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— INDIAN AFFAIRS BRANCH —

DEPARTMENT OF CITIZENSHIP AND IMMIGRATION

SUBJECT POTTAWATAMIE CLAIM VS U.S.

VOLUME

FROM 1939

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CHERRY 2666 LAW OFFICES

DORR E. WARNER
1101 HIPPODROME BUILDING
CLEVELAND

March 16, 1939

Department of Indian Affairs,
Ottowa, Canada.

In re: Pottawatomie Indians vs. United States

Gentlemen:

As you probably know, I have been working for several years last past in prosecuting the claim of the Pottawatomie Indians against the United States.

At the last session of Congress I succeeded in having a Jurisdictional Bill introduced in the Senate by Senator Elmer Thomas, Chairman of the Indian Affairs Committee of the Senate, and succeeded in having the Indian Bureau at Washington withdraw its objection to the Bill and take a neutral position in respect thereto. Later the Senate passed the Bill and it was automatically introduced in the House of Representatives, but owing to the fact that the House adjourned within a week thereafter, did not consider it. At the present session the Bill was re-introduced in the Senate and a favorable report made thereon by the Senate Committee on Indian Affairs, but no action has as yet been taken by the Senate.

I am advised that within the past four months Mr. A. G. Chisholm, Attorney of Toronto, Ontario, and Mr. Robert Bell, Jr., Attorney of Minneapolis, Minn., have been attempting to secure contracts with the Indians whereby they were employed to represent them in the prosecution of the claims, and I have a report that you approved their contracts and another report that you have not approved the contracts but were taking a neutral position in respect thereto. Kindly advise whether or not you have approved the contracts.

For your information I enclose herewith copy of my Brief which I have used in presenting this claim to the Committee of the Senate on Indian Affairs, to the Committee of the House of Representatives on Indian Affairs, and others. I also enclose copy of Bill S.J. 212 which passed the Senate June 7, 1938, and introduced in the House of Representatives on June 10, 1938, also copy of Bill S.J.32 which was introduced in the Senate at the present session.

Very truly yours,

Dorr E. Warner

Dorr E. Warner

DEW:A
Encl.

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 Pottawatomie Indians.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That jurisdiction be, and it is hereby, conferred upon the Court of Claims to make findings of fact and conclusions of law in respect of the claims against the United States, of whatever nature, legal or equitable, arising out of treaties between the Pottawatomie Nation of Indians and the United States, of 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 the Court of Claims shall report

its findings to Congress, 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.

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

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

The Court of Claims shall have jurisdiction to fix a reasonable attorney's fee for services rendered, and to be rendered, in the prosecution of said claims, not to exceed ten per centum of the amount, if any, found due to such Indians, and to fix the reasonable expenses incurred by such attorney, and the same shall be paid out of any funds 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

W bar
Resolution

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

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JOINT RESOLUTION

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

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

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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

In the Matter of

POTTAWATOMIE INDIANS

v.

UNITED STATES.

BRIEF ON BEHALF OF INDIANS

In Respect of

Joint Resolution Conferring Jurisdiction upon the Court of Claims to Investigate Their Claims

and

CONTRACT WITH THEIR ATTORNEY

Attached Hereto.

Dorr E. Warner,

Hippodrome Bldg., Cleveland, Ohio,

Attorney for Pottawatomie Indians.

The Gates Legal Publishing Co., Cleveland, Ohio

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POTTAWATOMIE INDIANS
v.
UNITED STATES.

BRIEF ON BEHALF OF POTTAWATOMIES
In Respect of
Joint Resolution to Investigate Their Claims.

The Petitioners referred to in this Brief are the descendants and successors in interest of that portion of the United Pottawatomie Nation which did not remove west of the Mississippi River with other members of the tribe, but which later departed from the tribal lands in Wisconsin and other states and settled in Canada.

They claim that the United States should account to them for their just and proportionate share of the tribal annuities and proceeds of the sale of tribal lands arising from treaties made between their ancestors and the United States.

Those descendants, continuing to reside in Wisconsin, of the Pottawatomies who did not remove west of the Mississippi, petitioned the Congress to account to them for their just and proportionate share of the said funds (Senate Document No. 185, 57th Congress, second session) and thereafter the Congress appropriated to them their share of such funds. Final action has not been taken in respect of the share of those Pottawatomies residing in Canada.

FACTS.

The pertinent facts are a matter of official record. They are found in:

1. The report of the Secretary of the Interior, House Document No. 830, 60th Congress, first session, herein termed "Report 830";
2. The report of the Committee of the House of Representatives on Indian Affairs, Report No. 470, 64th Congress, first session, herein termed "Report 470";
3. The report of the Committee of the Senate on Indian Affairs, Report No. 293, 65th Congress, second session, herein termed "Report 293."

The Pottawatomies residing in Wisconsin petitioned the Congress to consider the merits of their claims against the United States (Senate Document No. 185, 57th Congress, second session) and thereafter, pursuant to an Act of Congress (34 Stat. L. 380) the Secretary of the Interior made a report as to the status of their claim, including an enrollment of those Pottawatomies residing in Wisconsin, Michigan and Canada (Report 830).

From the report of the Committee of the House (Report 470), in which the Committee of the Senate on Indian Affairs concurred, it appears that:

> "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 Stats., 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 a 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 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 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 has 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.'' (Reports 470 and 293.)

Both committees recommended that Congress appropriate a sum of money sufficient to pay what was due the Pottawatomies residing in the states of Wisconsin and Michigan.

Pursuant to these reports and recommendations, the Congress appropriated and the Government distributed the just and proportionate share of the tribal lands and funds to the Pottawatomies residing in those two states.

Pursuant to an act of Congress, the Secretary of the Interior investigated the status of the Pottawatomie Indians and made an enrollment of the Pottawatomies residing in Wisconsin, Michigan, and Canada. At the time of his report, the total number of Pottawatomies residing in Wisconsin, Michigan and Canada, who did not remove west of the Mississippi River, was 2007 (Report 830, pages 13 & 22) of whom 457 resided in Wisconsin and Michigan, and 1,550 in Canada. (See enrollment of Indians submitted with Report No. 830.) Some of the Indians who formerly lived in Canada and moved back to Michigan are included in the 457 residing in Wisconsin and Michigan. (See Roll, pages 55 & 56.) Those who moved back received their pro rata share of tribal funds. Of the Indians residing in Canada, 507 received no rights from Canada, and 1043 received rights from

Canada. (See Roll and supplement submitted with Report 830.)

The total proportionate share of the Indians residing in Wisconsin, Michigan and Canada, who did not remove west of the Mississippi River, is $1,964,565.87. (Report 830, page 12.)

The proportionate share of those residing in Wisconsin and Michigan is $447,339.00, and the proportionate share of those residing in Canada is $1,517,226.87.

LAW.

The question presented is whether the United States is under any obligation to account to the Pottawatomie Indians residing in Canada for their just and proportionate share of the tribal funds.

The government has recognized the validity of the claims of the Pottawatomies residing in Wisconsin and Michigan, and has accounted to them for their just and proportionate share of tribal funds amounting to $447,339.00, but has not as yet accounted to the Pottawatomies residing in Canada for their just and proportionate share, amounting to $1,517,226.87.

Any determination of the rights of those Pottawatomies who failed to remove West of the Mississippi River involves necessarily a consideration of the Chicago Treaty of 1833 by the terms of which certain bands (or their chiefs) purported to cede to the United States the lands belonging to all the bands. As the Report of the Committee on Indian Affairs indicates, the Pottawatomies were in 1833 "divided into a number of bands and distinct tribes," occupying defined and separate areas, owing to the fact that there had been widespread invasion by white settlers of the lands of the Indians which had been transferred to them by prior treaties with the

United States. Those Pottawatomies who refused to remove from Wisconsin, including the ancestors of Petitioners, were members of bands which declared those who negotiated the Treaty of 1833 had *no authority* "to cede their homes and their lands in Wisconsin" to the United States.

The argument of the Petitioners will proceed, alternatively, upon considerations of the *invalidity* of the Treaty of 1833 and then upon an assumption of its *validity*. No question is raised, of course as to the legal effect of the execution of the treaty upon those bands which were parties to the treaty or upon those Pottawatomies who adhered to it by taking the benefits of its various provisions.

THE NON-BINDING CHARACTER OF THE TREATY OF 1833 INSOFAR AS THE RIGHTS OF THE PETITIONERS (OR THEIR ANCESTORS) ARE CONCERNED.

It appears that about 4,000 Pottawatomies removed to the west following the Treaty of 1833 (7 Stat., 431), while 2,000 refused to go. (Report 470, page 5.) "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." (Report 470, page 5.) The mere fact that one-third of the whole membership of the "United Nation of Pottawatomies" refused to recognize any authority in those who had signed the treaty clearly indicates the state of disunion existing between the various bands of these Indians and of itself is evidence sufficient to cast serious doubt upon the propriety of the negotiation, and upon the authority of the bands adhering to the treaty to bind the dissenting bands and hence upon the validity of the treaty itself.

By the year 1830 the separate character of and the lack of unity among the different branches of the Pottawatomies had become apparent, for by that time they were so divided upon a territorial basis as to constitute distinct tribes, the territory of each of which was rather well defined. (Report 470, p. 4.) The separate existence of each of these territorial bands was later recognized by the United States. It results that in 1833 tribal organization had broken down to such an extent that in their relations with white settlers and with the Federal government, there was no distinct tribal or national body whose acts could be considered as authoritatively binding in every respect upon every Indian who chanced to be of Pottawatomie blood.

Considerable doubt must have been felt by the functioning authorities in 1833 as to the validity of the Chicago Treaty, for we find that subsequent to the signing of that Treaty the Federal Government found it desirable to negotiate separate treaties with fourteen separate bands of Pottawatomies, covering the same subject-matter as did the Chicago Treaty, i.e., removal of each separate band west of the Mississippi and payments of the annuities. By its conduct in this respect, the United States gave direct recognition to the separate juridical position of each band of Pottawatomies. By the signing of these treaties, the United States admitted that each band was an entity for the purpose of negotiation and the surrender of each band's separately occupied lands. Consequently the purported Treaty of 1833 must have been a nullity insofar as it attempted to cede the lands, or to modify the terms of the annuities, of those members of different bands of these Indians which were not parties to the treaty.

No separate Treaty was ever made with the Wisconsin Pottawatomies. Consequently the record of the relations of the ancestors of these Petitioners with the United States is lacking completely in any juridical act which evidences a surrender of rights in lands occupied by such ancestors or which indicates any intention to relinquish rights to annuities secured by prior treaties with the United States.

Nor can the validity of the treaty be asserted with any degree of cogency on the ground that in dealing with its Indians the United States must deal with the tribe and not with the individual members. Under conditions as they existed in 1833 the unit of organization was no longer a "United Nation" but a separate band, so separate, in fact, that the Committee on Indian Affairs found such bands to have been distinct tribes. No evidence appears as to any central tribal organization as of this date. Under such circumstances the only equitable method of negotiating with the Pottawatomies would have been to treat with each band separately regarding its proportionate share of the tribal funds and the lands which it severally occupied. This very method of negotiation was adopted by the United States in fourteen separate instances; in each of them the United States recognized the band as the unit and in so doing it dealt with the band as a tribal organization and did not deal with the individual members of the group. But no such separate treaties were made with the bands of which the ancestors of Petitioners were members.

Accordingly,

1. Petitioners are glad to give their adherence to the well established principle that the United States must deal with the tribe and not with its individual members.

2. The United States itself has given a definition of "tribe" for the purpose of dealing with the Pottawatomies, viz., each separate and distinct band as the same existed in 1833 and the immediately succeeding years, to which definition Petitioners are content to adhere.
3. The United States has never negotiated a treaty with the tribe of which Petitioners' ancestors were members.

The relations of the non-removing Indians with the United States subsequent to 1833 are characterized by arbitrary executive and administrative conduct upon the part of the representatives of the United States. 2,000 Pottawatomies refused to leave their homes in Wisconsin which had been secured to them by the prior treaties with the United States. They were forcibly dispossessed of their lands and the same were treated as public domain and sold to white settlers. Endeavors by the Federal Government forcibly to remove the Wisconsin Pottawatomies from their homeland and to transport them beyond the Mississippi were so drastic, in the words of the Committee on Indian Affairs (p. 5), that 1,500 of the 2,000 fled to Canada and those who remained in Wisconsin "have eked a precarious existence and have been wanderers in the northern part of the State."

In direct contravention of an Act of Congress (13 Stat., 172), the Indian Office purported to forfeit the shares in lands and annuities of those who had not removed west of the Mississippi. By 1916, practically all funds allocated to *all* Pottawatomies had been paid over to those who had removed to the west, despite the provision of the Act of Congress, referred to above, that the shares of those who had not removed be withheld in the Treasury and retained to their credit. (Report 470, page 5.)

Accordingly, if we assume the non-binding effect of the Treaty of 1833 upon the non-adhering bands of Wisconsin Pottawatomies, we find that, without right or privilege, the United States took from them by force the homeland which that Sovereignty had sold to them in exchange for eastern lands previously possessed, that that homeland was parceled out and sold by the United States, that the United States, as well as individual citizens thereof, was the direct beneficiary of such wanton invasion because the proceeds of such sales passed into the Treasury of the United States, that the solemn engagement of the United States, embodied in prior treaties with these Indians, to pay definite annuities in perpetuity "to be equally divided" among all Pottawatomies was effectively repudiated by the administrative officers of the Federal Government, and that 2,000 Pottawatomies were made indigent wanderers and skulking refugees in the territories to which they alone could show good equitable title.

Approximately 2,000 non-assenting Pottawatomies were involved in the original expropriation. The Congress has recognized the equitable right to compensation of 457 of this number. By the various acts listed below, the Congress has appropriated out of the Treasury of the United States a total sum sufficient to pay such 457 their proportionate share of the tribal annuities and the value of their proportionate share of the tribal lands:

June	30, 1913,	38 Stat. L. 102,	$150,000
May	18, 1916,	39 Stat. L. 156,	100,000
March	2, 1917,	39 Stat. L. 991,	100,000
May	25, 1918,	40 Stat. L. 589,	75,000
June	30, 1919,	41 Stat. L. 29,	15,500
May	29, 1928,	45 Stat. L. 901,	6,839
			$447,339

The 457 persons for whose benefit these appropriations were made were residents of Wisconsin and Michigan. Some of this number formerly resided in Canada; they moved back to Michigan and the Government distributed to them their proportionate share. 1,550 of the non-assenting Pottawatomies remain uncompensated by the United States for the loss of their lands. To them no accounting has been made for their proportionate share of the annuities secured to them by the treaties antedating 1833; nor have they been the recipients of any portion of the additional annuities provided by the Treaty of 1833.

If 457 non-assenting Pottawatomies were in all fairness and justice entitled to compensation in some form from the United States, no good reason appears why 1,550 additional dissenters are not to a like extent equitably entitled to relief from the United States. If 457 were wronged by the conduct of the Government of the United States, the larger number was likewise and in the same degree injured. The only distinguishing feature in the situations of the two groups is that the wanderings of the 457 happened to be limited by the boundaries of the United States, while the larger group made escape from the "drastic measures" of the United States doubly sure by crossing the northern boundary and settling in the wilds of Canada. This factual distinction can have no persuasive effect, for by no recognized principle of the Anglo-American jurisprudence can the rightful or wrongful character of particular conduct be determined by the subsequent residence of the injured party. Neither the equitable right to some form of relief nor the duty to recompense an injured person for a wrong inflicted is conditional upon unchanging residence or the ambit of the later peregrinations of the sufferer. To draw a distinction between the two groups—to compensate those

who happened to remain south of the northern boundary of Wisconsin and to deny relief to those who passed beyond that line—would be to assert that he who determines to avoid oppression is to be penalized because he has made good his escape from such oppression.

Nor can any sound legal or moral reason for a difference in treatment of the two groups be found in the fact that the smaller group which has been compensated is composed of American nationals, while the 1,550 are Canadian nationals. The latter are the successors in interest of persons whose lands within the United States were expropriated. They became entitled by reason thereof to compensation for the wrong done them whether they continued American nationals or whether they became citizens of Timbuctoo. The 1,550 are the successors in interest of persons who were entitled to annuities from the United States under prior treaties; if the right to receive such annuities could by the most far-fetched construction be held to be dependent upon continued residence within the United States, then the United States as a practical matter prevented fulfillment of the condition and, by the most elementary principles of the common law relating to consensual agreements, the United States thereby eliminated such condition upon its duty to continue the payment of such annuities.

Therefore, the Petitioners submit that, both upon equitable and upon benevolent grounds, they are entitled to as favorable treatment from the United States as has been heretofore accorded those Pottawatomies residing in Wisconsin and Michigan.

ASSUMING THE BINDING CHARACTER OF THE TREATY OF 1833 UPON ALL POTTAWATOMIES.

If we assume that the Treaty of 1833 was binding upon all bands of Pottawatomies, whether they were parties to the treaty or not, the case of the Petitioners is equally strong. Article IV of that treaty reads 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 annuity shall be paid at their location west of the Mississippi." (7 Stat. 431.)

It is to be noted that this Article provides that during the three years following the signing of the treaty, only a portion of the annuities shall be paid at the new location, namely, the proportionate share of those who have removed. This implies necessarily that the United States will withhold in its Treasury the proportionate share of those Pottawatomies who did not remove. By its own contract, the United States adopted a policy of treating the Pottawatomies as divided groups for a specified period. By this agreement the United States relieved itself, for a period of three years, from the necessity of making payments of annuities west of the Mississippi except such proportionate amount as was due to the Pottawatomies who had removed. After the expiration of the three-year period, the United States came again under the duty of making payment west of the Mississippi of the full amount of the annuities.

I. The Treaty of 1833 does not forfeit the annuities of those Indians who did not remove to the west.

The Treaty of 1833 contains no condition of forfeiture. While it does impose upon the United States the duty of making full payments of the annuities at the western location after three years, it does not declare that the total amount of the annuities due shall be paid to such Indians as have removed. It merely designated the place of payment and defines the duty of the United States in that respect. It gives no authority to any branch of the Government or to any other body to declare a forfeiture for non-removal to the new lands. The plain duty of the Indian Office as to the proportionate share of the annuities of those Indians who did not remove was to have withheld that share until the Indians did remove or until some competent court had directed a disposition of it.

The treaty gives no support to the idea that by failure to remove to the western lands the proportionate share of those who did remove was increased. Such a contention would proceed necessarily upon the assumption that the United States had contracted to pay a lump sum annuity *to the tribe* and that the distributive shares in that lump sum would thereafter be determined by some tribal body. While it must be taken as an established principle that the United States deals with the tribe and not with the individual, that principle relates only to the matter of negotiating treaties or other contractual agreements with the Indians. For those purposes the tribe is the unit and the United States has dealt with those who are presumed to have authority to act for the whole body. But when the time for the performance of the agreement arrives, the principle of deal-

ing only with the tribe has no application. *In making payments the United States deals with the individual Indian.* Payments are not made in lump sums to some tribal authority and the distribution of those sums is not left to the decision of such authority. The United States makes distribution to the individual. Such has been the established policy of the United States and in the very case of the Pottawatomies, the Act of March 1, 1907, which related to the balance of the tribal funds assumed to be due to the Indians, authorized the Secretary of the Interior to make a *per capita* allotment to those members of the tribe then residing in Kansas. Accordingly, neither the treaty of 1833 nor the policy of the United States shows any indication of an intention that annuity payments should be made to the tribe as such.

During the whole of the period in which the United States was making payments to the western Pottawatomies, its representatives were well aware of the existence and the location of the eastern Pottawatomies, resident in Wisconsin, Michigan and Canada, and of their rights under the various treaties. Despite that fact, various payments were made over a long period of years to the western Pottawatomies which, it has been asserted, exhausted all funds due to *all* Pottawatomies. If the United States overpaid the western Indians, that fact cannot prejudice the rights of those remaining in the east. If either the Congress or the Indian Office was mistaken as to the legal position of the United States in the premises, that fact cannot terminate the treaty rights of those Pottawatomies who did not receive their share of the payments. In no way does the treaty give any countenance to the view that the annuities were subject to forfeiture by the arbitrary determination of some administrative agency of the government. But nevertheless, the Indian Office purported to declare a forfeiture and to treat the non-removing Pottawatomies as having lost all rights both to annuities and to tribal lands. (Report 470, pages 5 and 6.)

Additionally, it is to be remembered that annuities were due to the Pottawatomies under treaties antedating that of 1833. The latter treaty confirmed these Indians in the annuities due under such prior treaties in addition to providing a further new annuity. Such older treaties were entered into in consideration of the Pottawatomies giving up their original lands in Ohio and Indiana. They were fully performed on the part of the contracting Indians by the surrender of the Ohio and Indiana lands and by their removal to Wisconsin, Michigan and Illinois. So far as the performance of the terms of those treaties was concerned, nothing remained to be done except the payment of such annuities by the United States. The right to the same fully vested and subject to no conditions. The ancestors of Petitioners never received their proportionate shares of such annuities after 1833.

The equitable, as well as the legal course, would have been for the United States to have retained the proportionate shares of those Indians who did not remove from their homes, until they were forcibly ejected. Nothing required that their shares be paid over to the remaining members of the tribe, and we have seen that by the Act of June 25, 1864, the Congress recognized the equitable right to such shares of those Pottawatomies residing in Wisconsin. The position of the ancestors of Petitioners was entitled to no less consideration.

II. The non-assenting Pottawatomies did not voluntarily abandon their tribal rights.

These Indians who refused to adhere to the Treaty of 1833 did so upon the ground that the Indians who participated in the negotiation of the treaty were without authority to represent the dissenters and, consequently, that since they did not desire to leave their homeland they were under no legal compulsion to do so. In maintaining thusly a legal position which is not wholly unpersuasive, it is difficult to perceive how one can find a voluntary abandonment of that to which such Indians were lawfully entitled. If the legal position taken by such dissenters should have proved untenable, they would still have been remitted to their rights under the treaty; otherwise, one might never take a legal position contrary to his adversary without thereby incurring the loss of all his rights. But it is of the utmost significance that there is no authoritative determination that the position taken by the dissenters was incorrect. The record in the premises contains no adjudication rejecting the contention of the non-assenting Pottawatomies. Despite the complete absence of any such adjudication the dissenting ancestors of Petitioners were hounded about the State of Wisconsin by reason of the "drastic measures" employed against them; harsh and oppressive administrative action, backed no doubt by the military, caused them to seek an escape and in desperation they fled across the Canadian border in search of an asylum. Under such circumstances, to contend that they voluntarily abandoned any rights would be fatuous.

III. The non-assenting Pottawatomies did not forfeit their rights to proportionate shares in the new tribal lands in the west or in the proceeds of the sales of such lands.

The Treaty of 1833 contained no condition of forfeiture. The non-removing Indians were entitled to occupy their proportionate part of the new lands in Iowa. While this right may have been of little practical value as long as they did not remove, it was still a property right in the 5,000,000 acres of land granted to the Pottawatomies by the United States in return for a cession of lands of *all* the Pottawatomies in the states further to the east. By the treaty of Council Bluffs (1846), these Iowa lands were ceded to the United States in exchange for lands in Kansas and a cash consideration ($850,000.00 less certain deductions). If we assume the binding character of the Treaty of Council Bluffs upon all Pottawatomies, we find that certain property interests resting in the non-removing Indians and appertaining to 5,000,000 acres of lands in Iowa were relinquished to the United States for a stated consideration. Inasmuch as the Treaty of 1833 provided for no forfeitures and as no court has ever decreed a forfeiture of the property interests of such non-assenting Indians, the property interests of such eastern Indians must, in consequence, have been transmuted into a like proportionate interest in that which was received as the consideration for the extinguishment of their prior interests. The United States has never accounted to the dissenters for their proportionate part of the Kansas lands and the cash payment, as well as of the annuities heretofore considered.

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While the dissenters may never have performed the conditions precedent necessary to securing their occupancy of lands in the west, still the failure to perform

such conditions does not operate as a forfeiture. The Treaty of 1833 contains no provision for such a penalty. In the absence of a contractual provision therefor, neither the executive nor the legislative branch of the Government of the United States has the authority to declare such a forfeiture. To hold otherwise would be to assert that authoritative modification of a contract may be secured by unilateral act, that the rights of the contracting parties on one side may be altered, modified or extinguished by the mere exercise of the will of the other party to the contract. Such is not the law.

> "A forfeiture must be judicially declared." *Bouv. Law Dic.,* Forfeiture, and cases cited.

In order to authorize a claim to forfeiture a valuable property on account of violation of a condition, proceedings to enforce must be had. (*Bouv. Law Dic.,* 17 Ore., 140.)

Some further elementary principles of the law relating to forfeiture will enable all to a better understanding of the position of Petitioners.

> "The word 'forfeiture' means the judicial transfer of title to property as punishment for crime. *Tompkins Law Dic.,* 'Penalties'; *Bouv. Law Dic.,* 'Fines'; *Cruise Digest,* 'Fines'; *Shep. Touchstone,* '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. & Eng. Enc. of Law,* Vol. 8, p. 443; 2 *Black. Comm.* 267.

Since the Treaty of 1833 carried no provision relating to a forfeiture and since no proceedings ever were taken to declare a forfeiture, it is difficult to maintain any pretense that the shares of non-adhering Indians were "lost" or "forfeited." It has never been shown, nor has there been any attempt to show, *to whom* the shares in annuities and lands were forfeited, unless the contention be made that they were forfeited to the Pottawatomies who did remove inasmuch as the Government has paid to the latter a total sum equal to the amount to which all Pottawatomies were entitled. But if any party was entitled to a declaration of a forfeiture, it was the United States as the other contracting party in the treaty. No other party suffered by any failure of the dissenters to remove to the west. But as we have seen, there has never been an adjudication of forfeiture of these property rights by any judicial tribunal in the United States. It was not in the power of the executive to effect a forfeiture of the rights of these Indians that is, to modify and even to extinguish the solemn contractual obligation of the United States by the act of the United States alone. The executive branch had no authority to effect a forfeiture of the rights of one group simply by over-paying another group.

The nullity of attempted forfeiture of Indian rights by executive action has been proclaimed by the Supreme Court of the United States in the case of *New York Indians vs. United States,* 170 U. S. 1. That case was even stronger against the non-removing Indians than is the present one, because to the treaty therein involved there was annexed a condition of forfeiture relating to certain lands reserved for the Indians in Kansas in exchange for lands held and claimed by them in Wisconsin. Only a few of the Indians removed to the new reserva-

tion. The executive branch of the Government opened the reserved lands to settlement and sold those not occupied by the few Indians who did remove; this action was based upon an asserted forfeiture, claimed to have been worked by the failure of the Indians to remove. The Indians denied that there had been any forfeiture and brought an action against the United States for the proceeds of the sales of lands. In discussing the question of forfeiture, the Supreme Court of the United States said:

> "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 re-enter, take possession of lands, and sell them. A distinction is drawn by the authorities between the case of a private grantor, who may re-enter 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 the *United States v. Repentigny,* 5 Wall., 211, 267, 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 railway in *Schulenberg v. Harriman,* 21 Wall., 44, 63; in *Farnsworth v. Minnesota and Pacific Railroad,* 92 U. S., 49, and in *Van Wyek 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.
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> 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.
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> 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 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. 1, 25."

The Supreme Court thus makes it clear that even where an express condition of forfeiture in a grant is to be relied upon, still a judicial proceeding is necessary to declare the forfeiture or there must be authority given by the Congress in a direct, positive and unambiguous manner to re-enter and resume the possession of the United States. In the case of the Pottawatomies there has been no judicial declaration of a for-

tion. The executive branch of the Government opened the reserved lands to settlement and sold those not occupied by the few Indians who did remove; this action was based upon an asserted forfeiture, claimed to have been worked by the failure of the Indians to remove. The Indians denied that there had been any forfeiture and brought an action against the United States for the proceeds of the sales of lands. In discussing the question of forfeiture, the Supreme Court of the United States said:

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feiture. Morever, Congress has never given direct and unambiguous authority to anyone to re-enter upon lands in which the non-adhering Pottawatomies had a property interest and to resume the possession of the United States. No pretense of finally resuming the possession of the United States was ever made as the lands finally disposed of by the United States were turned over to the removing Pottawatomies *in toto*. The same conduct was pursued in respect to the annuities; Congress never gave any authority to forfeit the shares of the dissenters to the United States. Instead, the executive branch included in the payment to those who did remove a sum equal to that to which the non-adherents were entitled.

But in the last paragraph we have been discussing what steps must be taken to effect a forfeiture of property rights where the contract or treaty contains an express condition of forfeiture. In the case of the Pottawatomies no provision of any kind for forfeiture can be found in the treaty. How then could a forfeiture or estinguishment of the rights of Petitioners have been effected in the total absence of any stipulation for forfeiture and without a judicial proceeding of any kind whatsoever.

IV. Removal of non-assenting Pottawatomies to Canada did not effect a forfeiture of their rights.

In the case of the *New York Indians v. United States*, 170 U. S. 1, the Supreme Court held that the New York Indians did not forfeit their treaty rights by failing to remove west of the Mississippi River, and in 40 Court of Claims 448 the court held that that part of the New York Indian tribe who moved to Canada did not thereby forfeit their treaty rights.

By the treaty of Buffalo Creek, June 15, 1838 (7 Stat. L. 550), the New York Indians ceded to the United States certain lands in Wisconsin, and in consideration thereof the United States agreed to set aside, as a permanent home for the Indians, lands west of the Mississippi River, upon the express condition that they should remove to the lands west of the Mississippi River within a prescribed time, and in the event of their failing so to do, the lands should be forfeited to the United States. In the former case (170 U. S. 1) the Supreme Court held that the Indians did not forfeit their treaty rights by not removing west of the Mississippi River, and in the latter case (40 Court of Claims 448) the court held that the Indians did not lose their treaty rights by removing to Canada.

V. If the right to a proportional part of the annuities and the right to occupy lands in the west were conditional upon removal to the west, the Congress has established a policy of not insisting upon literal fulfillment of the condition.

Again, assuming the validity of the Treaty of 1833, and assuming that the United States would, by a strict construction of the treaty, come under no duty to make payments to those Pottawatomies who did not remove, the Congress has, in effect, waived the performance of the condition in so far as those Indians who remained resident in Wisconsin are concerned. By the Act of June 25, 1864, the Congress directed the retention in the Treasury of the proportionate shares of the annuities of such Indians. By the Acts of June 30, 1913, May 18, 1916, March 2, 1917, May 25, 1918, June 30, 1919 and May 29, 1928, the Congress appropriated sums sufficient to pay them their proportionate shares of the annuities and the

value of their proportionate shares of the tribal lands. It should be emphasized that these payments were made to Pottawatomies who did not remove to the west. If there were conditions precedent to the duty of the United States to pay them, the United States has, of course, waived such condition. If the United States was entitled to insist upon the performance of conditions precedent, the action of the Congress in making payment to the Wisconsin Pottawatomies clearly indicates that no public purpose is to be served by a strict adherence to the conditions and consequently it is indicative of a policy to waive unnecessary requirements in favor of persons under tutelage who had always assailed the validity of the same.

The position of those Indians who removed to Canada was in no essential different from that of those who remained in Wisconsin. Both groups "lost all of their lands" (Report 470, p. 5) and were deprived of their homes by the United States. The United States sold the properties of both groups alike and placed the proceeds of the sales in the public treasury. The oppression of one group by the administrative measures of the Federal Government was indistinguishable from that inflicted upon the other. In at least one respect the position of those who fled to Canada might be regarded as more meritorious under the treaty than that of those who remained in Wisconsin, in that the former quitted the State of Wisconsin and passed beyond the boundaries of the United States, while the latter remained in the territory which the United States desired them to quit. In determining whether conditions are to be waived, a differentiation between the two groups on the basis of residence would be anything but rational. Petitioners submit that no good reason exists, either in law or from

the standpoint of benevolence and mercy, for according less favorable treatment to the Canadian than to the Wisconsin Pottawatomies.

VI. The purpose, if not the exact letter, of the Treaty of 1833 was attained by the removal of the non-assenting Pottawatomies to Canada.

The purpose of the Treaty of 1833 was to obtain for white settlers the lands occupied by the Indians and indisputably secured to them by earlier treaties. It was but a part of the process of pushing the Indian ever further westward, securing his best lands and relegating him to the then arid regions, all in order to facilitate white settlement and development of the country. The declared policy of the United States was to obtain title and possession of Indian lands east of the Mississippi and to remove the Indians to the unoccupied public domain, then considered far less desirable, west of the Mississippi River. (Act of Congress, May 28, 1830; 4 Stat. 411.) Pursuant to that policy, the United States made many treaties with various tribes.

