandum from myself to Mr. Jackson .

I have discussed this matter with Mr. Jackson, the Acting Deputy Minister and would direct your attention to your memorandum of January 28th, 1937, dealing with an agreement entered into with Mr. A. G. Chisholm, K.C., of London, Ontario, and to Mr. Chisholm's letter of the 22nd June, 1936, and would be very glad to be advised just what position the Department is in with respect to Mr. Chisholm. Mr. Jackson made the suggestion that this matter might be discussed with the Deputy Minister of Justice in order that his views might be obtained as to whether he would have any objection to authorizing either Mr. Chisholm or Mr. Young to act on his own in presenting the claims.

W. Young
Solicitor.

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pt. 6)

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PLEASE REPLY TO THE
SECRETARY, INDIAN
AFFAIRS BRANCH



CANADA
DEPARTMENT
OF
MINES AND RESOURCES
INDIAN AFFAIRS BRANCH

PLEASE QUOTE
FILE 156610

M. [Signature]

OTTAWA, February 4, 1938.

MEMORANDUM

Chief Treasury Officer

I should be pleased if you would advise me how much money has been paid A. G. Chisholm in connection with the Pottawatomie Claim since the Agreement of August 8, 1918 between the Superintendent General of Indian Affairs and Mr. Chisholm, and from what source.

E. R. L. MacInnes
E. R. L. MacInnes,
Secretary.



Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

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TREASURY OFFICE

Ottawa, February 5, 1938.

Memorandum - Mr. MacInnes

The payments made to A.G.Chisholm, in connection with the Pottawatomie Claim, were paid from the Parliamentary Vote.

Below is a statement showing the amount paid each fiscal year, since August 1918. The first payments made were in 1922.

1922-23	.....	\$	3,560.46
1923-24	.....		2,775.83
1924-25	.....		436.66
1925-26	.....		190.45
1926-27	.....		421.97
1927-28	.....		173.20
1928-29	.....		146.36
1929-30	.....		88.63
1930-31	.....		119.38
1931-32	.....		65.54
1932-33	.....		60.00
		\$	8,038.48

g.

L. W. Meuter

Chief Treasury Officer.

AFM/B
8

(copy of a copy)

Memorandum of Agreement, made in duplicate the
Eighth day of August, One thousand nine hundred and
eighteen.

Between:-

THE SUPERINTENDENT GENERAL OF INDIAN AFFAIRS.

of the First Part,

and.

ANDREW GORDON CRISHOLM of the City of

London, in the County of Middlesex and Province of Ontario, sol-
icitor, ----- of the Second Part.

WHEREAS the party of the Second Part was a number of
years ago retained by Indians residing in the Province
of Ontario claiming to be members (or the descendants
of members) of the Indians known as the stray Bands of
Pottawatamies of Wisconsin in the United States entitled
to share in the distribution of certain large funds due
said Pottawatamies by the United States, and in pur-
suance and furtherance of said retainer received from
said Indian claimants Powers of Attorney and contracts
providing for his professional compensation and has ever
since been actively engaged in promoting the claims of said
Pottawatamies now in Canada for a proportional share of
said funds. And whereas in the course of his said
employment the party of the Second Part has brought the
matter to the attention of the party of the First Part and
has asked the assistance of the Canadian Government in
furthering the claims of said Pottawatamies now resident
in Canada and has offered in consideration thereof to
forego his rights under said contracts and submit the
whole question of his compensation for professional services
rendered such claimants to be determined as hereinafter
provided and has also entered into the other provisions
of this agreement, and the party of the First Part
has agreed as in hereinafter provided, NOW THEREFORE the
parties of the first and second parts in consideration of the

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premises agree together in manner following, that is to say.

- 1/ The party of the Second Part is recognized by the Party of the First Part as Solicitor for said Pottawatamie claimants and as such entitled to receive compensation for his services on their behalf.
- 2/ The party of the Second Part agrees to advocate that any moneys recovered from the United States for said claimants be paid to Canada to be administered for the exclusive benefit of said claimants, but subject nevertheless to the provisions of Section 89 of the Indian Act.
- 3/ In the event of the right of said claimants to share in said fund being determined by the court of Claims of the United States and that they are declared entitled so to share, said Court of Claims is to be asked to fix the compensation of the party of the Second Part for his professional services rendered said claimants.
- 4/ In the event of the United States paying said claimants by directing said fund be paid to Canada to be administered on behalf of said claimants, the matter of the compensation for legal services rendered said claimants, to be paid the party of the Second Part is to be referred to the Exchequer Court of Canada, the whole costs of such reference to be paid out of the fund recovered.
- 5/ The compensation so fixed by said Exchequer Court is to be for the recovery of the fund. The expense of ascertaining the particular individuals entitled to share therein is to be paid by a per diem allowance out of the fund, for legal fee and expenses of travel and maintenance and subject to approval of the Deputy Minister of Justice as to number of days employed and amount of daily fee.
- 6/ Should the said claimants recover in the said Court of Claims and the Court direct payment of a proportionate share to each claimant entitled thereto personally, the party of the Second Part will endeavour to arrange for distribution to said claimants by the Indian Department at Ottawa, in which event the cheques or warrants for payment will be held till the com-

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compensation of the party of the Second Part is determined by mutual agreement or by the Exchequer Court as aforesaid, and said cheques or warrants will only be delivered to the recipients thereof, on payment by such, of a proportionate amount of such compensation.

7/ The party of the First Part agrees to recommend the early passage of an Order in Council by his Excellency the Governor General in Council directing that a petition signed by the party of the Second Part as solicitor for said claimants, setting out the nature and grounds of their claim against the United States, be forwarded through the proper diplomatic channels for presentation to the United States Government, and which petition will ask for payment of said claim or in the alternative, a reference of the same to said Court of Claims of the United States for adjudication thereon, and will further use diplomatic or other proper means at Washington on behalf of the Canadian Government to secure the granting by the American Government of the prayer of said petition.

8/ The Department of Indian Affairs agrees to make payments as above determined to the party of the Second Part for his legal services aforesaid, only out of any moneys belonging to said fund, in its possession or control and which may lawfully be appropriated to that purpose.

9/ The Department of Indian Affairs will raise no objection to the levying of an assessment on said claimants by the party of the Second Part for the purpose of providing for disbursements in connection with the prosecution of said claim, provided it is stated at the time of such levy, that no claimant will be prejudiced by non-payment, and that such assessments are not more than two in number for no more than One dollar per capita on each assessment, and that the Party of the Second Part will at or before referring his claim for compensation as aforesaid to the Exchequer Court duly account to the Party of the First Part and to his satisfaction for all the moneys to be

collected under such levy of assessment.

10/ In the event of the death of the party of the Second Part before the right of said claimants to recover is determined and they do subsequently recover the Estate of the Party of the Second Part is nevertheless to be entitled to recover a proportionate sum for compensation for services rendered said claimants by the party of the Second Part and the provisions of this agreement are to apply to the ascertainment of the amount of said payment of said compensation to said estate.

In witness whereof the said parties have hereunto set their hands the day and year first above mentioned.

WITNESS.

A. S. Williams,
as to the signature of
Duncan C. Scott.

As to signature of
A. G. Chisholm.

E. P. Ashton.

Duncan C. Scott,
Deputy of the Supt. General
of Indian Affairs.

A. G. Chisholm.

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Ottawa, February 4, 1938.

MEMORANDUM

Deputy Minister

I have to refer to Mr. Cory's memorandum of January 28 re Pottawatomie Indian claim.

An agreement entered into with Mr. Chisholm on August 8, 1918, copy of which is enclosed, recognized him as the solicitor for the Indians (Pottawatomie claimants), set forth certain alternative conditions of payment to him, all of which were contingent on the success of the claim, and provided for recommendation to His Excellency, the Governor General in Council for the submission of the claim by petition to the United States Government.

The Order in Council above mentioned, copy of which is enclosed herewith, was duly passed on October 18, 1919. Following this the petition, signed by Mr. Chisholm as solicitor to the Indians, was filed with His Majesty's Ambassador at Washington, as stated in my memorandum of January 27, 1937, and a letter dated November 4, 1919 was written by the Deputy Superintendent General to the Secretary of the British Embassy at Washington stating that Mr. Chisholm was recognized by the Canadian Government as solicitor for the Indians.

Although the agreement above mentioned did not provide for any payment to Mr. Chisholm in advance of an award, the Department from time to time paid his accounts, for services and expenditures, from appropriation to an amount a little in excess of \$8,000.00. On December 20, 1932 he was advised not to incur any further costs in connection with the claim in a

letter - - -

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

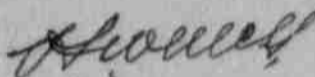
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letter from the undersigned which concluded as follows:

"I may say that in view of the situation it is the Minister's direction that you incur no further costs in connection with this claim for the time being. I have to suggest that you have your account to date forwarded in triplicate for taxation and payment."

This instruction was reiterated in a further letter dated March 6, 1933, but he was assured, however, that his status as counsel had not been disturbed.

Since these letters, which are on file hereunder, have been written there has been no change in the Department's relationship with Mr. Chisholm. The agreement, therefore, made with Mr. Chisholm in 1918 still stands, although, as it does not appear to contain anything of a contractual nature, I presume that it is terminable at pleasure; but this is a point concerning which, doubtless, the Department of Justice, which drew it, might be asked to give an opinion.



Director of Indian Affairs.

Enclosure.

TRM



R

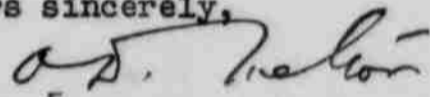


Ottawa,
February 26, 1938.

Dear Dr. McGill,-

I have received a further communication today from Mr. A. G. Chisholm, dealing with the case of the Pottawatomie Indians claim. He is very anxious to ascertain, immediately whether he may proceed with his proposed arrangements with Mr. Bell.

Yours sincerely,



Under-Secretary of State
for External Affairs.

The Director of Indian Affairs,
Department of Mines and Resources,
Ottawa, Ont.

N.B. Copy sent to Deputy Minister of Justice.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
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EX'D.

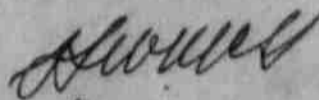
Ottawa, March 2, 1938.

Dear Dr. Skelton:-

I have to acknowledge receipt of your letter of the 26th of February, 1938, with regard to the Pettawatomie claim.

There is no record on our files of any negotiations between Mr. A.G. Chisholm and Mr. Bell.

Yours very truly,



Director of Indian Affairs.

Dr. O.D. Skelton, F.R.S.G.,
Under-Secretary of State for
External Affairs,
Ottawa.

R.O.I.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
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OTTAWA, November 16, 1937.

Dear Sir:-

I have received Mr. Jackson's letter of the 18th October, 1937, with enclosure dealing with Mr. Young's request to represent the Pottawatonic Indians in their claim against the United States Government.

I am enclosing a memorandum on the present situation. Obviously this matter depends upon the decision by the Director of Indian Affairs, as to whether or not Mr. Chishelm's request is approved. The approval depends upon circumstances which concern the Indian Affairs Branch and Justice. If approved, it disposes of the matter raised by Mr. Young.

If disapproved, the question of disposition of Mr. Young's request must be decided by Justice and not by this Department.

Yours sincerely,

J. E. READ.

The Deputy Minister,
Department of Mines and Resources,
OTTAWA.

Acting Under-Secretary of
State for External Affairs.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

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November 18, 1937.

MEMORANDUM WITH REGARD TO PRESENT POSITION
OF POTTAWATOMIE INDIANS
CLAIM.

(1) The Canadian Charge d'Affaires, in a letter to Mr. Hackworth, Legal Adviser of the Department of State, dated 26th August, 1937, with regard to the position of claims outstanding under the Pecuniary Claims Agreement of 1910, stated that the Canadian Government would be prepared, in so far as Canadian claims are concerned, to consent to the closing of this question by agreement with the Government of the United States that the claims contained in the lists exchanged in 1912 should be mutually barred, with a reservation which would protect the position of the Canadian claimants, in so far as any remedies under the laws of the United States are concerned. This, he presumed, could be arranged on a reciprocal basis, so that the cancellation of the international claims would not prevent either the Canadian or the United States claimants from pursuing any remedies available in the other country, whether ex gratia or ex jure.

(2) Mr. Hackworth was asked whether he would consider it possible to settle this matter by an exchange of notes rather than by an agreement or convention. Consequently the present position is that substantially the claims are cancelled in so far as their international aspects are concerned, although, technically, the actual agreement has not been concluded whether by formal instrument or by exchange of notes.

(3) In the circumstances, it would appear to be possible that the Indians, if they so desire, should take such action as may be available either ex gratia or ex jure to assert their rights as they may have in Washington.

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(4) We have communications on file with regard to two lawyers who want to represent the Indians' claims. The one is Mr. Chisholm, who has been engaged in this matter over a long period of years. The other is Mr. A.T. Young of Neaford, Ontario, who has, apparently, had some contact with the claim in the past.

(5) Mr. Chisholm has been in touch with a Washington firm and particularly with Mr. Robert C. Bell, Jr., with a view to cooperation in presentation of this case. I do not know Mr. Robert C. Bell, Jr. His father was a Judge of the United States District Court for Minnesota and while I am not certain that I met him personally, I know a good deal about him through his connection with the Lake of the Woods Flowage Easement Litigation. The father is a man of great ability and integrity, a good example of the best type of Judge with which one comes into contact in any country. The son is a member of the firm, one of the partners of which is known to me. He was a former Attorney General of Minnesota and Assistant Attorney General of the United States and I think that one could safely assume that it was a reliable firm. Mr. Chisholm wants to go ahead with this claim. All that he is asking is that we should assure the United States Government that he and his associates were the only lawyers authorized to represent these Indians.

(6) Mr. Young's request is indicated by the annexed copy of his letter to the Superintendent General of Indian Affairs. Apparently he wants to be retained by the Superintendent General on a contingent basis.

(7) The question that requires to be decided is one which depends upon the approval of the Department of Mines and Resources and of Justice. Assuming that Mr. Chisholm's

request is approved, the Canadian Government could inform the State Department of the fact that he and his associates are to be regarded as the sole representatives of the Indians. If, on the other hand, Mr. Young's request is approved, this obviously could not be done. Mr. Young, of course, has made no corresponding request.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

**PUBLIC ARCHIVES
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CANADA**



156610-4

R



Ottawa,
March 9, 1938.

Dear Dr. McGill,

I have received your letter dated the 2nd March, 1938, concerning the Pottawatomie claim. On the 18th November, 1937, the Acting Under-Secretary of State for External Affairs addressed a letter to the Deputy Minister, Department of Mines and Resources, together with a Memorandum setting forth the present position of the Pottawatomie Indians claim.

This Memorandum refers to the present diplomatic position of the claim as listed under the Pecuniary Claims Agreement of 1910. It also deals with two requests to represent the claims of the Indians; one by Mr. A. T. Young, and the other by Mr. Chisholm. Paragraph five sets forth Mr. Chisholm's negotiations with Mr. Robert C. Bell, Jr.

I had assumed that this matter would be referred to your Branch, but as it has obviously been overlooked, I am enclosing a copy of my letter to you, and also of the Memorandum.

2

I had sent to Mr. Edwards, on the 18th November, 1937, a copy of the letter and of the Memorandum.

Yours sincerely,

Under-Secretary of State
for External Affairs.

The Director of Indian Affairs,
Department of Mines and Resources,
Ottawa, Canada.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
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CANADA

EX'D.

March 14, 1936.

Dear Dr. Skelton:-

I have to acknowledge receipt of your letter of March 9, 1936, with reference to the Pottawatonic Indian claim.

In connection with this matter I have to advise you that this department has no further information that could be given to Mr. Chisholm at the present time.

Yours very truly,

Hoopes

Director of Indian Affairs.

Dr. O.D. Skelton, F.R.S.C.,
Under-Secretary of State for
External Affairs,
Ottawa

P.O.T.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
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CANADA

156610-4

Noted



Ottawa,
March 16, 1938.

EX'D.

R

Dear Dr. McGill,

I have received your letter dated the 14th March, and I am communicating with Mr. Chisholm, informing him that your Department has no further information at the present time.

Yours sincerely,

Under-Secretary of State
for External Affairs.

The Director of Indian Affairs,
Department of Mines and Resources,
Ottawa, Canada.

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

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W. J. T.

Ottawa, April 8, 1938.

Dear Mr. Telford:-

I have to refer to previous correspondence and to telephone conversation with this office this morning regarding Mr. A. T. Young, Barrister, of Meaford, Ontario, who has interested himself in the Pottawatonic Indian claim.

With regard to your request for a report, I have to advise you that Mr. Young wrote to the department on the 28th of June last requesting to be allowed to represent the Pottawatonic Indians in a claim against the United States Government. Mr. Young's request was considered by the department for some time, but no satisfactory reply could be furnished him as another solicitor, namely, Mr. A. G. Chisholm, K.C., of London, Ontario, has been active in this claim for many years. However, a copy of Mr. Young's application was forwarded to the Department of Justice on October 18th for their consideration and advisement.

In the meantime, Mr. Cory, the departmental solicitor, discussed the matter with the Deputy Minister of Justice, and Mr. Edwards advised him that a copy of Mr. Young's communication to the department had been submitted for consideration to the Department of External Affairs.

On November 18th a reply was received from Mr. J. E. Read, Acting Under-Secretary of State for External Affairs, which stated that he was of the opinion that the matter depended upon the decision of the Department of Justice and this Branch.

In a letter dated January 10th, the Deputy Minister of Justice advised the Under-Secretary

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

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CANADA

-2-

of State for External Affairs that he assumed that no action was required by his department until the Superintendent General of Indian Affairs had decided the question of policy involved.

This matter is still under consideration.

Yours very truly,

Hewitt

Director of Indian Affairs.

W.P. Telford, Esq., M.P.,
Owen Sound,
Ontario.

P.T.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
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CANADA

156610-4

BANK OF NOVA SCOTIA CHAMBERS
RICHMOND STREET
MET. 834

A. G. CHISHOLM, K. C.
Barrister, &c.

London, Canada... May 2, 1938

Self

Harold W. Magill, Esq.,
Director Indian Affairs,
Ottawa, Ont.

R



Dear Sir:-

re Pottawatomies.

In a letter received from Major Betts, M.P. on the above subject, he tells me of an interview had with you in which you expressed the opinion the claim of these Indians against the U. S. had no merit and that your Department had no intention of taking any further steps to forward it.

This being correct, I assume your Department will have no objection to my taking such steps to forward the claim as the circumstances would seem to permit.

Would you be good enough to write me stating my assumption is correct and much obliged?

Sincerely yours,

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

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CANADA

EX'D.

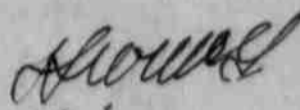
Ottawa, May 5, 1938.

Dear Sirs

I have to acknowledge receipt of your letter of May 2 and in reply to inform you that the Pottawatomie Claim has not been formally brought to conclusion, but we are taking no action to press the claim.

In regard to your taking steps to forward the claim through other channels I may say that I have no authority either to give or withhold.

Yours very truly,



Director of Indian Affairs.

A. G. Chisholm, Esq., K.C.,
Barrister, Etc.,
Bank of Nova Scotia Chambers,
Richmond Street,
London, Ontario.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
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CANADA

156610-4

BANK OF NOVA SCOTIA CHAMBERS
RICHMOND STREET
MET. 5364

A. G. CHISHOLM, K. C.
Barrister, &c.

London, Canada...JUNE 6, 1933.....

Harold W. McGill, Esq.,
Director of Indian Affairs,
Ottawa, Ont.

Handwritten initials "H" or "B"

Department of Mines & Resources
Indian Affairs Branch
JUN 10 1938
RECORDS

Dear Doctor McGill:-

re Pottawatomes.

Your letter of May 5th last in the above matter, in which you stated in reply to my tentative suggestion, your Department might have no objection to my taking such steps to forward the claim as the circumstances would seem to permit, was duly received and, in your reply you stated, you had no authority to give or withhold. My suggestion was made in consequence of your statement you intended to take no further action to press the claim.

I am now on the point of making arrangements with competent American Counsel, which I trust will prove satisfactory, to take hold of and press the claim of the above Indians to its legal conclusion.

In this connection it would be of some assistance in the proceeding, might you consent to my furnishing my associates with copies of documents enclosed to me with your letter of 6th March, 1933, as well as of December 20th, 1932. I presume, in view of the determination mentioned to me in a letter from External Affairs under date of November 18th last, that Department would raise no objection to what I suggest.

I would also be pleased if you would mention when writing in reply, that my status as Counsel for the Indians is still recognized by your Department, as mentioned in your letter to me of 6th March, 1933. It is of course hardly necessary for me to state that in any event, I make no claim for payment of further costs in the matter from the Department.

I would be glad to receive your favourable consideration of these requests.

Faithfully yours,

W. Chisholm

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

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156610-4

June 23, 1938.

Dear Sir:- Re Pottawatonic Indian Claim.

I have to acknowledge receipt of your letter of the 8th instant with regard to the above matter, and in reply thereto I have to advise you that this question is still under advisement.

Yours very truly,

T.R.L.M.
T.R.L. MacInnes.
Secretary.

BI
A.G. Chisholm, Esq., K.C.,
Barrister, etc.,
Richmond Street,
London, Ont.,

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

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75TH CONGRESS
3D SESSION

S. J. RES. 212

IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 1938

Referred to the Committee on Indian Affairs

JOINT RESOLUTION

To investigate the claims against the United States of certain members of the Wisconsin Band of Pottawatomic Indians.

- 1 *Resolved by the Senate and House of Representatives*
- 2 *of the United States of America in Congress assembled,*
- 3 That jurisdiction be, and it is hereby, conferred upon the
- 4 Court of Claims to make findings of fact and conclusions of
- 5 law in respect of the claims against the United States, of
- 6 whatever nature, legal or equitable, arising out of treaties
- 7 between the Pottawatomic Nation of Indians and the United
- 8 States, of members of the Wisconsin Band of Pottawatomic
- 9 Indians who were not paid from appropriations made by
- 10 the Act of Congress of June 30, 1913 (38 Stat. L. 102),
- 11 and subsequent Acts, and the Court of Claims shall report

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

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1 its findings to Congress, including therein a statement of the
2 amount of money, if any, expended by the United States
3 gratuitously for the benefit of said Indians, as required by
4 section 2 of title I of the Act of August 12, 1935 (49 Stat.
5 571, 596) : *Provided* That on any claim heard under the
6 provisions of this resolution, for the appropriation, taking,
7 acquisition, or deprivation of land or any interest therein,
8 the jurisdiction conferred by this resolution to hear any such
9 claim and to make findings of fact and conclusions of law
10 thereon, is limited to the ascertainment of the value of said
11 land, or interest therein, at the time of the appropriation, ex-
12 propriation, taking, acquisition, or deprivation, and no find-
13 ings or conclusions shall be made by the Court of Claims
14 which include any increment, interest or the equivalent thereof,
15 from the date of the taking to the date of making of such
16 findings and conclusions as an element of just compensation
17 or otherwise.

18 Such claims may be filed and presented by a representa-
19 tive group of said Indians within two years from the enact-
20 ment of this resolution, and plaintiffs therein, at any time
21 before the final findings of fact and conclusions of law are
22 rendered in said suit or suits shall have the right to amend
23 their petition or petitions, and the proceedings shall be had
24 as provided in the Judicial Code.

1 The rights of such Indians shall not be prejudiced by
2 laches, lapse of time, or any statute of limitations, nor by
3 the fact that some of them or some of their ancestors may
4 have fled from the United States to territory now a part
5 of the Dominion of Canada, and may have become Canadian
6 nationals.

7 The attorney for such Indians shall have access to all
8 records, documents, and correspondence in the possession of
9 any branch or agency of the Government, or may use the
10 same, or copies thereof, as evidence in the hearing of their
11 claims.

12 The Court of Claims shall have jurisdiction to fix a
13 reasonable attorney's fee for services rendered, and to be
14 rendered, in the prosecution of said claims, not to exceed
15 ten per centum of the amount, if any, found due to such
16 Indians, and to fix the reasonable expenses incurred by
17 such attorney, and the same shall be paid out of any funds
18 Congress may appropriate to pay the claims of such Indians.

Passed the Senate June 7, 1938.

Attest: EDWIN A. HALSEY,
Secretary.

75TH CONGRESS }
3D SESSION }

S. J. RES. 212

JOINT RESOLUTION

To investigate the claims against the United States of certain members of the Wisconsin Band of Pottawatomie Indians.

JUNE 10, 1938

Referred to the Committee on Indian Affairs

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

**PUBLIC ARCHIVES
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COPY/T.

CANADIAN LEGATION AT WASHINGTON

June 27, 1938.

No. 914.

Sir:

I have the honour to refer to your despatch No. 139 of April 25, 1933, concerning the claim of the Pottawatomie Indians residing in Canada against the Government of the United States.

2. As you will recall our representations to the Department of State on this subject produced negative results and the Department of State in their note of June 8, 1932, set forth the legal objections of the Government of the United States to the validity of this claim. I am *new* enclosing copies of S.J. Resolution 212 to investigate the claims against the United States of certain members of the Wisconsin Band of Pottawatomie Indians now residing in Canada and also the favourable report of the Senate Committee on Indian Affairs on this Joint Resolution. The Joint Resolution was passed by the Senate on June 7, but did not succeed in passing Congress before the end of the session.

3. You will observe that the report of the Senate Committee on Indian Affairs contains a letter from the Secretary of the Interior in favour of this Joint Resolution. It appears that the Attorney General has stated that he has no objections to the measure provided that certain amendments are made in the jurisdictional clauses of the bill. The Acting Director of the Bureau of the Budget, however, has

The Right Honourable
The Secretary of State
for External Affairs,
Ottawa, Canada.

advised/

advised that "the proposed legislation would not be in accordance with the programme of the President." Under this condition it seems unlikely that the measure will become law at a future session of Congress, unless the Administration should change their minds. In view of the fact that the Secretary of the Interior recommended to the Indian Affairs Committee that they should take this matter up with the Department of State, inquiries were addressed unofficially by this Legation to the State Department asking whether they proposed to take any action regarding this measure. They replied that so far it had not been brought to their attention by the Committee of Indian Affairs and they added that they had had no part in sponsoring the present measure.

4. While this measure has, therefore, no immediate prospects of being enacted, it is interesting as evidence that the claim is not entirely dead. The Indian Affairs Department may be interested in the statement contained in the letter of the Secretary of the Interior on page 3 of the enclosed report of the Indian Affairs Committee commenting on that section of the Senate Joint Resolution which provides for the payment of fees and expenses to the Attorney for the Indians under a contract executed at Buffalo, New York, on May 13, 1936, as a question seems to arise as to whether this contract was made by persons authorized by the Department of Indian Affairs to act on behalf of the Pottawatomie Indians.

I have the honour to be
with the highest respect,
Sir,
Your most obedient
humble servant

CR.HC.

HERBERT M. MARLER.

CANADIAN LEGATION,
Washington, D.C.
June 27, 1938.



No. 914.

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The Right Honourable
The Secretary of State
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Ottawa, Canada.

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pt. 6)

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I have the honour to be
with the highest respect,
Sir,
Your most obedient
humble servant,

H. M. Marler.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
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ROBERT C. BELL, JR.
ATTORNEY AT LAW

DETROIT LAKES, MINN.
75TH CONGRESS }
3d Session }

Calendar No. 2018

SENATE

REPORT
No. 1913

WISCONSIN BAND OF POTTAWATOMIE INDIANS

APRIL 20 (calendar day MAY 27), 1938.—Ordered to be printed

Mr. CHAVEZ, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. J. Res. 212]

See page 3

The Committee on Indian Affairs, to whom was referred the resolution (S. J. Res. 212) to investigate the claims against the United States of certain members of the Wisconsin Band of Pottawatomie Indians who were not paid from appropriations made by the act of Congress of June 30, 1913 (38 Stat. L. 102), and subsequent acts, and to confer jurisdiction upon the Court of Claims of the United States to make findings of facts and conclusions of law in respect thereto, having had the same under consideration, report thereon with the recommendation that it do pass with the following amendments:

On page 2, line 2, change the period to a comma, strike out all of lines 3, 4, 5, 6, 7, 8, 9, 10, and 11, and insert in lieu thereof the following:

including therein a statement of the amount of money, if any, expended by the United States gratuitously for the benefit of said Indians, as required by section 2 of title I of the Act of August 12, 1935 (49 Stat. 571, 596): *Provided*, That on any claim heard under the provisions of this resolution, for the appropriation, taking, acquisition, or deprivation of land or any interest therein, the jurisdiction conferred by this resolution to hear any such claim and to make findings of fact and conclusions of law thereon, is limited to the ascertainment of the value of said land, or interest therein, at the time of the appropriation, expropriation, taking, acquisition or deprivation, and no findings or conclusions shall be made by the Court of Claims which include any increment, interest, or the equivalent thereof, from the date of the taking to the date of making of such findings and conclusions as an element of just compensation or otherwise.

Such claims may be filed and presented by a representative group of said Indians within two years from the enactment of this resolution, and plaintiffs therein, at any time before the final findings of fact and conclusions of law are rendered in said suit or suits shall have the right to amend their petition or petitions, and the proceedings shall be had as provided in the Judicial Code.

On page 3, line 4, change the colon to a period and strike out all of lines 5, 6, 7, and 8.

The Secretary of the Interior, under date of April 7, 1938, submitted a report on the resolution, a copy of which is hereto attached.

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On March 2, 1918, the then Committee on Indian Affairs of the Senate made a favorable report on a bill in respect of the claims of the members of the Wisconsin Band of Pottawatomi Indians residing in Wisconsin and Michigan, and authorized and directed the Secretary of the Treasury to place upon the books of the Treasury to the credit of the members of the Wisconsin Band of Pottawatomi Indians, then residing in Wisconsin and Michigan, the sum of \$447,339. The pertinent facts in respect of those Indians who remained in Wisconsin and who fled to Canada are fully set forth in a report made by the House committee embodied in House Report No. 470, Sixty-fourth Congress, first session, appended hereo. The Senate committee adopted said House report and made it a part of its report (S. Rept. No. 293, 65th Cong., 2d sess.)

Thereafter the Congress appropriated \$447,339 for those Indians residing in the United States, the final appropriation having been made on May 29, 1928 (45 Stat. L. 901), but Congress has not taken final action with respect to the remainder of \$1,517,226.87 claims by those Indians living in Canada.

From the report of the Secretary of the Interior it will be observed that the Attorney General advises that certain clauses of the resolution are ambiguous and it contained no provision directing the Court of Claims to make findings of fact concerning gratuities and interest, and in conclusion the Attorney General states that—

While I have no objection to the enactment of a bill properly limited and circumscribed to securing a determination of the claims above referred to, I am unable to approve the enactment of the legislation in its present form.

The resolution as here amended complies with the suggestions of the Attorney General.

The Secretary of the Interior's report, dated April 7, 1938, follows:

DEPARTMENT OF THE INTERIOR,
Washington, April 7, 1938.

HON. ELMER THOMAS,
Chairman, Committee on Indian Affairs,
United States Senate.

MY DEAR MR. CHAIRMAN: Further reference is made to your request for a report on Senate Joint Resolution 212, to confer jurisdiction upon the Court of Claims to make findings of fact and conclusions of law in respect of the claims against the United States of certain members of the Wisconsin Band of Potawatomi Indians.

This proposed legislation is for the benefit of persons living in Canada, descendants of members of the Wisconsin Band of Potawatomi Indians who fled to that country after the treaty of September 26, 1833 (7 Stat. L., 431).

The records show that under the provisions of the act of Congress, approved June 21, 1906 (34 Stat. L., 380), the Secretary of the Interior caused an investigation to be made of the claims of the Wisconsin Band of Potawatomi Indians and made a report thereon to Congress. The report is contained in House Document 830, Sixtieth Congress, first session, and gives the facts in full concerning the enrollment and status of these Indians.

Briefly, the Potawatomi Indians, by treaty of September 26, 1833 (7 Stat. L. 431), sold their lands and agreed to remove west of the Mississippi River. About 2,000 removed to the State of Kansas in accordance with the treaty, and about an equal number fled to northern Michigan and Wisconsin and to Canada. Thereafter, all funds due the tribe under the treaty mentioned were paid to those who removed to Kansas. At the time of the investigation a roll was made showing 457 persons of Potawatomi blood as belonging in the United States (Michigan and Wisconsin), and 1,550 descendants of Wisconsin Potawatomes residing in Canada. It was found that to equalize the payments would require the sum of \$447,339 for the United States branch, and \$1,517,226.87 for those who resided in Canada, making a total of \$1,964,565.87. The \$447,339 has been appropriated

and paid to the United States branch or used for their benefit, but no appropriation has ever been made for the Canadian Potawatomes.

The field agent who made the investigation and enrollment referred to, reported as follows concerning the status of the Canadian Wisconsin Potawatomes:

"With but few exceptions all the enrolled Indians found living on reservations are considered and treated as British subjects. They are allowed to occupy and cultivate lands and to make improvements thereon, have access to the schools, are in fairly prosperous condition, and are being well cared for by the Dominion authorities, being in general treated as are Indians whose ancestry has been solely Canadian. These Indians, who are for the most part the second generation removed from the original fugitive ancestors, are fully domiciled wards of the Dominion Government. Such rights as they may now have by reason of their small quantum of American Potawatomi blood would seem to exist merely as an interest in an estate, should the claim pending before the Congress be treated merely as an estate. *If all descendants of the original Potawatomes who refused to remove to Kansas, and for that reason received no benefits under the treaty, are to be recognized solely on the basis of descent, then it would seem that these Canadian Indians would be entitled to the same share in any fund arising from the claim as the Wisconsin Potawatomes.* With the few exceptions to be hereinafter mentioned, they are not homeless, are making rapid progress toward complete civilization, and, in fact, seem to be much better off and better contented than their distant relatives in Wisconsin. Whether they will be recognized eventually as Canadian Indians and accorded full rights, including allotments of land, is a matter I am unable to forecast. As hereinbefore reported, the Canadian Indian agents differ on this question, and there would seem to be no way of ascertaining definitely just how they are regarded by the Dominion Government and what rights they will eventually get other than by submitting a list containing their names to that Government for information as to their present and probable future status." [Italics ours.]

Later, in 1932, the claim of the Canadian Potawatomes was the subject of correspondence between the Department of State and the Minister of the Dominion of Canada, culminating in the Department of State note of June 8, 1932, to the Canadian Legation, definitely rejecting the claim and declining to request the Congress to enact legislation authorizing its reference to the Court of Claims for adjudication, and the reply of October 25, 1932, from the Canadian Legation stating that pending the exploration of the possibility of settlement by other means, the Canadian Government would not further press for the submission of the claim to the Court of Claims but would "leave the claim as one listed for inclusion in the proposed second schedule of claims to be heard by the Pecuniary Claims Commission established by the Convention of August 18, 1910, on the next occasion on which this tribunal may be reconvened." The records of this Department contain no information concerning any further action taken.

The last paragraph of Senate Joint Resolution 212 provides for payment of fees and expenses to an attorney for the Indians under a contract executed at Buffalo, N. Y., May 13, 1936. It appears that section 141 of the Indian Act of Canada, 1927, required the consent in writing of the Superintendent General of the Indian Department to agreements made with Indian bands or tribes of Canada, with respect to their tribal claims. I am not able to advise whether the Canadian Potawatomi Indians possess a status which makes them subject to this provision, or whether the contract in question was made by persons authorized to act for and in behalf of the Indians having an interest in the claim. In the absence of full information concerning the validity of the contract, it is not recommended that the contract be, in effect, confirmed by Congress in this proposed legislation.

In view of the fact that the Indians interested are residents of Canada, and of the fact that the claim has heretofore been considered by the Department of State, it is probable that you will wish to obtain the views of that Department on Senate Joint Resolution 212.

The foregoing facts are set forth for the consideration of Congress in determining whether, as a matter of policy, the claim of the Canadian Pottawatomi Indians should be referred to the Court of Claims for findings of fact and conclusions of law, or to the Pecuniary Claims Commission mentioned above.

The Acting Director of the Bureau of the Budget has advised "that the proposed legislation would not be in accord with the program of the President." With the Budget report was enclosed a copy of a letter from the Attorney General, who advises that the jurisdictional clauses of the bill are ambiguous in that they purport to authorize a reference to the Court of Claims merely for findings of fact and a report to Congress, yet provide for an appeal to the Supreme Court

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pt. 6)

from any judgment rendered. It is believed that the following amendment would clarify this point:

Line 7, page 2, strike out the word "facts" and the comma immediately following, and insert in lieu thereof the words "fact and". Strike out the comma following the word "law". Line 8, page 2, strike out the words "or judgment". Line 10, page 2, strike out the words "judgment has" and substitute therefor the words "said findings of fact and conclusions of law have".

The Attorney General also points out that the resolution does not contain any provision directing the Court of Claims to make findings of fact concerning any gratuities that may have been expended in behalf of the United States for the benefit of the Indians, nor does it contain any provision to protect the Government against the recovery of interest.

In conclusion the Attorney General states that: "While I have no objection to the enactment of a bill properly limited and circumscribed to securing a determination of the claims above referred to, I am unable to approve the enactment of the legislation in its present form."

Sincerely yours,

HAROLD L. ICKES, *Secretary of the Interior.*

The pertinent facts set forth in said House Report No. 470, Sixty-fourth Congress, first session, follows:

The Pottawatomie Indians formerly occupied territory of the United States lying in the State of Ohio and south of the Great Lakes. Treaties were made by the United States around the year 1800 with the Pottawatomie Indians providing for the cession of lands of the Pottawatomie Indians in the States of Ohio and Indiana, and in return for cessions of land held by the Indians, the Government of the United States guaranteed certain annuities in perpetuity or otherwise to the Pottawatomie Indians as a nation. The present claimants are descendants of some of these members of the United Pottawatomie Nation. Between 1795 and 1833 other treaties were made with the United Pottawatomie Nation whereby large cessions of land were obtained from the Indians and solemn and binding obligations were contracted between the United States and the Indians whereby the United States agreed to give the United Nation of Pottawatomie Indians other perpetual annuities to be equally divided in accordance with Indian customs among all the members of the nation. By these several treaties the United States recognized the title of the Pottawatomie Indians to various lands to which the Pottawatomies agreed to and did remove in what are now the States of Michigan, Indiana, Illinois, and Wisconsin.

In the year 1830 the Pottawatomie Indians, by reason of various cessions of land which they had made to the Government of the United States, and by reason of settlements which had been made in the country they occupied, were divided into a number of bands and distinct tribes occupying defined territory in Wisconsin, Illinois, Michigan, and to some extent Indiana, near the shores of Lake Michigan.

By an act of Congress approved May 28, 1830 (4 Stats. 411), it was directed that treaties should be negotiated with Indian tribes holding lands east of the Mississippi River, these treaties to provide for an exchange of lands which the Indians held east of the Mississippi River and their removal to the then unoccupied domain west of the Mississippi River. The act provided for an exchange of lands, and by section 3 thereof the President was directed to solemnly assure the tribes agreeing to make the exchange of lands "that the United States will forever secure and guarantee to them and their heirs or successors the country so exchanged with them, and if they prefer it that the United States will cause a patent or grant to be made and executed to them for the same." The act also provided that the United States should undertake the work of settling the Indian emigrants in their new home.

Pursuant to this act of Congress various treaties were made with Indian tribes. These treaties provided in one form or another that the Indians removing west of the Mississippi River should acquire title in fee to their new homes, subject only to reversion to the United States in the event the Indians should become extinguished or abandon the same. Under the provisions of the act of 1830 the Five Civilized Tribes and various other Indians removed west of the Mississippi River and received in return for the cession of their lands east of the Mississippi River lands in the west and patents therefor or assurances of a permanent title

equivalent to a title in fee by patent. By a treaty concluded September 26, 1833 (7 Stat. 431; 2 Kappler 402) at the present city of Chicago, the Pottawatomie Indians ceded to the United States all of their lands along the western shore of Lake Michigan, and in consideration thereof the United States agreed to give them a new reservation of not less than 5,000,000 acres of land in the vicinity of the present city of Council Bluffs, Iowa. The United States also agreed, in consideration of the exchange, to make certain annual money payments to the Indians. The previous perpetual annuities, of course, likewise continued in force. The lands ceded were tribal lands held in common, and under the terms of the treaty negotiated at Chicago in 1833, each individual member of the nation was to receive his proportionate share in tribal lands or funds. The treaty provided that the Pottawatomies should receive the same title to their lands as was received by other Indian tribes exchanging their homes east of the Mississippi River for homes west of the Mississippi River, and, as heretofore shown, this title was to be communal title in fee simple.

At the time the treaty of Chicago of 1833 was negotiated, the Indians, as stated, were in detached bands, and those members of the nation living in the northern part of Wisconsin declared that there was no right in the bands which negotiated the treaty of 1833 to undertake to cede their homes and their lands in Wisconsin. After the treaty of Chicago of 1833, 14 separate treaties were made by the United States with separate bands, all providing for the removal of the Indians west of the Mississippi River, but none was made with the Wisconsin Pottawatomies separately.

By article 4 of the treaty of 1833 it was provided that the annuities due to the Indians "shall be paid at their location west of the Mississippi River." Quite a large number of the Indians, especially those in Wisconsin, refused to remove west of the Mississippi River. Article 4 had stated the place of payment of their annuities to be at their new location, the object of said article being to make an inducement to the Indians to remove west of the Mississippi River.

Many of the Wisconsin Pottawatomies refused to remove to the new home west of the Mississippi River; in fact, about 2,000 refused to go. The United States held that the Treaty of 1833 had ceded their lands to the United States, and the Government of the United States took possession of the same and sold these lands as public domain to settlers. Thus, those Indians who elected to remain in Wisconsin lost all of their lands in the State of Wisconsin, and since then have eked a precarious existence and have been wanderers in the northern part of the State. The reason given by the Indians for refusal to remove was that the chiefs who had undertaken to negotiate the Treaty of 1833 had no right to represent them or to attempt to cede their lands. The Government, however, as stated, held otherwise and took possession of the lands. Attempts were made to force the Wisconsin bands of Pottawatomies to remove west of the Mississippi River, with the consequence that because of the drastic measures adopted, about 1,500 of the 2,000 Indians referred to above fled to Canada. The Indian Office then forfeited the share in lands and funds secured to the tribe as a whole of those members of the Pottawatomies who refused to remove from the State of Wisconsin, and instead paid over the moneys and lands it held as a trustee for all of the Indians to those members who did remove west of the Mississippi River. The attention of Congress was called to the matter in 1864, and by act of June 25, 1864 (13 Stat. 172), Congress declared that no forfeiture had occurred and directed that the share of those Wisconsin Pottawatomies who had not removed west of the Mississippi River should be withheld in the Treasury and retained to their credit until such time as they might remove to the then home of the tribe in Kansas. This act provides as follows:

"To enable the Secretary of the Interior to take charge of certain stray bands of Winnebago and Pottawatomie Indians now in the State of Wisconsin, with the view to prevent any further depredations by them upon the citizens of that State, and for provisions and subsistence, \$10,000: *Provided*, That the proportion of annuities to which said stray bands of Pottawatomies and Winnebagoes would be entitled if they were settled upon their reservations with their respective tribes shall be retained in the Treasury to their credit, from year to year, to be paid to them when they shall unite with their said tribes, or to be used by the Secretary of the Interior in defraying the expenses of their removal, or in settling and subsisting them on any other reservation which may hereafter be provided for them." (13 Stat. 172.)

The Indian Office continued to ignore the Wisconsin Band of Pottawatomies and forfeited all shares in tribal lands and funds of those Pottawatomies who continued to reside in Wisconsin or went to Canada. At this time practically the entire funds of the Pottawatomies have been disbursed and those members of the tribe who remained in Wisconsin have been deprived of any shares in the tribal lands and funds.

Your committee have carefully considered the treaties, the laws, and the facts set forth in the hearings on H. R. 1776 and is of the opinion that the United States as the guardian of the Wisconsin Band of Pottawatomie Indians now within the border of the United States should account to them for their just and proportionate share of the tribal lands and funds of the Pottawatomie Nation of Indians.

CPP/T.

156610-4

Spicy



PLEASE ADDRESS
THE DEPUTY MINISTER OF JUSTICE
OTTAWA

OTTAWA July 11th, 1938.

A-864-3.

R

Dear Sir:-

I enclose herewith for your information copy of a Despatch of the 27th ultimo (No. 914) from the Canadian Legation at Washington to the Secretary of State for External Affairs re the claim of the Pottawatomie Indians, together with the prints of the accompanying documents.

In requesting you to let me have the benefit of your views in regard to this matter, I would draw your attention particularly to paragraph 4 of the Despatch and the statement contained in the document therein referred to.

I shall be obliged if you will return the printed documents to me when they have served your purpose as they are the only prints available and I should like to

Encs. 3. keep our records complete.

Yours very truly,

[Signature]
for Acting Deputy Minister of Justice.

Dr. H. W. McGill,
Director,
Indian Affairs Branch,
Department of Mines and Resources,
Ottawa.

*add
index
(1392)2
6
documents
send copy
to Chisholm*

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

156610-4

BANK OF NOVA SCOTIA CHAMBERS
RICHMOND STREET
MET. 5364

A. G. CHISHOLM, K. C.

Barrister, &c.

London, Canada.....AUGUST 22, 1938.

T. R. L. MacInnes, Esq.,

Acting Director Indian Affairs Branch,

Department Mines and Resources,

Ottawa, Ont.



Dear Mr. MacInnes:-

re Pottawatomies.

I am extremely obliged to you for forwarding me copies of Joint Resolution 212 and accompanying report of the Committee on Indian Affairs at Washington regarding the above matter. Could you, had you further copies of these documents, send me an extra copy of each.

It would appear from these that the old familiar game of U. S. Attorneys endeavouring to work in in this matter is being gone on with. I note even that a contract for the prosecution of the case is alleged to have been made at Buffalo on May 13, 1936, with what attorney or on what authority, does not appear and the contract does not appear to have been approved of by the U. S. authorities. Has your Department any knowledge on the subject. If so I would be glad to have it imparted to me.

In any event I do not think it would be too much for me to ask the Department to write External Affairs asking them to communicate with the Washington Legation requesting the Minister to communicate with the State Department drawing attention to the matter and asking the State Department to communicate with the Commissioner of Indian Affairs informing him that I am the only legal representative recognized by our government as acting for these Pottawatomic claimants. A number of years ago, before the Canadian Legation functioned the British Embassy dealt with this matter and at the request of our government Sir Auckland Geddes, then British Ambassador notified the State Department as stated. You may recollect I visited the State Department several times about this case and, so far as I am aware, no change has ever been made in my ~~SIXENSE~~ status in the matter. The claimants have ratified my employment repeatedly.

A further request I would ask you to make to External Affairs is regarding the position of the claim with respect to its situation under the Pecuniary Claims Convention. On November 18th, 1937, Mr. Read, then acting Under-Secretary wrote me the American State Department had been informed the interested

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pt. 6)

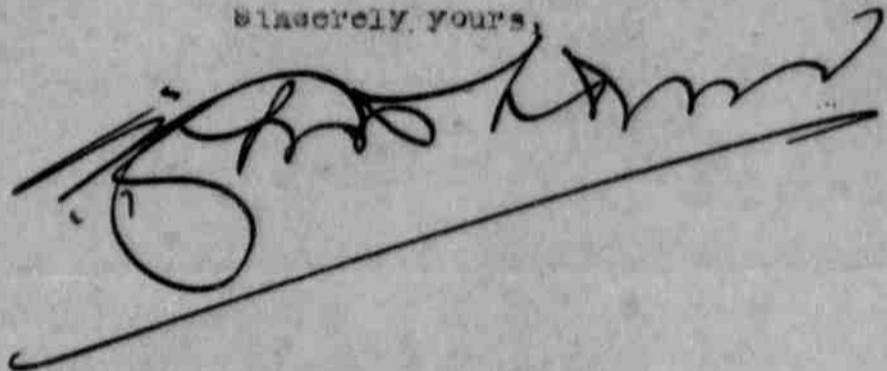
PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

governments were ready to make a final disposition of the Pecuniary Claims matters and further, while the action taken would of course, depend on the results from the interested departments with regard to the arrangements which have been suggested, if they concur Mr. Read would ask the Canadian Minister to confer with the United States authorities, with a view to treating the Pecuniary Claims agreement phase of this matter as ended, notwithstanding it would not be ended until the signature of the new agreement for cancellation. I do not know what has been actually done about it but would suggest the step mentioned by Mr. Read, if not already carried out, be proceeded with.

You may note at page three of the report from the Committee on Indian Affairs the unfortunate and incomprehensible statement (to me) of Mr. Herriidge then Minister at Washington, is quoted as if the determination of the Canadian government was to do nothing further in the case till a hearing before the Tribunal could be arranged. I would like to have the way cleared for a hearing by the Court of Claims. Of course, all concerned are quite aware such a hearing will never be had *by the Tribunal*.

I would be obliged if the Department would give it best consideration to the above requests. I have always maintained the United States would yet pay this just claim of the Canadian Pottawatomies. Thanking you again,

Sincerely yours,



- 2 -

I would like your consent to take this matter up for the Indians.

This matter has I understand been dealt with by the Department of External Affairs and the Department of Justice to the effect that the question of policy involved was to be decided by your Department.

I would appreciate your giving this matter your very earliest consideration and advising me.

Yours very truly,

A. J. Young

ATY:DS.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

**PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA**

EX'D.

Ottawa, August 27, 1938.

Dear Sir:- Re Pottawatonic Indian Claim.

I have to acknowledge receipt of your letter of the 24th with reference to the above.

The contents of your letter has been noted. As stated in my communication to you of August 17, the matter is still under advisement.

Yours very truly,

TRM
T.R.L. MacInnes.
Acting Director.

1
A.T. Young, Esq.,
Barrister, etc.,
Meaford, Ont.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

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CANADA

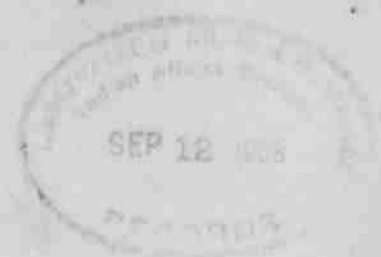
Pottawatomie
letter
1438
claim

156410-4

Sept 7



R



Ottawa, September 9, 1938.

Dear Sir,-

I have received your letter dated the 25th August, with regard to the Pottawatomie claims.

I sent you a copy of Canadian Legation despatch No. 914 of the 27th June, 1938, together with the enclosures. This gives a complete statement of the present position, in so far as the United States is concerned.

With regard to the position in Canada, you will remember that a proposal was submitted by Mr. Chisholm a year ago, which culminated in a decision by your Department that you had no further information that could be given to Mr. Chisholm at that time (March 14, 1938).

Whether or not there has been any change in your Department's decision on this point is a matter concerning which I have no information.

Putting the matter shortly, the present position is that the Pottawatomie claim has ceased to be a claim listed for possible inclusion in a Second Schedule under the Pecuniary Claims Agreement of 1910. It remains, however, a claim in respect of which any remedies may be pursued which are available either ex gratia or ex jure in the United States.

T.R.L. MacInnes, Esq.,
Acting Director of Indian Affairs,
Department of Mines & Resources,
Ottawa, Canada.

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

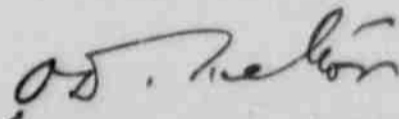
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- 2 -

There seems to be some possibility of a Jurisdictional Act being put through Congress. On the other hand, as a result of the action of your Department, arrangements for representation of the claimants are apparently not being proceeded with.

As far as this Department is concerned, with the exception of some minor exchanges of correspondence, carrying out decisions already taken, the case does not appear to call for any further action.))

Yours sincerely,



Under-Secretary of State
for External Affairs.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

**PUBLIC ARCHIVES
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CANADA**

156610-4

September 29th, 1938.

Dear Sir:

I have to refer to your letter of September 16th regarding the Pottawatomic claim.

I am now in receipt of a communication from the Under-Secretary of State for External Affairs in which it is stated that the present position is that this claim has ceased to be a claim listed for possible inclusion in a Second Schedule under the Pecuniary Claims Agreement of 1910. He states also that it remains a claim in respect of which any remedies may be pursued which are available either ex gratia or ex jure in the United States.

The question of what further action or interest, if any, the Department may take in the matter is still under consideration and, therefore, I am unable at present to advise you whether or not the request contained in your letter of August 22nd can be met.

Yours very truly,

T. R. L. MacInnes,
Secretary.

A. G. Chisholm, Esq., K.C.,
London, Ontario.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
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CANADA

156610-4

September 30th, 1938.

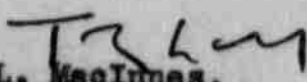
Dear Sir:

I have to refer to your letter of August 24th regarding the Pottawatomie claim.

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The question of what further action or interest, if any, the Department may take in the matter is still under consideration and, therefore, I am unable at present to advise you whether or not the request contained in your letter above-mentioned can be met.

Yours very truly,


T. R. L. MacInnes,
Secretary.

A. T. Young, Esq.,
Barrister, etc.,
Meaford, Ontario.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

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CANADA

156610-4

BANK OF NOVA SCOTIA CHAMBERS
RICHMOND STREET
MET. 2364

A. G. CHISHOLM, K. C.
Barrister, &c.

London, Canada.....(September 3, 1938)

Handwritten initials

Handwritten initials

Indian Affairs Branch
OCT 4 1938

Secretary, Indian Affairs Branch,
Department Mines and Resources,
Ottawa, Ont.

Dear sir:-

Re Pottawatomes - 156610-4.

I am in receipt of your letter of the 29th ult. in the above matter and note from it one of the requests made in my letter of August 22nd is still under consideration. This must refer to my position as solicitor for claimants, as to which I view of the agreement between the government and myself of August 6th 1913 and the subsequent ratifications of the same, I would have thought there could be no question arise.

Doctor McGill wrote me on May 5th last that the claim had not been formally brought to a conclusion but the Department was taking no action to press the matter.

Faithfully yours,

Handwritten signature

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

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Toronto
Star 1/11/38

Montreal
Lazette 3/4/38

HE HAD HIS DAY.
(Peterboro Examiner.)

Tom Longboat is now 51 years of age, and he helps with the work of cleaning the streets in Toronto. That's necessary and useful work but of course no one pays much attention to him now.

It must be all of 30 years ago when Tom Longboat, Onondaga Indian, ran himself into fame. He first took the Hamilton marathon. He came out first in the Boston marathon in 1907. Time was when admirers used to write to him and he received scores of letters and offers each day. There was once a reception for him in Toronto where thousands lined the route of the parade and cheered for him. It is recorded that some firm started making a cigar named after him.

Yes, Tom Longboat was riding high then. He went to the front in the years of war and probably few know he is cleaning streets in Toronto today. Perhaps the same streets over which he passed years ago when he was the guest of honor at the head of the parade. Perhaps like a good many others he has had occasion to find that fame is rather a fickle thing.

**INDIANS WON'T GET
MONEY, IS BELIEF**

Distribution of \$2,000,000 to
Parry Sound Tribe Dis-
counted at Ottawa

Special to The Star

Ottawa, Nov. 1.—Dr. H. W. McGill, director of the department of Indian affairs, said today, "There is not any bright prospect of the Potawatamies Indians of the Parry Sound district receiving two million dollars allegedly owed to them by the United States government."

The debt was incurred, Dr. McGill said, when Canada was a colony. The 200 Indians have been negotiating for several years with the United States state department.



157610
Toronto
Star 1/11/38

Montreal
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2

Dr. Mc Gill

*Halifax 156610
Chronicle
8/11/38*

Receives Father's Name



For the first time in history the Indian name of a white man descended to his son, when Timothy Eaton was adopted into the Cayuga tribe at the Six Nations Reserve, Brantford, Ont., and given the name Hen-Non-So-Wa-Nen, meaning in English, "Big House." The same name was conferred on Timothy's father, the late Sir John Eaton, 35 years ago.

Edmonton Journal 5/11/38

Canadian Indians Asking \$1,517,000 Award by U.S.

WASHINGTON, Nov. 5.—Bureau of Indian affairs said Friday efforts are being made by representatives of the Pottawattamie tribe of Indians of Parry Sound, Ont., to obtain \$1,517,000 from the U.S. government, claimed due under a treaty of 1833.