The lands of the Pottawatomies in Wisconsin and Illinois were finally made available to white settlers. As has been heretofore detailed, the flight of 1500 Pottawatomies to Canada made easy further white settlement of their lands and the sale thereof by the United States. White settlement could have been no better facilitated by the removal of these Indians west of the Mississippi. As a consequence, the United States achieved in this manner the result for which it had hoped in negotiating removal to the west. The chief aim of the United States—the vacating of the Indian lands in the territory named and white settlement thereof—was effected to as full an extent as if these 1500 Indians had removed to Iowa with

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The purpose of the Treaty of 1833 was to obtain for white settlers the lands occupied by the Indians and indisputably secured to them by earlier treaties. It was but a part of the process of pushing the Indian ever further westward, securing his best lands and relegating him to the then arid regions, all in order to facilitate white settlement and development of the country. The declared policy of the United States was to obtain title and possession of Indian lands east of the Mississippi and to remove the Indians to the unoccupied public domain, then considered far less desirable, west of the Mississippi River. (Act of Congress, May 28, 1830; 4 Stat. 411.) Pursuant to that policy, the United States made many treaties with various tribes.

The lands of the Pottawatomies in Wisconsin and Illinois were finally made available to white settlers. As has been heretofore detailed, the flight of 1500 Pottawatomies to Canada made easy further white settlement of their lands and the sale thereof by the United States. White settlement could have been no better facilitated by the removal of these Indians west of the Mississippi. As a consequence, the United States achieved in this manner the result for which it had hoped in negotiating removal to the west. The chief aim of the United States—the vacating of the Indian lands in the territory named and white settlement thereof—was effected to as full an extent as if these 1500 Indians had removed to Iowa with

the 4000. These Indians lost that which they would have lost had they adhered to the treaty, namely, their lands, and the same came into possession of the United States. The purpose of the Act of May 28, 1830, and the motivation of the Treaty of 1833 were fully realized at the expense of the 1500 as well as that of the 4000 and the 457.

VII. The United States did not account to the Wisconsin Pottawatomies in order that it might discharge its obligations to the State of Wisconsin.

The claim that the United States accounted to the Pottawatomies residing in Wisconsin and Michigan, in order that the Federal Government might discharge its obligations to the State of Wisconsin for its failure to remove the Indians from the State, is not warranted by the record.

The United States accounted to the Pottawatomies in order that it might discharge its obligations to the Pottawatomies themselves; it was under no obligation to the State of Wisconsin.

By the treaty of Sept. 26, 1833 (7 Stats. 431) the Pottawatomies ceded to the United States all their lands along the western shore of Lake Michigan, and in consideration thereof the United States agreed to give them a new reservation of five million acres west of the Mississippi River, and agreed in consideration of the exchange to make certain annual payments to the Indians and to continue in force previous perpetual annuities.

Nowhere in the treaty of Sept. 26, 1833 (7 Stats. 431) does it appear that the State of Wisconsin was a party to the treaty or that any part of its consideration was payable to the State of Wisconsin. In fact, at the

time the treaty was made the State of Wisconsin was not in existence; it was admitted to the Union in 1848.

Nowhere in any subsequent treaty or in any statute does it appear that the United States was under any obligation to the State of Wisconsin, nor has the State of Wisconsin ever made any such claim against the United States.

VIII. Payment to the Canadian Pottawatomies of their proportionate share of the tribal annuities and the value of their proportionate shares of tribal lands will not impose an unwarranted burden upon the United States.

The claim that payment to the Pottawatomies residing in Canada will impose upon the United States the duty to deal with unproven descendants of fugitive members of the tribe, does not go to the merits of our contention but rather to the physical difficulty of identifying descendants of members of the tribe. The Federal Government itself has eliminated this physical difficulty. Pursuant to an Act of Congress, the Secretary of the Interior prepared an official roll of all descendants of Pottawatomies residing in Wisconsin, Michigan and Canada, and the names and addresses of the present claimants, or their ancestors, are on that roll. (Report 830 and Roll.)

IX. Treaties made between the Indians and the United States should be liberally construed in their favor.

The Pottawatomies, like other Indians, were in a state of tutelage; their relations to the United States resembled those of a ward to a guardian; and their conduct is not to be measured by the same standard as the conduct of other people.

The Congress has recognized the incompetency of the Indians by enacting a Statute declaring void contracts made with Indians except when made pursuant to the restrictions provided in the Act (U. S. C. A. Title 25, Sec. 71).

For the foregoing reasons, the Supreme Court in several cases has held that treaties made with the Indians should be liberally construed in their favor in case of any doubtful expression.

Thus, in 72 U. S. 737, the Supreme Court held:

> "The Rules of Interpretation favorable to the Indian tribes are to be adopted in construing our treaties with them. * * *"

Thus, in *Pacific Fisheries v. U. S.*, 248 U. S. 78, 89, the Court held:

> "Statutes passed for the benefit of dependent Indian tribes or communities are to be liberally construed, doubtful expressions being resolved in favor of the Indians. *Choates v. Trap*, 224 U. S. 665, 675."

WHEREFORE, we respectfully submit that the Government should account to the Pottawatomie Indians residing in Canada for their just and proportionate share of tribal funds.

DORR E. WARNER,
Attorney for Pottawatomie Indians.

EXHIBIT A.

ATTORNEY'S CONTRACT.

THIS AGREEMENT, made and entered into this 13th day of May, 1936, by and between James Smith, Fred Toby, Elijah Tabobondong and Henry Jackson, acting for and on behalf of the Pottawatomie Tribe of Indians, of Canada, party of the first part, and Dorr E. Warner, attorney at law, residing at Cleveland, Ohio, party of the second part:

WITNESSETH: That the party of the first part on behalf of the said Pottawatomie Tribe of Indians under the authority vested therein by resolution of a council of the said Indians adopted on the 12th day of May, 1936, a copy of which is hereunto attached and made a part hereof, hereby contracts with, retains and employs the party of the second part as attorney in the matters hereinafter mentioned, subject to the approval of the Commissioner of Indian Affairs and the Secretary of the Interior, pursuant to section 2103 of the Revised Statutes of the United States (Section 81, Title 25, United States Code).

It shall be the duty of said attorney to advise and represent the said tribe of Indians in connection with properly investigating and formulating the claims of said tribe against the United States with respect to the suit which said Indians are authorized to institute against the United States under and by virtue of the act of ....., entitled:

It shall be the duty of said attorney to advise the said tribe of Indians and to represent them before all courts, departments, tribunals, the Committees of Congress, and other officers having any duty to perform in

connection with the investigation, consideration, or final settlement of said claims and matters embraced in the suit authorized by said act.

The said attorney in performance of the duties required of him under this contract shall be subject to the supervision and direction of the Commissioner of Indian Affairs and the Secretary of the Interior, and shall not make any compromise, settlement, or other adjustment of the matters in controversy unless with the approval of either or both of the said officers; said attorney shall also pursue the litigation in question to and through the court of final resort unless authorized by the Secretary of the Interior to terminate the proceedings at an intermediate stage thereof.

It is agreed that the said attorney, subject to the approval of the Secretary of the Interior, may associate with him in said work hereunder such attorney as he may select; *Provided*, That neither the Government nor the Indians, party of the first part, is to be at any expense by reason of the aforesaid employment of such associate attorney—all expenses thereof to be paid by Dorr E. Warner, said party of the second part, out of any compensation which he may receive for his services. However, said attorney, party of the second part, may employ such technical or stenographic assistance in respect of his obligations under this contract as he may deem necessary, same to be paid as expenses incidental to his employment thereunder.

In consideration of the services to be rendered under the terms of this contract the party of the second part shall receive such compensation as the Secretary of the Interior may find equitably to be due, if the matter be settled without submission to a court or tribunal, or in the event it is submitted to said court or tribunal, then

such sum as may be determined by said court or tribunal equitably to be due for the services theretofore rendered under this contract, but in no event shall the aggregate fee exceed ten per centum of any and all sums recovered or procured, through efforts, in whole or in part, for the said Indians, whether by suit, action of any department of the Government or of the Congress of the United States, or otherwise.

The attorney, party of the second part, shall also be allowed and reimbursed from the amount of any recovery received such actual expenses as are strictly necessary and proper in connection with the printing of briefs, court costs and proceedings and other similar matters to include such actual and necessary traveling expenses, clerical hire, and the like as may be properly required for the prosecution of the case: *Provided*, That all such expenditures shall be itemized and verified by the party of the second part, and shall be accompanied by proper vouchers, and shall be paid only upon the approval of the Secretary of the Interior, or officer designated by him.

It is further agreed that this contract shall continue for a period of 10 years beginning with the date of its approval by the Secretary of the Interior.

It is agreed also that no assignment of the obligations of this contract, in whole or in part, shall be made without the consent, previously obtained, of the Commissioner of Indian Affairs and the Secretary of the Interior; and that any assignment so made must comply with section 2106 of the Revised Statutes of the United States (Section 84, Title 25, United States Code).

It is further agreed that no assignment or encumbrance of any interest of said attorney in the compensation agreed to be paid by this contract shall be made

connection with the investigation, consideration, or final settlement of said claims and matters embraced in the suit authorized by said act.

The said attorney in performance of the duties required of him under this contract shall be subject to the supervision and direction of the Commissioner of Indian Affairs and the Secretary of the Interior, and shall not make any compromise, settlement, or other adjustment of the matters in controversy unless with the approval of either or both of the said officers; said attorney shall also pursue the litigation in question to and through the court of final resort unless authorized by the Secretary of the Interior to terminate the proceedings at an intermediate stage thereof.

It is agreed that the said attorney, subject to the approval of the Secretary of the Interior, may associate with him in said work hereunder such attorney as he may select; *Provided,* That neither the Government nor the Indians, party of the first part, is to be at any expense by reason of the aforesaid employment of such associate attorney—all expenses thereof to be paid by Dorr E. Warner, said party of the second part, out of any compensation which he may receive for his services. However, said attorney, party of the second part, may employ such technical or stenographic assistance in respect of his obligations under this contract as he may deem necessary, same to be paid as expenses incidental to his employment thereunder.

In consideration of the services to be rendered under the terms of this contract the party of the second part shall receive such compensation as the Secretary of the Interior may find equitably to be due, if the matter be settled without submission to a court or tribunal, or in the event it is submitted to said court or tribunal, then

such sum as may be determined by said court or tribunal equitably to be due for the services theretofore rendered under this contract, but in no event shall the aggregate fee exceed ten per centum of any and all sums recovered or procured, through efforts, in whole or in part, for the said Indians, whether by suit, action of any department of the Government or of the Congress of the United States, or otherwise.

The attorney, party of the second part, shall also be allowed and reimbursed from the amount of any recovery received such actual expenses as are strictly necessary and proper in connection with the printing of briefs, court costs and proceedings and other similar matters to include such actual and necessary traveling expenses, clerical hire, and the like as may be properly required for the prosecution of the case: *Provided,* That all such expenditures shall be itemized and verified by the party of the second part, and shall be accompanied by proper vouchers, and shall be paid only upon the approval of the Secretary of the Interior, or officer designated by him.

It is further agreed that this contract shall continue for a period of 10 years beginning with the date of its approval by the Secretary of the Interior.

It is agreed also that no assignment of the obligations of this contract, in whole or in part, shall be made without the consent, previously obtained, of the Commissioner of Indian Affairs and the Secretary of the Interior; and that any assignment so made must comply with section 2106 of the Revised Statutes of the United States (Section 84, Title 25, United States Code).

It is further agreed that no assignment or encumbrance of any interest of said attorney in the compensation agreed to be paid by this contract shall be made

without the approval of the Commissioner of Indian Affairs and the Secretary of the Interior. Any assignment of the obligations of this contract and/or any assignment or encumbrance of any interest in the compensation agreed to be paid made in violation of the provisions of this paragraph shall operate to terminate this contract and in such event no attorney having any interest in the contract or in the fee provided for therein shall be entitled to any compensation whatever for any services rendered to the date of termination of the contract.

It is agreed that in the event of the death of either one or both of the parties of the second part, the estate of the deceased attorney or the estates of the deceased attorneys, as the case may be, shall be allowed compensation in such sum as the Secretary of the Interior may find equitably to be due for the services theretofore rendered under the contract, if the matter be settled without submission to a court or tribunal, or in the event it is submitted to said court or tribunal, then such sum as may be determined by such Secretary equitably to be due for the services theretofore rendered under this contract.

It is agreed that the death of one of the parties of the second part, leaving the other surviving, shall not terminate the contract, but the death of both of the parties of the second part shall terminate this contract unless they leave surviving associate counsel holding an interest in the contract under an assignment duly approved by the Commissioner of Indian Affairs and the Secretary of the Interior, in which event such associate counsel shall be entitled to proceed in all matters pending before the Bureau of Indian Affairs, or in any court or tribunal, or before the Committees of Congress, until their final determination under the terms and conditions of this

agreement, and to prosecute such proceedings as a compliance with the terms and provisions of this contract.

This contract may be terminated by the Secretary of the Interior for cause deemed by him to be reasonable and satisfactory upon sixty days notice to the parties in interest; and, if the contract shall be so terminated, the party of the second part shall be credited with such interest should any sum or sums be recovered by a judgment of a court or tribunal as the Secretary of the Interior may determine to be equitable in the fee found to be due upon the final determination of the said suit and the controverted matters therein included, provided, that if a recovery be had without submission to a court or tribunal, then the party of the second part shall receive such compensation as the Secretary of the Interior may determine equitably to be due.

In Witness Whereof, we have hereunto set our hands and seals this 13th day of May, 1936, at Buffalo, New York.

James Smith,

Fred Toby,

Elijah Tabobondong,

Henry Jackson.

Dorr E. Warner, *Attorney.*

(Certificates required by Section 2103 Revised Statutes of the United States are Attached.)

without the approval of the Commissioner of Indian Affairs and the Secretary of the Interior. Any assignment of the obligations of this contract and/or any assignment or encumbrance of any interest in the compensation agreed to be paid made in violation of the provisions of this paragraph shall operate to terminate this contract and in such event no attorney having any interest in the contract or in the fee provided for therein shall be entitled to any compensation whatever for any services rendered to the date of termination of the contract.

It is agreed that in the event of the death of either one or both of the parties of the second part, the estate of the deceased attorney or the estates of the deceased attorneys, as the case may be, shall be allowed compensation in such sum as the Secretary of the Interior may find equitably to be due for the services theretofore rendered under the contract, if the matter be settled without submission to a court or tribunal, or in the event it is submitted to said court or tribunal, then such sum as may be determined by such Secretary equitably to be due for the services theretofore rendered under this contract.

It is agreed that the death of one of the parties of the second part, leaving the other surviving, shall not terminate the contract, but the death of both of the parties of the second part shall terminate this contract unless they leave surviving associate counsel holding an interest in the contract under an assignment duly approved by the Commissioner of Indian Affairs and the Secretary of the Interior, in which event such associate counsel shall be entitled to proceed in all matters pending before the Bureau of Indian Affairs, or in any court or tribunal, or before the Committees of Congress, until their final determination under the terms and conditions of this

agreement, and to prosecute such proceedings as a compliance with the terms and provisions of this contract.

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In Witness Whereof, we have hereunto set our hands and seals this 13th day of May, 1936, at Buffalo, New York.

James Smith,
Fred Toby,
Elijah Tabobondong,
Henry Jackson.

Dorr E. Warner, *Attorney.*

(Certificates required by Section 2103 Revised Statutes of the United States are Attached.)

156610-4

Sarnia Indian Reserve
March 1st 1939

The Secretary
Department of Indian Affairs
Ottawa.

Dear Sirs-

Some weeks ago there appeared in the press an item stating that a certain A. G. Chisholm K.C. of London, Ontario had the sanction of the Indian Department to make an attempt to prosecute a claim against the Government of the United States for the recovery of money owing to the Pottawatomies of Wisconsin now residing in Canada.

I have been following the activities of Mr. Chisholm through reports of certain Indians who have been in communication with him. If the reports are reliable Mr. Chisholm and his colleague have made progress, for a Bill passed in Congress grants them the privilege to file this claim before the Court of Claims.

I am not fully acquainted with the history of the Pottawatomies, but, by discreet inquiries amongst the older generation, I have been given to understand that they were admitted into membership,

of the various bands to which they now belong, by a vote of a majority of the members of each band. They have participated in the semi-annual distribution of interest money and have enjoyed all of the privileges of full membership freely.

One question I desire to ask is this, - In the event that their lawyer is successful in obtaining a judgment in their favor, who would be eligible to participate in the distribution, if any?

My wife, whose maiden name was Emma Henry, has Pottawatomie blood by virtue of being a great, great granddaughter of one of the women who actually came into Canada with those who fled from Wisconsin.

Would she be eligible? I ask it, not because we are greatly concerned about it, but, no one seemed to be able to answer a question like it at one of the meetings held here to discuss some angles of the Claim. And so I determined to ask the Department

for an answer.

Another question I wish to ask, - If the claim is allowed and the money paid over to your Department, would the entire sum be distributed to each and every claimant who may prove that they are direct descendants of those Pottawatomies who fled from the United States, or would the bulk of the money be placed in the Trust Fund and evenly distributed amongst the various tribes wherein the homeless Pottawatomies were admitted?

Having considered the matter and discussed it with several of my tribe, The Chippewas of Sarnia, we have arrived at this conclusion, that, knowing that the Department of Indian Affairs has always striven to be fair to each and every Indian coming under their protection, we feel certain that the Department will recognize the right of all the descendants of those kindly and charitable Chippewa, Ottawa, and other tribes who extended their hospitality

to the wandering Pottawatomies and finally admitted them into membership of their various bands, to be repaid in some measure after all these years of allowing these people to participate in the semi-annual and other distributions of moneys. If the money accruing to them from their claim were added on to the fund that they now hold jointly with the other tribes, all the Pottawatomies now living would enjoy an increase in the half yearly interest pay-days and their posterity would benefit for years to come.

Now, Sir, I have only expressed an opinion held by myself and others of the Chippewa members of the Sarnia band and feeling sure that this is the method that will be taken

by the Department when and if, the money from this claim is paid over by the government of the United States.

I take this method of obtaining confirmation from your Department.

Humbly requesting that an answer to my questions be forthcoming in the near future, I am

Yours very Truly

Aylmer N. Plain
Sarnia Indian Reserve
Sarnia, Ontario
Canada

156610-4

, March 28, 1939.

Dear Sir:

I have to acknowledge your letter of March 16 regarding the claim of the Pottawatomie Indians against the United States.

In reply to your question I may say that the position of this Branch, with regard to the contracts to which you refer entered into between certain Indians and Mr. A. G. Chisholm, is that there is no objection to them but that the Department does not assume any responsibility for them.

I am obliged to you for the copy of Bill S.J. 212 and Bill S.J.32, and of your brief which you enclosed.

Yours very truly,

T. R. L. MacInnes,
Secretary.

Dorr B. Warner, Esq.,
1101 Hippodrome Building,
Cleveland, Ohio,
U. S. A.

154610-4

Church of St. Bonaventure

Killarney, Ontario

April 6/39

Dept. of Indian Affairs
Ottawa, Ont.

Dear Sirs—

Will you please forward to me any information available concerning the monies turned over, or to be turned over to Indians now belonging to the Pottawa tribe by the United States government.

I have read something to that effect lately in the papers and now I am interested on behalf of one of my parishioners whose paternal grandfather was one of those Pottawa Indians who once lived in the States, and whose children and grand-children have always belonged to the unceded band in Canada.

Please reply quickly either with the desired information or let me know where I can go for it.

Yours Truly
(Rev) V. P. [illegible] Ont.

156610-4

April 13,1939.

Dear Sir:-

I have to acknowledge receipt of your letter of the 6th instant with regard to the Pottawatomie Indian Claim.

The present Canadian Pottawatomie Indians, who number some 1500, reside on various Indian Reserves innWestern 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 Wisconwin, 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. The claim, by mutual consent of the Canadian and United States Government, 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.

Some years ago a group of Indians engaged counsel with the approval of the department, and subsequently, other groups have engaged separate counsel.

This department takes a friendly interest in the claim of the Indians, but does not accept any responsibility for any proceedings that may be taken by them.

Yours very truly,

T.R.L.MacInnes.
Secretary.

Rev.V.P.McHugh,P.P.,
Church of St.Bonaventure,
Killarney,Ontario.

AGREEMENT

WHEREAS, Andrew G. Chisholm, Esq., K. C., of London, Ontario, Dominion of Canada, has heretofore been employed by the Pottawatomie Indians of Canada, formerly of the United States, to represent them as counsel in a claim against the government of the United States, the basis of which is revealed in House Document No. 830, 60th Congress, 1st Session, and Hearing before the Committee on Indian affairs of the House on H. R. 1776, dated February 19, 1916; and

WHEREAS, The said Andrew G. Chisholm desires to employ counsel in the United States to represent said Indians before the various officials and departments of the government of the United States, the committees of Congress and the Courts, and to render any and all legal services that may be necessary in that country pertaining to said claim; and

WHEREAS, The said Andrew G. Chisholm desires to employ Robert C. Bell, Jr., lawyer, Detroit Lakes, Minnesota, U. S. A., as counsel in the United States and to forward the said matter to him for appropriate action in said country;

THEREFORE, It is agreed by and between the said Andrew G. Chisholm, party of the first part, and Robert C. Bell, Jr., party of the second part, as follows:

(1) The party of the first part hereby employs and appoints the party of the second part to act as counsel for the Pottawatomie Indians of Canada in negotiations with the officials and departments of the government of the United States and to appear before the committees of Congress and in the institution and prosecution of a suit in the Courts of the United States, if necessary, and to render any and all legal services in the United States, and in Canada if desirable, in and pertaining to a claim of said Indians against the United States, above estimated.

(2) The party of the first part hereby assigns and transfers to the party of the second part a two-thirds interest in and to the rights, privileges and benefits held by said party of the first part by virtue of all contracts between him and said Indians with all ratifications thereof together with all benefits arising or which may arise to him under the agreement between himself and the Canadian Government dated August 8, 1918 which contracts ratifications and agreements are to be read with this agreement and intended to form part of the same but cannot conveniently on account of their number and varying dates be more particularly described herein.

(3) The party of the second part hereby accepts the employment designated in paragraph (1) above and the assignment of a two-thirds interest in the contract as contained in paragraph (2) above; and, in consideration of the assignment of the two-thirds interest in said contract as stated in paragraph (2), the said party of the second part agrees to render all legal services necessary in the United States pertaining to the above mentioned claim in an effort to compromise and settle same or to recover thereon by the institution and prosecution of a suit in the Courts of the United States.

(4) As it has been a custom and practice in the United States in allowing claims against the government and in legislation appropriating funds in payment thereof to designate and allow the compensation and expenses of attorneys and agents representing claimants, to authorize the Courts, in legislation conferring jurisdiction on them to hear and determine claims, to fix the compensation and expenses of attorneys and agents within prescribed limits, the parties hereto will accept as compensation for their services in connection with said claim such sum or sums as may be fixed and allowed in legislation or court determination as the case may be, and in default of such legislative or court determination, whatever compensation may be paid by the Indian claimants sharing in any recovery against the United States to the parties hereto or either of them. Any expenses hereafter incurred by the party of the second part in connection with said matter and not recovered from the government of the United States shall be deducted from any sum or sums allowed as attorneys' fees and paid to the party of the second part. The net proceeds allowed and paid as compensation to counsel shall be divided, one-third to the party of the first part, and two-thirds to the party of the second part. The party of the second part shall advance and pay the actual and necessary expenses required in connection with the negotiations and settlement of said claim and in connection with the institution and prosecution of any suit or suits that may be necessary. Both parties hereto shall appear as attorneys of record for claimants; their names signed to all petitions, reports, pleadings, briefs and other documents pertaining to the matter; and both shall act jointly in their efforts on behalf of the Indians.

(5) If, in the judgment of the party of the second part, it becomes advisable to employ additional counsel in the United States to assist in the negotiations to secure the payment of said claim or to institute and prosecute a suit in the Courts to recover thereon, he may select and employ such counsel, but such counsel shall be paid for their services by the party of the second part out of his share of the compensation mentioned in paragraph (4) above and not out of the share of the party of the first part; neither shall compensation of such counsel as may be employed by the party of the second part be considered as expense in any sense and deducted from the compensation allowed the parties hereto before it is divided as specified in paragraph (4) above.

(6) In the event of the death of either or both of the parties hereto, after valuable services rendered, the compensation for such services shall be determined on a quantum meruit basis, in accordance with the laws of the United States and the rules and regulations of the Department of the Interior, and paid to the heirs or legal representatives of the party (or parties respectively) but in determining such quantum meruit, the amount thereof shall not be less than two-thirds of the sum receivable hereunder by (either of the parties) had such party survived to personally receive the same.

Executed in duplicate, a copy to be retained by each of the parties hereto, this 15th day of August, 1938.

Andrew G. Chisholm,
Party of the first part.

Robert C. Bell, Jr.
Robert C. Bell, Jr.,
Party of the second part.

STATE OF MINNESOTA
COUNTY OF BECKER ss.

On this 11th day of August, 1938, before me personally appeared Robert C. Bell, Jr., to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Edna Z. Britton
Notary Public, Becker County, Minnesota. My commission expires September 29, 1938

PROVINCE OF ONTARIO
COUNTY OF MIDDLESEX ss.
DOMINION OF CANADA

On the 18th day of August, 1938, before me personally appeared Andrew G. Chisholm, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Notary Public, ~~Middlesex County~~, Ontario. My commission ~~expires~~ as solicitor is for term and duration

August 15,1936.

Robert G. Bell Jr.,

Messrs. Dennis & Bell,

Lawyers &c., Detroit Lakes, Minn. U.S.A.

Dear Mr. Bell:-

Notwithstanding any other construction that might be placed upon Paragraph 6 of the Agreement of this date between you and myself in connection with the Pottawatomie claims against the United States, the statement in said paragraph as to the quantum meruit to be ~~paid being not~~ more than two-thirds of the sum receivable thereunder by either of the parties had such party survived to personally receive the same, is to be applicable only to any sum which may be paid thereunder to my legal representatives and not to any sum payable to you or your legal representatives under said agreement.

You might attach this note to your copy of said agreement as I have done to mine. I feel that should it be I am not to receive any sum personally under said agreement you will deal fairly and liberally in any sum to be paid my estate.

Sincerely yours,

(sgd) A. G. Chisholm

agreed

W Bell's Bill

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That jurisdiction is hereby conferred on the Court of Claims of the United States to hear, determine, and render judgment, as upon a full and fair arbitration, for the amount, if any, with interest thereon, that legally or equitably may be fairly due the Wisconsin band of Pottawatomie Indians arising out of the treaty of September 26, 1833 (7 Stat. 431), the Act of June 25, 1864 (13 Stat. 172), the Act of June 21, 1906 (34 Stat. 380), and amendments thereof, or under

any other Acts of Congress or any treaties or agreements entered into between said Indians and the United States, or its authorized representatives, under which the United States has taken, acquired, appropriated, or expropriated lands of said Indians, or in which they had any right, title, or interest, or for the failure of the United States to pay any money that legally or equitably may fairly be due said Indians, or any member thereof, except such claims as heretofore may have been determined and liquidated between the United States and said Indians and the claims of those Indians who were paid from appropriations made under the Act of June 30, 1913 (38 Stat. 102) and subsequent acts, and either party shall have the right to have the judgment reviewed by the Supreme Court of the United States by appeal.

SEC. 2. In any suit or suits instituted hereunder, the Court of Claims shall determine and adjudge the claims of the party plaintiff in the premises, both legal and equitable, notwithstanding the lapse of time, laches or the statute of limitations, and notwithstanding the fact that some of said Indians or their ancestors departed from the United States, are now living in the Dominion of Canada, and may have become Canadian nationals, or affiliated with a Canadian band of Indians.

SEC. 3. The Court of Claims in any suit or suits commenced hereunder shall hear, determine, and adjudicate any properly chargeable claim or claims that the United States may have against said Indians, including gratuities not heretofore charged, as provided by the Act of August 12, 1935 (49 Stat. 571, 596; 25 U. S. C. 475a); but any payment or payments that have been made by the United States on any such claim or claims shall not operate as an estoppel but may be pleaded as a set-off.

SEC. 4. Official letters, documents, files, and records, or certified copies thereof, including those of the Government of Canada, may be received in evidence, and the departments and the United States Government, and the officials thereof, shall give access to the attorney or attorneys representing said Indians to such letters, documents, files, and records as they may require in the prosecution of any suit or suits instituted under this Act, and such attorney or attorneys shall have the right to make searches therefor without specifying such letters, documents, files, or records.

SEC. 5. The Wisconsin band of Pottawatomie Indians shall constitute a class entitled to share per capita in the proceeds of any recovery and shall be the party plaintiff in any suit or suits commenced hereunder and the United States shall be the party defendant. The petition or petitions shall

be filed within five years after the date of this Act and shall be subject to amendment at any time prior to final submission of the case to the Court of Claims. The petition or petitions shall be verified by the attorney or any one of the attorneys duly and legally employed by the Indians to represent them and no other verification shall be necessary.

SEC. 6. Said Indians shall be represented in the prosecution of any claim hereunder only by such attorney or attorneys as have been or hereafter may be selected by them, or the majority thereof, provided such selection is approved by the Commissioner of Indian Affairs of the United States. On the final determination of any suit brought hereunder the compensation and the actual and necessary expenses of said attorney or attorneys shall be determined and fixed by the Court of Claims and paid from any money found to be due said Indians: *Provided*, That the compensation shall not exceed 10 per centum of the amount of the judgments recovered in the litigation.

76TH CONGRESS
1ST SESSION

H. R. 1952

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.

By Mr. BUCKLER of Minnesota

JANUARY 9, 1939

Referred to the Committee on Indian Affairs

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Authorizing the Wisconsin band of Pottawatomie 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

UNITED STATES
DEPARTMENT OF THE INTERIOR
Office of the Solicitor
Washington

M. 30146

February 8, 1939

The Honorable

The Secretary of the Interior

My dear Mr. Secretary:

You have requested my opihion as to whether a contract, by which Indian residents and subjects of the Dominion of Canada propose to employ an attorney to prosecute claims against the United States, is subject to your approval and that of the Commissioner of Indian Affairs under section 81, title 25, United States Code.

This question must be answered in the negative. Section 81, title 25, United States Code, cannot be given extraterritorial operation. As stated by the United States Supreme Court in the case of The Appollon, 9 Wheat. 361:

> "The laws of no nation can justly extend beyond its own territories, except so far as regards its own citizens. They can have no force to control the sovereignty or rights or any other nation, within its own jurisdiction. And however general and comprehensive the phrases used in our municipal laws may be, they must always be restricted in construction, to places and persons, upon whom the legislature have authority and jurisdiction. * * *"

The principle announced by the Supreme Court requires the conclusion that section 81, title 25, United States Code, is confined in its scope and operation to Indians who reside in and are subject to the jurisdiction of the United States.

In connection with bills now pending before Congress proposing to confer jurisdiction on the Court of Claims to consider and adjudicate the claims of Canadian Indians against the United States, you further request a statement of my views "as to suitable provisions which we might recommend to the Congress for inclusion in the proposed legislation to govern the

question of recognition of the attorneys to represent these Indians in the Court of Claims."

The United States may not be sued without its consent and as its consent is purely voluntary it may prescribe the terms and conditions upon which it consents to be sued and the manner in which the suit may be conducted. Beers v. State of Arkansas, 20 How. 527, 529; In re Ayers, 123 U.S. 443, 505; Ball v. Halsell, 161 U.S. 73. While Congress may thus regulate and control the conditions upon which claims against the United States may be prosecuted, where, as here, the claims in question are being asserted by the subjects of a foreign nation, principles of international comity suggest that the laws of the foreign nation be respected and applied. If, therefore, the jurisdictional bills referred to meet with your approval in other respects, it would be entirely proper in my judgment to suggest that the suits be filed by attorneys selected and employed in conformity with Canadian law and that the attorneys be required to file with their petitions such proof of selection and employment as the Court of Claims may require. Any question concerning the rights of counsel to represent these Indians would then become a matter for judicial determination.

Respectfully,

(Sgd)Nathan R. Margold,
Solicitor

Approved: February 8, 1939.

(Sgd) Oscar L. Chapman,

Assistant Secretary.

15610-4

FRED DENNIS ROBERT C. BELL, JR

DENNIS & BELL

LAWYERS

DETROIT LAKES, MINNESOTA

April 21, 1939

Honorable Harold W. Magill
Superintendent General of Indian Affairs
Ottawa, Ontario
Dominion of Canada

Sir: In re: Pottawatomie Indians of Canada v. United States.