Floyd Larouche, representative of Commissioner John Collier, stated there can be no early settlement of the matter because there is no suit pending in the U.S. court of claims.

In 1833 part of the Pottawattamie

tribe was removed from the northern states to Kansas. Some went to Wisconsin and others to Canada, the latter settling at Parry Sound.

In 1908 the Pottawattamie who settled in Wisconsin received \$447,000 from the government as their share of benefits due them under the 1833 removal treaty. Officials said if payments were made to the Parry Sound Indians on the same basis as the Wisconsin group the amount would be approximately \$1,517,000.

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**PUBLIC ARCHIVES
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CANADA**

Dr. Mc Gill

*Halifax 156610
Chronicle
8/11/38*

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Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

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Toronto
Star. 7/13/38

156610-4

RENEW INDIAN CLAIM FOR \$1,517,000 IN U.S.

Ottawa Watches as 100-Year-
Old Negotiations Reopened
for Pottawatamies

Special to The Star

Ottawa, Nov. 5. — Government spokesmen today voiced interest in efforts being made at Washington to collect a claim of \$1,517,000 from the United States on behalf of 2,000 Pottawatamie Indians living in Canada. "The government is taking no part in the move to collect this 100-year-old claim, but we are closely watching developments," Dr. H. W. McGill, director of Indian affairs, declared.

"We have had official negotiations off and on with Washington since 1833 without achieving a settlement. The present effort is being made by private legal interests acting on behalf of these Indians," he said.

The main body of the Pottawatamies concerned live on Walpole Island. Others are scattered throughout southwestern Ontario, with a number in the Parry Sound district.

"The claim is for compensation for loss of lands originally held by the tribe in Wisconsin," Dr. McGill said. "About the time of the war of 1812, the bulk of the tribe was moved to Kansas, where they received vast lands in return for those they gave up in Wisconsin. A number, however, came to Canada and fought with the British. It is compensation on behalf of the descendants of these Indians who were deprived of their lands in Wisconsin that is being sought."



Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

Toronto
Star 7/138

156610-4

RENEW INDIAN CLAIM FOR \$1,517,000 IN U.S.

Ottawa Watches as 100-Year- Old Negotiations Reopened for Pottawatamies

Special to The Star

Ottawa, Nov. 5. — Government spokesmen today voiced interest in efforts being made at Washington to collect a claim of \$1,517,000 from the United States on behalf of 2,000 Pottawatamie Indians living in Canada. "The government is taking no part in the move to collect this 100-year-old claim, but we are closely watching developments," Dr. H. W. McGill, director of Indian affairs, declared.

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Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

**PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA**

Mr. Young
Please see blue
slips attached for resolution
passed by Pottawatomie
Mr. St. Louis.

Could you tell me please
if the Pottawatomie indians ever passed
a resolution giving the department any
instructions or making any request about
prosecuting the Pottawatomie claim.

Could you please also let me
have the Cayuga claim file.

53967-1

FD

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

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53967-1

PA

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

156610-4
BANK OF NOVA SCOTIA CHAMBERS
RICHMOND STREET
MET. 8364

A. G. CHISHOLM, K. C.
Barrister, &c.

London, Canada

Harold W. McGill, Esq.,
Director Indian Affairs,
Ottawa, Ont.



Dear Doctor McGill:-

re Pottawatonia, your file 156610-4.

I enclose you clipping from today's "Free Press" re the above matter. The same information was somewhat elaborated in yesterday's "Globe and Mail".

You will not mind me drawing your attention to Department's letter of 27th September last which stated the Department was then unable to advise me whether the request contained in my letter of August 22nd could be met. This request referred to the question of my status and in this connection I would refer to your letters to me of April 15, 1933 and 6th March, 1933.

The Mr. Warner in Cleveland to whom the clipping refers, is the Mr. Warner referred to in letter from the Acting Deputy Superintendent General to myself of July 5, 1934, and in consequence of which I declined his desire to co-operate with me in the prosecution of this claim.

I have no regrets to express about this but do consider it very advisable in the efforts I am now making and of which I have heretofore advised you, that this question above mentioned should be settled without more delay.

I ask nothing from your Department except as mentioned in mine to you of August 22nd last and I submit I should be able to claim the assistance of your Department to this extent at least, for my further efforts on behalf of these claimants.

Sincerely yours,

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

PAGE TWO

INDIANS CLAIM MILLION OWING

Parry Sound Tribe To Seek
\$1,517,000 From U.S.

UNDER TREATY OF 1833

Early Settlement of Issue Is
Seen Remote

WASHINGTON, Nov. 4 — (CP) — The Bureau of Indian Affairs said today efforts are being made by representatives of the Pottawatamie Tribe of Indians, of Parry Sound, Ont., to obtain \$1,517,000 from the United States Government, claimed due under a treaty of 1833.

Floyd Larouche, representative of Commissioner John Collier, stated there could not be any early settlement of the matter because there is no suit pending in the United States court of claims.

Indian office officials said D. E. Warner, a lawyer from Cleveland, Ohio, was here during the last session of Congress seeking action on the Parry Sound Indians' claims. A resolution submitted to Congress was not acted upon before adjournment. The attorney-general of the United States told a congressional committee he could not approve enactment of the resolution covering the claim in the form presented.

In 1833, part of the Pottawatamie Tribe was removed from the Northern States to Kansas. Some went to Wisconsin and others to Canada, the latter settling at Parry Sound.

In 1906, the Pottawatamies who settled in Wisconsin received \$447,000 from the Government as their share of benefits due them under the 1833 removal treaty. Officials said if payments were made to the Parry Sound Indians on the same basis as the Wisconsin group the amount would be approximately \$1,517,000.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

156610-4
BANK OF NOVA SCOTIA CHAMBERS
RICHMOND STREET
MET. 8364

A. G. CHISHOLM, K. C.
Barrister, &c.

London, Canada, November 7, 1938.

Harold W. McGill, Esq.,
Director Indian Affairs,
Ottawa, Ont.



Dear Doctor McGill:-

re Pottawatomes - your file 156610-4.

In my letter of 5th instant in the above, I quite forgot to mention what seems to me important, namely, that if Mr. Warner should be recognized by the proper authority at Washington as representing claimants and eventually should succeed in recovering their claims against the United States, it would destroy any hope of a portion of the recovery being funded with your Department for the benefit of the Indians.

Under my agreement with the Government of August 8, 1916, you saw that fifty per cent of the recovery was to be retained by the Department and administered by it for the benefit of claimants and, in my negotiations with Mr. Bell with whom I have arranged for the prosecution of the matter, I pointed out to him this, stating that from my previous personal experience in the distribution of the proceeds of a similar claim which I successfully prosecuted against the United States I found that much of the money received by beneficiaries was just wasted by them.

I think this should be borne in mind by the Department when considering the very simple question of adhering to the recognition accorded me by the Government, in the agreement referred to.

Sincerely yours,

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

156610-4

20

BANK OF NOVA SCOTIA CHAMBERS
RICHMOND STREET
MET. 234

A. G. CHISHOLM, K. C.
Barrister, &c.

London, Canada, November 7, 1938.

Set



Harold W. McGill, Esq.,
Director Indian Affairs,
Ottawa, Ont.

Dear Doctor McGill:-

re Pottawatomes - your file 156610-4.

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Under my agreement with the Government of August 6, 1918, you may note that fifty per cent of the recovery was to be retained by the Department and administered by it for the benefit of claimants and, in my negotiations with Mr. Bell with whom I have arranged for the prosecution of the matter, I pointed out to him this, stating that from my previous personal experience in the distribution of the proceeds of a similar claim which I successfully prosecuted against the United States, I found that much of the money received by beneficiaries was just wasted by them.

I think this should be borne in mind by the Department when considering the very simple question of adhering to the recognition accorded me by the Government, in the agreement referred to.

Sincerely yours,

A. G. Chisholm

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

PUBLIC ARCHIVES
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CANADA

OFFICE OF THE
INDIAN AGENT


CANADA
DEPARTMENT
OF
MINES AND RESOURCES
INDIAN AFFAIRS BRANCH

156610-4

B

PLEASE QUOTE
FILE _____

Parry Sound, Ont.,
Dec. 8th, 1938.



Seton
Dear Sir:-

I am enclosing copy of letter received from Robert Bell Jr. of the firm of Dennis and Bell, Detroit Lakes, Minnesota, also copy of form of approval which he wishes the Pottawatomie Indians residing in this Agency to sign, in order that he may represent them before the United States Congress at Washington.

I know very little about this matter other than what I have read in the newspapers and would like to have your assurance that Mr. A. G. Chisholm of London and Mr. Bell have the approval of the Department in this matter.

Kindly let me know as soon as possible.

Thanking you, I am,

Yours very truly,

Gerald M. Taylor
G. M. TAYLOR,
Acting Indian Agent,
PARRY SOUND, Ontario.

Encls.
The Secretary,
Department of Mines and Resources,
Indian Affairs Branch,
OTTAWA, Ontario.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

COPY

December 5, 1938.

Mr. John M. Daly,
Indian Superintendent,
Parry Sound, Ontario, Canada.

Dear Sir:-

Your name and address have been given to me by Mr. A. G. Chisholm, Barrister, London, Ontario, with whom I am now associated in the prosecution of a claim of the Pottawatomie Indians against the United States. At his suggestion I am mailing to you under separate cover a quantity of blanks to be used in obtaining the approval of the Indians of my employment in the matter. I am also mailing a quantity of circular letters bearing the signature of Mr. Chisholm explaining the purpose of my employment to the Indians and for distribution among them.

Please obtain the signatures of the Indians who are adults at this time, give their respective addresses, and list the names of minor children. Please mail the documents after they have been signed to me at Detroit Lakes, Minnesota. I will pay postage, of course.

You may say to the Indians that I shall go to Washington when Congress convenes early in January, that I shall draft appropriate legislation in connection with the matter which will be introduced for passage, that I shall prosecute their cause vigorously and without unnecessary delay, and that I shall make every effort to secure prompt action in their behalf.

The compensation of counsel in such matters usually is fixed in the United States by an act of Congress, or by order of the court, at not to exceed ten per cent of the sum recovered plus actual and necessary expenses, and that is agreeable to me. As my compensation is contingent on recovery, it is to my interest as well as the Indians to press this matter to an early conclusion. The fact that I am willing to devote my time and advance my personal expenses is very substantial proof of my belief in the justice of the claim and the chances of recovery. I promise the Indians faithful and diligent service, and in return I trust that, with your aid, they will promptly sign the approval of my employment. I would greatly appreciate a reply on the enclosed self-addressed envelope.

Thanking you, I am,

Sincerely yours,

signed, Robert C. Bell Jr.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

**PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA**

J. McMillan
156610-4
Toronto
Star
10/12/38

INDIANS TO BECOME WEALTHY 1,500 MAY SPLIT \$1,500,000

Pottawattomi Tribes Fled United States for Ontario in 1833
—Support of Congress Assured in 20-Year-Old
Claim—Bill's Passage May Be Routine

Special to The Star

London, Ont., Dec. 10.—A 20-year campaign for Pottawattomi Indians in Ontario for approximately \$1,500,000 is nearer success today. They seek compensation for loss of lands set aside for their tribes in Kansas by the United States in 1833. Announcement was made by A. G. Chisholm, London lawyer, that a private bill will come before U.S. congress in January authorizing the court of claims at Washington to pass on the application of the 1,550 Canadian Indians. Passage of the bill by congress is expected to be routine.

The court of claims has already recognized the right of the 415 Pottawattomies living in Wisconsin to compensation, but the U.S. government has taken the attitude the Ontario group forfeited their rights when they crossed the border in 1834.

However, the court of claims, in an exactly similar case brought before them by Mr. Chisholm in 1907, awarded the Oneida Indians of Middlesex county \$148,000 and he is confident judgment will also be given in favor of the Pottawattomies.

Associated with Mr. Chisholm is Robert C. Bell, Jr., of Minneapolis, Minn., who is arranging to present the bill which is in course of preparation by Mr. Chisholm.

Mr. Chisholm was recognized in 1918 by the Canadian government as the sole legal adviser to the Pottawattomi Indians of Canada, and his appointment was endorsed by the councils of all tribal settlements.

This week, however, Mr. Chisholm has circularized the tribe with a contract form with a request they sign it, authorizing Mr. Bell to

represent them in pressing their claim.

Convinced Claim Just

"I am getting along in years and cannot press this claim with the vigor of 20 years ago," Mr. Chisholm said. "But I am thoroughly convinced of the justness of the claim and I want to see these poor Indians given their rights."

The claim goes back to 1833 when the government at Washington decided to move all Indians to a territory set aside for them west of the Mississippi. The lands set aside for the Pottawattomi tribe, a branch of the Algonquins, was in what is now the state of Kansas.

The Pottawattomi Indians then inhabited what is now southern Michigan and northern Indiana and Illinois. They objected to leaving their ancestral home, and a detachment of the U.S. army was sent to move them. Most of the tribe made their escape and fled northward.

"I have investigated pretty thoroughly their history," Mr. Chisholm told The Star, "and of all the stories told of early American ill treatment of the Indians, few can equal that of this unfortunate tribe."

"About half of those who escaped crossed the St. Clair river into Canada in 1834. They were pursued by a detachment of U.S. cavalry, and shots fired at them as they paddled across the river. The cavalry could not enter Canada. Those who crossed the St. Clair took refuge on reservations at Walpole Island, Sarnia, and along the shore of Lake Huron."

Another remnant went up along the east shore of Lake Michigan, but the majority crossed at Sault Ste. Marie. These settled on Manitoulin Island, along the north shores of Lakes Huron and Superior, and around Georgian Bay to Parry Sound.

Never Received Help

The Canadian government provided a haven because these Indians had fought on the side of the British in the American Revolution and again in the war of 1812-14, but they were never recognized as Canadian Indians, never received any land, or treaty money.

"They settled on reserves with other Indians, and were allowed to stay there, but were, in effect, squatters, with only squatters' rights," Mr. Chisholm explained.

A United States court decided the present-day value of the property that had been set aside for the ancestors of the Pottawattomi Indians now in Wisconsin and Canada was \$1,923,000. The Pottawattomies in Wisconsin laid claim to that amount, and the U.S. court of claims awarded them a share proportionate to the total Pottawattomi population.

156610-4

December 13, 1938.

Dear Sir:-

I have to acknowledge receipt of your letters of November 5 and 7, 1938, with regard to the Pottawatomie Indian Claim, contents of which have been noted.

With respect to your communication of October 3 regarding your position of solicitor, I have to advise you that I have nothing to add to my letter to you of September 29, 1938, at the present time.

Yours very truly,

T.R.L. MacInnes.
Secretary.

A.G. Chishelm, Esq., K.C.
Barrister, etc.,
London, Ont.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

156610-4

January 4, 1939.

Dear Sir:-

I am enclosing herewith for your attention, and return, a letter that has been received from John Colwell of Wallaceburg, Ont., with regard to the Pottawatonic Indian Claim.

At the present time the department is not taking any part in these proceedings, but on the other hand, in so far as I am aware, the Indians are free agents in the matter, and if they choose to act independently, they are at liberty to enter into any arrangement, as they may see fit, in regard thereto.

Yours very truly,

T.H.L. MacInnes
Secretary.

Geo. W. Down, Esq.,
Indian Agent,
Sarnia, Ont.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

156610-4

January 4, 1939.

Dear Sir:- Re Pottawatonic Indian Claims.

I am enclosing herewith for your attention a letter that has been received from Mr. Chas. S. King, of Wikwemikong, Ontario, together with letter from Mr. Robert C. Bell, of Detroit Lakes, Minnesota, also letter from Mr. A.G. Chisholm of London, addressed to the Pottawatonic Indians of Wisconsin now residing in Canada, and contract form between the Pottawatonic Indians and Mr. Chisholm and Mr. Bell.

At the present time the department is not taking any part in these proceedings, and in view of the delicacy of the matter, it is not considered desirable that as Indian Agent, you should distribute any forms, either for Mr. Chisholm, Mr. Bell, or any other party, among the Indians.

On the other hand, in so far as I am aware, the Indians are free agents in the matter, and if they choose to act independently, they are at liberty to enter into any arrangement as they may see fit, in regard thereto.

Kindly advise Mr. King accordingly, and return his correspondence to him. Please return his letter in due course for the office files.

Yours very truly,

R.J. Lewis, Esq.,
Indian Agent,
Manitowaning, Ont.

TRLM
T.R.L. MacInnes.
Secretary.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

156610-4

January 4, 1939.

Dear Sir: Re Pottawatonic Indian claim.

I am enclosing herewith for your attention a letter that has been received from Mr. M.J. Sandy, of Christian Island, with regard to the above matter, together with circular letter from Mr. A.G. Chishelm of London, to the Pottawatonic Indians of Wisconsin, now residing in Canada, and contract form between the Indians and Mr. Chishelm and Mr. Bell of Detroit Lakes, Minnesota, - also copy of letter from the Deputy Supt. General, dated April 29, 1936, to Mr. Henry Jackson of Christian Island.

At the present time the department is not taking any part in these proceedings, and in view of the delicacy of the matter, it is not considered desirable that as Indian Agent, you should distribute any forms, either for Mr. Chishelm, Mr. Bell, or any other party, among the Indians.

On the other hand, in so far as I am aware, the Indians are free agent in the matter, and if they choose to act independently, they are at liberty to enter into any arrangement, as they may see fit, in regard thereto.

Kindly advise Mr. Sandy accordingly, and return his correspondence to him. Please return his letter in due course for the office files.

Yours very truly,

TRM
T.R.L. MacInnes,
Secretary.

PL
G.A. Lumsden, Esq.,
Indian Agent,
Christian Island, Ont.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

156610-4

January 4, 1939.

Dear Sir:-

I have to acknowledge receipt of your letter of December 8 with regard to the Pottawatonic Indian claim, wherewith you enclosed copy of a letter received from Mr. Robert Bell, of the firm of Dennis and Bell, Detroit Lakes, Minnesota, together with copy of contract form which he wishes the Indians of your agency to sign, in order that he may represent them before the United States Congress at Washington, and also copy of circular letter from Mr. A.G. Chisholm of London to the Pottawatonic Indians of Wisconsin now residing in Canada.

At the present time the department is not taking any part in these proceedings, and in view of the delicacy of the matter, it is not considered desirable that as Indian Agent, you should distribute any forms, either for Mr. Chisholm, Mr. Bell, or any other party, among the Indians.

On the other hand, in so far as I am aware, the Indians are free agents in the matter, and if they choose to act independently, they are at liberty to enter into any arrangement, as they may see fit, in regard thereto.

Yours very truly,

G.M. Taylor, Esq.,
Acting Indian Agent,
Parry Sound, Ont.

TRLM
R.L. MacInnes,
Secretary.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

156610-9
Toronto
Star 27/2/38

\$1,500,000 CHANCE INDUCES INDIANS TO CHANGE TRIBES

Many Crees Are Pottawatamis Now—But Treaty Money to Decide

CLAIM AGAINST U.S.

Special to The Star

London, Ont., Dec. 27.—"It is amazing the number of Cree, Oneida and Iroquois Indians who have become Pottawatami. They changed since learning that Pottawatami Indians living in Canada have a fair chance of winning their claim for \$1,500,000 from the United States government," stated A. G. Chisholm, solicitor for the Indians, today.

"The Indians, through intermarriage and intercommunication in the past 100 years have become so mixed up that it is sometimes difficult to prove which ones belong to the Pottawatami tribe and which to other tribes," Mr. Chisholm said. "However, that is no concern of ours. Our job is to get the United States government to recognize the claim of the Pottawatami Indians in Canada to compensate for loss of lands in the former Indian territory. It will be the job of the American government to see that the money is paid to the proper persons."

While there has been some confusion in obtaining signatures for the power of attorney sought by a firm of Wisconsin lawyers who are

handling the American end of the case for the Indians, it will not hamper the lawyers in pressing their claim before the United States Congress in January.

Since Pottawatami Indians who came to Canada from Michigan a century ago are non-treaty Indians, and not entitled to treaty money, it is presumed that Indians who have received treaty money will be debarred from a share of the \$1,500,000, if awarded, on the grounds that by accepting treaty money they admitted that they were not of the Pottawatami tribe.



Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

OFFICE OF THE
INDIAN AGENT



CANADA
DEPARTMENT
OF
MINES AND RESOURCES
INDIAN AFFAIRS BRANCH

15-6610-4

R

PLEASE QUOTE
FILE _____

Parry Sound, Ontario,
January 9th, 1939.

[Handwritten signature]



Dear Sir:- Re your letter of January 4th, file
No. 156610-4.

I note what you have to say with regard to the Pottawatomie Indians, and wish to advise you that I have already had a number of the Indians sign these forms, but have not as yet returned them to Robert Bell Jr.

I would like to know if you wish me to destroy these forms or will it be in order for each individual Indian, if he so desires, to forward the forms to Mr. Bell. I will be glad to receive your further advice in the matter.

Thanking you, I am,

Yours very truly,

G. M. Taylor

G. M. TAYLOR,
Acting Indian Agent,
PARRY SOUND, Ontario.

The Secretary,
Department of Mines and Resources,
Indian Affairs Branch,
OTTAWA, Ontario.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

156610-4

BANK OF NOVA SCOTIA CHAMBERS
RICHMOND STREET
MET. 2364A. G. CHISHOLM, K. C.
Barrister, &c.

London, Canada.....January 10, 1939.

T. R. L. MacInnes, Esq.,

Secretary Indian Affairs Branch,

Department Mines and Resources,

Ottawa, Ont.



Dear Mr. MacInnes:-

Your letter in the Pottawatomie matter (December 13/38, 156610-4) acknowledging mine of October 3/38 and, stating you have nothing at the present time to add to your letter to me of September 29/38, was duly received. I would again point out to you how embarrassing the inaction of the Department in this matter is to me and, more particularly at the present time and, urge again the Department take the step suggested in mine to you of August 22nd last.

The situation of the matter at Washington at present is that a proper jurisdictional Act has been prepared, has been approved of by the legislative counselor and was to go to the printer's hands on the 5th instant, prior to its introduction into Congress by Congressman R. T. Luekler of the Indian Affairs Committee of the House.

In the meantime three different lawyers at Washington are claiming to represent claimants and clamoring for recognition as such, by the competent authority there for this purpose. They are, Mr. Robert C. Bell Jr., with me, Mr. Dorr Warner of Cleveland, claiming to represent the Indians under a contract alleged to have been made with him by James Smith, Fred. Toby, Elijah Tabobogong and Henry Jackson representing the Indians under alleged authority of a Council held by them on 12th May, 1936. Nothing appears as to where this Council was held or by what authority or what notice of the same was given or who presided thereat and such contract would seem clearly to be in contravention of Section 90, Sub. sec. 2 of the Indian Act. The contract purports to have been signed at Buffalo N. Y. on 13 May, (the next day) which seems pretty quick work. Jackson one of the parties claiming to represent the Indians is the notorious character whose activities in this matter, led Doctor Scott when in office to admonish him so frequently and, finally to threaten him with arrest. He is absolutely unscrupulous and a bitter enemy of mine since I refused to have anything to do with him or further his schemes against the Indians. Then, there is a Mr. Conlon, practicing law at Washington, claiming to represent the Indians, through Mr. A. T. Young of Meaford, Ontario, who says he has for the last three years represented claimants. I under-

A. G. CHISHOLM, K. C.
Barrister, &c.

London, Canada.....

- 2 -

stand neither Mr. Conlon nor Mr. Young has any written contract with the Indians but, am told the former " is talking about an Act of Parliament to get proper "authority" whatever that may mean. Can you give me any information on the subject?

The competent authority at Washington has so far refused to recognize the Warner contract. I would think it likely this authority would follow any action taken by your Department and it scarcely seems to me too much to ask you to clarify my position. During the whole of my connection with this case, I have not taken a step without the instructions, approval or consent of the Department and have been repeatedly assured by it my status as Counsel was fully recognized. The Indians have repeatedly ratified my authority. It is alleged by some opposing me, I had abandoned the case. The Department will be quite aware there is no foundation for such a charge which I expect may have arisen from the fact that latterly the Washington Legation was chiefly engaged in the conduct of the case.

The Washington people are making inquiries as to what is the status recognized by the Canadian government for these Ppita-wotamies and, I would be greatly obliged if you would give me a statement as to this. Has our government anything to say about their relations with the United States? I quote as the question was asked. I recollect some years ago the Department informed me these people were not recognized by it as Canadian Indians and, I suppose their recognized status is governed by Section 2, subsections g and h of the Indian Act. I should be greatly obliged to have this information and also, if you would be so good as to forward me two copies of the Indian Act which I could forward to Washington.

I trust the Department will appreciate the circumstances under which I have ventured again to address you on this question of my personal status in the case and that there are really substantial and rather urgent reasons for some immediate action regarding the matter. Since Doctor McGill informed me it was not the Department's intention to further press the case, I have been doing all I thought possible to advance the claim and as no official expenditure is involved it would seem to me there can be no particular reason why the matter should not be now determined.

Hoping for the favourable consideration of the Department,

Sincerely yours,



INDIAN ACT

Section 141, Chapter 98, R.S.C. 1927.

Every person who without the consent of the Superintendent General in writing, receives, obtains, solicites or requests from any Indian any payment or contribution or promise of any payment or contribution for the purpose of raising a fund or providing money for the prosecution of any claim which the tribe or band of Indians belong, or of which he is a member, has or is represented to have for the recovery of any claim or money for the benefit of said tribe or band shall be guilty of an offence and liable upon summary conviction for each offence to a penalty not exceeding \$200.00 and not less than \$50.00 or to imprisonment for any term not exceeding two months.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

**PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA**

(COPY)

IN THE MATTER of the Pottawatomie Indians of Canada

VS

the Congress of United States.

I hereby authorize and instruct you, Archibald T. Young, Barrister, Meaford, Ontario, Canada, and James Conlon, Attorney and Counsellor at Law, 600F., St., N.W., Washington, D.C., to represent my interests as a claimant before the United States Congress and the United States Court of Claims.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

(COPY)

A. T. Young

Barrister, Solicitor, Etc.
Owen Sound Meaford
Tel. 336J Tel. 490

Meaford, Ont.,
Jan. 10th, 1939.

Department of Indian Affairs,
Parliament Bldgs.,
Ottawa, Ontario.

Attention - T. R. L. MacInnes.

Dear Sir:

Re: Pottawatomie Indian Claim
File #156610-4

I have enclosed a copy of Section 141, of the Indian Act of Canada, Chapter 98, R.S.C. 1927. A number of the Pottawatomie Indians of Canada wish to have me represent them before the United States Court of Claims and my fee for so doing to be whatever the Court of Claims will allow as an Attorney fee, not exceeding ten per centum of the share of each claimant represented. The Canadian Department of Indian Affairs will in no way be responsible for my fees or any expense incurred.

If you will waive the provisions of Section 141 of the Indian Act as against me, this will be sufficient for my purposes, and I will be free to accept whatever sum the United States Court of Claims may award as an Attorney fee.

I have enclosed herewith a copy of the retained which I purpose having my Indian Clients execute.

I would appreciate if you would forward me a waiver of Section 141 of the Indian Act as soon as possible.

Yours very truly,

(sgd) A. T. Young.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

156610-4

A. T. YOUNG
BARRISTER, SOLICITOR, ETC.

OWEN SOUND
TEL. 356J

MEAFORD
TEL. 490

Seley

RD

Meaford, Ont.,
Jan. 10th, 1939.

RECORDED
JAN 12 1939
DEPT. OF INDIAN AFFAIRS

Department of Indian Affairs,
Parliament Bldgs.,
Ottawa, Ontario.

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A. T. Young

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

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VS

the Congress of United States.

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Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

**PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA**

156610-4
Wikevemukong. Out. Dec. 14/38.
R. J. Lewis

To - The Secretary
Dept. of Indian Affairs
Ottawa, Ont.



Dear Sir:—

I received from Mr. Robert C. Bell Jr. a number of circular letters and contract forms, which I am enclosing herein, along with letter received from Mr. Bell.

The Claimants hesitate to sign said forms in favor of Mr. Bell, as they have already signed for A. G. Chisholm.

We wish to know if this matter has been approved of by the Dept. of Indian Affairs, as it does not state clearly in the enclosed letter if the Dept. has given their approval.

We will appreciate an early reply, so we can sign the forms as soon as possible, if there is no objection from the Dept. of Indian Affairs.

Yours Truly
Chas. S. King.

OF THE
INDIAN AGENT

W. H. Bell
Secretary



CANADA
DEPARTMENT
OF
MINES AND RESOURCES
INDIAN AFFAIRS BRANCH

156610 ⁴
R

PLEASE QUOTE
FILE 156610-4



I/44.

Manitowaning, January 13th, 1939.

Dear Sir:-

With reference to Departmental Letter No. 156610-4 of the 4th instant in regard to a letter the Department received from Mr. Chas. S. King, of Wikwemikong, together with letter from Mr. Robert Bell, of Detroit Lakes, Minnesota, also from Mr. A.G. Chisholm of London, addressed to the Pottawatomie Indians of Wisconsin now residing in Canada, and contract form between the Pottawatomie Indians and Mr. Chisholm and Mr. Bell, which the Department has advised me to advise Mr. King as to the view the Department is taking in this matter, I have the honour to report that Mr. King has been advised accordingly. His correspondence has been returned to him, and I enclose his letter for the Departmental files.

Your obedient servant,

I enc.

W. H. Bell
Indian Agent.

The Secretary,
Indian Affairs Branch,
Department of Mines and Resources,
Ottawa, Canada.

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

156610-4

January 17, 1939.

Dear Sir:-

I am enclosing herewith copy of a letter that has been received from Mr. A. T. Young, Barrister, of Meaford, Ontario, with regard to the Pottawatonic Indian Claim.

This department is not taking any part in these proceedings at this stage. I should like to have your advice as to whether or not the provisions of Section 141 of the Indian Act would apply in any way to the acceptance of a fee subsequent to an award in the manner indicated in Mr. Young's letter.

Yours very truly,

T.R.L.M.
T.R.L. MacInnes,
Secretary.

The Deputy Minister,
Department of Justice,
Ottawa.

RM
enc

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

156610-4

January 17, 1939.

Dear Sir:-

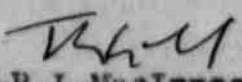
I have to acknowledge receipt of your letter of the 9th instant with regard to the Pottawatomie Indian Claim.


As I previously advised you, in view of the delicacy of the situation, it is not considered desirable that as Indian Agent, you should distribute any forms, either for Mr. Chisholm, Mr. Bell, or any other party, among the Indians.

On the other hand, in so far as I am aware, the Indians are free agents in the matter, and if they choose to act independently, they are at liberty to enter into any arrangement, as they may see fit, in regard thereto.

If you have had a number of Indians sign the forms submitted by Mr. Bell, they should be returned to them, and advised that they are at liberty to send them to Mr. Bell if they so desire, but they are under no obligation to do so, and that the department does not assume any responsibility in connection therewith.

Yours very truly,


T.R.L. MacInnes.
Secretary.


G.M. Taylor, Esq.,
Acting Indian Agent,
Parry Sound, Ont.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

(copy)

Port Elgin School
Cape Croker Reserve,
R. R. 5 Wlarton, Ontario.

Mr. W. R. Tomlinson K.C.,
M.P. for Bruce,
Port Elgin, Ontario.

Dear Mr. Tomlinson:

Mr. John Pedoniquotte of the Reserve here has asked me for information and advice regarding the enclosed letter and contract between the Pottawatomie Indians now resident in Canada and Andrew G. Chisholm and Robert C. Bell Jr. I understand that Mr. John Wesley Keeshig was to have distributed the various copies of the letter and contract to the Indians concerned, but he, having been ill, requested Mr. Pedoniquotte to do it for him.

I am too ignorant of the facts involved to give any advice of any value whatever, but am wondering if you, as the representative of the people here, would be kind enough to suggest to me the course of procedure which they ought to adopt. If you are not too busy to be able to give this matter your attention we would all be very grateful indeed.

I wish to thank you again for all your kindnesses to myself, and to extend to you the best of good wishes for a very Happy New Year.

Very sincerely yours,

(sgd) Gladys R. Parke.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

**PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA**

(copy)

HOUSE OF COMMONS

Canada

Ottawa 16th January, 1939.

Ford Pratt, Esq.,
Secretary to the Minister of Mines & Resources,
Ottawa.

Dear Mr. Pratt,

I am enclosing some correspondence in connection with a claim against the United States of the Pottawatomie Indians. The school mistress at Cape Croker Reserve has asked for my advice as to whether the Consul should sign this contract or not. I have no information about this matter, and I would like you to write me as to whether this, as a proper contract, should be signed by these Indians. I am rather skeptical of claims such as this, and you may have more information on the subject than I have.

I would appreciate it if you would write me, and return the correspondence with your comments.

Yours faithfully,

(sgd) W. R. Tomlinson
-M.P. Bruce-

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

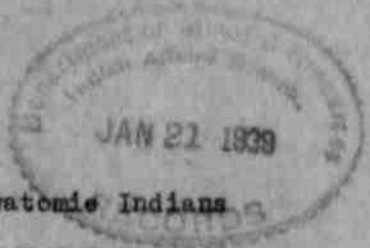
Minister's Office

156610-4

MEMORANDUM

Jan. 19, 1939

THE DEPUTY MINISTER



re- Claim of Pottawatomie Indians

Mr. W.R. Tomlinson, M.P., has forwarded me the attached correspondence in connection with the above claim,- his letter Jan. 16, with enclosure of one from Gladys R. Parke, Port Elgin School, Cape Croker Reserve, R.R. 5, Warton, Ont.; copy of one from A.G. Chisholm, K.C., Barrister, London, Ont, and blank form of Contract between the Pottawatomie Indians, Resident in Canada, and Andrew G. Chisholm and Robert C. Bell, Jr.

With a return of the correspondence, will you please let me have a draft reply to Mr. Tomlinson.

W.J.F. Pratt
W.J.F. Pratt
Private Secretary.

Encl.

Dr. McGill -

For draft reply as requested.

encl.

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

156610-4

W. J. ARTHUR FAIR
BARRISTER, SOLICITOR, NOTARY PUBLIC
DOMINION BANK BUILDING - 388 GEORGE STREET
PETERBOROUGH, ONT.

R

Aley

January 23rd, 1939.

JAN 24 1939
RECORDED

The Department of Indian Affairs,
Ottawa, Ontario.

Re: Isaac Johnson and Pottawatomie
Indian Claim.

Dear Sirs:

I have been consulted by one Isaac Johnson, with reference to his possible share in a claim being made by the Pottawatomie Indian Tribe against the United States' Government, in which I am informed that Mr. A.G. Chisholm, K.C., of London, Ontario, is acting on behalf of the tribe.

Will you be good enough to inform me as to whether your Department is in possession of information regarding this matter, and if Mr. Chisholm is properly authorized to act on behalf of the members of the tribe in Ontario.

Any other information in this connection that you can give me will be appreciated.

Yours very truly,

W. J. ARTHUR FAIR,

per: *[Signature]*

AEMcD: GS.

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

156610-4

January 27, 1939.

Dear Sir:-

I have to acknowledge receipt of your letter of the 23rd instant with regard to the provisions of Section 141 of the Indian Act.

Following your opinion that this section does apply to the acceptance of a fee subsequent to an award in the manner indicated in Mr. Young's letter, I shall be glad if you will advise me if it will be in order for this department to grant to Mr. Young, or to any other counsel acting for the Canadian Petawatomie Indians, or any of them, a limited consent under the said section to regularize the collection of a fee through an award in the manner indicated.

As requested by your Mr. Jackett, I am enclosing herewith copy of form of retained submitted by Mr. Young with his letter of January 10, 1939.

Yours very truly,


T.R.L. MacInnes.
Secretary.

C.P. Plaxton, Esq.,

Acting Deputy Minister,
Department of Justice, Ottawa.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

156610-4

File



LAUGHING IT OFF

It's a good thing Elijah J. Pavis, full-blooded Ontario Indian, has a sense of humor. He made the trip to Cleveland to confer with an attorney over a \$1,500,000 claim for his Potawatomi tribe. While there a "blonde" and "brunette" tied him up at the point of a gun, robbed him of \$67.85—the reward of a week's trapping.

**OUT TO GET \$1,500,000
LOST \$67.85 TO GIRLS**

**Parry Sound Indian Winds
Up in Jail — Can't
Raise \$500**

Cleveland, Jan. 20 — Elijah J. Pavis, full-blooded Indian from near Parry Sound, Ont., came to Cleveland to get \$1,500,000 from the U.S. government.



Joan Cook

Instead of that he was in jail today held under bond of \$500 he couldn't raise and all because, he claims, of a blonde and a brunette.

Swarthy, affable, smiling, he arrived in Cleveland to confer with Attorney D. E. Warner over the \$1,500,000 claim his tribe is pressing against the U.S. government. More than 100 years ago, he said, the white men drove his people, the Potawatomies from Wisconsin and the land from which they were driven was never paid for.

Elijah, so goes his story, was sitting in a hotel restaurant when the blonde and brunette seated themselves beside him and asked him to buy them a drink.

Elijah, out of \$67.85, the yield of a few week's trapping around Parry Sound, bought a couple rounds of beer.

His company proposed he join them for the evening. He engaged a room, the three went upstairs and the blonde, he said, pulled a gun on him. "She told me to lie down on the bed or she would pull the trigger," he said.

"Every time I would try to look around she would hit me over the head with the gun. She must have hit me six or seven times. One of them took the pocketbook from my pocket, took the money out of it and then put it back in my pocket."

In spite of the gun Elijah yelled enough that Patrolman Joseph Golek who happened to be entering the building, heard him. So to-day the blonde, Joan Cook, 21, is in jail being held for the grand jury under \$10,000 bond on a charge of robbery. The brunette, 16, has been turned over to the juvenile court and Elijah—still smiling—

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

**PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA**

File

156610-4



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Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

**PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA**

156610-4
DEPARTMENT OF INDIAN AFFAIRS
DEC 19 1938
RECORDS

Leaf
B

Christian Island Dec 15th 1928

To the Dept of Indian Affairs, Ottawa.
Sir, I want ask you what I can do Reports
To those Blanks & Circulars.
Harry Jackson is endeavoring to ignore
the services by Mr. A. H. Chisholm Gordon
and Claims that Mr Warner of Cleveland
is the one now employed by the Claimants
and have already approach the Government
in Washington. Kindly Direct-me by Return
mail, if this be the true proceeding I have
on hand as I always believe had been
approved and supported by our Government.
This man, H. Jackson should be stopped
making trouble right along.
Enclosed you find letter to him from
the Dept. Do not fail-man to act
accordingly

Awaiting a early Reply
Yours Truly
M. J. Sandy

P.S. Kindly Return the
Blanks on the Copy
This Reply
MJS

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
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CANADA

OFFICE OF THE
INDIAN AGENT

[Handwritten signature]



CANADA
DEPARTMENT
OF
MINES AND RESOURCES
INDIAN AFFAIRS BRANCH

156610-4

PLEASE QUOTE
FILE

R

Christian Island

Jan 4, 1939



Dear Sir,-

Am enclosing letter of M J Sandy as requested in letter 156610-4 dated Jan 4 1939 and have given Sandy his correspondence and information.

Your obedient servant

[Handwritten signature: G. C. Gumsden]

Indian Agent

The Secretary

Department of Indian Affairs

Ottawa, Ont.

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

112 Old House Office Building
Washington, D. C.
January 27, 1939

Mr. John Collier
Commissioner of Indian Affairs
New Department of Interior Building
Washington, D. C.

Sir
Sir:

Re: Wisconsin Band of Pottawatomie Indians
in Canada vs. United States.

In a recent letter to you dated January 10th, 1939, I called your attention to the fact that a number of attorneys with conflicting contracts purport to represent the complainants in the above entitled matter. The question of proper counsel probably will not come to a head until the time comes for the presentation of a petition to the Court of Claims should Congress authorize such a procedure. However, it would be of considerable assistance to the attorneys concerned if the department would define its relationship to these expatriated Indians. Are they wards of this government?

I would like to call your attention to page 21 of Document No. 830, House of Representatives, 60th Congress, 1st Session, containing a report dated April 1, 1908 wherein the special U.S. investigator, W. M. Wooster, states, "These Indians, who are for the most part the second generation removed from the original fugitive ancestors, are fully domiciled wards of the Dominion government."

Inasmuch as this claim is based on personalty, the situs of which is at the domicile of the owner, and the fact that the attorney-client relationship is a personal one, it would seem that the United States, the place of the forum, should consult the laws of Canada in determining the proper attorney. The 1927 Revised Statutes of Canada, Chapter 98, Part I, section 90 deals with "All moneys or securities of any kind applicable to the support or benefit of Indians, and all moneys accrued or hereafter to accrue from the sale of any Indians lands or the proceeds of any timber, etc." Subsection 2 says:

"No contract or agreement binding or purporting to bind, or in any way dealing with the moneys or securities referred to in this section, or with any moneys appropriated by Parliament for the benefit of the Indians, made either by the chiefs or councillors of any band of In-

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

Mr. John Collier--2

dians or by the members of the said Band, other than and except as authorized by and for the purposes of this part shall be valid or of any force unless and until it has been approved in writing by the Superintendent Generalⁿ.

Section 141 of the same act contains a provision against anyone receiving money for the prosecution of a claim without the consent of the Superintendent General.

Mr. A. G. Chishelm, K. C., of London, Ontario, has a contract duly approved by the Superintendent General of Indian Affairs of Canada under the above statutes, of which you have a photostatic copy. I am representing Mr. Chishelm's interests in Washington.

Mr. Berr E. Warner, of Cleveland, Ohio, on May 13, 1936 brought a number of Indians to Buffalo, N. Y. for the purpose of contracting with them under the laws of the United States. It is clear that the laws of a sovereign state can not be avoided by a temporary removal of the contracting parties to a different jurisdiction for the purpose of such evasion. Wardship is a status which can not be thus evaded. Such a contract should not be valid unless valid in Canada.

Before questioning the correctness of the legal theory of Mr. Warner's contract, I would like to know the Department's attitude and relationship to these Indians. In this connection I would like to call your attention to a communication from F. M. Goodwin, assistant secretary of the Department of the Interior addressed to the Secretary of State under date of April 10, 1922, regarding a similar contract held by Kappler and Merillat, Washington attorneys, with these same Indians covering the same claim wherein it is related:

"However, as these Indians are not wards of this Government and are under the supervision and direction of the Dominion Government, such contract would not come within the purview of sections 2103-6 of the Revised Statutes of the United States requiring that attorneys' contracts with Indian tribes be approved by the Commissioner of Indian Affairs and the Secretary of the Interiorⁿ.

Mr. John Collier--5

I believe you will also find in the files of the State Department a letter from Sir Auckland Geddes, when he was British Ambassador, stating that Mr. Chisholm is the only recognized representative of these Indian claimants.

It is worthy of note that Mr. Warner attempted to associate himself with Mr. Chisholm in the prosecution of this claim back in 1934. Mr. Chisholm wrote to the Indian Department in Ottawa inquiring about the possibility of forming this association. I quote the reply:

Department of Indian Affairs
Canada 156610
Office of the Deputy Superintendent General

Ottawa,
July 5, 1934

Dear Sir:-

Re: Pottawatomic Claim.

I have to acknowledge your letter of the 3rd instant with reference to the prospective visit from Mr. Warner, of Cleveland, Ohio, in connection with the Pottawatomic claim. I may say that when Mr. Warner wrote the Department in November last we replied to him as follows,-

"In reply I beg to say that the claim to which you refer in is all probability what is known as the Pottawatomic claim. This claim has been under way for many years having been undertaken by Mr. A. G. Chisholm, K.G., of London, Ontario. Subsequently the assistance of the Department of Indian Affairs was invoked and we had the matter referred to the Department of Justice. The claim was formally filed some years ago with the United States Government through the office of the Canadian Minister to Washington and it is felt that everything that can be done is being done on behalf of these Indians by this Department."

I should think that all you could tell him is that you are acting under instruction from the Department and that at present any negotiations on the subject are being carried on between the Canadian Legation at Washington and the State Department, the latter refusing to recognize anyone not authorized by the Canadian Government to represent the Canadian claimants.

Yours very truly,

Ed. A. S. Williams

Acting Deputy Superintendent General.

A. G. Chisholm, Esq.,

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

Mr. John Collier--4

Only on last May 5th was Mr. Chisholm successful in withdrawing the claim from the Pecuniary Claims Commission where he had been actively prosecuting it since the date when the State Department declined, on June 9, 1932, the request of the Canadian Legation to sponsor an adjudication by the U. S. Court of Claims. I have been in Washington for the past three weeks in connection with the matter under an arrangement entered into with Mr. Chisholm.

The case shall merit my continued effort and, if at any time I may be of assistance to your office, please contact me care of Congressman R. T. Buckler, 142 Old House Office Building, in Washington.

Respectfully,

Robert C. Bell, Jr.

Robert C. Bell, Jr.

RCB:b

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

156610-4

FRED DENNIS

ROBERT C. BELL, JR.

DENNIS & BELL
LAWYERS
DETROIT LAKES, MINNESOTA

142 Old House Office Building
Washington, D. C.
January 27, 1939

Harold W. Magill, Esq.
Director of Indian Affairs
Ottawa, Ontario
Dominion of Canada



Sir:

Re: Wisconsin Band of Pottawatome Indians
in Canada vs. the United States

I am writing you in regard to the above entitled matter on the advice of Mr. John Read, of the Secretariat for External Affairs, who is now in this city on business for your government.

I have enclosed a letter addressed this day to the Bureau of Indian Affairs which is self-explanatory. I should like to ask your department also "What is your attitude and relationship to these Indians?" I know that in the past the department has taken an active interest in the prosecution of the claim and should certainly have a voice in, if not control of, the distribution of any funds which might be recovered. The interest is evidenced and recognized by the contract between Mr. Chisholm and Duncan Scott, Deputy Superintendent General of Indian Affairs on August 8, 1918.

To my knowledge, three sets of attorneys already claim to be the proper counsel in this case but the matter probably will come to a head only if and when legislation is passed by Congress giving jurisdiction of the matter to the U. S. Court of Claims. At that time the Dominion Government undoubtedly should assert its interest in the matter and, as a guardian of the Indians, protect its wards from their inclination to sign multiplicitous attorney contracts.

A defection of part of the Indians from Mr. Chisholm, only natural in extended litigation, is led by Mr. Henry Jackson, of Christian Island, one of the four signatories of Mr. Warner's contract. Mr. Jackson, I understand, has been several times reprimanded by your government for his activities in this case.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

Harold W. Magill, -Esq.--2

I might state that the usual length of time for one of these cases is about 25 years and in the case of Canadian claimants could reasonably take a good deal longer. The Klamath case (304 U. S. 119), the most notable recent recovery, was commenced in 1908. Jurisdictional legislation passed in 1920 and the final judgment was entered in 1938.

I hope to have your co-operation in this matter with a view to cutting all unnecessary delays to a minimum.

Respectfully,

Robert C. Bell, Jr.

Robert C. Bell, Jr.

RCB:b

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

**PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA**

*Immediate
Sept.*



House of Commons
Canada

Department of Indian Affairs
FEB 2 1939
RECORDS

W. P. Telford
OTTAWA

February 1, 1939.

T. R. L. MacInnes, Esq.,
Department of Mines & Resources,
Ottawa, Canada.

B

Dear Mr. MacInnes,-

RE: FILE 156610-4

I am in receipt of a letter from A. T. Young of Meaford, Ontario, with respect to a claim being made in the United States by the Pottawatomie Indians. Apparently, this tribe wish to have Mr. Young represent them before the United States Court of Claims. Mr. Young has applied to your Department for permission, under certain conditions, to represent the above tribe. He now asks that your Department waive the provisions of section 141 of the Indian Act as against him. He informs me that if this were done, he would be free to accept whatever sum the United States Court of Claims might award him as an Attorney fee.

If you can send this waiver direct to Mr. Young and advise me that it has been done, it will be very much appreciated.

Yours very truly,

W. P. Telford
W. P. Telford, M. P.

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

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CANADA

Mr. Telford

156610-4

February 4, 1939.

Dear Mr. Telford:-

I have to acknowledge receipt of your letter of February 1, 1939, with regard to the Pottawatomie Indian claim.

This matter is under advisement, and I shall communicate with you in connection therewith at an early date.

Yours very truly,

TRM
T.R.L. MacInnes.
Secretary.

W.P. Telford, Esq., M.P.,
House of Commons,
Ottawa.

RM

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

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CANADA

Mr. Wanner

76TH CONGRESS
1ST SESSION

S. J. RES. 32

IN THE SENATE OF THE UNITED STATES

JANUARY 9 (legislative day, JANUARY 5), 1939

Mr. THOMAS of Oklahoma introduced the following joint resolution; which was read twice and referred to the Committee on Indian Affairs

JOINT RESOLUTION

To investigate the claims against the United States of certain members of the Wisconsin Band of Pottawatomie Indians.

1 *Resolved by the Senate and House of Representatives of*
2 *the United States of America in Congress assembled,*
3 That jurisdiction be, and it is hereby, conferred upon the
4 Court of Claims to make findings of fact and conclusions of
5 law in respect of the claims against the United States, of
6 whatever nature, legal or equitable, arising out of treaties
7 between the Pottawatomie Nation of Indians and the United
8 States, of members of the Wisconsin Band of Pottawatomie
9 Indians who were not paid from appropriations made by
10 the Act of Congress of June 30, 1913 (38 Stat. L. 102),
11 and subsequent Acts, and the Court of Claims shall report

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
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CANADA

1 its findings to Congress, including therein a statement of the
2 amount of money, if any, expended by the United States
3 gratuitously for the benefit of said Indians, as required by
4 section 2 of title I of the Act of August 12, 1935 (49 Stat.
5 571, 596): *Provided*, That on any claim heard under the
6 provisions of this resolution, for the appropriation, taking,
7 acquisition, or deprivation of land or any interest therein,
8 the jurisdiction conferred by this resolution to hear any such
9 claim and to make findings of fact and conclusions of law
10 thereon, is limited to the ascertainment of the value of said
11 land, or interest therein, at the time of the appropriation, ex-
12 propriation, taking, acquisition, or deprivation, and no find-
13 ings or conclusions shall be made by the Court of Claims
14 which include any increment, interest, or the equivalent
15 thereof, from the date of the taking to the date of making of
16 such findings and conclusions as an element of just com-
17 pensation or otherwise.

18 Such claims may be filed and presented by a representa-
19 tive group of said Indians within two years from the enact-
20 ment of this resolution, and plaintiffs therein, at any time
21 before the final findings of fact and conclusions of law are
22 rendered in said suit or suits, shall have the right to amend
23 their petition or petitions, and the proceedings shall be had
24 as provided in the Judicial Code.

1 The rights of such Indians shall not be prejudiced by
2 laches, lapse of time, or any statute of limitations, nor by
3 the fact that some of them or some of their ancestors may
4 have fled from the United States to territory now a part
5 of the Dominion of Canada, and may have become Canadian
6 nationals.

7 The attorney for such Indians shall have access to all
8 records, documents, and correspondence in the possession of
9 any branch or agency of the Government, or may use the
10 same, or copies thereof, as evidence in the hearing of their
11 claims.

12 The Court of Claims shall have jurisdiction to fix a
13 reasonable attorney's fee for services rendered, and to be
14 rendered, in the prosecution of said claims, not to exceed
15 10 per centum of the amount, if any, found due to such
16 Indians, and to fix the reasonable expenses incurred by
17 such attorney, and the same shall be paid out of any funds
18 Congress may appropriate to pay the claims of such Indians.

76TH CONGRESS
1ST SESSION

S. J. RES. 32

JOINT RESOLUTION

To investigate the claims against the United States of certain members of the Wisconsin Band of Pottawatomie Indians.

By Mr. THOMAS of Oklahoma

JANUARY 9 (legislative day, JANUARY 5), 1939
Read twice and referred to the Committee on Indian Affairs

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

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CANADA

Bell

ROBERT C. BELL, JR.
ATTORNEY AT LAW
DETROIT LAKES, MINN.

76TH CONGRESS
1ST SESSION

H. R. 1952

IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 1939

Mr. BUCKLER of Minnesota introduced the following bill; which was referred to the Committee on Indian Affairs

A BILL

Authorizing the Wisconsin band of Pottawatomie Indians to file suit in the Court of Claims of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That jurisdiction is hereby conferred on the Court of Claims
4 of the United States to hear, determine, and render judgment,
5 as upon a full and fair arbitration, for the amount, if any,
6 with interest thereon, that legally or equitably may be fairly
7 due the Wisconsin band of Pottawatomie Indians arising out
8 of the treaty of September 26, 1833 (7 Stat. 431), the
9 Act of June 25, 1864 (13 Stat. 172), the Act of June 21,
10 1906 (34 Stat. 380), and amendments thereof, or under

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

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CANADA

1 any other Acts of Congress or any treaties or agreements
2 entered into between said Indians and the United States, or
3 its authorized representatives, under which the United States
4 has taken, acquired, appropriated, or expropriated lands of
5 said Indians, or in which they had any right, title, or interest,
6 or for the failure of the United States to pay any money
7 that legally or equitably may fairly be due said Indians,
8 or any member thereof, except such claims as heretofore
9 may have been determined and liquidated between the
10 United States and said Indians and the claims of those
11 Indians who were paid from appropriations made under the
12 Act of June 30, 1913 (38 Stat. 102) and subsequent acts,
13 and either party shall have the right to have the judgment
14 reviewed by the Supreme Court of the United States by
15 appeal.

16 SEC. 2. In any suit or suits instituted hereunder, the
17 Court of Claims shall determine and adjudge the claims of the
18 party plaintiff in the premises, both legal and equitable, not-
19 withstanding the lapse of time, laches or the statute of
20 limitations, and notwithstanding the fact that some of said
21 Indians or their ancestors departed from the United States,
22 are now living in the Dominion of Canada, and may have
23 become Canadian nationals, or affiliated with a Canadian band
24 of Indians.

1 SEC. 3. The Court of Claims in any suit or suits com-
2 menced hereunder shall hear, determine, and adjudicate any
3 properly chargeable claim or claims that the United States
4 may have against said Indians, including gratuities not here-
5 tofore charged, as provided by the Act of August 12, 1935
6 (49 Stat. 571, 596; 25 U. S. C. 475a); but any payment
7 or payments that have been made by the United States on
8 any such claim or claims shall not operate as an estoppel
9 but may be pleaded as a set-off.

10 SEC. 4. Official letters, documents, files, and records, or
11 certified copies thereof, including those of the Government
12 of Canada, may be received in evidence, and the departments
13 and the United States Government, and the officials thereof,
14 shall give access to the attorney or attorneys representing
15 said Indians to such letters, documents, files, and records as
16 they may require in the prosecution of any suit or suits insti-
17 tuted under this Act, and such attorney or attorneys shall
18 have the right to make searches therefor without specifying
19 such letters, documents, files, or records.

20 SEC. 5. The Wisconsin band of Pottawatomie Indians
21 shall constitute a class entitled to share per capita in the pro-
22 ceeds of any recovery and shall be the party plaintiff in any
23 suit or suits commenced hereunder and the United States
24 shall be the party defendant. The petition or petitions shall

1 be filed within five years after the date of this Act and shall
2 be subject to amendment at any time prior to final submission
3 of the case to the Court of Claims. The petition or petitions
4 shall be verified by the attorney or any one of the attorneys
5 duly and legally employed by the Indians to represent them
6 and no other verification shall be necessary.

7 SEC. 6. Said Indians shall be represented in the prose-
8 cution of any claim hereunder only by such attorney or attor-
9 neys as have been or hereafter may be selected by them, or
10 the majority thereof, provided such selection is approved by
11 the Commissioner of Indian Affairs of the United States.
12 On the final determination of any suit brought hereunder the
13 compensation and the actual and necessary expenses of said
14 attorney or attorneys shall be determined and fixed by the
15 Court of Claims and paid from any money found to be due
16 said Indians: *Provided*, That the compensation shall not ex-
17 ceed 10 per centum of the amount of the judgments recovered
18 in the litigation.

76TH CONGRESS
1st Session

H. R. 1952

A BILL

Authorizing the Wisconsin band of Pottawat-
omie Indians to file suit in the Court of
Claims of the United States, and for other
purposes.