Reference is made to my letters to you of January 27 and February 10, 1939, in regard to the above entitled matter. In connection therewith I am enclosing copy of an opinion of the Solicitor for the Interior Department of the United States dated February 8, 1939, pertaining to the employment of counsel to represent the Pottawatomie Indians of Canada in a claim against the United States; also in connection therewith I am enclosing copy of a contract executed by and between Mr. Andrew G. Chisholm, K. C., London, Ontario, and me dated August 15, 1938, which I have the honor to submit to you for your approval.

It will be necessary for me to appear before the Committees of Congress in hearings at an early date on the jurisdictional bill which I heretofore have had introduced on behalf of the Indians, copy of which is enclosed; and at the same time it will be necessary for me to show my legal employment; hence the imperative necessity, especially in view of the Solicitor's opinion, of having your approval of the contract between me and Mr. Chisholm.

After the execution of the contract between Mr. Chisholm and me, circulars were mailed to the Indians to obtain their approval of the contract. Approximately twelve hundred Indians have executed these written approvals without any solicitation on the part of either Mr. Chisholm or me, and they will be transmitted to you if desired.

Interloping lawyers pretending to represent these Indians likely will appear at the Committee hearings. It will be necessary for me to show that Mr. Chisholm and I are legally employed and that these other lawyers are not. Unfortunately, the appearance of such lawyers naturally will interfere with the progress of the proposed legislation and I should be armed with authority conclusively to prove that they have no legal standing.

Mr. Dorr E. Warner of Cleveland, Ohio, is the most active competitor. He tried to become associated with Mr. Chisholm, but the Canadian government refused to consent thereto as shown by the letter of the Deputy Superintendent General of Indian Affairs of Canada dated July 5, 1934, to Mr. Chisholm, which is quoted in my letter to the United States Commissioner of Indian Affairs, copy of which was mailed to you under date of January 27, 1939. Notwithstanding this, he continued his activities. He transported four Indians to Buffalo, New York, where a contract was signed May 13, 1936, and it is under this contract that he now claims authority to act. This contract, of course, is illegal under the opinion of the Solicitor General. More recently Mr. Warner has conducted a campaign among the Indians to secure employment by the Indians individually and by his own averment has expended nearly $3,000 largely for the purpose of securing such contracts.

Mr. Chisholm and I together have devoted much time and expended a considerable sum in behalf of these Indians. Our compensation, as shown by the contract between Mr. Chisholm and me, is wholly contingent and we are asking nothing from the Indians or the Canadian government except approval of our employment and the evidence of it. The contract was executed by Mr. Chisholm and me in triplicate, one copy of which is enclosed.

Respectfully,

Robert C. Bell, Jr.

Robert C. Bell, Jr.

Copy

Charles J.Kappler,
Attorney and Counsellor at law
Transportation Bldg,
Washington, D.C.

April 15,1939.

David Sims,,
Wiarton,Ont. R.R.5.

Dear Sir:

Your letter of the 6th April, addressed to Mr. Chas H.Merillat, concerning the claim of the Pottawatomie Indians of Canada, was received by Mrs. Merillat; Mr. Merillat having died in 1935. Mrs. Merillat has turned over your letter to me for reply.

Mr. Merillat and I were associated together in the prosecution of the claim of the American Pottawatomies in which we secured a settlement. On account of making such settlement the Canadian Pottawatomies entered into a contract with us for the prosecution of their claim. Mr.Chisholm and others disputed the fact that we represented the Can. Pott. and had sufficient influence with the Can.Government ~~xxxxxx~~ to have the latter request the British Ambassador at Washington to advise the State Department that the Canadian Government did not recognize the contract made with Merillat and Kappler because the contract had not been approved by the Supt of Indian Affairs for Canada. The result was that the State Dept advised us that the U.States, under the representations of the British Ambassador, would not recognize us as the attorneys for the Can. Pottawatomies. We advised your people of this situation and urged you to get the Can. Supt of Indians to agree that we should be your attorneys. Up to the present nothing in this respect has been done, and under the circumstances it is impossible for us to continue representing your people at Washington.

However, should your people desire our services and can persuade the Supt of Indian Affairs of Canada to approve our contract, we are willing to continue to represent you; otherwise we can do nothing in your behalf.

Yours very truly,

(Sgd) Charles J.Kappler.

Copy

Saugeen Ind. Reserve

April 24, 1939.

The Pottawatomie meeting tonight. The resolution is passed to inquire at Dept Indian Affairs at Ottawa on consideration forward our Pottawatomie claim at Washington, U.S.A. moved by Mr. Elijah Cook, secd by Mr. David Sims.

Trusting the Government may have sympathy toward his said Indian people.

Carried.

Signed by Sec

Elijah Wahlezee.

Copy Western Assurance Co.

Port Elgin, Ont.
April 26/1939.

W.R.Tomlinson, K.C., M.P.
Ottawa.

Dear Sir: Re Pottawatomie Indian claim.

- - - - - - - -

Mr.David Sims, an Indian who claims to be a Pottawatomie, came to my office yesterday with the two enclosed documents, namely a resolution passed by the Saugeen Pottawatomies and a letter to David Sims, from C.J.Kappler, attorney, Washington, D.C., pertaining to this claim.

Mr. Sims would like if you could take this matter up with the Dept Indian Affairs.

Kindly return the enclosed letter to me when you are through with it.

This matter has been on fire for years, and my father a number of years ago, had taken this matter up for the Indian, with the late Hon.James Malcolm, also Col.Hugh Clark, and half a dozen others, to try and satisfy these Indians.

With kindest regards,

Faithfully,

(unsigned)

Copy

House of Commons,
Ottawa,
April 27/39.

Ford Pratt,Esq.
Priv.Sec to the Hon.
Min.Mines and Resources,Ottawa.

Dear Mr.Pratt,

I am enclosing herewith correspondence from Mr. John J.Chapman of Port Elgin with reference to the Pottawatomie Indian claim.

I would appreciate your comments.

Please return the correspondence when it has served your purpose.

Yours sincerely,

(Sgd)W.R.Tomlinson
M.P.Bruce

157610-4

To be returned to Indian Affairs when signed.

- -

Ottawa, May 5, 1939.

Dear Mr. Tomlinson:-

I have your letter of April 28, enclosing correspondence from Mr. John J. Chapman of Port Elgin, regarding the Pottawatomie Indian Claim.

The general circumstances of this question were outlined to you in my letter of February 27 last. As mentioned therein, in 1911, the Indians retained the services of Mr. A. G. Chisholm, K. C., of London, Ontario, as their solicitor, and the department recognized his status as such, by entering into an agreement with him in 1918.

I have noted the letter from Mr. Kappler of Washington to Mr. Sims, dated April 15, which you enclosed.

Mr. Kappler's connection with the case according to the records of the department is as follows.

A number of the Cape Croker, Saugeen and other Indian claimants having become dissatisfied with the manner in which proceedings were being conducted repudiated Mr. Chisholm and entered into the contract with Messrs Kappler and Merillat, attorneys of Washington, D. C., referred to in Mr. Kappler's letter above mentioned.

The desire of the Indians to change counsel apparently was caused by their inability to understand the difficulties and delays which invariably occurred in claims of this kind. The department appreciated the not unnatural impatience of the Indians, but did not find that any reason existed for altering its arrangement with Mr. Chisholm. Accordingly the Deputy Superintendent General in February, 1922, advised the Secretary of State for External Affairs that the department recognized no solicitor other than Mr. Chisholm as representing the interests of the Canadian Pottawatomie Indians.

In the meantime....

In the meantime, while it is true that progress has been impeded through obstacles of a constitutional nature, nothing has transpired to change the attitude of the department in the matter. Mr. Chisholm, and his United States associate, Mr. Robert C. Bell, are doing all in their power to forward the claim through the proper channels at Washington, pursuant to the terms of the agreement above mentioned, in which the interests of the Indians are amply protected.

Your correspondence is returned herewith.

Yours very truly,

per) W. J. Pratt.

Private Secretary.

W. R. Tomlinson, Esq., M. P.,
House of Commons,
OTTAWA.

Wrote May 8/

Ottawa, May 15, 1939.

Memorandum.

The Deputy Minister.

I have to refer to my memorandum of February 4, 1938, regarding the Pottawatomie Indian claim.

Since that date, as you are aware, there has been considerable correspondence on the subject with various interested parties.

For your information may I review briefly the circumstances.

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 River, and the Pottawatomies, therefore, were 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 do so by the United States Government. Some of them fled to inaccessible portions of Wisconsin and Michigan, but the majority crossed to Canada. Their descendants are scattered over various Indian Reserves in Western Ontario.

These Canadian Pottawatomies now claim under the Chicago Treaty of 1833, and fifteen other Treaties made with the United States 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 United States Government to those Pottawatomies who failed to move west of the Mississippi. Their forefathers, at the time of the treaties, resided in Wisconsin, and were equally entitled to compensation with the forefathers of the Indians still in Wisconsin. The Indians in the same category still in the United States have received settlement of their claim, but the United States Government has taken no steps to settle with the descendants of the Pottawatomies who came to Canada. The Canadian Pottawatomies have never knowingly abandoned any rights in the tribal estate, in whatsoever form they may have existed.

In 1908 a roll of Pottawatomie Indians was prepared by the United States Government, and there were enrolled 2007 persons,- 457 in Wisconsin and Michigan and 1550

in Canada. Presumably the number is approximately the same now.

The settlement by the United States Government with the American Pottawatomies brought the question to a head in the minds of their Canadian fellow-tribesmen. Since then various solicitors have interested themselves in the matter, and the department has been drawn into negotiations between them and the Indians.

The solicitor most active in the case has been Mr. A.G. Chisholm, of London, Ontario. His employment by the Indians dates from 1911. In July of that year he wrote to the British Embassy at Washington, suggesting that the claim should be submitted to the Court of Claims of the United States, with a right to appeal therefrom to the Supreme Court of the United States, but he did not succeed in having that procedure adopted.

In December, 1911, the Department of Justice wrote to the department stating that the First Schedule of Claims under the Pecuniary Claims Convention with the United States had been approved of by the Senate of the United States, and the preparation of claims was under consideration. The department was asked if it was aware of any further Canadian claims to be included in the Schedule, and replied on January 20,1912, that it was desirous of submitting the claim of the 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, which was done.

Owing to the outbreak of the War in 1914, the sittings of the Pecuniary Claims Commission ceased for the time being. It reconvened in 1926, and the First Schedule was disposed of, but it never reached the Second Schedule.

In 1927 the Department of Justice engaged the services of Mr. C. C. Robinson, K.C., of Toronto, as its agent to represent the Crown in the case. No material progress was made, and finally it has been agreed, between the Governments, that this claim, together with others involved, shall be barred mutually,

but subject to a reservation to protect the right of the claimants in any other available remedies, either ex gratia or ex jure. This agreement has not yet been implemented by the necessary formal exchange of notes between the Governments. This action, however, I am advised by the Department of External Affairs is expected at an early date, and in the meantime, in effect, the Pottawatomie claim is withdrawn.

From the foregoing it will be seen that 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 the Department of Justice, to have the case heard by the Pecuniary Claims Tribunal. The latter was adopted by the department and failed for the reasons explained. Mr. Chisholm is still following the former, a circumstance which keeps alive the question of his status as recognized counsel for the Indian claimants.

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. 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. This was granted, subject to the terms of the Agreement between Mr. Chisholm and the department, referred to in my memorandum above mentioned of February 4,1938.

The primary object of the department in entering this Agreement was to circumvent any improvident contracts that might be made by the Indians in respect to these claims. By the Agreement, Mr. Chisholm undertook to forego his rights under his previous

contract with the individual Indians,- which among other things provided for a contingent fee of 33 -1/3%, - 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.

It was also stated in the Agreement 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-pgyment; that such payments were not to be more than two in number, and each 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. The 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.

Mr. Chisholm is still acting for the Indians under this Agreement, and at present, with the assistance of his United States associate, Mr. Robert C. Bell, is endeavouring to have the necessary enabling legislation passed by Congress, where a Bill to that end prepared by Mr. Bell has been introduced.

From time to time certain groups among the Indian claimants, apparently being dissatisfied with the course of the proceedings, engaged other counsel in the place of Mr. Chisholm. Several of these solicitors are at present active in the interests of their respective clients, including Mr. A.T. Young, Barrister, of Meaford, Ontario, Mr. Charles J. Kappler of Washington, D.C., and Mr. Dorr E. Warner of Cleveland, Ohio, the latter having had a separate Bill introduced in Congress.

The action of those Indians who have left Mr. Chisholm doubtless is due to their not unnatural dissatisfaction with the long delay in making any headway in the case, but this, of course, has been caused by constitutional difficulties over which Mr. Chisholm had no control. Mr. Chisholm still represents the great majority of the claimants, the number of those under

contract with him being estimated at twelve hundred. In the circumstances I think that the Agreement between him and the department should be allowed to stand.

Mr. Young, above mentioned, who represents some of the Indians, has asked for a conditional waiver of Section 141 of the Indian Act, to enable him to receive compensation of any fees that may be allowed him by the Court of Claims or other competent authority, out of any amount that may be awarded to his clients. The effect of this section is that noone, without permission from the Minister, shall receive any payment or promise of payment from any Indian for the recovery of any claim or money for any tribe or band, subject to a penalty from $50.00 to $200.00, or imprisonment of two months.

In as much as this case is entirely within the jurisdiction of the United States, and as the claim of the Canadian Pottawatomies is based solely on rights of their ancestors domiciled in the United States, arising from their relations with the United States Government, I should not have thought that the provisions of Section 141 would have applied in respect to payments made, pursuant and subsequent to, an award in the United States, but according to an opinion received from the Department of Justice, they do.

I do not see any objection to the granting of Mr. Young's request, and I would recommend, therefore, that he be given the necessary permission under the said Section 141 to accept as attorney fee whatever sum the United States Court of Claims or other competent authority - which would be the Exchequer Court of Canada if the procedure suggested by the department is followed - may allow him from the share which his clients may receive out of any award made and to enter into contracts with Indian claimants in that behalf, but on the distinct understanding that such permission will not in any way alter the status of Mr. Chisholm, the counsel for the Indians recognized by the department by virtue of the Agreement above mentioned.

Should other similar requests be received, each can be considered on its merits.

While the outcome of this claim is distinctly uncertain and while progress may be fraught with delay, nevertheless, the claimants have good reason to hope for success in the light of results achieved in somewhat similar cases in the past, one of which, the Oneida claim, was conducted by Mr. Chisholm and resulted in an award by the Court of Claims of the United States, from which the Canadian Oneidas received $300,000.00.

I have thought it well in this memorandum to bring out in particular those points which seem to bear upon the department's participation and position in the matter to date, as undoubtedly it will be called upon to be party in one way or another to future proceedings.

Director of Indian Affairs.

TRLM
PEY

TRKM

Secretary

CANADA
DEPUTY MINISTER
OF
MINES AND RESOURCES

Ottawa, 26th May, 1939.

MEMORANDUM:

Dr. McGill.

I have before me your memorandum of the 15th instant dealing with the Pottawatomie Indian claim, wherein the facts are recited with regard to the legal status of A. G. Chisholm, K.C., who is acting as counsel for a large group of these Indian claimants, together with details relating to other members of the legal fraternity who are representing independent group or groups of these said claimants.

In reference to the request of Mr. A. T. Young, Barrister, of Meaford, Ontario, representing one of the independent groups, for a conditional waiver of section 141 of the Indian Act to enable him to receive compensation that may be allowed him by the United States Court of Claims or other competent authority out of any amount that may be awarded his clients, I wish to advise you that such request may be granted; care should, however, be exercised by the Department so that the interests of the Indians concerned are fully protected. The fee that may be stipulated by the United States Court of Claims or other competent authority - the Exchequer Court of Canada - would be satisfactory. Further, such permission is to be given on the distinct understanding that nothing therein is to affect or alter the status of Mr. Chisholm.

for Deputy Minister.

156610-4

May 27,1939.

Dear Sir:-

I have to refer to your letter of January 10 last and to previous correspondence regarding the Pottawatomie Indian Claim.

After mature consideration which necessarily involved considerable amount of time,it has been decided to grant conditional permission or waiver to you under Section 141 of the Indian Act, as requested in your letter of January 10 above mentioned.

Accordingly I have to advise you that consent is given to you as required by the section aforesaid to receive such compensation or fee only as may be allowed you and stipulated by the United States Court of Claims, the Exchequer Court of Canada or other competent authority recognized in that behalf by this department, out of any amount that may be awarded to your clients who are Canadian Indian claimants, or any of them, arising out of what is known as the Pottawatome Indian Claim.

This consent is given subject to the conditions above mentioned,to protect the interests of the Indians concerned, and on the distinct understanding that it shall in no way affect the prior recognition and status that has been accorded to Mr. A.G.Chisholm, Barrister of London, Ontario, in an agreement entered into with him by the department in 1918, on the 8th day of August.

original sent.

Yours very truly,

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

T.R.L.MacInnes.
Secretary.

156610-4

May 27, 1939.

Dear Mr. Telford:-

I have to refer to your letter of February 1 last and my reply of February 4, with regard to the Pottawatomie Indian Claim.

I am enclosing herewith copy of a letter that has been sent to Mr. Young today, granting him permission as required under the Indian Act to receive fees in payment for his services, as allowed by the Courts or any other competent authority out of any award that may be made to his Canadian Indian clients.

This action was taken only after careful consideration in view of the relationship of the department in the matter to Mr. A.G.Chisholm, of London, who has been acting as counsel for the Indians under an agreement made with the department in 1918.

Yours very truly,

W.P.Telford,Esq.,M.P.,
House of Commons,
Ottawa.

T.R.L.MacInnes.
Secretary.

enc

Fred Dennis Robert C. Bell, Jr.

DENNIS & BELL
Lawyers

Detroit Lakes,
Minnesota,
April 21, 1939.

Honorable Harold W. Magill
Superintendent General of Indian Affairs
Ottawa, Ontario
Dominion of Canada

Sir: In re: Pottawatomie Indians of Canada v. United States.

Reference is made to my letters to you of January 27 and February 10, 1939, in regard to the above entitled matter. In connection therewith I am enclosing copy of an opinion of the Solicitor for the Interior Department of the United States dated February 8, 1939, pertaining to the employment of counsel to represent the Pottawatomie Indians of Canda in a claim against the United States; also in connection therewith I am enclosing copy of a contract executed by and between Mr. Andrew G. Chisholm, K.C., London, Ontario, and me dated August 15, 1938, which I have the honor to submit to you for your approval.

It will be necessary for me to appear before the Committees of Congress in hearings at an early date on the jurisdictional bill which I heretofore have had introduced on behalf of the Indians, copy of which is enclosed; and at the same time it will be necessary for me to show my legal employment; hence the imperative necessity, especially in view of the Solicitor's opinion, of having your approval of the contract between me and Mr. Chisholm.

After the execution of the contract between Mr. Chisholm and me, circulars were mailed to the Indians to obtain their approval of the contract. Approximately twelve hundred Indians have executed these written approvals without any solicitation on the part of either Mr. Chisholm or me, and they will be transmitted to you if desired.

Interloping lawyers pretending to represent these Indians likely will appear at the Committee hearings. It will be necessary for me to show that Mr. Chisholm and I are legally

employed .....

employed and that these other lawyers are not. Unfortunately, the appearance of such lawyers naturally will interfere with the progress of the proposed legislation and I should be armed with authority conclusively to prove that they have no legal standing.

Mr. Dorr E. Warner of Cleveland, Ohio, is the most active competitor. He tried to become associated with Mr. Chisholm, but the Canadian government refused to consent thereto as shown by the letter of the Deputy Superintendent General of Indian Affairs of Canada dated July 5, 1934, to Mr. Chisholm, which is quoted in my letter to the United States Commissioner of Indian Affairs, copy of which was mailed to you under date of January 27, 1939. Notwithstanding this, he continued his activities. He transported four Indians to Buffalo, New York, where a contract was signed May 13, 1936, and it is under this contract that he now claims authority to act. This contract, of course, is illegal under the opinion of the Solicitor General. More recently Mr. Warner has conducted a campaign among the Indians to secure employment by the Indians individually and by his own averment has expended nearly $3,000 largely for the purpose of securing such contracts.

Mr. Chisholm and I together have devoted much time and expended a considerable sum in behalf of these Indians. Our compensation, as shown by the contract between Mr. Chisholm and me, is wholly contingent and we are asking nothing from the Indians or the Canadian government except approval of our employment and the evidence of it. The contract was executed by Mr. Chisholm and me in triplicate, one copy of which is enclosed.

Respectfully,

Robert C. Bell, Jr.

Copy sent to Mr. Bell for his information.

156610-4

June 3,1939.

Dear Sir:-

I am now able to advise you as to the department's position with regard to the questions raised in your letter of January 10, acknowledging mine of February 14, also in Mr. Bell's letter of April 21, copy of which is enclosed herewith.

As you are aware this claim, along with others listed under the Second Schedule of the Pecuniary Claims Convention, has been dropped by mutual agreement of both governments, although the formal exchange of notes to that end has not yet taken place.

With regard to your request that the department should clarify your position I have to advise you that the Agreement with you of August 8, 1918, is still in good standing.

With reference to the contract between yourself and Mr. Bell, copy of which was enclosed with his letter of April 21 above mentioned, it is not considered that the approval for which he asks by this department is necessary. In so far as the department is concerned, you are at liberty to enter into any contract with your agent or associate in the case, subject, of course, to the understanding that all proceedings shall be carried on in accordance with the Agreement above mentioned. Any arrangement of this nature is regarded as a personal relationship between those concerned, in this instance, yourself and Mr. Bell, to which the department should not be expected to become a party.

With reference to your observations, and those of Mr. Bell, concerning other solicitors, I may say that while this department has accorded you recognition as counsel for the Indians, that circumstance, in my opinion, does not operate necessarily to deprive others of legal standing as suggested by you. The difference, as I see it, between yourself and the others, is, that you have an official status by virtue of your Agreement, of August 1918, above mentioned, with the department, subject to the terms thereof, while the others have only the status of private solicitors, acting for their respective clients.

RBL

Copy sent to Mr. Bell for his information.

156610-4

June 3,1939.

Dear Sir:-

I am now able to advise you as to the department's position with regard to the questions raised in your letter of January 10, acknowledging mine of February 14, also in Mr. Bell's letter of April 21, copy of which is enclosed herewith.

As you are aware this claim, along with others listed under the Second Schedule of the Pecuniary Claims Convention, has been dropped by mutual agreement of both governments, although the formal exchange of notes to that end has not yet taken place.

With regard to your request that the department should clarify your position I have to advise you that the Agreement with you of August 8, 1918, is still in good standing.

With reference to the contract between yourself and Mr. Bell, copy of which was enclosed with his letter of April 21 above mentioned, it is not considered that the approval for which he asks by this department is necessary. In so far as the department is concerned, you are at liberty to enter into any contract with your agent or associate in the case, subject, of course, to the understanding that all proceedings shall be carried on in accordance with the Agreement above mentioned. Any arrangement of this nature is regarded as a personal relationship between those concerned, in this instance, yourself and Mr. Bell, to which the department should not be expected to become a party.

With reference to your observations,and those of Mr. Bell, concerning other solicitors, I may say that while this department has accorded you recognition as counsel for the Indians, that circumstance, in my opinion, does not operate necessarily to deprive others of legal standing as suggested by you. The difference, as I see it, between yourself and the others, is, that you have an official status by virtue of your Agreement, of August 1918,above mentioned, with the department, subject to the terms thereof, while the others have only the status of private solicitors, acting for their respective clients.

While restricting official recognition to you, however, the department reserves the right to grant consent under Section 141 of the Indian Act, to any other solicitor on his application to legalize the receipt by him of any fees that may be found, by competent authority, to be due him. I think that it is apparent that to refuse to grant such consent, in any case, except for sufficient and specific reason might be regarded as arbitrary interference with the freedom of the individual claimants concerned.

As you intimated, the department is quite aware that there is no foundation for the charge that you had abandoned the case. Furthermore, of course, it is understood fully that you are in no way responsible for any delays in the proceedings, which, on the other hand, have been due to constitutional difficulties over which you had no control.

I am forwarding a copy of this letter to Mr. Bell for his information, and also two copies of the Indian Act, with amendments to date for his use.

Yours very truly,

T.R.L.MacInnes.
Secretary.

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

THE SECRETARY OF THE INTERIOR
WASHINGTON

May 26, 1939

Hon. Will Rogers,
Chairman, Committee on Indian Affairs,
House of Representatives

My dear Mr. Chairman:

This will refer again to your request for a report on H. R. 1952, authorizing the Wisconsin Band of Pottawatomie Indians to file suit in the Court of Claims of the United States, and for other purposes.

This proposed legislation is for the benefit of persons living in Canada, descendants of members of the Wisconsin Band of Pottawatomie Indians who fled to that country after the treaty of September 2[illegible], 1833 (7 Stat. L., 431). The facts on which their claims are based are shown in Senate Report No. 1913, the 75th Congress.

S. J. Res. 32, introduced in the Senate on January 9, also deals with the claims of the Canadian Pottawatomie In against the United States. The principal difference betw the Joint Resolution and the House Bill is that the House B would confer jurisdiction on the Court of Claims to hear the claims of the Indians and to render a final judgment thereon, while the Senate measure would merely authorize the court to make findings of fact and conclusions of law, and to submit its findings and conclusions to the Congress for such actio as it might wish to take. The action of the court under S. Res. 32 would not be in the nature of a final judgment aga the United States.

The House Bill expressly includes claims for interest any principal sums that might be found due the Indians; the Senate Joint Resolution expressly excludes interest as an ment of just conpensation or otherwise in any claim for th propriation, taking, acquisition or deprivation of land o interest therein.

The House Bill provides that selection of an at torneys to represent the Indians in the proposed l be subject to the approval of the Commissioner o of the United States; the Senate Joint Resoluti

provision governing the selection of attorneys to represent the Indians. The Solicitor for the Interior Department has recently advised that Section 81, Title 25, United States Code, relating to negotiation and execution of attorney contracts with Indian Tribes, cannot be given extraterritorial operation, and would not govern in the case of a contract with Pottawatomie Indians who are residents and subjects of the Dominion of Canada.

The Solicitor further points out that while Congress may regulate and control the conditions upon which claims against the United States may be prosecuted, where, as here, the claims in question are being asserted by the subjects of a foreign nation, principles of internation comity suggest that the laws of the foreign nation be respected and applied.

In the circumstances, if either of these proposed measures is to receive the favorable consideration, it is suggested that the following provision be substituted for Section 6 of H. R. 1952, or substituted for the provisions now appearing in lines 12 to 18, page 3 of S.J.Res. 32:

> The Indians shall be represented in the prosecution of any claims hereunder by an attorney or attorneys selected and employed in conformity with Canadian law, and the attorney or attorneys shall be required to file with their petitions such proof of selection and employment as the Court of Claims may require. The Court of Claims shall have jurisdiction to fix reasonable attorneys' fees for services rendered, not to exceed 10 per cent of the amount, if any, found due the Indians, and to fix reasonable expenses incurred by the attorney or attorneys, and the amounts of fees and expenses fixed shall be paid out of any funds Congress may appropriate to pay the claims of the Indians.

S. J. Res. 32 is similar to S. J. Res. 212 in the form approved by the Senate during the 75th Congress. The measure did not come to a vote in the House of Representatives.

The foregoing facts are set forth for the consideration of the Congress in determining whether, as a matter of policy, the claims of the Canadian Pottawatomie Indians should be referred to the Court of Claims for findings of fact and conclusions of law as contemplated in S. J. Res. 32, or for adjudication and entry of judgment thereon, as contemplated in H. R. 1952. The Director of the Bureau of the Budget has advised that the proposed legislation would not be in accord with the program of the President.

Sincerely yours,

(Signed) Harold L. Ic
Secretary of the Int

156610-4

BANK OF NOVA SCOTIA CHAMBERS
RICHMOND STREET
MET. 8364

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

London, Canada June 13, 1939.

T. R. L. MacInnes, Esq.,
Secretary, Indian Affairs Branch,
Department Mines and Resources,
Ottawa, Ont.

Dear Sir:-

Your file I566I0-4.

I have to acknowledge the receipt of your letter of the 3rd instant in the Pottawatomie matter with its enclos d copy of letter from Mr. Bell, to your Deputy Minister. Herewith you will find copy of a letter from the Secretary of the Interior of the U. S. to Hon. Will Rogers,Chairman,Committee on Indian Affairs,House of Representatives, Washington,which deals with the question of the principles which should apply to the recognition by his Committee of who should be ac orded recognition as the proper legal representative of the Canadian claimants.

With Mr.Ickes' ruling that when claims in question as here, are being asserted by the subjects of a foreign nation,principles of international comity suggest that the laws of the foreign nation be respected and applied, I fancy your department will be quite in accord. And,the p'ragraph suggested in Mr. Ickes' letter in substitution for Section 6 of H. R. 1952,or in substitution for the provisions now appearing in lines I2 to I8,page 3 of S. J. Res. 32 would seem quite adequate for the purpose of determining the selection and employment of the attorney or attorneys representing such Canadian claimants. How far the Court of Claims (as suggested in Mr. Ickes' letter would be assisted in d termining this question of who should be recognized as representing the Indians,while your department " reserves the right to grant consent under Section I4I of the Indian Act to any other solicitor (not previously officially recognized) on his application to legalize the receipt by him of any fees that may be found,by competent authority to be due him" as " it is apparent that to refuse to grant such consent, in any case,except for specific and sufficient reasons might be regarded as arbitrary interference with the freedom of the individual claimants concerned" is more than I can at present perceive. The Department will note that ~~this " recognition" is to be fixed by~~ the attorney or attorneys such proof of selection and employment as the Court of Claims may require". As we propose to file our petition at the earliest possible date,it would seem necessary to have this question of recognition,determined at some early date.

Through file with Petition

I should point out that Section I4I of the Indian Act is an " arbitrary interference with the (otherwise) freedom of the individual claimant concerned" providing that,"every person who,without the consent of the Supreintendent General expressed in writting,receives, obtains,solicits or requests frm 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 to which said Indian belongs,or of which he is a member as 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 any offence " and so on. Without embarking on any legal argument it does seem to me Section I4I clearly contemplates the consent of the Superintendent General to be antecedent to the actual making of the contract.

Mr. Dorr E. Warner is an American attorney of Cleveland, Ohio,who transported four Indians to Buffalo, New York,where a contract to represent the Canadian Pottawatomie claimants was signed May I3,I936,and it is under this contract Mr. Warner now claims authority to act. Assuming that a number of individual claimants have since implemented this contract,do I understand your department would under such circumstances ever contemplate approving the same?,or sanctioning individual contracts made between the Indians and Mr. Warner,and yet,it would appear to me from the terms of your letter you reserve the right to do so? Is there anything in your letter placing a limit on the number of "unofficial " representatives whose contracts might be sanctioned by the Department,or preventing any and all attorneys who have contracts with individual Indians from interfering in Washington and then claiming compensation? Such contingency does not seem very satisfactory to me.

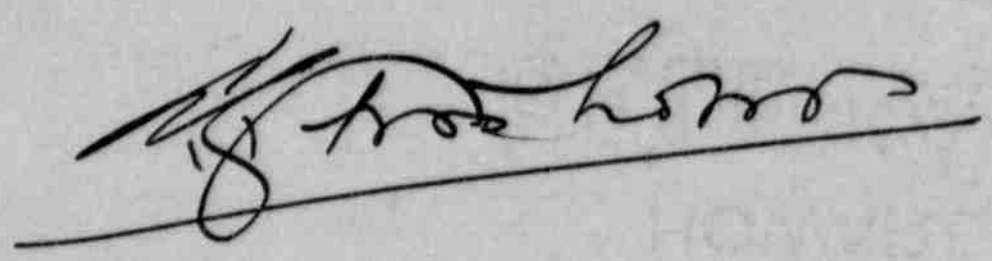
Should the Department unqualifiedly adhere to the stipulation made in your letter as to representation for claimants,it may surely be anticipated and accepted that it will have to rule on conflicting claims thereto between myself (and Mr. Bell) and Mr. Warner. On what principle are the respective claims to be determined? Is he who is favoured with the most recent contract to be entitled to recognition? It is said, and it may be correct,that Mr. Warner has spent several thousand dollars in securing contracts from claimants in his favour. I think it may easily be imagined that allowing for the peculiarities of the Indians,a judicious expenditure of a few dollars among them would have a very decisive effect on their decision. Are individuals who made contracts with me under the auspices of your department and its active assistance , and who under similar auspices and assistance have again and again ratified the same,to be upheld by the Department should they ficklely,and as th Department well knows,without any sufficient reason,undertake and do sign new agreements the effect of which is meant to be the determination and renunciation of the solemn agreements previously entered into with myself? And,yet this would be the effect of what Mr. Warner proposes. I would hope the Department would speedily frown on any such attempt.

Fwether reasons for the Department now determining when or for what reasons it would withhold complete recognition of my own (or Mr. Bell's representation for me) representation for all these claimants are in my mind,but as I presume the Department will be at all times ready and willing to render me such assistance as under the circumstances of this difficult case it may consider itself free to extend, and as in advance it would seem impossible to provide for all contingencies that may arise, I would prefer to depend on the assurance I have the good-will of the Department for my efforts on behalf of claimants,should itappear necessary to invoke this.

Evidently though, as it appears to me,the authorities at Washington,attach considerable importance to the early determination of the phase of the matter on which I have ventured again to address the Department.

I trust yet to have the unqualified recognition of the Department for my position as legal representative of all these claimants and of the arrangements between myself and Mr. Bell for the prosecution of the case.

Faithfully yours,



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 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 Pottawatamis claiments and as such entitled to receive compensation for his service s 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 the 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 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 connectionwith 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 Sunt. General
of Indian Affairs.

A. G. Chisholm.

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.

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NOW THEREFORE the parties of the first and second parts in consideration of the 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 Pottawatamis claiments 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 the 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 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 connectionwith 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.

House of Commons
Canada

Napanee, Ontario.
June 19, 1939.

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

Dea Sir

Would you be good enough to advise me if you have on record in your department a copy of a contract entered into by the Pottowatomie Indians (or the Department of Indian Affairs at Ottawa) and William Chisholm of London, Ontario.

I am given to understand that this contract was entered into a good many years ago, and, as I understand, was for services in behalf of the Pottowatomis of Canada in recovering the amount claimed from the United States Government due to them.

Trusting that I may hear from you at your earliest convenience,

Yours very truly,

Geo J. Tustin

GJT/WMA.

George J. Tustin.

B-1566 10 4

House of Commons
Canada

Napanee, Ontario.
June 19, 1939.

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

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Trusting that I may hear from you at your earliest convenience,

Yours very truly,

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GJT/WMA.

George J. Tustin.

(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 consid[illegible]

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

1/ The party of the Second Part is recognised 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 forsaid claimants be paid to Canada to be administered for the exclusive benefit of said claimants, but subject nevertheless to the provisions of Section 69 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 recivered.

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pensation 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.

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collected under such levy of assessment.

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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.

Copied [illegible]

Ottawa, June 26, 1939.

Dear Mr. Tustin:

I have to acknowledge receipt of your letter of the 19th instant with regard to the Pottawatomie Indian Claim.

This department has entered into no contract with Mr. William Chisholm of London. It has, however, an agreement dated August 8, 1918, not contract, with Mr. A. G. Chisholm, Barrister, etc., of London, which is still in effect, recognizing his status as counsel for a group of Canadian Pottawatomie Indians, subject to certain conditions for the protection of his clients aforesaid, with whom he has individual contracts, to the number of some twelve hundred, relative to their claim against the Government of the United States for compensation in respect of certain lands in the State of Wisconsin, of which their ancestors who were United States Indians, are alleged to have been deprived about a hundred years ago.

In addition to Mr. Chisholm, certain other solicitors are acting for some groups of Pottawatomie Indians, who have become dissociated from Mr. Chisholm. Permission, where asked for, is granted by the department to these other solicitors, where their bona-fides are satisfactory, but Mr. Chisholm remains the only counsel having formal official recognition in the case.

Progress in the case has been long delayed. The claim had been included in the Second Schedule under the Pecuniary Claims Convention of 1912, and with other such claims recently was withdrawn by mutual consent of the Dominion and United States Governments. The present position is that Mr. Chisholm and others interested are endeavouring to have enabling legislation passed through Congress in order that the case may be brought before the United States Court of Claims.

Yours very truly,

T. R. L. MacInnes,
Acting Director.

George J. Tustin, Esq., M.P.,
Napanee, Ontario.

Ottawa, August 15,1939.

Memorandum.

Mr. Cory.

I am enclosing herewith a letter that has been received from Mr. Robert C. Bell, Jr., with regard to the Pottawatomie Indian Claim, for any observations or suggestions that you may care to make, that might be of assistance in preparing a reply to Mr. Bell.

In so far as I am aware I cannot add anything material to my letter to Mr. Chisholm dated June 3, copy of which was forwarded to Mr. Bell for his information, but I should be obliged for the benefit of your views with regard to the matter.

The file dealing with the Pottawatomie Claim is also enclosed for your information. Will you kindly return it in due course.

T.R.L.MacInnes.
Secretary.

156610-4

BANK OF NOVA SCOTIA CHAMBERS
RICHMOND STREET
MET. 6364

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

London, Canada August 14, 1939.

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

Dear Sir:-

re Pottawatomies - 156610-4.

May I respectfully point out that I have as yet received no acknowledgment of my letter to the Department of June 13 last in which I addressed a remonstrance to you against the determination arrived at by the Department and communicated to me in yours of June 3ed last, to vary the terms of the Agreement between myself and the Department of August 8, 1918, by reserving the right to the Department to grant consents to recognition by the Department of any other solicitor claiming to represent the Indians under conditions referred to in your mentioned letter.

I did this for I considered for reasons mentioned in my letter, which convinced me your decision if carried out would render the position of myself and my good associate Mr. Bell, quite unworkable and such as would only cause confusion and discord if ever such was submitted to the Court of Claims for action thereon. Further, that the conduct of Mr. Dorr Warner in this matter, disentitled him to any sympathy from your Department.

For such reasons and in view of the decision of the Department to take no further action to press the claim, as communicated to me in Doctor McGill's letter of May 5, 1938, I implored the Department to give myself and colleague the assistance asked for in our independent effort on behalf of claimants. I had hoped for a prompt acquiescence in my request.

The situation has now become accentuated by the determination announced by Mr. Bell in a letter received from him this morning by myself, in which he encloses copy of letter from himself to you under date of 13th instant proclaiming his intention of taking no further steps in the matter without your official recognition of his position.

All I can say as to this is that while Mr. Bell.s determination is a complete surprise to me, I feel deeply hurt to think it has been caused by an unnecessary wound received from the hands of your Department, from which I had such such strong hopes of co-operation and assistance in furthering this claim.

What am I to do? The situation might I am convinced be

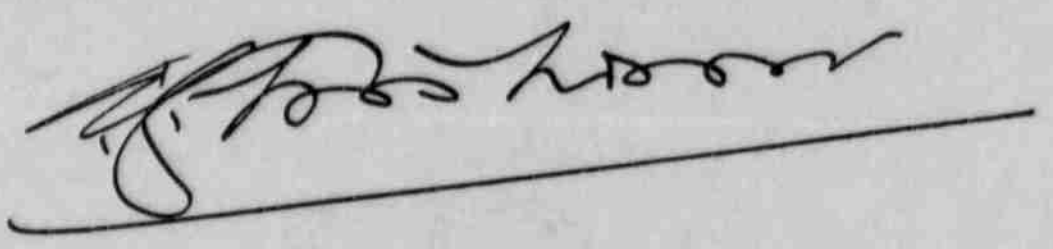
BANK OF NOVA SCOTIA CHAMBERS
RICHMOND STREET
MET. 6364

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

London, Canada.....

easily remedied by appropriate and prompt action by your Department. I think very respectfully it is my right to claim this.

Faithfully yours,



156610-4

FRED DENNIS ROBERT C. BELL, JR.

DENNIS & BELL
LAWYERS
DETROIT LAKES, MINNESOTA

Received

August 13, 1939

T. R. L. MacInnes, Esq.,
Secretary, Indian Affairs Branch,
Department Mines and Resources,
Ottawa, Canada.

Sir:

Reference is made to your letter of June 3, 1939, enclosing copy of your letter of that date to A. G. Chisholm, Esq., K. C., Barrister, etc., London, Ontario, relative to file 156610-4. I have hoped that the presentation of the situation by Mr. Chisholm in his letter to you of June 13, 1939, would result in official recognition of the agreement between him and me to represent the Pottawatomie Indians of Canada.

When the last Congress convened I went to Washington and secured the introduction of a bill conferring jurisdiction on the Court of Claims, a report on the bill by the Department of Justice, the Department of the Interior and the Bureau of the Budget. I could have secured a hearing on the bill before the Committee on Indian Affairs of the Senate, also of the House of Representatives, but frankly I did not dare to proceed to that point; because it would have been necessary for me to show my official authority to represent the Indians and that I did not have. I was at the scene of action but completely disarmed. Mr. Chisholm's right to represent the Indians has official recognition; mine has not and my employment by him would not suffice.

Permit me once more to direct your attention to the opinion of the Solicitor for the Department of the Interior dated November 8, 1939, in which he says: " * * * It would be entirely proper in my judgment to suggest that the suits be filed by attorneys selected and employed in conformity with Canadian law and that the attorneys be required to file with their petitions such proof of election and employment as the Court of Claims may require. Any question concerning the rights of counsel to represent these Indians would then become a matter for judicial determination."

The rules of the Court of Claims require that a contract showing official employment to represent the Indian tribes be filed with the complaint in a case brought by Indians against the United States.

In addition to the reasons here stated, I have the honor to request that you again review those stated in Mr. Chisholm's letter to you dated June 13, 1939, in the sincere belief that, with the situation thus fully before you, it will reveal the imperative necessity of giving the agreement between Mr. Chisholm and me your approval before I can act for the Indians.

The Pottawatomie Indians of Canada were ousted from their lands in the United States. Congress appropriated funds and paid their fellow tribesmen who remain in the United States, and I have had the opinion that those who went to Canada in preference to moving to the state of Kansas are equally entitled to compensation for their share in the lands that they were required to vacate. I have hoped to present the claim and to press it to an early conclusion, but it would be folly for me to continue to devote my time and pay my expenses without official recognition. Moreover, such action on your part undoubtedly would terminate the activities of American shyster lawyers who would be guilty of a violation of Section 141 of the Indian Act of Canada if they were operating in Canada as they have been in the United States.

I have the honor to request that you review this problem once more with a view to taking the action that seems so essential for the presentation of the claim of the Indians.

Faithfully yours,

Robert C. Bell, Jr.

copy to Honorable Daniel C. Roper,
United States Minister to Canada,
Ottawa, Canada.

Ottawa, August 15, 1939.

Memorandum.

Mr. Cory

I am enclosing herewith a letter that has been received from Mr. Robert C. Bell, Jr., with regard to the Pottawatomie Indian Claim, for any observations or suggestions that you may care to make, that might be of assistance in preparing a reply to Mr. Bell.

In so far as I am aware I cannot add anything material to my letter to Mr. Chisholm dated June 3, copy of which was forwarded to Mr. Bell for his information, but I should be obliged for the benefit of your views with regard to the matter.

The file dealing with the Pottawatomie Claim is also enclosed for your information. Will you kindly return it in due course.

T. R. L. MacInnes,
Secretary.

(C o p y)

Robert C. Bell,

United States District Judge,

Saint Paul, Minnesota,

August 23,1939.

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

Barrister, etc.,

London, Canada.

Dear Mr. Chisholm:-

Recently I took the liberty of directing a letter to my friend Daniel C. Roper in regard to the Pottawatomie case. I received a reply dated June 12. My son has requested me to transmit a copy of Mr. Roper's reply to you. It is enclosed.

Mr. MacInnes, I believe merely transmitted to my son a copy of his letter to you of June 3,1939.

Of course, the office of the United States Minister at Ottawa did not go into the matter fully so as to ascertain the importance and the necessity of giving my son official status. In view of the position of the Solicitor for the Interior Department, the chief legal advisor of the Secretary of the Interior, and in view of the statements contained in the report of the Secretary to the House Committee on Indian Affairs, it is imperative that any lawyer appearing on behalf of the Indians be employed in accordance with the laws of the Dominion of Canada and that the contract of employment have the official approval of the Canadian Office of Indian Affairs.

I write this not because of any interest in the matter, but merely at the request of my son.

Sincerely yours,

sd. Robert C. Bell.

United States District Judge.

I5661O-4

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

BANK OF NOVA SCOTIA CHAMBERS
RICHMOND STREET
MET. 6364

London, Canada.....August 26, 1939....

T.L. R. MacInnes, Esq.,

Secretary Indian Affairs Branch,

Mines and Resources, Ottawa, Ont.

Dear Sir:-

re Pottawatomies- I5661O-4

I enclose you copy of letter received by me from United States District Judge Robert C. Bell of Minneapolis, a Jurist of national repute and, I understand from mention of him in correspondence with External Affairs, highly esteemed by the Officials of that Department.

Your Department has not acknowledged my letters of June 13 and August 14 last and may I be permitted to say that I am at this date completely unable to understand the hesitancy of the Department in acting on the clearly pronounced official statements of the competent Washington authorities as to what by United States law is required to regularize my colleague's status in the case.

I only refer to how seriously my efforts on behalf of claimants are affected by the present situation of the matter,

Faithfully yours,

A. G. Chisholm

CANADA
DEPARTMENT
OF
MINES AND RESOURCES
INDIAN AFFAIRS BRANCH

203-19

Ottawa, September 1,1939.

Memorandum.

Mr. Cory,
Departmental Solicitor.

I have to refer to my memorandum to you of August 15, wherewith I enclosed our file No. 156610-4 with regard to the Pottawatomie Indian claim.

A further communication has been received from Mr. Chisholm with regard to this matter, and I am enclosing herewith our temporary file for your consideration.

T.R.L.MacInnes.
Secretary.

PEY
enc

LEGAL DIVISION

TLC.

CANADA
DEPARTMENT
OF
MINES AND RESOURCES
GENERAL ADMINISTRATIVE OFFICES

OTTAWA 2nd September, 1939.

MEMORANDUM:

Mr. MacInnes.

Re - Pottawatomie Indian claim
and Mr. Robert C. Bell, Jr.

Referring to your memorandum of August 15th last I wish to state that the matter of having Mr. Bell acknowledged as representing the Canadian Indians in their claim before the United States Courts was taken up with the Justice Department.

I believe this Pottawatomie Indian matter has been before Justice on other previous occasions for various advice but as Mr. Plaxton was not very familiar with the subject he suggested that someone of your branch who is familiar with the situation outline the case briefly and submit the matter officially to the Justice Department. It may be that the Department of External Affairs will have to be consulted. However, when the matter is submitted officially Justice Department will take the necessary steps.

See memo of May 14 - previous memos IRM

If you would have this material prepared and submitted to this office we shall be glad to check it for you.

Senior Solicitor.

To whom it may concern:-

This will certify that the Department of Indian Affairs, Canada, officially recognizes Mr. Andrew G. Chisholm K.C., of London, Canada, as Counsel and legal representative of the descendants of the Pottawatomie Indians of Wisconsin resident in Canada, in their proceedings to recover certain money claims made by them against the United States of America, under treaties made between the latter and the ancestors of said Indians in the year 1833 and subsequent years: and also, that by agreement the said Chisholm has appointed Mr. Robert C. Bell Jr, of Detroit Lakes, Minnesota, U.S.A., attorney at law, his agent and legal representative ~~and agent~~ at Washington D. C. to appear for him in any proceedings relative to such matter before any Court of the United States at Washington, D.C., or any Department of the Government of the United States thereat.

Dated at Ottawa, Canada, this day of October, 1932

As Witness,

Deputy Supt. General of Indian Affairs,
for Supt. General Indian Affairs,
Canada.

TO WHOM IT MAY CONCERN;

This is to certify that the Indian Affairs Branch of the Department of Mines and Resources, Ottawa, Canada, officially recognizes Mr. Andrew G. Chisholm, K.C., of London, Canada, as Counsel and legal representative of the descendants of the Pottawatomie Indians of Wisconsin resident in Canada, in their proceedings to recover certain money claims made by them against the United States of America, under treaties made between the latter and the ancestors of the said Indians in the year 1833 and subsequent years; and also recognizes that by an Agreement, dated August 15, 1938, a signed and witnessed copy whereof has been duly submitted to this Branch, and placed among its records, the said Mr. A. G. Chisholm has appointed Mr. Robert C. Bell, Jr., of Detroit Lakes, Minnesota, U.S.A., his legal representative, to act for him in the United States, to conduct negotiations with the officials and departments of the Government of the United States, to appear before Committees of Congress of the United States, and in the Courts of the United States, in connection with the matter aforesaid.

Dated at Ottawa, Canada, this day of

As Witness,

Director of Indian Affairs.

156610-4

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

BANK OF NOVA SCOTIA CHAMBERS
RICHMOND STREET
MET. 8364

London, Canada October 14, 1939.

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

Dear Sir:-

re Pottawatomies - 156610-4.

My letters to your Department of June 13, August 14, August 26 and September 23, each 1939, still remain ~~xxxxxxxxxx~~ unreplied to.

I have heard through your office on two occasions that Mr. MacInnes was out of the City but would return in a few days when these would be drawn to his attention.

Might I inform you that not receiving these replies has greatly delayed and inconvenienced both Mr. Bell, at Washington, before the Indian Committees of both House and Senate, and myself here, and caused Mr. Bell particularly a good deal of money and lost time. I should like to draw attention to the matter as unless the facilities of the Department afford some method of dealing more promptly with its correspondence, I will have to take some further steps.

Faithfully yours,

A. G. Chisholm

TO WHOM IT MAY CONCERN;

This is to certify that the Indian Affairs Branch of the Department of Mines and Resources, Ottawa, Canada, officially recognizes Mr. Andrew G. Chisholm, K.C., of London, Canada, as Counsel and legal representative of the descendants of the Pottawatomie Indians of Wisconsin resident in Canada, in their proceedings to recover certain money claims made by them against the United States of America, under treaties made between the latter and the ancestors of the said Indians in the year 1833 and subsequent years; and also recognizes that by an Agreement, dated August 15, 1938, a signed and witnessed copy whereof has been duly submitted to this Branch, and placed among its records; the said Mr. A. G. Chisholm has appointed Mr. Robert C. Bell, Jr., of Detroit Lakes, Minnesota, U.S.A., his legal representative, to act for him in the United States, for the purpose of conducting negotiations with the officials and departments of the Government of the United States, appearing before Committees of Congress of the United States, and in the Courts of the United States, in connection with the matter aforesaid.

Dated at Ottawa, Canada, this day of

As Witness,

Director of Indian Affairs.

BRM

156610-4

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

BANK OF NOVA SCOTIA CHAMBERS
RICHMOND STREET
MET. 8364

London, Canada, September 23, 1939.

Secretary, Department of Indian Affairs,
Ottawa, Ont.

Dear Sir:-

re Pottawatomies, 156610-4.

Referring to recent correspondence in this matter, I should think that if the Department would be good enough to sign certificate similar to draft enclosed herewith it would probably obviate any difficulty so far as Mr. Bell's status is concerned.

Should the Department assent to this it would simply give formal assent to the opinion expressed in your letter to me of June 3rd last.

Should you agree to this it might be as well to make two original copies and have them signed, one for Mr. Bell and the other for myself.

Faithfully yours,

LEGAL DIVISION

CANADA
DEPARTMENT OF MINES AND RESOURCES
GENERAL ADMINISTRATIVE [illegible]

OTTAWA 17th October, 1939.

MEMORANDUM:

Mr. MacInnes.

With reference to your memorandum of the 30th ultimo upon the subject matter of a letter received from Mr. A. G. Chisholm, K.C., dated the 23rd idem, I beg to advise that I have today discussed this matter with Mr. C. P. Plaxton, K.C., of the Department of Justice and he has advised me verbally that he sees no objection to the execution of the document submitted and attached to Mr. Chisholm's letter herewith. You will note that Mr. Plaxton has suggested minor changes and when these have been incorporated in the proposed certificate same may be executed by Dr. McGill.

Papers returned herewith.

Solicitor.

TO WHOM IT MAY CONCERN:

This is to certify that the Indian Affairs Branch of the Department of Mines and Resources, Ottawa, Canada, officially recognizes Mr. Andrew G. Chisholm, K.C., of London, Canada, as Counsel and legal representative of the descendants of the Pottawatomie Indians of Wisconsin resident in Canada, in their proceedings to recover certain money claims made by them against the United States of America, under treaties made between the latter and the ancestors of the said Indians in the year 1833 and subsequent years; and also recognizes that by an Agreement, dated August 15, 1938, a signed and witnessed copy whereof has been duly submitted to this Branch, and placed among its records, the said Mr. A.G.Chisholm has appointed Mr. Robert C. Bell, Jr., of Detroit Lakes, Minnesota, U.S.A., his legal representative, to act for him in the United States for the purpose of conducting negotiations with the officials and departments of the Government of the United States, of appearing before Committees of Congress of the United States, and in the Courts of the United States, in connection with the matter aforesaid.

Dated at Ottawa, Canada,
this 18th day of
October, 1939.

As Witness,

Harold McGill

Director of Indian Affairs.

TO WHOM IT MAY CONCERN:

This is to certify that the Indian Affairs Branch of the Department of Mines and Resources, Ottawa, Canada, officially recognizes Mr. Andrew G. Chisholm, K.C., of London, Canada, as Counsel and legal representative of the descendants of the Pottawatomie Indians of Wisconsin resident in Canada, in their proceedings to recover certain money claims made by them against the United States of America, under treaties made between the latter and the ancestors of the said Indians in the year 1833 and subsequent years; and also recognizes that by an Agreement, dated August 15, 1938, a signed and witnessed copy whereof has been duly submitted to this Branch, and placed among its records, the said Mr. A.G.Chisholm has appointed Mr. Robert C. Bell, Jr., of Detroit Lakes, Minnesota, U.S.A., his legal representative, to act for him in the United States for the purpose of conducting negotiations with the officials and departments of the Government of the United States, of appearing before Committees of Congress of the United States, and in the Courts of the United States, in connection with the matter aforesaid.

Dated at Ottawa, Canada,
this 18th day of
October, 1939.

As Witness,

Director of Indian Affairs.

TO WHOM IT MAY CONCER:

This is to certify that the Indian Affairs Branch of the Department of Mines and Resources, Ottawa, Canada, officially recognizes Mr. Andrew G. Chisholm, K.C., of London, Canada, as Counsel and legal representative of the descendants of the Pottawatomie Indians of Wisconsin resident in Canada, in their proceedings to recover certain money claims made by them against the United States of America, under treaties made between the latter and the ancestors of the said Indians in the year 1833 and subsequent years; and also recognizes that by an Agreement, dated August 15, 1938, a signed and witnessed copy whereof has been duly submitted to this Branch, and placed among its records, the said Mr. A.G.Chisholm has appointed Mr. Robert C. Bell, Jr., of Detroit Lakes, Minnesota, U.S.A., his legal representative, to act for him in the United States for the purpose of conducting negotiations with the officials and departments of the Government of the United States, of appearing before Committees of Congress of the United States, and in the Courts of the United States, in connection with the matter aforesaid.

Dated at Ottawa, Canada,
this 18th day of
October, 1939.

Harold W. McGill

As Witness, Director of Indian Affairs.

156610-4

EXD. A.

October 18,1939.

Dear Mr. Chisholm:-

I have to refer to your letter of the 14th instant and to previous correspondence with regard to the Pottawatomie Indian claim.

I am enclosing herewith two original certificates similar to the draft which you enclosed with your letter of September 23, one for Mr. Bell and one for yourself, duly executed by the Director of Indian Affairs. I may say this certificate has been passed upon and approved by the Department of Justice.

The status of the Director of the Indian Affairs Branch relative to the former Deputy Superintendent General of Indian Affairs is described in the Department of Mines and Resources Act, Sub-section 2 of Section 9, 1936, which you will find at the back of the Office Consolidation of the Indian Act, copy of which is enclosed.

Yours very truly,

T.R.L.MacInnes.

Secretary.

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

156610-4

TYTLER & SPROULE
BARRISTERS, SOLICITORS
AND NOTARIES

NORMAN D. TYTLER, B.A.
ARTHUR R. SPROULE
R. G. THOMAS

TELEPHONE ELGIN 3283

1103 CANADA PERMANENT BUILDING
320 BAY STREET
TORONTO 2.

November 11th, 1939.

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

Dear Sirs :-

Re: Pottawatomie Indians

We have been consulted by Henry Jackson of Christian Island, and Elijah Tobabondung of Parry Island, representing the Pottawatomie Indians in Canada. They are two of the four members appointed by the Tribe here to represent them in 1936. The other two are Fred Tobey of Honey Harbour, and James Smith of Christian Island. We are instructed that Mr. Jackson and Mr.Tobabondung are representing the other two, who concur in their opinions.

You are no doubt more familiar with the question of this Indian Tribe and the money they hope to collect from the United States Government than we are. We have gone over the papers that Mr. Jackson has, and he has explained the situation.

It would appear from our instructions that the first matter in connection with this claim that is now in question, is the agreement with Mr. A. G. Chisholm, K.C., of London, and the appointment of him as their r epresentative in or about the year 1908. We are instructed that Mr. Chisholm collected from the Band an estimated amount of $2000.00 to $2500.00. He got $2.00 from most of the members of the Tribe, totalling about $1500.00. So far as our clients know, he accomplished nothing of any importance, and as a matter of fact, they are inclined to think that he made no real effort to accomplish anything. Mr. Jackson instructs us that he does not think there is anything on record in your Department to shew any efforts made by Mr. Chisholm, except to have your Department take up the matter with the United States Department through the Canadian Minister at Washington, but that nothing of any value or consequence was ever achieved through his efforts.

We are further instructed that in 1936 Mr.Dorr E.Warner, an Attorney of Cleveland, Ohio, interested himself

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TORONTO 2.

in the matter, and as a result the agreement between the Tribe in Canada and Mr.Warner, dated 13th May, 1936, was entered into. We believe you have a copy of this on file. It would appear that Mr.Warner made real efforts to get the claim ahead, and did achieve quite a bit of success in that he got a bill introduced in the Senate and passed in 1938, but owing to the fact that Congress adjourned too soon, the bill was not dealt with. We have discussed the matter with Mr.Warner, who advised us that there was no possibility of having a bill of this nature considered at the r ecent sittings of Congress, but that he expects that at the next meeting early next year, he will get ahead.

We are instructed that although the Indians had heard nothing of Mr.Chisholm for many years, that he came back on the scene when Mr.Warner started to work, and is now a disturbing element in Mr.Warner's progress. Mr.Warner says that his position would be very much strengthened if he were approved by your Department as the proper representative of the Tribe in Canada.

It would appear to us that a claim of this nature involving payment by the United States of a very large sum to a number of Indians in Canada, most of whom had never been in the United States, and whose forefathers left there a century or more ago, might not be looked on very favourably there even if it is a valid claim, and that certainly no opportunity should be given any who wish to oppose the claim, nto do so because of divided interests here. The representatives assure us that the concerted opinion of the Tribe is that Mr.Chisholm has never accomplished anything, and they want to be rid of him, and have full confidence in Mr.Warner because of the results he has achieved so far. He has apparently been willing to spend a large amount of his own money in furthering the claim without asking any contribution from them. They also point out that Mr.Warner has very strong assistance in that he was able to interest Senator Thomas of Oklahoma, who is the Chairman of the Indian Affairs Committee, to introduce and sponsor this bill on behalf of the Canadian Indians.

We are also instructed that 75% or more of the signatories to the Agreement with Mr.Chisholm in 1908, are now dead, and that a new generation has grown up; also that approximately 30% of the claimants are non-treaty Indians, and perhaps 5% are enfranchised and living away from Reservations.

TYTLER & SPROULE
BARRISTERS, SOLICITORS
AND NOTARIES
NORMAN D. TYTLER, B.A.
ARTHUR R. SPROULE
R. G. THOMAS

TELEPHONE ELGIN 3283

1103 CANADA PERMANENT BUILDING
320 BAY STREET
TORONTO 2.

The Tribe of course, look to you to further in every way in your power their claim, and know that you will want to give them every assistance you can..

It would appear that if the claim is upheld there is upwards of $1,500,000., exclusive of interest, coming to the Canadian Tribe which now totals about 1500. This naturally is a very important and serious matter to them.

What our clients would like the Department to do is either to assist them in some feasible way of getting rid of Mr.Chisholm's contract, or to permit them to hold a proper meeting in order that they may approve the new contract with Mr.Warner, and have him properly appointed as their Attorney in charge.

We would be very pleased if you would give this matter your attention as soon as possible and let us hear from you.

Yours very truly,
TYTLER & SPROULE,
per A R Sproule

ARS/J.

EXD.

156610-4

November 22, 1939.

Dear Sir:

Re: Pottawatomie Indians

I have to refer to your communication of November 11 with regard to the above case.

For your information I may state very briefly the historical facts in this case.

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.

In the year 1911 the Canadian Pottawatomie Indians engaged counsel to prosecute the claim on their behalf, and their action in so doing was subsequently approved by the department.

Since that time the proceedings have continued, but progress has been delayed by various constitutional difficulties.

According to our records, Mr. Chisholm has done and is doing everything possible to forward the claim. Such delays as have occurred have been due to reasons over which neither Mr. Chisholm nor this department had any control. In the circumstances it is not considered that there is any reason which would warrant this department in making any change in its arrangement with him.

The department, however, has no objection to any action that any of the claimants may care to take

in engaging separate counsel as this is a matter in which they are free agents, subject however to the provisions of Section 141 of the Indian Act which requires consent for the collection of monies for the prosecution of any claim.

Yours very truly,

T. R. L. MacInnes

T. R. L. MacInnes,
Secretary.

A. R. Sproule, Esq.,
Messrs. Tytler & Sproule,
Barristers, Solicitors, etc.,
1103 Canada Permanent Building,
Toronto, 2, Ontario.

15-6610 4

WILLIAM A. ROBINSON, B.A.
BARRISTER-SOLICITOR-NOTARY
MIDLAND, ONTARIO

Oct.21st.1940.

Mr.T.R.L.MacInnes,
Secretary,Indian Affairs Branch,
Department of Mines and Resources,
Ottawa, Canada.

Dear Mr.MacInnes -

You will recall that Mr.Dorr E. Warner, Solicitor of Cleveland and myself interviewed you in July as to the possibility of his representing certain Pottawatomie Indians residing in Canada in the pressing of their claims against the United States Government. At this interview you intimated that the Department would be willing to signify its approval of Mr.Warner's representation of the Indians in terms similar to the approval granted to other solicitors. I would now be glad if you would forward such approval in due course.

Yours very truly,

NMc

156610-4

October 24, 1940.

EX'D.
A.

Dear Mr. Robinson:

I have to refer to your letter of October 21 and to our interview of last July, in which you requested approval of the Department to your representation of the Indians in connection with the Pottawatomie claim, on behalf of Mr. Dorr E. Warner of Cleveland.

I have to advise you that consent is given to you as required under Section 141 of the Indian Act, to receive such compensation or fee only as may be allowed you and stipulated by the United States Court of Claims, the Exchequer Court of Canada or other competent authority recognized in that behalf by this Department, out of any amount that may be awarded to your clients who are Canadian Indian claimants, or any of them, arising out of what is known as the Pottawatomie Indian Claim.

This consent is given subject to the conditions above mentioned, to protect the interests of the Indians concerned, and on the distinct understanding that it shall in no way affect the prior recognition and status that has been accorded to Mr. A. G. Chisholm, Barrister of London, Ontario, in an agreement entered into with him by the Department on August 8, 1918.

Yours very truly,

T.R.L.MacInnes,
Secretary.

William A. Robinson, Esq.,
Barrister, etc.,
Midland, Ontario.

/5-6610-4

WILLIAM A. ROBINSON, B.A.
BARRISTER-SOLICITOR-NOTARY
MIDLAND, ONTARIO Oct.26th.1940.

Sec'y

Mr.T.R.S.MacInnes,
Secretary,Indian Affairs Branch,
Department of Mines and Resources,
Ottawa, Canada.

Dear Mr.MacInnes -

I thank you for yourletter of the 24th. instant with regard to the Pottawatomie claim . As I am only indirectly interested in this matter as the Canadian agent of Mr.Dorr E. Warner of Cleveland I would be much obliged if you would issue a similar consent as is therein granted to me to Mr.Warner addressed in my care.

Thanking you in advance I am,

Yours very truly,

NMc

156810-4

November 1, 1940.

Dear Mr. Warner:

A request has been received from Mr. William A. Robinson, Barrister of Midland, Ontario, respecting the approval of this Department to your representation of the Indians in connection with the Pottawatomie Claim.

Insofar as our jurisdiction of this administration extends, consent is given to you as required under Section 141 of the Indian Act, to receive such compensation or fee only as may be allowed you and stipulated by the United States Court of Claims, the Exchequer Court of Canada or other competent authority recognized in that behalf by this Department, out of any amount that may be awarded to your clients who are Canadian Indian claimants, or any of them, arising out of what is known as the Pottawatomie Indian Claim.