By Mr. BUCKLER of Minnesota

JANUARY 9, 1939

Referred to the Committee on Indian Affairs

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

**PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA**

156610-4

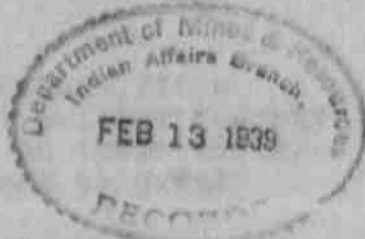
FRED DENNIS ROBERT C. BELL, JR.
DENNIS & BELL
LAWYERS
DETROIT LAKES, MINNESOTA

Ex/1

B

February 10, 1939

Harold W. Magill, Esq.
Director of Indian Affairs
Ottawa, Ontario
Dominion of Canada



Sir:

Re: Wisconsin Band of Pottawatomie
Indians in Canada vs. United States.

I am pleased to enclose my bill which has been introduced in Congress on behalf of the plaintiffs in the above entitled matter. The bill occupied my attention in Washington from January 2nd to February 2nd of this year. I expect to return to Washington in several weeks to participate in committee hearings on the subject.

Supplementing my letter to you dated January 27, 1939, I am enclosing a report number 1913, Calendar No. 2018. On page three thereof you will notice a reference by the Secretary of the Interior to a purported contract which Mr. Dorr E. Warner, of Cleveland, holds with the Indians and his opinion thereon.

The bill which the report covers is S.J. Res. 212, 75th Congress, 3rd Session. S.J. Res. 32, Mr. Warner's bill, a copy of which I have enclosed, is a word for word duplicate of the old S.J. Res. 212. You will note that it does not give the court authority to enter judgment, merely provides for an investigation, gives no right to appeal, stipulates against the allowance of interest, contains no provision for verification of pleadings, etcetera. I hope that no rights of the claimants will be prejudiced thereby.

I shall avoid and forestall any conflict among the several sets of attorneys who are interested in this matter since the thing which is of most immediate importance is to get jurisdictional legislation

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

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Harold W. Magill, Esq.--2

from Congress.

The Bureau of the Budget, the Indian Office
and the Department of Justice are all writing reports
to be incorporated into a memorandum on these bills.
I shall keep you advised on the subject as events
transpire.

Respectfully,

Robert C. Bell, Jr.
Robert C. Bell, Jr.

RCB:b

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
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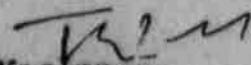
156610-4

February 14, 1939.

Dear Sir:-

I have to refer to your letter of the 10th ultimo with regard to the Pottawatamie Indian Claim, and in reply thereto I have to inform you that your request is receiving consideration, and that I expect to be able to give you definite advice on the matter at an early date.

Yours very truly,


T.R.L. MacInnes.
Secretary.

A.T. Young, Esq.,
Barrister, etc.,
Meaford, Ont.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

156310-4

February 14, 1939.

Dear Sir:-

I have to refer to your letter of the 23rd ultimo with regard to the Pottawatomie Indian Claim, and in reply thereto I have to inform you that the matter is receiving consideration, and I will advise you further in connection therewith in due course.

Yours very truly,

T.R.L.M.
T.R.L. MacInnes.
Secretary.

W.J.A. Fair, Esq.,
Barrister, etc.,
Peterborough, Ont.

W.J.A.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

156610-4

February 14, 1939.

Dear Sir:-

I have to refer to your communication of the 10th ultimo with regard to the Pottawatomie Indian Claim, and in reply thereto I have to inform you that the matter is receiving consideration and I will advise you further in connection therewith in due course.

Yours very truly,

TRM
T.R.M. MacInnes.
Secretary.

A.G. Chisholm, Esq., K.C.,
Barrister, etc.,
London, Ont.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

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CANADA

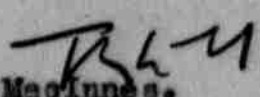
156610-4


February 14, 1939.

Dear Sir:-

I have to refer to your letters of January 27 and February 10, with regard to the Pottawatomie Indian Claim, and in reply thereto I have to inform you that the matter is receiving consideration, and I will advise you further in connection therewith in due course.

Yours very truly,


T.R.L. MacInnes.
Secretary.


R.C. Bell, Esq. Jr.,
Messrs. Dennis and Bell,
Detroit Lakes, Minnesota.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
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About a hundred years ago the Pottawatomie Indians resided in the State of Wisconsin. The United States Government decided to move all Indians west of the Mississippi, and the Pottawatomes, therefore, ~~was~~ ordered to move to this territory. As the land was poor, and there was little game, many of the Indians refused to go, but were later forced to by the U.S. Government. Some of them fled to inaccessible portions of Wisconsin and Michigan, but the majority crossed to Canada, and their descendants comprise the Canadian Branch of the Pottawatomie Indians of Wisconsin.

These Canadian Pottawatomes now claim under the Chicago Treaty of 1833, and fifteen other Treaties made with the U.S. Government with their forefathers, that they are entitled to a proportionate share of the \$1,964,565.87 found and acknowledged to be due by the U.S. to those Pottawatomes who failed to move west of the Mississippi. Their forefathers, at the time of the treaties, resided in Wisconsin, and were equally entitled to relief with the forefathers of the Indians still in Wisconsin. The Indians still in that State have received settlement of their claim. The U.S. Government, however, has taken no steps to settle with the descendants of the Pottawatomes who reside in Canada, and who never knowingly abandoned any rights in the tribal estate, in whatever form it has existed.

In 1908 a roll of Pottawatomie Indians was prepared by the U.S. Government, and there were enrolled 2007 persons, - 457 in Wisconsin and Michigan and 1550 in Canada. Presumably the number is approximately the same.

An International Tribunal, known as the Pecuniary Claims Tribunal, and acting under the Pecuniary Claims Agreement or Convention, was formed to deal with claims such as the above.

An Order in Council was passed Feb. 12, 1912, recommending that the British Ambassador at Washington be requested to present to the U.S. Government, for inclusion in the Second Schedule to be considered under the Pecuniary Claims Agreement of Aug. 1910, the claim of these Indians. This was done, but for years no definite action was taken, as the Pecuniary Claims Tribunal ceased to operate on the outbreak of war. The Claim of the Indians was notified to the U.S. authorities for arbitration. Under the Convention, the Claims notified were to be listed in different schedules by further agreements of contracting powers, but one list only was approved before proceedings were interrupted by the war. This claim was to have been included in the Second Schedule.

In Nov. 1919, an O.C. dated Oct. 18, 1919, was sent to the British Ambassador at Washington, together with petition setting forth the claims of the Indians. This O.C. set forth the case more fully than the O.C. of Feb. 1912. It recommended that the claim be presented to the U.S. Government for determination under the Pecuniary Claims Agreement, or that the petition be referred to the U.S. Court of Claims or other appropriate tribunal for adjudication.

In 1911, Mr. A.G. Chisholm, Barrister of London had been retained by the Canadian Indians to prosecute their claim. In 1919 he entered into an Agreement with the department to act as solicitor, and has been the only agent recognized by the department. It was stated that if the claim was recognized by the U.S. Court of Claims, said Court was to fix the compensation to be made Mr. Chisholm, the amount to be paid out of fund received by Indians. If the money was paid direct

Canadian Government to be administered, compensation of Mr. Chisholm was to be fixed by Exchequer Court, all costs to be paid out of Fund. After the Claim was settled, compensation for work of proving which Indians are entitled to a share, is to be on a basis of a per diem allowance, to be paid only after amount of allowance and number of days has been approved by Justice. If the money was paid direct to the Indians Mr. Chisholm agreed to endeavour to arrange for distribution of same by Indian Dept, in which case payment to Indians would be held until compensation to Mr. Chisholm was determined by mutual agreement or by Exchequer Court.

During the years several other attorneys from Washington and elsewhere tried to become recognized as agents of the Indians. One firm succeeded in having a Bill introduced into Congress, in 1922, but it was withdrawn at the request of the Indian Department. The Indians became dissatisfied and endeavoured to have Mr. Chisholm dismissed. From 1922 to 1933, Mr. Chisholm was paid \$8,038.48 by the department.

The services of Mr. C.C. Robinson, K.C. of Toronto were engaged in 1927, and all matters, both legal and diplomatic, were taken out of Mr. Chisholm's hands. From 1927 to 1930 Mr. Robinson was paid \$2,607.99. Mr. Chisholm's services had been unsatisfactory for several years, and while his services were never actually cancelled, such a course of action had been recommended by the Deputy Minister, in November, 1923.

The Pecuniary Claims Tribunal did meet in 1926 and disposed of the claims in the First Schedule, but the Second Schedule was never reached, and there appeared to be little prospect of the claim being referred to the U.S. Court of Claims, as Mr. Chisholm had long desired. In June, 1932, the U.S. Government set forth the legal objections which ended any possibility that the Department of State would support the settlement of the case by the Court of Claims.

In 1937, Mr. A.T. Young, Barrister, of Meaford, was desirous of representing the Indians and certain of them requested him to act for them. He suggested that his fees be placed on a contingent basis depending upon how much of the claim was realized, not exceeding 10% of the share of each claimant represented.

A Bill was introduced into Congress in June, 1938, but did not succeed in passing before the end of the Session. Dr. Skelton was of the opinion that the claim had ceased to be a claim listed under the Pecuniary Claims Agreement.

Mr. Chisholm in 1938, sent a circular letter to the Indians and entered into a contract with a Mr. Bell of Detroit Lakes and a Bill was introduced into Congress on January 9, 1939. In the meantime Mr. Young is still pressing for advice, and Justice Department has been requested for a ruling with regard to the interpretation of Section 141 of the Indian Act.

According to a retainer form forwarded to the department in January, 1939, by Mr. Young, the American Attorney and Counsellor at Law, is Mr. James Conlon, 600F., St., N.W., Washington, who has been authorized and instructed to represent the Indians's interests as a claimant before the U.S. Congress and the U.S. Court of Claims.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

**PUBLIC ARCHIVES
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CANADA**

156610-4



Handwritten signature

WRJ/AL
PLEASE ADDRESS
THE DEPUTY MINISTER OF JUSTICE
OTTAWA

OTTAWA 23rd January, 1939.

R

J.R. 4056/39:

Dear Sir,

I beg to acknowledge receipt of your letter of the 17th instant (Ref. No. 156610-4), and in reply may say that in my opinion the provisions of sec. 141 of the Indian Act do apply to the acceptance of a fee subsequent to an award in the manner indicated in Mr. Young's letter.

Yours truly,

Handwritten signature: J.P. Platon

Acting Deputy Minister.

The Secretary,
Indian Affairs Branch,
Department of Mines and Resources,
O t t a w a .

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

PUBLIC ARCHIVES
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CANADA

156610-4



WRJ/AL

PLEASE ADDRESS
THE DEPUTY MINISTER OF JUSTICE
OTTAWA

OTTAWA 30th January, 1939.

J.R. 4056/39.

Dear Sir,

I beg to acknowledge receipt of your letter of the 27th instant in which you ask me to advise you if it will be in order for your Department to grant a limited consent under sec. 141 of the Indian Act to regularize the collection of a fee through an award.

I have the honour to inform you that it is my opinion that when any person obtains from an Indian a promise for the payment of money to which the provisions of sec. 141 applies, such person must have the consent of the Superintendent General, expressed in writing, to obtain the particular promise. If, therefore, the Superintendent General should decide to give a consent in pursuance of these provisions to Mr. Young or any other counsel, it will be in order to grant such consent with reference to a particular form of retainer indicated therein, and with reference to certain Indians, and need not be the general waiver of sec. 141 for which Mr. Young asks.

Yours truly,

Acting Deputy Minister.

The Secretary,
Indian Affairs Branch,
Department of Mines and Resources,
O t t a w a .

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
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CANADA

156610-4

December 1, 1938.

Dear Sir:- Re my letter dated November 18, 1938.

The department is in receipt of a further letter from Mrs. Gene Lavoie, with regard to the Pettawatouie Claim.

She is desirous of obtaining the address of the Indian Affairs Branch at Washington. Please advise Mrs. Lavoie that the address is as follows:-

The Commissioner,
Indian Affairs Branch,
Department of the Interior,
Washington, D.C., U.S.A.

Yours very truly,

TRLM
T.R.L. MacInnes,
Secretary.

R. S. Lewis, Esq.,
Indian Agent,
Manitowaning, Ont.,

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

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CONTRACT

CONFIDENTIAL
G-M-E
CONFIDENTIAL

Short history of the
Pottawatomie Indian Claim.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

**PUBLIC ARCHIVES
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CONTRACT

Between the Pottawatomie Indians, Resident in Canada,
and Andrew G. Chisholm and Robert C. Bell, Jr.

WHEREAS, Andrew G. Chisholm of London, Ontario, heretofore has been employed by the Pottawatomie Indians now residing in the Province of Ontario, Canada, individually and jointly as a tribe to represent them in an effort to secure the payment of certain moneys due them from the government of the United States of America, which employment has been duly recognized and approved by the government of the Dominion of Canada; and

WHEREAS, The said Andrew G. Chisholm, recognizing that the legal service of counsel in the United States is essential to the successful prosecution of said claim, has employed in this connection Robert C. Bell, Jr. of Detroit Lakes, Minnesota, U. S. A., and has assigned to him an undivided interest in the rights and privileges resulting from the contract of employment existing between the said Chisholm and the said Indians, which is hereby ratified and confirmed;

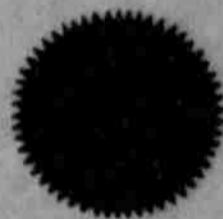
THEREFORE, BE IT HEREBY KNOWN, That I, the undersigned, one of the claimants to a proportionate share of the moneys due the Pottawatomie Indians from the United States now residing in the Province of Ontario, do hereby on my own behalf and on behalf of my minor children whose names are hereunder written, ratify and confirm the action of the said Andrew G. Chisholm in employing the said Robert C. Bell, Jr. and in assigning to him an undivided interest in the rights and privileges resulting from the contract now existing between the said Chisholm and the said Pottawatomie Indians; and

In consideration of the legal services rendered and to be rendered, I, on my own behalf and on behalf of my minor children, do hereby appoint and employ the said Andrew G. Chisholm and the said Robert C. Bell, Jr. as agents and attorneys for me and my infant children, and I hereby authorize said attorneys to take such action and to render any and all legal services that they may deem necessary and proper in connection with the prosecution of said claim;

Signed and sealed this _____ day of _____, 1938.

My children's names are:

Claimant.



I, _____ of the _____ Reserve
in the County of _____ and Province of Ontario, do hereby certify that the above
confirmation and authority was signed by the said _____ one of said
Pottawatomie claimants on behalf of h_____self and infant children in my presence the day and date above
mentioned.

Signature of Witness _____

(If witness occupies any representative capacity such as Chief, etc., he should so sign, stating such capacity.)

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pt. 6)

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CANADA

Calendar No. 2018

75TH CONGRESS }
3d Session }

SENATE

{ REPORT
{ No. 1913

WISCONSIN BAND OF POTTAWATOMIE INDIANS

APRIL 20 (calendar day MAY 27), 1938.—Ordered to be printed

Mr. CHAVEZ, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. J. Res. 212]

The Committee on Indian Affairs, to whom was referred the resolution (S. J. Res. 212) to investigate the claims against the United States of certain members of the Wisconsin Band of Pottawatomie Indians who were not paid from appropriations made by the act of Congress of June 30, 1913 (38 Stat. L. 102), and subsequent acts, and to confer jurisdiction upon the Court of Claims of the United States to make findings of facts and conclusions of law in respect thereto, having had the same under consideration, report thereon with the recommendation that it do pass with the following amendments:

On page 2, line 2, change the period to a comma, strike out all of lines 3, 4, 5, 6, 7, 8, 9, 10, and 11, and insert in lieu thereof the following:

including therein a statement of the amount of money, if any, expended by the United States gratuitously for the benefit of said Indians, as required by section 2 of title I of the Act of August 12, 1935 (49 Stat. 571, 596): *Provided*, That on any claim heard under the provisions of this resolution, for the appropriation, taking, acquisition, or deprivation of land or any interest therein, the jurisdiction conferred by this resolution to hear any such claim and to make findings of fact and conclusions of law thereon, is limited to the ascertainment of the value of said land, or interest therein, at the time of the appropriation, expropriation, taking, acquisition or deprivation, and no findings or conclusions shall be made by the Court of Claims which include any increment, interest, or the equivalent thereof, from the date of the taking to the date of making of such findings and conclusions as an element of just compensation or otherwise.

Such claims may be filed and presented by a representative group of said Indians within two years from the enactment of this resolution, and plaintiffs therein, at any time before the final findings of fact and conclusions of law are rendered in said suit or suits shall have the right to amend their petition or petitions, and the proceedings shall be had as provided in the Judicial Code.

On page 3, line 4, change the colon to a period and strike out all of lines 5, 6, 7, and 8.

The Secretary of the Interior, under date of April 7, 1938, submitted a report on the resolution, a copy of which is hereto attached.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
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2105 WISCONSIN BAND OF POTTAWATOMIE INDIANS

On March 2, 1918, the then Committee on Indian Affairs of the Senate made a favorable report on a bill in respect of the claims of the members of the Wisconsin Band of Pottawatomi Indians residing in Wisconsin and Michigan, and authorized and directed the Secretary of the Treasury to place upon the books of the Treasury to the credit of the members of the Wisconsin Band of Pottawatomi Indians, then residing in Wisconsin and Michigan, the sum of \$447,339. The pertinent facts in respect of those Indians who remained in Wisconsin and who fled to Canada are fully set forth in a report made by the House committee embodied in House Report No. 470, Sixty-fourth Congress, first session, appended hereto. The Senate committee adopted said House report and made it a part of its report (S. Rept. No. 293, 65th Cong., 2d sess.)

Thereafter the Congress appropriated \$447,339 for those Indians residing in the United States, the final appropriation having been made on May 29, 1928 (45 Stat. L. 901), but Congress has not taken final action with respect to the remainder of \$1,517,226.87 claims by those Indians living in Canada.

From the report of the Secretary of the Interior it will be observed that the Attorney General advises that certain clauses of the resolution are ambiguous and it contained no provision directing the Court of Claims to make findings of fact concerning gratuities and interest, and in conclusion the Attorney General states that—

While I have no objection to the enactment of a bill properly limited and circumscribed to securing a determination of the claims above referred to, I am unable to approve the enactment of the legislation in its present form.

The resolution as here amended complies with the suggestions of the Attorney General.

The Secretary of the Interior's report, dated April 7, 1938, follows:

DEPARTMENT OF THE INTERIOR,
Washington, April 7, 1938.

HON. ELMER THOMAS,
Chairman, Committee on Indian Affairs,
United States Senate.

MY DEAR MR. CHAIRMAN: Further reference is made to your request for a report on Senate Joint Resolution 212, to confer jurisdiction upon the Court of Claims to make findings of fact and conclusions of law in respect of the claims against the United States of certain members of the Wisconsin Band of Potawatomi Indians.

This proposed legislation is for the benefit of persons living in Canada, descendants of members of the Wisconsin Band of Potawatomi Indians who fled to that country after the treaty of September 26, 1833 (7 Stat. L., 431).

The records show that under the provisions of the act of Congress, approved June 21, 1906 (34 Stat. L., 380), the Secretary of the Interior caused an investigation to be made of the claims of the Wisconsin Band of Potawatomi Indians and made a report thereon to Congress. The report is contained in House Document 830, Sixtieth Congress, first session, and gives the facts in full concerning the enrollment and status of these Indians.

Briefly, the Potawatomi Indians, by treaty of September 26, 1833 (7 Stat. L. 431), sold their lands and agreed to remove west of the Mississippi River. About 2,000 removed to the State of Kansas in accordance with the treaty, and about an equal number fled to northern Michigan and Wisconsin and to Canada. Thereafter, all funds due the tribe under the treaty mentioned were paid to those who removed to Kansas. At the time of the investigation a roll was made showing 457 persons of Potawatomi blood as belonging in the United States (Michigan and Wisconsin), and 1,550 descendants of Wisconsin Potawatomes residing in Canada. It was found that to equalize the payments would require the sum of \$447,339 for the United States branch, and \$1,517,226.87 for those who resided in Canada, making a total of \$1,964,565.87. The \$447,339 has been appropriated

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and paid to the United States branch or used for their benefit, but no appropriation has ever been made for the Canadian Potawatomes.

The field agent who made the investigation and enrollment referred to, reported as follows concerning the status of the Canadian Wisconsin Potawatomes:

"With but few exceptions all the enrolled Indians found living on reservations are considered and treated as British subjects. They are allowed to occupy and cultivate lands and to make improvements thereon, have access to the schools, are in fairly prosperous condition, and are being well cared for by the Dominion authorities, being in general treated as are Indians whose ancestry has been solely Canadian. These Indians, who are for the most part the second generation removed from the original fugitive ancestors, are fully domiciled wards of the Dominion Government. Such rights as they may now have by reason of their small quantum of American Potawatomi blood would seem to exist merely as an interest in an estate, should the claim pending before the Congress be treated merely as an estate. *If all descendants of the original Potawatomes who refused to remove to Kansas, and for that reason received no benefits under the treaty, are to be recognized solely on the basis of descent, then it would seem that these Canadian Indians would be entitled to the same share in any fund arising from the claim as the Wisconsin Potawatomes.* With the few exceptions to be hereinafter mentioned, they are not homeless, are making rapid progress toward complete civilization, and, in fact, seem to be much better off and better contented than their distant relatives in Wisconsin. Whether they will be recognized eventually as Canadian Indians and accorded full rights, including allotments of land, is a matter I am unable to forecast. As hereinbefore reported, the Canadian Indian agents differ on this question, and there would seem to be no way of ascertaining definitely just how they are regarded by the Dominion Government and what rights they will eventually get other than by submitting a list containing their names to that Government for information as to their present and probable future status." [Italics ours.]

Later, in 1932, the claim of the Canadian Potawatomes was the subject of correspondence between the Department of State and the Minister of the Dominion of Canada, culminating in the Department of State note of June 8, 1932, to the Canadian Legation, definitely rejecting the claim and declining to request the Congress to enact legislation authorizing its reference to the Court of Claims for adjudication, and the reply of October 25, 1932, from the Canadian Legation stating that pending the exploration of the possibility of settlement by other means, the Canadian Government would not further press for the submission of the claim to the Court of Claims but would "leave the claim as one listed for inclusion in the proposed second schedule of claims to be heard by the Pecuniary Claims Commission established by the Convention of August 18, 1910, on the next occasion on which this tribunal may be reconvened." The records of this Department contain no information concerning any further action taken.

The last paragraph of Senate Joint Resolution 212 provides for payment of fees and expenses to an attorney for the Indians under a contract executed at Buffalo, N. Y., May 13, 1936. It appears that section 141 of the Indian Act of Canada, 1927, required the consent in writing of the Superintendent General of the Indian Department to agreements made with Indian bands or tribes of Canada, with respect to their tribal claims. I am not able to advise whether the Canadian Potawatomi Indians possess a status which makes them subject to this provision, or whether the contract in question was made by persons authorized to act for and in behalf of the Indians having an interest in the claim. In the absence of full information concerning the validity of the contract, it is not recommended that the contract be, in effect, confirmed by Congress in this proposed legislation.

In view of the fact that the Indians interested are residents of Canada, and of the fact that the claim has heretofore been considered by the Department of State, it is probable that you will wish to obtain the views of that Department on Senate Joint Resolution 212.

The foregoing facts are set forth for the consideration of Congress in determining whether, as a matter of policy, the claim of the Canadian Potawatomi Indians should be referred to the Court of Claims for findings of fact and conclusions of law, or to the Pecuniary Claims Commission mentioned above.

The Acting Director of the Bureau of the Budget has advised "that the proposed legislation would not be in accord with the program of the President." With the Budget report was enclosed a copy of a letter from the Attorney General, who advises that the jurisdictional clauses of the bill are ambiguous in that they purport to authorize a reference to the Court of Claims merely for findings of fact and a report to Congress, yet provide for an appeal to the Supreme Court

from any judgment rendered. It is believed that the following amendment would clarify this point:

Line 7, page 2, strike out the word "facts" and the comma immediately following, and insert in lieu thereof the words "fact and". Strike out the comma following the word "law". Line 8, page 2, strike out the words "or judgment". Line 10, page 2, strike out the words "judgment has" and substitute therefor the words "said findings of fact and conclusions of law have".

The Attorney General also points out that the resolution does not contain any provision directing the Court of Claims to make findings of fact concerning any gratuities that may have been expended in behalf of the United States for the benefit of the Indians, nor does it contain any provision to protect the Government against the recovery of interest.

In conclusion the Attorney General states that: "While I have no objection to the enactment of a bill properly limited and circumscribed to securing a determination of the claims above referred to, I am unable to approve the enactment of the legislation in its present form."

Sincerely yours,

HAROLD L. ICKES, *Secretary of the Interior.*

The pertinent facts set forth in said House Report No. 470, Sixty-fourth Congress, first session, follows:

The Pottawatomie Indians formerly occupied territory of the United States lying in the State of Ohio and south of the Great Lakes. Treaties were made by the United States around the year 1800 with the Pottawatomie Indians providing for the cession of lands of the Pottawatomie Indians in the States of Ohio and Indiana, and in return for cessions of land held by the Indians, the Government of the United States guaranteed certain annuities in perpetuity or otherwise to the Pottawatomie Indians as a nation. The present claimants are descendants of some of these members of the United Pottawatomie Nation. Between 1795 and 1833 other treaties were made with the United Pottawatomie Nation whereby large cessions of land were obtained from the Indians and solemn and binding obligations were contracted between the United States and the Indians whereby the United States agreed to give the United Nation of Pottawatomie Indians other perpetual annuities to be equally divided in accordance with Indian customs among all the members of the nation. By these several treaties the United States recognized the title of the Pottawatomie Indians to various lands to which the Pottawatomies agreed to and did remove in what are now the States of Michigan, Indiana, Illinois, and Wisconsin.

In the year 1830 the Pottawatomie Indians, by reason of various cessions of land which they had made to the Government of the United States, and by reason of settlements which had been made in the country they occupied, were divided into a number of bands and distinct tribes occupying defined territory in Wisconsin, Illinois, Michigan, and to some extent Indiana, near the shores of Lake Michigan.

By an act of Congress approved May 28, 1830 (4 Stats. 411), it was directed that treaties should be negotiated with Indian tribes holding lands east of the Mississippi River, these treaties to provide for an exchange of lands which the Indians held east of the Mississippi River and their removal to the then unoccupied domain west of the Mississippi River. The act provided for an exchange of lands, and by section 3 thereof the President was directed to solemnly assure the tribes agreeing to make the exchange of lands "that the United States will forever secure and guarantee to them and their heirs or successors the country so exchanged with them, and if they prefer it that the United States will cause a patent or grant to be made and executed to them for the same." The act also provided that the United States should undertake the work of settling the Indian emigrants in their new home.

Pursuant to this act of Congress various treaties were made with Indian tribes. These treaties provided in one form or another that the Indians removing west of the Mississippi River should acquire title in fee to their new homes, subject only to reversion to the the United States in the event the Indians should become extinguished or abandon the same. Under the provisions of the act of 1830 the Five Civilized Tribes and various other Indians removed west of the Mississippi River and received in return for the cession of their lands east of the Mississippi River lands in the west and patents therefor or assurances of a permanent title

equivalent to a title in fee by patent. By a treaty concluded September 26, 1833 (7 Stat. 431; 2 Kappler 402) at the present city of Chicago, the Pottawatomie Indians ceded to the United States all of their lands along the western shore of Lake Michigan, and in consideration thereof the United States agreed to give them a new reservation of not less than 5,000,000 acres of land in the vicinity of the present city of Council Bluffs, Iowa. The United States also agreed, in consideration of the exchange, to make certain annual money payments to the Indians. The previous perpetual annuities, of course, likewise continued in force. The lands ceded were tribal lands held in common, and under the terms of the treaty negotiated at Chicago in 1833, each individual member of the nation was to receive his proportionate share in tribal lands or funds. The treaty provided that the Pottawatomies should receive the same title to their lands as was received by other Indian tribes exchanging their homes east of the Mississippi River for homes west of the Mississippi River, and, as heretofore shown, this title was to be communal title in fee simple.

At the time the treaty of Chicago of 1833 was negotiated, the Indians, as stated, were in detached bands, and those members of the nation living in the northern part of Wisconsin declared that there was no right in the bands which negotiated the treaty of 1833 to undertake to cede their homes and their lands in Wisconsin. After the treaty of Chicago of 1833, 14 separate treaties were made by the United States with separate bands, all providing for the removal of the Indians west of the Mississippi River, but none was made with the Wisconsin Pottawatomies separately.

By article 4 of the treaty of 1833 it was provided that the annuities due to the Indians "shall be paid at their location west of the Mississippi River." Quite a large number of the Indians, especially those in Wisconsin, refused to remove west of the Mississippi River. Article 4 had stated the place of payment of their annuities to be at their new location, the object of said article being to make an inducement to the Indians to remove west of the Mississippi River.

Many of the Wisconsin Pottawatomies refused to remove to the new home west of the Mississippi River; in fact, about 2,000 refused to go. The United States held that the Treaty of 1833 had ceded their lands to the United States, and the Government of the United States took possession of the same and sold these lands as public domain to settlers. Thus, those Indians who elected to remain in Wisconsin lost all of their lands in the State of Wisconsin, and since then have eked a precarious existence and have been wanderers in the northern part of the State. The reason given by the Indians for refusal to remove was that the chiefs who had undertaken to negotiate the Treaty of 1833 had no right to represent them or to attempt to cede their lands. The Government, however, as stated, held otherwise and took possession of the lands. Attempts were made to force the Wisconsin bands of Pottawatomies to remove west of the Mississippi River, with the consequence that because of the drastic measures adopted, about 1,500 of the 2,000 Indians referred to above fled to Canada. The Indian Office then forfeited the share in lands and funds secured to the tribe as a whole of those members of the Pottawatomies who refused to remove from the State of Wisconsin, and instead paid over the moneys and lands it held as a trustee for all of the Indians to those members who did remove west of the Mississippi River. The attention of Congress was called to the matter in 1864, and by act of June 25, 1864 (13 Stat. 172), Congress declared that no forfeiture had occurred and directed that the share of those Wisconsin Pottawatomies who had not removed west of the Mississippi River should be withheld in the Treasury and retained to their credit until such time as they might remove to the then home of the tribe in Kansas. This act provides as follows:

"To enable the Secretary of the Interior to take charge of certain stray bands of Winnebago and Pottawatomie Indians now in the State of Wisconsin, with the view to prevent any further depredations by them upon the citizens of that State, and for provisions and subsistence, \$10,000: *Provided*, That the proportion of annuities to which said stray bands of Pottawatomies and Winnebagoes would be entitled if they were settled upon their reservations and their respective tribes shall be retained in the Treasury to their credit, from year to year, to be paid to them when they shall unite with their said tribes, or to be used by the Secretary of the Interior in defraying the expenses of their removal, or in settling and subsisting them on any other reservation which may hereafter be provided for them." (13 Stat. 172.)

The Indian Office continued to ignore the Wisconsin Band of Pottawatomies and forfeited all shares in tribal lands and funds of those Pottawatomies who continued to reside in Wisconsin or went to Canada. At this time practically the entire funds of the Pottawatomies have been disbursed and those members of the tribe who remained in Wisconsin have been deprived of any shares in the tribal lands and funds.

Your committee have carefully considered the treaties, the laws, and the facts set forth in the hearings on H. R. 1776 and is of the opinion that the United States as the guardian of the Wisconsin Band of Pottawatomie Indians now within the border of the United States should account to them for their just and proportionate share of the tribal lands and funds of the Pottawatomie Nation of Indians.

75TH CONGRESS
3D SESSION

S. J. RES. 212

IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 1938

Referred to the Committee on Indian Affairs

JOINT RESOLUTION

To investigate the claims against the United States of certain members of the Wisconsin Band of Pottawatomic Indians.

- 1 *Resolved by the Senate and House of Representatives*
- 2 *of the United States of America in Congress assembled,*
- 3 That jurisdiction be, and it is hereby, conferred upon the
- 4 Court of Claims to make findings of fact and conclusions of
- 5 law in respect of the claims against the United States, of
- 6 whatever nature, legal or equitable, arising out of treaties
- 7 between the Pottawatomic Nation of Indians and the United
- 8 States, of members of the Wisconsin Band of Pottawatomic
- 9 Indians who were not paid from appropriations made by
- 10 the Act of Congress of June 30, 1913 (38 Stat. L. 102),
- 11 and subsequent Acts, and the Court of Claims shall report

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pt. 6)

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1 its findings to Congress, including therein a statement of the
2 amount of money, if any, expended by the United States
3 gratuitously for the benefit of said Indians, as required by
4 section 2 of title I of the Act of August 12, 1935 (49 Stat.
5 571, 596) : *Provided* That on any claim heard under the
6 provisions of this resolution, for the appropriation, taking,
7 acquisition, or deprivation of land or any interest therein,
8 the jurisdiction conferred by this resolution to hear any such
9 claim and to make findings of fact and conclusions of law
10 thereon, is limited to the ascertainment of the value of said
11 land, or interest therein, at the time of the appropriation, ex-
12 propriation, taking, acquisition, or deprivation, and no find-
13 ings or conclusions shall be made by the Court of Claims
14 which include any increment, interest or the equivalent thereof,
15 from the date of the taking to the date of making of such
16 findings and conclusions as an element of just compensation
17 or otherwise.

18 Such claims may be filed and presented by a representa-
19 tive group of said Indians within two years from the enact-
20 ment of this resolution, and plaintiffs therein, at any time
21 before the final findings of fact and conclusions of law are
22 rendered in said suit or suits shall have the right to amend
23 their petition or petitions, and the proceedings shall be had
24 as provided in the Judicial Code.

1 The rights of such Indians shall not be prejudiced by
2 laches, lapse of time, or any statute of limitations, nor by
3 the fact that some of them or some of their ancestors may
4 have fled from the United States to territory now a part
5 of the Dominion of Canada, and may have become Canadian
6 nationals.

7 The attorney for such Indians shall have access to all
8 records, documents, and correspondence in the possession of
9 any branch or agency of the Government, or may use the
10 same, or copies thereof, as evidence in the hearing of their
11 claims.

12 The Court of Claims shall have jurisdiction to fix a
13 reasonable attorney's fee for services rendered, and to be
14 rendered, in the prosecution of said claims, not to exceed
15 ten per centum of the amount, if any, found due to such
16 Indians, and to fix the reasonable expenses incurred by
17 such attorney, and the same shall be paid out of any funds
18 Congress may appropriate to pay the claims of such Indians.

Passed the Senate June 7, 1938.

Attest: EDWIN A. HALSEY,
Secretary.

75TH CONGRESS }
3D SESSION }

S. J. RES. 212

JOINT RESOLUTION

To investigate the claims against the United States of certain members of the Wisconsin Band of Pottawatomie Indians.

JUNE 10, 1938

Referred to the Committee on Indian Affairs

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Canadian Billboards p. 44-

WISCONSIN BAND OF FORTAWATOMIE INDIANS

HEARINGS

BEFORE A

**SUBCOMMITTEE OF THE
COMMITTEE ON INDIAN AFFAIRS**

OF THE

HOUSE OF REPRESENTATIVES

ON

H. R. 1776

From

*James C. Chapman,
Loan, Estate & Insurance Agt.
Port Hope, Ont.*



WASHINGTON
GOVERNMENT PRINTING OFFICE
1916

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

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CANADA**

WISCONSIN BAND OF POTTAWATOMIE INDIANS.

SUBCOMMITTEE OF THE COMMITTEE ON INDIAN AFFAIRS,
HOUSE OF REPRESENTATIVES,
Saturday, February 19, 1916.

The subcommittee met at 10.30 o'clock a. m., Hon. C. C. Dill presiding.

The committee had under consideration H. R. 1776, for the relief of the Wisconsin Band of Pottawatomie Indians, and for other purposes.

[H. R. 1776, Sixty-fourth Congress, First Session.]

A BILL For the relief of the Wisconsin Band of Pottawatomie Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of carrying into effect the act of June twenty-fifth, eighteen hundred and sixty-four (Thirtieth Statutes at Large, page one hundred and seventy-two), and the act of June thirtieth, nineteen hundred and thirteen (Thirty-eighth Statutes at Large, page), the Secretary of the Treasury is hereby authorized and directed to place upon the books of the Treasury to the credit of that portion of the Wisconsin Band of Pottawatomie Indians now residing in the States of Wisconsin and Michigan the sum of \$427,795, the same being the balance of principal due with interest on the original sum of \$447,339 at five per centum, from January eighteenth, nineteen hundred and eight, to June thirtieth, nineteen hundred and thirteen, and on \$297,339 from June thirtieth to December thirty-first, nineteen hundred and thirteen, as the proportionate share of these Indians in annuities and moneys of the Pottawatomie Tribe in which they have not shared, as set forth in the report of the Secretary of the Interior to the House of Representatives embodied in House Document Numbered Two hundred and thirty, Sixtieth Congress, first session, and confirmed by the act of Congress of June thirtieth, nineteen hundred and thirteen, appropriating \$150,000 on account, which sum shall draw interest at the rate of five per centum per annum; and the said sum of \$427,795 is hereby appropriated, out of any money in the Treasury not otherwise appropriated for the purposes aforesaid, the same to be immediately available.

Sec. 2. That from the sum placed to the credit of said Pottawatomie Indians the Secretary of the Interior is hereby directed to pay to the legal representatives of R. V. Belt, deceased (Mrs. Joanna Belt and William O. Belt), in full settlement of the claim of said R. V. Belt against said Indians, such sum as the Court of Claims, to which the matter of fees of the attorneys for the Wisconsin Band of Pottawatomie Indians is hereby referred for judgment, shall find to be due the said R. V. Belt and his associates on a quantum meruit for their services in the prosecution of said claim under a contract with representatives of the Wisconsin Band of Pottawatomies, approved by the Commissioner of Indian Affairs, for fifteen per centum on the first day of November, nineteen hundred and two. Suit for said attorneys' fees shall be filed in the Court of Claims within ninety days from the date of approval of this Act by petition verified by the legal representatives of the estate of said R. V. Belt, deceased, shall be defended by an attorney, to be designated by the Attorney General, and the Court of Claims shall render judgment as upon a quantum meruit for such sum as it shall deem just, after consideration of all services rendered in prosecution of said claim by R. V. Belt and his associates and of the contract approved as aforesaid by the Commissioner of Indian Affairs.

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DEPARTMENT OF THE INTERIOR,
Washington, February 3, 1916.

DEAR MR. STEPHENS: With your letter of January 4, 1916, you submitted copy of H. R. 1776, "For the relief of the Wisconsin Band of Pottawatomie Indians, and for other purposes," with the request that I cause a report to be made thereon for the use of your committee.

The purpose of the bill is to cause to be placed in the Treasury of the United States to the credit of that portion of the Wisconsin Band of Pottawatomie Indians now residing in the States of Wisconsin and Michigan the sum of \$427,795, being the balance of the principal due as the proportionate share of these Indians in the annuities and moneys of the Pottawatomie Tribe in which they have not shared, as set forth in the report of the department embodied in House Document 830 (60th Cong., 1st sess.).

The provisions of this bill are identical with those of H. R. 9908 (63d Cong., 2d sess.), upon which report was made (copy herewith) January 30, 1914.

Since the date of that report the parties interested have filed additional statement dated January 5, 1916 (copy inclosed), stating more fully the service rendered.

After considering the additional arguments presented I have concluded that there is no serious objection to submitting the claim of these attorneys to the Court of Claims, as proposed in the bill now here. It is noted, however, that this bill repeats the same errors pointed out in the report of January 30, 1914. In line 12, page 1, the figures "\$427,795" should be stricken out and in lieu thereof the figures "\$426,672.33" should be inserted. In line 7, page 2, the word "two" should be stricken out and in lieu thereof the word "eight" should be inserted.

The Rev. Morstad, a missionary, has lived the greater part of his life among these Indians, rendering them valuable assistance. I am still of the opinion that he should be awarded a sum in partial recognition of these services. The Indians, I am advised, are entirely agreeable to this. I, therefore, suggest at the end of section 1 there be inserted as a part of that section substantially the following:

"Provided, That the Secretary of the Treasury is hereby authorized and directed to pay Erik O. Morstad, of Carter, Wisconsin, who has lived with and cared for said Indians for many years, the sum of \$5,000, said sum to be paid from the amount placed to the credit of said Pottawatomie Indians."

The reward thus to be paid to Rev. Morstad should not, in my opinion, be made conditional upon a fee being awarded to the attorneys.

If this bill, H. R. 1776, be amended in the particulars suggested, no objection would be offered by this department to its enactment.

Cordially, yours,

FRANKLIN K. LANE, Secretary.

HON. JOHN H. STEPHENS,
Chairman Committee on Indian Affairs,
House of Representatives.

There were present before the committee Hon. Thomas F. Konop, a Representative in Congress from the State of Wisconsin; Mr. Charles H. Merillat, and Mr. Charles J. Kappler.

Mr. DILL. You may proceed, Mr. Konop.

STATEMENT OF HON. THOMAS F. KONOP, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN.

Mr. KONOP. Gentlemen of the committee, I will make a very brief preliminary statement in regard to this bill. I have been pounding away at this before the committee, trying to get a hearing on this matter, but it has always been postponed.

This is the third time that I have introduced the bill for the relief of the Pottawatomie Indians in Wisconsin, and I am so convinced of their claim being right that if I went to Congress for the next 20 years and the claim was not allowed, I would continue to introduce bills for their relief.

I would like to state briefly that this matter has been reported on favorably by the department twice. They have urged it, and I will leave with the committee the reports of the department on my bill

of last year, which was H. R. 9908, and the present bill, which is H. R. 1776. I would like to have both reports printed in the record, and I would also like to have the letter written to the honorable Commissioner of Indian Affairs January 5, 1916, by Kappler and Merillat, the gentlemen who will present the argument in favor of this bill, printed in the record; also a copy of a letter of April 3, 1914, relating to their right to have this matter referred to the Court of Claims and their attorneys' fees adjusted. I would also like to have printed with the hearings the memorial of the Pottawatomie Indians which was presented to the Fifty-seventh Congress, second session—to the Senate. It is Senate Document 185. I would like to have that printed in the record for the simple reason that I think the supply of this document is practically exhausted, and this memorial takes up all the steps from the very beginning, and shows that these Indians are entitled to this claim.

I also wish to have included the letter of the Secretary of the Interior, House Document No. 830, Sixtieth Congress, first session, and other documents touching this question.

(The papers referred to are printed at the close of the hearings.)

Before I came to Congress I did not know anything about this matter at all, but when I was a candidate for Congress, campaigning up through Forest County and Florence County, I would run across Indians and would ask, "Are these Menominee Indians?" And would be told, "No; they are Pottawatomie Indians; they don't belong any place. They are nobody's Indians." I ran across a good many of them up there, and they were in great distress. They had nothing; they were roaming around through the woods, living by fishing and hunting, and nobody paying any attention to them.

Immediately after I was elected to Congress I had delegation upon delegation from these Indians come down to see me and beg me to take up their matter when I got to Congress and see that it was presented. When I got to Congress, Mr. Merillat and Mr. Kappler here acquainted me with the particulars of the claim. They are here to-day, and I would like to introduce Mr. Merillat, who will make a statement to the committee.

Mr. DILL. We had this bill up before the committee, but I wish you would state in your own language briefly just what the bill purposes to do, what you have in mind.

Mr. KONOP. I had thought that Mr. Merillat would state that, but I will say that the bill is simply for the purpose of placing to the credit of the Pottawatomie Indians in the Treasury of the United States moneys that belong to them and that the department allowed them, and the amount is about \$427,000.

Mr. SEARS. Does this originate from an Indian treaty, Mr. Konop?

Mr. KONOP. The claim originated under the treaty of 1833 at Chicago, with the United Bands of Pottawatomies and other Indians mentioned in the treaty. (See 7 Stat., 431; 2 Kappler, 402.) Then also the claim has a basis—it goes back to the act of 1864 (13 Stat., 172), which provided that any money due these Wisconsin Pottawatomie Indians should be retained in the Treasury to their credit; and the department did not do that. Now these Indians want what the department failed to do for them.

Mr. DILL. This bill provides how much money shall go in there?

Mr. KONOP. \$426,672.33, with interest from December 31, 1913.

I will say further that Congress has recognized the claim in the act of 1913—I stated that to the full committee, if you will remember—by appropriating \$150,000 on account, for the purchase of land in severalty for these Indians. That has been done. And you will remember that in the last appropriation bill when it was considered in the committee, the sum of \$100,000 was carried to buy farm implements and lumber for them to build houses, and to start them in the way of working their farms. So if that appropriation passes there will be the sum \$250,000 that has already been appropriated.

Mr. DILL. Which should be taken out of this?

Mr. KONOP. No; for this reason: \$447,000 was the original claim; and that original claim was allowed the Indians on January 18, 1908, and the interest on \$447,000 at 5 per cent up to June, 1913, added to the sum of \$447,000, then deducting the \$150,000, leaves a balance of \$426,672. Now, there would be \$100,000 to come out of this.

Mr. DILL. \$100,000 should be charged against the \$426,000?

Mr. KONOP. Yes. Now I will introduce Messrs. Merillat and Kappler, who are more acquainted with this matter.

Mr. DILL. Just who is Mr. Merillat?

Mr. KONOP. Mr. Merillat is an attorney of Washington, D. C. He is one of the attorneys for the administrator of the estate of R. V. Belt, who was the attorney for these Indians.

I will say that for years and years these Indians have been maintaining that they had money in the Treasury of the United States, and they have been wanting the Government to allow them their money for their support and civilization. They went to various attorneys, and the attorneys would take up the claim and drop it after awhile. Then they would go to some other attorneys, and those attorneys would fool around with it a few years and then drop it again. Finally, Mr. Belt took an interest in the claim.

I think it was in 1902 that Mr. Belt took the claim and went up there among the Indians, and with the assistance of a missionary—a Lutheran missionary, Rev. Morstad—went around and made a roll of the Indians, and found out how many there were. Then they went and delved into the law and the facts in the case, and finally brought it to such a state that this memorial was presented to the Congress, and after pushing the matter in Congress for a number of years Congress recognized the claim. Then Mr. Belt died, and Mr. Merillat and Mr. Kappler have been the attorneys for the administrator of the estate of Mr. Belt.

Mr. MERILLAT. We were attorneys also in Mr. Belt's lifetime, aiding him in having the Pottawatomie claim established.

Mr. KONOP. I will now present Mr. Merillat.

STATEMENT OF MR. CHARLES H. MERILLAT, OF WASHINGTON, D. C., REPRESENTING THE WISCONSIN BAND OF POTTAWATOMIE INDIANS.

Mr. MERILLAT. Mr. Chairman, and gentlemen, the purpose of the bill, as Mr. Konop stated, is to place \$426,672.33 on the books of the Treasury Department to the credit of these Indians to draw interest from December 31, 1913.

Mr. DILL. Just a minute at that point; why do you mention the date, December 31, 1913? Is that the law referred to?

Mr. KONOP. That was the time when the \$150,000 was appropriated by Congress, and from that time there has been that balance of \$426,000 and something. It represents the official computation of the Interior Department, bringing the balance with interest down to that date.

Mr. SEARS. What was the original amount, as specified or stated in the treaty, due these Indians?

Mr. MERILLAT. The answer to that can not be made in one word, because it is the result of a number of treaties beginning with 1795, extending down through a period of years. For example, the treaty of 1818, made at Tippecanoe (7 Stat., 185; 2 Kappler, 168); the treaty of 1833, made at Chicago (7 Stat., 421; 2 Kappler, 402); the treaty of 1846, made in Iowa (9 Stat., 857; 2 Kappler, 557). In 1864 an act of Congress was passed directing that there be retained in the Treasury the moneys due the claimant bands of Pottawatomies under these treaties as their share of the tribal funds; but this was not done, and the act was ignored by the department.

Mr. SEARS. Now, under the act of Congress, what was the amount to be placed to their credit?

Mr. MERILLAT. No sum was named at that time, for the reason that it would vary from time to time, but they were to have retained under the act of Congress their proportionate share of the annuities. The claim arises in this way: The Pottawatomie Indians were one tribe, known as the Pottawatomie Nation of Indians, and this claim begins in 1833 under a treaty made at Chicago. By that treaty it was provided that these Indians should sell to the Government 5,000,000 acres of land, and that they should receive in return 5,000,000 acres of land in Iowa, in fee simple, subject only to the qualification that if they should cease to exist as a nation or an Indian tribe, they should lose their title to their lands. In other words they were given just the same title as the Five Civilized Tribes received and for the same reason, namely, that under the act of 1830 they agreed by treaty to exchange their lands east of the Mississippi for lands west of that river. The Pottawatomies had divided by 1833 into a number of bands. The whole tribe was made up of the aggregate of all these bands. The United States took the lands belonging to all of them by a treaty with certain of the chiefs. The United States at that time and since always has provided that there shall be a holding, a communal holding, of Indian lands, and that the rights in annuities shall be communal, to be divided pro rata among all the members of the families. The treaty of 1833 provided that the Indians should move west and should be afforded assistance in the removal. It also provided that the money for three years should be paid in the East. After three years the money should be paid west.

There was no provision, as in the New York Indian treaty, which the Supreme Court of the United States has construed—and construed in favor of the Indians—that any Indians not removing west should forfeit their right by not removing. The Pottawatomies of Wisconsin declined to move west, and there was no assistance tendered to them to go west, and they did not go west. The Indian Office in

those days objected to their not removing to the west, and declared a forfeiture—which they could not under any authority of law do. The Supreme Court of the United States has settled that in the New York Indian case I have referred to. The Department of the Interior simply said "as to all of these Wisconsin Pottawatomes who do not go West we declare their share forfeited."

Mr. DILL. Who did that?

Mr. MERILLAT. The Indian Office, the Interior Department.

Mr. DILL. There is one thing I have not gotten clear in my mind yet, and that is by what method was this \$447,000 arrived at?

Mr. MERILLAT. The method by which the Government arrived in late years at the amount justly due the Pottawatomes as having been forfeited without authority of law was this: They ascertained the number of all of the Pottawatome Indians—as a result of our efforts they made a census of all the Pottawatome Indians.

Mr. KONOP. Would you let me suggest something there, that the letter from the Secretary of the Interior that I asked to be incorporated contains the whole history of how they arrived at the amount.

Mr. DILL. Well, it would be a good thing to just briefly sketch it, so that we might understand it.

Mr. MERILLAT. They got at it in this way: On June 21, 1906, we secured the passage of an amendment which directed the enrollment of the Pottawatome Indians, the making of a census embracing all the members of the tribe, and then a census which should embrace the Wisconsin Band of Pottawatomes, those who had not removed west, in order that their proportionate share might be determined.

Mr. DILL. Of what?

Mr. MERILLAT. Of the total funds, the total annuities that were payable from the United States.

Mr. DILL. Annuities from what?

Mr. MERILLAT. Annuities from the various treaties that the United States had made with these Indians in payment for their land.

Mr. DILL. Monies received in the Public Treasury from public lands formerly belonging to the Indians, and under the treaty a certain percentage, a certain amount was to go to these Indians? Is that the idea?

Mr. MERILLAT. No; under the several treaties which the United States had made the United States had agreed to pay annually in perpetual annuities so much money.

Mr. DILL. It named the amount, did it?

Mr. MERILLAT. It named the amount precisely. For instance, the treaty of 1795 provided that there should be set aside \$1,000 annually to be paid to the Pottawatome Nation of Indians forever. The treaty of 1818 provided another sum—say for purposes of illustration, \$5,000 annually. Other treaties made between then and 1833 provided that in consideration of other lands which these Pottawatomes ceded in Ohio and Indiana they should get a certain amount. In 1833 the United States took from these Indians by treaty 5,000,000 acres of land, and provided that more than \$800,000 should be placed to their credit in the Treasury of the United States. The United States then took this 5,000,000 acres of land and opened it to homestead or preemption entry, and sold it, covering the moneys into the Public Treasury. The United States thereby secured

from the Indians their lands and in return agreed to give them so much money each year.

Mr. SEARS. That was what treaty?

Mr. MERILLAT. That was the treaty of 1833, made at Chicago.

Mr. SEARS. Did that supersede other treaties?

Mr. MERILLAT. No; the other treaties continued in force and effect as to the annuities agreed to be paid by prior treaties for other lands that the United States had acquired from these Indians by these earlier treaties.

Mr. DILL. Are they still continuing, those same treaties?

Mr. MERILLAT. These treaties are still continuing, because they are perpetual—except sometimes the Government has commuted them.

Mr. DILL. Then does this \$426,000 represent the final amount these Indians will get, or will money be coming in all the time to them?

Mr. MERILLAT. This represents the final amount.

Mr. DILL. Then you have other treaties that provide certain annuities that have been terminated?

Mr. MERILLAT. They have arrived at this by a basis of commutation.

Mr. KONOP. Let me say here, you have stated several times that these Indians ceded 5,000,000 acres of land under the treaty of 1833.

Mr. MERILLAT. That is right.

Mr. KONOP. As a matter of fact, from what I gather, they ceded much more than 5,000,000 acres. They were to get 5,000,000 acres of land for ceding Indiana, Illinois, Michigan, and Wisconsin.

Mr. MERILLAT. No; I think I am right, Mr. Konop, for this reason: They were to get in Iowa an amount of land that would be equal to that which the United States recognized as being the number of acres they had in those States.

Mr. KONOP. I was under the impression that they ceded all those States for the 5,000,000 acres they were to get west of the Mississippi.

Mr. MERILLAT. No; they did not have title to all those States—the United States did not recognize it—but the United States did recognize that they were entitled to a tract of land in those States that would aggregate 5,000,000 acres. The United States said to them in 1833, "We will give you acreage in Iowa, west of the Mississippi River, that will be equal to the acreage you have east of the Mississippi River."

Mr. DILL. Then later the United States took over that land and turned this amount of money to their credit?

Mr. KONOP. They moved them into Kansas.

Mr. MERILLAT. They moved them into Kansas, yes. The Indians had hardly located in Iowa on the 5,000,000 acres that the United States said they should have in fee simple, until the influx of settlers grew so great and the pressure for the rich Iowa lands so strong, that the United States said to these Indians, "we want to make another treaty with you, and move you down into Kansas." At that time the United States said "we will give you 576,000 acres of land in Kansas and over \$800,000 in return for your 5,000,000 acres in Iowa." There, Mr. Konop, is where the big land reduction came in.

Mr. SEARS. Did they get lands in Kansas?

Mr. MERILLAT. They got lands in Kansas, but only about one-eighth of the acreage they had in Iowa. That is to say, the United States gave those lands in Kansas to one branch or faction, if I might say, of the whole Pottawatomie tribe of Indians. They did not give any lands to those who are known as the Wisconsin band of Pottawatomies. In other words, the Pottawatomies in 1833 were a tribe composed of bands stretching around the shores of Lake Michigan, in Indiana, Illinois, and up into Wisconsin. The United States under the treaty which it made in 1833 with certain of the chiefs—principally those in Indiana and Illinois—proceeded to take all the lands of the Pottawatomies, but when it came to accounting to the Indians for it, they simply took their lands and paid everything over to the Illinois and Indiana Pottawatomies, who had removed west, and did not recognize those in Wisconsin at all. The United States itself later recognized that this was not just.

In the year 1864 Congress passed an act by which it specifically directed that there should be retained in the Treasury of the United States the shares that were justly due and owing to the Wisconsin band, or faction, if you choose to use the word, of the Pottawatomie Indians for their interest in the tribal lands and funds. But although Congress directed in specific terms—and I have the act here—that that money should be retained or withheld in the Treasury of the United States to the credit of these Indians, the law was ignored. It was not withheld or retained in the United States Treasury, but was paid out to those who had gone to Kansas; the contention being made that there had been a forfeiture by the Wisconsin Pottawatomies of all their rights under all treaties and of all lands, because they did not move west.

Mr. DILL. To Kansas?

Mr. MERILLAT. Yes; to Kansas. There was no provision of law by which there should be any forfeiture of Indian rights for not removing farther west. The Interior Department had no right to declare a forfeiture, and when Congress had the matter placed before it in 1864 it decided that no forfeiture had occurred. However, whenever this claim came up through the several sets of attorneys employed by the Indians, every time it was pressed on the Interior Department, up to 1908, the Interior Department said, "there has been a forfeiture." The department made that answer to Senator Quarles, of Wisconsin, to Senator Nelson, of Minnesota, and to others who took up the interests of these Indians.

Mr. DILL. Who figured out that \$447,000 was due? Who arrived at that computation?

Mr. MERILLAT. That was made by the Interior Department wholly, under the act of Congress of 1906 which was drafted by us and passed by Congress. When Mr. Belt associated us with the case in December, 1905, we went over all treaties, laws, and court decisions and studied the whole case. We said then to Mr. Belt, "the very first thing that you have got to do is to have a complete enrollment made of all the Indians, so that you can have it fixed by an official record with which the attorneys have not a thing to do, how many Indians there are all told and what is the proportion that the Wisconsin band bears to the tribe as a whole. Then having that percentage, you have got to have the Government make the computations showing what

are the total moneys that have been due at various times to these Pottawatomie Indians as a whole and are now justly owing."

Mr. DILL. I see.

Mr. MERILLAT. And then divide the percentage as ascertained into the whole.

Mr. DILL. And the Interior Department in carrying that act out did this?

Mr. MERILLAT. The Interior Department carried that out. We furnished all the data we could as to the treaties and everything. There was not a thing, outside of the census enrollment, that was not a matter of documentary record in the department.

Mr. DILL. Let me ask you this: Have there been any other moneys appropriated by the Government for the support and maintenance of these Pottawatomie Indians, in addition to the \$150,000 that was appropriated in the Indian appropriation bill of 1913 to buy them lands and \$100,000 that is contained in the pending appropriation bill?

Mr. MERILLAT. Outside of one amount of, I think \$25,000, that was appropriated in the Indian appropriation act passed in 1910 for the support, education, and civilization of the Wisconsin Pottawatomies and to investigate their condition. This was not treated as being a payment on the claim. Then to relieve distress and starvation among them there was \$7,000 appropriated in 1912 and 1913. The first appropriation on the claim was \$150,000 in 1913.

Mr. DILL. During all these years there has been no appropriation in all the Indian appropriation bills to these Pottawatomie Indians until 1913.

Mr. MERILLAT. Absolutely none, except as I have stated.

Mr. KONOP. Was it year before last?

Mr. MERILLAT. It was in 1910 the first moneys were appropriated for them and then the two distress provisions. They were all treated as gratuities the same as Congress has provided in many other cases for starving Indians.

Mr. DILL. I mean the appropriation of \$150,000 to buy these lands. There was nothing in the years preceding that, particularly 1906 to 1913?

Mr. MERILLAT. Outside of the appropriation of \$25,000 which we got just before the \$150,000 appropriation to relieve distress among them. They were in an awful condition, and reports of starvation were coming here, and Congress made temporary appropriations to prevent starvation.

Mr. DILL. They had no lands to live on previous to that appropriation of \$150,000 in 1913?

Mr. KONOP. No; they just roamed around over the cut-over lands and in the woods that the lumber companies owned. Some of them worked in the lumber camps, and some of them did any kind of work they could get. But they just roamed around through the woods, half of them starving. They had no medical attendance or anything at all. Their condition was very deplorable. They have bought the land now, and the question is to put them on the land.

Mr. SEARS. At the time the roll was completed how many Indians were there?

Mr. MERILLAT. I can give you that. It is all embraced in this report.

Mr. KONOP. How many were there?

Mr. SEARS. Yes.

Mr. KONOP. There are at the present time about 2,000, the census shows—or the justification of the commissioner showed that—here is, "number in Wisconsin, average, 841; number in Kansas, 1,084; total number of what are known as Wisconsin Band of Pottawatomies, average, 1,925." Now, the total of all the Indians—

Mr. SEARS (interposing). What I would like to know is the number of Indians that are to be—you could hardly say benefited—the number of Indians that would receive this amount of \$426,000; that is, the roll you just spoke of that you completed, of those that did not move.

Mr. MERILLAT. It is an average of approximately 457. Some have moved back.

Mr. SEARS. They would hardly come in, would they?

Mr. KONOP. From Kansas, you mean?

Mr. SEARS. Yes.

Mr. MERILLAT. Not from Kansas, but some have moved back from Canada. The Indians were up on the border, and the number that will be benefited will depend a little bit upon whether any who moved over into Canada come back into Wisconsin or Michigan. I should say the number is something in excess of 500. The situation is this, that those who go to Canada will not get their rights. Now, that is a fluctuating number. I want to answer with as much accuracy as I can. These Indians are up there on the border, living, as Mr. Konop says, as Gipsies, and the number will fluctuate a little. They will have to be in the United States in order to get the benefits of this appropriation, but you see you can not give an absolutely accurate number. It will run, in my judgment, Mr. Konop, between 500 and 600.

Mr. SEARS. Do you not think, as a matter of fairness, that it should be limited to the Indians in the United States? The Indian that moved to Canada should lose his rights, and he should not move back because there is going to be an appropriation. You might have an influx of 500.

Mr. MERILLAT. The department makes up its roll of these Indians.

Mr. SEARS. And that roll is approximately 500?

Mr. MERILLAT. That is right. I wanted to be very accurate with you, though, because I did not want you to think hereafter that I was not trying to give you the full information.

Now, the real crux of the whole matter is right here. The Indian Office misconstrued the treaty of 1833 and the treaty of 1846. The Indian Office said that inasmuch as the treaty says that the funds shall be paid west of the Mississippi River, therefore if an Indian stayed in Wisconsin or Michigan or a band stayed in Wisconsin or Michigan and were not at the place of payment that they forfeited their rights.

Mr. SEARS. That is in most of the treaties?

Mr. MERILLAT. Most of the treaties—that provision is in the bulk of the treaties. There are a good many treaties, such as the New York Indian treaties, which specifically provided that the Indians not removing to Kansas shall forfeit their rights expressed in the future. That came up before the Supreme Court of the United States, and the Supreme Court of the United States in the New York Indian case, in 170 U. S., said in substance: Why, that is not a forfeiture. This is

a provision whereby in the future there may be a forfeiture declared, but there has been no forfeiture declared by Congress or the courts, and the executive department of the Government has no right to declare a forfeiture.

That is a thing that can be done only by two branches of our Government; the courts can declare a forfeiture, and there is no forfeiture such as the courts could declare. The Congress of the United States, upon appropriate proceedings, as the law-making branch, can declare a forfeiture, but has not done so and there is no power on the part of the executive department of the Government to declare a forfeiture, and this attempt on the part of the executive branch to declare a forfeiture of New York Indian lands and funds is void and illegal. It was on the strength of that decision, which was in the case of a treaty far more against the Indians than the Pottawatomie treaties, that we finally got the Interior Department to recognize that it was in error all these years in declaring there had been a forfeiture and enforcing its declaration of forfeitures and also in ignoring the act of 1864 which provides "that the proportion of annuities to which said stray bands of Pottawatomies and Winnebagoes would be entitled if they were situated upon the reservation with their respective tribes, shall be retained in the treasury to their credit from year to year, to be paid to them when they shall unite with their tribe, or to be used by the Secretary of the Interior in defraying the expenses of their removal, or in settling and subsisting them on any other reservation which may hereafter be provided for them," but that is not a forfeiture, far from it; it is a recognition of the rights of our Indian clients.

Mr. DILL. What year is that?

Mr. MERILLAT. 1864, June 25.

Mr. DILL. It is upon that primarily that you base this bill here?

Mr. KONOP. My contention is this, Mr. Dill: If the department had complied with this law that Congress prescribed, there would now be in the Treasury this amount of money to the credit of these Indians.

Mr. MERILLAT. That is right.

Mr. KONOP. I would state right in this connection, the Winnebago Indians were included in this act of 1864, and the Federal Government through Congress has done right by the Winnebago Indians by permitting them to take allotments on the public lands in the State of Wisconsin, and giving them everything they were entitled to. Now, if they could settle with the Winnebago Indians, my contention is that they should do for the Pottawatomies what they did for the Winnebagos under this law.

Mr. SEARS. When did they settle with the Winnebagos?

Mr. KONOP. Do you recall when the Government settled with the Winnebagos, Mr. Merillat?

Mr. MERILLAT. I think it was somewhere in the eighties. The memorial to Congress will contain that statement, or that information. I think it was somewhere about 1881 or 1882, but I would not want offhand to vouch for it; my recollection of the year is accurate.

Mr. SEARS. Would it not be well to have that statement included in this hearing, that settlement?

Mr. MERILLAT. I think it is stated right in that memorial, just what it is.

Mr. SEARS. I simply make that as a suggestion.

Mr. KONOP. There is no reason why the Government should not do for the Pottawatomies what it did for the Winnebagoes under this law. I think it was somewhere in 1886 that they settled up.

Mr. MERILLAT. I think it was in the eighties, but I have not the exact date of the Winnebago settlement.

Mr. KONOP. Now let me quote to you about the Winnebagoes: "In the case of the said bands of Winnebagoes, for whom the same law contained the same directions"—that is, the law of 1864—"the department was subsequently compelled to report that the law had not been observed. From the nature of the action taken by the Office of Indian Affairs upon our claims, as hereinbefore stated, it is presumed that a report of that office as to the action taken as to the annuities of the Wisconsin Pottawatomies under that act would be that the law has not been observed. The Stray Bands of Winnebagoes have succeeded in having their claims adjusted. Congress, after an investigation of the matter, and learning that the legislative directions of 1864 had not been complied with by the department, passed an act on January 18, 1881 (21 Stat., 315), directing that a census be taken of those Winnebagoes residing in Nebraska and Wisconsin and that the proportion of the annuities of the Wisconsin Winnebagoes be ascertained from the act of 1864 to the date of the action under the law." That was ascertained, and then they made a settlement by giving the Winnebago Indians the right to take lands from the public domain in Wisconsin, which they did. That was the way the Winnebagoes were settled. Now we have done something for the Pottawatomies by buying them land for \$150,000, and now what we want is that what is still due them should be put in the Treasury of the United States to their credit.

Mr. MERILLAT. Early in 1906 we reached this conclusion, that we would never get the department to come seriously to consider the question, the legal question involved, as to whether there had been a forfeiture or not, until we got some recognition from Congress; because Senator Quarles in 1902, and others in the late nineties had been writing the department and all the department would say was, "these Indians have forfeited their rights." And you never could get them seriously to consider the legal question. So we said the thing to do is to get legislation from Congress for the enrollment of these Indians, for the computation of what is due them, and then, that being the case, and that duty being committed to the department, the department then will listen to us in a quasi judicial way as to whether there has been a forfeiture or has not been a forfeiture. We had made a preliminary enrollment ourselves; that is, we had sent out blanks and had gotten the names for the aid of the department. When it came to the question, however, of making these enrollments after we had gotten this legislation from Congress in 1906, which gave a good starting basis for this claim, we said, "we will not make the enrollment. If we have anything at all to do with that, Congress would not attach verity to it. We want that done officially. We will give you our information, our blanks, and give you the names," and then they sent their own people, two inspectors, up there and made the roll.

Mr. DILL. That is all explained in the documents?

Mr. MERILLAT. Yes.

Mr. DILL. Now, the other phase of this bill—in the first place I would like to hear from somebody about Mr. Morstad, why he should be given \$5,000 of the Indians' money. I see what the Secretary says about it, but I would like to have a little more detailed information.

Mr. MERILLAT. Here is the exact situation. In the nineties the Indians had employed an attorney named Bullock, paying him a small retainer and agreeing to pay a contingent fee if he would secure them the rights which they were claiming and which the Indian Office for 30 years had been denying. Mr. Bullock worked on the matter for several years and abandoned it. Then some other attorneys, just as Mr. Konop has stated to you, took it up and they abandoned it. The Indians sent two delegations here, and the Indian Office told them they had forfeited all their rights and did not have any claim. The Indians went back, and in 1902 they made known their claims to Mr. Morstad, who was a missionary among them and has lived for a great many years among them and done a splendid work among them. Mr. Morstad took up the matter of their rights and their claims, and he wrote in their behalf to Senator Quarles. The Senator transmitted the letter, together with a letter of his own, to the Indian Office.

The Indian Office replied to Senator Quarles, reiterating their position that there had been a forfeiture and that the Indians had no rights. Senator Quarles then replied to the Indians that they had not any claim. He accepted, in other words, the statement of the department that there was a forfeiture without delving into it to see whether or not that conclusion was a correct conclusion. Then Mr. Morstad, who was a Scandinavian, got into communication through that common ancestry with Senator Nelson—he probably knew him before. Senator Nelson, on his part, knew Mr. Belt as an attorney very familiar with Indian affairs, and wrote Mr. Belt. The latter investigated the claim and Senator Nelson got a report from Mr. Belt, in which he went over the matter to the length of 10 or 12 typewritten pages, and gave it as his opinion that there never had been a forfeiture and that the Indian Office was in error in its conclusion that there had been. Senator Nelson, after reading it over, reached the conclusion that it was not a matter which he could take up. It was not in his State, and it demanded legal investigation that he could not make, and he told Mr. Morstad and the Indians to communicate with Mr. Belt. So it was through the Rev. Mr. Morstad that the Indians and Mr. Belt came into association.

Now throughout all that Mr. Belt has done, Mr. Morstad has aided him; and I want to say to the gentlemen of the committee, whether you make this direct appropriation or not to Mr. Morstad, I am authorized by Mrs. Belt to say—and from ourselves as associate attorneys—that if we get our fees we intend, whether there is a direct appropriation for Mr. Morstad or not, to see that Mr. Morstad is compensated. He never did this under any claim or expectation of any kind that he would get a dollar.

Mr. DILL. How old a man is he?

Mr. MERILLAT. I should say he is in the neighborhood of 70. He is a pretty old man.

Mr. DILL. Has he a family?

Mr. MERILLAT. I can not answer that. I can find out whether his wife is living. He has a son, Mr. Kappler reminds me.

Mr. KONOP. He is still up there with the Indians. I got a letter from him yesterday. He is still there.

Mr. DILL. This \$5,000, then, is to be paid to him for the services you have mentioned here, as an assistant, if not as an attorney, rather than as a missionary. He is not to be paid for missionary work?

Mr. MERILLAT. No. The suggestion for his payment originated with the department. It did not originate with us or Mr. Morstad. The situation was this—

Mr. DILL (interposing). I see the reason for it.

Mr. MERILLAT. That is the reason for it. Now here was the exact situation: After the Indians came into communication through Mr. Morstad, who has done most of their correspondence—they are like Gipsies and are a very illiterate people—they got in touch with Mr. Belt, and Mr. Belt looked thoroughly into the case and drafted a contract to be signed by the Indians after a representative council of the bands. Mr. Morstad wrote Mr. Belt that "these Indians are so poor that they can pay no retainer. They can not even pay the expenses of printing or anything of that sort. If you take the case it must be wholly on a contingent basis." Mr. Belt took the case on a contingent basis of 20 per cent. He prepared his contract in exact accordance with the Revised Statutes. The Indians held a council and appointed representatives to sign the contract. The Indian chiefs went before the United States judge and signed the contract as required by law and forwarded it to Washington. Mr. Belt also signed. The then Commissioner of Indian Affairs was Mr. Jones, of Wisconsin, coming from the very State in which these Indians were. That contract was presented to him. Mr. Jones, upon its presentation, said that he would approve this contract because the Indians should have somebody having some official status to represent them. But in his letter approving the contract he specifically said, "this shall not be a recognition of the claims or rights of these Indians. This office has always held that they have forfeited their rights." But he said further, in substance, "inasmuch as they should have some representative I will approve this contract, but with a reduction of the amount of the fee from 20 per cent to 15 per cent, as that is the highest amount the office ever agrees to be paid for work done for an Indian tribe on a contingent basis."

Mr. DILL. Let me ask you there, your request here in this bill to be allowed to go into the Court of Claims—or directed to go into the Court of Claims—is based upon the contract that Mr. Belt had, and you do this as the representatives of the administrator of the Belt estate?

Mr. MERILLAT. Absolutely. What I will show will make it clear that we claim no rights except under and through Mr. Belt, and any discharge or acquittance by the Belt estate discharges absolutely any claims that we have.

Commissioner Jones, as I said, although he came from Wisconsin, denied that the Indians had any lawful claim. That was the situation in 1902. He approved the contract, but with the reduction in the amount, saying in his letter to the Secretary of the Interior, however—something that was not correct as a matter of law—"I do not

think that this contract requires, however, any approval, because these Indians are citizens of the United States and not a tribe." That is to say, they could and undoubtedly some of them could and probably have voted. When that went over to Secretary Hitchcock, the Secretary's view was that no Indians ever should have any attorneys at all, and he said, "the commissioner's letter states that my approval is not necessary. It is returned to your files." The effect of that, of course, was to reduce the rate from 20 per cent to 15 per cent. Its effect likewise, however, was to make this a binding contract, because the commissioner was wrong. The Supreme Court and all of the Federal courts have held that the fact that the Indians are citizens does not wipe out the provision of section 2103, requiring approval. So, while it had the approval of one of the officers of the Government that section 2103 required, it did not have Secretary Hitchcock's approval and hence is not a legally enforceable contract.

Mr. DILL. Let me ask you this, if Congress were to pass this bill and simply strike that part referring to the attorney's fees, what would be the result then on Mr. Belt's estate?

Mr. MERILLAT. We would absolutely have no claim. We would have done all the work and could not get a dollar.

Mr. DILL. His contract would be worthless?

Mr. MERILLAT. His contract would be worthless because it did not have the approval of Secretary Hitchcock. The Secretary said "it appears from your letter that my approval is not necessary. Therefore, I return it to the files." He did not act one way or the other, but the attorneys nevertheless went ahead and presented the claim and have served the Indians faithfully as their attorneys, relying on the fairness of Congress. Now, to illustrate the desperation of this situation when the attorneys took hold. That contract and that action by Commissioner Jones on the claim itself was taken in the summer of 1902. Mr. Belt spent three months here before Congress met, drafting a memorial setting forth the claims of the Indians and why they had a just right. He presented that to Senator Quarles in December, 1902. The Senator said to him, "Why, I will not present this to Congress. The Indian Office says they haven't any claim, and I will not present it to Congress." Mr. Belt argued with the Senator that he should give a hearing and see whether the Indian Office was right or not. He had a number of hearings before the Senator, and it was not until February, 1902, that the Senator said, "Well, you seem to make out some kind of a case here, and I will present this memorial."

Then Mr. Belt asked that there be an investigation of the claim by the Indian Office. That was refused. The Indian Office continued—as their letters here show—up into 1904 and later to deny the claim. It took a year and a half to get Senator Quarles to the point where he would introduce a bill, and then we had to work for all that time up until 1906, when we got legislation through that made a fair start for the claim. Then we went along still further, and ultimately got a recognition of the claim by the Interior Department in 1908. Every forward step was the result of work by the attorneys, who drafted every memorial, brief, act of Congress, or other paper up to the time when Congress appropriated \$150,000.

Mr. DILL. Mr. Morstad's money, if appropriated, would come out of the Indians' money? I take it the Belt money would likewise?

Mr. MERILLAT. That is right. Now we do not claim, of course, that we can get that 15 per cent under the contract, because the Secretary did not approve it and it would not be a "legal" contract without his approval. What we do ask is this: Our services have been rendered before a number of bodies of the House and Senate and executive departments—the Department of the Interior—and in various ways. Let us go to some one tribunal that can determine how much we are entitled to for the services rendered, the work performed, and the results obtained.

Mr. DILL. I see in one letter you suggest that this ought to go to the Court of Appeals rather than to the Court of Claims.

Mr. MERILLAT. We did that because there was some objection at one time made to the Court of Claims, based on the idea that they might be too liberal. We said, "If you do not like that tribunal, send us to another." Our position is that the Court of Claims is the body that Congress has created for the purpose of passing on these matters, but we are indifferent as to the tribunal. All we ask is that the value of our services be legally ascertained and paid. If we had a contract with a gentleman down on Pennsylvania Avenue, and there was a difference, there would be some court to adjust it, and we ask a similar right here.

Mr. KONOP. You will find in that letter and report a statement made by the attorneys explaining everything.

Mr. DILL. You think it is best that Congress should directly appropriate \$5,000 out of these funds to Mr. Morstad, instead of putting him into the Court of Claims along with you?

Mr. MERILLAT. Our position is this: He has no legal claim, and it would simply be a donation by Congress, but Mr. Morstad has rendered services that have aided the Indians as to this claim.

Mr. DILL. He was the man that started this thing, and if the contract of these gentlemen is no good, they have no claim either.

Mr. KONOP. I would be willing to state to the committee that if this money comes out of the Indian fund, and it was submitted to those Indians, to whom this man has been a father, advisor, and counsellor, that there would not be a dissenting voice on that proposition.

Mr. DILL. I believe that. The only question with me was, whether it would be wise to make a distinction between Mr. Morstad, who did the work of an attorney in the beginning—and from my viewpoint the man who starts the ball rolling is more important than the fellow who gives it a push—the question in my mind is whether it is wise to make a distinction between Mr. Morstad, and say, "We will give you \$5,000 in cash, and Mr. Belt must go into the court and prove his claim and get what he can."

Mr. MERILLAT. My position in substance is this: We think Mr. Morstad has done a remarkable work among these Indians extending over a series of years. He did not have the legal knowledge that was necessary to accomplish results, but he did call it to the attention of a man who could put it into shape and he did aid the Indians in their correspondence and in other ways and got us information we needed and that the department needed. Now we think he should have recognition. The proposition, however, to recognize

him directly comes from the department itself, through its inspectors, who talked with the Indians and knew their sentiments, knew how they felt, and that recommendation came from the department itself. It was not in anywise sponsored by us, and in fairness to Mr. Morstad it should be said that it did not come from him. We have always said—and do now say—that whether you recognize Mr. Morstad or not, if we get our fees on a basis of 10 per cent to us, we intend to see that Mr. Morstad gets at least \$5,000. We have gone on record before committees to this effect, we are on record to him, and we had Mr. Belt's authorization for that in his lifetime, and we have the authorization of his widow and executor for our statement.

Mr. DILL. When did Mr. Belt die?

Mr. MERILLAT. In 1910, I think.

Mr. DILL. I just wondered when that was.

I do not know of anything further, unless you want to put something else in the record.

Mr. MERILLAT. I ought to say this, that there has never been a step forward made in this claim that was not made by the attorneys; that every paper has been drafted by the attorneys and every argument made by them.

Mr. DILL. These Indians had no money, in other words?

Mr. MERILLAT. These Indians had not a dollar. They were turned down, and their claim had been turned down for 40 years. Their case was absolutely a desperate one. We took it up on a wholly contingent contract. Every cent of expense that there has been of any kind—and it has not been great—has been borne by the attorneys, and every step that has been made has been as a result of the arguments and efforts of the attorneys, aided by the Senators and Representatives from the State, of course. Mr. Konop has been of very material service, and we have had services rendered to us by others holding an official relation to the Government of the United States. But I think they will admit that that was largely as a result of our coming to them and presenting the justice of the case.

Mr. KONOP. There is no question about that.

Mr. MERILLAT. And acquainting them with the situation.

Mr. DILL. There is one more thing. Mr. Sears was asking some questions about these Indians up here. Are they increasing or decreasing in population?

Mr. KONOP. I doubt whether there is any increase in the population.

Mr. DILL. How do they live now?

Mr. KONOP. They work in the wintertime in the lumber camps, and the old fellows live in shacks, huts out in the woods, built up temporarily and try to keep warm as well as they can.

Mr. DILL. Do the children go to the schools or do they not?

Mr. KONOP. I do not know. I doubt whether there are any near a school. They have an agency established at Carter, and I guess they have a little day school there.

Mr. KAPPLER. They have a little day school at Carter.

Mr. MERILLAT. I should be inclined to think, from the data here, that they are very nearly stationary, with possibly a slight tendency to die off.

Mr. DILL. Is this agency for them primarily?

Mr. KONOP. It was started for them. That is where this \$7,000 in the 13 appropriation goes. I have been at Carter a couple of times, and there is absolutely nothing there but a little school. Mr. Morstad lives there and the agent lives there.

Mr. DILL. I do not think there is anything further. I certainly appreciate the completeness with which you gentlemen have stated this matter.

Mr. KONOP. We thank you very much for this opportunity to put something on paper.

(Whereupon, at 12 o'clock noon, the subcommittee adjourned.)

[Senate Document No. 185, Fifty-seventh Congress, second session.]

POTTAWATOMIE INDIANS OF WISCONSIN.

MEMORIAL OF THE POTTAWATOMIE INDIANS OF WISCONSIN, ASKING FOR CONSIDERATION OF THEIR CLAIMS FOR THEIR PROPORTIONATE SHARES OF THE TRIBAL ANNUITIES, INTEREST ON TRUST FUNDS, AND OTHER MONEYS AND ESTATE OF THE POTTAWATOMIE NATION OF INDIANS.

To the Senate and House of Representatives of the United States of America in Congress assembled:

Your memorialists, the Pottawatomie Indians of Wisconsin, respectfully petition your honorable body to give consideration to their claims for their proportionate shares of the annuities, interest on the trust funds, other moneys, or other estate of the Pottawatomie Nation of Indians.

We are, and always have been, members of the United Nation of Chippewa, Ottawa, and Pottawatomie Indians, now known as the Pottawatomie Nation, which name, so written, was adopted by said Indians in and by the treaty of 1846, as will be hereinafter more fully shown.

We have never, knowingly or intentionally, abandoned our membership in the tribe, nor any of our rights in and to the tribal estate in whatever form it has existed from time to time, whether in lands, annuities, interest on trust funds, or otherwise.

We have not, for many years past, shared in any of the payments of money made to the Indians of the said tribe or nation, from the tribal annuities or other funds, nor in any other tribal benefits, notwithstanding our whereabouts have been well known to the department of the Government having the management of Indian affairs.

We have, at various times, requested the consideration of our claims, and for that purpose have sent delegations to Washington to lay the matter before the Department of the Interior; and appeals have been made by and through influential friends in our behalf, but we have utterly failed to secure what we have believed to be a fair and full consideration of said claims.

The following letters will show the more recent action of the office of Indian Affairs on the matter:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., February 15, 1902.

CHARLES KISHECK,
Wabeno, Forest County, Wis.

SIR: I am in receipt of your letter of the 7th instant stating that under the treaty of September 26, 1833, the united nation of Chippewa, Ottawa, and Pottawatomie Indians ceded to the United States 5,000,000 acres of land along the western shore of Lake Michigan, and when payment was made in 1839 the sum of \$70,000 was appropriated and kept in trust by the Government for the head chief, Waumegesago, or the Wampam and his people, and has never been paid, and you desire to be informed what consideration the Indians were to receive for the lands so ceded.

In reply I have to inform you that the treaty aforesaid is contained in United States Statutes, volume 7, page 431. Under article 3 thereof \$100,000 was paid to certain individuals, \$150,000 to satisfy the claims of sundry persons against the United States, \$100,000 to be paid in goods and provisions, \$280,000 to be paid in annuities

of \$14,000 yearly for 20 years, \$150,000 for mills, farm houses, etc., \$70,000 for education, and \$400 to each of four chiefs during their lives.

This office has made an exhaustive search to verify your statement that \$70,000 was deposited with the United States as a trust fund. The only money that could possibly create such a fund would come from the 20 installments of \$14,000 each.

The records of this office show that \$14,000 was yearly appropriated and sent to the agent to be paid out, and there is nothing on the books to the credit of the aforesaid nation. You have evidently been misinformed relative to the \$70,000.

Very respectfully,

A. C. TONNER,
Assistant Commissioner.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., June 19, 1902.

HON. J. V. QUARLES,
United States Senate, Washington, D. C.

SIR: I am in receipt, by your reference, of the communication addressed to you by E. O. Morstad relative to the claim of the Pottawatomie Indians in Wisconsin for annuities and other benefits under the treaty of September 26, 1833, which they have never received.

In reply I have to inform you that the Indians alluded to lost any and all rights they may have had under said treaty by not removing with their tribe west of the Mississippi River, as provided for by the treaty. A supplemental clause to that treaty, September 27, 1833, provided that a certain class of the tribe would be permitted to remain in Michigan, and their proportion of the annuities would be paid them at L'Arbre Croche. This, however, was not done, and resulted in a suit by the Pottawatomies of Indiana and Michigan, which was decided in their favor (see C. Cls. R., vol. 27, p. 403), and Congress appropriated \$104,626 to satisfy the payment, which amount was paid to the Pottawatomies of Indiana and Michigan entitled thereto under the aforesaid supplemental clause. Certain Indians in Wisconsin claimed to be entitled to share in the judgment, but the department would not recognize their rights.

As a matter of fact, the Wisconsin Pottawatomies have no claim under the treaty of 1833. They give as an excuse for not complying with the stipulations thereof that the making of the treaty was by a few and not understood by the majority, and many refused to remove and thereby forfeited their rights. There is nothing this office can do in the matter.

The letter of Mr. Morstad is herewith returned.

Very respectfully,

A. C. TONNER,
Acting Commissioner.

The conclusions of the Office of Indian Affairs upon the said claims of your memorialists, under the treaty of 1833, are that they "lost any and all rights they may have had under said treaty by not removing with their tribe west of the Mississippi River, as provided by the treaty"; and further, that by not removing they "thereby forfeited their rights." The final statement that "there is nothing this office can do in the matter" compels your memorialists to seek to have their claims considered by some other tribunal. They consider the conclusions of the Office of Indian Affairs as wrong and unjust. They do not believe that all of the provisions of the treaties and laws, or all of the facts bearing upon said claims have been considered; but they are unable to properly present, themselves, the grounds and reasons for their belief as to the injustice of said decisions. Finding themselves unable to proceed with the further prosecution of their claims without competent legal assistance, and having been advised thereto, they have entered into a contract with Hon. R. V. Belt, attorney at law, Washington, D. C., retaining and employing him as their attorney and counselor for the prosecution of their said claims.

Through the assistance of their said attorney your memorialists are enabled to present this appeal to your honorable body for the consideration of their claims, setting forth therein a history of the matter, together with the provisions of the treaties and laws on which they base their claims and the facts showing their right to recover on said claims.

Your memorialists humbly petition for the careful and prompt consideration of this memorial, and that such legislation be enacted as will provide for the adjudication and final settlement of their claims as herein set forth.

By a treaty made by the United States August 3, 1795, with the "tribes of Indians called the Wyandots, Delawares, Shawanoes, Ottawas, Chippewas, Putawatimes, Miami, Eel River, Weas, Kickapoos, Piankashaws, and Kaskaakias" cession of large areas of country was made lying in eastern and southern Ohio and extending into what is now Indiana. (7 Stat., 49.)

The treaty Indians were left in possession of the country in northwestern Ohio, in Indiana, Illinois, Michigan, and Wisconsin, except the portions thereof recognized to be in the occupancy of other Indian tribes.

Subsequently separate treaties were made with portions of the Pottawatomes, as also with other tribes, for cessions of lands in which they were particularly dwelling at the time of the treaties. All of these treaties were made in the progress of the general movement of the Indian tribes farther westward, removing the frontier boundary before the advancing civilization of the white population. Another purpose of these treaties was to more particularly define the tracts of country claimed and occupied by the different tribes. As before stated, the territory of the Chippewas, Ottawas, and Pottawatomes was on both sides of Lake Michigan, in Wisconsin and Michigan, and extended down into Indiana and Illinois.

By a treaty made with the Chippewas, Ottawas, and Pottawatomes in 1816 (7 Stat., 146), and another made with the Pottawatome Tribe of Indians of the Prairie and Kankakee (7 Stat., 378), cessions of land were made along the south of Lake Michigan, extending southward into Indiana and Illinois. These cessions served to make a division between the Pottawatomes and affiliated tribes in Wisconsin and Illinois from those of the same tribes living in Michigan and Indiana. By further cession of land made by the Pottawatomes of the States of Indiana and Illinois and Michigan Territory in 1832 they parted with all of their occupancy titles in those States (7 Stat., 399), there being reserved in the ceded country specified tracts for certain bands, and certain detached tracts within the ceded territory were granted to individuals, families, etc., named in the treaty.

The foregoing presents a general view of the situation of the Pottawatome Tribe of Indians up to the time of the treaty of Chicago, which provided for their removal west of the Mississippi River.

The said treaty of Chicago was concluded as follows:

On September 26, 1833, the chiefs and headmen of the united nation of Chippewa, Ottawa, and Pottawatome Indians ceded to the United States all of their lands along the western shore of Lake Michigan. This cession extended down into the northern part of Illinois. The consideration for that cession was certain money payments and a new reservation of not less than 5,000,000 acres west of the Mississippi River. This new reservation was located north and west of the Missouri River, with Council Bluffs as the agency location. The treaty provided that the Indians were to remove from the ceded lands in Illinois immediately on the ratification of the treaty; but they were permitted to remain on the ceded lands in Wisconsin for the period of three years; they were to be removed at the expense of the United States, and also subsisted for one year after their removal. The fourth article of that treaty provides as follows:

"ART. 4. A just proportion of the annuity money, secured as well by former treaties as the present, shall be paid west of the Mississippi to such portion of the nation as shall have removed thither during the ensuing three years. After which time the whole amount of the annuities shall be paid at their location west of the Mississippi. (7 Stat., 431-433.)

On the next day, September 27, 1833, "Articles supplementary" to the treaty concluded on the previous day, as aforesaid, were concluded with the "Chiefs and headmen of the said united nations of Indians residing upon the reservations of land situated in the Territory of Michigan south of Grand River," for the cession, for certain money considerations, of all of their lands in the Territory of Michigan south of Grand River; and by said "Articles supplementary" the said Indians were made parties to the treaty concluded on the previous day, and were to be entitled to all of its benefits and subject to all of its conditions. (7 Stat., 442-448.)

By a memorandum in the nature of a supplemental article to the "Articles supplementary" aforesaid a few of the Indians in Michigan, because of their religious creed, were permitted to remain in that Territory on removing to the northern peninsula thereof, and to receive their proportion of the annuities at L'Arbre Croche.

This combined treaty of September 26 and 27, 1833, was ratified, and was proclaimed on February 21, 1835. (7 Stat., 431-448.)

From 1834 to 1837, 14 or more treaties were concluded with separate bands of the Pottawatome Indians in the State of Indiana for the cession of tracts of land that had been reserved for them, or of granted tracts secured to them by previous treaties. Money payments constituted the consideration, and the Indians, in all of said treaties

except 3, stipulated to remove to the reservations west of the Mississippi River in two years from the making of said treaties. (7 Stat., 467-469, 490, 498-501, 505, 513-515, 532.)

The Indians soon began to remove to the reservation located on the Missouri River, as before stated, but before many of them had settled thereon the United States found it desirable to ask them to exchange that reservation for one south of the Missouri River, in what is now the State of Kansas. The great body of the Indians were not disposed to remove from their former homes about Lake Michigan. This new request for another change before removal had been effected under the treaty of 1833 did not encourage them in the matter of removal. The adult Indians held that in such an important matter for so radical a change of latitude, climate, etc., the whole tribe should have been consulted, and they did not realize nor recognize the binding force of the treaties concluded with the few chiefs and headmen of the tribes. In this situation military force was employed to secure the removal of those unwilling to remove. Some were so removed, but many evaded the military escorts and scattered about the country, earning their living at trapping, picking berries, etc.

In the annual report of the Commissioner of Indian Affairs for 1836, page 36, it is stated that the Chippewa, Ottawa, and Pottawatome Indians originally numbered for removal 8,000; that 1,712 had been removed, and that 6,288 remained to be removed. In the same report it is stated on page 41 that the number of Pottawatomes of Indiana for removal was 3,000, and that 53 of them had been removed.

The annual report for 1837, pages 72 and 73, give different statements as to the number of Indians for removal, and the number removed, but as these and subsequent reports were subsequently stated to be erroneous, it is not considered necessary to make further statements based on them.

In connection with a statement as to the removal of Indians, made in the annual report of the Commissioner of Indian Affairs for the fiscal year 1840-41, the following explanation as to the Chippewas, Ottawas, and Pottawatomes, and the Pottawatomes of Indiana, is found, and it is here given to show the situation at that time. (See pp. 29-30.)

There has been considerable uncertainty in the estimates formed from time to time of the number of these Indians, and it runs through many years. It appears from the pay rolls that in 1834 there were paid at Chicago, of the united band of Chippewas, Ottawas, and Pottawatomes, 6,734; and of the Pottawatomes of Indiana, 1,346, making an aggregate of 8,080; and the muster rolls show that there were at the same time west, 441. These papers were the foundation, doubtless, of a report and estimate of 1835, and chart of 1836, placing the united band at 8,000, which has since been adopted, except in the year 1837, and that erred as much in the opposite direction. The treaty of Chicago was signed by several chiefs who afterwards became parties to separate treaties for their landed interests in Illinois and Indiana, by which many of them agreed to remove west of the Mississippi and others southwest of Missouri. It is probable that they have been confounded, and a portion of the latter enumerated as of the united band, being parties to the same treaty; that many of them are lost in kindred tribes with which they have mingled, and that the aggregate has been much diminished by death, as we know a large body did remove, and others not reported may have removed to Canada. All these causes combined, taking into the reckoning whatever number may be known yet to be east, of which we have no accurate knowledge, will furnish the best account that can be given of these Indians. The statement below exhibits the details of the information possessed.

On Oct. 24, 1834, the Ottawas, Chippewas, and Pottawatomes numbered..... 66,734
On Nov. 8, 1834, the Pottawatomes of Indiana numbered..... 1,346

The total number of these bands east in 1834..... 8,080
Muster rolls in this office show there were at the same time west..... 441

Total number east and west of the Mississippi in 1834..... 8,521

Capt. Russell removed, in the fall of 1835, a large party of the Chicago Indians, and in 1836 Mr. Kercheval removed another party. The records do not show the number of either; but it would seem from a letter of Dr. James, subagent, etc., that both together did not exceed... 1,455
Prior to November, 1837, of the same band, had removed themselves..... 842
On Nov. 26 Col. Sands delivered..... 287
And in the fall of 1838 Mr. Berry delivered..... 150

Whole number of Ottawas, Chippewas, and Pottawatomes removed prior to 1840 (all in the Council Bluffs Subagency)..... 2,734

The 41 above named appear to have gone ultimately to the Osage River Subagency; in July, 1837, their number had increased to.....	658
In September, 1837, Col. Sands delivered in the same district.....	160
And on Sept. 26, 1837, Mr. Proffit.....	33
In October, 1838, Mr. Polk's party numbered.....	756
Making the whole number emigrated prior to 1840 in the Osage River Subagency.....	1,627
So the whole number west prior to 1840 was.....	4,361
Leaving a balance to be accounted for of.....	4,160
Of these, there have been removed in 1840.....	936
	3,224
On the 1st of July, 1837, Mr. Kercheval reports that there had gone to Canada.....	1,000
And Mr. Schoolcraft in 1838, reports.....	137
	1,137
Leaving the number at their old homes in the States.....	2,087
Mr. Schoolcraft reported in September, 1840, Ottawas and Pottawatomies south of Grand River, in Michigan, to the number of.....	950
Leaving.....	1,137

In the treaty concluded near Council Bluffs in 1846 (9 Stat., 853) the following is stated in the preamble:

"TREATY WITH THE POTTAWAUTOMIE NATION."

"Whereas the various bands of the Pottawautomie Indians, known as the Chippewas, Ottawas, and Pottawautomies, the Pottawautomies of the Prairie, the Pottawautomies of the Wabash, and the Pottawautomies of Indiana, have, subsequent to the year 1828, entered into separate and distinct treaties with the United States, by which they have been separated and located in different countries, and difficulties have arisen as to the proper distribution of the stipulations under various treaties, and being the same people by kindred, by feeling, and by language, and having, in former periods, lived on and owned their lands in common, and being desirous to unite in one common country, and again become one people, and receive their annuities and other benefits in common, and to abolish all minor distinctions of bands by which they have heretofore been divided, and are anxious to be known only as the Pottawautomie Nation, thereby reinstating the national character; and whereas the United States are also anxious to restore and concentrate said tribes to a state so desirable and necessary for the happiness of their people, as well as to enable the Government to arrange and manage its intercourse with them: Now, therefore, the United States and the said Indians do hereby agree that said people shall be hereafter known as a nation, to be called the Pottawautomie Nation."

By that treaty the said Indians ceded to the United States their reservation in Iowa for the sum of \$850,000. Out of that sum they stipulated for the following payments:

For a new reservation in Kansas (art. 4).....	\$87,000
For a cash per capita payment (art. 5).....	50,000
For expenses of removal (art. 6).....	30,000
For subsistence for one year (art. 6).....	40,000
Total.....	207,000

Leaving a balance of..... 643,000

The disposition of this balance is provided for in article 7 of the treaty, which is as follows:

"ARTICLE VII. The balance of the said sum of eight hundred and fifty thousand dollars, after deducting the cost of removal and subsistence, etc., it is agreed shall remain with the United States, in trust for said Indians, and an interest of five per cent annually paid thereon, commencing at the expiration of one year after the

¹ The name of this tribe in different treaties spelled very differently.

removal of said Indians, and continuing for thirty years, and until the nation shall be reduced below one thousand souls. If, after the expiration of thirty years, or any period thereafter, it shall be ascertained that the nation is reduced below that number, the said annuity shall thenceforth be paid *pro rata* so long as they shall exist as a separate and distinct nation, in proportion as the present number shall bear to the number then in existence."

Article 10 reads as follows:

"ARTICLE X. It is agreed that hereafter there shall be paid to the Pottawautomie Nation annually the sum of three hundred dollars in lieu of the two hundred pounds of tobacco, fifteen hundred pounds of iron, and three hundred and fifty pounds of steel stipulated to be paid to the Pottawautomies under the third article of the treaty of September 20, 1828." (9 Stat., 853-856.)

In 1846 there yet remained in the State of Wisconsin a large number of the individual members of the united nation of Chippewas, Ottawas, and Pottawatomies. Their lands having been ceded to the United States they were without any reservation. They did claim to be equally the possessors with the Menominees of the country ceded by the latter tribe in their treaty of 1836 (7 Stat., 506), in which claim they had the support of some of the principal chiefs of the Menominee tribe, and they annually appeared at the annuity payments made to the Menominees to demand their portion of the annuity, but their claim was never recognized. (See Annual Report Commissioner Indian Affairs for 1846, p. 247.)

It was reported in the annual report of the Indian Bureau for 1866, page 41, that "about 600 Pottawatomies, strolling through Wisconsin, belong to Kansas Territory."

There were reported to be in that State, at the same time and in about the same situation, some troublesome Winnebagoes, who had refused to accompany their tribe to the West, or, having gone West, had returned to Wisconsin. So many complaints were made concerning these Indians that Congress, by the act of June 25, 1864, provided as follows:

"To enable the Secretary of the Interior to take charge of certain stray bands of Winnebago and Pottawatomie Indians, now in the State of Wisconsin, with a view to prevent any further depredations by them upon the citizens of that State, and for provisions and subsistence, \$10,000: *Provided*, That the proportion of annuities to which said stray bands of Pottawatomies and Winnebagoes would be entitled if they were settled upon their reservations with their respective tribes shall be retained in the Treasury to their credit, from year to year, to be paid to them when they shall unite with their said tribes, or to be used by the Secretary of the Interior in defraying the expenses of their removal, or in settling and subsisting them on any other reservation which may hereafter be provided for them." (13 Stat., 172.)

The same amount, \$10,000, was appropriated, and for the same purpose, by the act of March 3, 1865 (13 Stat., 560). By the act of July 26, 1866 (14 Stat., 265), \$5,000 was appropriated for the same purpose. This additional provision was contained in the act of March 2, 1867:

"For salary of a special agent to take charge of Winnebago and Pottawatomie Indians now in the State of Wisconsin, \$1,500." (14 Stat., 514.)

These provisions were repeated in the act of July 27, 1868 (15 Stat., 221), and in the act of April 10, 1869 (16 Stat., 40).

The act of July 15, 1870 (16 Stat., 359), contains the following:

"For this amount, or so much thereof as may be necessary to pay the expenses of the removal of stray bands of Pottawatomie and Winnebago Indians in Wisconsin from their present homes in that State to the tribes to which they respectively belong, as follows:

"For the transportation and subsistence of one thousand Winnebagoes from Wisconsin to Nebraska, at \$15 each, \$15,000.

"For transportation of five hundred Pottawatomies and two hundred Chippewas, intermarried with them, from Wisconsin to the Indian Territory, at \$30 each, \$21,000."

In the annual report of the Commissioner of Indian Affairs for the same year the following appears:

SPECIAL AGENCY FOR STRAY BANDS,
WINNEBAGO AND POTTAWATOMIE INDIANS OF WISCONSIN,
New Lisbon, Wis., September 20, 1870.

SIR: Under the instructions of your circular letter of June 1, 1870, I have the honor to forward herewith the annual report of this special agency.

The numerous bands of Indians in this agency, scattered as they are over so large a section of country, and in constant intercourse with the whites, have been remarkably quiet and inoffensive, giving no cause of complaint from the latter; on the contrary, the towns and villages where they trade their berries, maple sugar, etc., are

By a treaty made by the United States August 3, 1796, with the "tribes of Indians called the Wyandots, Delawares, Shawanoes, Ottawas, Chippewas, Putawatimes, Miami, Seneca, Delaware, Kickapoos, Piankashaws, and Kaekaskias" cession of large areas of country was made lying in eastern and southern Ohio and extending into what is now Indiana. (7 Stat., 49.)

The treaty Indians were left in possession of the country in northwestern Ohio, in Indiana, Illinois, Michigan, and Wisconsin, except the portions thereof recognized to be in the occupancy of other Indian tribes.

Subsequently separate treaties were made with portions of the Pottawatomies, as also with other tribes, for cessions of lands in which they were particularly dwelling at the time of the treaties. All of these treaties were made in the progress of the general movement of the Indian tribes farther westward, removing the frontier boundary before the advancing civilization of the white population. Another purpose of those treaties was to more particularly define the tracts of country claimed and occupied by the different tribes. As before stated, the territory of the Chippewas, Ottawas, and Pottawatomies was on both sides of Lake Michigan, in Wisconsin and Michigan, and extended down into Indiana and Illinois.

By a treaty made with the Chippewas, Ottawas, and Pottawatomies in 1816 (7 Stat., 146), and another made with the Pottawatomie Tribe of Indians of the Prairie and Kankakee (7 Stat., 378), cessions of land were made along the south of Lake Michigan, extending southward into Indiana and Illinois. These cessions served to make a division between the Pottawatomies and affiliated tribes in Wisconsin and Illinois from those of the same tribes living in Michigan and Indiana. By further cession of land made by the Pottawatomies of the States of Indiana and Illinois and Michigan Territory in 1832 they parted with all of their occupancy titles in those States (7 Stat., 399), there being reserved in the ceded country specified tracts for certain bands, and certain detached tracts within the ceded territory were granted to individuals, families, etc., named in the treaty.

The foregoing presents a general view of the situation of the Pottawatomie Tribe of Indians up to the time of the treaty of Chicago, which provided for their removal west of the Mississippi River.

The said treaty of Chicago was concluded as follows:

On September 26, 1833, the chiefs and headmen of the united nation of Chippewa, Ottawa, and Pottawatomie Indians ceded to the United States all of their lands along the western shore of Lake Michigan. This cession extended down into the northern part of Illinois. The consideration for that cession was certain money payments and a new reservation of not less than 5,000,000 acres west of the Mississippi River. This new reservation was located north and west of the Missouri River, with Council Bluffs as the agency location. The treaty provided that the Indians were to remove from the ceded lands in Illinois immediately on the ratification of the treaty; but they were permitted to remain on the ceded lands in Wisconsin for the period of three years; they were to be removed at the expense of the United States, and also subsisted for one year after their removal. The fourth article of that treaty provides as follows:

"Art. 4. A just proportion of the annuity money, secured as well by former treaties as the present, shall be paid west of the Mississippi to such portion of the nation as shall have removed thither during the ensuing three years. After which time the whole amount of the annuities shall be paid at their location west of the Mississippi. (7 Stat., 431-433.)

On the next day, September 27, 1833, "Articles supplementary" to the treaty concluded on the previous day, as aforesaid, were concluded with the "Chiefs and headmen of the said united nations of Indians residing upon the reservations of land situated in the Territory of Michigan south of Grand River" for the cession, for certain money considerations, of all of their lands in the Territory of Michigan south of Grand River; and by said "Articles supplementary" the said Indians were made parties to the treaty concluded on the previous day, and were to be entitled to all of its benefits and subject to all of its conditions. (7 Stat., 442-448.)

By a memorandum in the nature of a supplemental article to the "Articles supplementary" aforesaid a few of the Indians in Michigan, because of their religious creed, were permitted to remain in that Territory on removing to the northern peninsula thereof, and to receive their proportion of the annuities at L'Arbre Croche.

This combined treaty of September 26 and 27, 1833, was ratified, and was proclaimed on February 21, 1835. (7 Stat., 431-448.)

From 1834 to 1837, 14 or more treaties were concluded with separate bands of the Pottawatomie Indians in the State of Indiana for the cession of tracts of land that had been reserved for them, or of granted tracts secured to them by previous treaties. Money payments constituted the consideration, and the Indians, in all of said treaties

except 3, stipulated to remove to the reservations west of the Mississippi River in two years from the making of said treaties. (7 Stat., 467-469, 490, 498-501, 505, 513-515, 532.)

The Indians soon began to remove to the reservation located on the Missouri River, as before stated, but before many of them had settled thereon the United States found it desirable to ask them to exchange that reservation for one south of the Missouri River, in what is now the State of Kansas. The great body of the Indians were not disposed to remove from their former homes about Lake Michigan. This new request for another change before removal had been effected under the treaty of 1833 did not encourage them in the matter of removal. The adult Indians held that in such an important matter for so radical a change of latitude, climate, etc., the whole tribe should have been consulted, and they did not realize nor recognize the binding force of the treaties concluded with the few chiefs and headmen of the tribes. In this situation military force was employed to secure the removal of those unwilling to remove. Some were so removed, but many evaded the military escorts and scattered about the country, earning their living at trapping, picking berries, etc.

In the annual report of the Commissioner of Indian Affairs for 1836, page 36, it is stated that the Chippewa, Ottawa, and Pottawatomie Indians originally numbered for removal 8,000; that 1,712 had been removed, and that 6,288 remained to be removed. In the same report it is stated on page 41 that the number of Pottawatomies of Indiana for removal was 3,000, and that 53 of them had been removed.

The annual report for 1837, pages 72 and 73, give different statements as to the number of Indians for removal, and the number removed, but as these and subsequent reports were subsequently stated to be erroneous, it is not considered necessary to make further statements based on them.

In connection with a statement as to the removal of Indians, made in the annual report of the Commissioner of Indian Affairs for the fiscal year 1840-41, the following explanation as to the Chippewas, Ottawas, and Pottawatomies, and the Pottawatomies of Indiana, is found, and it is here given to show the situation at that time. (See pp. 29-30.)

"There has been considerable uncertainty in the estimates formed from time to time of the number of these Indians, and it runs through many years. It appears from the pay rolls that in 1834 there were paid at Chicago, of the united band of Chippewas, Ottawas, and Pottawatomies, 6,734; and of the Pottawatomies of Indiana, 1,346, making an aggregate of 8,080; and the muster rolls show that there were at the same time west, 441. These papers were the foundation, doubtless, of a report and estimate of 1835, and chart of 1836, placing the united band at 8,000, which has since been adopted, except in the year 1837, and that erred as much in the opposite direction. The treaty of Chicago was signed by several chiefs who afterwards became parties to separate treaties for their landed interests in Illinois and Indiana, by which many of them agreed to remove west of the Mississippi and others southwest of Missouri. It is probable that they have been confounded, and a portion of the latter enumerated as of the united band, being parties to the same treaty; that many of them are lost in kindred tribes with which they have mingled, and that the aggregate has been much diminished by death, as we know a large body did remove, and others not reported may have removed to Canada. All these causes combined, taking into the reckoning whatever number may be known yet to be east, of which we have no accurate knowledge, will furnish the best account that can be given of these Indians. The statement below exhibits the details of the information possessed.

On Oct. 24, 1834, the Ottawas, Chippewas, and Pottawatomies numbered..... 66,734
On Nov. 8, 1834, the Pottawatomies of Indiana numbered..... 1,346

The total number of these bands east in 1834..... 8,080
Muster rolls in this office show there were at the same time west..... 441

Total number east and west of the Mississippi in 1834..... 8,521

Capt. Russell removed, in the fall of 1835, a large party of the Chicago Indians, and in 1836 Mr. Kercheval removed another party. The records do not show the number of either; but it would seem from a letter of Dr. James, subagent, etc., that both together did not exceed... 1,455
Prior to November, 1837, of the same band, had removed themselves..... 842
On Nov. 26 Col. Sands delivered..... 287
And in the fall of 1838 Mr. Berry delivered..... 150

Whole number of Ottawas, Chippewas, and Pottawatomies removed prior to 1840 (all in the Council Bluffs Subagency)..... 2,734

The 441 above named appear to have gone ultimately to the Osage River Subagency; in July, 1837, their number had increased to.... 658
 In September, 1837, Col. Sands delivered in the same district..... 100
 And on Sept. 26, 1837, Mr. Proffit..... 53
 In October, 1838, Mr. Polk's party numbered..... 756

Making the whole number emigrated prior to 1840 in the Osage River Subagency..... 1,627
 So the whole number west prior to 1840 was..... 4,361
 Leaving a balance to be accounted for of..... 4,169
 Of these, there have been removed in 1840..... 936
 3,224
 On the 1st of July, 1837, Mr. Kercheval reports that there had gone to Canada..... 1,000
 And Mr. Schoolcraft in 1838, reports..... 137
 1,137
 Leaving the number at their old homes in the States..... 2,087
 Mr. Schoolcraft reported in September, 1840, Ottawas and Pottawatomies south of Grand River, in Michigan, to the number of..... 950
 Leaving..... 1,137

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SIR: Under the instructions of your circular letter of June 1, 1870, I have the honor to forward herewith the annual report of this special agency.

The numerous bands of Indians in this agency, scattered as they are over so large a section of country, and in constant intercourse with the whites, have been remarkably quiet and inoffensive, giving no cause of complaint from the latter; on the contrary, the towns and villages where they trade their berries, maple sugar, etc., are

deriving considerable benefit from them; a large number have also been employed in the past year in lumbering, harvesting, and hop picking. A number of lumbermen and mill owners have informed me that the Indians they have employed in their business have been steady, good hands, and are showing a greater desire to work than heretofore.

Under the direction of the Superintendent of the United States Census I have made as thorough an enumeration of these wandering bands as possible. I find that it will not vary materially from the former estimates, and is as follows: Winnebagoes, 995; Pottawatomies, 720; Chippewas, 208; total, 1,923. In visiting their scattered and isolated camps I was surprised to find that they were cultivating more acres of corn and potatoes than I had supposed. Quite a number of them have become owners of a few acres, while others again rent a few from the whites; and nearly all of them are desirous of doing the same. In all their councils with me they have expressed a desire and hope that the Great Father at Washington would give them a home and reservation in this country, that was formerly their own, and allow them to remain here. They evince a great repugnance and fear of being removed from the State, and will undoubtedly return as fast as they are taken away, as has been proved in former attempts to remove them. The legislature of the State at their last session desired to have them located on the Eau Claire River, Marathon County, northwestern part of the State, a section of country well adapted for them, where there are but a few whites and where they in time would become settled and useful. I see no reason why they can not become as good and useful citizens as the Brothertown Indians of this State. Having prosecuted several parties who had violated the laws in trafficking with the Indians in spirituous liquors, the examples thus made have been very beneficial and, as a consequence, no complaints have since been made by whites or Indians.

The statistical table of farming, etc., herewith inclosed, has been made from estimates by personal observation while visiting their different localities; if anything, it is rather under what has been done. I find nearly all the younger persons of the bands have learned, or are learning, to speak English; many of them speak it quite well. If they had the advantage of schools they would progress much faster; many of them are also adopting a civilized dress. I have, in all my intercourse with them, endeavored to impress upon them that the Government and Great Father at Washington desire to improve their condition and make them like the whites. Many of them seem to feel that this is best for them, and express a wish to become as the white man. With a little perseverance and with care I am confident this can be done.

I am, respectfully, your obedient servant,

D. A. GRIFFITH,
U. S. Army Special Indian Agent.

Hon. E. S. PARKER,
Commissioner of Indian Affairs.

As to the number of the Pottawatomies and Chippewas of the United Nation of Chippewas, Ottawas, and Pottawatomies that remained in the State of Wisconsin, the act of July 15, 1870, and the statement in the annual report of that year afford the most reliable information accessible to your memorialists. The definite ascertainment of the number of the claimant Indians will be necessary in order to the determination of the exact measure of their claims.