This consent is given subject to the conditions above mentioned, to protect the interests of the Indians concerned, and on the distinct understanding that it shall in no way affect the prior recognition and status that has been accorded to Mr. A. G. Chisholm, Barrister of London, Ontario, in an agreement entered into with him by the Department on August 8, 1918.

Yours very truly,

T.R.L.MacInnes,
Secretary.

Dowr E. Warner, Esq.,
Solicitor,
Cleveland, Ohio.

156610-4

November 1, 1940.

EXD.
A.

Dear Mr. Robinson:

I have to refer to your communication of October 26 and to previous correspondence with regard to the Pottawatomie Claim.

As requested, I am enclosing herewith a letter addressed in your care to Mr. Dorr E. Warner of Cleveland, issuing a similar consent as was granted to you.

Yours very truly,

T.R.L.MacInnes,
Secretary.

William A. Robinson, Esq., B.A.,
Barrister, etc.,
Midland, Ontario.

77TH CONGRESS
1ST SESSION

H. R. 1807

IN THE HOUSE OF REPRESENTATIVES

JANUARY 10, 1941

Mr. BUCKLER of Minnesota introduced the following bill; which was referred to the Committee on Indian Affairs

A BILL

Authorizing the Wisconsin band of Potawatomi Indians to file suit in the Court of Claims of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That jurisdiction is hereby conferred on the Court of Claims of the United States to hear, determine, and render judgment, as upon a full and fair arbitration, for the amount, if any, with interest thereon, that legally or equitably may be fairly due the Wisconsin band of Potawatomi Indians arising out of the treaty of September 26, 1833 (7 Stat. 431), the Act of June 25, 1864 (13 Stat. 172), the Act of June 21, 1906 (34 Stat. 380), and amendments thereof,

or under any other Acts of Congress or any treaties or agreements entered into between said Indians and the United States, or its authorized representatives, under which the United States has taken, acquired, appropriated, or expropriated lands of said Indians, or in which they had any right, title, or interest, or for the failure of the United States to pay any money that legally or equitably may fairly be due said Indians, or any member thereof, except such claims as heretofore may have been determined and liquidated between the United States and said Indians and the claims of those Indians who were paid from appropriations made under the Act of June 30, 1913 (38 Stat. 102), and subsequent Acts, and either party shall have the right to have the judgment reviewed by the Supreme Court of the United States by appeal: *Provided, however*, That in any claim for the appropriation, expropriation, taking, acquisition, or deprivation of land or any interest therein, the jurisdiction hereinbefore conferred by this Act upon the Court of Claims to hear and determine any such claim is limited to the determination of the value of the said land or interest therein at the time of the appropriation, expropriation, taking, acquisition, or deprivation, and that no claim shall be asserted or judgment rendered by the Court of Claims which includes any increment, interest, or an equivalent thereof from the date of the taking of said land or interest therein

to the date of judgment as an element of just compensation or otherwise; and this provision is not severable from any provisions in this Act conferring jurisdiction upon the Court of Claims.

SEC. 2. In any suit or suits instituted hereunder, the Court of Claims shall determine and adjudge the claims of the party plaintiff in the premises, both legal and equitable, notwithstanding the lapse of time, laches, or the statute of limitations, and notwithstanding the fact that some of said Indian or their ancestors departed from the United States, are now living in the Dominion of Canada, and may have become Canadian nationals, or affiliated with a Canadian band of Indians.

SEC. 3. The Court of Claims in any suit or suits commenced hereunder shall hear, determine, and adjudicate any properly chargeable claim or claims that the United States may have against said Indians, including gratuities not heretofore charged, as provided by the Act of August 12, 1935 (49 Stat. 571, 596; 25 U. S. C. 475a); but any payment or payments that have been made by the United States on any such claim or claims shall not operate as an estoppel but may be pleaded as a set-off; and, in the computation of the amount due at the time of judgment, sums expended gratuitously shall be treated as payments made at the time of such expenditures, each expenditure being applied first to

payment of accrued interest and the remainder, if any, being applied to principal. If any such expenditure has been made prior to the date of the accrual of the claim for which judgment is rendered, it shall be treated as a payment made on the date of the accrual of the claim.

SEC. 4. Official letters, documents, files, and records, or certified copies thereof, including those of the Government of Canada, may be received in evidence, and the departments and the United States Government, and the officials thereof, shall give the attorney or attorneys representing said Indians access to such letters, documents, files, and records as they may require in the prosecution of any suit or suits instituted under this Act, and such attorney or attorneys shall have the right to make searches therefor without specifying such letters, documents, files, or records.

SEC. 5. The Wisconsin band of Pottawatomie Indians shall constitute a class entitled to share per capita in the proceeds of any recovery and shall be the party plaintiff in any suit or suits commenced hereunder and the United States shall be the party defendant. The petition or petitions shall be filed within five years after the date of this Act and shall be subject to amendment at any time prior to final submission of the case to the Court of Claims. The petition or petitions shall be verified by the attorney or any one of the attorneys duly and legally employed by the

Indians to represent them and no other verification shall be necessary.

SEC. 6. The Indians shall be represented in the prosecution of any claims hereunder by an attorney or attorneys selected and employed in conformity with Canadian law, and the attorney or attorneys shall be required to file with their petitions such proof of selection and employment as the Court of Claims may require. The Court of Claims shall have jurisdiction to fix reasonable attorneys' fees for services rendered, not to exceed 10 per centum of the amount, if any, found due the Indians, and to fix reasonable expenses incurred by the attorney or attorneys, and the amounts of the fees and expenses fixed shall be paid out of any funds Congress may appropriate to pay the claim of the Indians.

77TH CONGRESS
1ST SESSION

H. R. 1807

A BILL

Authorizing the Wisconsin band of Potawatomi Indians to file suit in the Court of Claims of the United States, and for other purposes.

By Mr. BUCKLER of Minnesota

JANUARY 10, 1941
Referred to the Committee on Indian Affairs

156610-4

Indian Affairs

FRED DENNIS ROBERT C. BELL, JR.

DENNIS & BELL

LAWYERS

DETROIT LAKES, MINNESOTA

February 27, 1941

Canadian Bureau of Mines and Resources
Ottowa, Ontario
Dominion of Canada.

Gentlemen: EXD.

I am pleased to adivse you that I am in Washington prosecuting the claim of the Wisconsin band of Pottawatomi Indians in Canada against the United States.

Enclosed herewith is a bill H.R. 1807 providing for a jurisdictional act to allow these indians to go into the United States Court of Claims.

Very truly yours,

Robert C. Bell, Jr.

Robert C. Bell, Jr.

RCB/esk

Enclosure

156610-4

WILLIAM A. ROBINSON, B.A.
BARRISTER-SOLICITOR-NOTARY
MIDLAND, ONTARIO

July 5th.1941.

E.A.D.
G

Mr.T.R.S.MacInnes,
Indian Affairs Branch,
Department of Mines and Resources,
Ottawa, Canada.

Dear Mr.MacInnes - Your File 156610-4
Pottawatomie Indians

I am advised by Mr.Dorr E.Warner of Cleveland that Senate Bill 1117 conferring jurisdiction on the United States Court of Claims to render judgment against the United States in the event the Court finds the Pottawatomie Indians have a valid claim passed the United States Senate on June 30th. I am passing this information along to you as I am sure you would be interested to know that Mr.Warner is still pursuing the matter. I understand that he has obtained retainers from a great number of Pottawatomie descendants since our interview with you last July.

Yours very truly,

NMC

156610-4

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

BANK OF NOVA SCOTIA CHAMBERS
RICHMOND STREET

London, Canada July 16, 1941.

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

Dear Doctor Mcgill:- re Pottawatomies your file I56610-4

Will you do me a favour? There is a demand at Washington for copies of my contracts with the claimants. When I went to prepare these, I found missing a ratifying agreement entered into by the Indians on June 23rd, 1922, in the presence of Inspector Parker, who presided at the meeting. I can't account in any way for it but presume it was from want of care on my part.

My request is that you would have your file of the above date and looked up and three copies of the Minutes of this meeting certified and forwarded to me.

You would greatly oblige me. Hoping to see you again one of these days.

Faithfully yours,

A. G. Chisholm

1-Mr. Allerie
2 [illegible] Dom.
[illegible] 11-26-10 closed
15-6610 - 4

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

BANK OF NOVA SCOTIA CHAMBERS
RICHMOND STREET

London, Canada, July 23, 1921.

Dear Mr.. MacInnes:-

Thanks for yours of the 19th instant with copies of Minutes of Meeting of PottaWatomie claimants held at Cape Croker on June 23rdmI922 duly certified. There was as I recollect a copy of resolution and certificate of Inspector Parker with the original Minutes but which was not attached to the copies just received from you. Would it be too much trouble to take a look and if my recollection is correct, have copies sent me?

Sincerely yours,

A. G. Chisholm

T.. R.. L.. MacInnes Esq, K.
Acting Director Indian Affairs,
Ottawa, Ont.

156610-4

, July 30, 1941.

Dear Mr. Chisholm:

In reply to your letter of July 23 I am enclosing as requested triplicate copies from our records of the resolution and certificate of Inspector Parker which was attached to the Minutes of Meeting of Pottawatomie claimants held June 23, 1922.

Yours very truly,

T. R. L. MacInnes,
Secretary.

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

Barrister, etc.,

London, Ontario.

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

BANK OF NOVA SCOTIA CHAMBERS
RICHMOND STREET

London, Canada, July 26, 1911.

J. D. L. MacInnes Esq -
Acting Director Indian Affairs,
~~Washington~~ Ottawa, Ont..

Dear Mr. MacInnes:-

re Pottawatomies.

I am advised from Washington that our Government has recognized Mr. Dorr Warner of Cleveland, Ohio, as Counsel for the above people, subject to my rights in the matter.

Should this be correct I would be greatly surprised at such action without considering it necessary to notify me of such step and furnishing me with a copy of the agreement with Mr. Warner.

Your Department may not be aware that Warner for a long time has been going up and down the country occupied by these claimants, accompanied by Henry Jackson, whose reputation is doubtless well known to you, seeking to detach claimants from the agreements made under the auspices of your Department and, should my information be correct, will likely further complicate matters at Washington.

I would like full advice regarding this and if such an agreement has been made between Warner and your Department, a copy of the same, and trust the Department will not consider me too inquisitive in making this request.

Faithfully yours,

A. G. Chisholm

EXD.

156610-4

, August 5, 1941.

Dear Mr. Chisholm:

I have your letter of July 28 regarding Mr. Dorr Warner of Cleveland, Ohio.

This Department has entered into no agreement with Mr. Warner and has not officially recognised him as counsel for the Pottawatomies. The position of the Department with regard to him briefly is as follows:

Under Section 141 of the Indian Act it is a criminal offence in Canada for anyone to accept any fees from an Indian for the prosecution of any tribal claim without permission. Mr. Warner applied through his Canadian agent, Mr. Wm. A. Robinson of Midland, Ontario, for such permission, which was granted as to receipt of compensation or fee that might be allowed to any clients of his by the United States Court of Claims, the Exchequer Court of Canada or other competent authority recognised in that behalf by this Department. Such consent would be given to any reputable solicitor in respect to any claim that was considered worthy of prosecution. For your information I may say that similar consent was given to other barristers; namely, Mr. A. T. Young of Meaford, Ontario, and Mr. Charles J. Kappler of Washington, D.C. You will understand that it would be regarded as arbitrary action for the Department to refuse such permission unless there was some reason to believe that the claim in question was fraudulent or worthless.

These gentlemen are acting as private counsel for the individual Indians whom they represent and all that they have received from the Department is a limited consent under Section 141 of the Indian Act. The Department would hardly presume to deny the right of any individual Indian, acting as such, to select his own counsel. You remain, however, the only counsel officially recognised as representing the Canadian Pottawatomie Indians generally under agreement with the Department.

I trust that the foregoing information will clarify the position of the Department in the matter to your satisfaction.

I enclose an extra copy in case you should wish to forward it to Mr. Bell.

Yours very truly,

T. R. L. MacInnes,
Secretary.

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

156610-Vol 7

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

BANK OF NOVA SCOTIA CHAMBERS
RICHMOND STREET

London, Canada August 5, 1941.

T.D.L. MacInnes, Esq.,
Secretary, Dep rtment Indian Affairs,
Ottawa, Ont.

Dear Mr. MacInnes:-

re Pottawatomies- ypur file I56610-4.

I have yours of the 30th ult. with triplicate copies from your records of the resolution and certificate of Inspector Parker which was attached to the Minutes of Meeting of Pottawatomie claimants held June 23, 1922, and am greatly obliged for your courtesy in this matter.

Sincerely yours,

A. G. Chisholm

I56610 vol. 7

BANK OF NOVA SCOTIA CHAMBERS
RICHMOND STREET

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

London, Canada August 11, 1941.

T.D.L. MacInnes Esq.,

Secretary, Indian Affairs Branch, Department Mines and Resources,

Ottawa, Ont.

Dear Mr. MacInnes:-

re Pottawatomies - I56610- 4.

I have yours of the 5th instant regarding Dorr E. Warner and other attorneys to whom the Department has afforded protection in contracting with claimants. I am obliged for the information you give me. I do not quite understand that what the Department will not allow Warner to do in his own name becomes sanctioned when done in the name of his agent Robinson. Mr. Warner's conduct in this matter is deserving of severe reprobation. After negotiating with me as shown by your files, he bought Henry Jackson and then proceeded to steal my clients by visiting claimants and inducing them to make new contracts with him, transporting several of them to U.S. territory who claimed (Jackson among them) to represent claimants and appeared to think it would be all right, if entered into in the U.S. I do not know whether you are aware of how the late Manley Chew of Midland, threatened to have me dismissed from this case unless I entered into an agreement with himself and Jackson to conduct the case with him on shares. Of course I refused to consent and showed the agreement tendered to me for signature to the Prime Minister and Hon. Charles Stewart, at their request, After Chew's death Jackson got hold of Warner or Warner got hold of Jackson, I don't know which and Jackson and Warner have been closely associated together since endeavouring to alienate my clients.

Kappler in Washington, tried his best to get Bell to throw up his agreement with me and eliminate me from the case. I know nothing of the other men whom you mention, but they are out to make all the trouble for me they can.

I have been absolutely loyal to the Department in my dealings with the matter, have letters from the Prime Minister [illegible] Chew and his activities, saw him at Ottawa after he refused at first what I at first told him of the matter, and only believed when I showed him and Mr. Stewart the agreement tendered me for signature by Chew, with his signature attached. You may understand why I deplore any assistance extended to these men by the Department. I might just add that it was at the personal request of the P.M, I attended at Ottawa and showed him the agreement referred to . I had no personal intention of doing so till he requested me to do so refusing to credit what I alleged, as really incredible.

Faithfully yours,

A. G. Chisholm

156610

August 18,1941.

Dear Mr. Chisholm:

I am just in receipt of your letter of August 11 with further reference to the Pottawatomie matter.

I do not think that there is any question of our not allowing Mr. Warner to do anything in his own name which would be sanctioned when done in the name of his agent. As a matter of fact I do not think that we have any control over Mr. Warner at all, as he is outside of our jurisdiction. Our position in the matter would be just the same, however, if he had communicated with us direct instead of Mr. Robinson. All that we have given to any of the parties mentioned in my letter of August 5 is an assurance that they will not be prosecuted under Section 140 of the Indian Act for receiving fees from their own individual clients, provided such receipt is otherwise lawful, that is in accordance with the Order of the Court or other competent authority. This additional assurance is something that could hardly be withheld, where the claim in question is itself regarded as legitimate.

As mentioned before the department has no agreement with any of these parties as it has with you.

Yours very truly,

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

T.R.L.MacInnes.
Secretary.

I5-6610

BANK OF NOVA SCOTIA CHAMBERS
RICHMOND STREET

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

London, Canada August 21, 1941.

Noted
Letter
no further
action

TO. L. MacInnes Esq.,
Secretary, Indian Affairs Branch,
Department Mines and Resources Ottawa, Ont.

Dear Mr. MacInnes:-

your file I56610.

I have just received yours of 18th instant. The point I wished to emphasise in our correspondence and in which I ventured to criticise the Departmental action, I hope not unpleasantly, is ~~that by~~ allowing Warner and his associates to make these contracts with some of claim- under which they are sure to claim at Washington, entitles them to recognition as the real representatives of claimants, when these same claimants had already appointed myself as such. I am quite aware you may say you had no jurisdiction over Warner or what he does but, I think any question as to this might have been avoided by stipulating that the individual clients whom your letter refers to, must not have already appointed some solicitor to represent them.

Pray, excuse me should this correspondence assume the appearance of a controversy between us. I appreciate your letters and will try and avoid troubling you on the subject again.

Faithfully yours,

A. G. Chisholm

August 5, 1941

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

Dear Mr. Chisholm:

I have already indicated to you that my work for this government as an attorney for William S. Knudsen, of the Office of Production Management, would in all likelihood interfere with my participation in the case of the Wisconsin Band of Pottawatomies vs. the United States. When I came here last January, I was not certain as to the permanency of my duties. Since then, however, Mr. Knudsen has appointed me as his representative on the Emergency Facilities Committee and it looks as though I will be thus engaged for the duration.

I can not under the law press this case while engaged in my present work. I have all of the files that you turned over to me in my office. I will turn them over to whomever you designate together with additional files and information that I have gathered that will be useful in the prosecution of the case.

Of course, I will and do waive any claims that I might have against you by reason of our contract or by reason of any work that I have done or expenditures that I have made in the prosecution of this case.

I am sorry to discontinue our pleasant association and give up such an interesting project. I am sure that you will understand that it is necessary.

Sincerely yours,

Robert C. Bell

September 19,1941

Edward K. Wheeler Esq.,

Attorney &c.,

Messrs. Kirkland, Fleming & Co, National Press Bldg.,

Washington D.C.

Dear Mr. Wheeler:-

Re Pottawatomies.

I have your undated letter in the above matter mailed on 16th instant and have given the same my consideration.

Before deciding on the matters you there deal with I would like you to shortly advise me as to the steps you have taken to protect my interests and those of my clients in view of your statement that Mr. Warner claims to represent the whole of the Pota atomie claimants.

I would also like you to request the Clerk of the Senate Indian Affairs Committee to send me several copies of the Senate Bill in the matter.

Your early reply will facilitate matters.

Faithfully yours,

(Copy)

Law Offices of
Kirkland, Fleming, Green, Martine & Ellis
National Press Building
Washington D.C..

Main Office, 33North Lasalle St.
Chicago, Illinois.

Louis C.. Caldwell,
Hammond E.. Chaffetz
Resident Partners.

Howard W.. Xxxxxxxxxxxx Vusey,
Reed T.. Rollo, Donald C.. Beelar,
Percy H. Russell Jr.

Dear Mr.. Chisholm:-

I am sorry to have delayed this long in advising you of my activity on behalf of the Pottawatomie Indians. This delay has been due toa number of factors primarilymarising out of the conferences, I have had with members of the Indian Affairs Committee of the United States Senate and their special Counsel and an attorney claiming to represent the Pottawatomies, Dorr E.. Warner, Mr. Warner. Mr. Warner has been active in furthering the claims of the Indians, but has represented himself to be their attorney. So long as such representations continued to be made without concrete refutation it was impossible to proceed on behalf of the Indians. When I ran afould of this situationI felt it necessary to have the aforesaid conferences and also to meet with Mr.. Warner. On the latter's assurance of co-operation and with this explanation to the Committee members I urged the passage of the Thomas bill by the committee and the Senate. Since that time I have endeavoured to arrive at an understanding with Mr.. Warner regarding the representation of the Indians without success, though he is still promising to continue our discussions. He showed me a copy of the letter he received from the Indian Department of your government which he has used to substantiate his claim to represent the Indians. As you know it is difficult to secure Indiaegislation under the best of circumstances. Therefore it seemed to me impossible or far more difficult when lawyers claiming to represent the Indians were in disagreement.. I therefore still hope that an understanding may be reqched which will be satisfactory to all. Such an understanding should be reduced to writing and constitute my authority to represent the Pottawatomies. I am not in a position to do further work for them in the House of Represenaatives until I have written authority. I am disinclined to act also until the matter of representation has been settled one way or the other in so far as Mr.. Warner is concerned.. Mr. Bell read me the letter received by you from the Canadian Indian Department. I do not understand how you and your appointees can represent the Pottawatomie Tribe in their individual capacity unless the Attorneys are in agreement.. As I understand the matter Warner claims to have contracts from many of the same Indians with whom you have contracts. It seems to me that such being the case your Indian Department should decide who is entitled to represent the Indians in question. From the foregoing you will see that I have been faced with many difficulties. To date not time has been lost since Indian bills have not as yet received their turn on the House calendar. I hope that I will receive written authority from you authorizing me to represent the Pottawatomies on the termsaccorded Mr.. Bell so that I may proceed expeditiously.

Sincerely,

d.. Edward Wheeler.

(Copy)

Office of Production Management

Social Security Building

Washington D.C. September 16,1941.

Mr. A.G. Chisholm, K.C.,
Box 682,
London,Ontario,
Dominion of Canada.

Dear Mr. Chisholm :-

This has been one of the more hectic days of a Washington experience. However, I am pleased to give your affairs priority when they present themselves to my attention,and whether it is gratis or otherwise is immaterial. The OPM is under fire at present and we are particularly rushed. Although we are in the main only an advisory body, it seems that responsibility for the entire defense effort has been unfairly charged to us.

Mr. Wheeler finally got back to town from an extended vacation and I finally managed to contact him. He again said that he would send me a copy of the photostat of the document of the document wherein the Canadian Government recognizes Mr. Robinson as a proper agent of the Indians but I have not as yet received it. I find that he has communicated with you only once since the beginning of this affairs. He said he would write you at once and unless he does so, I think that you should consider the matter closed if you have not already done so.

You will be extremely irate to find what has happened in Congress so far. After my talks with Mr. Wheeler,he apparently immediately to confer with his friend Mr. Grorud,Clerak of the Senate Indian Affairs Committee. Mr. Grogrud says that he was told by Mr.Wheeler that he had an assignment of my interest in the case. Of courseI would not and did not give any such assignment. I feel that it is up to any new attorney to enter into a new contract with you.

Mr. Grogrud advised Mr Wheeler to come to an understanding with Mr. Warner and he attempted to do so. No tan gible or definite understanding was reached yet Mr. Wheeler allowed the matter to be brought before the Senate Committee. I had not the sightest inkling that the Bill was up for hearing and knew nothing of all of this. The Bill was reported out with Mr. Warner and Mr. Wheeler at the hearing and without my knowledge. When I suggested to Mr. Grograd that he should have let me know as he had agreed to do when the Billcame before the Committee,he assailed me for taking an improper interest in the case and trying to stop the Indians from recovering.

Of course I could not stop the "Warner Bill" on the Senate floor within the bounds of propriety and diplomacy so it has now pass d the Senate.

It is doubtful if the Senate Bill will ever receive consideration from the House Committee. If it does,it will probably be killed like it was last time. In any event I am following it closely and will appear againt it if it comes up.I feel that I could not be accused of pressing a cause of action against the United States if I did so.

I regret this all exceedingly. This state of affairs together with the factmthat the Canadian Government has seen fit to give "unofficial " recognition to other attorneys makes our position embarrising. I shall await any instructions from you.

Sincerely yours,

Ed. Robert C. Bell.

156610

BANK OF NOVA SCOTIA CHAMBERS
RICHMOND STREET

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

London, Canada Sept. 19, 1941.

Will forward tomorrow A.G.C.

T. R. L. MacInnes, Esq.,
Secretary, Indian Affairs Branch,
Department Mines and Resources, Ottawa, Ont.

Dear Mr. MacInnes:-

re Pottawatomies- Your file I566IO.

I am herewith enclosing you copies of recent leters from Mr. Bell, Mr. Edward K. Wheeler, original from Mr. Bell, which you may keep, copy of reply to Mr. Bell from myself and copy of reply to Mr. Wheeler. Mr. Bell's letter and, copy of my last letter from him will speak for themselves. From a perusal of these you will perceive that things in the above matter at Washington are in rather a mess, chiefly caused by a letter from your Department which this man Warner has been displaying around Washington, claiming it gives him authority to represent the whole of the Pottawatomie claimants.

May I explain. Sometime ago Mr. Bell wrote me telling me of his being called to Washington to serve as Assistant to Mr. Knudson, Head of the Office of Production Management of the U.S., which would necessitate his relinquishment of his engagement to represent these claimants at Washington. Mr. Bell informed me he would give all assistance to whoever might be appointed to succeed him to represent claimants. I did not notify you at the time of the circumstances, as I wished to make inquiries as to a suitable man for the position and this took time. I might say here, that my mind is made up as to the man, can we secure him. I will advise you fully as to this later on when the negotiations between us are completed. In the meantime, I received a letter from Mr. Edward K. Wheeler, a son of Senator B. K. Wheeler, (U.S.A. Senate) wishing the position. I was for a number of reasons, which I need not go into here, a little dubious about his suitablyity for the position but whatever mydoubts, they have been resolved for me, by Mr. Wheeler's provedfutility. From the enclosed copy of my letter of today to him you will see that I wish if possible, to get certain in ormation from him. Should I prove successful in this, I will immediately advise him, it will be impossible for me to make any arrangements for the above mentioned object, with him. I will continue to keep you informed of any developments and would visit Washington to get matters settled completely, for I believe important developments are imminent, but this would entail rather heavy expense, which at present I cannot afford.

I would be pleased could the Department write me expressing approval of my conduct of the matter and, finally and in the most positive terms express its disagreement to Mr. Warner's claim to represent all the claimants. I omitted to state above, that I am informed from Washington, that Warner claims he has your Department's authority for making this claim. Should you accede to this desire you might favour me with three certified copies of any communication to me on the subject.

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

BANK OF NOVA SCOTIA CHAMBERS
RICHMOND STREET

London, Canada.....

I may consider it necessary to communicate further with you regarding this matter and trust you will be able to clear the way in a sense for me and dispose finally of the claims of a man who is endeavouring to defeat every object the Department has in mind, at least so far as I can see, in extending its assistance to claimants generally.

Faithfully yours,

A. G. Chisholm

156610

September 23,1941.

E.D.

Dear Mr. Chisholm:

I have to acknowledge receipt of your letter of September 19 with regard to the Pottawatomie claim.

While the department is prepared to show every consideration that would be proper in the matter, I think that upon reflection you will realize that it cannot write a letter to your order as suggested. I am prepared, however, to state definitely to you that this department has never, in any way, intimated to Mr. Warner that he is recognized as counsel for the whole of the Pottawatomie claimants. On the other hand, I am pleased to advise you that you are the only counsel with whom the department ever entered into an agreement on the subject, and the agreement with you dated Aug. 8,1918, remains in effect.

Yours very truly,

T.R.L.MacInnes.
Secretary.

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

32-105

September 24,1941.

Dear Sir:

I have to refer to previous correspondence with regard to chiefs and councillors in your agency.

(Copy)

London, Canada September 19, 1941.

Edward K. Wheeler Esq.,

Attorney &c.

Messrs. Kirkland, Fleming & Co., National Press Bdg.,

Washington D.C.

Dear Mr. Wheeler:-

re PottaWatomies.

I have your undated letter in the above matter mailed on 16th. instant and have given the same my consideration.

Before deciding on the matters you there deal with I would like you to shortly advise me as to the steps you have taken to protect my interests and those of my clients in view of your statement that Mr. Warner claims to represent the whole of the PottaWatomie claimants.

I would also like you, to request the Clerk of the Senate Indian Affairs Committee to send me several copies of the Senate Bill in the matter.

Your early reply will facilitate matters.

Faithfully yours,

sd. A.E. Chisholm.

(Copy)

September 20,1941.

Mr. Robert C. Bell,

Office of Production Management,

Social Security Building, Washington D.C.

Dear Mr. Bell:-

re Pottawatomies.

I duly received your letter of the 16th instant. Unforseen circumstances have prevented an earlier reply. Before going into the matter more fully I would like to inquire from you what was done with the certified xxx copy of the ratification by claimants of my appointment as their solicitor,which you may recollect some 700 or 1000 claimants sent me their individual adherence to and which I sent you and which should be with the other papers in your possession.I sent you these certified copies on August 21st last but you have not yet acknowledged their receipt as yet.

The question is important as I quite fail to understand how it is,if Mr.Wheeler saw these papers he could make the statement he does in his undated letterto me of which I enclose you copy that "Ido not understand how you and your appointees can representthe Pottawatomie Tribe in their individual capacity unless the attorneys are in agreement. As I understand the matter Warner claims to have contracts from many of the same Indians with whom you have contracts". ---- "He showed me a copy of the letter he received from the Indian Department of your government which he has used to substantiate his claim to represent the Indians".

He has from what you tell me not kept his promise to send you a copy of the photostat of the document wherein the Canadian government recognizes Mr. Robinson as a proper agent of the Indians. In a letter to me from the Indian Department under date of 5th August last, mentioning the names of parties to whom some limited recognition had been accorded,including that of Mr. Robinson (who is Warner's representative) the Department remarks " These gentlemen are acting as private Counsel for the individual Indians whom they represent and all that they have received from the Department is a limited consent under Section 141 of the Indian Act.The Department would hardly presume to deny the right of any individual Indian,acting as such,to selet his own Counsel. You remain,however,the only Counsel officially recognized as representing the Canadian Pottawatomie Indians generally under agreement with the Department".

I will send a copy of this letter to the Indian Department and trust you will immediately take steps to remedy any misunderstanding at Washington. I need not chartacterize Warner's statement he represents all claimants further.

In the meantime I would ask you to notice the request I make to Mr. Wheeler to send me several copies o the Senate Bill in his letter to me referred to and see that he does so. Also,copy of the letter from our Indian Department on which Warner bases his claim of full representation.

I will finish this letter later on.

Do you recollect that in mine to you of 21st ult,I asked you to be soon enough, if you were able,to send me copy of "Hearings before a sub-committee of the Judiciary,U.S. Senate 83rd" respecting the jurisdiction of the Court of Claims? You have referred to this in any letter nor have I received the document.

I consider it most unfortunate that you were prevented from attending the hearing before the Senate Indian Affairs Committee of the Bill pending in this matter and surprised that apparently,you had taken no steps by notifying the Secretary of the committee or otherwise,that you were interested in the same. I am also very much surprised that Mr. Wheeler whom you claim as a personal friend had no hesitancy in appearing with Warner in support of the bill,without mentioning to the members of the committee,either your or my own interest in the matter before,when he well knew of it and Warner's interest in opposing any mention of this. I can well imagine you are very busy but such a situation as you mention in yours of the 16th inst. should never have arisen and had ordinary precautions been taken,would not have arisen. I don't wish to say any more about this but you may understand my disappointment.

I am enclosing you copies of letters to the Secretary of our Indian Department under date of 19th instant, from Wheeler to myself dated blank but mailed 16th instant, for your information. Also,one from Indian Affairs to myself dated August 1s no last.

I intend taking up with Mr. Ernest L. Wilkinson of Washington, whose office in the Earle Building there, the question of his willingness to act for the Canadian Pottawatomies in further proceedings for their relief and in the event of his agreeing to do so,will at once advise you and this will relieve you of further trouble about the matter, which I regret having to inflict on you when otherwise much engaged and which I have before expressed my obligation for and would repeat. You will please treat this information as CONFIDENTIAL till negotiations are completed. Mr. Wheeler is of course out of it.I have no confidence in him and I expect you will not be surprised to be told this. He I consider is anything but reliable.

I think this all I need say to you today and expect you will consider it quite enough. With regards,

Faithfully Yours,

sd. A.G.Chisholm

Pottawatomies 156610 4

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

BANK OF NOVA SCOTIA CHAMBERS
RICHMOND STREET

London, Canada Sept. 22nd. 1941

T. D. L. MacInnes Esq.,
Secretary, Indian Affairs Branch,
Dept. Mines and Resources, Ottawa, Ont.

Dear Mr. MacInnes:-

Pottawatomies. - I56610- 4.

As p omised I enclose you copy of my reply to his letter to me of which I wote you on I9th Inst. I received from Mr. Bell in the above matter.

Faithfully yours,

W. J. Chisholm

I also enclose copy of my reply to Mr. Wheeler's letter of which I have already sent you copy.
A.G.C.

156610-4

L'Anguille Valley Memorial Association
Logansport, Indiana

March 18th, 1943.

Archivist,
Indian Affairs Department,
Ottawa, Canada.

Dear Sir:

In connection with a study I am attempting to bring to a conclusion (concerning the Potawatomi Indians), I should like to obtain the names and approximate location (what province? what county? or near what city?) of any former P O T A W A T O M I Indian-villages in Canada.