Your memorialists are not informed what action was taken by the Department of the Interior to carry out the legislative directions contained in the act of June 25, 1864, to retain in the Treasury to the credit of the claimant Indians their proportion of the tribal annuities to be disposed of as in that law provided. In the case of the stray bands of Winnebagoes, for whom the same law contained the same directions, the department was subsequently compelled to report that the law had not been observed. From the nature of the action taken by the Office of Indian Affairs upon our claims, as hereinbefore stated, it is presumed that a report by that office as to action taken as to the annuities of the Wisconsin Pottawatomies under that act would be that the law has not been observed.

The stray bands of Winnebagoes have succeeded in having their claims adjusted. Congress, after an investigation of the matter, and learning that the legislative directions of 1864 had not been complied with by the department, passed the act of January 18, 1881 (21 Stat., 315), directing that a census be taken of those Winnebagoes residing in Nebraska and Wisconsin, and that the portion of the annuities of the Wisconsin Winnebagoes be ascertained for the period from the act of 1864 to the date of action under the law; a method of ascertainment and adjustment of the amount of the claims of the Wisconsin Winnebagoes was prescribed by said law. When the amount of the annuities that inured to the Wisconsin Winnebagoes was ascertained, the whole of which had been paid to that branch of the tribe residing in Nebraska, it

was directed that said amount should be recouped from the subsequent annual proportions of the Nebraska Winnebagoes, in such annual amounts as would cause to the latter no absolute distress, and that the sums so recovered should be paid to the Wisconsin Winnebagoes in addition to the proportion of the annuities ascertained to be thereafter due them annually.

The Winnebagoes of Wisconsin were allowed to take allotments of land from the public domain in Wisconsin, and were aided in doing so.

What was done for the Wisconsin Winnebagoes, your memorialists ask may be done for them. The situation of both is exactly parallel, except that the Winnebagoes were removed by military force in the latter part of 1873, but returned to Wisconsin in the early part of 1874. (See Annual Report of Commissioner of Indian Affairs, 1874, pp. 37 and 211; *ibid.*, 1875, p. 100.)

The action of the Commissioner of Indian Affairs on the claims of your memorialists, as hereinbefore stated, may perhaps mislead some in supposing that there has been a determination of the said claims by the suit brought in the Court of Claims under the act of Congress of March 19, 1890 (26 Stat., 24). In order to avoid this error it will be necessary to state quite fully the facts and situation as to that suit:

Notwithstanding the memorandum or supplemental article forming a part of the "Articles supplementary," concluded on September 27, 1833, at Chicago, whereby certain Catholic Indians were permitted to remain in Michigan on moving from the ceded lands to the northern peninsula of that State, and to receive their annuities at L'arbre Croche, the department neglected to pay to them their portion of the tribal annuities. They complained to Congress, and on March 2, 1861 (12 Stat., 207), a joint resolution was passed calling on the Department of the Interior for a report of the amount of said annuities then due them. A report was made, stating that the amount found to be due them was \$30,000, and that an arrangement had been made with the tribe for the adjustment of the same. Congress thereupon passed the joint resolution of July 28, 1866 (14 Stat., 370), directing payment of that amount out of the trust funds of the tribe, the same to be received by the Michigan Pottawatomies in full of all their claims to that date. The Michigan Pottawatomies received the money, but subsequently insisted that it was not a full and fair adjustment of their said claims; and on the showing made, Congress authorized them to bring suit in the Court of Claims to determine their rights.

Under the said act two petitions were filed in the Court of Claims, one, No. 16743, on behalf of 91 Indians, and the other, No. 16842, on behalf of 1,371 Indians. The Attorney General, representing the United States, first moved to consolidate the two cases, but subsequently, contending that the petitioners in No. 16842 were not within the jurisdictional act, moved the dismissal of that case. The court reserved action on both motions until its final decision, and disposed of them therein as follows:

"In case No. 16743 the petitioners assume to represent 91 Indians who are the representatives, as it is alleged, of a part of the band residing on the reservations in the Territory of Michigan; the petition in 16842 assumes to represent 1,371 Indians who are alleged to be a part of the United Nation occupying the reservations ceded by the supplementary treaty of September 27, 1833, and which were and are included in the exception (as to removal) of the supplemental article of the treaty of September 27.

"It is contended by counsel in No. 16743 that the petitioners in No. 16842 have no rights under the treaty of 1833, and therefore no legal capacity to appear by independent or supplemental petition; and that whatever judgment is recovered must be for the benefit of the 91 persons and those whom they represent, to the exclusion of any claims upon the part of the individuals represented in case No. 16842. The petitioners in the latter case concede the right of the petitioners in case No. 16743 to bring the suit and have their claims adjusted, but insist upon an equal right of investigation and determination.

The preamble of the special law of jurisdiction recites:

"Whereas representatives of the Pottawatomie Indians of Michigan and Indiana in behalf of all the Pottawatomie Indians of said States, make claim against the United States on account of various treaty provisions which, it is alleged, have not been complied with: Therefore,

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Court of Claims is hereby authorized to take jurisdiction of and try all questions of difference arising out of treaty stipulations with the said Pottawatomie Indians of Michigan and Indiana."

The right to sue in some form is given to 'all Pottawatomie Indians' of Michigan and Indiana, and the plaintiffs or petitioners in such a suit are subject only to the qualifications and limitations of being Pottawatomies of Michigan and Indiana. The qualification is well defined, and the right extends to all having the qualification. Some of the persons directly represented in the first petition are descendants of persons

who belonged to a particular branch of the United Nation, and some of the persons named in the second petition are descendants of other persons who belonged to the same band of Pottawatomies.

"In the legislation of our jurisdiction, Congress, having recognized the fact and condition that representatives of the Pottawatomie Indians of Michigan and Indiana, in behalf of all the Pottawatomies of said States, make claim against the United States on account of various treaty provisions, and upon that fact and condition have provided a jurisdiction in this court to determine all questions of difference between the United States and said Indians. The purpose of the statute is to settle in an authoritative and judicial form all questions of difference arising from the claims of the Pottawatomie Indians of Michigan and Indiana, and any proceeding which accomplishes that purpose, irrespective of technical rules of pleading, is proper and legal under the law of our jurisdiction.

"The second section provides that said action shall be commenced by petition stating the facts, and that the same may be verified by a 'business committee' or authorized attorney of said Indians. Both of the petitions in this proceeding are verified by affidavit of the attorney appearing in each case, and in that particular are identical. In each case it appears that by special appointment the attorneys represent some of the Pottawatomies who remained in the States of Indiana and Michigan under the supplemental article of the treaty of 27th September, 1833.

"In this view of the statute the court allows the motion of the defendants to consolidate the cases, and overrules the motion to dismiss cause No. 16842, made on the 19th of January, 1891.

"This brings the issue by both petitions to the consideration of the court, to be disposed of on the broad ground of the right of all the Pottawatomies of Michigan and Indiana, Congress having recognized by the very title of the act a claimant designated as the 'Pottawatomie Indians of Michigan and Indiana,' and under that generic head is to be determined the aggregate right of such claimant, leaving the question of distribution to that department of the Government which by law has incumbent the administration of the trust which in legal contemplation exists between the United States and the different tribes of Indians.

"Irrespective of the technical question of who has the right to maintain a suit under the statute, whatever claim any or all of the Indians may have against the defendants, grows out of the alleged supplemental article of the treaty of 27th September, 1833. If this is law it is a recognition on the part of the defendants of a separate and independent right of a part of the United Nation of Chippewa, Ottawa, and Pottawatomie Indians to a division of and participation in a portion of the fund belonging to the whole nation."

The court in said decision then proceeds to consider said supplemental article and held that it was law. As to the number of Indians entitled to its benefits, it held as follows:

"The court finds that the number of Indians remaining in the State of Michigan after the treaty of September 27, 1833, residing on reservations in the Territory of Michigan, who stayed on account of their religious creed, is set forth in Finding X, to wit, 291 to 2,812 emigrating under said treaty."

Then, after considering each item of the tribal annuity bearing fund, the court allowed to said 291 Indians permitted by the treaty to remain in Michigan, and to receive their proportion of the annuities in that State, the sum of \$104,483.36 as the aggregate amount that had been withheld from them. (27 C. Cls. R., 403.)

It has been found necessary to make these extensive quotations from that decision of the Court of Claims in order to make it plain that the jurisdictional act in that case did not cover any of the claims of the Pottawatomie Indians of Wisconsin, that no claim was filed in said court by or on behalf of the Pottawatomie Indians of Wisconsin, and that no claims of the Pottawatomie Indians of Wisconsin were in any wise passed upon by the Court of Claims in that decision.

The Pottawatomie Indians of Wisconsin in their claims for their proportion of the tribal annuities stand upon very different ground from the foundation claimed by the petitioners in the suits instituted in the Court of Claims under the act of March 19, 1890. Those claims of the Pottawatomie Indians of Michigan and Indiana were prosecuted on the basis of rights claimed to have been preserved to the claimant Indians by and in the supplemental article to the "Supplementary articles of the treaty of September 27, 1833."

Your memorialists, the Pottawatomie Indians of Wisconsin, base their claims now under consideration upon the broad ground of their right, as members of the tribe, to share, according to their numbers, in the tribal estate, in whatever form it has existed, for the years covered by said claims. That right was specially preserved to them by the act of Congress of June 25, 1864. (13 Stat., 172.) That law stands to

this day unrepealed, and under its provisions your memorialists come asking that their proportion of the tribal estate so preserved to them be distributed to them to meet their pressing needs. Your memorialists have been, for many years past, earning their support in civilized pursuits; they have provided for themselves and their children with money earned at hard labor in lumbering camps and other industries in the State of Wisconsin; they do not live in tribal relation, and have no desire to be herded on a reservation to be supported by the United States; they would be glad to be assisted in acquiring allotments of land on the public domain, and to have a school provided for their children; they have had no school facilities, and they and their children have suffered greatly thereby.

The general allotment act—act of February 8, 1887—provides as follows:

"And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within said limits, his residence, separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property." (See sec. 6, 24 Stat., 388.)

When it seen that Congress, by its legislation on the subject, both general and special, has taken so great pains to preserve to your memorialists their rights in and to the tribal estate, in whatever form it exists, they can not see how the Commissioner of Indian Affairs can justly or properly hold that the claims of your memorialists are without foundation, or that your memorialists have in any wise forfeited their tribal annuities. They are persuaded that the action of the Indian Office has been taken on an imperfect presentation and consideration of the laws and facts in the case.

While the decision of the Court of Claims in the cases hereinbefore referred to did not in any wise determine the claims of your memorialists, it did settle some questions pertinent to the consideration of their said claims, to wit:

(1) It determined that the number of the United Nation of Chippewa, Ottawa, and Pottawatomie Indians, allowed by the treaty of September 27, 1833, to remain in Michigan and draw their annuities there, to be 291. (2) That the number of said nation removed West was 2,812; total, 3,103. (3) That said number, 3,103, had received the benefit of the tribal annuities and interest on trust funds.

In finding the said numbers of the said Indians the court followed the determination thereof by the department, as shown in reports on the subject. (See S. Rept. No. 121, 42d Cong., 2d sess., p. 6.)

The most recent official information accessible to your memorialists as to the number of said United Nation of Chippewas, Ottawas, and Pottawatomies remaining in the State of Wisconsin is contained in the law of 1870 and the annual report of the Commissioner of Indian Affairs for that year, the one giving their number as 700, and the other as 720 Pottawatomies and 208 Chippewas. It is not believed that their number is less at the present time.

In order, therefore, to show, as near as they are able, the extent and measure of their claims, your memorialists will adopt the number 700 as representing them. When their number shall have been more certainly ascertained, the amount of their claims can be stated with greater exactness.

The treaty of 1833 having been ratified and proclaimed February 21, 1835, and the Indians being under obligations to remove within three years, it is presumed that they shared in the distribution of the tribal annuities made prior to February 21, 1838.

Statement showing the tribal annuities and interest on trust fund of the United Nation of Chippewa, Ottawa, and Pottawatomie Indians for the period from 1838 to 1863, inclusive, 26 years, and for the period from 1864 to 1902, 39 years.

Treaty.	Annual amount.	Time.	Amount due nation for 26 years, from 1838 to 1863.	Amount calculated for nation for 39 years, from 1864 to 1902.
Aug. 3, 1795 (7 Stat., 49).....	\$1,000	Perpetual.....	\$26,000	\$39,000
Sept. 30, 1809 (7 Stat., 113).....	500	do.....	13,000	19,000
Oct. 2, 1818 (7 Stat., 185).....	2,500	do.....	65,000	97,500
Aug. 29, 1821 (7 Stat., 218).....	3,000	20 years.....	20,000	.....
Oct. 16, 1826 (7 Stat., 295).....	2,000	22 years.....	22,000	.....
Sept. 20, 1828 (7 Stat., 317).....	2,000	Perpetual.....	52,000	78,000
Do.....	1,000	20 years.....	11,000	.....
July 29, 1829 (7 Stat., 320).....	16,000	Perpetual.....	416,000	624,000
Oct. 20, 1832 (7 Stat., 378).....	15,000	20 years.....	225,000	.....
Oct. 26, 1832 (7 Stat., 394).....	20,000	do.....	300,000	.....
Oct. 27, 1832 (7 Stat., 399).....	15,000	12 years.....	105,000	.....
June 17, 1846 (9 Stat., 833).....	300	Perpetual.....	5,100	11,700
Do.....	32,150	Annual interest on trust fund.....	546,550	1,253,850
Total.....			1,806,650	2,123,550

Where the annuities are for a term of years, the unexpired time only is calculated in the first period. As all of the annuities for a stated term of years expired before the second period, no amounts are carried forward thereon for any one of them for that period.

There are other treaty obligations of the United States to the said Indians for education, etc., not calculated in the above.

If the aggregate of the sums inuring to the said United Nation of Indians from their annuity and interest-bearing trust funds for the period from 1838 to 1863, inclusive, \$1,806,650, had been distributed to the 3,803 members of the tribe (291 in Michigan, 2,812 west of Mississippi River, and 700 in Wisconsin), the proportion for each individual would have been \$475.06. Therefore, for that period the 700 Pottawatomies of Wisconsin were deprived of the aggregate sum of \$332,542.

If like distribution had been made of the annuities and interest on the trust fund for the period from 1864 to 1902, inclusive, \$2,123,550, the share of each individual would have been \$558.38. For that period the aggregate sum for the Pottawatomies of Wisconsin, 700 in number, would have been \$390,866.

The aggregate sum of the annuities of the United Nation and of the interest on the trust fund, of which the claimant Indians are shown to have been deprived, is \$723,408. This does not include any portion of the treaty provision for education and some other specific treaty obligations of the United States.

A few of your memorialists did get to the reservation of the tribe west of the Mississippi River and drew their proportionate shares of the tribal moneys or payments at one or, perhaps, two annuity payments, and subsequently returned to Wisconsin, but not many did so.

The fact that a portion of the annuity and interest-bearing funds of the tribe or nation was distributed to some of the members who became citizens of the United States does not in anywise affect the sum that should have annually been retained in the Treasury of the United States to the credit of the Pottawatomies of Wisconsin under the law of 1864.

The claim set up by the office of Indian Affairs that your memorialists have "lost" or "forfeited" their treaty rights by not removing with the tribe is not true as a matter of fact, is not true as a matter of law, and is contrary to all principles of equity governing such cases.

"The word 'forfeiture' means the judicial transfer of title to property as punishment for crime. (Tompkins Law Dic., 'Penalties'; 'Forfeitures'; Bouv. Law Dic., 'Fines'; Cruise Digest, 'Fines'; Shep. Touch., 'Fines.')

"Forfeiture means the loss of something as a penalty for doing or omitting to do a certain required act. The taking of some property, right, privilege, franchise, or benefit from one person and transferring it to another. A punishment annexed by law to some illegal act or negligence in the owner of lands, tenements, or hereditaments whereby he loses all his interest therein and they become vested in the party injured as a recompense for the wrong done, which he alone, or the public together

with himself, has sustained." (Am. and Eng. Enc. of Law, vol. 8, p. 443; 2 Black. Com., 267.)

The office of Indian Affairs does not show, nor attempt to show, to whom the shares of the annuities, etc., of the claimant Indians were forfeited. If, by not removing, the claimant Indians committed any crime for which any specific penalty was annexed, or failed to perform any duty enjoined by law, who suffered thereby? To whom benefit did the money or thing alleged to have been forfeited inure? By whom was determined and declared the forfeiture?

"A forfeiture must be judicially declared." (Bouv. Law Dic., 'Forfeiture,' and cases cited.)

In order to authorize a claim to forfeiture of valuable property on account of violation of a condition, proceedings to enforce must be had. (Bouv. Law Dic.; 17 Or., 140.)

The Office of Indian Affairs does not show when, by whom, or where the proceedings were had to enforce the forfeiture of the annuities, etc., of the claimant Indians.

"In courts of law equity will not enforce a forfeiture or penalty except when exclusively essential to do justice." (Am. and Eng. Enc. of Law, vol. 8, p. 446.)

"Equity never lends its aid to enforce a forfeiture or penalty, or anything in the nature of either." (Marshall v. Vicksburg, 15 Wall., 146.)

These elementary principles of the law of forfeiture will enable all to a better understanding of this case.

The treaty of 1833 contains no condition of forfeiture. It does require, after a specified time, that all payments of annuities to the Indians shall be made on the reservation west of the Mississippi River. It does not declare that all annuities, after that specified time, shall be distributed to those Indians who shall have removed. It does not give to the Department of the Interior, or any other branch of the Government, the power and authority to declare a forfeiture of the annuities, etc., of any of the Indians. The duty of the Department of the Interior as to the annuities of these Indians who failed to remove, as required by the treaty, was to have withheld them until the Indians entitled to them did remove, or, if they failed to remove at all, until Congress should direct as to the disposition to be made of them.

If any party was entitled to a declaration of forfeiture of the annuities, etc., of the claimant Indians, it was the United States. No other party suffered by any failure of the claimant Indians to remove West. The executive branch of the Government should have retained the annuities of these Indians failing to remove until proper disposition should have been made thereof by action of Congress, or the judicial determination of some court of competent jurisdiction. It was not in the power of the executive to effect a forfeiture of the annuities of the claimant Indians and to turn the money thus held to be forfeited over to individuals who could show no right to receive it.

In the recent case of the New York Indians v. United States, decided by the Supreme Court of the United States, strong opposition is taken to forfeitures by executive action.

In that case was involved a condition of forfeiture annexed by a treaty to certain lands reserved for said Indians, in exchange for lands then held and claimed by them, if the Indians did not remove, as provided in the treaty, to the new reservation in the State of Kansas. The Indians, except a very few, never did remove. The executive branch of the Government took action opening the reserved lands to public settlement, claiming that they had been forfeited by the Indians.

The court, in discussing the question of forfeiture in that case, said, among other things, the following:

"In the view we have taken of the granting clause of this treaty, the provisions of the third article created a condition subsequent, upon the breach of which the Government might declare a forfeiture, but had no power by simple executive action to reenter, take possession of the lands, and sell them. A distinction is drawn by the authorities between the case of a private grantor, who may reenter in the case of the breach of a condition subsequent, and the Government, which can only repossess itself of lands by legislative or judicial action. The distinction was first clearly drawn by this court in the case of United States v. Repentigny (5 Wall., 211, 257), in which the court said: 'We agree that before a forfeiture or reunion with the public domain could take place a judicial inquiry should be instituted or, in the technical language of the common law, office found, or its legal equivalent. The mode of asserting or assuming the forfeited grant is subject to the legislative authority of the Government. It may be after judicial investigation, or by taking possession directly under the authority of the Government without these preliminary proceedings.' Practically the same language was used with reference to a grant of lands in aid of a railroad in *Schulenberg v. Harriman* (21 Wall., 44, 63); in *Farnsworth v. Minnesota*

and Pacific Railroad (92 U. S., 49), and in *Van Wyck v. Magee* (115 U. S., 469), it was said that "legislation to be sufficient (for the purpose) must manifest an intention by Congress to reassert title and resume possession. As it is to take the place of a suit by the United States to enforce a forfeiture, and a judgment therein establishing a right, it should be direct, positive, and free from all doubt or ambiguity." (See also *Pacific Railway Co. v. United States*, 124 U. S., 124.) As there is no pretense that any such action as is contemplated by these cases was ever taken, it necessarily follows that if an estate in fee simple vested in the Indians, the proceedings subsequently taken would not revert the title to the Government.

"5. But even if it were conceded that the rights of the Indians were subject to forfeiture by executive action, it is by no means certain that the contingency ever happened which authorized the forfeiture; or, if a forfeiture did result, it was not waived by the subsequent action of Congress. A condition, when relied upon to work a forfeiture, is construed with great strictness. The grantor must stand on his legal rights, and any ambiguity in his deed, or defect in the evidence to show a breach will not be taken most strongly against him and in favor of the grantee. A condition will not be extended beyond its express terms by construction. The grantor must bring himself within these terms to entitle him to a forfeiture." (*Jones on Real Prop.*, secs. 678, 679; *New York Indians v. United States*, 170 U. S., 25.)

No compliance with any of the legal requirements necessary to effect a forfeiture of any of the treaty rights of the claimant Indians is shown. The United States, the only party that could have any right to be recompensed by any such forfeiture, if legally adjudged and declared, waived any such right by the enactment of the law of 1864. That law preserved to the claimant Indians their proportionate shares of the tribal annuities, etc. Any unwarranted executive action as to the annuities of the claimant Indians prior to that law, and any failure of the executive branch of the Government after the date of that law, to comply with its requirements, or to observe its provisions, can not divest the claimant Indians of their treaty rights to their proportionate shares of the tribal annuities, etc. The whereabouts of the claimant Indians were well known to the department, as is abundantly attested by the public records.

Your memorialists, having herein shown that their claims rest upon the sure foundations of treaty, law, and justice, respectfully petition your honorable body to give them their prompt and full consideration and investigation, and to enact such legislation as will require the speedy ascertainment and enrollment of the claimant Indians and an accounting showing what amounts have been withheld from them of the annuities, interest on trust fund, and other moneys, or estate of the Pottawatomie Nation of Indians from the date of the treaty of 1833 to and including the year 1863, and also for the additional period from 1864 to the present time. When this shall have been done, your memorialists urgently request that prompt payment of the amount so found to be due and payable to them be distributed to those entitled to receive it.

Your memorialists also request that a school affording advantages and facilities for the education of our children be established and maintained at some point in the State of Wisconsin found to be most convenient for the greatest number of them.

And your petitioners will ever pray.

Adopted by the Pottawatomie Indians of Wisconsin in council assembled at Carter, in Forest County, Wis., this 17th day of September, 1902.

CHARLES KISBECK,
President of the Council.
JOHN GHUNDEER,
Secretary of the Council.
R. O. BECK, Counsel.

[House Document No. 830, Sixtieth Congress, first session.]

REPORT OF INVESTIGATION OF CLAIMS OF POTTAWATOMIE INDIANS OF WISCONSIN.

DEPARTMENT OF THE INTERIOR,
Washington, April 1, 1903.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES:

I have the honor to invite your attention to the following act of Congress approved June 21, 1906 (34 Stat. L., 380):

"That the Secretary of the Interior be, and he is hereby, directed to cause an investigation to be made of the claims of the Pottawatomie Indians of Wisconsin, as set forth in their memorial to Congress, printed in Senate Document No. 185, Fifty-

seventh Congress, second session, and to report thereon to Congress at the beginning of the next session thereof—

"1. Showing on the best information now obtainable what number of said Indians continued to reside in the State of Wisconsin after the treaty of September 26, 1833.

"2. Their proportionate shares of the annuities, trust funds, and other moneys paid to or expended for the tribe to which they belong, in which the claimant Indians have not shared.

"3. The amount of such moneys retained in the Treasury of the United States to the credit of the claimant Indians as directed by the provision of the act of Congress approved June 25, 1864; if none have been so retained, the amount that should have been annually so retained under said law.

"4. Showing, also, what disposition has been made of the annuities, trust funds, and other moneys of said tribe.

"5. With the amounts and the status of any now remaining to their credit in the Treasury or otherwise.

"6. He will also cause an enrollment to be made of said Pottawatomie Indians." And in complying with the provisions thereof, in the order stated in the act, I submit the following report:

"1. Showing on the best information now obtainable what number of said Indians continued to reside in the State of Wisconsin after the treaty of September 26, 1833."

The treaty of September 26, 1833 (7 Stat. L., 431), was not ratified and proclaimed until February 21, 1835, and by its terms the Indians were permitted to retain possession, for the term of three years, of the country north of the boundary line of the State of Illinois (art. 2). Removal from Wisconsin was therefore not required until after February 21, 1838, and article 4 of said treaty provided for payment of annuities secured by former treaties and the one then under negotiation, in accordance with this plan of emigration.

The report of the Commissioner of Indian Affairs for the fiscal year 1840 to 1841 (pp. 253 and 254 of the consolidated reports for 1838-1842), in reviewing the then existing sources of information relative to the number of the Pottawatomie Indians, shows that a total of 1,137 members of the tribe had fled to Canada after the ratification of the treaty of 1833 and prior to 1840; that the total number of these Indians remaining at their old homes in the States was 2,087 in 1840, of which number 950 were in Michigan, south of Grand River. If the number who fled to Canada from Wisconsin and Michigan was proportionate to the number which remained in each of said States, then 619 of those who went to Canada belonged to the Wisconsin band and 518 to the Michigan band. Supplementing these figures with the census taken in 1870 by Special Indian Agent D. A. Griffith (Report of Commissioner of Indian Affairs for 1870, p. 323), showing 928 members of the tribe then in Wisconsin, and the enrollment made by Dr. Wooster, completed January 15, 1908, more particularly referred to hereinafter, the following table has been constructed:

TABLE NO. 1.—Location and number of the Wisconsin Band of Pottawatomie Indians.

	Number in Wisconsin.	Number in Canada.	Total number.
1840.....	1,137	619	1,756
1870.....	928	(?)	2,007
1908.....	457	1,550	2,007
Average.....	841	1,084	1,925
Total average.....			1,925

? Not known.

By taking the average number of the tribe in Wisconsin and adding it to the average number in Canada, rather than averaging the two total numbers, effect is given to the figures for 1870.

"2. Their proportionate shares of the annuities, trust funds, and other moneys paid to or expended for the tribe to which they belong, in which the claimant Indians have not shared."

The total of such funds as estimated in accordance with statements Nos. 1 to 6, inclusive, hereto attached, amounts to \$1,964,565.87. However, it will be seen by reference to Table No. 2, page 6, herof, that the treaty of July 29, 1829 (7 Stat. L., 320), providing for a perpetual annuity of \$16,000, was made with the "Chippewas, Ottawas,

and Pottawatomies;" that the treaty of October 20, 1832 (7 Stat. L., 378), providing for a 20-year annuity of \$15,000, was entered into with the "Pottawatomies of the Prairie and Kankakee;" that the treaty of October 26, 1832 (7 Stat. L., 394), providing for a 20-year annuity of \$20,000, was made with the "Pottawatomies of the Wabash," and that the treaty of October 27, 1832 (7 Stat. L., 399), providing for a 12-year annuity of \$15,000, was made with the "Pottawatomies of Indiana and Michigan Territory." These various bands of Indians were united into one tribe, to be henceforward known as the "Pottawatomie Nation," by the provisions of the treaty of June 17, 1846 (9 Stat. L., 853), and were thereafter to "receive their annuities and other benefits in common," and as soon as the provisions of said treaty could be put into effect their annuities and other moneys were so paid. Prior to the treaty of 1846 these annuities seem to have been paid to the several bands with which the treaties were negotiated, but as the Court of Claims, in the case of the Pottawatomie Indians v. The United States (27 C. C., 403, VIII finding of fact), placed these annuities on the same footing with the other annuities of the Pottawatomie Tribe, no distinction has been made in the statements submitted herewith, and they have been reckoned as a part of the common annuities of the tribe for the entire period from 1838 to 1907, inclusive.

"3. The amount of such moneys retained in the Treasury of the United States to the credit of the claimant Indians as directed by the provision of the act of Congress, approved June 25, 1864, if none have been so retained, the amount that should have been annually so retained under said law."

No moneys have been retained in the Treasury of the United States to the credit of the said Wisconsin Indians, as directed by the act of June 25, 1864. Owing to the fact that a census of the Wisconsin band has not been taken annually, it is impossible to give the amount which should have been annually retained in the Treasury of the United States under said act. The average annual amount which should have been retained in accordance with the act of June 25, 1864, is estimated to be \$24,899,997.

"4. Showing also what disposition has been made of the annuities, trust funds, and other moneys of said tribes."

The annuities of said tribe are shown in the following table:

TABLE NO. 2.

Treaty.	United States Statutes.	Tribe payable to.	Amount.	Time.
Aug. 3, 1795	7-49, art. 4.	Pottawatomies.....	\$1,000	Perpetual.
Sept. 3, 1829	7-113, art. 3.	do.....	500	Do.
Oct. 2, 1818	7-185, art. 3.	do.....	2,500	Do.
Aug. 29, 1821	7-218, art. 4.	do.....	5,000	20 years.
Oct. 16, 1826	7-295, art. 3.	do.....	2,000	Perpetual.
Do.....	7-295, art. 3.	do.....	1,150	Perpetual.
Sept. 20, 1828	7-317, art. 2.	do.....	1,000	20 years.
Do.....	7-317, art. 2.	do.....	2,000	Perpetual.
July 29, 1829	7-329, art. 2.	Chippewas, Ottawas, and Pottawatomies.....	16,000	Do.
Do.....	7-329, art. 2.	do.....	500	Do.
Oct. 20, 1832	7-378, art. 3.	Pottawatomies of the Prairie and Kankakee.....	15,000	20 years.
Oct. 26, 1832	7-394, art. 3.	Pottawatomies of the Wabash.....	20,000	Do.
Oct. 27, 1832	7-399, art. 4.	Pottawatomies of Indiana and Michigan Territory.....	15,000	12 years.
Sept. 26, 1833	7-431, art. 3.	Chippewas, Ottawas, and Pottawatomies.....	14,000	20 years.
Sept. 27, 1833	7-442, art. 2.	do.....	2,000	Do.
June 17, 1846	9-853, art. 19.	Pottawatomie Nation.....	300	Perpetual.

¹ Bushels of salt.

² Barrels of salt.

For other funds received under the treaty of 1846 and their disposition, see statements Nos. 2, 3, 4, and 5 attached hereto.

After the treaty of 1833 (7 Stat. L., 431), the annuities shown in the foregoing table were paid in Wisconsin, Indiana, and Michigan, and a portion west of the Mississippi, to the members of the several bands named, until 1838, after which time they were paid in accordance with article 4 of said treaty of 1833 to the members of the several bands west of the Mississippi (with the exception of certain payments made to the Pottawatomies who remained in Michigan on account of their religion until 1846). After the treaty of June 17, 1846 (9 Stat. L., 853), the annuities of the said tribe were paid except certain shares commuted in accordance with the provisions of the treaty of 1861 (12 Stat. L., 1191), to the several bands in Kansas who were under the jurisdiction of the former Pottawatomie and Great Nemaha Agency and the present Pottawatomie Indian School located at Hoyt, Kans.

The cash payments of \$120,000 (see statement No. 2), and the interest on the balance of the purchase price of the lands ceded to the United States by the treaty of June 17, 1846, amounting to \$32,150 annually (see statement No. 3), were paid to the members

of the "Pottawatomie Nation" who emigrated to Kansas and were enrolled subject to the jurisdiction of the agent in charge at the Pottawatomie and Great Nemaha Agency.

The balance of the purchase price of the lands ceded to the United States by the treaty of June 17, 1846 (see statements Nos. 2 and 6), amounting to \$643,000, was paid in part, from time to time, to the several members of the tribe to whom allotments in severalty were made in accordance with the treaty of 1861, as modified by later agreements, until in 1875 said principal was reduced to \$230,004.20. One hundred and forty eight thousand eight hundred and forty-four dollars and fifty-one cents of this \$230,004.20 was paid to the Pottawatomies in Kansas in the first quarter of the fiscal year 1908, in accordance with the provisions of the act of March 1, 1907 (34 Stat. L., 1031). The balance of \$81,219.69, being the shares of certain minors and incompetents, was retained in the Treasury of the United States in accordance with the act of April 21, 1904 (33 Stat. L., 201).

The lands in Kansas, acquired under the provisions of the treaty of 1846 (9 Stat. L., 853), were subdivided in accordance with the provisions of the treaty of 1861 (12 Stat. L., 1191), as modified by the treaty of March 20, 1866 (14 Stat. L., 763), and the agreement of February 27, 1867 (15 Stat. L., 531), and allotments in severalty were made at various times to the members of the tribe who were deemed competent to manage their own lands and funds, until 1,551 members, constituting about two-thirds of the total membership of the nation, had received allotments, aggregating 152,128.94 acres. (Report of Wolcott and Ross, 1863, allotments to Pottawatomies.) To each of those to whom allotments in severalty were made under the treaty of 1861, as modified by later agreements, the commuted value of their share in the annuities and trust funds of the tribe was also paid.

Approximately 84,089.62 acres of the lands in Kansas, acquired under the provisions of the treaty of 1846, were also set aside for those who desired to hold their lands in common. (See statement No. 5.) These lands have been subsequently allotted to the several members of the Kansas bands (who had previously declined to take advantage of the provisions of the treaty of 1861), in accordance with the act of February 28, 1899 (30 Stat. L., 909), as amended by the act of March 3, 1903 (32 Stat. L., 982, 1007), until there now remains only 590.62 acres unallotted (Report of Commissioner of Indian Affairs, 1906, p. 457), 319 acres reserved for the use of the school and 1 acre reserved for church purposes.

The interest on the funds shown in table No. 3 following has been applied to the support of the schools maintained for the Pottawatomie Tribe. The members of the Wisconsin Band have resented all attempts on the part of the Indian Service to place them in schools, and even now are afraid of being compelled to attend. (See p. 10 of Dr. Wooster's Report to the Commissioner of Indian Affairs, Dec. 18, 1907, copy of which is attached.)

"5. With the amounts and the status of any now remaining to their credit in the Treasury or otherwise."

The amounts appropriated for the Pottawatomie Indians and being paid during the fiscal year 1908 by the superintendent of the school in Kansas, will be found in the act of Congress approved March 1, 1907 (34 Stat. L., 1015, 1030, 1031). The effect on the sundry annuities of the commutation by those who became citizens is shown in the reduced amounts appropriated as compared with the table of annuities given on page 6 hereof.

In addition to the 590.62 acres of lands now held in common by the members of the nation who maintained tribal relations in Kansas, there was, on March 25, 1908, in the Treasury of the United States to the credit of the Pottawatomie Nation of Indians, the amounts shown in the following table:

TABLE NO. 3.

Pottawatomie education fund.....	\$76,907.44
Pottawatomie general fund.....	89,501.91
Pottawatomie mills fund.....	17,346.29
Interest on Pottawatomie education fund.....	933.98
Interest on Pottawatomie general fund.....	11,945.36
Interest on Pottawatomie mills fund.....	4,048.88
Indian moneys, proceeds of labor (Pottawatomies in Kansas).....	167.00
Fulfilling treaties with Pottawatomies.....	3,228.48
Fulfilling treaties with Pottawatomie Nation (award of June 28, 1869).....	1,766.50
Payment to Pottawatomies in Kansas (minors).....	80,522.52
Total.....	286,428.36

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The "general fund" mentioned in the foregoing table took its origin from article 3 of the treaty of September 26, 1833 (7 Stat. L., 431), by which the United States agreed to pay "\$150,000 to be applied to the erection of mills, farm houses, Indian houses, and blacksmith shops, to agricultural improvements, to the purchase of agricultural implements and stock, and for the support of such physicians, millers, farmers, blacksmiths, and other mechanics as the President of the United States shall think proper to appoint."

So far as known, the expended portion of this fund and interest thereon have been used for the purposes specified in the treaty, but the members of the Wisconsin Band have not shared therein.

"Seventy thousand dollars for purposes of education and the encouragement of the domestic arts, to be applied in such manner as the President of the United States may direct," was also to be paid in accordance with said article 3 of the treaty of 1833.

An appropriation for fulfilling the provisions of the treaty of 1833 was made by the act of March 3, 1835 (4 Stat. L., 790).

The treaty of October 16, 1826 (7 Stat. L., art. 3), provided for an annual appropriation of "\$2,000 for purposes of education, as long as the Congress of the United States may think proper, to be expended as the President may direct, and also to build for them a mill sufficient to grind corn, on the Tippecanoe River, and to provide and support a miller."

The treaty of September 20, 1828 (7 Stat. L., 317), also provided for the annual payment of \$1,000 "for the purposes of education, as long as Congress may think the appropriation may be useful." The appropriations made under these treaties were in part added to the appropriation for fulfilling the treaty of 1833, and together account for the credit to the educational fund and the mill fund. These funds were for a time invested in bonds or stocks, in accordance with the expressed wish of the Indians, but under the act of April 1, 1880 (21 Stat. L., 70), all such securities were converted into cash and the proceeds deposited in the Treasury of the United States.

The item of \$2,228.48, "fulfilling treaties with Pottawatomies," represents the unpaid individual shares of certain annuitants retained on account of their minority or incompetency. The same status exists with reference to the item of \$1,766.50.

The item of \$80,522.52 is composed of the unpaid shares of minors and incompetents who were entitled to participate in the final distribution of the \$230,064.20, which was the remainder of the balance of the purchase price of the lands ceded to the United States by the treaty of 1846.

The item of \$167 "Indian moneys, proceeds of labor," Pottawatomies in Kansas, is derived from miscellaneous sources and is held for the use of the tribe, exclusive of those who have become citizens.

"6. He will also cause an enrollment to be made of said Pottawatomie Indians."

During the fall of 1906 a roll of the Pottawatomies in Wisconsin was prepared, but was not considered sufficiently correct on which to base this report. On June 28, 1907, a clerk of the office of the Commissioner of Indian Affairs was detailed to proceed to Wisconsin and other points to prepare a roll of the Wisconsin Pottawatomies. His roll and report were completed and submitted to the Commissioner of Indian Affairs December 18, 1907 (a copy of report is inclosed), showing 1,880 found by him to be entitled to enrollment. A supplemental roll has been submitted by him, dated January 18, 1908, containing 127 additional names, making a total of 2,007 persons enrolled. These rolls are believed by the Commissioner of Indian Affairs to be as nearly correct and complete as it is practicable to make them. Of the total number enrolled, 457 reside in Wisconsin and Michigan and 1,550 in the Dominion of Canada. The numbers so found have been used in compiling the data necessary for this report.

The unusual difficulties attending the making of this roll and the compilation of the data necessary to determine the approximate interest of the Wisconsin Band in the annuities and other funds of the tribe have delayed the rendition of this report.

Very respectfully,

JAMES RUDOLPH GARFIELD,
Secretary.

STATEMENT No. 1.

This statement shows the amount of limited and perpetual annuities due and paid the Pottawatomie Indians west of the Mississippi River, from 1838 to 1863, and the amount that would have been due from 1864 to 1907, inclusive, had no payment of trust funds, etc., been made under the treaty of 1861.

As the members of the Wisconsin Band of Pottawatomies were not required to remove west until after February 21, 1838, it is presumed, and apparently admitted

by them in their memorial (S. Doc. No. 185, 57th Cong., 2d sess.), that they shared in the distribution of the tribal annuities up to and including the year 1837.

Articles II and III of the treaty of 1861 (12 Stat. L., 1191), required the United States Indian agent for the Pottawatomie tribes in Kansas to take an accurate census of them, in separate lists, and provided for the distribution of the proportionate share of the cash value of all the tribal funds, to such allottees of the tribe as were deemed capable of citizenship. In accordance with these provisions, as modified by later acts, about two-thirds of the residents of the tribe in Kansas did become citizens, and received their distributive share of the estimated cash value of all annuities and other funds of the tribe. As the Wisconsin Band of Pottawatomies did not share in this distribution, nor in the payment of annuities, after 1838, all limited and perpetual annuities will be treated as though the aforesaid treaty of 1861 had not been entered into, and as though no division of funds had been made.

Congress, by the act of June 25, 1864 (13 Stat. L., 172), provided as follows:

"For deficiencies in subsistence and expenses of removal and support of the Sioux and Winnebago Indians of Minnesota, during the fiscal year ending June 30, 1864, \$137,293.40: *Provided*, That the portion expended in behalf of the Winnebagoes shall be reimbursed to the Treasury upon the sale of their lands in Minnesota to enable the Secretary of the Interior to take charge of certain stray bands of Winnebago and Pottawatomie Indians, now in the State of Wisconsin, with a view to prevent any further deprivations by them upon the citizens of that State; and for provisions and subsistence, \$10,000: *Provided*, That the proportion of annuities to which said stray bands of Pottawatomies and Winnebagoes would be entitled if they were settled upon their reservations with their respective tribes shall be retained in the Treasury to their credit, from year to year, to be paid to them when they shall unite with their said tribes, or to be used by the Secretary of the Interior in defraying the expenses of their removal, or in settling and subsisting them on any other reservation which may hereafter be provided for them."

As the effect to be given this statute in determining the proportionate share of the Wisconsin Pottawatomies in the annuities of the tribe has not been judicially determined, the table following is submitted, showing the total annuities of the tribe for the two periods from 1838 to 1863, inclusive, 26 years, and from 1864 to 1907, inclusive, 44 years.

Treaty.	Annual amount.	Time.	Amount due nation from 1838 to 1863, inclusive (26 years).	Amount due nation from 1864 to 1907, inclusive (44 years).
Aug. 3, 1795	\$1,000.00	Perpetual	\$26,000.00	\$44,000.00
Sept. 30, 1809	2,500.00	do	13,000.00	22,000.00
Oct. 2, 1818	2,500.00	do	65,000.00	110,000.00
Aug. 29, 1821	3,000.00	20 years	20,000.00	
Oct. 16, 1826	2,000.00	22 years	22,000.00	
Do	(1)	Perpetual	1,400.00	2,464.00
Sept. 20, 1828	2,000.00	do	37,000.00	88,000.00
Do	1,000.00	20 years	11,000.00	
July 29, 1829	16,000.00	Perpetual	416,000.00	704,000.00
Do	(2)	do	1,300.00	2,500.00
Oct. 20, 1832	15,000.00	20 years	225,000.00	
Oct. 26, 1837	20,000.00	do	300,000.00	
Oct. 27, 1837	15,000.00	12 years	105,000.00	
Sept. 24, 1838	14,000.00	20 years	224,000.00	
Do	2,000.00	do	37,000.00	
June 17, 1846	300.00	Perpetual	5,100.00	13,500.00
Total			1,318,836.00	985,864.00

1 160 bushels of salt.

1 50 barrels of salt.

By the act of Congress approved March 19, 1890, the Court of Claims was given jurisdiction to try all questions of difference arising out of treaty stipulations with the Pottawatomie Indians of Michigan and Indiana, and to render judgment thereon. In accordance with this statute the consolidated cases of the Pottawatomie Indians v. The United States were heard and determined by the court (27 C. C., 403). In its ninth finding of facts the court concludes that the average number of Indians remaining in Wisconsin during the period commencing in 1836 and extending to 1872, in accordance with the supplemental article to the articles supplementary to the treaty of 1833, was 291, and that the number of Indians who had emigrated to the west averaged 2,812 for the same period.

Indian Affairs. (RG 10, Volume 2791, File 156,610, pt. 6)

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The total membership of the bands in Kansas, as estimated by the census taken in pursuance of the treaty of 1861 (12 Stat. L., 1191), was 2,180. Taking this number as the average of the tribe in Kansas from 1872 to 1907, and comparing it with the average of 2,812 found by the Court of Claims for the preceding period from 1836 to 1872, a mean average of 2,496 for the whole period from 1836 to 1907 is obtained for the total membership of the tribe west of the Mississippi.

Finding 11 of the Court of Claims also determined that the total number of said Indians who remained in Michigan was 1,100. Combining these figures with those given in Table No. 1, showing the membership of the tribe in Wisconsin and Canada, and other data, the following results are obtained:

Average number of Pottawatomies west of the Mississippi from 1836 to 1907	2,496
Whole number remaining in Michigan	1,100
Approximate number which fled to Canada from Michigan	518
Average number of the Wisconsin Band in Wisconsin and Canada	1,925

Total membership of the tribe..... 6,039

Assuming that the Indians who fled to Canada are entitled to share equally with those who continued to reside in Wisconsin, the fractional part of the total annuities for the period stated due the Wisconsin Band is $\frac{1,100}{6,039}$; hence the proportionate share of the Wisconsin Band from 1838 to 1863 is \$484,156.75. Proportionate share of the Wisconsin Band from 1864 to 1907 is \$314,265.37. Total share of annuities, \$798,422.12.

STATEMENT NO. 2.

The treaty of June 17, 1846, Article II (9 Stat. L., 853), ceded to the United States all the lands granted to the Pottawatomie Nation by the treaty of September 26, 1833. (7 Stat. L., 431.)

Article III of the treaty provided as follows:

In consideration of the foregoing cessions or sales of lands to the United States, it is agreed to pay to said tribes of Indians the sum of \$850,000, subject to the conditions, deductions, and liabilities provided for in the subsequent articles of this treaty..... \$850,000.00

The deductions were to be as follows:

By Article V. For payment of first annuities to enable the Indians to pay their debts before leaving for their new homes, to pay for their improvements, etc..... \$50,000.00

By Article VI. To pay expenses for removal of the Upper and Lower Bands and subsistence for 12 months after their arrival at new homes..... 70,000.00

Total cash payments..... 120,000.00

By Article IV. Payment to the United States for 576,000 acres of land in Kansas..... 87,000.00

Total deductions..... 207,000.00

Balance..... 643,000.00

For the five years prior to 1846 the average number of Indians west of the Mississippi, as shown by the Court of Claims in the case previously referred to, was 2,331; for the same period the total number in Michigan was 1,100, of which there was an average of 239 who were not entitled to share in the proceeds of the sale of lands under the treaty of 1846, they having received lands in Michigan under the supplemental article to the treaty of 1833. The figures are established by the eighth and ninth findings of the said court. Using the figures already determined as representing the number of the tribe in Canada and Wisconsin, the following table has been constructed, showing the total number of claimants who might have shared in the cash payment of \$120,000 made under the treaty of 1846:

Average number of the tribe west of the Mississippi	2,231
Number in Michigan	831
Approximate number in Canada	518
Average number of the Wisconsin Band in Wisconsin and Canada	1,925

Total number of claimants..... 5,505

Fractional part due the Wisconsin Band, assuming that all members of the tribe should share equally, $\frac{1,925}{5,505}$ of \$120,000, which amounts to \$41,961.85.

STATEMENT NO. 3.

By Article VII of the treaty of June 17, 1846, the balance of the purchase price of \$643,000 which remained after the deductions stated was to be held in trust by the United States, and to draw interest at 5 per cent annually, commencing at the expiration of one year after the removal of said Indians and continuing for 30 years and until the nation was reduced below 1,000 souls. Interest on that sum, amounting to \$32,150, was first appropriated by the act approved July 29, 1848, and the same amount was yearly appropriated up to and including 1868, after which the trust principal was reduced by the shares of the citizens being withdrawn in accordance with the provisions of the treaty of 1861, until, in 1875, it only amounted to \$230,064.20 and the interest to \$11,503.21.

In determining the number of claimants entitled to share in this fund recourse is again had to the decision of the Court of Claims (eighth, tenth, and eleventh findings of fact) and the other sources of information mentioned, from which the following compilation is made:

Average number of the tribe west from 1846 to 1872	2,640
Average number of the tribe west from 1872 to 1907 (census under treaty of 1861)	2,180
	4,820

Mean average west from 1846 to 1907	2,410
Numbers in Michigan, exclusive of average of 291 who received lands there	809
Approximate number in Canada from Michigan	518
Average number of Wisconsin Band in Wisconsin and Canada	1,925

Total number of possible claimants..... 5,662

Fractional part of said interest, due the Wisconsin Band, assuming that all share equally, $\frac{1,925}{5,662}$.

The total interest accrued and estimated on the said balance of \$643,000 is shown by periods as follows:

Annual interest	\$32,150.00
Amount due nation from 1848 to 1863 inclusive (16 years)	514,400.00
Amount due the Wisconsin Band	174,888.73
Amount calculated for nation from 1864 to 1907 (44 years)	1,414,000.00
Amount due the Wisconsin Band	480,943.93

STATEMENT NO. 4.

Share of the Wisconsin Band of Pottawatomies in the proceeds of the sale of surplus lands and interest on deferred payments.

Under Article V of the treaty of 1861 (12 Stat. L., 1191) the privilege was granted the Leavenworth, Pawnee & Western Railroad Co. to purchase the surplus lands of the Pottawatomies (acquired by the treaty of 1846 for the retained purchase price of \$87,000) at \$1.25 per acre. Article 2 of the agreement of February 27, 1867 (15 Stat. L., 531), sets forth that the Leavenworth, Pawnee & Western Railroad Co., having failed to purchase the lands as provided by the agreement of 1861, the Atchison, Topeka & Santa Fe Railway Co. may purchase said lands at \$1 per acre, the amount of such purchase money to be paid within five years from date of purchase, with interest at the rate of 6 per cent per annum on deferred payments. Article 2 of the 1867 agreement provided that John F. Deils, John Shoemaker, and M. Gillaud should have the right to purchase in a compact body 1,013.54 acres of the unallotted lands at \$1 per acre. These parties actually purchased and paid for 1,014.62 acres. The proceeds from the sale of the lands were divided according to the treaty of 1861 among the 2,180 members of the tribe, whose numbers were ascertained by the census taken, as required by said treaty. No other claimants shared. The proportion due the Wisconsin Band is estimated from the following table, using the figures as previously stated:

Number in Kansas	2,180
Number in Michigan	809
Approximate number in Canada from Michigan	518
Average number of the Wisconsin band in Wisconsin and Canada	1,925

Total number of possible claimants..... 5,432

Fractional part due the Wisconsin band, $\frac{1}{11}$.
The following is a statement of the land account under the treaty of 1867 (15 Stat. L., 531):

Interest paid by the Atchison, Topeka & Santa Fe Ry.....	\$101,630.05
Amount paid for land by Deil, Shoemaker, and Gillaud.....	1,014.62
Amount paid by the Atchison, Topeka & Santa Fe Ry.....	338,766.82
Total.....	441,411.49

Proportionate share of the Wisconsin Band, \$156,427.43.

STATEMENT NO. 5.

Showing the number of acres allotted and held in common under the treaty of 1861 valued at \$1 per acre.

Article 4 of the treaty of June 17, 1846 (9 Stat. L., 1853), provided for the purchase of 576,000 acres of land, which was to form the new reservation for the Pottawatomies in Kansas. Under the provisions of the treaty part of this land was to be allotted in severalty to those members who should afterwards become citizens, and part was to be set aside in portion equal to the amount given to those in severalty, to be held in common by the noncitizens, and the remainder of the land was to be sold at \$1 per acre to the Atchison, Topeka & Santa Fe Railway Co., except the 1,014.62 acres sold to Deil, Shoemaker, and Gillaud. The total amount sold was 339,781.44 acres, showing that the number of acres allotted in severalty and the number to be held in common aggregated 236,218.56 acres. Placing the same value on this allotted land as was paid for the surplusage, it would be worth \$236,218.56. The Wisconsin Pottawatomies not having been allotted lands elsewhere, would have been entitled to a share of the 576,000 acres in Kansas had they removed there. If they are entitled to share in the proceeds of the surplus lands, then each one would be entitled to share equally with the Kansas members of the tribe in the lands allotted and held in common, either by receiving their proper allotments or an equivalent in cash. As allotments, however, were to be based on the status of the several members of the tribe, which status has not been determined for the Wisconsin Band, it is impracticable to determine the number of acres that they should have received in allotments; hence an estimate of the cash value of the proportionate shares of the entire Wisconsin Band is submitted, taking the membership of the tribe as compiled for statement No. 4:

Acres.....	236,218.56
Value.....	\$236,218.56

The fractional part of the value of this land to which the Wisconsin Band would have been entitled had they emigrated with their brethren is $\frac{1}{11}$, which amounts to \$85,065.71. It is presumed that the use of lands in Wisconsin and Michigan is sufficient consideration to form an equitable set-off against any claim for interest that might otherwise be held to have accrued on this item.

STATEMENT NO. 6.

Beginning with the fiscal year 1869, certain portions of the principal of \$643,000 remaining from the purchase price of the lands ceded to the United States under the treaty of June 17, 1846 (9 Stat. L., 853), were paid from time to time to the members of the tribe in Kansas, who elected to receive their allotments in severalty, until in 1875 it was reduced, as previously stated, to \$230,064.20, of which amount \$148,844.51 was paid to the Pottawatomies in Kansas in the first quarter of the fiscal year 1908, in accordance with the act of March 1, 1907 (34 Stat. L., 1031). The balance of \$81,219.69, being the shares of certain minors and incompetents, was retained in the Treasury of the United States. Although the act of March 1, 1907, specifically provides that the balance of \$230,064.20, appropriated by it, shall be paid to the "members of the Pottawatomic Tribe of Indians in Kansas," it is believed that the equitable right of the members of the Wisconsin Band to share in the payment of this balance is as great as their right to share in the other portion of the \$643,000 principal; hence this statement is made to include the entire amount of said principal.

The number of claimants is taken in conformity with the estimate made in statement No. 4, showing the fractional part due the Wisconsin Band to be $\frac{1}{11}$.
 $\frac{1}{11}$ of \$643,000 equals \$227,866.10.

RECAPITULATION.

Proportionate shares of the Wisconsin Pottawatomies.

Statement.	1838 to 1863.	1864 to 1907.	Total.
No. 1.....	\$484,156.75	\$314,255.37	\$798,412.12
No. 2.....			41,061.82
No. 3.....	174,888.53	480,943.93	655,832.46
No. 4.....			150,427.43
No. 5.....			84,065.71
No. 6.....			227,866.10
Total.....	659,045.28	795,199.30	1,454,244.58

¹ From 1848 to 1863.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 18, 1907.

THE COMMISSIONER OF INDIAN AFFAIRS.

SIR: Pursuant to your instructions of June 28, 1907, to complete the enrollment of Wisconsin Pottawatomies and their descendants in Wisconsin, Michigan, and Canada, as provided for by the act of Congress approved June 21, 1906 (34 Stat. L., 380), I have the honor to submit herewith a roll or schedule containing the names of 1,880 persons, and to report as follows:

As instructed, I proceeded directly to Carter, Wis., and at once called on Rev. Erik O. Morstad, a Lutheran missionary among the Pottawatomies, who had rendered valuable assistance to Indian Inspector Churchill in the preparation of his roll of the Indians. On consultation with the missionary it was learned that he had inaugurated the movement to prosecute a claim against the United States in behalf of these Indians and that he was personally acquainted with nearly all their families. It was learned also that the method followed in making the previous enrollment in Wisconsin was to visit the town or village nearest the Indian group or settlement and send an Indian interpreter or guide for them so that their tribal status might be inquired into and their right to enrollment determined; that he, the missionary, had subsequently ascertained that some of the persons enrolled at the various places visited had misrepresented the facts and consequently misled the inspector into believing that they were entitled to enrollment. It was learned also that there had been some omissions by reason of absence and failure of Indians to remember the names of all their children, etc.

On the strong recommendation of Rev. Mr. Morstad, Charles Kisheck, a chief of his people, and by far the most reliable and best versed man among them in genealogical matters, was employed by me as interpreter.

In company with the missionary, who was engaged as guide in accordance with your instructions, the group of Indians some 6 or 8 miles (by trail) east of Carter, Wis., was first visited. At this place some changes in the previous enrollment were found to be necessary by reason of births, deaths, etc.

A consultation at which Chief Kisheck—the intelligent and trustworthy Pottawatomic interpreter—was present developed that it would be impossible to obtain definite information by correspondence with the Indians of the various groups in Wisconsin, for the reason that they were unable to read or write, and we accordingly decided to make quick visits to their camps, or wherever they could be found, in order properly to check up the Churchill roll.

Method of enrollment and evidence required.—During our visits to the groups and camps of the Indians in Wisconsin inquiries were made of the oldest and most reliable Indians to ascertain what knowledge they had of any relatives residing in Canada, or their ancestors, and whether they were receiving rights from the Dominion Government.

At the Carter group the principal sources of information were Joe Femma, a full-blood Pottawatomic, 83 years of age, and Chief Kisheck, 65 years of age. In Canada when reservations were visited, the Indian agents were usually found to be courteous and of material assistance to us in the work. Here much was learned also from questioning the old Indians, the ones of greatest assistance being Chief John Tobey, 88 to 90 years of age, of Honey Harbor; Josiah Williams, 80 years of age, of Sarnia; Amab Wenigwans, 70 years of age, residing at South Bay, Manitoulin Island; William Wankay, 86 years of age, of Cape Croker; and William Abi, 90 years of age, living at Christian Island.