I think there were at least a few Potawatomi villages east of Lake Huron, Lake St. Clair, or Georgian Bay, in Ontario, --- and perhaps also elsewhere in Canada; and I should greatly appreciate any information you can give or get me concerning their names and/or approximate location.

Sincerely yours,
R. B. Whitsett, Jr.
Robert B. Whitsett, Jr.
Secretary.

Mr. St. Louis.

156610-4

EX'D.

April 5,1943.

Dear Sir:

I have to refer to your letter of March 18 with regard to the Pottawatomie Indians.

The Pottawatomie Indians were invited to settle on Walpole Island by the "Proclamation of 1837". Many came over from the States of Michigan and Wisconsin to Canada between the years 1837 and 1841 and were received in a friendly manner by the various Canadian tribes of Indians residing in the northern and southern parts of Ontario. Most of them settled on Walpole Island and in the vicinity. The only band of Pottawatomie Indians in Canada at the present time are to be found on Walpole Island. There are, however, many Indians scattered among other bands, especially the Chippewa Band of Indians, who claim to be descendents of the Pottawatomies of Wisconsin who were admitted from time to time to the Canadian bands to which they now belong.

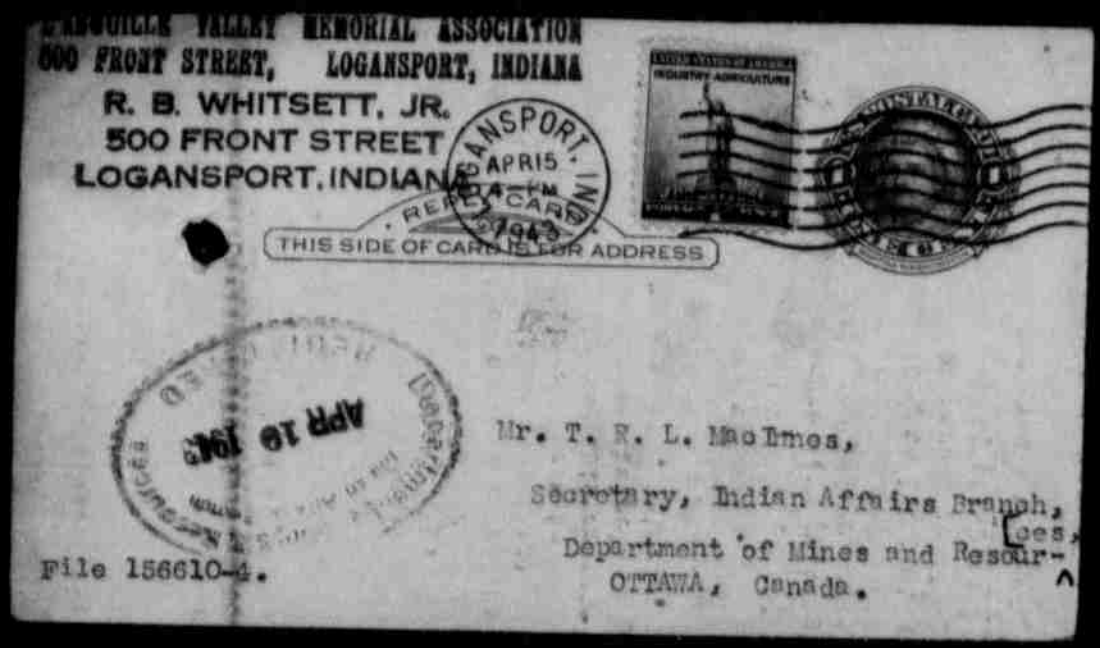
In reply to your question I may say that in so far as I am aware there are no Pottawatomie villages east of Lake Huron or Georgian Bay.

T.R.L.M

Yours very truly,

Robert B.Whitsett,Jr.,Esq.,
Secretary,
L'Anguille Valley Memorial Association,
Loganport, Indiana,
U.S.A.

T.R.L.MacInnes.
Secretary.



156610-4

R. B. WHITSETT, JR.
500 FRONT STREET
LOGANSPORT, INDIANA

April 14, 1943.

Dear Sir:

I thank you for your courteous letter of April 5, in answer to my previous inquiry, regarding villages or former villages of the Potawatomi Indians in Canada. I gather that there are no such villages known to yourself with the possible exception of some on or near Walpole Island, in Kent county, Ontario. I shall try to obtain the names of these (possible) villages.

For some time, I having been trying to borrow (by putting up a cash-deposit for safe return) the work Indian Treaties and Surrenders from 1680 to 1890; but I am in doubt as to where I could find a copy in the States which I could get through an inter-library or other loan for even a week or two.

R. B. Whitsett, Jr.

156610

EXD. April 22, 1943.

Dear Sir:-

I have to refer to your card dated April 14 and previous correspondence with regard to the Pottawatomie Indians.

Under separate cover I am forwarding you a copy of our Indian Treaties and Surrenders, Volumes 1-2, which contain treaties and surrenders from 1680 to 1890.

It would be appreciated if you would return this volume in due course. If later, however, you should desire to purchase it the cost is $10.00.

Yours very truly,

T.R.L. M

T.R.L. MacInnes,
Secretary.

Robert B. Whitsett, Jr., Esq.,
Secretary,
L'Anguille Valley Memorial Association,
Loganport, Indiana,
U.S.A.

15-6610-4

Executive

L'ANGUILLE VALLEY MEMORIAL ASSOCIATION
ROBERT B. WHITSETT, JR.
Secretary
500 FRONT STREET
LOGANSPORT, INDIANA

May 4th, 1943.

Reference to File
156610.

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

Dear Sir:

I greatly appreciate the opportunity to examine a copy of "Indian Treaties and Surrenders, 1680 to 1890". The book reached me safely on friday afternoon, April 30th, and I mailed it back to you, by International Parcel Post, at noon today, Tuesday, after leafing all the way through it.

Your letter of April 22, 1943, which announced that the volume would be sent me, made no mention of any rental charge; but if there is such a charge, and you will tell me amount, I shall, of course, send it. Although neither I myself nor local libraries would be interested in purchasing a copy, I shall bring the matter to the attention of the Indiana State Library at Indianapolis, which might possibly be interested.

Being particularly interested in the movements of nineteenth century Potawatomi Indian chiefs named Wimego, Waymekon, etc., I was pleased to note that "Treaty or Surrender No. 103," page 247, vol. 1, 8-16-1865, was signed by a chief or head man named W a i m e g w o n, who is listed as having been a member of Chief Bonekeosh's Band of Chippewas on the Mississagua in, I think, Algoma county, Ontario. I very much regret, however, that this printed record seems to give no clue as to the meaning of that Chippewa or Potawatomi name Wai-me-gwon. Perhaps the manuscript sources do not do so either. ...I am puzzledly less enthusiastic about the Wamekwuwuhop (v.II,p.24) [illegible] Moose Lake band of Cowltenux and Swampy Cree, whose name also is not translated. The French surname Lasselle which keeps recurring in this volume (Alexis Lasselle, the interpreter) is delightfully familiar to me; for many members of this family were among my own northcentral Indiana city of Logansport's most outstandingly prominent pioneer settlers. Thank you.

R B Whitsett, Jr.

Mrs Young

Did Hies come please.

Cd you furnish me any information re Potts Chief or the meaning of Ind names.

We have no information concerning these last

1v6610-4

L'ANGUILLE VALLEY MEMORIAL ASSOCIATION
ROBERT B. WHITSETT, JR.
RESEARCH
500 FRONT STREET
LOGANSPORT, INDIANA

January 18th, 1944.

The Hon. T. R. L. MacInnes,
Secretary, Indian Affairs Branch,
Department of Mines and Resources,
Ottawa, Canada.

Dear Sir:

I should like to see the following two items, and am wondering if you cannot, and will not be kind enough to, aid or at least advise me in getting to do so:

1. "The Proclamation (of the Crown?) of 1837" in which Potawatomi Indians were invited to settle in the Walpole Island Reservation, or on Walpole Island.

2. A census, or enrollment, or other such list, of some or all of the Potawatomi Indians who accepted that invitation, or who did settle on or near Walpole Island, or came under the care of your Indian Agents at Walpole Island, or at Kettle Point (on Lake Huron) in Lambton county, Ontario, or elsewhere in Southwestern Ontario.

.....

The main thing just now is to win the present war, and as promptly and decisively as is possible; and I have not found, and do not find, it practicable to visit the Walpole Island vicinity as I should like to do. But just as a matter of information to your Branch, I wish here to remark that I have obtained information from Kent county, Ontario, historical sources that there is a small Potawatomi Indian village-site about one mile south of Chatham on "the McGeachy farm" and another about two miles east of Chatham on "the Slater farm."...F.W.Hodge's"Handbook of Am. Inds. ..", v.2, bot. of p. 291, indicates there were (in about or before 1912) forty-four Potawatomis divided between Caradoc and Riviere aux Sables, where they reside by permission of the Chippewa and Munsee." (By Caradoc, I presume, is meant the town on Can. Pac. R.R. near Komoka in Middlesex Co.,Ont.; and by "Riv.auxSables", the stream of Huron, Middlesex, and Lambton cos., Ont.)... I am told the Chippewas of Kettle Point Res., Lambton co., let about 100 Potawatomis settle among them.

At about the time the U.S. gov't. moved most of the Potawatomis west (1835-1842), many of our northern Indians Potawatomis mysteriously disappeared; and I strongly suspect that some of them may have taken refuge on or near Walpole Id. If I could see any list of the Pots. who may have been enrolled on the Walpole or nearby reservations, I might recognize Indiana Pot. names.

Respectfully yours,
R.B.Whitsett, Jr.
Secretary.

156610-4

EXH. A

February 15,1944.

Dear Sir:

I have to refer to your letter of January 18 with regard to the Pottawattomi Indians.

A copy of the Proclamation of 1837 is attached hereto. We have no official record of the number of Pottawattomi Indians who have been admitted into the various bands. The only band of Pottawattomi Indians in Canada is to be found on Walpole Island, with a population of 122.

Between the years 1837 and 1841, a number of Pottawattomi Indians who had been ordered by the United States Government to remove to the Indian Territory west of the Mississippi made application and were permitted to settle upon Walpole Island. The first census of record of these Indians is in the year 1842, when they numbered 507, including the Ottawas. There are many Pottawwatomi Indians who were admitted from time to time to the Canadian Indian bands residing in the northern and southern parts of Ontario, but of their number we have no record.

T.R.L.M

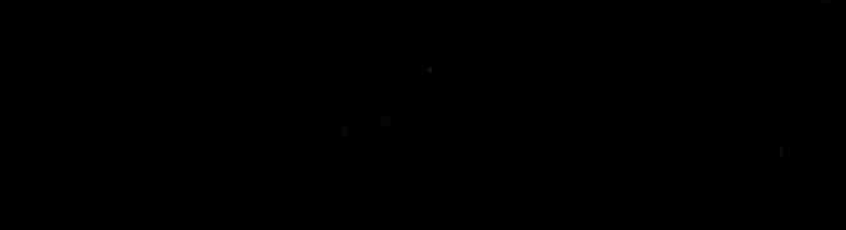
Yours very truly,

Robert B.Whitsett, Esq.,
L'Anguille Valley Memorial Assocn,
500 Front Street,
Logansport,Indiana,
U.S.A.

T.R.L.MacInnes.
Secretary.

en

L'ANGUILLE VALLEY MEMORIAL ASSOCIATION
500 FRONT STREET, LOGANSPORT, INDIANA
R. B. WHITSETT, JR.
500 FRONT STREET
LOGANSPORT, INDIANA



THIS SIDE OF CARD IS FOR ADD

The Hon. T. R. L. MacInnes,

Secretary, Indian Affairs Branch,
Department of Mines and Resources,

OTTAWA, Canada.

R. B. WHITSETT, JR.
500 FRONT STREET
LOGANSPORT, INDIANA

File 156 610-4.

March 22, 1944.

Dear [redacted]

This is to acknowledge, with thanks, your letter of February 15th, and its inclosed copy of the Proclamation of 1837 (read to the Indians then assembled on Manitoulin Id.)

I must apologize for my delay, which is due to a combination of unforseen circumstances, including my repeated absences from the city and the sudden death of an immediate member of my family.

I have as yet made no progress in my attempt to obtain the names of any of the Potawatomi chiefs or warriors who were living on Walpole Island, or elsewhere in Canada, before 1850 or 1860.

Very truly yours,

R. B. Whitsett, Jr.

L.B. V. pg. 300

Indian Office,
Toronto, 16th Jan., 1840.

Will. Jones, Esq.,
A. S. I. A.

Sir:-

I am in receipt of your letter of the 7th instant informing me that the chief Manitowapount and his band are encamped within 15 miles of Port Sarnia on their way to settle in Upper Canada and requesting to know whether they are returned for presents.

You do not state their number nor anything about them. The communication which I made the Indians at Manitowaning in 1837 was that no American Indians were to receive presents after three years from 1836 of course these Indians not having come into the Province before the expiration of the year 1839 are strictly speaking not entitled to the Bounty.

However, as the distribution of presents to the Western Indians for 1839 has not yet taken place, I should recommend your preparing a supplementary estimate for this band and at the same time recommend them to move into the Province without delay.

You will of course send me a copy of the numerical return and estimate.

x x x

I have the honour, &c.,

S. P. J.

Speech of Manitogabouit requesting permission to settle in Canada - June 1839.

Father-

Give me your hand. My hand and heart have long been yours.

Father -

With this white feather cleanse your ears that my words may readily reach you; with this white cloth and fair water lave your eyes that you may see him who addresses you -

Father -

Many years ago when the war Wampum came amongst us - when we were called upon to fight side by side under the standard of the Red Coat our old men and yours assembled and smoked around the Council Fire lighted by the White Elk amongst us - these were his words - "Join us my children, "paint yourselves for the fight, hand in hand let us march to "the battle field to overthrow the perfidious Long Knife who "seeks our distruction and yours. Your Great father across the "vast salt lake calls upon you thro' me to assist him and in "the hour of your need your voices shall reach to him and he "will extend to you the hand of grateful friendship of "protection and assistance. Fear not death which can come but "once, fear not to be disabled by wounds for your widows shall "be his children, your old and infirm his pensioners, his warm "blankets shall protect you from the winter's cold, poverty "and distress shall be unknown to you."

Father -

We heard his voice - it caused with it conviction. The bright prospects he held out to us cheered us on to exertion and to you I appeal if we did not do our duty, if we did not act as men.

Father -

It was on an island not far from this that the White Elk (Col. McKee) lighted his Council Fire "To this as "a beacon you shall always look" said he to us "Your Great "Father bought from you this Island not for himself but as "a resting place for the Ojibeways, Pottiwatimies and "Ottawas. When the houses crowded closely on your hunting "grounds leave you but little room to breathe freely, but "little game for your support, turn to it as a refuge and "it shall always be open to you."

Father -

The hour has now come when we claim that promise - Father, we are destitute of the many Chiefs who fearlessly sought the battlefield with the Red Coats, but few now remain - aged and infirm tho' I seem, it is not the snow of many winters which blanched my head or bent my frame, neither have the firey waters which have been brought among us impaired my energies - see my scarred head and wounded body and in them trace the cause of my premature decay.

And shall I, my Father, now that I am old and infirm, shall my children and the young men who look to me in misfortune and in want, appeal to you in vain. Shall not the words of the White Elk be true? Will you cast shame on his tomb. Shall he grieve in the Happy Hunting Grounds that his promises to us remain unfulfilled? No, My Father, I feel certain it will not be so and that I shall not sue in vain.

Father -

When you wanted us we were ready, should you want us again, soon will your voice sound in our ears and soon shall we echo back the reply we are ready and tho' broken down by age and disabled by wounds, my tribe shall not march to war without its Chief.

Father -

Let not my words fall in vain but faithfully convey them to our Great Father in Toronto - tell him all I have said and to our entreaties add yours that we should be allowed to remain on that Island where still shine the embers of the ancient Council fire.

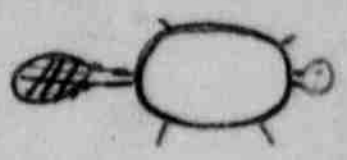
Father -

Tell the Great Father that with this wampum I recall the promise of former days and bind him to the performance.

Father -

Once more your hand and now I have done and go to await in my lodge the answer of your great Chief.

Manitogabaouit



In presence of

William Jones, A.S.I.A.

T. W. Keating A.S.I.A.

Lower Indian Reserve,
June 6th, 1844.

Sir:

I have in obedience to instructions from the Chief Superintendent to transmit for the information of His Excellency the Governor General the causes which have led to the increase on my Numerical Return for the year 1844. I had previously briefly stated them to Mr. Jarvis but beg now to offer as full an explanation as possible.

In the year 1839 two Chiefs - Ogimanse and Manitog-ga-ba-onit came over to Sarnia with their principal men and applied to Mr. Jones and myself for permission to settle in Canada with their respective bands, the encroachments of the Americans having become unbearable and being further threatened with removal to the Western shores of the Mississippi - these men were brothers and the speech delivered on the occasion by Manito-ga-ba-onit, the elder of the two, was transmitted to the Chief Superintendent and the permission sought accorded (this document I append). Many availed themselves of it at once and have been since settled at Walpole Island, others came and returned whilst many with the apathetic delay characteristic of the Indians and a strong reluctance to abandon the graves of their dead, kept lingering on until this spring when they all gave in their names thro' the Chiefs and determined upon immediate and permanent settlement.

The reasons which caused me to include them in my return are as follows:-

1st. That they had as a body received special permission to take up their abode in the British Dominions in 1839 under the administration of Sir George Arthur.

2nd. That the two chiefs well known to Mr. Jones and whose cases I have lately represented were among the most deserving warriors who bled for us last war, thirteen wounds on one, fifteen on the other - one a gun shot still open the ball not being extracted, bearing strong testimony of their bravery and devotedness.

3rd. That there were among them the widows and orphans of many who fell during the arduous contest of 13 & 14 whose Right I humbly tho' perhaps erroneously thought I could not refuse to recognize especially in reference to the authority granted for this location.

I have the honor to be, Sir,

Your Most obed't Humble Serv't,

T. W. Keating.
A.S.I.A.

Higginson, Esquire,
Civil Secretary,
Indian Department,
&c &c &c.,
Kingston.

I-6610-4

1. Reply
2. Sept 1/-

CANADA
DEPARTMENT
OF
MINES AND RESOURCES
MINES AND GEOLOGY BRANCH

Ottawa, April 4, 1944.

Mr. T.R.L. MacInnes
Indian Affairs Branch
Booth Building
Sparks Street
Ottawa.

Dear Mr. MacInnes:-

In a letter from Mr. Robert B. Whitsett, Jr. of the L'Anguille Valley, Memorial Association, 500 Front Street, Logansport, Indiana, the following question is propounded:-

> "I should like to learn the names of some of the Potawatomi chiefs or braves who a little more than one century ago were living on Walpole Island or elsewhere in Southwestern Ontario".

I have written to Mr. Whitsett and informed him that this part of his letter was being referred to you and that you would, doubtless, correspond with him direct.

Sincerely yours,

Douglas Leechman

Douglas Leechman
National Museum
Ottawa Canada.

DL/FL

156610-4

EXD.

Ottawa, April 17, 1944.

Dear Sir:-

I have to refer to your postcard of March 22 with further reference to Canadian Indians.

I have been able to locate the names of three Pottawattomi Chiefs who were living in Canada about a century ago. Copies of Old Indian papers containing the names of these Chiefs are attached hereto for your information.

Yours very truly,

T.R.L. MacInnes,
Secretary.

Robert B. Whitsett, Esq.,
L'Anguille Valley Memorial Association,
500 Front Street,
Logansport, Indiana,
U.S.A.

L'ANGUILLE VALLEY MEMORIAL ASSOCIATION
800 FRONT STREET, LOGANSPORT, INDIANA

POWHATAN INDIANS MAKING STONE IMPLEMENTS

POWHATAN INDIANS MAKING STONE IMPLEMENTS

FIELD MUSEUM OF NATURAL HISTORY
CHICAGO, U. S. A.

POWHATAN INDIANS

Apr. 22, 1944. Hall B 156610-4.

The Indian at the left is prying up boulders, the one in the center is breaking the large masses as a first step in shaping, and the one on the right is shaping rude blades by flaking. These were carried from the quarry to be worked up into various implements.

THIS SPACE FOR WRITING

I wish here to thank you for your (Apr.17th) giving me data on three Potawatomi chiefs in Canada about a century ago. The Chief OGIMANSE of Keating's 6-6-1844 letter was very possibly Pot.Chief OGAMANS who circum 1837 lived in Kewanna's (Pot.) village on Lake Bruce (then Lake Kewanna) at west edge of northcentral Indiana county of Fulton, --- west of Rochester, Indiana.

R.B. Whitsett, Jr., Secretary,
L'Anguille Valley Memorial Association.
Logansport, Indiana.

POST CARD

THIS SIDE FOR ADDRESS

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The Hon. T.R.L. MacInnes,
Secretary, Indian Affairs
Branch, Department of
Mines and Resources,
OTTAWA,
Canada.

Dictated by Thomas

Little Current Ont.
March 27th. 1945-

Dept of Indian Affairs.
Ottawa Ont.

APR 2 1945
REGISTERED

To whom it may concern:-

Will you please let me know by return of mail what steps has been taken towards the Pottawatomie Indians claim for which you will find circular and a recent letter received from Chicago into the matter.

If you read carefully you will understand that the Indian residing in the States have had their share to this claim and I would like to know what is in the way to stop the Canadian claimant of not receiving theirs.

Please be kind enough to return all circulars and letter from Chicago that you will find enclosed in this Registered Letter.

Hoping to hear from you in a near future

I remain
Albert Pelon
Husband of claimant Clara Osahwabine

COPY

Address Only The
Commissioner of Indian Affairs

Refer in Reply to the Following:
Land Division
Claims
3694-43

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
CHICAGO 54, ILLINOIS

Mr. Albert Pilon,
Little Current,
Ontario, Canada.

Mar-2 1945

My dear Mr. Pilon:

This will refer to your letter of January 18 stating that in 1918 or 1919 there was a proposal to make a payment to the Pottawatomie Indians of Wisconsin in the amount of $1,964,565.87. you state that your wife was entitled to share in this payment as her mother was related to the Pottawatomie Indians of Wisconsin but that she never received any information concerning the payment.

The Pottawatomie Indians sold their lands to the United States by the treaty of September 26, 1833 (7 Stat. 431) and agreed to remove to lands west of the Mississippi River. Thereafter, about 2,000 of them removed to Kansas and about an equal number fled to Wisconsin, Michigan, and Canada. Subsequent to this migration all funds due the tribe under their treaties were paid to the Pottawatomie Indians who had removed to Kansas.

As the result of a memorial presented to Congress by the Wisconsin and Michigan Pottawatomies (Senate Document 185, 57th Congress) who had thus been deprived of their annuities, Congress, by the Act of June 21, 1906 (34 Stat. 380), directed that an investigation be made of their claims by the Secretary of the Interior. The report to Congress thereunder (House Document 830, 60th Congress, First Session) found that 457 of the Indians reside in Wisconsin and Michigan and 1,550 in Canada, and that to equalize the payments would require the sum of $417,339 for the United States branch and $1,517,226.87 for those residing in Canada, making a total of $1,964,465.87. The $447,339 has been appropriated and paid to the United States branch of the Pottawatomies, or expended for their benefit, but no appropriation has been made for the Canadian Pottawatomies.

In 1932 the claim of the Canadian Pottawatomies was the subject of correspondence between the Department of State and the Minister of the Dominion of Canada, culminating in a

Department of State note of June 8, 1932, to the Canadian Legation, definitely rejecting the claim and declining to request Congress to enact legislation authorizing its reference to the Court of Claims for adjudication. The Canadian Legation of October 25, 1932, replied that, under the exploration of the possibility of settlement by other means, the Canadian Government would not press further 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." Our records contain no information concerning any further action.

Sincerely yours,

(Sgd.) W. D. Weekley

For the Commissioner.

156610

Ottawa, Ontario,
April 18, 1945.

Dear Sir:

We acknowledge your letter of March 27th and are returning herewith the enclosures which accompanied it.

The last information on our files would appear to indicate that the request of the Pottawatomie Indians to prosecute their claims before the United States Courts was rejected by the Committee of the Senate, to whom it was referred and the matter has not progressed beyond that stage.

Encls.

Yours truly,

Acting Director.

Albert Pilon, Esq.,
Little Current,
Ontario.

Minister's Office 156610.

MEMORANDUM

Sept. 12, 1945

DEPUTY MINISTER

Pottawatomie Indians - claim.
re: Albert Pilon,
Little Current, Ont.

Reply

Mr. Thomas Farquhar, M.P., has left with us the attached correspondence concerning the claim of the Canadian Pottawatomie Indians, and in particular reference to the case of Mr. Albert Pilon, Little Current, Ont.

Will you please have a draft letter prepared to Mr. Farquhar for the Minister's signature, furnishing whatever information is available concerning the claim of the Pottawatomies. Kindly return the attached to Mr. Farquhar, therewith.

Private Secretary.

Encls.
A/D Hoey to Pilon Apt. 18/45
US Dept. Int. to Pilon Mar. 2/45
Chisholm, Solicitor for Can. Pottawatomies of Wisconsin, Br. Aug. 15/18, Feb. 1920

Mr. Hoey:
For draft reply as requested.

SEP 14 1945
REGISTERED

Ottawa, September 21, 1945.

Dear Mr. Farquhar,-

I am returning herewith the attached correspondence which you left with us concerning the claim of the Pottawatomie Indians and for your information may state very briefly the historical facts in this case.

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.

In the year 1911 the Canadian Pottawatomie Indians engaged counsel to prosecute the claim on their behalf, and their action in so doing was subsequently approved by the department.

Since that time the proceedings have continued, but progress in the case has been long delayed. The claim was included in the Second Schedule under the Pecuniary Claims Convention of 1912, but with other such claims was later withdrawn by mutual consent of the Dominion and United States Governments. Several groups of Indians through their respective counsel have endeavoured to have the matter brought before the Court of Claims in Washington. This action, however, according to my understanding, could only be taken following the necessary legislation by Congress, which in so far as I am aware, has not yet been passed.

Yours sincerely,

Thomas Farquhar, Esq., M.P.,
House of Commons,
Ottawa.

SENT 21/9/45 CH

156610

DOUGLAS & McCALLUM
BARRISTERS, SOLICITORS, ETC.
A.R. DOUGLAS, K.C. J.D. McCALLUM
R. J. Lamon

PHONE METCALF 271-2
CABLE-DOUGLAS-LONDON

ROYAL BANK BUILDING
380 RICHMOND STREET
LONDON, CANADA 13th April, 1946.

T. R. L. MacInnes, Esq.,
Secretary, Indian Affairs,
Department of Mines & Resources,
OTTAWA, Ontario.

Agreement with like forms sent Aug 8, 1946

Dear Sir: Re: Pottawatomies

With reference to the writer's conversation with you on the 29th of March last, we would say that we act for the Executrix of the late A. G. Chisholm K.C. and she has handed to us the file of the late Mr. Chisholm with regard to the claim of the Canadian Pottawatomies against the Government of the United States of America. She also referred to us certain current correspondence with Mr. Robert C. Bell Jr. with whom Mr. Chisholm was co-operating in connection with this claim.

Following a recent letter from Mr. Bell, we wrote to Mr. M. J. Sandy of Christian Island, who apparently had been one of a committee, which retained and instructed the late Mr. Chisholm. Mr. Sandy advises that he is agreeable for the writer to act for his group in the place of Mr. Chisholm. We would like your consent to his taking a retainer from the Pottawatomies in Canada and collecting from them a sufficient amount to cover our out-of-pocket expenses. You will have on file the Agreement between Mr. Chisholm and Mr. Bell, and we are prepared to enter into a like Agreement with Mr. Bell.

Awaiting your advice, we remain,

Yours truly,

DOUGLAS & McCALLUM,

Per

ARD/JM

Mr. Cory's memo.
6th May, 1946.

LEGAL DIVISION

CANADA
DEPARTMENT
OF
MINES AND RESOURCES
GENERAL ADMINISTRATIVE OFFICES

OTTAWA 6th May, 1946.

MEMORANDUM:

Mr. MacInnes.

Please see your memorandum of the 1st instant, immediately hereunder on file 156610, upon the subject of the Pottawatomie Indian claim.

I have discussed this matter with Mr. Jackson and he is agreeable to granting to Mr. Douglas the same privileges as Mr. Chisholm enjoyed under the agreement referred to. It is suggested that Mr. Douglas be so communicated with. We should not definitely commit ourselves on this and he might be advised that under all the circumstances the necessary recommendation will be made to the Minister when we have their full representations and draft agreement before us.

Solicitor.

156610

, May 9, 1946.

Dear Mr. Douglas:-

I have to acknowledge your letter of April 13 re Pottawatomies.

As required the matter was referred to the Legal Branch for advice and I am now advised that favourable consideration will be given to granting you the same privileges that the late Mr. Chisholm enjoyed under his agreement with the Department dated August 8, 1918. It is presumed that you have a copy of this agreement on file which, as mentioned in your letter, was handed to you by the Executrix, and I would refer you to Section 9 thereof, regarding the levying of assessments or retainers to provide for disburstments. An agreement between yourself and Mr. Bell, similar to that between him and the late Mr. Chisholm, would be quite in order as far as this Branch is concerned.

I may add that consent as required by Section 141 of the Indian Act requires approval by the Minister, and that the necessary recommendation will be made to him, if you will good enough to forward to me a formal statement of what you propose, together with a draft agreement between yourself and the Department as above mentioned.

Yours truly,

T.R.L.M

T.R.L. MacInnes,
Secretary.

A.R. Douglas, K.C., Esq.,
Barrister and Solicitor, Etc.,
Royal Bank Building,
383 Richmond Street,
London, Ontario.

156610

May 1,1946.

Memorandum.

Mr. Cory.

Please note letter hereunder from Mr. A.R.Douglas, Barrister of London, Ontario, dated April 13, 1946, regarding the Pottawatomie Indians.

This gentleman, according to my information, has a high standing in the legal profession. He is, I believe, solicitor for the Estate of the late A.G.Chisholm, and presumably, because of that connection, he has been approached by some of the Pottawatomie Indians to act for them in connection with their claim with which Mr. Chisholm formerly was very active. Mr. Douglas asked for consent under Section 141 ~~to collect moneys~~ to collect retainers from interested Indians. This consent has been given to other interested counsel, as the department has recognized the claim as one which has some substantial possibilities and not merely a proposition through which to exploit the Indians. The department's policy, as I understand it, is not to take direct part in the proceedings, but merely to see, in as far as it can, that the interests of the Indians are protected. The Indians involved are divided into various groups and the position of the department has been that there is no objection to any group engaging the services of a solicitor, on their own initiative, subject to appropriate safeguards.

I should be glad if you would let me have your advice as to the form in which the particular consent asked by Mr. Douglas should be given. In this connection I would refer you to Section 9 of an Agreement between the department and the late Mr. Chisholm, dated August 8,1918, which, it will be noted, restricts collections from the Indians to two assessments of not more than one dollar each. I assume that the question of an Agreement between Mr. Douglas and Mr. Bell is one to be settled between themselves and in which the department would have no part or authority.

A summary of the Pottawatomies' claim is contained

in the Director's memorandum of May 15,1939, tagged hereunder.

Kindly return our file in due course.

Y

T.R.L.MacInnes.
Secretary.

156610-4

Ottawa, May 22, 1946.

Dear Mr. Douglas: Re Pottawatomies.

As requested in your letter of May 16 I enclose herewith copy of Agreement between the Indian Affairs Department and Mr. A.G. Chisholm, dated August 8, 1918.

As it is some time since this Agreement was made, you may have some representations to make regarding its present application. My instructions are, however, that it should form the basis of any new arrangement.

Yours very truly,

T.R.L. MacInnes.

T.R.L.MacInnes,
Secretary.

A.R.Douglas, Esq., K.C.,
Barrister, etc.,
Royal Bank Building,
383 Richmond Street,
London, Ontario.

Mr. Douglas' agreement.

THIS AGREEMENT made this day of A.D. 1946.

B E T W E E N:

THE SUPERINTENDENT GENERAL OF INDIAN AFFAIRS, hereinafter called the "PARTY",

OF THE FIRST PART,

- and -

ASHTON RAY DOUGLAS, of the City of London, in the County of Middlesex, Solicitor, hereinafter called the "PARTY",

OF THE SECOND PART.

WHEREAS the Party of the Second Part is retained by Indians residing in the Province of Ontario claiming to be members (or descendants of members) of the Indians known as stray bands of Pottawatomies of the State of Wisconsin, one of the United States of America, entitled to share in the distribution of funds to the said Pottawatomies by the United States of America.