On arriving at a camp, settlement, or reservation, the Indians were immediately gathered in council or a meeting was called for the next day. At the council the Indians claiming Pottawatomie Indian blood were then, separately, carefully examined with the aid of the interpreter, and Rev. Mr. Morstad, who speaks the Chippewa tongue—the court language of the Ojibway, Ottawa, and Pottawatomie Tribes—also assisted in the examinations. At many of the places, especially reservations, the chiefs and headmen were of considerable help in having all those of alleged Pottawatomie descent present at the conference.

In order to enroll a claimant was required to prove satisfactorily (1) that he or one of his ancestors was a member of the Wisconsin Pottawatomie Tribe or band at the time of the making of the treaty of 1833, but did not move west of the Mississippi River, as required by that treaty, and consequently did not receive any of the benefits accruing thereunder; and (2) that neither he nor the ancestor through whom he claimed was or had been enrolled with any other tribe or band in the United States.

A large number of applicants were examined who, by their own admissions, were clearly shown to be without Pottawatomie blood. They were refused enrollment and told why. In many cases where Wisconsin Pottawatomie descent was claimed a searching inquiry disclosed that their ancestors, while Pottawatomies, belonged in southern Wisconsin or to the Michigan branch known as Pokagon's band of Pottawatomies. They also were rejected.

Where doubt existed the claimants were given the benefit of it; their names were taken in the field book of enrollments, and their cases were submitted to two or more of the old men heretofore mentioned as authoritative sources of information. Most of the ancestors of the applicants were at once recalled by Chief Kisheck, and in the end his objections to any enrollment were invariably sustained by the other old men. One doubtful case in which statements were taken for submission to the office is that of the Bibonisi family, which is discussed under the Wikwemikong group.

Location of various groups.—These refugees, roving Indians, are widely scattered in northern Wisconsin, Michigan, and in the Province of Ontario, Canada, the points or towns in the United States nearest to which the principal groups are located being Carter, Star Lake, Phlox, Minocqua, and Wausaukee, Wis., and Bark River, Mich.

Carter group.—As a result of our visit to the group named the following changes have been made in the enrollment at that place:

Added: An unnamed son, born May 15, 1907, to William Pemmoimee (No. 19, Churchill roll).

Omitted: Kishigobiness (No. 79, Churchill roll), died in November, 1906. George Wabuum, or Netagwetak (No. 9), and his children—Kiwess, Okitchigamig, Wendasinok, Wenakooow, and Anakwatons (Nos. 11–15, inclusive), were found to be enrolled and allotted (allotment Nos. 797–802, inclusive), at the Pottawatomie Agency, Kans. Joe Shawno, or Miogishig (No. 121), is enrolled at the Green Bay Agency, Wis., with his mother, under the name of Honest John, jr.

Phlox group.—Phlox is a small village 2 or 3 miles west of the northwest corner of the Menominee Indian Reservation. The Indians were found to be residing as intruders about 10 miles (by trail) within the northern part of the reservation. They were living with fifteen or sixteen war-dancing members of the Prairie Band, who have been allotted and are enrolled in Kansas. The changes made necessary by the visit are:

Added: An unnamed daughter, born June 10, 1907, to John Noon (No. 135). Miaogishigok, a daughter of No. 142, and her son, Kapouike; Pitwegishigok, a cousin of No. 134; John Kowabami, a brother of No. 142; Tchingwe and Aiatabit, children of No. 158; and Migo, an old Pottawatomie woman who was a child at the time of the treaty of 1833. These persons were found to be entitled to enrollment, having been overlooked or unreported to the inspector at the time of his visit.

Omitted: Honest John, sr. (No. 142), who died July 7, 1907. Mekatewikomekwe (No. 147), enrolled and allotted (allotment No. 794) at the Pottawatomie Agency, Kans. Kiwenike (No. 150), who is enrolled and allotted (allotment No. 804) at the Pottawatomie Agency, Kans. Abwekoang, or Charley Batiste (No. 151), also enrolled and allotted (allotment No. 791) in Kansas.

Minocqua group.—These poverty-stricken Indians were reached by going to a station (Goodnow) about 14 miles from Minocqua, thence by handcar 5 miles, and by Indian trail some 5 or 6 miles. They reside on private land and live in poorly built log huts or shacks. The changes in this group are:

Added: Kakekwe, a daughter, born in November, 1906, to Tchibaissinok (No. 221). An unnamed daughter, born in February, 1907, to Nanawakamigog (No. 237).

Omitted: Nambishikwe (No. 105), died in June, 1907. Migisiwewe (No. 234), died in January, 1907. Kobchigabawi (No. 245), died in January, 1907.

Star Lake group.—Some of this group were found to be residing on private land at a place called "Camp Two," about 10 miles northeast of Star Lake. The others were found at Partridge Lake, some 4 miles by trail from Star Lake. The changes are:

Added: Frank Daniels, born in April, 1907, son of Jim Daniels (No. 265).

Omitted: John Escanaba, or Wabanissi (No. 250), died in March, 1907.

Bark River Group.—These Indians are situated about 8 miles by road and trail from Bark River, Mich. They reside also on private lands, have log houses, and a church and school. The lands are cultivated by them; and, while they will eventually be evicted therefrom, they are at present more progressive and prosperous than the group near Minocqua. The changes are:

Added: Julia Kisheck, born July 26, 1907, to Christina Kisheck (No. 322). Alec Philemon, born October 29, 1906, to Hettie Philemon (No. 339). Webanukaa, born in May, 1907, to Jessie Mishigand (No. 347).

Added, Indians from Canada: Living with the Bark River group are 18 persons of Pottawatomie descent who were born in Canada and have but recently come to this country, seeking enrollment. But two of them are enrolled as Canadian Indians and receive rights from the Dominion Government. Their status is fully set out on the roll or schedule herewith—Nos. 410–427, inclusive.

Omitted: Abraham Mishigand (No. 294), died October 28, 1906. Charles Burns, or Shagesh (No. 290). This man is a mixed-blood Chippewa Indian who has no Pottawatomie blood. At the time of our visit he had disappeared from the group or settlement of the Indians at which he had been residing and could not be found. From the evidence submitted it clearly appears that he is not entitled to enrollment. (See Exhibits A, B, C, and D.)

Wausaukee group.—The main place of residence of the Indians constituting this group is what is known as "White Rapids," on the Menominee River, about 12 miles by road and trail from Wausaukee, Wis. The changes found necessary here are:

Added: An unnamed son, born in June, 1907, to Mary Ben (No. 365). Mrs. Mary Wabee, a daughter of John Shine (No. 377), and her four children—Wassigek, Omsogishig, Niganigishigokwe, and Kagciassinok. This family resides near Crandon, Wis., and was probably not reported to the inspector at the time of his visit. Louis Seenong, a cousin of No. 375. This man also was overlooked, or failed to present himself for enrollment.

Omitted: Wendaban (No. 381), who died June 21, 1907. Joe Anty, or Nawakassin (No. 397), enrolled and allotted (allottee No. 796) in Kansas. Joe Walker, or Wabigons (No. 408), enrolled and allotted (allottee No. 795) in Kansas. William Claffin (No. 389) was found to be not entitled to enrollment. In conversation with Chief Kisheck and others I learned that the father of No. 389 was a white man and his mother a mixed-blood Menominee and Chippewa Indian. In this case I obtained a joint affidavit (Exhibit E) from Alexander Summercloud and Ben Qwowe, who know Claffin well. They say that he is not of Pottawatomie blood and should not have been enrolled. At the time of my visit to Wausaukee this Indian could nowhere be found, though we spent several days seeking him through woods, berry fields, etc. Katin, or Catherine Shine (No. 378). This woman and her family have moved to the Carter group. Chief Kisheck and the other Pottawatomies with whom I talked said that she was enrolled as a Chippewa Indian and received payments with the L'Anse band in Michigan. She admitted to me that she was so enrolled and receiving rights as an Indian.

Mrs. Julia Martin, or Ishweibam (No. 403), enrolled and receiving rights with the Menominee tribe at the Green Bay Agency, Wis. She admitted to me that she was so enrolled and receiving rights.

Additional enrollments in the United States.—Those from Canada and enrolled under Bark River have heretofore been mentioned. There were also enrolled seven members (Nos. 427–434, inclusive) of the Wandahæga family, nearly all of whom were born in Canada, where they resided a number of years, and then removed to the Pottawatomie Reservation in Kansas. A like number of Indians (Nos. 436–442, inclusive) belonging to the George family, and of similar Canadian status, were found on the Indian reservation at Odanah, Wis., and enrolled. There were enrolled also 15 other Indians from Canada (Nos. 435 and 1846–1855, inclusive) who had removed from the Stony Point and Sarnia Reservations to Michigan. None of these persons are enrolled or receive rights in this country.

The total of enrolled Wisconsin Pottawatomies in the United States, including the Churchill roll, is 457. Nearly all are of mixed blood, the band for years having intermarried with the Chippewa and Ottawa. Some few have a small percentage of white blood, but to all appearances they are full bloods.

These Indians, as a rule, have no fixed homes, but roam from place to place, picking berries, digging ginseng and other roots, gathering evergreens, working in lumber

camps, etc. A few of them have homesteaded and now hold from 40 to 80 acres of public land, and have made small clearings and erected rude log houses. In the main, though, they are squatters and have built shelters or shacks and made small clearings in the forest or wherever vacant land could be found. All the public land in Wisconsin has long since been settled, and lumber companies now own or control the lands on which these nomads temporarily reside. Consequently, when the cut-over lands are sold to settlers the squatter Indians are forced to move on, and thus lose what few improvements they have made.

The number of Indians at the various groups or settlements is at all times variable—individuals and often entire families moving from one group to another at the dictates of necessity or caprice. Consequently much time and trouble were required to trace the families, and many places were visited other than the towns or villages by which the groups are designated.

At some of the camps visited much patience and tact were required to get any information whatever from the Indians. They were sullen and suspicious, still considered themselves refugees, and repeatedly said that they did not wish to be enrolled. For the most part they feared that their children would be sent to school, or that they would be collected and forcibly removed to Kansas by the Government. In these cases it was due to the extensive knowledge of the Indians possessed by Rev. Mr. Morstad, to his unfailing patience and tact, and to the personal influence of Chief Kisheck, that the information necessary to complete the enrollment was obtained.

Canadian Indians of Pottawatome descent.—Those who fled to Canada and their descendants are scattered along the northern shore at distances inland and on islands (including Great Manitoulin) from the eastern end of Lake Superior to the southeastern part of Lake Huron. They also reside along the entire mainland of Georgian Bay, and on the Canadian peninsulas formed by that bay and Lakes Huron, Erie, and Ontario.

In view of the peculiar fitness of the missionary and the Indian chief for the work, and of the valuable assistance rendered by them in Wisconsin, they were again employed as guide and interpreter, respectively, for the trip to Canada, of which full report was made to you in a letter dated July 19, 1907.

At the suggestion of the secretary of the department of Canadian Indian affairs, we visited Walpole Island Reservation, 30 miles south of Sarnia, Ontario, in the St. Clair River. Between seven and eight hundred Pottawatomes were found at the reservation, but there were none who belonged or was related to the Wisconsin band.

The places visited in the Province of Ontario, near which the principal groups of Indians are located, were:

Sarnia.—The Indians reside on the Sarnia Reservation, located about 2 miles south of the town of the same name. Heads of families have 10 acres of land each, which they cultivate and upon which they have made substantial improvements. The reservation is still unallotted, whisky is excluded, and the Indians are fairly prosperous and contented. Fourteen of the 70 persons enrolled by me reside in Michigan, whence they removed some years ago. They are not considered as wards of the Dominion Government and receive no benefits therefrom. The others are British subjects and receive full rights as Canadian Indians.

Here was found "Big Josiah" Williams, a full-blood Pottawatome, who was about 7 years of age at the time of the treaty of 1833, and was then residing with his people in Wisconsin. His knowledge of those that fled from Wisconsin to Canada and their descendants was of great assistance to us in tracing the genealogy of many claimants.

Kettle Point.—The Kettle Point Indian Reservation is situated on the south shore of Lake Huron, about 12 miles north of the town of Forest. Of the 79 persons enrolled at this place all but 22 receive full rights as Canadian Indians.

Stony Point.—The Indian reservation of similar name is a few miles northeast of Kettle Point and is also on the shore of Lake Huron. Thirteen persons were enrolled here, 3 of whom receive no rights under the Canadian Government.

Muncey.—The Muncey Reservation is about 3 miles from the town of the same name, and all of the 7 Indians enrolled enjoy full tribal rights under the Dominion Government.

Lake Simcoe.—The 10 Indians enrolled reside on Scugog and Georgina Islands in Lake Simcoe. The 5 enrolled at the island last named receive full tribal rights as Canadian Indians. The others do not.

Southampton.—The Southampton Indian Reservation is situated about 4 miles northeast of the town of Southampton. Here 306 persons were enrolled, 96 of whom are not accorded rights as Canadian Indians.

7 *Cape Croker.*—The Indian Reservation of Cape Croker is situated on the Saugeon Peninsula, about 16 miles northeast of Warton. Here we enrolled 318 persons, and all but 46 receive full tribal rights under the Canadian Government.

8 *Grand Manitoulin Island group.*—The Sheshegwaning Indian Reservation is located in the northern end of Manitoulin Island, about 3 miles south of the village of Morrisville. Fifty-six persons were enrolled, all of whom are British subjects and receive limited rights as Canadian Indians.

These enrolled Indians hold lands, have fairly good homes, and receive annuities from the Dominion Government. However, they do not share in what they term "treaty money," funds arising from a sale of a part of the reservation under an early treaty.

9 *Sucker Creek.*—The reservation of this name is about 6 miles north of the town of Little Current. Here 4 persons were enrolled, all of whom have full rights as Canadian Indians.

10 *Little Current.*—Thirteen persons were enrolled at the town of the above name; and all receive full tribal rights as Indians under the Dominion Government.

11 *In the region of West Bay.*—At the place named, which is also known as Honora Bay, 28 Indians were enrolled. Eleven receive no rights in Canada.

12 *In the region of South Bay.*—Here were enrolled 54 persons, 32 of whom receive no rights whatever under the Dominion Government.

13 *Wikwemikong.*—The Indian reserve of similar name is located at the village of Wikwemikong. Seventy persons were enrolled, 46 of whom receive no rights in Canada.

While on the Wikwemikong Reservation we were led to believe—mainly by a Chippewa Indian named Anderson—that his father-in-law, Peter Bibonisi (or Pebonisi), 90 years of age, was a Pottawatome from Wisconsin. Further, Saganaki, a Pottawatome about 90 years of age, also said that he knew Emikwan, the father of Bibonisi, to be of Pottawatome blood. However, on visiting Wikwemikong, we, after some trouble, found Bibonisi and questioned him at some length. He said to the interpreter and guide, in my presence, that he was "about all Ottawa," and not a Pottawatome Indian; that his mother was a Chippewa; and that his father was Emikwan, an Ottawa, who came from some place in the States, he did not know where.

As Bibonisi was quite feeble and somewhat deaf, and as the testimony of Saganaki and Anderson seemed to be rather more definite, it was decided to enter in the field book the names, etc., of all the members—about 150 persons—of the Bibonisi family and make further inquiry of other old men of the tribe as to his ancestry when opportunity presented. This was done, with the result that we were fully convinced that Bibonisi's statements as to his parentage were true. Formal statements were accordingly obtained from Chief Kisheck, Joe Pemma, and Rev. Mr. Morstad, and are submitted herewith as Exhibits G, H, and I. Josiah Williams and Chief John Tobey also said that Bibonisi was of Ottawa and not Pottawatome Indian blood.

In view of the evidence neither he nor his descendants have been enrolled; and it is recommended that my action in omitting their names from the schedule be approved.

14 *Wikwemikonging.*—The Indian reserve of similar name is located about 6 miles from the village of Wikwemikonging. We enrolled 23 persons at this place, 16 of whom received no rights in Canada.

15 *Manitowaning.*—In the town of Manitowaning and vicinity 14 persons, all receiving full tribal rights as Canadian Indians, were enrolled.

16 *Sheguindah.*—The Indian reserve of this name is located near the town of Sheguindah. Here 5 persons were enrolled, all of whom receive full Canadian rights.

17 *Miscellaneous groups.*—At Thessalon, on the north mainland of Lake Huron, 2 Indians, who receive full rights in Canada, were enrolled.

18 At Killarney, also on the mainland north of Manitoulin Island, 35 persons were enrolled, all of whom receive no rights in Canada.

19 At Whitefish River, on the mainland mentioned, 16 persons, all receiving full rights in Canada, were enrolled.

20 On Birch Island, in the northern channel of Lake Huron, 9 persons, receiving full rights under the Dominion Government, were enrolled.

21 At Spanish River, on Aird Island, also in the northern channel of Lake Huron, 1 Indian, who receives full tribal rights in Canada, was added to the roll.

22 At the town of French River, on the northern mainland of Georgian Bay, 9 persons were enrolled, 4 of whom receive no rights in Canada.

23 At Byng Inlet, also on the northern mainland of Georgian Bay, there were enrolled 2 persons, who receive full tribal rights as Canadian Indians.

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In view of the peculiar fitness of the missionary and the Indian chief for the work, and of the valuable assistance rendered by them in Wisconsin, they were again employed as guide and interpreter, respectively, for the trip to Canada, of which full report was made to you in a letter dated July 19, 1907.

At the suggestion of the secretary of the department of Canadian Indian affairs, we visited Waipole Island Reservation, 30 miles south of Sarnia, Ontario, in the St. Clair River. Between seven and eight hundred Pottawatomes were found at the reservation, but there were none who belonged or was related to the Wisconsin band.

The places visited in the Province of Ontario, near which the principal groups of Indians are located, were:

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At Spanish River, on Aird Island, also in the northern channel of Lake Huron, 1 Indian, who receives full tribal rights in Canada, was added to the roll.

At the town of French River, on the northern mainland of Georgian Bay, 9 persons were enrolled, 4 of whom receive no rights in Canada.

At Byng Inlet, also on the northern mainland of Georgian Bay, there were enrolled 2 persons, who receive full tribal rights as Canadian Indians.

24 Parry Sound district group.—At Moose Point, 5 miles east of Moon River, there were enrolled 11 persons who receive no rights in Canada.

25 At Shawanaga Indian Reservation, about 5 miles south of Pointe au Baril, 10 persons receiving full Canadian rights were enrolled.

26 At the reserve on Parry Island, located in Parry Sound, 97 persons were enrolled, 76 of whom receive no tribal rights as Canadian Indians.

27 At what is locally called "Tobeyville," about 6 miles south of Honey Harbor, in Victoria Harbor, 47 persons receiving no rights in Canada were enrolled.

28 Christian Island.—The island of the same name is located in the south end of Georgian Bay, and is an Indian reservation. Here 127 persons were enrolled, 51 of whom do not receive rights under the Dominion government.

The total enrollment of Indians of Wisconsin Pottawatome descent in Canada is 1,423.

Political status of Indians.—The political status of these Indians in whom the proportion of Canadian Indian blood (Chippewa usually) greatly predominates is that of British subjects. At least this was the usual view of the Indian agents of the Dominion Government who were consulted. At all the Indian reservations where these people are residing they are allowed to hold lands, which they cultivate, but the lands have not been allotted.

The Indian agent of the Christian Island Band of Chippewas said that, should the reservation be allotted, it might be that the "American Indians," who receive no financial aid from the Dominion Government but are allowed to occupy and cultivate land, would be denied allotments of land by that Government. However, at some of the other agencies visited the officials in charge did not take the same view of the matter, but thought that the Indians of Wisconsin Pottawatome descent would be given full rights, including allotments of land, with the other British subjects on the reservation.

In Canada the Indian children follow the status of the father. In some cases, where a so-called "American Indian" has married into a Canadian band or tribe, neither he nor his children receive any rights other than being allowed to occupy and cultivate lands. Again, where a woman of similar descent so intermarries, she thereby becomes a member of the Canadian tribe, and she and her children receive full rights. In cases of illegitimate (Canadian) Indian children the rule seems to be to deny them the rights enjoyed by their parents.

As a rule, the Indians found residing on Canadian reservations are occupying and cultivating lands, have fairly comfortable homes, are in a measure industrious, and seem prosperous. So far as we could observe, whisky was kept away from them and they appeared to be well contented with their lot.

In most cases the information as to whether or not an enrolled person is receiving rights under the Canadian Government was obtained from Government officials in charge of the agencies or reservations. At some of the reservations the agents were surprised to learn that certain apparently full-blood Canadian Chippewas were of Wisconsin Pottawatome descent.

Rights of Canadian Indians in the pending claim.—In the instructions of the office it is said:

"The fact of their residence in a foreign country is held not to affect their right to enrollment with the Pottawatomes of Wisconsin for the purposes of the act under which the roll is to be prepared."

Recognizing clearly, as I do, that it is beyond the scope of your instructions to include in this report any discussion of the right of the enrolled Canadian Indians to share in the present claim, it is thought best, in order to furnish full information, to set out briefly their apparent status in Canada.

With but few exceptions all the enrolled Indians found living on reservations are considered and treated as British subjects. They are allowed to occupy and cultivate lands and to make improvements thereon, have access to the schools, are in fairly prosperous condition, and are being well cared for by the Dominion authorities, being in general treated as are Indians whose ancestry has been solely Canadian. These Indians, who are for the most part the second generation removed from the original fugitive ancestors, are fully domiciled wards of the Dominion Government. Such rights as they may now have by reason of their small quantum of American Pottawatome blood would seem to exist merely as an interest in an estate, should the claim pending before the Congress be treated merely as an estate. If all descendants of the original Pottawatomes who refused to remove to Kansas, and for that reason received no benefits under the treaty, are to be recognized solely on the basis of descent, then it would seem that these Canadian Indians would be entitled to the same share in any fund arising from the claim as the Wisconsin Pottawatomes. With the few exceptions to be hereinafter mentioned, they are not homeless, are making rapid progress

toward complete civilization, and, in fact, seem to be much better off and better contented than their distant relatives in Wisconsin.

Whether they will all be recognized eventually as Canadian Indians and accorded full rights, including allotments of land, is a matter I am unable to forecast. As hereinbefore reported, the Canadian Indian agents differ on this question, and there would seem to be no way of ascertaining definitely just how they are regarded by the Dominion Government and what rights they will eventually get other than by submitting a list containing their names to that Government for information as to their present and probable future status. Certainly the equity on the side of their American relatives is much greater than in their case.

The exceptions to which reference has heretofore been had are in the cases of the Wemigwans family, at South Bay, Manitoulin Island, the nonreservation Tobey family, and all those Indians who do not live on reservations and are indicated on the schedule as "receiving no rights" in Canada. These it would seem should be placed on an equal footing with the Wisconsin Indians if a distinction is to be made.

Spelling of Indian names, etc.—The orthography used in the roll conforms to the authoritative and accepted dictionary of the Ojibway or Chippewa language.

In all cases where persons have Indian names, not only the names but their meaning, so far as possible, was ascertained and added to the roll under the impression that it might prove of future value in identifying individuals. Some few names were not of the Chippewa tongue, or were so corrupted as to be meaningless.

The roll and all papers transmitted by the office to be used in connection with its preparation are submitted herewith. There are inclosed also the copies of correspondence with Indian agents, etc., the field books used in the work, and all other papers relating to the matter.

Since preparing the roll and this report lists of names of additional claimants have been received from Michigan John, of Laona, Wis., and Amable Wemigwans, of South Bay, Manitoulin Island, Canada. These lists have been sent to Rev. E. O. Morstad with request that he look into the status of the persons named therein and confer with Joe Pemma and Chief Kisheck, the best Indian authorities in Wisconsin. He has been asked also to expedite the matter as much as possible; and when his answer shall be received, a supplemental report containing the names of such additional claimants as may be found entitled to enrollment will be submitted.

Michigan John, who represents a faction of Pottawatomes in the vicinity of Laona, was given by me while there the fullest opportunity to present any additional claimants, and repeatedly said that he knew of no more. The list now furnished by him is very imperfect, and it is thought that all thereon have already been enrolled under different names. At South Bay, Amable Wemigwans was also given ample opportunity to present the names of claimants and said that he had furnished all of Pottawatome descent. In submitting the list of additional names he said that he claimants were absent at the time of my visit and he forgot them.

Very respectfully,

W. M. WOOSTER,
Clerk and Special Disbursing Agent.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, January 18, 1908.

SIR: I have the honor to refer to my report of December 18, 1907, submitting a roll of Wisconsin Pottawatomes and their descendants in Wisconsin, Michigan, and Canada, in which it was said that since preparing that roll some lists of additional names had been received from Indians in Canada and sent to Rev. E. O. Morstad for investigation.

The desired information concerning these cases has been received, and I therefore transmit an additional schedule, containing the names of 127 persons residing in Canada who are found to be entitled to enrollment.

Concerning the imperfect list of names furnished by Michigan John, of Laona, Wis., referred to in my report of the 18th ultimo, I have to say that the list was sent to Rev. E. O. Morstad for investigation and has been returned by him. He says in letters of December 23 and 26, 1907, respectively, that he learns from Chief Charles Kisheck that so far as the names on the list can be recognized they are all on the roll.

As Mr. Oettinger, who originally furnished the list, says in a letter of December 13, 1907, that he is unable to get any more information or proof as to the alleged applicants, and it appears that so far as their names can be identified they are already enrolled, no further action seems to be necessary in the matter.

There is transmitted, also, the correspondence had by me relative to the additional names and copies of certain other correspondence bearing on the enrollment matter.
Very respectfully,

W. M. WOOSTER,
Ex-Clerk and Special Disbursing Agent.

The Commissioner of Indian Affairs.

JANUARY 30, 1914.

MY DEAR MR. STEPHENS: The department has received your letter of December 8, 1913, transmitting, with request for a report thereon, a copy of H. R. 9908, "For the relief of the Wisconsin Band of Pottawatomie Indians, and for other purposes."

The bill directs that the Secretary of the Treasury place to the credit of that portion of the Wisconsin Band of Pottawatomie Indians now residing in the States of Wisconsin and Michigan the sum of \$427,795, "the same being the balance of principal due, with interest on the original sum of \$447,339 at five per centum, from January eighteenth, nineteen hundred and eight, to June thirtieth, nineteen hundred and thirteen, and on \$297,339 from June thirtieth to December thirty-first, nineteen hundred and thirteen, as the proportionate share of these Indians in annuities and moneys of the Pottawatomie Tribe in which they have not shared, * * *."

The bill provides also that the claim of the legal representatives of R. V. Belt, deceased, for attorney fees for services rendered these Indians shall be referred to the Court of Claims; and that such sum as shall be deemed just by the court on a quantum meruit for the services rendered shall be paid the legal representatives of decedent by the Secretary of the Interior—payment to be made from the said sum of \$427,795.

The provisions of this bill are similar to a proposed amendment to H. R. 26874 (Indian appropriation bill for the fiscal year ending June 30, 1914), relating to the claim of these Indians, except that interest at 5 per cent per annum is added to the claim from June 30 to December 31, 1913.

In a report dated February 27, 1913, to Hon. Robert J. Gamble, chairman of the Senate Committee on Indian Affairs, this department referred fully to the matter of the attorney fees, and recommended that the item in the Indian appropriation bill then pending be so changed or amended as to provide a reference of the matter of attorney fees to the Court of Claims.

In this report it was recommended also that the Secretary of the Treasury be authorized and directed to pay from the sum to be placed to the credit of the said Pottawatomie Indians the sum of \$5,000 to Erik O. Morstad, a missionary, who has lived among and cared for these Indians for many years.

The act of June 30, 1913 (Public, No. 4), appropriated the sum of \$150,000 for the purchase of lands for these Indians, "said sum to be reimbursed to the United States out of the appropriation, when made, of \$447,339, the said sum last named being the proportionate share of the said Indians in annuities and moneys of the Pottawatomie Tribe, in which they have not shared, as set forth in House Document Numbered Eight hundred and thirty, Sixtieth Congress, first session, * * *."

It is noticed that the interest to be allowed for the periods mentioned in the bill amounts to \$129,333.33, which, added to the unappropriated balance of \$297,339, makes the amount due these Indians \$426,672.33, instead of \$427,795, as given in the bill.

In a prior report of May 8, 1908, on H. R. 21219, Sixtieth Congress, first session, addressed to the chairman, House Committee on Indian Affairs, the department said with reference to the claim of the attorney of record for services rendered that from the evidence adduced of such services it was believed that the sum of \$5,000 would be a fair and reasonable compensation. Subsequently, in its report of February 27, 1913, to the chairman of the Senate Committee on Indian Affairs, the department said:

"A careful examination has been made of the evidence submitted, and the department is now of the opinion that the sum of \$5,000 previously recommended is inadequate to the services rendered. The Indian Office now advises that \$20,000 would not be too large an allowance in this case."

Though the department felt at the time of its said report of February 27 last that the question of the attorney's fee might be allowed to go to the Court of Claims, a careful reconsideration of the entire matter convinces me that the flat fee of \$20,000 recommended by the Commissioner of Indian Affairs is at least enough; certainly no more than this amount should be allowed.

Under the appropriation made June 30, 1913, of \$150,000 the department has detailed a special commissioner to Wisconsin for the purpose of purchasing lands for these Indians, and from his preliminary reports it clearly appears that it will require

all the money that is due these Indians for the purpose of obtaining necessary lands, settling them thereon, and providing them with houses, farming implements, etc., to the end that they may be placed on a proper footing and thereby enabled to become self-supporting.

Considering the needs of these Indians and of the services rendered by the attorney, the department firmly believes that a flat fee of \$20,000 is very liberal for the services rendered by the attorney. No necessity, therefore, is now seen for referring this phase of the matter to the Court of Claims, as proposed in the bill.

It is recommended that the bill be amended in the following particulars:

Page 2, line 1, strike out "\$427,795" and insert in lieu thereof "\$426,672.33."
Page 2, line 10, strike out the word "two" and insert in lieu thereof the word "eight"—the correct number of the document mentioned being 830.

Page 2, line 15, strike out "\$427,795" and insert in lieu "\$426,672.33."

Page 2, line 17, after the word "available," insert the words "And provided further, That the Secretary of the Treasury is hereby authorized and directed to pay to Erik O. Morstad, of Carter, Wisconsin, who has lived with and cared for said Indians for many years, the sum of \$5,000, said sum to be paid from the amount placed to the credit of said Pottawatomie Indians."

Page 2, line 23, strike out all after the word "Indians" to end of the bill and insert in lieu thereof "the sum of \$20,000: *Provided further,* That before any money is paid hereunder to the said legal representatives of R. V. Belt, deceased, they shall first execute and deliver to the Secretary of the Interior a satisfaction and discharge of all claims and demands for services rendered said Indians in the matter of their claims."

Should the foregoing amendments be made to the bill under consideration, the department would see no objection to its passage.

A copy of departmental letter of February 27, 1913, to the chairman of the Senate Committee on Indian Affairs is inclosed.

Yours, very truly,

FRANKLIN K. LANE.

HON. JOHN H. STEPHENS,
*Chairman Committee on Indian Affairs,
House of Representatives.*

WASHINGTON, D. C., January 5, 1914.

HON. CATO SHELLS,
Commissioner of Indian Affairs, Washington, D. C.

MY DEAR MR. COMMISSIONER: You will remember that when the last Indian appropriation bill was under consideration I had an interview with you relative to the amendment offered by Senator Nelson (for Senator Stephenson) to pay the Pottawatomies of Wisconsin the money found due them, and you requested me to file a statement giving reasons why the amendment as introduced relating to the attorneys' fees should remain as it was, that is, to allow the Court of Claims to determine the amount after a proper hearing. No report was submitted to the Senate Committee on Indian Affairs on the amendment and consequently no action was taken thereon by the committee.

Congressman Konop has introduced the same amendment in the form of a bill, H. R. 1776, which has been referred to you for report. I heretofore mailed you a copy of the statement we prepared on the subject of our services and that of Mr. Belt on behalf of the Pottawatomies, and respectfully request that you consider the same in the preparation of your report on the bill.

Our contention is that as a former Commissioner of Indian Affairs, Mr. Jones, when the Pottawatomie case was considered most desperate, approved a contract for 15 per cent, that while working under this contract we succeeded after 11 years of work in establishing the Pottawatomie claim, upon which \$150,000 on account has been appropriated by Congress; that as Secretary Fisher, on a similar bill and amendment, recommended that the attorney fees be fixed by the Court of Claims; that as the Indian Office in reporting on Mr. Konop's bill for the relief of the Pottawatomies, under date of January 30, 1914, recommended that a flat fee of \$20,000 be paid the attorneys; that as we believe our services should be valued by some tribunal after a proper hearing. In view of this situation it is but just and reasonable that the question of the fee be referred to the Court of Claims. If, however, there is objection to its reference to the Court of Claims we are satisfied to have it referred to the Court of Appeals of the District of Columbia, or to the Commissioner of Indian Affairs and the Assistant Attorney General of the Interior Department (both of whom are lawyers and have had considerable practice and experience) for hearing and settlement.

We are very desirous to have our fee adjusted at this session of Congress, and we believe the Pottawatomies are equally anxious to have it settled, and we therefore trust you will give this matter your personal attention and that you will find time to read the communication sent you under date of April 3, 1914, copy of which is inclosed.

Yours, respectfully,

CHARLES J. KAPLER,
CHAS. H. MERRILLAT.

WASHINGTON, D. C., April 3, 1914.

HON. CATO SELLS,
Commissioner of Indian Affairs, Washington, D. C.

MY DEAR MR. COMMISSIONER: Referring to our conversation in reference to the amendment introduced by Senator Nelson to the Indian appropriation bill providing for the payment to the Pottawatomie Indians of Wisconsin the balance of the money found due them, in compliance with your request that we file a short statement of our position with respect to the payment of the attorneys in the case we beg to submit the following:

It is, we believe, conceded that at the time Mr. Belt undertook the prosecution of the Pottawatomie claim it was a most desperate case. An attorney by the name of Bullock had been employed by the Pottawatomies but after several years' work abandoned it. The Pottawatomies and the Rev. Dr. Morstad, who is a missionary among the Indians, had faith in their claim and on account of Dr. Morstad being a Norwegian and acquainted with Senator Nelson, he appealed to Senator Nelson to take an interest in the claim. Senator Nelson referred his letter to Mr. Belt, formerly assistant commissioner of Indian Affairs, for investigation and report. Mr. Belt after several months investigation concluded that the Indians were right in their contention that their annuities should have been retained in the Treasury to their credit as provided by the act of June 25, 1864. He thereupon entered into a contract with the Pottawatomies on a wholly contingent-fee basis of 20 per cent of whatever was recovered. He submitted this contract to the Commissioner of Indian Affairs, Mr. Jones, who approved it for 15 per cent, but distinctly stating such approval was not to be considered in any way a recognition of the Indians' claim, as the office had held that the Indians had forfeited their annuities.

The contract was then presented to Secretary Hitchcock, who held that as the Indians were citizens it did not require approval. The contract was placed in the files of the Indian Office and Mr. Belt commenced his labors in behalf of the Indians. The following is a short résumé of the nature of the claims of the Pottawatomies and the services by the attorneys:

The claim of the Pottawatomie Indians of Wisconsin arises under treaties made by the United States with the united Pottawatomie Nation of Indians in 1833 and 1846 and under an act of Congress passed in 1864.

The Indian Office and the Interior Department unlawfully forfeited the rights of the Wisconsin Band of Pottawatomies in tribal annuities and lands, holding they had forfeited their rights.

Between 1890 and 1900 the Indians sent two delegations to Washington to present their claims, and each time the delegation was turned down by the Indian Office and their claims denied. The Indians employed an attorney named Bullock to prosecute their claims for a small retainer and a contingent fee of 10 per cent. After several years of services Mr. Bullock abandoned the claim and returned his contract, holding the claim was impossible of successful prosecution.

In 1902 the Wisconsin Pottawatomies wrote Senator Quarles, of Wisconsin, regarding their claim, and the Senator communicated with the Indian Office, Mr. Jones, of Wisconsin, then being commissioner. The reply of the Indian Office, made by Acting Commissioner Towner, to Senator Quarles, dated June 19, 1902, stated:

"The Indians lost any and all rights they may have had under said treaty of 1833 by not removing with their tribe west of the Mississippi River as provided in the treaty."

Senator Quarles wrote the Indians of the denial of their claim. Through a Scandinavian missionary, the Rev. Mr. Morstad, the Indians came into communication with Senator Nelson, of Minnesota, and through him the claim was referred to Mr. R. V. Belt, a practicing attorney in Washington.

Mr. Belt became convinced the Wisconsin Pottawatomies had rights of which they had been so long illegally deprived and made a long report to Senator Nelson, which resulted in Mr. Belt and the Wisconsin band of Pottawatomies being put into com-

munication with the Rev. Mr. Morstad, a missionary, as the intermediate agent between them.

The Indians stated they were absolutely without means and could make only a wholly contingent contract, being unable to bear even expenses. A contract was drafted and signed by the Indians through their representatives selected in council and Mr. Belt for a wholly contingent fee of 20 per cent. This contract, made in accordance with the provisions of section 2103 et seq. of the Revised Statutes, was submitted for approval to the Commissioner of Indian Affairs. Commissioner Jones approved the contract with a proviso reducing the contingent fee to 15 per cent, stating in his letter forwarding the contract for action by the Secretary of the Interior, as required by the law, thus:

"This office has denied such claim on the ground that by refusing to move West under the treaty of 1833 they forfeited all rights under that and subsequent treaties with the Pottawatomie Nation."

The contract is approved at the reduced rate "with the express understanding and upon the condition that such action shall in no wise be regarded as a recognition of the claimant Indians as a tribe or the alleged claims in the premises."

Secretary Hitchcock returned the letters for the files, stating that as the Indians were citizens it was doubtful whether the contract came under the provisions of the Revised Statutes and the same should be placed in the files without any action by him.

Pending the foregoing action on the contract, Mr. Belt spent the summer and autumn of 1902 in a prolonged investigation of the claims of the Indians. He drafted a memorial making 16 printed pages, considerable of it being in fine type, which was forwarded to the Rev. Mr. Morstad, the Indians called into council, and the memorial was signed September 17, 1902, by the Indians and returned to Mr. Belt. That memorial will be found in Senate Document 185, Fifty-seventh Congress, second session.

That memorial gave the first expression to the claim of the Wisconsin Pottawatomies. It was full and complete and gave official status to the claims of the Indians. We have the first original draft of it in Mr. Belt's hand.

Its introduction in Congress was accomplished only after considerable work. Mr. Belt drafted and sent to Mr. Morstad letters which he and the Indians forwarded to Senator Quarles, requesting him to introduce the same in Congress. Senator Quarles was unwilling so to do at first, because of the adverse report of the Indian Office. Mr. Belt followed up the letters he had had the missionary and the Indians send Senator Quarles with personal interviews in the shape of hearings which Senator Quarles accorded him between January 8 and February 27, 1903. He submitted a draft of a bill for the relief of the Pottawatomies to the Senator, but after these several hearings Senator Quarles said he would go no further at that time than to present the memorial to Congress, and desired to study the case of the Indians before he assumed the responsibility of introducing a bill for their relief.

After further presentations to Senator Quarles, on November 28, 1903, he agreed to introduce a bill providing for an investigation of the claims of the Indians. Representative Brown, of Wisconsin, whose attitude was largely that of Senator Quarles, gave several hearings to Mr. Belt, and the result was bills were introduced in each House of Congress.

February 2, 1904, the Secretary of the Interior communicated to Congress an adverse report from the Commissioner of Indian Affairs upon the bill, this time the Commissioner, however, modifying his report to the extent that the Indian Office held the Indians had "relinquished" their claim to lands and funds by not moving west instead of contending they had "forfeited" the same.

In 1903 and 1904 Mr. Belt drafted and sent to the Rev. Mr. Morstad petitions to be signed by the Indians, addressed to their Senators and Representatives in Congress, and these petitions were sent by the Indians through the Rev. Mr. Morstad and their chiefs to the members of the Wisconsin delegation, and the fact communicated to Mr. Belt, who, with this backing, continued to present the matter to Congress.

An oral hearing was had before a subcommittee of the Senate Committee on Indian Affairs in the early part of 1904, but although persistent efforts were made to secure action, Congress adjourned without action being had.

Enrollment blanks were prepared by Mr. Belt and sent to the Rev. Mr. Morstad and Chief Kishock for enrollment of the names of the Indians. These blanks had some value, inasmuch as they were of aid later to the Government officers who made the enrollment of the Indians in 1907 and 1908.

After Congress assembled in December, 1904, the matter was again taken up, and a subcommittee of the House Committee on Indian Affairs appointed to consider a

bill which had been introduced for the appointment of an inspector who should make a thorough investigation of the case of the Indians. The matter was pressed in both the Senate and House Committee on Indian Affairs, but without result, during the Fifty-eighth Congress.

December 14, 1905, Mr. Belt associated two other attorneys with him in the prosecution of the claim, and thereafter all worked in cooperation.

During all this time correspondence was kept up with the Indians.

It was apparent to the attorneys that the first most essential step to real progress in the cause was to obtain an official enrollment of the Indians by Government officers and an official computation by Government officers, and not by the attorneys, of the number of the Indians and what the proportionate shares were to which they would be entitled if their claim was valid. Such legislation was procured by the attorneys in the act of Congress of June 21, 1906 (34 Stat., 380), the attorneys drafting this legislation as they had every bill, memorial, brief, or other paper.

This act gave an official recognition in a sense to the claim and was a decided step forward in its recognition. It, like every other step that had been taken, whether in the shape of memorial, petition, argument, or brief prior thereto, had been the work of the attorneys.

After this act became a law the attorneys presented the act of Congress to the Secretary of the Interior, and Mr. Frank C. Churchill, United States Indian inspector, was detailed by the department to make the census required by the act aforesaid. Mr. Belt had several interviews with him, communicated to the Indians through the Rev. Mr. Morstad that he would visit them, and put Mr. Churchill, through Mr. Morstad, in communication with the Indians. All this is shown by correspondence in our possession. Mr. Churchill's census was not deemed complete by the Indian Office and request was made that Congress appropriate \$2,000 for the expense of making a complete census. Congress declined to make any appropriation, holding the Indian Office had sufficient employees to do the work without any extra appropriation. The matter was presented in 1907 to both Representative Brown and Senator La Follette. After Congress declined to make a special appropriation the Interior Department for a time declined to order any person to complete Inspector Churchill's work; but finally, after several interviews with the Commissioner of Indian Affairs and the Secretary of the Interior, Dr. Wooster, of the Indian Office, was detailed to the work of compliance with the aforesaid act of June 21, 1906.

Mr. Belt and his associate attorneys presented the matter fully to Dr. Wooster, and through them the Rev. Mr. Morstad and Chief Kiaheek rendered valuable service to Dr. Wooster in completing the census provided for. Some point has been made that the attorneys did not actually do this work of taking the census and the subsequent work of making the computation. On this point the attorneys state that they would have refused to take the census, because obviously no verity would have been given to a census or computations made by private attorneys for claimants.

After the census was completed the attorneys took up the matter with Inspector McConhee, then in the Finance Division of the Indian Office. They gave full data to him, on which he made computations and made a report to the Secretary of the Interior.

The matter was presented to the Secretary of the Interior and a report made to Congress of the census of the Indians, the shares to which they were entitled, and for the first time the Indian Office receded from its attitude of opposition to the claim itself and the Indian Office and the Secretary of the Interior became favorable to the payment of the claim of the Indians.

This report will be found in House Document No. 830, Sixtieth Congress, first session, and favored the payment to the Pottawatomies still residing in Wisconsin and Michigan of the sum of \$447,339.

A printed brief of 36 pages was prepared by the attorneys and presented to members of the House and Senate Committees on Indian Affairs and to the Department of the Interior. A full oral presentation of the claims was made by the attorneys to a subcommittee of the House Committee on Indian Affairs on January 29, 1909. (See printed hearings on H. R. 21219.)

From that time forward the attorneys have constantly presented the matter to members of the Indian Committees of both Houses of Congress, and Congress has made minor appropriations for the relief of the Indians.

When the Indian Office, after many years of denial of the claims of the Indians, finally conceded its error, it refused to grant any hearing of the attorneys on the question of their fees: At that time the Acting Commissioner of Indian Affairs was Mr. Larrabee, who had been a division chief under Mr. R. V. Belt, when the latter was Assistant Commissioner of Indian Affairs. An exceedingly bitter feud existed between them. This can be proved by officials still in the service of the Government. The time was one of agitation against attorneys' fees. When the claim was written up it

was recommended by the subordinate officials in immediate charge of the work that there should be paid to the attorneys the full contract rate for which the contract had been approved by Commissioner Jones, namely, 15 per cent. Acting Commissioner Larrabee returned the same with the statement that Mr. Belt should not be allowed any such amount. It was then written up in favor of the allowance of \$25,000. Commissioner Larrabee became much incensed and specifically directed that only \$5,000 should be allowed to Mr. Belt for his services and \$5,000 to the missionary, the Rev. Mr. Morstad, notwithstanding the action of his predecessor. He refused to hear the attorneys as to their services.

When this occurred the attorneys requested a hearing of the Secretary of the Interior, but were denied a hearing on the ground that the Indian Office should pass upon the matter or Congress, and that it was not a matter that the Secretary could inquire into, but he would accept the commissioner's recommendation.

If this contract is not one requiring approval, then it is a valid and binding contract against the Indians for 20 per cent, and a few of the Indians are entitled to represent the whole of those benefited (Smith v. Swormsted, 16 How., U. S. Sup. Ct. Repts.). If it is a contract that required approval, then we respectfully submit that the attorneys would be entitled equitably to the amount for which the contract was approved, namely, 15 per cent, by the Commissioner of Indian Affairs at the time the claim was regarded as a desperate one and the unlawful holding of Secretary Hitchcock that the contract required no action on his part should not prejudice the rights of the claimant's attorneys. If the contract is to be treated as simply evidence in a quantum meruit suit the attorneys respectfully request that the matter may be referred to a court where they may have a hearing and the value of their services determined; but if Congress deems it proper, the attorneys are willing to accept 10 per cent as a compromise, deeming this the lowest rate that could in any wise whatsoever be deemed a fair and equitable compensation for the services of more than eight years performed by one attorney, about five years performed by three attorneys, and an additional service of two years performed by two of the attorneys, Mr. Belt being now deceased.

Considerable has been said about the services of the Rev. Mr. Morstad. Mr. Belt has always stated he intended to compensate the missionary out of his contract fee. The Rev. Mr. Morstad in a letter which is appended hereto shows clearly that the forward steps that have been taken in this claim and the important letters, papers, and other documents that have been drafted, some of which bear his signature and those of the Indians, were prepared by Mr. Belt or his associates and forwarded to him.

WASHINGTON, D. C., January 17, 1913.

REV. E. O. MORSTAD, Carter, Wis.

DEAR SIR: The Pottawatomie matter is up again in the Senate, and some question has arisen concerning the services of Mr. Belt. We have informed Senator La Follette that Mr. Belt drafted at this end the memorial which the Indians sent on to Washington and drafted many of the letters and papers and documents which you forwarded to Washington.

It would help very much if you would immediately upon receipt of this send a full letter stating exactly the facts as to what was done by Mr. Belt in the way of forwarding papers to you and having you sign the same and forward them to Washington or procure the Indians to sign the same and forward to Washington.

As you perhaps know, Mr. Belt was formerly Assistant Commissioner of Indian Affairs, and under him, as chief of division, was Maj. Larabee, who afterwards became Assistant Commissioner of Indian Affairs. There were very serious personal difficulties between these two men, and that was largely why Maj. Larabee proceeded to recommend the Government should not recognize the fee arrangement of Mr. Belt.

As both Mr. Belt and Maj. Larabee are now dead, it is necessary to get matters from persons who are acquainted with the facts and who are living. Therefore, it is essential that you should make a full and complete statement in the premises. Will you not kindly do this and forward to us by return mail?

Yours, very truly,

KAPPLER & MERRILLAT.

CARTER, WIS., January 21, 1913.

Messrs. KAPPLER & MERRILLAT,
Attorneys and Counselors at Law, Washington, D. C.

DEAR SIR: Your letter of the 17th instant I received last night. In this you desire me to make a statement as complete as possible concerning the services of Mr. Belt in the Wisconsin Pottawatomie matter. To this I have to say that it is now nearly 11 years since Mr. Belt took this work in hand for our Indians. He wrote me that

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in the summer of 1902 he gave up his vacation in order to take up this work. He next drafted a memorial, which I sent to Washington for the Indians, and, from time to time, drafted many of the letters and other documents which I forwarded to Washington. The majority of personal letters to him and others concerning this matter I wrote myself, but several of the most important ones he first drafted and sent to me.

To reiterate the difficulties which we have met with in this matter will, perhaps, now to quite an extent be an old story. I shall briefly state, however, that between 1890 and 1900 our Indians sent two delegations to Washington, had a Washington lawyer by the name of Bullock, whom they agreed to pay 10 per cent (in case he would be successful) and paid him some over \$100 in cash. I have his correspondence. He worked at it for a few years. But neither he nor the delegation nor Members of Congress that wrote about the matter for them were ever able to accomplish anything.

It was after I had spent about a week at our splendid State historical library in Madison, in the beginning of 1902, and had gathered all the data I could there, and after having repeatedly written to the Indian Office, and the commissioner denying each time that our Indians had any claim, that my attention was called to Mr. Belt. He seemed also at first somewhat reluctant to take the matter up, wrote me that it would be uphill work. But by the sketch he sent me, as to the history of the matter, I could see now for the first time that there really was hope for our poor Indians in spite of the department's repeated denials. In spite of Mr. Belt's efforts, and splendid arguments in their favor, it was not until April, 1908, that the Indian Department finally recognized the claim of these Indians.

Among other very difficult matters connected with the claim for Mr. Belt was the computation of what the Government really owed them. I remember him writing to me something about it many years ago.

I remember particularly that it took Mr. Belt at Washington and me at this end some three years at least to make our Representative in Congress, W. E. Brown, of Rhinelander, interested in the matter. Each time I saw him he said he had taken it up with the department, etc. But the last time I called his attention to certain pages of the memorial which Mr. Belt had worked out, and he had to admit there and then that the claim was just, and did much to help the matter on after that.

By these few remarks I trust it will appear that this has been a very difficult and complicated task, which fully required the skill and best efforts of an expert like Hon. R. V. Belt to accomplish, that it seems providential to me that he had you associated with him in it several years before he died, and I should feel much disappointed for Mrs. Belt and yourselves if the fee that you now ask should be denied you, it being but one-half of the fee that was stipulated or contracted for by Mr. Belt originally.

May remark before I close that when Senator La Follette asked my opinion as to the attorneys' fee at the conference in Laona, Wis., in 1909, I did not feel prepared to pass any judgment or opinion on it. But having learned since that you offer to accept one-half the amount of the original fee, having also talked it over with friends who know about such things more than I do, and having had more time to think about it, I feel now more safe in expressing my opinion.

Very truly, yours,

E. O. MORSTAD.

As above remarked, through the services of the attorneys begun in 1902 the Indian Office and the Interior Department reversed their position on the merits of the claim of the Pottawatomies and recognized its justice and at the last session of Congress they succeeded in getting Congress to recognize the claim by securing the following in the Indian appropriation bill approved June 30, 1913:

"For the purchase of allotments for the individual members of that portion of the Wisconsin Band of Pottawatomie Indians now residing in the States of Wisconsin and Michigan, \$150,000, said sum to be reimbursed to the United States out of the appropriation, when made of \$447,339, the said sum last being the proportionate share of the said Indians in annuities and moneys of the Pottawatomie Tribe, in which they have not shared, as set forth in House Document numbered eight hundred and thirty, Sixtieth Congress, first session, and the Secretary of the Interior is hereby authorized to expend the said sum of \$150,000 in the purchase of land within the States of Wisconsin and Michigan, the title of such land to be taken in trust by the Government for the use and benefit of said Indians, said land to be situated in organized school districts and to be purchased in bodies of not more than one section, which said bodies shall not adjoin each other: *Provided*, That the land so purchased, except such part thereof as may be necessary for administrative purposes, shall be divided equitably among the Indians entitled thereto, and patents therefor shall be

issued in accordance with the general allotment laws of the United States: *Provided further*, That the Secretary of the Interior may, in his discretion, withhold allotments from any Indian or Indians belonging to this band who, owing to advanced age or other infirmities are deemed by him incapable of making beneficial use thereof, and in lieu of formal allotments to Indians falling within this class tentative allotments of land may be made to such Indians for occupancy and use during the remainder of their natural life time."

This \$150,000 has been used for the purpose of procuring lands for the Pottawatomies. The balance of the money due amounting to \$426,672.33 is provided for in Senator Nelson's amendment introduced at our request and upon which the department has been called for a report. There is no doubt that the Pottawatomies will get this money as the claim has been recognized by Congress and an appropriation made on account of the same. The only question in dispute is the amount due the attorneys for their services in establishing the claim and recovering this large sum of money for the Indians.

When this matter came up on the Stephenson amendment last year the Indian Office went over the record as presented by the attorneys, and upon the showing made reversed its former finding that \$5,000 was sufficient compensation for the attorneys and recommended "that \$20,000 would not be too large an allowance." We contended that the matter should be governed by the principle of whether or not the contract was fair and reasonable at the time it was made; that the contract having been made with the Indians for 20 per cent at a time when the case was desperate; that the Commissioner of Indian Affairs after due consideration having approved it for 15 per cent on the express condition and understanding that "such action was not in any way to be regarded as a recognition of the alleged claims in the premises"; that 15 per cent being the usual rate of compensation provided in Indian contracts at that time as approved by the Commissioner of Indian Affairs; that the claim of the Indians having been recognized and established solely through the services rendered by the attorneys; that under those circumstances 15 per cent was fair and equitable, but that in order to compromise the matter we would be willing to accept 10 per cent, which would be one-half of the original contract rate (and the Indians and Dr. Morstad were gratified at this suggestion, as will be seen by the letter of Dr. Morstad above quoted); or if that were not agreeable to the department and Congress we would be willing to go before any proper tribunal, make a showing of services rendered, and allow such tribunal fix the fee on a quantum meruit.

After a hearing before Assistant Secretary Adams and the assistant attorney general of the Interior Department, Mr. Cobb, and an official of the Indian Office, the department forwarded to Congress on February 27, 1913, the following report:

"Recently there has been filed with the department by Messrs. Kappler & Merillat, attorneys associated with Mr. Belt in this matter, a brief and summary statement of services rendered by the attorneys in the case, and the books and papers bearing upon the matter. A careful examination has been made of the evidence submitted, and the department is now of opinion that the sum of \$5,000 previously recommended is inadequate to the services rendered. The Indian Office now advises that \$20,000 would not be too large an allowance in this case. The additional evidence in this matter, set out in the public hearings of January 17, 25, and 29, and February 3, 1913, before the Senate Committee on Indian Affairs, will be found on pages 207 to 211. A copy of these hearings is inclosed for your convenience.

"Mr. Belt entered into a contract with these Indians to prosecute their claims, which contract provided for a fee of 20 per cent of the amount recovered, being wholly contingent upon recovery. This contract was made and submitted for approval in accordance with the provisions of sections 2103-2106 Revised Statutes of the United States. The Commissioner of Indian Affairs approved it with a proviso reducing the contingent fee to 15 per cent, and submitted it to the Secretary of the Interior. The Secretary returned the contract to the Indian Office without action thereon, upon the theory that the claimants being citizens there was no jurisdiction in the Secretary of the Interior to approve or disapprove it. The attorneys, while insisting that they were entitled to at least the amount provided in the contract, as modified by the approval of the Commissioner of Indian Affairs, have signified a willingness to accept in full satisfaction of their claim 10 per cent of the amount secured to the Indians.

"The pending Indian appropriation bill (see pp. 64 to 67) carries an item providing for the placing to the credit of these Indians the sum of \$447,339 to be expended under the discretion of the Secretary of the Interior for their benefit, and also items of \$5,000 to H. V. Belt, or legal representatives, for attorney fees, and of \$5,000 for services rendered by Rev. E. C. Morstad. The department, in view of the additional evidence of attorney's services rendered, would recommend that the items in the Indian appropriation bill be so changed or amended as to provide a reference to a proper tribunal

for the ascertainment of a just and equitable amount to be paid the attorneys for the services performed in behalf of these Indians. The Court of Claims would be a proper tribunal, and a reference to that court may be effected by amending the present item in the Indian appropriation bill as follows:

"Strike out lines 6 to and including the word 'assigns' in line 20 on page 66 of the Indian appropriation bill as reported to the Senate and insert in lieu thereof the following: 'That from said sum the Secretary of the Interior is directed to pay to the legal representatives of R. V. Belt, deceased, in full settlement of the claim of R. V. Belt against said Indians, such sum, not exceeding \$67,000, as the Court of Claims, to whom the matter of attorneys' fees is hereby referred for judgment, with full jurisdiction in the premises, shall find to be due the said R. V. Belt and his associates on a quantum meruit for their services in the prosecution of said claim under a contract with representatives of the Pottawatomie Band of Indians approved by the Commissioner of Indian Affairs on the first day of November, nineteen hundred and two, upon the filing of a receipt in full for all services rendered. Out of the sum placed to the credit of the said Pottawatomie Indians the Secretary of the Treasury is hereby authorized and directed to pay to Erik O. Morstad, of Carter, Wisconsin, who has lived with and cared for said Indians for many years, the sum of \$5,000.'

"As heretofore mentioned, the department in reports of May 9, 1908, and June 24, 1912, in effect recognized the claims of these Indians and recommended favorably on the bills to appropriate the sum of \$447,339, found due the Wisconsin branch of the Pottawatomie residing in the United States.

"These Indians are without lands, and are unable to gain a support for themselves. Their condition is such to demand relief. This can be accomplished by the amendment now found in the appropriation bill as reported to the Senate. If the further amendment suggested herein be made, the matter of attorneys' fees can likewise be adjusted on an equitable basis."

While we are of the opinion that the recommendation of the Secretary is fair and equitable and are willing to abide by it, still if the present Secretary of the Interior and the Commissioner of Indian Affairs think that the Court of Claims should not be authorized to hear and determine the matter of the fee, then we suggest that it be referred to the Court of Appeals of the District of Columbia, or to the Commissioner of Indian Affairs and the Assistant Attorney General of the Interior Department, both of whom are lawyers and have had considerable practice and experience, and we are willing that they after proper hearing shall determine the fee to be paid the attorneys.

We may add that in all reports made by the department to Congress on bills concerning claims similar to the one of the Pottawatomie it is recommended that the attorneys' fees be fixed by the Court of Claims, and the one most in point is the Secretary's report under date of August 9, 1913, on Senate bill 1041, conferring jurisdiction on the Court of Claims to hear, determine, and render judgment in claims of the Osage Nation against the United States, in which the Secretary states "that any act having this purpose in view should provide for the employment of attorneys to represent the Indians under contract to be approved by the Commissioner of Indian Affairs and the Secretary of the Interior as required by existing law, and, further, that the Court of Claims should be authorized to fix the fees of the attorneys."

We are constrained to say that as Mr. Belt, who worked hard and faithfully during his lifetime for the Pottawatomie Indians, is now dead, and as his widow is dependent upon the part of the fee which will go to her, we feel it our duty toward our late associate and his widow to urge that the attorney fees in this case be fixed by a proper tribunal after due hearing.

Yours, respectfully,

CHARLES J. KAPPLER,
CHAS. H. MERRILLAT.

BEFORE THE HOUSE AND SENATE COMMITTEES ON INDIAN AFFAIRS.

IN RE BILL FOR THE RELIEF OF THE POTTAWATOMIE INDIANS OF WISCONSIN, FOR PAYMENT OF TREATY ANNUITIES AND OTHER MONEYS IN ACCORDANCE WITH FACTS REPORTED BY THE SECRETARY OF THE INTERIOR.

As attorneys for what are known as the Pottawatomie Indians of Wisconsin, comprising quite a large number of Indians now resident in the States of Wisconsin and Michigan and the Dominion of Canada, and members of what was formerly known as the United Pottawatomie Nation of Indians, we respectfully urge upon Congress that it pass a measure for the payment to these Indians of the amount found due to them by the Secretary of the Interior, on the ascertainment of the number of these Indians

and the accounting made to ascertain the amount of tribal funds which had been unlawfully withheld from them over a long course of years by the Government on the ground that they had not removed west of the Mississippi River. The accounting and census were made under legislative directions of June 21 1906 (34 Stat. L., 380), all as shown in House Document No. 830, Sixtieth Congress, first session.

The payment of this money, amounting to \$1,964,565.87, to these Indians would be in accordance with what has been found to be due to them by the Department of the Interior, and would be in strict accordance with a decision rendered in a case concededly not so strong, by the Supreme Court of the United States in what is known as the New York Indian case. It furthermore would be in accordance with the action of Congress taken with reference to the Winnebago Indians of Wisconsin.

The claim of these Indians originate in a treaty made with them by the United States September 26, 1833, the treaty being entitled, "A treaty between the United Nation of Chippewa, Ottawa, and Pottawatomie Indians and the United States." At the time this treaty was negotiated the Pottawatomie Indians were situated in the States of Indiana, Michigan, Illinois and Wisconsin, their domain extending into the interior from along the shores of Lake Michigan. At the time the treaty was negotiated the Pottawatomie Nation, however, was separated into a large number of bands as the result of settlements that had been established among them, including what is now the city of Chicago, these settlements dividing the Pottawatomie Nation into bands that were located on the western shore of Lake Michigan, including northern Illinois and a large part of Wisconsin, and other bands of the tribe that were located in eastern Illinois, Indiana, and Michigan. This situation resulted in the United States making not one treaty with the Pottawatomie Nation but a large number of treaties with various bands, and likewise was the subject of considerable friction with the Indians owing to a disavowal on the part of various bands of the right of certain chiefs to undertake to act for them. These explanatory details are given not because of the legal or equitable aspect of the case but in order to a proper understanding of then existing conditions and of the attitude taken subsequently by both the Indians and the United States; it likewise explains the course of the Interior Department in long ignoring specific acts of Congress and paying money to those Indians who heeded their requests and denying their rights under the law to those Indians whom the department regarded as recalcitrant, notwithstanding the department was vested with no power under the treaty or the law of forfeiting the rights of one set of Indians and rewarding others with overpayments.

By Article I of the Pottawatomie treaty of September 26, 1833 (7 Stat., 431; Kappler, vol. 2, 402), it was provided:

"The said United Nation of Chippewa, Ottawa, and Pottawatomie Indians cede to the United States all their land along the western shore of Lake Michigan and between this lake and the land ceded to the United States by the Winnebago Nation, at the treaty of Fort Armstrong made on the 15th of September, 1832, bounded on the north by the country lately ceded by the Menominees, and on the south by the country ceded at the treaty of Prairie du Chien made on the 29th of July, 1829, supposed to contain about 5,000,000 acres."

By this treaty it will be observed the Indians parted with land to which the United States admitted they had title to the extent of about 5,000,000 acres of land. By subsequent treaties, some fourteen in number, made between 1833 and 1840, the United States obtained from various bands of Indians in Michigan and Indiana lands to which they claimed title. At this time the Pottawatomie as a whole were entitled by treaty to various annuities given for lands ceded by them.

Subsequent to the making of the proclamation of the treaty of 1833, which proclamation was not made, however, until 1835, the Pottawatomie Indians were given, as provided for in the treaty of 1833, a large tract of land supposed to be at least 5,000,000 acres in Iowa in the vicinity of Council Bluffs. The title which the United States guaranteed to the Indians by this treaty of 1833 was, as shown by Article II, to be the same as that held by other emigrating Indians lately assigned to lands west of the Mississippi River. A reference to these other treaties therefore is necessary in order to ascertain what title was guaranteed to the Wisconsin Pottawatomie Indians who are now claimants before Congress. These later treaties were all negotiated in pursuance of an act passed by Congress May 28, 1830, in accordance with a national policy having in view the transfer of Indians from the Eastern States to the then unsettled country west of the Mississippi River. The act of May 28, 1830, was entitled, "An act to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the Mississippi River." The most important section of this act is section 3. The essential provisions of the act are as follows:

"Sec. 3. That in the making of any such exchange or exchanges, it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange

is made, that the United States will forever secure and guarantee to them, and their heirs or successors, the country so exchanged with them; and if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same: *Provided always*, That such lands shall revert to the United States if the Indians become extinct or abandon the same."

Other sections of this act provided for pay to Indians having improvements on the relinquished lands in the East, and that in making the exchange the President should "cause such aid and assistance to be furnished to the emigrants as may be necessary and proper to enable them to remove to and settle in the country for which they may have exchanged."

Under the provisions of this act, among other treaties, there were negotiated the treaties with the Five Civilized Tribes of the Indian Territory, as to each of which tribes it has been held that they had a title in fee to their lands, subject only to a reversion, since extinguished by the various Dawes Commission acts, in the event the tribe should become extinct.

The first treaty negotiated under the provisions of the act was that of October 27, 1832, with the Kaskaskias, Peorias, and other Indians formerly composing the Illinois Nation of Indians. By Article IV of this act it was provided as follows:

"The United States cede to the combined tribes of Kaskaskias and Peorias, and the bands aforesaid united with them, 150 sections of land forever, or as long as they live upon it as a tribe."

By the treaty of October 29, 1832, with the Piankashaw and Wea Tribes it was provided in Article II as follows:

"The United States cede to the Piankashaw and Wea Tribes, for their permanent residence, 250 sections of land within the limits of the survey."

By the treaty of December 29, 1832, with the Seneca and Shawnee United Nations it was provided in Article II as follows:

"In consideration of said lands described and ceded as aforesaid the United States will grant by letters patent to the tribe or nation of Indians aforesaid the following tract:"

By the treaty of February 14, 1833, with the Cherokee Nation of Indians west of the Mississippi it was provided in Article I as follows:

"The United States agree to possess the Cherokees, and to guarantee it to them forever, and that guaranty is hereby pledged, of 7,000,000 of acres of land to be bounded as follows * * * and letters patent shall be issued by the United States as soon as practicable for the land hereby granted."

By the treaty of February 14, 1833, with the Creeks it was provided just as was provided in the Pottawatomie treaty, that a deputation of Indians might examine the lands within which their future home would lie at the expense of the Government, and by Article II it was provided:

"The United States hereby agree, by and with the consent of the Creek and Cherokee delegates, this day obtained, that the Muskogee or Creek country west of the Mississippi shall be embraced within the following boundaries:"

By Article III it was provided:

"The United States will grant a patent, in fee simple, to the Creek Nation of Indians for the land assigned said nation by this treaty or convention, whenever the same shall have been ratified by the President and Senate of the United States, and the right thus guaranteed by the United States shall be continued to said tribe of Indians so long as they shall exist as a nation, and continue to occupy the country hereby assigned them."

And by Article IV the Seminoles were provided for as follows:

"* * * And it is also understood and agreed that the Seminole Indians of Florida, whose removal is provided for by their treaty, shall also have a permanent and comfortable home on the lands hereby set apart as the country of the Creek Nation."

Similar treaty provisions were made with the Choctaws and Chickasaws. The last of the important treaties prior to the Pottawatomie treaty herein referred to was that of May 13, 1833, with the Quapaw Indians. By Article II of this treaty it was provided as follows:

"The United States hereby agree to convey to the Quapaw Indians 150 sections of land and agree to convey the same by patent to them and their descendants as long as they shall exist as a nation or continue to reside thereon."

It thus will be seen that by the treaty whereby the United States agreed on an exchange of lands with the Pottawatomie Indians, it was solemnly understood that the Pottawatomie Indians should receive an absolute title to their lands west of the Mississippi River as a condition for the relinquishment of their lands in Wisconsin. The United took possession of the lands in Wisconsin and sold the same under its public land laws as part of the public domain. Hence, we have a situation in which

the United States has received the full consideration for the lands and agreed to give a permanent title to the Indian tribes to their new home west of the Mississippi.

This agreement was further reinforced in 1846 when the United States again desired to bring about the removal of the Indians from Iowa, which then was beginning to receive an influx of white settlers to Kansas. The treaty of 1846, among other things, stated that the United States desired to bring together the various bands of Pottawatomie Indians which were one people by kindred, language and other things in common, and to reunite them as one people who should receive their annuities and their benefits in common, and should be restored to their national character as a nation. The Government in consideration of the quit claim by the Indians of any rights or claims they made to the tracts or parcels of lands on which they had been located in Iowa, agreed to make certain money payments to the Indians, and then, by Article IV, provided as follows:

"The United States agree to grant to the said united tribes of Indians possession and title to a tract or parcel of land containing 576,000 acres, being 30 miles square and being the eastern part of the lands ceded to the United States by the Kansas Tribe of Indians by treaty concluded on the 14th day of January and ratified on the 15th of April of the present year, lying adjoining the Shawnees on the south and the Delawares and Shawnees on the east on both sides of the Kansas River, and to guarantee the full and complete possession of the same to the Pottawatomie Nation, parties to this treaty, as their land and home forever; for which they are to pay the United States the sum of \$87,000, to be deducted from the gross sum (\$850,000) promised to them in the third article of this treaty."

It will be noted, therefore, that the judicial, executive, and legislative bureaus or departments of the Government at one time or another has declared that the title the Indians acquired by exchange of lands was an absolute title in their own right and in common, the Indian title, it always having been held, was a communal title in which all members of the tribe were entitled to an equal undivided share until such time as allotment of the same should be made, and that such allotment should be made upon a basis of equality.

In the case of *New York Indians v. The United States* (170 U. S., 1), the Supreme Court of the United States considered a treaty made January 15, 1838, with the New York Indians, then located near Buffalo Creek, N. Y. By this treaty it had been provided that the Indians should relinquish whatever claim they had, the same being a matter of dispute with the Menominee Indians of Wisconsin in 1831. In consideration of the relinquishment by the New York Indians of these lands the United States agreed "to set apart the following tract of country situated directly west of the State of Missouri as a permanent home for all the New York Indians * * * to have and to hold the same in fee simple to the said tribes or nations of Indians by patent from the President of the United States issued in conformity with the provisions of the third section of the act of May 28, 1830," which act we have heretofore quoted, being the same act under which the Pottawatomie exchange of lands was provided for.

The court, in considering this case, and in considering a claim made on behalf of the Government that the agreement was in the future tense and that by it the United States had simply agreed to set apart in the future certain lands, and that as the Indians had not removed west of the Mississippi River as the treaty required them to do, that they, therefore, obtained no title to the lands west of the Mississippi River, and which lands the Government subsequently without consent of the Indians sold to settlers, said that the proper construction to be placed on such a grant had been determined in a number of decisions by the court, and that it was a grant in present, of which the Indians could not be deprived, except under some well-established legal principles. The court stated the proposition made by the language of the act agreeing to set apart lands for the Indians and the further provision in another article of the treaty that they should remove west of the Mississippi River, as follows:

"The real question involved is whether the cession of the Kansas lands to these Indians ever took complete effect or whether the failure or rather the refusal of the Indians to remove to the lands set apart for them within five years worked ipso facto under the third article of the treaty a forfeiture of their interest."

The court held that it was a grant in present and that there was no forfeiture, although the article providing for their removal, as will be seen hereafter, stated that they should forfeit their lands if they did not remove, which is not true, as will be seen in the Pottawatomie treaty. The court, after citing a number of cases, including the well-known case of *Rutherford v. Green's Heirs* (2 Wheat., 196), said:

"Applying the principle of the cases above cited to the one under consideration we are of the opinion that the grant in question was intended to invest a present legal title in the Indians."

It being seen, therefore, that there has been a recognition by Congress and a determination by the courts that the title of the Pottawatomie Indians was a title in fee and that the grant to them was a grant of a present interest, it follows, unless for some reason some part of the Indians have been divested of their interest in the lands, annuities, and other funds of the tribe, that the Wisconsin Pottawatomies were entitled to their divisible share of the lands and funds held in the communal estate by the tribe, and which lands and annuities the United States stipulated to secure to them in compensation for the tribal lands in Wisconsin about Lake Michigan and in Iowa.

Counsel will show that there was no such divestiture or forfeiture of interest, and that the rights of those Indians who did not move west were recognized by Congress in express terms in the act of 1864; that the same was recognized by the Court of Claims and the Supreme Court of the United States in a case much weaker for the Indians than the Pottawatomie case, in the case of the New York Indians v. The United States, heretofore referred to, and that at last after many years counsel have succeeded in convincing the executive department of the Government of the justice of the claims of the Indians.

A comparison of the provisions as to the removal of the Indians in the Pottawatomie and New York Indian treaties, respectively, will make this entirely clear.

By the Pottawatomie treaty it was provided on this point as follows:
"And it is further agreed that as fast as the said Indians shall be prepared to emigrate they shall be removed at the expense of the United States and shall receive subsistence while upon the journey and for one year after their arrival at their new home, it being understood that the said Indians are to remove from all that part of the land now ceded which is within the State of Illinois immediately on the ratification of this treaty, but to be permitted to retain possession of the country north of the boundary line of the said State for the term of three years without molestation or interruption and under the protection of the laws of the United States."

Provision was then made for the payment of certain annuities to the Indians, and by article 4 it was provided as follows:

"A just proportion of the annuity money, secured as well by former treaties as the present, shall be paid west of the Mississippi to such portion of the nation as shall have removed thither during the ensuing three years, after which time the whole amount of the annuities shall be paid at their location west of the Mississippi."

It will be observed from this language that the treaty nowhere contains a provision for the forfeiture of the rights of those Indians who did not remove west of the Mississippi River, but simply that in order to induce them to remove it was directed that the annuities should be payable west of the Mississippi River.

The Interior Department, however, appears to have taken offense at the fact that a number of the Wisconsin Pottawatomies asserted that those chiefs who had undertaken to dispose of their lands by the treaty of 1833 had no right to act for them and declined to remove west of the Mississippi River, a condition of mind that became accentuated when it became known soon after 1840 that there was again under consideration a proposition to remove those Pottawatomies who had consented and had moved to Iowa to other sections farther south and west.

The Interior Department, notwithstanding the terms of the treaty, did not declare any forfeiture, and notwithstanding the Wisconsin Pottawatomies, some of whom had moved to Canada when the United States sought to force them to go west of the Mississippi, protested, undertook nevertheless to forfeit the share of those Wisconsin Pottawatomies who failed to remove west of the Mississippi River and paid the same over to those Pottawatomie Indians who did remove west of the Mississippi River. This forfeiture was without warrant of law, and, furthermore, it was held by Justice Brewer in *Richardville v. Troop* (28 Fed. Rep.) that an executive department of the Government had no right or power to declare a forfeiture. That a forfeiture had not been incurred we will see has been found by both the courts and Congress.

But the Indian Office went further even than this. It forfeited the rights of the Pottawatomie Indians who did not remove west of the Mississippi River not only in their share of the lands in Wisconsin, or the consideration agreed by the treaty of 1833 to be given them in return therefor, including their share in the lands west of the Mississippi River, in Iowa first and later in Kansas, but it took the extreme measure of forfeiting the share due to those Pottawatomie Indians of Wisconsin in perpetual annuities and other funds that had been solemnly agreed to be paid to them by treaties enacted between August 3, 1795, and October 27, 1832, whereby the United States, in consideration of cessions of land made by the Pottawatomies as a nation to lands they then held in Ohio and east of their Lake Michigan homes, agreed to divide among the Pottawatomies as a whole (all Indian rights being communal) certain perpetual annuities and other funds, if forfeited the shares of those who did not remove

even in these back-treaty payments and gave their shares to those who did move west. And it did this without any warrant of law, and continued so to do even after Congress in 1864, on its attention being called to the matter, specifically directed a contrary course should be pursued. It was a plain travesty on justice; an equally plain defiance of an act of Congress.

A sample of these treaties is that of October 2, 1818, whereby it was provided that in consideration of the cession certain lands between the Tippecanoe, Wabash, and Vermilion Rivers in Indiana, the United States agreed to pay \$2,500 annually to the entire Pottawatomie Nation of Indians.

The situation, to illustrate, was as though in consideration for transfer of title to the land on which the Capitol Building stands, which land was held by a numerous family as a communal holding, the United States should agree by consent of the entire family to give to the family \$10,000 a year so long as the family or descendants thereof should live and agree to divide the same equally among each member of the family or descendants thereof and then later should buy from the family as a whole their title to the House of Representatives Office Building, agree in return to give them as a home at the land whereon is now the Senate Office Building and certain perpetual annual payments, stating as the place of payment the Senate Office Building and then after getting the House of Representatives Office Building site and converting the same to the use and profit of the United States should forfeit the right of those members of the family who did not make their homes on the Senate Office Building site not only to the lands of the Senate Office Building site, but also forfeit their shares in the money payments for the House of Representatives site, and in the payments agreed to be made annually to all members of the family in consideration for the cession by them of the Capitol Building site. And all this done simply, first, by implication from a treaty that did not leave the same open to such implication, and second, to continue the forfeitures when Congress ordered otherwise.

A statement of these various and several annuities and other payments forfeited will be found in the tables embodied in House Document No. 830, Sixtieth Congress, first session.

A comparison of the foregoing provisions of the Pottawatomie treaty with the New York Indian treaty of Buffalo Creek, made January 15, 1838, and the decision of the Supreme Court of the United States thereon, will show clearly that no forfeiture was incurred.

By the New York Indian treaty it was provided, not as in the case of the Pottawatomie treaty, that the annuities "shall be paid west of the Mississippi," but there was this provision in Article III of the New York Indian treaty:

"It is further agreed that such of the tribes of the New York Indians as do not accept and agree to remove to the country set apart for their new homes within five years, or such other time as the President may from time to time appoint, shall forfeit all interest in the lands so set apart to the United States."

Construing this treaty, the Supreme Court of the United States in the New York Indian case heretofore referred to, said:

"Assuming that the Indians took immediate title to the lands reserved for them in Kansas, we are next to inquire whether such title has been legally forfeited."

Then, considering the question it raised, the court said:

"In the view we have taken of the granting clauses of this treaty, the provisions of the third article created a condition subsequent, upon a breach of which the Government might declare a forfeiture, but had no power by simple executive action to reenter, take possession of the lands and sell them."

The court cited with approval this decision in *United States v. Repentigny* (5 Wall., 267), as follows:

"We agree that before a forfeiture or reunion with the public domain could take place, a judicial inquiry should be instituted or, in the technical language of the common law, office found, or its legal equivalent."

"A legislative act directing the possession and appropriation of the land is equivalent to office found. The mode of ascertaining or of assuming the forfeited grant is subject to the legislative authority of the Government. As said by this court in *Railway Company v. McGee* (115 U. S., 469), however, legislation, in order to be sufficient and to take the place of a suit by the United States to enforce a forfeiture and a judgment therein, should be direct, positive and free from all doubt or ambiguity."

A condition when relied upon to work a forfeiture, it said, is construed with great strictness. It held that in the New York case there was no forfeiture, notwithstanding the provisions of Article III.

It held that a forfeiture could not occur by implication. It therefore must be apparent that since no forfeiture occurred in the New York Indian treaty case, not-

withstanding the declaration upon that point, it is plain there was none in the case of the Pottawatomies of Wisconsin.

In the case of the New York Indians the executive department, acting under the provisions of Article III, had undertaken to forfeit the rights of the New York Indians, but the Supreme Court of the United States, as we have seen, refused to uphold this forfeiture and held that the United States legally and equitably was liable and must reimburse the New York Indians.

The case of the Pottawatomies of Wisconsin, as seen, is far stronger under the terms of the treaty.

But the case of the Pottawatomies of Wisconsin does not rest here. Their rights and claims are far stronger, for in 1864, Congress specifically recognized the claims of the Wisconsin Pottawatomies, including in this designation those tribal members who still remained in Wisconsin, those in Michigan, and those in Canada, who had formerly belonged to what is known as the Pottawatomie branch, and declared that they were entitled to an equal share in all tribal lands, annuities, and funds with those Pottawatomies who in fact removed west of the Mississippi River.

In the Indian appropriation act approved June 23, 1864 (13 Stat. L., 172), it was provided as follows:

"Provided, That the proportion of annuities to which said stray bands of Pottawatomies and Winnebagos would be entitled if they were settled upon the reservation with their respective tribes shall be retained in the Treasury to their credit from year to year to be paid to them when they shall unite with their tribes or to be used by the Secretary of the Interior in defraying the expenses of their removal, or in settling and subsisting them on any other reservation which may hereafter be provided for them."

In the case of the Winnebagos, Congress heretofore has paid over to them their withheld annuities.

By the act referred to we therefore have an express declaration by Congress that those Pottawatomies who had not removed were entitled equally with the others to their share in the annuities, and that no forfeiture had occurred.

That act, in other words, was a declaratory one with respect to the treaty of 1833.

Notwithstanding this express declaration by Congress and its explicit direction that the share of the Wisconsin Pottawatomies who had not removed should be retained in the Treasury to their credit, the Interior Department in violation of the law and the express command of Congress did, as a matter of fact, continue to pay over to those Indians who had removed the entire tribal annuities and did not withhold and keep in the Treasury to the credit of the stray bands of Wisconsin Pottawatomies who had remained in Wisconsin their share of the tribal annuities and funds. The law of Congress, in other words, was simply ignored.

The Interior Department paid out the entire fund and made settlement with those Pottawatomies who removed west and subsequently made allotments on the basis that those who had removed were alone entitled to share in the tribal lands and funds, and that a forfeiture had taken place of the lands and funds of those who remained in Wisconsin and Canada. This act on the part of the executive department was in the teeth of the law of Congress, and as the Supreme Court, as we have shown, has heretofore decided, was in violation of law. This violation of law and this assertion on the part of the Department of the Interior that the Wisconsin Pottawatomies had forfeited their rights, continued up until a very recent time. As late as June 19, 1902, the Indian Office in response to a letter from Senator Quarles, of Wisconsin, calling attention to the matter and asking information with respect to the claims of the Wisconsin Pottawatomies, wrote:

"The Indians lost any and all rights they may have had under said treaty (treaty of 1833) by not removing with their tribe west of the Mississippi River, as provided in the treaty."

"As a matter of fact, the Wisconsin Pottawatomies have no claims under the treaty of 1833. They gave as an excuse for not complying with the stipulations thereof that the making of the treaty was by a few and not understood by the majority and many refused to remove and thereby forfeited their rights. There is nothing this office can do in the matter."

After this continued refusal by the Indian Office and the Interior Department to recognize the rights of what were formerly known as the Wisconsin Pottawatomies, the Indians, on the advice of Senator Nelson, of Minnesota, employed an attorney to represent their interests. As a result of representations of the law and the fact, the Interior Department now has reconsidered, within the last three years, the position it took, and has found that there had been no forfeiture incurred by the Wisconsin Pottawatomies and that they are entitled to be recompensed for their fair share of

lands, annuities, and funds of which they have been deprived. A report to this effect is now in the files of Congress.

Thus we find at last the executive, judicial, and legislative departments of the Government combined in favor of the claim of the Wisconsin Pottawatomies that no forfeiture has occurred and that legally and equitably the United States is in honor bound under its treaty stipulations to make good the money of which it has deprived its wards, the Indians referred to.

In view of this fact we respectfully urge upon Congress that it shall at this time make an appropriation to pay to the Indians, our clients, the amount found due to them on an accounting by the officers of the Government. There would seem to be, under the circumstances and in view of the fact that the accounting has been made, no reason for any other action than the appropriation of the money and the direction of the uses to which it shall be applied.

We respectfully urge that this action shall be taken. Some question has arisen as to whether or not those Wisconsin Pottawatomies who moved to Canada forfeited thereby any claim or right to the tribal lands or funds. This point was expressly decided, however, by the Court of Claims in the New York Indian case above referred to as having been decided by the Supreme Court of the United States. After the decision of the Supreme Court of the United States the case was referred back to the Court of Claims for an accounting, and the decision of the Court of Claims subsequent to the accounting was affirmed by the Supreme Court of the United States. In this case in the Court of Claims reported in volume 46 of the Court of Claims Reports, at page 448, the court took up the contention made in behalf of the United States and some of the Indians who had not removed to Canada that those Indians who had removed to Canada had forfeited their rights. The Court of Claims, however, held to the contrary, saying that the fundamental Indian law of ownership was communal, and that all members of the community were entitled to their ascertained interest in the tribal lands and funds, regardless of where their home was. The court said:

"Our Indians are and have been the wards of the United States, and the Indian has no right of expatriation. Whether they may or may not leave the country is a question of Indian policy. In Sitting Bull's case they removed to Canada with the intent of remaining there, and became domiciled, so far as Indians could be. The Indian policy required that they should be brought back and they were brought back. In the case of the Kickapoos, they removed to Mexico with like intent to remain and be domiciled there. The Indian policy required that they be brought back and they were brought back. In 1842 the Indian policy might have required that the Oneidas be brought back, and if it had they would have been brought back. They did not cease to be wards of the United States because they had crossed the border and had attempted to domicile themselves in a foreign country, and it was expressly held in the case of *Lowe v. Kickapoos* (37 C. Cls., 413) that 'the Indians being wards of the United States can not suspend that relation without the consent of the Government.'"

The court said that the United States took no act to sanction their expatriation, or to deprive them of their rights under the treaty, and that therefore those rights continued until the breach of the agreement. Then, speaking of a situation which is equally applicable to the Pottawatomies, the court added:

"From an equitable point of view it may be added that they did more to carry out the policy of the United States by removing from the State of New York than any of the Indians who are now represented in this court."

Likewise, we may say that so far as concerned one of the main objects of the United States—that of obtaining the Indian's lands in Wisconsin for settlers—so many of the Pottawatomies concerned in this case as removed across the border of Canada did as a matter of fact subserve by their removal one of the main policies of the United States. As the lands, however, were theirs, and as they ceded them for and in consideration of certain lands and annuities which the United States solemnly agreed to give them in exchange, it is but fair wherever they are that they should receive the consideration which the Government agreed to make to them.

We submit that Congress should make provision, since an accounting has been had and is before Congress, for the Indians both in this country and in Canada according to the roll made by the officials of the Interior Department of the United States. Should any question, however, be made as to the rights of those Indians who removed to Canada, we ask, in view of the fact that there is a concurrence of all branches of the Government in the proposition that those Pottawatomie Indians who still remain in Wisconsin are entitled to reimbursement, that Congress shall make an appropriation and pay to those Pottawatomie Indians now living in the United States their share of the tribal lands and funds found to be due them, and that there shall be referred to the court for determination the liability—legal and equitable—of the United States to those Pottawatomie Indians who removed to Canada.

SERVICES OF ATTORNEYS.

But one other matter remains for consideration, and that is the compensation due the attorneys for the Indians. On this point we may state that the services have been performed under a contract duly made by representative Indians after a council of those chiefly in interest, and that that contract, at a time when the case looked desperate, and was opposed by the Indian Office as without foundation, was approved by the Commissioner of Indian Affairs. Counsel ask that that agreement may be lived up to. The only point of difference at this time in this whole matter between the executive department of the Government and the counsel representing the Indians is as to the compensation to be allowed to the attorneys. We shall, therefore, address ourselves to this point to show that counsel are entitled both as a matter of contract and as a matter of service rendered, to the fee provided for in the contract.

As shown heretofore, the Pottawatomie Indians of Wisconsin from 1838 to 1864 were illegally deprived by the Department of the Interior of their share in tribal annuities and other moneys due under treaty stipulations. From 1864 until 1902 they were again further denied their rights by the Indian Office and the Department of the Interior notwithstanding a positive act of Congress directing that their shares should be held in the Treasury, and notwithstanding this positive command of Congress in 1864 their shares were paid over to other Pottawatomie Indians who had moved west of the Mississippi to the injury of the Wisconsin Pottawatomies. In 1902 Senator Quarles of Wisconsin took up the matter with the Indian Office and it on June 19, 1902, again reiterated its denial of rights to the Pottawatomies, the Commissioner of Indian Affairs, in a letter to Senator Quarles, dated June 19, 1902 stating:

"The Indians lost any and all rights they may have had under said treaty of 1833 by not removing with their tribe west of the Mississippi River as provided in the treaty. * * * As a matter of fact, the Wisconsin Pottawatomies have no claims under the treaty of 1833."

Upon this statement by the Indian Office, and accepting the statement therein contained as correct, Senator Quarles took no further steps in the matter. The attention of Senator Nelson being directed to the case, he communicated through a correspondent in Washington with Mr. Belt, at one time Assistant Commissioner of Indian Affairs, and then a practicing attorney in the city of Washington. After a careful investigation of the matter Mr. Belt became convinced that the Pottawatomie Indians of Wisconsin did have rights, and made a long report upon the subject for Senator Nelson. The result of that report was that Mr. Belt was put in communication with the Indians through the Rev. Mr. Morstad, a missionary among them, who sought to secure his services for prosecution of their claims. The Indians were unable, as the correspondence shows, to raise a retainer or to promise any compensation, except out of such award as might be made them. The situation presented was that of Indians with unacknowledged rights whose claims had been repeatedly denied by the executive department, and it was to be believed would continue to be denied by the office charged with the guardianship of their interests. The very fact that the Indian Office was recognized as standing in the relation of guardian to the Indians as their wards, and that for that reason they might be expected to look with a favorable eye on every claim of Indians to rights in lands or property naturally gave to any adverse view the Indian Office might take on any Indian claim the very greatest weight. It thus will be seen that at this time, namely, the summer of 1902, any attorney undertaking this case would have to make an uphill fight for a number of years, and would be engaged on what would be considered by lawyers generally as a desperate undertaking.

However, Mr. Belt did undertake this labor and agreed upon a wholly contingent fee of 20 per cent of such amount as might be recovered to represent the Indians. It is a perfectly safe statement to make that any white persons of thorough intelligence and the most keen business and trading instincts would have consented willingly to name a wholly contingent fee of 33 1/3 per cent to 50 per cent to any attorneys who would undertake a claim for them in a similarly desperate situation.

After correspondence with the Indians and with Mr. Morstad following his reports to Senator Nelson Mr. Belt effected a contract with the Indians on a basis of 20 per cent, to be wholly contingent. This contract was signed by the Indians.

The fight before Congress was initiated by a memorial which Mr. Belt drafted as a result of a summer's extensive research devoted to the Pottawatomie treaties, the laws of Congress, and the reports of the Indian Office and other data available.

That memorial will be found in Senate Document No. 185, Fifty-seventh Congress, second session. Incorporated in it will be found the letters of the Assistant Commissioner of Indian Affairs denying rights to the Pottawatomies.

The contract made between Mr. Belt and the Indians was submitted in due course to the Commissioner of Indian Affairs, Mr. W. A. Jones. Mr. Jones approved the contract, but with a reduction in the fee to 15 per cent of any amount that might be recovered. In his letter to the Secretary of the Interior submitting the contract to him, Commissioner Jones under date of November 1, 1902, again denied that the Indians had any just claim, stating the matter thus:

"This office has denied such claim on the ground that by refusing to move west under the treaty of 1833 they forfeited all rights under that and subsequent treaties and with the Pottawatomie Nation."

The commissioner stated that he believed that inasmuch as these Indians were citizens of the United States, he was of opinion they were competent to make contracts without the consent of the Interior Department, but that no harm could come from approving a contract even though the same were not required specifically by the terms of the Revised Statutes, and that it would be only proper following precedent to give the matter some status by approving a contract, but "with the express understanding and upon the condition that such action shall in no wise be regarded as a recognition of the claimant Indians as a tribe, or the alleged claims in the premises."

Thus, we find that with a full recognition of the situation, the Commissioner of Indian Affairs before the services had been rendered and before victory was in sight, recommended that the maximum fee that under the custom established with reference to Indian tribal fee contracts could be allowed upon Indian contracts should be awarded the attorneys if they were successful. When the matter was submitted to Secretary Hitchcock, the contract was returned with the statement that in view of the fact that approval apparently was not required by the terms of section 2103 of the Revised Statutes, the contract was returned without approval for the files of the Indian Office. It may be said that that throughout his term in office Mr. Hitchcock was violently opposed to contracts of attorneys to represent Indians, insisting that the Indian Office could and would protect the Indians without aid from lawyers, a fallacy which has been sufficiently demonstrated in late years.

Mr. Belt in the autumn of 1902 was engaged steadily in preparing the case of the Pottawatomies for presentation to Congress. On December 11, 1902, he wrote Senator Quarles requesting him to present the memorial of the Indians to the Senate and have the same printed as a congressional document. Senator Quarles, however, was so impressed by the antagonism of the Indian Office to the claim that he did not present the memorial until February 27, 1903, and then only after several hearings which he gave between January 8 and February 27 to Mr. Belt. The Senator seemed to think that the claim evidently had no merit and the Indians no rights, since the Indian Office reported adversely.

March 3, 1903, a protest was made to the Commissioner of Indian Affairs against paying out to the Pottawatomies in Kansas the proportion of annuities due to the claimant Indians in Wisconsin, but the protest was ignored.

A draft of a bill for the relief of the Pottawatomies was submitted to Senator Quarles with the memorial he had introduced, but was not presented to the Senate, and it was not until November 28, 1903, that the Senator's consent could be obtained to introduce a bill providing for an investigation of the fact as to whether or not the Indians had any just claims. The bill was referred to the Committee on Indian Affairs when introduced, and a similar bill was introduced in the House December 7, 1904, by Representative Brown of Wisconsin.

On February 2, 1904, the Secretary of the Interior reported to the Senate on the Senate bill, inclosing a report of the Commissioner of Indian Affairs adverse to the measure and stating that the commissioner already had informed Senator Quarles that the Indians had "forfeited" their annuities by not removing west of the Mississippi River, but that inasmuch as the attorneys for the claimant Indians were objecting to the word "forfeited," the word "relinquished" would be substituted, though legally, he submitted, the words were synonymous.

At last a hearing was had before a subcommittee of the Senate Committee on Indian Affairs, at which the matter was argued orally. But, notwithstanding persistent efforts, Congress adjourned without action on the bill by the committee. Thus we find that after two years of labor it had been impossible to secure recognition of the claims of the Indians.

At this time steps were taken to obtain an enrollment of the Indians, and Mr. Belt sent to the Rev. Mr. Morstad and Chief Kisheck certain blanks for the purpose of securing an enrollment. The matter was vigorously taken up once more in December, 1904, with the view of having a thorough investigation made. After several interviews with Representative Brown, in which the whole matter was gone over, a subcommittee

of the House Committee on Indian Affairs was appointed to consider the measure. This measure provided for the appointment of an inspector who should investigate the case. Numerous interviews followed with members of both the Senate and House Committee on Indian Affairs, but, nevertheless, the Fifty-eighth Congress adjourned its third session without final action on the measure proposing an investigation.

December 14, 1905, Mr. Belt associated Messrs. Kappler & Merrillat with him in the prosecution of the claim, and from that time to the present date all three counsel have worked in cooperation and steadily toward the perfection of the claims of the Indians.

Finally, in the year 1906, legislation was procured for the enrollment of these Indians and a report upon their claims. This measure was drafted by counsel, and provided for the official enrollment of the Indians and an official statement as to the funds of which they had been deprived of their share. That enrollment, it is true, was not made by counsel, and because counsel did not make the enrollment the Indian Office has endeavored to minimize the work of counsel. It is sufficient on that point to say that counsel can not undertake the work of enrollment. In order that the same might have verity, it was absolutely essential that this should be undertaken by the Government of the United States. It was undertaken and the first report made was not satisfactory to the Indian Office, with the result that counsel after considerable labor succeeded in inducing the Indian Office again to take up the matter and make a more perfect enrollment. In this connection it may be stated that counsel had a number of interviews with the inspector and with the clerk of the Indian Office detailed to make this enrollment; went over the ground thoroughly with them; gave them data which would be of value in making the enrollment, and placed them in communication with persons who could afford them the assistance necessary to enable a perfect enrollment to be made. At the same time counsel prepared much data and submitted the same to the accounting officers of the Indian Office in immediate charge of the work of tabulation of the amounts that had been withheld from the Indians. Counsel furnished to these accounting officers complete data on which to make their computations, furnishing them the references to the several treaties under which annuities were provided for and making suggestions as to the proper method of computation. Again, counsel state that they did not themselves make this computation. They would have refused to make the same had they been requested, because like the enrollment the verity of the same depended on the work being performed by the officials of the Government of the United States. Obviously neither courts nor Congress would have given heed to either enrollments or calculations made not by the officials of the Government of the United States, but by the party claimant or their counsel. Numerous suggestions were made to Mr. Frank C. Churchill, the United States Indian inspector, to Dr. Wooster, the clerk in the Indian Office, who with Mr. Churchill, made the enrollments, and to the accounting officers.

Finally, the enrollment was made and completed, and the report with reference to the enrollment and also with reference to the amount of annuities and other funds of which these Indians had been deprived, was submitted by the Office of the Commissioner of Indian Affairs to the Secretary of the Interior. After the work had been completed and the report prepared for the signature of the Secretary of the Interior, counsel for the Indians were shown the same and given a hearing thereon. As a result of such hearing the report was recast and now is believed to be entirely accurate. The report will be found in House Document No. 830, Sixtieth Congress, first session.

It may be stated that during this interval the matter was presented by counsel to Senators La Follette and Stephenson, of Wisconsin, and Representative Morse, of Wisconsin, that counsel devoted much time and consideration to the matter, all three attorneys being engaged steadily at intervals upon the claim. Bills were prepared for introduction in both the Senate and the House.

Finally, the Indian Office and the Department of the Interior were brought after much labor to a recognition of the fact that these Indians had just claims. The fact is to be borne in mind that the result has been obtained only after 70 years of denial of rights to these Indians by the Indian Office, and after 7 years of labor by one attorney for the Indians and 3 years of labor on the part of the two lawyers associated with him. For some unknown and unaccountable reason the Indian Office notwithstanding these facts and notwithstanding the fact that when the fight was begun the Commissioner of Indian Affairs approved a contract with the Indians for 15 per cent of any recovery, now takes the position that counsel should have a fee of only \$5,000. It likewise recommends \$5,000 to be paid to the Rev. Mr. Morstad. Counsel desire to express their appreciation of the services and assistance they have been rendered by the Rev. Mr. Morstad and his fidelity to the interests of the Indians under his charge. They may state that while under no legal obligation of any kind to the Rev. Mr. Morstad, who has worked zealously for his people without thought of compensation, that it always has been their intention to tender some compensation to this gentleman

for the work he has done. They have felt, however, knowing this missionary, that it would be a delicate matter just how to approach him, and that it would be inadvisable to suggest such a course while the matter was pending. They always have intended, as stated, that when a final result was achieved that out of the amount coming to them according to their contract they would make some compensation.

Request for a hearing on the subject of the Pottawatomie contract and the services rendered thereunder was made of the Acting Commissioner of Indian Affairs and of the Secretary of the Interior by Mr. Belt, the attorney having the contract approved by Commissioner of Indian Affairs Jones, and on his behalf by his associates, but the acting commissioner, who made the report to the Secretary, declined to grant a hearing on the ground that he knew nothing of the services rendered in Congress, had no record of suggestions made to the administrative officials in immediate charge of the work of compiling the data ordered prepared by Congress, and had reached his own conclusion in the matter and saw no need of a hearing, and that Congress could do as it saw fit as regards services before it, while the Secretary of the Interior replied to a request for a hearing to the effect that he must be guided by the recommendation of the Indian Office.

Counsel respectfully submit that in view of the foregoing the most manifest injustice would be done to have the contract of the lawyers reduced as is proposed on a recommendation made without hearing. The payment of the full fee of 15 per cent is respectfully insisted upon as due in justice and equity. The Supreme Court of the United States in a number of cases has stated that contingent fees much larger were entirely fair and equitable, and Congress in several instances has allowed such per centum. In a case involving equally as much money and with only one or two points involved—that of the amount due Admiral Dewey and the sailors of the United States for destroying the Spanish fleet at Manila—a certain fee of 5 per cent was paid and an additional 10 per cent on the amount that might be recovered over and above the minimum claim, it being conceded by the United States that there was due to Admiral Dewey and his officers and sailors a large amount of money and the only question in the case being how much they were entitled to in excess of the amount conceded by the Government.

We respectfully request, therefore, that a full allowance of the contract fee be made. Respectfully submitted.

R. V. BELT,
Attorney for the Pottawatomie Indians of Wisconsin and Canada.
KAPPLER & MERRILLAT,
Associate Counsel.

x

COPY

LAW OFFICE
of
A. G. CHISHOLM.
Dundas Street.

London, Ont., December, 1918.

Dear Sir or Madam:

Arrangements have now been completed between the Department of Indian Affairs, Ottawa, on behalf of the Government of Canada, and myself, whereby the claim of the descendants of the Pottawatamies of Wisconsin resident in this country, referred to more particularly in my circular letter dated August 15th, 1918, copy of which was mailed you, will be vigorously pressed for an early settlement; and in furtherance of our own efforts for payment of the claim, the Superintendent General has agreed to recommend the Canadian Government pass an Order-in-Council directing that diplomatic or other proper means be taken at Washington for this purpose.

In consideration of this action of the Government, I have agreed to forego the compensation agreed on in the Contract signed by you with myself, to be paid me by you in the event of the recovery of the claim, and have agreed with the Indian Department, such compensation shall be fixed, according to circumstances, by either the Court of Claims at Washington, or the Exchequer Court of Canada. By a further provision of the Agreement with the Indian Department, the Canadian claimants are to be assessed not more than \$2.00 per head, for the purpose of providing for disbursements in connection with the prosecution of the claim, and of this amount you are now asked to provide \$1.00 for each claimant (wife or child and yourself) represented by you. While no claimant will be prejudiced by non-payment, as a large sum will be immediately required to properly forward the matter, it must be recognized by all concerned, any lack of adequate and prompt response to this assessment, must prove a serious impediment to prosecution of the claim.

Please, therefore, at your early convenience tear off the attached slip and remit me the amount proper to be paid by you as above stated. Doubtless changes have taken place in the roll of claimants now in my possession, since the same was made up. The attached slip is correct, according to information at the time mentioned. You can notify me of any such changes, or of the names of additional claimants, on the attached slip and the same will receive attention. Hoping the above will have your approval.

Respectfully,

A. G. Chisholm.

Solicitor for Canadian Branch Pottawatamies
of Wisconsin.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

PUBLIC ARCHIVES
ARCHIVES PUBLIQUES
CANADA

P.O:

Dated

.....

A. G. Chisholm,
Barrister, etc.,
London. Ont.

Dear Sir:

I have received your circular of December, 1918, regarding the claim of the Pottawatamies of Wisconsin against the United States. I enclose you the sum of \$1.00 assessed against me for the purpose of providing disbursements in connection with the prosecution of the claim. Said amount represents \$1.00 for each of the following persons.

Name	Post Office	Amount.
1.....Mrs. Sophia Shawon...	Cape Croker.....	\$1.00
2.....		
3.....		
4.....		
5.....		
6.....		
7.....		
8.....		
9.....		
10.....		

Respectfully,

Sign name here.....

Add Post Office.....

NOTE:- If the names of your children or wards on behalf of whom you claim, are not mentioned above, fill in their names and add \$1.00 for each name so filled in. If any of the above-mentioned parties are dead, mark "Dead" opposite such name and do not send \$1.00 for such party. Claimants not already listed, may have their names added by inserting them above. Please remit by Express or Money Order or Postal Note.

To,

The Honourable,

The Secretary of the Interior of the United States.

The Petition of Andrew Gordon Chisholm of the City of London in the Dominion of Canada, Solicitor, on behalf of certain Canadian representatives of the Wisconsin Band of Pottawatamie Indians, whose ancestors resided in the State of Wisconsin at the time of the making of certain Treaties with the United States by said Pottawatamie Indians (set out and referred to in the report of the Secretary of the Interior to the House of Representatives, embodied in House Document 830, 60th Congress, first session) but who afterwards removed to Canada; for a proportionate share in the sum found due to said Pottawatamies of Wisconsin by the United States, as set out in said House Document 830, or for other relief.

H U M B L Y S H E W E T H

1. That at the time of the making of the said Treaties, the forefathers of said Indians resided in the State of Wisconsin, and were equally entitled with the forefathers of the Pottawatamies of Wisconsin, who still remain in said State of Wisconsin and in the State of Michigan, to all benefits and advantages derived or to be derived by said Pottawatamies of Wisconsin, under said Treaties.

2. That by their removal to Canada said Indians claim their forefathers did not forfeit the benefits and advantages, derived or to be derived by them as members of the said Pottawatamies of Wisconsin, under said Treaties. That the Court of Claims of the United States has held (15th May, 1905, in the case of the New York Indians versus the United States) that under similar circumstances, the Oneida Indians of New York by their migration to Canada, in or about the year 1842, where they have since resided, did not forfeit their right to their

proportionate share of the New York Indian fund, found due to the New York Indians by the United States; and that the United States accordingly paid to said Oneida Indians still residing in Canada, their said proportionate share of said fund. That said Court of Claims also held in said case of the New York Indians,-

"Our Indians were and have been the wards of the United States, and the Indian has no right of expatriation."

3. That the United States has not declared that by their removal to Canada, said Canadian representatives of said Pottawatamie Indians of Wisconsin, had forfeited their right to share in the benefits and advantages of said Treaties.

4. That up till a comparatively recent period, notwithstanding the continual assertion by said Indians of their claims in these respects, the United States had not admitted there were any moneys due the Pottawatamies of Wisconsin by the United States. That it was only after the institution of a most careful investigation by the United States, the Secretary of the Interior, made his report to the Congress of the United States, dated the 1st April, 1908, embodied in said House Document 830, above referred to.

5. From said report, it would appear:

a/ The total proportionate shares of the annuities, trust funds and other moneys paid to or expended to the Tribe to which they belong, in which the said Pottawatamie Indians of Wisconsin had not shared, the sum of \$1,964,565.87.

b/ That a roll of said Pottawatamie Indians prepared by authority of Act of Congress (34 Stat. L. 360) in the direction of the Secretary of the Interior submitted to the Commissioner of Indian Affairs, 18th, 1907, showed 1880 found entitled to enrolment and that by a supplemental roll dated January, 1908, 127 additional names were added, making of 2007 persons enrolled.

c/ That the Secretary of the Interior in his report above referred to stated,—"These rolls were prepared by the Commissioner of Indian Affairs to be

correct and complete as it is practicable to make them. Of the total number enrolled 457 reside in Wisconsin and Michigan and 1550 in the Dominion of Canada."

5/ That for the purpose of compiling said rolls, the Agent of the Secretary of the Interior visited Indian communities at the following places in the Province of Ontario, Canada, namely, - Sarnia, Kettle Point, Stony Point, Muncey, Lake Simcoe, Southampton, Cape Croker, Grand Manitoulin Island, Thessalon, Killarney, Whitefish River, Birch Island, Spanish River, French River, Byng Inlet, Moose Point, Shawanaga, Parry Island, Honey Harbour and Christian Island.

6. The Pottawatamie Indians of Wisconsin, now resident in Canada, claim that they are and always have been under United States law, members of the United Nation of Chippewa, Ottawa and Pottawatamie Indians, now known as the Pottawatamie Nation, and that they have never knowingly or intentionally abandoned any of their rights in and to the tribal estate in whatever form it has from time to time existed, whether in lands, annuities, interest on trust funds, or otherwise, and assert that notwithstanding their residence in Canada, they are still treated by the government of that Dominion, as United States and foreign Indians. Except for certain individuals who have been adopted into scattered Chippewa bands of Indians in the Province of Ontario they do not share in any of the benefits bestowed upon its Indians by the Government of Canada.

7/ The migration of numbers of the Pottawatamies of Wisconsin to Canada, was occasioned by their eviction by the United States, from their lands in Wisconsin. At the time, it was the policy of the United States to remove all Indians, West of the Mississippi. The forefathers of the Pottawatamies of Wisconsin were dissatisfied with such proposal. They refused to go and when driven off their lands, some fled to inaccessible parts of Wisconsin and Michigan, and others and the greater part crossed the Lakes to Canada, where their descendants on whose behalf this Petition is brought, still remain. The Pottawatamies of Wisconsin today in Canada, have no reserve, nor does the Canadian Government hold any trust funds on their

behalf, and except that it recognizes them as Indians, supervises them accordingly, and affords them the means of education extended to other Indians, bestows no benefits upon them, except as mentioned in the preceding paragraph.

8. Some years ago, the Pottawatamies of Wisconsin resident in Canada, duly appointed the undersigned as their Solicitor, to endeavour to procure for them a proportionate share of the moneys alleged to be due said Pottawatamies of Wisconsin by the United States, and the undersigned has ever since by personal effort and through Attorneys at Washington, endeavoured to forward their claim for such proportional share. A letter received by the undersigned from the Commissioner of Indian Affairs at Washington, of which the following is a copy, explains the then position of this claim.

Refer in reply to
the following-

Department of the Interior,
Office of Indian Affairs,
Washington, June 19, 1917.

Land contracts
47401 - 1917
W M W

A. G. Chisholm, Esq.,

Barrister, Solicitor, &c.

87½ Dundas St. (upstairs) London, Canada.

Dear Sir,

Receipt is acknowledged of your further letter of May 12th, 1917, with respect to the claim against the United States of the Canadian Branch of Wisconsin Pottawatamie Indians.

In answer you are advised that the total amount found due that part of the Pottawatamie Nation which failed to remove to Kansas in accordance with their Treaty of September 26th, 1833, (7 Stat. L. 451) was reported to the Congress as \$1,964,565.87. The Census or Roll which was made at the time of the said report showed roughly about 2000 Indians ----- 3/4 residing in Canada, and the remainder in the States of Wisconsin and Michigan. The amount due the United States branch, or remaining one-fourth, was reported as \$447,339.00.

The Congress has from time to time made various appropriations in settlement of the amount found due the Branch residing in the United States, but has taken no action whatever concerning the claim of the 3/4 of these refugee Indians residing in Canada.

For your full information a copy of H.R. 2313, 65th Congress, 1st. Session, for the purpose of settling the balance still due the United States Branch of the Tribe, is enclosed.

By the Act of March 2, 1917, (Public #369) making appropriation for the Indian Department, the sum of \$100,000.00 was provided for clearing land, purchase of houses, building material, implements &c. and for the payment per capita of not exceeding \$25,000.00 to these Indians in the United States.

From the appropriations above mentioned for the sole use and benefit of the Wisconsin Pottawatami in the United States, lands have been purchased and annuities paid, and farming implements, &c. are being provided. However, as above indicated, Congress has in no way recognized the claim of the so-called Canadian branch nor have any appropriations been made for the same.

Very truly yours,

s/d. E.B. Meritt,

Assistant Commissioner.

The Bill known as H.R. 2313, 65th Congress, 1st Session, attached to said letter did not become law, and one similar thereto was introduced on February 4th, 1918, in the United States Senate, as an amendment to the pending Indian Appropriation Bill (H.R. 8696) which Amendment was also not enacted; but the Indian Appropriation Act approved May 25th, 1918, (Pub No. 159) provided that the sum of \$75,000.00 should be expended for the benefit of these Indians in partial settlement of the claim of that portion of the Wisconsin Band of Pottawatamie Indians still residing in the States of Wisconsin and Michigan.

9. The Canadian Branch of the Pottawatamies of Wisconsin respectfully submit they are equally entitled to payment by the Government of the United States, with their brethren still residing in the States of Wisconsin and Michigan, and should receive from the United States, a proportionate amount of said sum of \$1,964,565.87, found and acknowledged to be due by the United States to that part of the Pottawatamie Nation which failed to remove West of the Mississippi; and submit that neither by act of their own, or by law of the United States, did they by their flight to Canada, transfer their proportional interest in said amount, to their brethren of Wisconsin and Michigan, or forfeit their right to receive payment of the same.

10. That your Petitioner represents over 1500 individuals claim-

ing to be members of the Canadian Branch of the Pottawatamies of Wisconsin.

Your Petitioner would therefore pray,-

a/ That said Canadian Branch of said Pottawatamie Indians of Wisconsin, be paid their proportionate share of the amount of \$1,964,565.87, due by the United States to those Pottawatamies of Wisconsin, whose forefathers failed to remove West of the Mississippi, with interest.

b/ That in case said Canadian Branch of said Pottawatamie Indians of Wisconsin is not paid such proportionate share, or their right to be paid the same is not acknowledged by the United States, said Canadian Branch of said Indians may be enabled to prosecute their claim therefor, before the Court of Claims of the United States, with the right of appeal to either party to the Supreme Court of the United States, and that proper steps may be had and taken for this purpose.

c/ That in the event of payment being made to said Canadian Branch of said Pottawatamie Indians of Wisconsin, of a proportionate share of said amount of \$1,964,565.87 and interest, the same should be made to the Government of Canada to be administered by it as a fund for the benefit of the individuals composing said Canadian Branch of said Pottawatamie Indians of Wisconsin.

d/ That for the purpose of the prayer of your Petitioner your Honourable Department may be pleased to give such further or other directions for the relief of said Canadian Branch of said Pottawatamie Indians as may seem just and reasonable.