AND WHEREAS such retainer provided for the professional compensation of the Party of the Second Part.

AND WHEREAS to this date and during the time that the late Andrew Gordon Chisholm, Esq., K.C. was acting for the said Pottawatomies, the Party of the First Part and His Majesty's Government of the Dominion of Canada has lent assistance in furthering the claims of the said Pottawatomies.

AND WHEREAS there is an Agreement between the Party of the Second Part and one Robert C. Bell Jr., an Attorney, residing in the City of Stamford, in the State of Conneticutt, one of the United States of America, with respect to the prosecution of the claim of the said Pottawatomies providing for the sharing of the remuneration to be awarded and other matters.

NOW THEREFORE IT IS AGREED by and between the parties hereto as follows:

1. The Party of the Second Part is recognized by the Party of the First Part as Solicitor for the said Pottawatomies, 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 of America for the said claimants be paid to the Party of the First Part in the right of the Dominion of Canada to be administered for the

exclusive benefit of said claimants, (but subject nevertheless to the provisions of Section 79 of the Indian Act)

3. In the event of the claim of the said Pottawatomies being determined by the Court of Claims of the United States of America and that they are declared entitled so to share in the said fund the said Court of Claims shall be asked to fix the compensation of the said Robert C. Bell Jr. and the Party of the Second Part for their professional services.

4. In the event of the United States of America paying the said Pottawatomies by directing the said fund to be paid to the Dominion of Canada to be administered on behalf of the said Pottawatomies, the share of the costs of the Party of the Second Part shall be paid out of the said funds, if not paid in the United States of America by direction of the said Court of Claims or otherwise.

5. Should the said Pottawatomies recover in the said Court of Claims and the Court direct payments 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 said Department of Indian Affairs, in which event the cheques or warrants for payment will be held till the compensation of the Party of the Second Part is paid and from the said cheque or warrants will be deducted a proportionate amount of the compensation provided always that such compensation has not been otherwise paid.

6. The Party of the First Part only agrees, in any event, to pay to the Party of the Second Part moneys due to him for compensation out of the said funds in the possession or control of the Dominion of Canada which may lawfully be appropriated for that purpose.

7. The Department of Indian Affairs will raise no objection to the levying of an assessment on the said Pottawatomies 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 receiving his compensation whether through the Department of Indian Affairs or otherwise duly account to the Party of the First Part and to his satisfaction for all moneys so collected.

8. The Party of the Second Part agrees at all times and in good faith to

use his best endeavours to see that the Estate of the said Andrew Gordon Chisholm secures a proportionate sum of the compensation awarded as provided by Paragraph 10 of a certain memorandum of agreement between the Party of the First Part and the said Andrew Gordon Chisholm, dated the 8th day of August, 1918.

9. In the event of the death of the Party of the Second Part before the right of the said Pottawatomies 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 to the said Pottawatomies by the Party of the Second Part.

10. The Party of the First Part agrees to recommend to His Excellency, The Governor-General in Council that representations be made to the Government of the United States of America through the proper diplomatic channels asking that the said claim be paid or on the alternative that there be a reference of the same to the Court of Claims of the United States of America for adjudication, and by every proper means on behalf of the Government of the Dominion of Canada to urge that the prayer of the said Pottawatomies be granted.

IN WITNESS WHEREOF the said parties here hereunto set their hands the day and year first above mentioned.

SIGNED, SEALED AND DELIVERED)
In the presence of)

DATED

THE SUPERINTENDENT GENERAL OF
INDIAN AFFAIRS

and

ASHTON RAY DOUGLAS

A G R E E M E N T

DOUGLAS & McCALLUM,
Solicitors, &c.,
LONDON, Ontario.

DOUGLAS & McCALLUM
BARRISTERS, SOLICITORS, ETC.
A.R. DOUGLAS, K.C. J.D. McCALLUM

PHONE METCALF 271-2
CABLE-DOUGLAS-LONDON

ROYAL BANK BUILDING
383 RICHMOND STREET
LONDON, CANADA 10th July, 1946.

R. J. Lamon

T.R.L. MacInnes, Esq.,
Secretary,
Dept. of Indian Affairs Branch,
Parliament Buildings,
OTTAWA, Ontario.

Dear Mr. MacInnes: Re: Your file - 156610

In pursuance of our conversation this afternoon, I shall try to arrange to be in Ottawa on either Tuesday or Wednesday of next week. I have considered the substance of your letter of the 9th of May last and am enclosing herewith a draft of an Agreement which I am prepared to enter into, so far as the Department if concerned.

Looking forward to seeing you next week, I remain

Yours sincerely,

A R Douglas

ARD/JM
Encl.

156610-4

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T R L MACINNES

SECRETARY DEPT OF INDIAN AFFAIRS BRANCH PARLIAMENT BLDGS OTTAWA

RE POTTAWATOMIES COULD YOU SEE ME THURSDAY INSTEAD OF WEDNESDAY

A R DOUGLAS

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Send the following message, subject to the terms on back hereof, which are hereby agreed to

Ottawa, July 16, 1946.

A. R. Douglas, Royal Bank Building, Richmond Street, London, Ontario.

RETEL JULY SIXTEENTH THURSDAY WILL BE SATISFACTORY.

T. R. L. MacInnes.

Charge Indian Affairs
Mines and Resources

FORM 6102

DOUGLAS & McCALLUM

BARRISTERS, SOLICITORS, ETC.

A.R. DOUGLAS, K.C. J.D. McCALLUM

R.J. LAMON

PHONE METCALF 271-2
CABLE-DOUGLAS-LONDON

ROYAL BANK BUILDING
383 RICHMOND STREET
LONDON, CANADA 29th Aug., 1946.

T. R. L. MacInness, Esq.,
Secretary,
The Department of Indian Affairs Branch,
Parliament Buildings,
OTTAWA, Ontario.

Dear Sir:-

Re: Pottawatomies
Your File - 156610

Will you please let us know what disposition has been made with respect to the Agreement which we submitted in our letter of the 10th of July.

Yours truly,

DOUGLAS & McCALLUM,

Per

ARD/DT

, August 31, 1946.

Dear Mr. Douglas:-

I have your letter of August 29 re Pottawatomies.

Our file including the draft agreement is being reviewed by the Departmental solicitor. I shall advise you when I hear from him. In the meantime I am sending you a copy of the Cayuga Award (claims) which I have just received from Washington as we had no copies here. I think you will find it of interest as the claims have points in common.

Yours truly,

T.R.L.M

T.R.L. MacInnes,
Secretary.

A. R. Douglas, Esq., K.C.,
Barrister, Solicitor, Etc.,
London, Ontario.

156610

, August 31, 1946.

MEMORANDUM

MR. CORY

Further to our recent conversation I am enclosing herewith our file re the Pottawatomie claim.

Please note draft agreement tagged, submitted by Mr. A.H. Douglas of London which is intended to legalize transactions between him and prospective Indian clients having regard to the provisions of Section 141 of the Indian Act. This agreement is based on that formerly entered into by the late Mr. A.G. Chisholm, also tagged hereunder. This is in line with your memorandum of May 6 tagged hereunder. Mr. Douglas called to see me on this matter on May 18. You were out of the city at that time, but I explained to Mr. Douglas that all we would be prepared to do in any event would be to allow him the same recognition as might be granted to any other solicitor acting on behalf of any group of Pottawatomie Indians and that insofar as the Department is concerned, the effect would be simply to grant him permission to deal with his clients under Section 141 aforesaid and not to make him a representative of the Department in any way, or to give him special recognition as representing the Pottawatomie Indians as a whole as the late Mr. Chisholm claimed to do. Thus the said term "the said Pottawatomies" in paragraph numbered 1 of the terms of the agreement would apply only to those individual Indians who choose to retain Mr. Douglas as stated in the first line of the preamble. Mr. Douglas said that he was quite satisfied with that understanding. I may add that to the best of my opinion, Mr. Douglas has a high standing in the League of Profession in London and it is more or less natural that he has become interested in this case as he happens to be the solicitor for the estate of A.G. Chisolm. From the administration viewpoint of this Branch, there would be no objection to permit Mr. Douglas to proceed in the matter with the understanding, of course, that the Department has not come a party in any way to the litigation which is entirely within the jurisdiction of the U.S. courts. This condition involves changes in the agreement and I suggest deletion of Section 10. Please return out file in due course.

FR.M

T.R.L. MacInnes.

Mr. MacInnes.

Herewith is a suggested redraft of the agreement with Douglas re Pottawatomies.

W.M.Cory.
11-9-46.

156610 V.7

, September 13, 1946.

MEMORANDUM

MR. CORY

I am returning herewith your redraft of proposed agreement with Mr. A.R. Douglas on the Pottawatomie matter, which is satisfactory as far as this office is concerned.

With our file No. 156610, Volume 7, I am sending our closed file also, 156610, Volume 1, and would refer you to letter from D.M.J. of September 18, 1918, wherewith was forwarded draft agreement, presumably prepared by Mr. Chisholm and sent direct to Justice. This, subject to modifications agreed upon by Justice and Indian Affairs resulted in the agreement of August 8,1918.

T.R.L.

T.R.L. MacInnes,
Secretary.

156610 4

L DIVISION

CANADA
DEPARTMENT
OF
MINES AND RESOURCES
CENTRAL ADMINISTRATIVE OFFICES

OTTAWA 19th September, 1946.

MEMORANDUM:

Mr. MacInnes.

Herewith please find file 156610, vol. 7, with regard to the Pottawatomie claim.

I have discussed my proposed draft agreement with Mr. Jackson as per my memorandum of the 17th instant, attached hereto, and Mr. Jackson has expressed himself as being satisfied with this draft with the exception of clauses 3, 4 and 5. He feels there is a duplication in these sections. He further expressed himself as not wanting to finally approve of this agreement until we have a list of the Pottawatomie Indians who have retained Mr. Douglas. He feels that we should have this list so that there could be no possible confusion if at a later date some other lawyer claims he is acting on behalf of some of the Pottawatomies and demands a similar agreement.

It will, therefore, be necessary to obtain from Mr. Douglas a list of the individual Indians who have retained him.

I am forwarding, in the meantime, my suggested draft of the proposed agreement with Mr. Douglas but would suggest that this be not sent forward to Mr. Douglas until Mr. Jackson has signified his approval thereto.

Solicitor.

LEGAL DIVISION

CANADA
DEPARTMENT
OF
MINES AND RESOURCES
GENERAL ADMINISTRATIVE OFFICES

OTTAWA 17th September, 1946.

MEMORANDUM:

Mr. Jackson.

Herewith please find Indian Affairs Branch file No.186610 vol. 7, dealing with the claim of the Pottawatomies and would direct your attention to the letter of the 13th April last from the law firm of Douglas and McCallum to Mr. MacInnes regarding a proposed agreement herein, similar to the old Chisholm agreement. The agreement with Mr. Chisholm, you will recall, was originally drafted by him and was sent direct to the Department of Justice. Mr. E. L. Newcombe, the then Deputy Minister of Justice, made certain modifications which resulted in the agreement which was subsequently executed with Mr. Chisholm on the 8th day of August, 1918.

You will recall that I discussed the letter from Messrs. Douglas and McCallum with you and at that time you advised that you were agreeable to granting Mr. Douglas the same privileges as Mr. Chisholm enjoyed under the agreement referred to - see my memorandum of the 6th May to Mr. MacInnes, hereunder and marked.

Mr. Douglas has now submitted a suggested agreement which is also hereunder and marked. I have examined this agreement and have redrafted it in accordance with the old Chisholm agreement. My draft is herewith for your consideration and approval. It will be noted that the usual reference to the Superintendent General of Indian Affairs, as suggested by Mr. Douglas, has been changed to the Minister of Mines and Resources. The first recital has been changed very slightly. I suggest the word "certain " in the first line.

The second recital is unobjectionable.

The third recital, in my opinion, should come out and has been left out in my draft.

The fourth recital I incorporated in my draft as being unobjectionable.

.....

Clause 1 is satisfactory.

Clause 2 is satisfactory with the deletion of the words "but subject nevertheless to the provisions of section ..... of the Indian Act". These words, in my opinion, are meaningless as all Indian monies must be dealt with in accordance with the Indian Act - see Section 90 of this said Act.

Clause 3 is unobjectionable.

Clause 4 has been struck out of Mr. Douglas' draft and clauses 4 and 5 of the old Chisholm agreement substituted therefor.

Clause 6 has been taken out of Mr. Douglas' agreement and the wording of the Chisholm agreement adopted.

Clause 7 has been changed to the wording of the Chisholm agreement.

Clause 8 is unobjectionable and is similar to the Chisholm agreement wording.

Clause 9 is similar to the Chisholm agreement and clause10 is deleted. The wording of Mr. Douglas' suggested clause 10 is similar to the old Chisholm agreement but in working out the old agreement action was taken through diplomatic channels as provided in this section but it was turned down by the United States Courts.

With this precedent it would be useless to incorporate a similar clause in Mr. Douglas' agreement.

If my suggested draft agreement meets with your approval I will forward it to Indian Affairs Branch with instructions to send it forward to Mr. Douglas for his perusal and execution.

Solicitor.

ADDRESS REPLY TO THE SECRETARY, INDIAN AFFAIRS BRANCH

CANADA
DEPARTMENT OF MINES AND RESOURCES
INDIAN AFFAIRS BRANCH

16 1-14

PLEASE QUOTE FILE 156610-7

MEMORANDUM

OTTAWA, September 25, 1946.

MR. CORY

I have to acknowledge receipt of your memorandum of September 19 returning our file 156610 together with your draft of the agreement with Mr. Douglas regarding the Pottawatomie claim.

Your draft is quite satisfactory for the purposes of this Branch. Your clauses 3, 4 and 5 seem necessary to me, in order to provide a clear understanding of what the procedure is to be in the event of the claim being allowed. According to my understanding clause 3 covers the case where payment of the claim and all professional services, including U.S. and Canadian counsel, would be made in the U.S. without reference to this Department, whereas clauses 4 and 5 cover the case where the administration of funds including payment of Canadian counsel would be transferred or handed over to the Canadian Government and presumably this Department, assuming that the Court of Claims or other U.S. authority concerned will be willing or competent to deal with the matter in that way. On this basis I do not think there is any duplication; possibly the distinction between the two contingencies might be stated more specifically. It is noted that similar conditions were approved by the Department of Justice in the former agreement with Mr. Chisholm.

It is noted that a list of the retainers would be required. My recollection is that Mr. Chisholm furnished such a list, although I cannot locate it now. Mr. Douglas could hardly furnish a complete list in advance as the list would be growing as he goes along, and furthermore the agreement should be entered into before he accepts retainers. It is suggested therefore that a clause be added making it a condition of the agreement that such a list be furnished and kept up to date by the party of the second part; this might be added to clause 7.

I am returning your memorandum of September 17 to Mr. Jackson and your draft herewith. I shall be obliged if you will return the draft when finally approved.

I may add that I have discussed this matter with the Director.

T.R.L. MacInnes

T.R.L. MacInnes,
Secretary.

Mr. Scott,

I think a clause should be added providing for part of 2nd part providing names of those Indians who retain them. This list should be issued to every six(?) months.

Also the words "and Pottawatomies" in para 1., should be made more clear. Does it mean. "the certain Indians" retained by them.

This Agreement made this day of A.D. 1946.

BETWEEN

His Majesty the King, in right of Canada, represented by the Minister of Mines and Resources, hereinafter called the party of the first part,

and

Ashton Ray Douglas, of the City of London, in the County of Middlesex, Solicitor, hereinafter called the party of the second part.

WHEREAS the Party of the Second Part is retained by certain Indians residing in the Province of Ontario, claiming to be members (or descendants of members) of the Indians known as stray bands of Pottawatomies of the State of Wisconsin, one of the United States of America, entitled to share in the distribution of funds to the said Pottawatomies by the United States of America.

AND WHEREAS such retainer provided for the professional compensation of the Party of the Second Part.

AND WHEREAS the Party of the First Part has given his consent, expressed in writing, to prosecute the claim of the said Indians as provided by Section 141 of the Indian Act.

AND WHEREAS there is an agreement between the Party of the Second Part and one, Robert C. Bell, Jr., an Attorney, residing in the City of Stamford, in the State of Connecticut, one of the United States of America, with respect to the prosecution of the claim of the said Pottawatomies providing for the sharing of the remuneration to be awarded and other matters.

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

1. The Party of the Second Part is recognized by the Party of the First Part as Solicitor for the said Pottawatomies, 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 of America for the said claimants be paid to the Party of the First Part in the right of the Dominion of Canada to be administered for the exclusive benefit of said claimants.

3. In the event of the claim of the said Pottawatomies being determined by the Court of Claims of the United States of America and that they are declared entitled so to share in the said fund the said Court of Claims shall be asked to fix the compensation of the said Robert C. Bell, Jr., and the Party of the Second Part for their professional services.

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 received.

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 of each claimant entitled thereto personally, the Party of the Second Part will endeavour to arrange for distribution to said claimants by the Director of Indian Affairs at Ottawa, in which event the cheques or warrants for payment will be held till the 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 make payments as above determined ~~to the Party of the Second Part for his~~ file legal services aforesaid, only out of any moneys belonging to said fund, in his possession or control and which may lawfully be appropriated to that purpose.

8. The Party of the First Part 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.

9. The Party of the Second Part agrees at all times and in good faith to use his best endeavours to see that the Estate of the said Andrew Gordon Chisholm secures a proportionate sum of the compensation awarded as provided by Paragraph 10 of a certain memorandum of agreement between the Party of the First Part and the said Andrew Gordon Chisholm, dated the 8th day of August, 1918.

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.

SIGNED, SEALED AND DELIVERED)
In the presence of)

This Agreement made this day of

A.D. 1946

BETWEEN

His Majesty the King, in right of Canada, represented by the Minister of Mines and Resources, hereinafter called the party of the first part,

and

Ashton Ray Douglas, of the City of London, in the County of Middlesex, Solicitor, hereinafter called the party of the second part.

WHEREAS the Party of the Second Part is retained by certain Indians residing in the Province of Ontario, claiming to be members (or descendants of members) of the Indians known as stray bands of Pottawatomies of the State of Wisconsin, one of the United States of America, who claim to be entitled to share in the distribution of funds to the said Pottawatomies by the United States of America.

AND WHEREAS such retainer provided for the professional compensation of the Party of the Second Part.

AND WHEREAS the Party of the First Part has given his consent, expressed in writing, to prosecute the claim of the said Indians as provided by Section 141 of the Indian Act.

AND WHEREAS there is an agreement between the Party of the Second Part and one, Robert C. Bell, Jr., an Attorney, residing in the City of Stamford, in the State of Connecticut, one of the United States of America, with respect to the prosecution of the claim of the said Pottawatomies providing for the sharing of the remuneration to be awarded and other matters.

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

1. The Party of the Second Part is recognized by the Party of the First Part as Solicitor for the said Pottawatomies, 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 of America for the said claimants be paid to the Party of the First Part in the right of the Dominion of Canada to be administered for the exclusive benefit of said claimants.

3. In the event of the claim of the said Pottawatomies being determined by the Court of Claims of the United States of America and that they are declared entitled so to share in the said fund the said Court of Claims shall be asked to fix the compensation of the said Robert C. Bell, Jr., and the Party of the Second Part for their professional services.

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 received.

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 of each claimant entitled thereto personally, the Party of the Second Part will endeavour to arrange for distribution to said claimants by the Director of Indian Affairs at Ottawa, in which event the cheques or warrants for payment will be held till the 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 make payments as above determined for the legal services aforesaid, only out of monies belonging to said fund in his possession or control and which may lawfully be appropriated to that purpose. No payments for legal services as aforesaid shall be made, however, unless and until the Party of the Second Part furnishes the Party of the First Part with a list of names of those Indians who retain the Party of the Second Part as provided herein. Such list shall be attached hereto and shall form part of this agreement. The Party of the Second Part shall keep this list accurate and up to date during the currency of this agreement.

8. The Party of the First Part 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.

9. The Party of the Second Part agrees at all times and in good faith to use his best endeavours to see that the Estate of the said Andrew Gordon Chisholm secures a proportionate sum of the compensation awarded as provided by Paragraph 10 of a certain memorandum of agreement between the Party of the First Part and the said Andrew Gordon Chisholm, dated the 8th day of August, 1918.

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.

SIGNED, SEALED AND DELIVERED)
In the presence of)

This Agreement made this day of

A.D. 1946

BETWEEN

His Majesty the King, in right of Canada, represented by the Minister of Mines and Resources, hereinafter called the party of the first part,

and

Ashton Ray Douglas, of the City of London, in the County of Middlesex, Solicitor, hereinafter called the party of the second part.

WHEREAS the Party of the Second Part is retained by certain Indians residing in the Province of Ontario, claiming to be members (or descendants of members) of the Indians known as stray bands of Pottawatomies of the State of Wisconsin, one of the United States of America, who claim to be entitled to share in the distribution of funds to the said Pottawatomies by the United States of America.

AND WHEREAS such retainer provided for the professional compensation of the Party of the Second Part.

AND WHEREAS the Party of the First Part has given his consent, expressed in writing, to prosecute the claim of the said Indians as provided by Section 141 of the Indian Act.

AND WHEREAS there is an agreement between the Party of the Second Part and one, Robert C. Bell, Jr., an Attorney, residing in the City of Stamford, in the State of Connecticut, one of the United States of America, with respect to the prosecution of the claim of the said Pottawatomies providing for the sharing of the remuneration to be awarded and other matters.

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

1. The Party of the Second Part is recognized by the Party of the First Part as Solicitor for the said Pottawatomies, 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 of America for the said claimants be paid to the Party of the First Part in the right of the Dominion of Canada to be administered for the exclusive benefit of said claimants.

3. In the event of the claim of the said Pottawatomies being determined by the Court of Claims of the United States of America and that they are declared entitled so to share in the said fund the said Court of Claims shall be asked to fix the compensation of the said Robert C. Bell, Jr., and the Party of the Second Part for their professional services.

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 received.

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 of each claimant entitled thereto personally, the Party of the Second Part will endeavour to arrange for distribution to said claimants by the Director of Indian Affairs at Ottawa, in which event the cheques or warrants for payment will be held till the 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 make payments as above determined for the legal services aforesaid, only out of monies belonging to said fund in his possession or control and which may lawfully be appropriated to that purpose. No payments for legal services as aforesaid shall be made, however, unless and until the Party of the Second Part furnishes the Party of the First Part with a list of names of those Indians who retain the Party of the Second Part as provided herein. Such list shall be attached hereto and shall form part of this agreement. The Party of the Second Part shall keep this list accurate and up to date during the currency of this agreement.

8. The Party of the First Part 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.

9. The Party of the Second Part agrees at all times and in good faith to use his best endeavours to see that the Estate of the said Andrew Gordon Chisholm secures a proportionate sum of the compensation awarded as provided by Paragraph 10 of a certain memorandum of agreement between the Party of the First Part and the said Andrew Gordon Chisholm, dated the 8th day of August, 1916.

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.

SIGNED, SEALED AND DELIVERED)
In the presence of)

This Agreement made this day of

A.D. 1966

BETWEEN

His Majesty the King, in right of Canada, represented by the Minister of Mines and Resources, hereinafter called the party of the first part,

and

Ashton Ray Douglas, of the City of London, in the County of Middlesex, Solicitor, hereinafter called the party of the second part.

WHEREAS the Party of the Second Part is retained by certain Indians residing in the Province of Ontario, claiming to be members (or descendants of members) of the Indians known as stray bands of Pottawatomies of the State of Wisconsin, one of the United States of America, who claim to be entitled to share in the distribution of funds to the said Pottawatomies by the United States of America.

AND WHEREAS such retainer provided for the professional compensation of the Party of the Second Part.

AND WHEREAS the Party of the First Part has given his consent, expressed in writing, to prosecute the claim of the said Indians as provided by Section 141 of the Indian Act.

AND WHEREAS there is an agreement between the Party of the Second Part and one, Robert C. Bell, Jr., an Attorney, residing in the City of Stamford, in the State of Connecticut, one of the United States of America, with respect to the prosecution of the claim of the said Pottawatomies providing for the sharing of the remuneration to be awarded and other matters.

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3. In the event of the claim of the said Pottawatomies being determined by the Court of Claims of the United States of America and that they are declared entitled so to share in the said fund the said Court of Claims shall be asked to fix the compensation of the said Robert C. Bell, Jr., and the Party of the Second Part for their professional services.

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 received.

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6. Should the said claimants recover in the said Court of Claims and the Court direct payment of a proportionate share of each claimant entitled thereto personally, the Party of the Second Part will endeavour to arrange for distribution to said claimants by the Director of Indian Affairs at Ottawa, in which event the cheques or warrants for payment will be held till the 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.

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8. The Party of the First Part 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.

9. The Party of the Second Part agrees at all times and in good faith to use his best endeavours to see that the Estate of the said Andrew Gordon Chisholm secures a proportionate sum of the compensation awarded as provided by Paragraph 10 of a certain memorandum of agreement between the Party of the First Part and the said Andrew Gordon Chisholm, dated the 8th day of August, 1918.

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.

SIGNED, SEALED AND DELIVERED
In the presence of

136610-9

LEGAL DIVISION

CANADA
DEPARTMENT
OF
MINES AND RESOURCES
GENERAL ADMINISTRATIVE OFFICES

OTTAWA 2nd October, 1946.

MEMORANDUM:

Mr. McInnes.

Attached hereto please find my original draft agreement in re Pottawatomies, together with my memorandum of the 17th ultimo to Mr. Jackson, together with your memorandum of the 25th idem to me.

It will be noted that Mr. Jackson suggests that the first recital should be clarified and that a clause should be added providing for the party of the second part furnishing the names of those Indians who retain them. Mr. Jackson's suggestion with regard to this list has been embodied in Section 7 of a new draft agreement herein. If this meets with your approval I think that it might now be in order to forward this agreement to Mr. Douglas.

Solicitor.

156610-4

, October 4, 1946.

Dear Mr. Douglas:-

I received your letter of September 4 with further reference to the Pottawatomie claim.

I am enclosing herewith a revised draft of agreement which I have just received from the Legal Branch.

You will note that it shows a number of changes from your draft by way of deletion, additions and divers alterations.

It is thought that the provision for a list of retainers as added to clause 7 is desirable, both from your viewpoint and that of the Department, as it will remove any doubt as to who represents whom. On this point I might mention that in the past some confusion arose when certain solicitors claimed to represent individual Indians who already had retained Mr. Chisolm.

With reference to the deletion of clause 10 of your draft, it is stated that while this clause was similar to that contained in the Chisolm agreement, representations were made through diplomatic channels, but that action was refused by the U.S. authorities and that it would not be in order for the Canadian Government to again present the claim which had been definitely rejected and which moreover had at one time been included in the Schedule of Claims to be heard by the Pecuniary Claims Commission but withdrawn by mutual agreement by both governments. These considerations of course in no way bar or prejudice private action by the Indians concerned or necessary consent thereto by this Department under the Indian Act, but do in effect under diplomatic practice estop the Government from further direct action.

If the draft is acceptable to you, please advise me and it will be put in final form for completion and signature.

Yours truly,

T.R.L. MacInnes,
Secretary.

A.R. Douglas, Esq., K.C.,
Barrister, Solicitor, Etc.,
London, Ontario.

156610-4

, October 4, 1946.

Dear Mr. Douglas:-

I am enclosing herewith a copy of "Public Law 726 - 79th Congress".

As we apprehended the Bill was finally passed with the restrictive provision of "identifiable group of American Indians residing within the territorial limits of the United States or Alaska." The only way I can think of in which the Canadian Pottawatomies could get under that wire, would be if they could be accepted as the descendants of such an "identifiable group". I do not as a matter of fact from my talks with United States authorities on the subject think there is much possibility in this and I merely bring the point up as a personal suggestion for your consideration.

Yours truly,

T.R.L.M.

T.R.L. MacInnes,
Secretary.

A.R. Douglas, Esq., K.C.,
Barrister, Solicitor, Etc.,
London, Ontario.

TRLM/ITH

156610-4

, October 4, 1946.

MEMORANDUM

MR. CORY

I have to acknowledge receipt of your memorandum of October 2 with revised draft of agreement with Mr. Douglas re Pottawatomies. This is satisfactory and a copy is being forwarded to Mr. Douglas with the request that he advise us if it is acceptable to him and if so it will be drawn in final form for completion and signature.

T.R.L.M.

T.R.L. MacInnes,
Secretary.

TRLM/ITH

156610-4

719 YONGE STREET
TORONTO

TELEPHONES:
BUSINESS, RANDOLPH 1163
RESIDENCE, KINGSDALE 0557

October 15,
1 9 4 61

Mr. R. J. Hoey,
Director- Dept. Mines & Resources,
Indian Affairs Branch,
O T T A W A.

Dear Mr. Hoey:

I have had sent to me this morning a copy of an Act Public Law 726/79th Congress - Chapter 959/2nd Session setting up a Commission to deal with claims of Indians against the United States of America.

As you are aware, the Pottowattamies have endeavoured for years to have their claim to an admitted amount of $2,750,000. in the hands of the United States Treasury under the several Treaties relating to the lands in Wisconsin, without any success. Attempts were made while the Commission for the settlement of pecuniary claims arising between the British Government and the United States Government to have this claim included, but the United States faired so badly in the results of the arbitration, particularly the Cayugau claims, that they do not desire to get another dressing such as they got from the late Christopher Robinson and consequently refused to admit any further claims. This Commission having been set up, I think the Government should now endeavour to conclude the Convention similar to the 1908 one, and have this claim refered to the new Commission.

I should like to discuss this matter with you and with Mr. Glen and should be glad to know when Mr. Glen will be in town.

Yours faithfully,

W. Murdoch

WM/LL

156610-4 (Secy.)

Ottawa, Ontario.
October 22, 1946.

W. Murdoch, Esq.,
719 Yonge Street,
Toronto, Ontario.

EXD.
A.

Dear Mr. Murdoch:

This will acknowledge your letter of October 15, regarding the Pottawatomie claim.

It is noted that Public Law 726/79th Congress - Chapter 959/2nd Session setting up a Commission to deal with claims of Indians, to which you refer is restricted in application to quote:"any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska." According to my understanding this would bar the inclusion of the claim of the Canadian Pottawatomies for consideration by the new Indian Claims Commission.

The only way as far as I am aware in which the interested Pottawatomies could proceed further with their claim would be through the United States Courts which, as doubtless you know, would require enabling legislation by Congress.

Some of the Pottawatomies have engaged counsel with that end in view. There have been several of these groups with their separate counsel acting independently.

Further information will be given to you gladly on the subject if you wish to call at the Branch.

Director.

T.R.L.M.

I-J-6610-4

719 YONGE STREET
TORONTO

TELEPHONES:
BUSINESS. RANDOLPH 1163
RESIDENCE. KINGSDALE 0857

Sept 11.46

October 25th,
1946.

Mr. R. J. Hoey,
Director - Dept. Mines & Resources,
Indian Affairs Branch,
O T T A W A.

Dear Mr. Hoey:

I have your letter of the 22nd instant, which is not at all satisfactory.

The principle of the liability of the government to seek and recover the amount claimed by the Pottawatomies under the Treaties with the United States government was settled in the Cayugau arbitration under the Convention for the settlement of pecuniary claims. One of the complaints of the whole body of intelligent Indians is that the Government of Great Britain recovered a substantial amount for the Cayugau, but Canada refused in similar circumstances to recover the amount admittedly due to the Canadian Pottawatomies. If the Department is not prepared to have this claim enforced, I am afraid it will be necessary to have the matter aired in Parliament. I should prefer to avoid such, of course, but the amount of money which has been extracted from members of that Band on the pretext of enforcing the claim in the court of claims at Washington is such that an end should be put to people going around the country soliciting money for such a purpose. The amount of money which Warner and Chisholm have extracted from the Indians is disgraceful, while it is impossible for the contending solicitors to come to any agreement.

Two years ago I had a talk confidentially with an official of the United States Government and learned that the Government would on no account deal with any member of the Band or permit a suit to be brought in the court of claims, but that if the claimswere pressed by the Canadian Government there would be no answer, in view of the Cayugaus case, to the claim being dealt with in some way. Strangely enough some years ago the Canadian Government trumped up the claim of the Pottawatomies in an attempt to saw it off against a claim which was being made by the United States Government against the Canadian Government.

I think the matter should be discussed with Mr. Glen, and I shall be glad to know when this can be done.

Yours faithfully,
W Murdoch

WM/LL

156610-4

DEPARTMENT OF EXTERNAL AFFAIRS CANADA

REPLY TO BE ADDRESSED TO:
THE UNDER-SECRETARY OF STATE
FOR EXTERNAL AFFAIRS
OTTAWA

Ottawa, October 29, 1946.