And, your Petitioner will ever pray,-

Dated, August 1918.

(copy of a copy)

Memorandum of Agreement, made in duplicate the Eighth day of August, One thousand nine hundred and eighteen.

Between:-

THE SUPERINTENDENT GENERAL OF INDIAN AFFAIRS.

of the First Part,

and.

ANDREW GORDON CHISHOLM of the City of

London, in the County of Middlesex and Province of Ontario, solicitor, ----- of the Second Part.

WHEREAS the party of the Second Part was a number of years ago retained by Indians residing in the Province of Ontario claiming to be members (or the descendants of members) of the Indians known as the stray Bands of Pottawatamies of Wisconsin in the United States entitled to share in the distribution of certain large funds due said Pottawatamies by the United States, and in pursuance and furtherance of said retainer received from said Indian claimants Powers of Attorney and contracts providing for his professional compensation and has ever since been actively engaged in promoting the claims of said Pottawatamies now in Canada for a proportional share of said funds. And whereas in the course of his said employment the party of the Second Part has brought the matter to the attention of the party of the First Part and has asked the assistance of the Canadian Government in furthering the claims of said Pottawatamies now resident in Canada and has offered in consideration thereof to forego his rights under said contracts and submit the whole question of his compensation for professional services rendered such claimants to be determined, as hereinafter provided and has also entered into the other provisions of this agreement, and the party of the First Part has agreed as in hereinafter provided, NOW THEREFORE the parties of the first and second parts in consideration of the

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premises agree together in manner following, that is to say.

- 1/ The party of the Second Part is recognized by the Party of the First Part as Solicitor for said Pottawatamie claimants and as such entitled to receive compensation for his services on their behalf.
- 2/ The party of the Second Part agrees to advocate that any moneys recovered from the United States for said claimants be paid to Canada to be administered for the exclusive benefit of said claimants, but subject nevertheless to the provisions of Section 89 of the Indian Act.
- 3/ In the event of the right of said claimants to share in said fund being determined by the court of Claims of the United States and that they are declared entitled so to share, said Court of Claims is to be asked to fix the compensation of the party of the Second Part for his professional services rendered said claimants.
- 4/ In the event of the United States paying said claimants by directing said fund be paid to Canada to be administered on behalf of said claimants, the matter of the compensation for legal services rendered said claimants, to be paid the party of the Second Part is to be referred to the Exchequer Court of Canada, the whole costs of such reference to be paid out of the fund recovered.
- 5/ The compensation so fixed by said Exchequer Court is to be for the recovery of the fund. The expense of ascertaining the particular individuals entitled to share therein is to be paid by a per diem allowance out of the fund, for legal fee and expenses of travel and maintenance and subject to approval of the Deputy Minister of Justice as to number of days employed and amount of daily fee.
- 6/ Should the said claimants recover in the said Court of Claims and the Court direct payment of a proportionate share to each claimant entitled thereto personally, the party of the Second Part will endeavour to arrange for distribution to said claimants by the Indian Department at Ottawa, in which event the cheques or warrants for payment will be held till the com-

compensation of the party of the Second Part is determined by mutual agreement or by the Exchequer Court as aforesaid, and said cheques or warrants will only be delivered to the recipients thereof, on payment by such, of a proportionate amount of such compensation.

7/ The party of the First Part agrees to recommend the early passage of an Order in Council by his Excellency the Governor General in Council directing that a petition signed by the party of the Second Part as solicitor for said claimants, setting out the nature and grounds of their claim against the United States, be forwarded through the proper diplomatic channels for presentation to the United States Government, and which petition will ask for payment of said claim or in the alternative, a reference of the same to said Court of Claims of the United States for adjudication thereon, and will further use diplomatic or other proper means at Washington on behalf of the Canadian Government to secure the granting by the American Government of the prayer of said petition.

8/ The Department of Indian Affairs agrees to make payments as above determined to the party of the Second Part for his legal services aforesaid, only out of any moneys belonging to said fund, in its possession or control and which may lawfully be appropriated to that purpose.

9/ The Department of Indian Affairs will raise no objection to the levying of an assessment on said claimants by the party of the Second Part for the purpose of providing for disbursements in connection with the prosecution of said claim, provided it is stated at the time of such levy, that no claimant will be prejudiced by non-payment, and that such assessments are not more than two in number for no more than One dollar per capita on each assessment, and that the Party of the Second Part will at or before referring his claim for compensation as aforesaid to the Exchequer Court duly account to the Party of the First Part and to his satisfaction for all the moneys to be

collected under such levy of assessment.

10/ In the event of the death of the party of the Second Part before the right of said claimants to recover is determined and they do subsequently recover the Estate of the Party of the Second Part is nevertheless to be entitled to recover a proportionate sum for compensation for services rendered said claimants by the party of the Second Part and the provisions of this agreement are to apply to the ascertainment of the amount of said payment of said compensation to said estate.

In witness whereof the said parties have here-
unto set their hands the day and year first above mentioned.

WITNESS.

A. S. Williams,
as to the signature of
Duncan C. Scott.

As to signature of
A. G. Chisholm.

E. P. Ashton.

Duncan C. Scott,
Deputy of the Supt. General
of Indian Affairs.

A. G. Chisholm.

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Short history

About a hundred years ago the Pettawatomie Indians resided in the State of Wisconsin. The United States Government decided to move all Indians west of the Mississippi, and the Pettawatomies, therefore, was ordered to move to this territory. As the land was poor, and there was little game, many of the Indians refused to go, but were later forced to by the U.S. Government. Some of them fled to inaccessible portions of Wisconsin and Michigan, but the majority crossed to Canada, and their descendants comprise the Canadian Branch of the Pettawatomie Indians of Wisconsin.

These Canadian Pettawatomies now claim under the Chicago Treaty of 1833, and fifteen other Treaties made with the U.S. Government with their forefathers, that they are entitled to a proportionate share of the \$1,964,365.87 found and acknowledged to be due by the U.S. to those Pettawatomies who failed to move west of the Mississippi. Their forefathers, at the time of the treaties, resided in Wisconsin, and were equally entitled to relief with the forefathers of the Indians still in Wisconsin. The Indians still in that State have received settlement of their claim. The U.S. Government, however, has taken no steps to settle with the descendants of the Pettawatomies who reside in Canada, and who never knowingly abandoned any rights in the tribal estate, in whatever form it has existed.

In 1908 a roll of Pettawatomie Indians was prepared by the U.S. Government, and there were enrolled 2007 persons, - 457 in Wisconsin and Michigan and 1550 in Canada.

Presumably the number is approx the same
An International Tribunal, known as the Pecuniary Claims Tribunal, and acting under the Pecuniary Claims Agreement or Convention, was formed to deal with claims such as the above.

An Order in Council was passed Feb. 12, 1912, recommending that the British Ambassador at Washington be requested to present to the U.S. Government, for inclusion in the Second Schedule to be considered under the Pecuniary Claims Agreement of Aug. 1910, the claim of these Indians. This was done, but for years no definite action was taken, as the Pecuniary Claims Tribunal ceased to operate on the outbreak of war. The claim of the Indians was notified to the U.S. authorities for arbitration. Under the Convention, the Claims notified were to be listed in different schedules by further agreements of contracting powers, but one list only was approved before proceedings were interrupted by the war. This claim was to have been included in the Second Schedule.

In Nov. 1919, an O.C. dated Oct. 18, 1919, was sent to the British Ambassador at Washington, together with petition setting forth the claims of the Indians. This O.C. set forth the case more fully than the O.C. of Feb. 1912. It recommended that the claim be presented to the U.S. Government for determination under the Pecuniary Claims Agreement, or that the petition be referred to the U.S. Court of Claims or other appropriate tribunal for adjudication.

In 1911, Mr. A.G. Chisholm, Barrister of London had been retained by the Canadian Indians to prosecute their claim. In 1919 he entered into an Agreement with the department to act as solicitor, and has been the only agent recognized by the department. It was stated that if the claim was recognized by the U.S. Court of Claims, said Court was to fix the compensation to be made Mr. Chisholm, the amount to be paid out of fund received by Indians. If the money was paid direct to

Canadian Government to be administered, compensation of Mr. Chisholm was to be fixed by Exchequer Court, all costs to be paid out of Fund. After the Claim was settled, compensation for work of proving which Indians are entitled to a share, is to be on a basis of a per diem allowance, to be paid only after amount of allowance and number of days has been approved by Justice. If the money was paid direct to the Indians Mr. Chisholm agreed to endeavour to arrange for distribution of same by Indian Dept, in which case payment to Indians would be held until compensation to Mr. Chisholm was determined by mutual agreement or by Exchequer Court.

During the years several other attorneys from Washington and elsewhere tried to become recognized as agents of the Indians. One firm succeeded in having a Bill introduced into Congress, in 1922, but it was withdrawn at the request of the Indian Department. The Indians became dissatisfied and endeavoured to have Mr. Chisholm dismissed. From 1922 to 1933, Mr. Chisholm was paid \$8,038.48 by the department.

The services of Mr. C.C. Robinson, K.C. of Toronto were engaged in 1927, and all matters, both legal and diplomatic, were taken out of Mr. Chisholm's hands. From 1927 to 1930 Mr. Robinson was paid \$2,607.99. Mr. Chisholm's services had been unsatisfactory for several years, and while his services were never actually cancelled, such a course of action had been recommended by the Deputy Minister, in November, 1923.

The Pecuniary Claims Tribunal did meet in 1926 but and disposed of the claims in the First Schedule, but the Second Schedule was never reached, and there appeared to be little prospect of the claim being referred to the U.S. Court of Claims, as Mr. Chisholm had long desired. In June, 1932, the U.S. Statesman set forth the legal objections which ended any possibility that the Department of State would support the settlement of the case by the Court of Claims.

In 1937, Mr. A.T. Young, Barrister, of Meaford, was desirous of representing the Indians and certain of them requested him to act for them. He suggested that his fees be placed on a contingent basis depending upon how much of the claim was realized, not exceeding 10% of the share of each claimant represented.

A Bill was introduced into Congress in June, 1938, but did not succeed in passing before the end of the Session. Dr. Skelton was of the opinion that the claim had ceased to be a claim listed under the Pecuniary Claims Agreement.

Mr. Chisholm in 1938, sent a circular letter to the Indians and entered into a contract with a Mr. Bell of Detroit Lakes and a Bill was introduced into Congress on January 9, 1939. In the meantime Mr. Young is still pressing for advice, and Justice Department has been requested for a ruling with regard to the interpretation of Section 141 of the Indian Act.

A. T. Young



CANADA
DEPARTMENT
OF
MINES AND RESOURCES

Ottawa, January 26, 1939.

Memorandum.

Mr. MacInnes.

In view of the fact that during 1938, the question of the Pottawatomi Indian Claim was again before the United States Congress, I have prepared a summary for your convenience and ready reference.

The Handbook of Canadian Indians, states,-
"that the Potawatomi sided actively with the French down to the peace of 1763. They were prominent in the rising under Pontiac, and on the breaking out of the Revolution in 1775, took arms against the United States and continued hostilities until the treaty of Greenville in 1795. They again took up arms in the British interest in 1812, and made final treaties of peace in 1815. As the settlements rapidly pressed upon them, they sold their land by piece-meal, chiefly between the years 1836 and 1841, and removed beyond the Mississippi. A large part of those residing in Indiana refused to leave their homes until driven out by military force. A part of them escaped into Canada, and are now settled on Walpole Island in lake St. Clair. Those who went west were settled partly in western Iowa, and partly in Kansas, the former, with whom were many individuals of other tribes, being known as Prairie Potawatomi, while the others were known as Potawatomi of the Woods. In 1846, they were all united on a reservation in southern Kansas. A part of them was known as the Keotuc band. In 1861, a large part of the tribe took lands in severalty and became known as Citizen Potawatomi, but in 1868, they again removed to a tract in Oklahoma, Indian territory, where they now are. The others are still in Kansas, while a considerable body, part of the Prairie band, is yet in Wisconsin, and another band, the Potawatomi of Huron, is in lower Michigan.

x x x

Those in British territory are all in the province of Ontario, and number about 220, of whom 173 are living with Chippewa and Ottawa on Walpole Island in Lake St. Clair, and the remainder (no longer officially reported) are divided between Caradoc and river Ausable, where they reside by permission of the Chippewa and Munsee."

Their descendants were born in Canada, and are therefore, British subjects, and under the administration and protection of the Canadian Government in virtue of the provisions of the British North America Act of 1867, and the Indian legislation of Canada.

The Pottawatomi Indians formerly occupied territory of the United States lying in the State of Ohio and south of the Great Lakes. Treaties were made by the United States around the year 1800 with these Indians providing for the cession of lands of the Pottawatomi Indians in the States of Ohio and Indiana, and in return for cessions of land held by the Indians, the Government of the U.S. guaranteed

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certain annuities in perpetuity or otherwise to the Pottawatomie Indians as a nation. The present claimants are descendants of some of these members of the United Pottawatomie Nation. Between 1795 and 1833 other treaties were made with the United Pottawatomie Nation whereby large cessions of land were obtained from the Indians and solemn and binding obligations were contracted between the U.S. and the Indians whereby the U.S. agreed to give the U.S. Nation of Pottawatomie Indians other perpetual annuities to be equally divided in accordance with Indian customs among all the members of the nation. By these several treaties the U.S. recognized the title of the Pottawatomie Indians to various lands to which the Pottawatomies agreed to and did remove to what are now the States of Michigan, Indiana, Illinois and Wisconsin.

In the year 1830 the Pottawatomie Indians, by reason of various cessions of land which they had made to the Government of the United States, and by reason of settlements which had been made in the country they occupied, were divided into a number of bands and distinct tribes occupying defined territory in Wisconsin, Illinois, Michigan and to some extent Indiana, near the shores of Lake Michigan.

An Act of Congress was approved May 28, 1830, directing that treaties should be negotiated with Indian tribes holding lands east of the Mississippi River, these treaties to provide for an exchange of lands held by the Indians east of the Mississippi River, and their removal to the then unoccupied domain west of the Mississippi River. It was provided in these treaties that these Indians should acquire title in fee to their new homes, subject only to reversion to the U.S. in the event the Indians should become extinguished or abandon the same.

By a treaty concluded September 26, 1833, at the present city of Chicago, the Pottawatomie Indians ceded to the U.S. all of their lands along the western shore of Lake Michigan, and in consideration thereof the United States agreed to give them a new reservation of not less than 5,000,000 acres of land in the vicinity of the present city of Council Bluffs, Iowa. The U.S. also agreed, in consideration of the exchange, to make certain annual money payments to the Indians. The previous perpetual annuities, of course, likewise continued in force. The lands ceded were tribal lands held in common, and under the terms of the treaty of 1833, each individual member of the nation was to receive his proportionate share in tribal lands or funds. The treaty provided that the Indians should receive the same title to their lands as was received by other Indian tribes exchanging their homes east of the Mississippi River for homes west of the river, and this title was to be communal title in fee simple.

At the time the treaty of 1833 was negotiated, the Indians were in detached bands, and the Indians living in the northern part of Wisconsin declared that there was no right in the bands which negotiated the treaty to undertake to cede their homes and their lands in Wisconsin. Later there were 14 separate treaties made with the separate bands, but none was made separately with the Wisconsin Indians.

The area relinquished by the Indians under the Chicago Treaty (1833) was upwards of five million acres. They received \$75,000.00 in goods, in addition to certain annuities.

Many of the Wisconsin Indians, and some others, refused to remove to the new home west of the Mississippi River; in fact about 2,000 refused to go. The U.S. held that the Treaty of 1833 had ceded their lands, and the Government took possession of the same and sold them as public domain to settlers. Thus, those Indians who elected to remain in Wisconsin lost all their lands in the State of Wisconsin, and since then have eked out a precarious existence and have been wanderers in the northern part of the State. The reason given by the Indians for refusal to remove was that the chiefs who had undertaken to negotiate the treaty of 1833 had no right to represent them or to attempt to cede their lands. Attempts were made to force these Indians to remove west of the Mississippi River, with the consequence that because of the drastic measure adopted about 1500 of the 2,000 Indians referred to above fled to Canada. The Indian office then forfeited the share in lands and funds secured to the tribe as a whole of those members of the Pottawatomies who refused to remove from the State of Wisconsin, and instead paid over the moneys and lands it held as a trustee for all of the Indians to those members who did remove west of the Mississippi River.

The attention of Congress was called to the matter in 1864, and by an Act it was declared that no forfeiture had occurred and directed that the share of the Wisconsin Indians who had not removed west of the Mississippi River should be withheld in the Treasury and retained to their credit until such time as they might remove to the then home of the tribe in Kansas (June 25, 1864).

The Indian Office continued to ignore the Wisconsin Indians and forfeited all shares in tribal lands and funds of those who continued to reside in Wisconsin or went to Canada. Practically all the funds have been disbursed and those members of the tribe who remained in Wisconsin have been deprived of any shares in the tribal lands and funds.

In a report to Congress, dated April 1, 1908, the Secretary of the United States Interior Department stated that, - "the total proportionate shares of the annuities, etc., paid to or expended for the tribe to which they belong, in which the claimant (United States) Pottawatomie Indians of Wisconsin has not shares, was the sum of \$1,964,565.87". He stated also that a roll of Pottawatomie Indians had been prepared, and that, up to January, 1908, there were enrolled 2,007 persons, of which number 457 were in Wisconsin and Michigan, and 1,550 in Canada.

In 1905 the United States had paid the Oneida Indians, still in Canada, and descendants of Oneidas who migrated to Canada in or about 1842, their proportionate share of the New York Indian Fund. The United States Court of Claims had held that, - "our Indians were and have been the wards of the United States, and the Indian has no right of expatriation". The amount paid to the Indians was approximately \$300,000.00.

The total amount involved was \$1,964,565.87,- and in 1906, the Secretary of the Interior, caused an investigation to be made of the claims of the Wisconsin Band and a report made thereon to Congress. Subsequently, the amount of \$447,339 was appropriated and paid to the United States Pottawatomies, but no appropriation has ever been made for the Canadian Pottawatomies. The balance due them is estimated at \$1,517,226.87.

The field agent who made the investigation reported, concerning the status of the Canadian Wisconsin Pottawatomies:- (December 18, 1907.)

"With but few exceptions all the enrolled Indians found living on reservations are considered and treated as British subjects. They are allowed to occupy and cultivate lands and to make improvements thereon, have access to the schools, and are in fairly prosperous condition, and are being well cared for by the Dominion authorities, being in general treated as are Indians whose ancestry has been solely Canadian. These Indians, are for the most part the second generation removed from the original fugitive ancestors, are fully domiciled wards of the Dominion Government.

x x x

If all descendants of the original Pottawatomies who refused to remove to Kansas, and for that reason received no benefits under the treaty, are to be recognized solely on the basis of descent, then it would seem that these Canadian Indians would be entitled to the same share in any fund arising from the claim as the Wisconsin Pottawatomies."

Those who fled to Canada and their descendants are scattered along the northern shore at distances inland and on islands (including Great Manitoulin) from the eastern end of Lake Superior to the southeastern part of Lake Huron. They also reside along the entire mainland of Georgian Bay, and on the Canadian peninsulas formed by that bay and Lakes Huron, Erie and Ontario. The principal groups of Indians are located at:-

Sarnia,
Kettle Point,
Stony Point,
Muncey,
Lake Simcoe,
Southampton,
Cape Croker,
Grand Manitoulin Island group,
Sucker Creek,
Little Current,
In the region of West Bay,
In the region of South Bay,
Wikwemikong,
Wikwekimongsing,
Sheguindah,

Miscellaneous groups at:-

Thessalon,
Killarney,
Whitefish River,
Birch Island,
Spanish River,
French River,
Byng Inlet,
Parry Sound district group,
Shawanga Indian Reserve,
Parry Island,
Honey Harbour,
Christian Island.

In the opinion of the United States investigators, the seven to eight hundred Indians residing on Walpole Island, 30 miles south of Sarnia, in the St. Clair River, do not belong and are not related to the Wisconsin Band.

(Kappler and Merrillat's report).

In April, 1910, the Deputy Supt. General, Mr. Frank Pedley, signed and approved an agreement on behalf of the Department of Indian Affairs, and John G. Graham, assisted by Mr. W.S. Braddock of Mather, Wis., and Mr. W.S. Field, of Washington. Mr. Graham resided at the City of Romah, Wash. This contract agreed to pay Mr. Graham 5% of all monies collected, the balance to be paid to the Superintendent General in trust for the Indians. Copy is attached. No further correspondence is on file with regard to this.

In March 1911, an Order in Council was passed with regard to the proposed payment of 33%, which was mentioned in an agreement between Mr. W.H. Robeson of Washington, and Mr. A.G. Chisholm, of London, Ont. There is no copy of this contract on file, and no correspondence between Mr. Chisholm and the department at that time. The Order in Council suggested that the matter be referred to the Minister at Washington and the U.S. Government be requested to take any measures possible to protect the Indians' interests, and that any money collected be placed in the hands of the Canadian Government. Correspondence took place between the Under Secretary of State, Sir Joseph Pope, and the Department, - and between the Minister at Washington and His Excellency, the Duke of Connaught, (Oct. 31, 1911).

In the same year the Indians had retained the services of Mr. A.G. Chisholm.

An O.C. dated Dec. 2, 1911, drew attention to the O.C. above mentioned, and stated that the U.S. Government should be informed that any money payable should be made to the band as a whole and not to individual Indians. Also that no appointment of a legal adviser at Washington should be made without previous consultation with the Embassy.

An International Tribunal known as the Pecuniary Claims Tribunal and acting under the Pecuniary Claims Agreement or Convention was formed to deal with cases such as the Pottawatomie claim. (Information re formation of this Tribunal is on file in the Department of Justice. Prior to 1912).

In July 1911, Mr. Chisholm, wrote to the British Embassy at Washington, suggesting that the claim should be submitted to the Court of Claims of the U.S., with a right to appeal therefrom to the Supreme Court of the U.S., it being provided that if such claimants are entitled by descent, their right to share should be determined on the same basis as the U.S. Indians, and that receipt of benefits from the Canadian Government, or their residence in Canada, should not debar them

In December, 1911, the Department of Justice wrote to the Department of Indian Affairs, stating that the first Schedule of Claims under the Pecuniary Claims Convention with the United States had been approved of by Senate of the United States, and the preparation of claims was under consideration. The department was asked if we were aware of any further Canadian claims to be included in the Schedule. We replied January 20, 1912, that it was desirous of submitting the claim of the Pottawatomie Indians to the Pecuniary Claims Convention, and an Order in Council was passed in February, 1912, requesting that the Minister at Washington should have the claim included in the Second Schedule to the Pecuniary Claims Agreement of August, 1910.

In a letter to Dr. Scott, dated October 27, 1921, the Deputy Minister of Justice, speaking of the Pecuniary Claims Convention, stated:-

"The claim of the Pottawatomies was notified to the United States authorities for arbitration, but it has not been scheduled as one of the claims for hearing. Under the Convention the claims notified were to be listed in different schedules by further agreement of the contracting powers, and one list only was approved before the proceedings were interrupted by the war. It was the intention to bring forward the Pottawatomies claim to be included in a Second Schedule, but nothing has been done about this, and I cannot say whether we will succeed in negotiating a Second Schedule. A despatch from the Colonial Office has recently been referred to me from which I gather that the scheduling of further claims is not likely to come up for consideration until the claims already listed shall have been disposed of, and consequently, while it would seem probable that a meeting of the arbitrators will take place at Washington during the period of the coming conference, as it is anticipated that M. Fromageot will be in attendance, it is unlikely that anything will be done further than to dispose of the cases standing for awards, and to arrange for the hearing of cases now standing upon the present list.

Owing to the outbreak of the War in 1914, the sittings of the Pecuniary Claims Commission for the transaction of its business ceased for the time being. It reconvened in 1926 and the first Schedule was disposed of, but it never reached the Second Schedule.

Two ways were suggested to have the claim investigated and determined, one, supported by Mr. Chisholm, that this Government should endeavour to have enabling legislation passed at Washington which would give jurisdiction to the Court of Claims to hear the case, and the other, as mentioned above, and supported by Justice, to try to get the case on for hearing before the Pecuniary Claims Tribunal, upon the view that this claim had been already notified to the U.S. Government under the terms of the Pecuniary Claims Convention, and the claim already noted for the Second Schedule.

In August, 1918, Mr. Chisholm submitted, for the approval of the Department of Justice, a draft Petition to the Secretary of the Interior of the United States,

making representations with regard to this claim. Copy of this Petition is attached hereto. After considerable correspondence with the Department of Justice and Mr. Chisholm, the terms of the Petition were agreed upon. This was the first time Mr. Chisholm had communicated with the department, although there are copies on file of letters from him to the British Embassy at Washington in 1911.

Mr. Chisholm asked the permission of the department to send a circular letter to the various claimants in Canada, setting out the facts of the case. Permission was granted to send out this circular. Copy of same is attached hereto.

The department was anxious to see, if possible, that no improvident contracts were made by the Indians in respect to these claims, and in pursuance of this, an Agreement was entered into between the Superintendent General, and Mr. Chisholm, dated August, 1918, with the concurrence of the Department of Justice, in which Mr. Chisholm was recognized by the Superintendent General as solicitor for the claimants, and in which he undertook to forego his rights under his contract with the individual Indians for one-third of the funds that might be recovered, and agreed to have his compensation for the recovery of the fund determined by the Court of Claims or by the Exchequer Court of Canada.

There does not appear to be any original of this Agreement on file, although an envelope, in Mr. Williams' handwriting is marked, - "Agreement with Mr. Chisholm". Copies, however, are on file, and one is appended hereto.

The Agreement, provided, among other things, that the Superintendent General would offer no objection to the levying of an assessment on the various claimants for the payment of disbursements in prosecuting the claim, provided that at the time of such levy that no claimant would be prejudiced by non-payment; that such payments were not to be more than two in number, and not more than one dollar per capita, and that Mr. Chisholm, before referring his claim to the Exchequer Court for compensation, would duly account to the Superintendent General for all monies collected under such levy of assessment. This Agreement, further provided that Mr. Chisholm was to make every effort to have any fund that might be recovered paid to the Dominion of Canada for distribution among those entitled.

The Petition and the Agreement were approved and executed, and a copy returned to Mr. Chisholm.

An Order in Council, dated October 18, 1919, was passed, which dealt with the O.C. of February 12, 1912, above mentioned. It was stated in the O.C. of 1919 that the previous O.C. was incorrect, inasmuch as the rights of the Indians were based not on the Chicago Treaty alone, but also upon 15 other treaties, under all of which they based their claim for relief. The Petition mentioned above was attached to the new O.C., setting forth the Indians' claim. The Order in Council recommended that the petition be transmitted to the

British Ambassador at Washington for presentation to the United States Government for determination under the Pecuniary Claims Agreement, or if not feasible, that it be referred to the Court of Claims of the United States, or some other appropriate tribunal for adjudication.

In February, 1920, the British Embassy at Washington advised the Deputy Superintendent General that the claim of the Canadian Indians had been negotiated under the Second Schedule of Claims, when the war had broken out. The Tribunal had adjourned at the outbreak of war, and it was not expected to take up work until the summer, and until that time it was useless to attempt any settlement.

In January, 1921, Dr. Skelton wrote to Mr. Chisholm that the case had not been definitely allotted to the Second Schedule. Justice Department was not in favour of referring the case to the Court of Claims.

The Cape Croker, Christian Island, and other Indians, held meetings from time to time with regard to their desire to place the matter of their claim in the hands of American lawyers and repudiate Mr. Chisholm, as they felt that the case was too long delayed. The Indians succeeded in getting resolutions passed at some of these meetings. They were naturally unable to understand the difficulties and delays which invariably occur in claims of this kind, and some of them became impatient, in view of which they were easily persuaded to try some other solicitors.

The Cape Croker Indians drew up a contract in October 1921, appointing Messrs. Kappler and Merrillat, Attorneys at Washington, D.C., to represent their claim. On January 4, 1922, they introduced in Congress a Bill providing for the payment to the Indians of the amount claimed to be due them, which amounted to \$1,517,226.87. The contract stated that Messrs. Kappler and Merrillat were to receive 15% of any award made, (and the money paid direct to the Indians, instead of being administered by the Canadian Government,) as no agreement was made with the department.

The Deputy Superintendent General wrote to the Under-Secretary of State for External Affairs in February, 1922, requesting that the Bill be withdrawn and stating that the department recognized no other solicitor except Mr. Chisholm to represent the Indians' claim.

In September, 1923, the British Embassy at Washington, in a letter to the Governor General, Lord Byng of Vimy, stated that the United States Government declined to accept liability in the matter, and that the State Department had suggested that the claim should be settled by arbitration under the terms of the special agreement concluded between Great Britain and the United States on August 18, 1910. It was suggested that the question be referred to the Court of Claims to avoid this course. No action, however, apparently was taken.

All arrangements throughout in connection with this claim were made with the approval of the Department of Justice, and the concurrence of His Excellency the Governor General in Council.

In April, 1922, the British Embassy at Washington stated that the American Branch of the Pottawatomie Indians had been paid by means of a series of appropriations passed by Congress. It was undecided whether this had been done as a matter of grace, or a matter of right. If it was decided as a matter of grace, it could not be expected that Congress would be prepared to extend it to our Indians.

In November, 1923, the Deputy wrote to the Superintendent General, the Honourable Charles Stewart, stating that he was not satisfied with Mr. Chisholm's conduct, and that no further payments would be made to him without special authority. He also stated that the Department of Justice had been asked to consider the whole question.

In a letter to Mr. Chisholm, dated November 28, 1923, the Deputy stated as follows:-

"I intend to take up the question of further procedure with the Minister and with the Justice Department, and the present advance is the last I intend to make without special authority."

Notwithstanding, this letter and memorandum, accounts continued to be received from Mr. Chisholm, which were passed for payment by the department.

Below is a statement showing the amount paid each fiscal year, since August 1918. The first payments were made in 1922:-

1922-23.....	\$ 3,560.46	
1923-24.....	2,775.83	
1924-25.....	436.66	
1925-26.....	190.45	
1926-27.....	421.97	
1927-28.....	173.20	
1928-29.....	146.36	
1929-30.....	88.63	
1930-31.....	119.38	
1931-32.....	65.54	
1932-33.....	60.00	\$8,038.48

In April, 1924, a Bill was introduced into the Senate of the United States, authorizing payment of \$1,517,226.87, to certain members of the Wisconsin Indians, being their share of the proceeds of the sale of tribal lands, and referring especially to the Pottawatomie Indians residing in Canada. This, however, did not pass.

In 1927, the Department of Justice engaged the services of Mr. C.C. Robinson, K.C., of Toronto, as Senior Counsel. All matters, both legal and diplomatic, were taken out of the hands of Mr. Chisholm. His dealings in connection with the case had been unsatisfactory for several years. Mr. Robinson, had conducted the Cayuga case before the Pecuniary Claims Tribunal and had been successful in winning the case. Various sums were paid by the department to Mr. Robinson for his services, as follows:-

April 13, 1927.....	\$1347.98
Dec. 15, /27.....	265.63
June 14, /28.....	601.82
April 8, /29.....	150.00
Jan. 4/30.....	242.56

In April, 1930, Dr. Skelton wrote to the Deputy Superintendent General of Indian Affairs, stating that Mr. Chisholm was again pressing that the Government should endeavour to have legislation passed at Washington which would give jurisdiction to the Court of Claims to hear the case. The Deputy Minister of Justice, was of the opinion that, as the claim had already been notified to the United States under the terms of the Pecuniary Claims Convention, it was likely that the case would be disposed of under the terms of the Convention, and that the interest of the Indians would be safer in the hands of the International Tribunal than it would be in the Court of Claims. In 1929, Mr. Robinson had stated that there was no prospect of the British Government taking any steps to negotiate a Second Schedule, and that consequently, he suggested making independent arrangements.

In May, 1931, Dr. Skelton wrote a letter to the Deputy Minister of Justice, in which he stated that he understood this department was opposed to any action that would involve the abandonment of the place of this claim on the Second Schedule, with a view to its submission to the Court of Claims, and that, as the United States Government and the Foreign Office were opposed to reconvening the Pecuniary Claims Tribunal, there did not appear to be any prospect for any action to dispose of the matter. Moreover, it was uncertain as to when, or if ever, the Pecuniary Claims Tribunal would again assemble.

A letter was sent to the Honourable W.D. Herridge, in November, 1931, in which he was requested to take up the matter with the United States Government with a view to ascertaining whether in the event of the claim being withdrawn by the Canadian Government from the Second Schedule of Pecuniary Claims, the United States Government would give its assurance that the claim would be considered by the Court of Claims.

The Honourable W.D. Herridge, when Canadian Minister to Washington, personally interested himself in this claim, as did his predecessor, the Honourable Vincent Massey.

The legal objections of the U.S. Government to the validity of the claim were set forth in a statement received from the Secretary of State's Department at Washington, dated June, 1932. This ended any possibility that the Department of State would support the adjudication of the case by the Court of Claims.

The Hon. Mr. Herridge, in a letter to the Secretary of State of the United States, dated October 25, 1932, stated that he considered the only practical course was to leave the claim as one listed for inclusion in the proposed Second Schedule of Claims to be heard by the Pecuniary Claims Commission, on the next occasion on which the tribunal might be reconvened.

The claimants are naturally disappointed that no substantial progress appears to have been made and some of them have suggested that the Government abandon the claim and allow them to prosecute it on their own behalf. This suggestion, in conjunction with other phases of the claim, was the subject of a conference in 1932, between this department, the Under-Secretary of State for External Affairs, the Department of Justice, and the Canadian Minister to Washington.

The consensus of opinion at that time was that there was little or no prospect of this claim being referred by the United States Government to its Court of Claims, and further that the Indians on their own behalf could not meet with any better success than the Government had done, and that the Government would not be justified in abandoning the claim as requested by some of the Indians.

In June, 1937, the department received a letter from Mr. A. T. Young, Barrister, of Meaford, Ontario, in which he stated that he had been approached by several members of the Pottawatomie Indians, and they had requested him to act for them regarding this claim. He suggested that his fees and costs be placed on a contingent basis depending upon whether the whole or any part of the claim was realized. Mr. Young was informed that we were unable to give him any advice in connection with the matter at the present time. Further correspondence was received from him from time to time along the same lines. The matter was referred to the departmental solicitor, who advised that there would not appear to be anything further that could be done for the present.

In a memorandum to Mr. Jackson, dated January 13, 1938, Mr. Cory stated:-

"From the recent correspondence it will be seen that Mr. Edwards apparently concurs with the Acting Under-Secretary of State for External Affairs and before anything further can be done in the matter a question of policy will have to be decided by our Minister."

In July, 1938, the Justice Department forwarded a communication from the Canadian Legation at Washington, enclosing copy of "Joint Resolution, 212, June 10, 1938, in the House of Representatives, 75th Congress, 3rd Session", - to investigate the claims against the United States of certain members of the Wisconsin Band of Pottawatomie Indians.

The Joint Resolution was passed by the United States Senate on June 7, 1938, but did not succeed in passing Congress before the end of the Session. Copy attached.

The Canadian Minister at Washington, in a letter to the Secretary of State for External Affairs, dated June 27, 1938, stated that the Acting Director of the Bureau of the Budget had advised that "the proposed legislation would not be in accordance with the programme of the President",

and under this condition it seemed unlikely that the measure would become law at a future session of Congress unless the Administration should change their minds.

In March, 1938, Dr. Skelton had forwarded to the department a memorandum dealing with the present diplomatic position of the claim as listed under the Pecuniary Claims Agreement of 1910. It was stated therein as follows:-

"The Canadian Charge d'Affaires, in a letter to Mr. Hackworth, Legal Adviser of the Department of State, dated August 26, 1937, with regard to the position of claims outstanding under the Pecuniary Claims Agreement of 1910, stated that the Canadian Government would be prepared, in so far as Canadian claims are concerned, to consent to the closing of this question by agreement with the Government of the U.S. that the claims contained in the lists exchanged in 1912 should be mutually barred, with a reservation which would protect the position of the Canadian claimants, in so far as any remedies under the laws of the United States are concerned. This, he presumed, could be arranged on a reciprocal basis, so that the cancellation of the international claims would not prevent either the Canadian or the United States claimants from pursuing any remedies available in the other country, whether ex gratia or ex jure.

Mr. Hackworth was asked whether he would consider it possible to settle this matter by an exchange of notes rather than by an agreement or convention. Consequently the present position is that substantially the claims have been cancelled in so far as their international aspects are concerned, although, technically, the actual agreements have not been concluded whether by formal instrument or by exchange of notes. In the circumstances, it would appear to be appropriate that the Indians, if they so desire, should take such steps as may be available either ex gratia or ex jure to assert such rights as they may have in Washington."

In December, 1938, the department received copies of a circular letter, dated December 8, 1938, sent to the Pottawatomie Indians by Mr. Chisholm, together with copy of a contract between the Pottawatomie Indians residing in Canada, and Mr. Chisholm, and a Mr. R.C. Bell, Jr., Barrister, of Detroit Lakes, Minn., authorizing Mr. Bell's employment with regard to the prosecution of the claim. It was stated that Mr. Bell intended to go to Washington in January, 1939, and would draft appropriate legislation in connection with the matter, which would be introduced for passage by Congress.

The Indian Agents at Parry Sound and Manitowaning communicated with the department, stating that they had been asked to get the Indians to sign the contracts and forward same to Mr. Bell.

Dr. Skelton, stated in a letter Sept. 8, 1938, that "the present position is that the Pottawatomie claim has ceased to be a claim listed for possible inclusion in a second schedule under the Pecuniary Claims Agreement of 1910.

The agents were advised that at the present time the department was not taking any part in the proceedings, and that in view of the delicacy of the situation, it was not considered desirable that they should distribute any forms, either for Mr. Chisholm, Mr. Bell, or any other party, among the Indians. They were also advised, on the other hand, that in so far as this department was aware, the Indians are free agents in the matter, and if they chose to act independently, they were at liberty to enter into any arrangement, as they might see fit, with regard thereto.

In the meantime, Mr. Young submitted to the department a form of retainer, authorizing him to represent the Indians before the United States Congress and the United States Court of Claims. He also asked to be advised as to whether or not the provisions of Section 141 of the Indian Act would apply in any way to the acceptance of a fee subsequent to an award by the United States Government. The Department of Justice advised that in their opinion the provisions of Section 141 did apply to the acceptance of a fee subsequent to an award as set forth by Mr. Young. His fee to be whatever the Court of Claims will allow as attorney fee, not exceeding 10% of the share of each claimant represented.

The Justice Department was asked on January 27, 1939, whether it would be in order for this department to grant Mr. Young, or to any other counsel acting for the Canadian Pottawatomie Indians, or any of them, a limited consent under the said Section 141, to regularize the collection of a fee through an award by the United States Government. ~~A reply has not yet been received.~~

Thyler E. Foul.

The claim, by mutual agreement of both governments, is not to be proceeded with in the courts, but this action does not prejudice the right of any interested party pursuing any available remedies. The agreement with Mr. Chisholm of 1918, was never approved by Council, and therefore does not bind the Government. The signing of any contract by the Indians does not bind the department nor the Crown in any action, obligation or responsibility with respect to the proposed proceedings or their outcome.

Please note the last few pages are still in the rough.

LEGAL DIVISION


CANADA
DEPARTMENT
OF
MINES AND RESOURCES
GENERAL ADMINISTRATIVE OFFICES

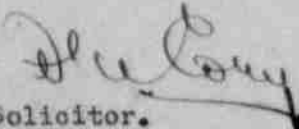
OTTAWA 11th February, 1939.

MEMORANDUM:

Mr. MacInnes.

Attached hereto please find draft letter for the Private Secretary's signature to W. R. Tomlinson, Esq., M.P., House of Commons, Ottawa, dated the 7th instant, in reply to the letter of the 16th [?] ultimo, together with correspondence, received from Mr. Tomlinson. Mr. Jackson in commenting on this proposed draft remarks that "no reference has been made to the last paragraph of the circular letter. We should definitely state whether we approve of what Chisholm is doing, also mention that any action being taken by Chisholm does not bind the Department but only those Indians who engage him".

Would you be good enough, therefore, to redraft this communication in the light of Mr. Jackson's instructions or submit this matter to this office with your views regarding the question as to whether we approve of what Mr. Chisholm is doing.


Solicitor.

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

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Ottawa, February 17, 1939.

Dear Mr. Tomlinson:-

I expected before this to have the information necessary to enable me to reply to your letter of January 16, wherewith you enclosed letter and documents from Gladys R. Parke, of Port Elgin School, Cape Croker Reserve, Ontario, regarding the Pottawatomie Indian Claim.

The fact is that the Indian Affairs Branch, to which your letter was referred, is not yet in a position to reach a conclusion which would enable me to reply definitely to the questions raised by your correspondent.

There are many angles to this case and the department is receiving much correspondence and varied representations in regard thereto. The matter is being given close attention, and I hope at an early date to be able to let you know definitely the policy of the department in connection therewith.

Your correspondence is returned herewith.

Yours sincerely,

W.R. Tomlinson, Esq., M.P.,
House of Commons,
Ottawa.

W.J.F. Pratt.
Private Secretary.

enclosures - 3 -

*Not
sent*

TRM

Indian Affairs. (RG 10, Volume 2791, File 156,610,
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R. B. WHITEHEAD, K.C.
COMMISSIONER

156610-4
PARLIAMENT BUILDINGS
TORONTO



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ONTARIO SECURITIES COMMISSION

R

Toronto, February 15th, 1939.

The Department of Indian Affairs,
OTTAWA, CANADA.

Dear Sirs:-

re the Pottawatomie Indians
& Andrew G. Chisholm, K.C.

Attached hereto are documents in connection with the above matter, which have been forwarded to this office under a personal and confidential cover. Our informant who is a Solicitor in Peterborough, Ontario is questioning the whole set-up, and suggests that it belongs to the same category as the 'Baker' and 'Drake' Estates.

As you can see from the attached circular letter dated December 5th, 1938, these Indians are being asked to sign a contract authorizing the addition of Robert C. Bell, Jr., to the arrangement presently in effect with Andrew G. Chisholm, K.C. A blank copy of this contract is also attached. Also included are five receipts given by Mr. Chisholm to various Indians back in the year 1920.

It is recalled that an article appeared in the local Press in London, Ontario, within the last six or eight weeks, to the effect that Mr. Chisholm was practically on the verge of success in obtaining some enormous sum of money from the United States, although the enclosed circular and contract give no indication of such imminent success.

We are interested to know whether or not

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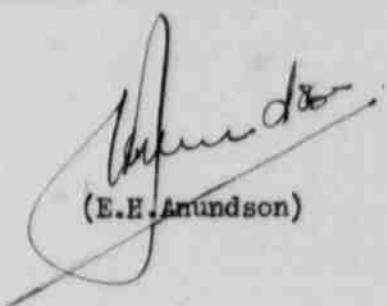
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the statements contained in these documents to the effect that the assistance and cooperation of the Canadian Government have been made available to Mr. Chisholm are correct, as, if these statements are untrue, it would certainly appear that something should be done about it either by your Department or possibly by this Commission.

We should greatly appreciate your opinion on the matter and would ask that you carefully preserve the documents which we are forwarding, as they were merely handed to us in trust, and it is expected that they will be returned to the original source of information, when they have served their purpose.

Yours very truly,

ONTARIO SECURITIES COMMISSION



(E.H. Arundson)

Encl's.
REGISTER.

Ottawa, February 21, 1939.

Dear Mr. Tomlinson:-

I am in receipt of your letter of January 16, 1939, wherewith you enclosed correspondence in connection with the Pottawatomie Indian Claim, and which I am returning herewith as requested.

Before undertaking to answer the questions raised by your correspondent, I shall outline for you briefly the circumstances of this claim.

The present Canadian Pottawatomie Indians, who number some 1500, reside on various Indian Reserves in western Ontario, and are claiming compensation from the United States Government for losses sustained as a result of their ancestors having been dispossessed of certain lands in the State of Wisconsin, following United States colonization policy somewhat over a hundred years ago.

The claim does not appear to be without foundation, as their fellow-tribesmen, in like case, in the United States, have been compensated.

In 1912 this claim was referred to the Pecuniary Claims Commission, and the department, at that time, was party to the proceedings. In 1911, the Indians retained the services of Mr. A.G. Chisholm, K.C., of London, Ontario, as counsel, and the department recognized his status as solicitor, by entering into an Agreement with him, in 1918, approved by the Department of Justice.

In the meantime, it has been decided, by mutual agreement of both governments, to withdraw this, and other claims, listed for possible inclusion in a Second Schedule under the Pecuniary Claims Agreement of 1910, but such withdrawal to be without prejudice as to the right of any interested party to pursue any available remedies, either ex gratia or ex jure in the United States. The formal exchange of notes between the governments covering the withdrawal has not been made, but I understand will take place at an early date. The department is awaiting official

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notification of this action before determining its future course in the matter.

As it is now common knowledge among the Indian claimants that the claim will not be proceeded with before the Tribunal, they are endeavouring to revive it through the Courts of the United States, which I understand, would require a Jurisdictional Act of Congress. To that end, several groups of Indians now are acting independently of each other, each with its own counsel - Mr. Chisholm, above mentioned, associated with Mr. Robert C. Bell of Detroit Lakes, Minnesota.

With these observations I may now revert to the specific point upon which advice is sought in your letter. The form of contract between the Indians and Mr. Chisholm and Mr. Bell, which you forwarded, appears to be in keeping with the agreement between the department and Mr. Chisholm above mentioned, and the circular letter from Mr. Chisholm to the Indians which accompanied it correctly describes the position as shown by the records of the department.

In the circumstances I think that it is quite proper for the Indians to sign the contract if they choose to do so. It should be understood, however, that the signing of this contract by the Indians does not bind the department to any action, obligation or responsibility with respect to the proceedings or their outcome.

Yours sincerely,

W.R. Tomlinson, Esq., M.P.,
House of Commons,
Ottawa.

W.J.F. Pratt,
Private Secretary.

enclosures - 3 -

TR:14
AW

Indian Affairs. (RG 10, Volume 2791, File 156,610,
pt. 6)

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, February 23, 1939.

Dear Sir:

I have to acknowledge receipt of your letter of February 15 enclosing correspondence with regard to the Pottawatomie Indian claim which is returned herewith as requested.

Before undertaking to answer the questions raised in your letter I shall outline for you briefly the circumstances of this claim.

The present Canadian Pottawatomie Indians, who number some 1500, reside on various Indian Reserves in western Ontario, and are claiming compensation from the United States Government for losses sustained as a result of their ancestors having been dispossessed of certain lands in the State of Wisconsin, following United States colonisation policy somewhat over a hundred years ago.

The claim does not appear to be without foundation, as their fellow-tribesmen, in like case, in the United States, have been compensated.

In 1912 this claim was referred to the Pecuniary Claims Commission, and the department, at that time, was party to the proceedings. In 1911, the Indians retained the services of Mr. A. G. Chisholm, K.C., of London, Ontario, as counsel, and the department recognized his status as solicitor, by entering into an Agreement with him, in 1918, approved by the Department of Justice.

In the meantime

E. H. Anundson, Esq.,
Ontario Securities Commission,
Parliament Buildings,
Toronto, Ontario.

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In the meantime, it has been decided, by mutual agreement of both governments, to withdraw this, and other claims, listed for possible inclusion in a Second Schedule under the Pecuniary Claims Agreement of 1910, but such withdrawal to be without prejudice as to the right of any interested party to pursue any available remedies, either ex gratia or ex jure in the United States. The formal exchange of notes between the governments covering the withdrawal has not been made, but I understand will take place at an early date. The department is awaiting official notification of this action before determining its future course in the matter.

As it is now common knowledge among the Indian claimants that the claim will not be proceeded with before the Tribunal, they are endeavouring to revive it through the Courts of the United States, which I understand, would require a Jurisdictional Act of Congress. To that end, several groups of Indians now are acting independently of each other, each with its own counsel - Mr. Chisholm, above mentioned, associated with Mr. Robert C. Bell of Detroit Lakes, Minnesota.

With these observations I may now revert to the specific point upon which advice is sought in your letter. The form of contract between the Indians and Mr. Chisholm and Mr. Bell, which you forwarded, appears to be in keeping with the agreement between the department and Mr. Chisholm above mentioned, and the circular letter from Mr. Chisholm to the Indians which accompanied it correctly describes the position as shown by the records of the department.

In the circumstances I think it is quite proper for the Indians to sign the contract if they choose to do so. It should be understood, however, that the signing of this contract by the Indians does not bind the department to any action, obligation or responsibility with respect to the proceedings or their outcome.

I may add that I appreciate the interest that you have taken in the matter on behalf of the Indians.

Yours very truly,


T. R. L. MacInnes,
Secretary.

Enclosures.

Indian Affairs

156610-4



R
Ottawa, 22nd February, 1939.

Dear Mr. Heeney -

Re - A. G. Chisholm, K.C.

I acknowledge your letter of the 13th instant forwarding correspondence from W. G. H. Chisholm in connection with the above named who has been performing certain legal services for the Six Nations and Pottawatonic Indians.

In explanation of the foregoing, I may say that the matter of the Six Nations Indians deals with the Grand River navigation dispute which has been before my Minister on a good many occasions during the last three years. The Honourable, the Leader of the Opposition, Dr. R. J. Manion, recently brought this matter before the Department. I do not think I can do better than enclose copy of a letter which my Minister wrote to the Honourable Mr. Elliott in June, 1936. A copy of this letter was sent to Dr. Manion in reply to his recent letter. This sets out very clearly the reason why it is not possible to recognize Mr. Chisholm's claim in this case. I might particularly draw your attention to the fact that he has already been paid over \$4,500.00 in prosecuting a claim which the Minister of Justice in 1910 stated "was of the wildest character" and I am sure you will agree with me that the Government would not be justified under these circumstances in recognizing his account.

In the Pottawatonic matter, Mr. Chisholm represents those Indians under an agreement entered into with the Department of Indian Affairs in 1918 which said agreement has been approved by the Department of Justice. The Pottawatonic Indians who number some 1500 reside in various Indian Reserves in Western Ontario and are claiming compensation from the United States Government for losses sustained as a result of their ancestors having been

- dispossessed -

A. D. P. Heeney, Esq.,
Principal Secretary to the
Prime Minister,
O t t a w a.

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dispossessed of certain lands in the State of Wisconsin following the United States Colonization policy somewhat over 100 years ago. This claim does not appear to be without foundation as their fellow tribesmen in the United States have received compensation. Under the said agreement of 1918 no monies were payable to Mr. Chisholm except from monies recovered from the United States for the said Indians. As a matter of fact Mr. Chisholm has received on behalf of this claim over a period of years, an amount in excess of \$8,000.00 which monies were paid to him out of annual appropriations and not under this agreement. In 1923 the then Deputy Superintendent General of Indian Affairs notified Mr. Chisholm that no more money would be paid to him out of appropriations on account of this claim without special authority but even after that additional monies were paid to him by the Department of Indian Affairs.

The agreement referred to by Mr. W. G. H. Chisholm is, I presume, the agreement of 1918 which is still in effect.

With regard to the other matters referred to by Mr. Chisholm in his letters of the 10th instant and which, as requested, I return herewith, I may say that there is no knowledge with regard thereto.



Yours very truly,

W. J. Proth.
Private Secretary.

mailed Feb. 24

To be returned to Indian Affairs when signed.

Ottawa, February 21, 1939.

Dear Mr. Tomlinson:-

I am in receipt of your letter of January 16, 1939, wherewith you enclosed correspondence in connection with the Pottawatonic Indian Claim, and which I am returning herewith as requested.

Before undertaking to answer the questions raised by your correspondent, I shall outline for you briefly the circumstances of this claim.

The present Canadian Pottawatonic Indians, who number some 1500, reside on various Indian Reserves in western Ontario, and are claiming compensation from the United States Government for losses sustained as a result of their ancestors having been dispossessed of certain lands in the State of Wisconsin, following United States colonization policy somewhat over a hundred years ago.

The claim does not appear to be without foundation, as their fellow-tribesmen, in like case, in the United States, have been compensated.

In 1912 this claim was referred to the Pecuniary Claims Commission, and the department, at that time, was party to the proceedings. In 1911, the Indians retained the services of Mr. A.G. Chishelm, K.C., of London, Ontario, as counsel, and the department recognized his status as solicitor, by entering into an Agreement with him, in 1918, approved by the Department of Justice.

In the meantime, it has been decided, by mutual agreement of both governments, to withdraw this, and other claims, listed for possible inclusion in a Second Schedule under the Pecuniary Claims Agreement of 1910, but such withdrawal to be without prejudice as to the right of any interested party to pursue any available remedies, either ex gratia or ex iure in the United States. The formal exchange of notes between the governments covering the withdrawal has not been made, but I understand will take place at an early date. The department is awaiting official

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notification of this action before determining its future course in the matter.

As it is now common knowledge among the Indian claimants that the claim will not be proceeded with before the tribunal, they are endeavouring to revive it through the Courts of the United States, which I understand, would require a Jurisdictional Act of Congress. To that end, several groups of Indians now are acting independently of each other, each with its own counsel - Mr. Chisholm, above mentioned, associated with Mr. Robert C. Bell of Detroit Lakes, Minnesota.

With these observations I may now revert to the specific point upon which advice is sought in your letter. The form of contract between the Indians and Mr. Chisholm and Mr. Bell, which you forwarded, appears to be in keeping with the agreement between the department and Mr. Chisholm above mentioned, and the circular letter from Mr. Chisholm to the Indians which accompanied it correctly describes the position as shown by the records of the department.

In the circumstances I think that it is quite proper for the Indians to sign the contract if they choose to do so. It should be understood, however, that the signing of this contract by the Indians does not bind the department to any action, obligation or responsibility with respect to the proceedings or their outcome.

Yours sincerely,

W.H. Tomlinson, Esq., M.P.,
House of Commons,
Ottawa.

enclosures - 3 -

W. J. F. Pratt
W. J. F. Pratt,
Private Secretary.

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Copy for Indian Affairs Branch.

156610-4



Ottawa, February 27th, 1939.

Dear Mr. Tomlinson -

I am in receipt of your letter of January 16th, 1939, herewith you enclosed correspondence in connection with the Pottawatonic Indian claim, and which I am returning herewith as requested.

Before undertaking to answer the questions raised by your correspondent, I shall outline for you briefly the circumstances of this claim.

The present Canadian Pottawatonic Indians, who number some 1800, reside on various Indian Reserves in Western Ontario, and are claiming compensation from the United States Government for losses sustained as a result of their ancestors having been dispossessed of certain lands in the State of Wisconsin, following United States colonisation policy somewhat over a hundred years ago.

The claim does not appear to be without foundation, as their fellow-tribesmen, in like case in the United States, have been compensated.

In 1912 this claim was referred to the Pecuniary Claims Commission, and the Department, at that time, was party to the proceedings. In 1911, the Indians retained the services of Mr. A. G. Chisholm, K.C., of London, Ontario, as counsel, and the Department recognised his status as solicitor, by entering into an agreement with him in 1918 which was approved by the Department of Justice as to form. The claim, by mutual agreement of both Governments, is not to be proceeded with in the courts but this action does not prejudice the right of any interested party pursuing any available remedies. The Indians, therefore, are endeavouring to revive this claim in the United States courts and groups are now acting independently of each other, each with its own counsel, Mr. Chisholm, associated with Robert C. Bell of Detroit Lakes, Minnesota, representing one group.

E. R. Tomlinson, Esq., M.P.,
House of Commons,
Ottawa.

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While the circular letter and form of contract enclosed are substantially correct, I would direct your attention to the first recital of the form of contract which states that Mr. Chisholm's employment has been recognized and approved by the Government of the Dominion of Canada. This statement is not correct as the Department of Indian Affairs entered into the agreement with Mr. Chisholm in 1918 recognizing his status as solicitor for the Indians. This agreement has never been approved by Council and, therefore, does not bind the Government. It should also be understood that the signing of this contract by the Indians does not bind the Department nor the Crown in any action, obligation or responsibility with respect to the proposed proceedings or their outcome.

Yours very truly,



Private Secretary.

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