Dear Mr. MacInnes,

I assume from your telephone conversation of yesterday with Mr. Thibault of this Department concerning certain arbitration conventions which are or have been applicable between Canada and the United States of America that the conventions in question are -

(a) The Arbitration Convention between His Britannic Majesty and the United States of America signed at Washington on April 4th, 1908; and

(b) The Agreement for Submission to Arbitration of Pecuniary Claims between Great Britain and the United States of America signed at Washington on August 18th, 1910.

2. As regards the above Arbitration Convention of 1908, it was given binding force between the two signatory parties by an Exchange of Notes dated April 4th, 1908. Ratifications of the Convention were later exchanged at Washington, on June 4th, 1908.

The Convention was renewed for a period of five years by an Agreement signed at Washington on the 31st May, 1913; for another period of five years, by a Convention signed at Washington on June 3rd, 1918; and still further for five years by an Agreement signed at Washington on the 23rd June 1923. No renewal of the Convention was made in 1928.

Mr. T.R.L. MacInnes,
Secretary,
Indian Affairs Branch,
Mines and Resources Dept.,
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Ottawa, Ont.

Department of Mines & Resources
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The Convention may therefore be considered as having expired in that year.

By the Notes exchanged on April 4, 1908, the Arbitration Convention of 1908 was interpreted as excluding "existing pecuniary claims" as well as "the negotiation and conclusion of the Special Treaty recently recommended by the International Waterways Commission or any such Treaty for the settlement of questions connected with boundary waters".

3. As regards the above Pecuniary Claims Agreement of 1910, its conclusion was approved by Minute of Council, P.C. 1449 dated at Ottawa July 6, 1910 and Minute of Council, P.C. 1643 dated at Ottawa August 12, 1910. Ratification was advised by the Senate of the United States of America, July 19, 1911.

Article I of the Agreement states that "either party may, at any time within four months from the date of the confirmation of this Agreement, present to the other party any claims which it desires to submit to arbitration. The claims so presented shall, if agreed upon by both parties, unless reserved as hereinafter provided, be submitted to arbitration in accordance with the provisions of the Agreement. Either party shall have the right to reserve for further examination any claims so presented for inclusion in the Schedules; and any claims so reserved shall not be prejudiced or barred by reason of anything contained in this Agreement".

Article 2 provides that "all claims outstanding at the time of signature, and originating in circumstances anterior to that date shall thereafter be considered as finally barred".

The first schedule of claims (together with its terms) to be submitted for arbitration in accordance with the provisions of the Agreement was signed at Washington, July 6, 1911. In this schedule reference is made to the Cayuga Indians whom you mentioned as illustration.

The Agreement and its accompanying schedule were subsequently confirmed by an Exchange of Notes dated at Washington April 26, 1912, as approved by Minute of Council, P.C.207 dated at Ottawa January 31, 1912.

4. The tribunals by which disputes are to be settled under the Arbitration Convention of 1908 and the Pecuniary Claims Agreement of 1910 are not the same.

While the 1908 Convention provided for differences to be submitted to the Permanent Court of Arbitration established by the Hague Convention of July 29, 1899, the 1910 Agreement laid down that they should be referred to an arbitral tribunal constituted in accordance with Articles 59 and 87 of the Convention for the Pacific Settlement of International Disputes of October 18, 1907, which read as follows:

"Article 87. Each of the parties in dispute appoints an arbitrator. The two arbitrators thus selected choose an umpire. If they do not agree on this point, each of them proposes two candidates taken from the general list of the members of the Permanent Court, exclusive of the members appointed by either of the parties and not being nationals of either of them; which of the candidates thus proposed shall be the umpire is determined by lot.

"The umpire presides over the tribunal, which gives its decision by a majority of votes."

"Article 59. Should one of the Arbitrators either die, retire, or be unable for any reason whatever to discharge his functions, the same procedure is followed for filling the vacancy as was followed for appointing him."

5. The texts of the Convention of 1908 and the Agreement of 1910 will be found in the compilation entitled "Treaties and Agreements affecting Canada in force between His Majesty and the United States of America (1814-1925) issued in 1927 by the King's Printer at Ottawa.

Yours sincerely,

for Under-Secretary of State for External Affairs.

AMERICAN AND BRITISH CLAIMS ARBITRATION TRIBUNAL

AWARD
CAYUGA INDIANS
Claim No. 6

Arbitrators:
Alfred Nerincx,
Sir Charles Fitzpatrick,
Roscoe Pound.

British Memorial
filed December 4, 1912.
American Answer
January 1, 1914.
British Reply
filed August 30, 1914.
Hearing of the case
November 27 to
December 23, 1925.
Counsel:
Great Britain
Christopher C. Robinson.
United States
Fred K. Nielsen.
Dallas S. Townsend.
Charles F. Murphy.

This is a claim of Great Britain, on behalf of the Cayuga Indians in Canada, against the United States by virtue of certain treaties between the State of New York and the Cayuga Nation in 1789, 1790, and 1795, and the Treaty of 1814 between the United States and Great Britain, known as the Treaty of Ghent.

At the time of the American Revolution, the Cayugas, a tribe of the Six Nations or Iroquois, occupied that part of Central New York lying about Cayuga Lake. During the Revolution, the Cayugas took the side of Great Britain, and as a result their territory was invaded and laid waste by Continental

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troops. Thereupon the greater part of the tribe removed to Buffalo Creek, and after 1784 a considerable portion removed thence to the Grand River in Canada. By 1790 the majority of the tribe were probably in Canada. In 1789 the State of New York entered into a treaty with the Cayugas who remained at Cayuga Lake, recognized as the Cayuga Nation, whereby the latter ceded the lands formerly occupied by the Tribe to New York and the latter covenanted to pay an annuity of $500 to the nation. In this treaty a reservation at Cayuga Lake was provided for. As there was much dissatisfaction with this treaty on the part of the Indians, who asserted that they were not properly represented, it was confirmed by a subsequent treaty in 1790 and finally by one in 1795, executed by the principal chiefs and warriors both from Buffalo Creek and from the Grand River. By the terms of the latter treaty, in which, as we hold, the convenants of the prior treaties were merged, the State convenanted, among other things, with the " Cayuga Nation " to pay to the said " Cayuga Nation " eighteen hundred dollars a year forever thereafter, at Canandaigua, in Ontario County, the money to be paid to " the Agent of Indian Affairs under the United States for the time being, residing within this State " and, if there was no such agent, then to a person to be appointed by the Governor. Such agent or person appointed by the Governor was to pay the money to the " Cayuga Nation," taking the receipt of the nation and also a receipt on the counterpart of the treaty, left in the possession of the Indians, according to a prescribed form. By this treaty the reservation provided for in the Treaty of 1789 was sold to the State.

There are receipts upon the counterpart of the Treaty of 1795 down to and including 1809, and these receipts and the receipt for 1810, retained by New York, show that the only persons who can be identified among those to whom the money was paid, and the only persons who can be shown to have held prominent positions in the tribe, were then living in Canada. In 1811 an entire

change appears. From that time a new set of names, of a different character, appear on the receipts retained by New York. From that time there are no receipts upon the counterpart. Since that time, it is conceded, no part of the moneys paid under the treaty has come in any way to the Cayugas in Canada, but the whole has been paid to Cayugas in the United States, and since 1829 in accordance with treaties in which the Canadian Cayugas had no part or in accordance with legislation of New York. The claim is: (1) That the Cayugas in Canada, who assert that they have kept up their tribal organization and undoubtedly have included in their number the principal personages of the tribe according to its original organization, are the "Cayuga Nation," covenantees in the Treaty of 1795, and that as such they, or Great Britian on their behalf, should receive the whole amount of the annuity from 1810 to the present. In this connection it is argued that the covenant could only be discharged by payment to those in possession of the counterpart of the treaty and indorsement of a receipt thereon, as in the treaty prescribed. (2) In the alternative, that the Canadian Cayugas, as a part of the posterity of the original nation, and numerically the greater part, have a proportion of the annuity for the future and a proportion of the payments since 1810, to be ascertained by reference to the relative numbers in the United States and in Canada for the time being.

As the occasion of the change that took place in and after 1811 was the division of the tribe at the time of the War of 1812, those in the United States and those in Canada taking the part of the United States and of Great Britain, respectively, Great Britain invokes Article IX of the Treaty of Ghent, by which the United States agreed to restore to the Indians with whom that Government had been at war "all the possessions, rights, and privileges which they may have enjoyed or been entitled to" in 1811 before the war.

Great Britain can not maintain a claim as for the Cayuga Nation for the whole annuity since 1810 and for the future. In order to maintain such a claim, it would be necessary to establish the British nationality of the obligee at the date at which the claim arose. The settled doctrine on this point is well stated by Little, Commissioner, in Abbiatti's Case, 3 Moore, International Arbitrations, 2347–8. See also Mexican Claims, 2 Id. 1353; Dimond's Case, 3 Id. 2386–8. The obligee was the "Cayuga Nation," an Indian tribe. Such a tribe is not a legal unit of international law. The American Indians have never been so regarded. 1 Hyde, International Law, § 10. From the time of the discovery of America the Indian tribes have been treated as under the exclusive protection of the power which by discovery or conquest or cession held the land which they occupied. Wheaton, International Law, 838; 3 Kent, Commentaries, 386; Breaux *v.* Jones, 4 La. Ann. 141. They have been said to be "domestic, dependent nations" (Marshall, C. J., in Cherokee Nation *v.* Georgia, 5 Pet. 1, 17), or "States in a certain domestic sense and for certain municipal purposes" (Clifford, J., in Holden *v.* Joy, 17 Wall. 211, 242). The power which had sovereignty over the land has always been held the sole judge of its relations with the tribes within its domain. The rights in this respect acquired by discovery have been held exclusive. "No other power could interpose between them." (Marshall, C. J., in Johnson *v.* McIntosh, 8 Wheat. 543, 578.) So far as an Indian Tribe exists as a legal unit, it is by virtue of the domestic law of the sovereign nation within whose territory the tribe occupies the land, and so far only as that law recognizes it. Before the Revolution all the lands of the Six Nations in New York had been put under the Crown as "appendant to the Colony of New York," and that colony had dealt with those tribes exclusively as under its protection. (Baldwin, J., in Cherokee Nation *v.* Georgia, 5 Pet. 1, 34–35.) New York, not the United States, succeeded to the British Crown in this respect at

the Revolution. Hence the "Cayuga Nation," with which the State of New York contracted in 1789, 1790, and 1795, so far as it was a legal unit, was a legal unit of New York law.

If the matter rested here, we should have to say that the Legislature of New York was competent to decide, as it did in the Treaties of 1829 and 1831, what constituted the "Nation," for the purposes of the prior treaties made by the State with an entity in a domestic sense of its own law and existing only for its own municipal purposes.

It does not follow, however, that Great Britain may not maintain a claim on behalf of the Cayuga Indians in Canada. These Indians are British Nationals. They have been settled in Canada, under the protection of Great Britain, and subsequently, of the Dominion of Canada, since the end of the eighteenth or early years of the nineteenth century. There was no definite political constitution of the Cayuga Nation, and it is impossible to say with legal precision just what would constitute a migration of the nation as a legal and political entity. But as an entity of New York law, it could not migrate. "Nationality is the status of a person in relation to the tie binding such person to a particular sovereign nation." Parker, Umpire, in Administrative Decision No. 5, Mixed Claims Commission, United States and Germany, October 31, 1924, 25 Am. Journ. Int. Law, 612, 625. The Cayuga Nation, as it existed as a legal unit by New York law, could not change its national character, without any concurrence by New York, and become, while preserving its identity as the covenantee in the treaty, a legal unit of and by British law. The legal character and status of the New York entity with which New York contracted was a matter of New York law. Moreover, the situation of the Cayuga Nation is very different from that of an ordinary corporation, which has no small margin of self-determination. Such a legal unit can not change its national character by its own act. See North and South American Construction Company's Case, 3 Moore, International Ar-

bitrations, 2318, 2319. Even less is such a thing possible in the case of an Indian tribe, whose dependent condition is as well settled as its legal position is anomalous. Such tribes are " in a state of pupilage." (Marshall, C. J., in Cherokee Nation *v.* Georgia, 5 Pet. 1, 17.) They have always been " subject to such restraints and qualified control in their national capacity as was considered by the whites to be indispensable to their own safety and requisite to the due discharge of the duty of protection." (3 Kent, Commentaries, 386.) In the case of Indians on the public domain of the United States, they are " the wards of the Nation. They are communities dependent on the United States." (Miller, J., in United States *v.* Kagama, 118 U. S. 375, 383–4.) With respect to Indians, the Government " is *in loco parentis.*" Nisbet J., in Howell *v.* Fountain, 3 Ga. 176.

When the Cayugas divided, some going to Canada and some remaining in New York, and when that cleavage became permanent in consequence of the War of 1812, Great Britain might, if it seemed desirable, treat the Canadian Cayugas as a unit of British law or might deal with them individually as British nationals. Those Indians were permanently established on British soil and under British jurisdiction. They were and are dependent upon Great Britain or later upon Canada, as the New York Cayugas were dependent on and wards of New York. If, therefore, the Canadian Cayugas have a just claim, according to "the principles of international law and of equity," Great Britain is entitled to maintain it.

That, as a matter of justice the Canadian Cayugas have such a claim, has been the opinion of every one who has carefully and impartially investigated their case. In 1849, the Commissioners of the Land Office, to whom the Legislature of New York had referred a memorial of " the chiefs and warriors of the Cayuga Indians residing in Canada West," reported in their favor and urged a "just distribution" of the annuity. This commission was composed of the then Lieutenant Governor, Secretary of

State, Comptroller, Treasurer, and State Engineer and Surveyor of New York. N. Y. Assembly, Doc. 1849, vol. 3, No. 165. Afterwards the claim was considered in detail by the General Term of the Supreme Court of New York in People *v.* Board of Commissioners of the Land Office, 44 Hun. 588. That tribunal pointed out that we "ought not to permit words such as 'sovereign states,' 'treaties,' and the like to conceal the real facts." The substance of the matter was that New York agreed to pay the then Cayuga Indians and their posterity, and on the division of the tribe the annuity ought to have been apportioned, as, indeed, was done when the New York Cayugas afterward divided. It is true the judgment in this case was reversed by the Court of Appeals. But the reversal was upon jurisdictional grounds in no way affecting the views of the Supreme Court upon the merits of the claim. Nor can we examine the evidence and come to any other conclusion than that as a matter of right and justice such an apportionment should have been and ought to be made.

In the report of the Committee of the New York Senate, in 1890, that committee was governed by two propositions of law, one that the Canadian Cayugas by their emigration "surrendered all claim or interest in the annuity funds and property of said Cayuga Nation of Indians," the other, that the claim was not within the purview of the Treaty of Ghent. N. Y. Senate Doc. No. 73, 1890. But the first can not be maintained in view of the circumstances that the United States guaranteed their lands to the Six Nations in 1789, after the removal to the Grand River in 1784, and that the principal signers of the Treaty of 1795 and most of those who receipted for the annuities on behalf of the nation from 1795 to 1810 were Cayugas who had so emigrated. As to the second, we do not so construe the Treaty of Ghent. The committee relies on the form of payment to the nation as an entity. The word "enjoy" in the treaty, as we think, refers to the substantial participation in the division of the

money. If New York did not follow the treaty as to production of and receipt on the counterpart, the State was bound to see that those who ought to have the money were those who got it. Both in this report and in the opinion of Judge O'Brien, then Attorney General of New York, in 1884 (Memorial, Vol. III, p. 777), the circumstances that the Canadian Cayugas had taken part with Great Britain in the War of 1812 is evidently regarded as a ground of excluding them from any share in the annuity. So also the letter of Commissioner Bissell (Memorial, Vol. III, p. 793) gives this reason. But it is obviously untenable, and it was expressly stated on behalf of the United States at the hearing that no such defense is urged. It is evident that both the committee and the Attorney General go upon the form of the covenant and the legal authority of New York to determine what shall be recognized as the Cayuga Nation. They do not deny the merit of the claim. This is palpably true of the decision of the New York Court of Appeals in Cayuga Nation *v.* State, 99 N. Y. 235.

It can not be doubted that until the Cayugas permanently divided, all the sachems and warriors, wherever they lived, whether at Cayuga Lake, Buffalo Creek, or the Grand River in Canada, were regarded as entitled to and did share in the money paid on the annuity. Indeed it is reasonably certain that the larger number and the more important of those who signed the Treaty of 1795 were then, or were soon thereafter, permanently established in Canada. It is clear that the greater number and more important of those who signed the annuity receipts from the date of the treaty until 1810 were Canadian Cayugas. We find the person through whom, by the terms of the treaty, the money was to be paid, writing to the Governor of New York in 1797 that the Canadian Cayugas had not received their fair proportion in a previous payment and proposing to make the sum up to them at the next payment. Everything indicates that down to the division the money was regarded as payable to and was paid to and divided among

the Cayugas as a people. The claim of the Canadian Cayugas, who are in fact the greater part of that people, is founded in the elementary principle of justice that requires us to look at the substance and not stick in the bark of the legal form.

But there are special circumstances making the equitable claim of the Canadian Cayugas especially strong.

In the first place, the Cayuga Nation had no international status. As has been said, it existed as a legal unit only by New York law. It was a *de facto* unit, but *de jure* was only what Great Britain chose to recognize as to the Cayugas who moved to Canada and what New York recognized as to the Cayugas in New York or in their relations with New York. As to the annuities, therefore, the Cayugas were a unit of New York law, so far as New York law chose to make them one. When the tribe divided, this anomalous and hard situation gave rise to obvious claims according to universally recognized principles of justice.

In the second place, we must bear in mind the dependent legal position of the individual Cayugas. Legally they could do nothing except under the guardianship of some sovereign. They could not determine what should be the nation, nor even whether there should be a nation legally. New York continued to deal with the New York Cayugas as a "nation." Great Britain dealt with the Canadian Cayugas as individuals. The very language of the treaty was in this sense imposed on them. What to them was a covenant with the people of the tribe and its posterity had to be put into legal terms of a covenant with a legal unit that might and did come to be but a fraction of the whole. American Courts have agreed from the beginning in pronouncing the position of the Indians an anomalous one. Miller J., in United States *v.* Kagama, 118 U. S. 375, 381. When a situation legally so anomalous is presented, recourse must be had to generally recognized principles of justice and fair dealing in order to determine the rights of the individuals involved. The same considerations of equity that have repeatedly been invoked by

the courts where strict regard to the legal personality of a corporation would lead to inequitable results or to results contrary to legal policy, may be invoked here. In such cases courts have not hesitated to look behind the legal person and consider the human individuals who were the real beneficiaries. Those considerations are even more cogent where we are dealing with Indians in a state of pupilage toward the sovereign with whom they were treating.

There is the more warrant for so doing under the terms of the treaty by virtue of which we are sitting. It provides that decision shall be made in accordance with principles of international law and of equity. Merignhac considers that an arbitral tribunal is justified in reaching a decision on universally recognized principles of justice where the terms of submission are silent as to the grounds of decision and even where the grounds of decision are expressed to be the " principles of international law." He considers, however, that the appropriate formula is that " international law is to be applied with equity." *Traité théorique et pratique de l'arbitrage international*, § 303. It is significant that the present treaty uses the phrase " principles of international law and equity." When used in a general arbitration treaty, this can only mean to provide for the possibility of anomalous cases such as the present.

An examination of the provisions of arbitration treaties shows a recognition that something more than the strict law must be used in the grounds of decision of arbitral tribunals in certain cases; that there are cases in which—like the courts of the land—these tribunals must find the grounds of decision, must find the right and the law, in general considerations of justice, equity, and right dealing guided by legal analogies and by the spirit and received principles of international law. Such an examination shows also that much discrimination has been used in including or not including " equity " among the grounds of decision provided for. In general, it is used regularly in

general claims arbitration treaties. As a general proposition, it is not used where special questions are referred for arbitration.

Three arbitration treaties between Great Britain and the United States contain provision for decision in accordance with " equity " or " justice ": The claims Convention of 1853, Article I (1 Malloy, Treaties, 664), using the words " according to justice and equity "; the Claims Convention of 1896, Article II (1 Malloy, 766), calling for " a just decision "; and the Agreement for Pecuniary Claims Arbitration, 1910, Article VII (3 Malloy, 2619), prescribing decision " in accordance with treaty rights, and with the principles of international law and of equity." These are general claims arbitrations. They should be contrasted with the arbitration agreements between Great Britain and the United States in which there is no provision for equity as one of the grounds of decision. Articles IV, V, and VI of the Treaty of Ghent provide for arbitration as to the islands on the Maine boundary, as to the northeastern boundary, and as to the river and lake boundary. The arbitrators are to decide " according to such evidence as shall be laid before them." Here the questions were of fact only. Hence in an arbitration of specific questions, all provision as to equity is omitted. So also in the Regulations for the Mixed Courts of Justice under the Treaty of April 7, 1862 (1 Malloy, 681), Article I, the arbitrators are to " act in all their decisions in pursuance of the stipulations of the aforesaid treaty." This was a special tribunal under a treaty for abolition of the slave trade. The contrast with the provisions of the treaties for general claims arbitrations is noteworthy. So also in the Fur Seal Arbitration Convention of 1892 (1 Malloy, 746), Articles II, VI; the Alaskan Boundary Convention, 1903 (1 Malloy, 787), Articles I, III, IV; and the Agreement for the North Atlantic Coast Fisheries Arbitration (1 Malloy, 835), Article I. In each of these certain specific questions were submitted. These agree-

ments are either silent as to the grounds of decision or provide simply for a fair and impartial consideration.

In some of the arbitration agreements between Great Britain and the United States it has happened that clauses of both types have been included in one treaty. Thus, in the Jay Treaty of 1794, Article V, has to do with arbitration of the Maine boundary. In that matter the arbitrators are to decide " according to such evidence as shall * * * be laid before them ". But Article VII, providing for arbitration of claims, requires a decision " according to the merits of the several cases, and to justice, equity, and the law of nations." (1 Moore, International Arbitrations, 5, 321.) Again in the Treaty of Washington, 1871, Art. XXXIV, and following, providing for arbitration of the San Juan water boundary, call for decision " in accordance with the true interpretation of the Treaty of June 15, 1846." 1 Moore, International Arbitrations, 227. Also in the same treaty, Article VI, submitting the Alabama Claims, provides three carefully formulated rules, agreed on expressly by the parties, and requires decision by those rules and " such principles of international law, not inconsistent therewith, as the arbitrators shall determine to have been applicable to the case." So also in Article II, as to claims governed by rules agreed upon, the arbitrators are to examine and decide " impartially and carefully." On the other hand, in Article XXIII, providing for the arbitration of fishing claims, the decision is to be " according to justice and equity." (1 Malloy, 710, 714.) Here the careful discrimination, according to the subject matter dealt with, in the several articles of the same treaty, speaks for itself.

Arbitration treaties of and with Latin American countries before 1910 (the date of the treaty here in question) tell the same story. Of these, some provide for decision according to international law, equity (or justice), and treaty provisions. Such are (with slightly varying language): Arbitration Convention between the United States and Mexico. 1839. 1 Malloy, 1101, Art. IV (arbi-

tration of claims); Ecuador-United States, 1862, 13 St. L. 631; Peru-United States, 1863, 13 St. L. 639, Art. III; United States-Venezuela, 1866, 13 St. L. 713, Art. I; Mexico-United States, 1868, 1 Malloy, 1128, Art. I; Guatemala-Mexico, 1888, 71 Br. & For. State Pap. 255, Art. IV; United States-Venezuela, 1892, 28 St. L. 1183, Art. III; Chile-United States, 1892, 27 St. L. 965, Art. IV; Guatemala-Honduras, 1895, 77 Br. & For. State Pap. 530, Art. VI; Mexico-Venezuela, 1903, Manning, Arbitration Treaties among the American States, 343, Art. I (arbitration of all pending claims); Brazil-Peru, 1904, U. S. Foreign Relations, 1904, p. 111, Art. III (general claims arbitration); Argentina-Brazil, 1905, 3 Am. Journ. Int. Law, Suppl. p. 1, Art. X (general arbitration); Brazil-Peru, 1909, Manning, 450, Art. IX (general arbitration). It will be noted that these words are used where no specific claims are in question, but there is a general arbitration of claims of all kinds. In other cases the treaty speaks only of justice and equity. Such are: Costa Rica-Nicaragua, 1854, Manning, 31, Art. III; New Granada-United States, 1857, 1 Malloy, 319, Art. I; Chile-United States, 1858, 12 St. L. 1083; Paraguay-United States, 1857, Manning, 145, Art. II; Costa Rica-United States, 1860, 12 St. L. 1135, Art. II; Peru-United States, 1868, 16 St. L. 751, Art. I; Chile-Peru, 1868, Manning, 78; United States-Venezuela, 1886, Manning, 150, Art. VI; Mexico-United States, 1902, 32 St. L. 1916; Brazil-United States, 1902, U. S. Treaty Series, No. 413, Art. I. Here it is significant that eight of the ten arbitrations between the United States and Latin American States, in which, because of the difference in legal systems and technique of decision, it was expedient to give some latitude to the Tribunal. In this connection the treaty between the United States and Venezuela in 1903 (U. S. Treaty Series, No. 420) is especially significant. It requires decision " upon a basis of absolute equity, without regard to objections of a technical character or of the provisions of local legislation." (As

to what this meant, see Ralston, International Arbitral Law and Procedure, 69–71.) In other cases, the language shows that the arbitrator was to be no more than an *amiable compositeur:* Honduras-Salvador, 1880, Manning, 1115, Art. V (" just and expedient "); Honduras-Nicaragua, 1894, Manning, 211, Art. II (5); Honduras-Salvador, 1895, Manning, 216, Art. II; Chile-United States, 1909, U. S. Treaty Series, No. 535½ (" as an *amiable compositeur* ").

In the treaties cited, to which the United States has been a party, it will be noted how discriminatingly the language is chosen. How can it be said that the phrase " principles of equity " is of no significance when the different phrases are shown to have been so carefully chosen to fit different occasions?

This conclusion is borne out even more when we examine the arbitration treaties of and with the Latin American States in which no reference is made to equity. In some of these no reference is made to grounds of decision: Mexico-United States, 1897, 30 St. L. 1593 (a limited arbitration of specific issues of law and fact raised by prior diplomatic correspondence); Peru-United States, 1898, U. S. Treaty Series, No. 286 (limited arbitrations of the amount of indemnity only—all other questions excluded); Haiti-United States, 1899, Manning, 282 (special agreement to submit one claim of a citizen of the United States to one of the Justices of the Supreme Court of the United States); Guatemala-United States, 1900, Manning, 288, Art. I (refers " questions of law and fact " as to one specific claim); Nicaragua-United States, 1900, 2 Malloy, 1290 (reference to specific claims, as to the amount of indemnity only—question of liability expressly excluded); Salvador-United States, 1901, U. S. Treaty Series, No. 400 (specific claims, the issues having already been defined by diplomatic correspondence); Dominican Republic-United States, 1902, Manning, 320 (special arbitration of one claim on defined points); Dominican Republic-United States, U. S. Treaty Series, No. 417

(special arbitration as to terms of payment of agreed indemnity). In each of these cases the United States was a party, and the nature of the arbitration shows why it is that reference to general grounds of decision was omitted.

In another type of case provision is made for decision according to international law or "public law" and treaties. Such a case is: Colombia-United States, 1874, 1 Foreign Rel. U. S., 427, Art. II (but here these general grounds were supplemented by special stipulations). In another type, the grounds of decision are expressly restricted to "the rules of international law existing at the time of the transactions complained of": Haiti-United States, 1884, 23 St. L. 785, Art. IV (reference to two special claims of citizens of the United States to one of the Justices of the Supreme Court of the United States; naturally it was sought to restrict the scope of his choice of grounds of decision). In another group of treaties, the decision is to be "according to the principles of international law." Such are: Brazil-Chile, 1899, Manning, 259, Art. V; Argentina-Uruguay, 1899, 94 Br. & For. State Pap. 525, Art. X; Argentina-Paraguay, 1899, 92 Id. 485, Art. X; Argentina-Bolivia, 1902, Manning 316, Art. X; Argentina-Chile, 1902, Manning, 328, Art. VIII; Costa Rica-Guatemala-Honduras-Nicaragua-Salvador, 1907, 100 Br. & For. States Pap. 836, Art. XXI (treaty establishing the Central American Court of Justice as a Permanent Court of Arbitration). But these treaties (except the last) add that the terms of submission may otherwise provide, thus taking care of the possibility of anomalous situations. One treaty, Bolivia-Peru, 1901, 3 Am. Journ. Int. Law, Suppl. 378, Art. VIII, requires "strict obedience to the principles of international law." In another type of this species of treaty, there is minute specification of the exact grounds of decision. Such are Bolivia-Peru, 1902, Manning, 334; Costa Rica-Panama, 1910, 6 Am. Journ. Int. Law, Suppl. p. 1. Each is a boundary arbitration.

In these treaties of and with Latin-American States, as in the case of treaties between Great Britain and the United States, it happens sometimes that different provisions as to the grounds of decision are made in different articles of the same treaty. Thus: Colombia-Ecuador, 1884, Manning, 140 (Art. I, "impartiality and justice," Art II, " in accordance with the principles of international law and the legal principles established by analogous modern tribunals of high authority"); Ecuador-United States, 1893, 28 St. L. 1205, (Art. II (b) " under the law of nations," Art. IV, such damages " as may be just and equitable "—an arbitration of one specified claim); United States-Venezuela, 1908, U. S. Treaty Series, No. 522½ (Art I " under the principles of international law," Art II whether " manifest injustice " was done, Art. III " on its merits in justice and equity," Art. V " in accordance with justice and equity "). This different language for different situations speaks for itself. It should be said also that the language of treaties with Continental powers, both prior and subsequent to 1910, to which the United States is a party, entirely sustains the conclusions to which the examination of the treaties with Great Britain and with Latin-American States must lead. (See United States-Norway, 1921, 3 Malloy, 2749, Art. I; Allied Powers-Germany, 1920, 3 Malloy, 3469, Art. 299 (b); Allied Powers-Hungary, 1921, 3 Malloy, 3644, Art. 234 (b); United States-Great Britain-Portugal, 1891, 2 Malloy, 1460, Art. 1; United States-Germany-Great Britain, 1899 2 Malloy, 1589, Art. I.)

Under the first and second Hague Conventions for the Pacific Settlement of International Disputes (32 St. L. 1779, Art. XLVIII; 36 St. L. 2199, Art. LXXIII) there is to be a special *compromis* in each arbitration which is to provide as to the basis of decision. But wide powers of determining the basis of decision are insured by Art. 48. Also Art. 38 of the Statute of the Permanent Court of International Justice (1920) provides specially that the court may decide *ex aequo et bono*, if the parties agree

thereto. As Anzilotti points out, however, that much-criticized provision is meant for cases such as we have seen above, which call, not for principles of equity, but for a degree of compromise. Anzilotti, *Corso di diritto internazionale*, 64 (1923). Such a power is not necessarily nonjudicial, as Magyary asserts. *Die internationale Schiedsgerichtsbarkeit im Volkerbunde*, 151–2 (1922). But it is a different thing from what we invoke in the present case—namely, general and universally admitted principles of justice and right dealing, as against the narsh operation of strict doctrines of legal personality in an anomalous situation for which such doctrines were not devised and the harsh operation of the legal terminology of a covenant which the covenantees had no part in framing and no capacity to understand. It is enough to cite the opinions of Merignhac (*Traité théorique et pratique de l'arbitrage international*, §§ 294–305), *Bulmerincq* (*Die Staatsstreitigkeiten und ihre Entscheidung ohne Krieg*, § 11, Holtzendorff, *Handbuch des Völkerrechts*, VI, 42), and Lammasch (*Die Lehre von der Schiedsgerichtsbarkeit in ihrem ganzen Umfange*, II, 179–181, 185).

It remains to consider the United States-Norway Arbitration Award, 1922. (17 Am. Journ. Int. Law, 362, ff.). By Article I of the agreement under which that award was made, the decision was to be in accordance with the principles of law and equity. The meaning of this phrase is discussed on pages 383–385. Construing Article LXXIII of the Hague Convention for the Settlement of International Disputes (1907) and Article XXXVII of the Convention of 1908, the Tribunal considers, rightly as we conceive, that the word *droit*, as used in those articles has a broader meaning than that of "law" in English, in its restricted sense of an aggregate of rules of law. It quotes Lammasch to the effect that the arbitrator should "decide in accordance with equity, *ex aequo et bono*, when positive rules of law are lacking." It then says of the words "law and equity" in the agreement under which it was sitting: "The majority of international lawyers seem

to agree that these words are to be understood to mean general principles of justice as distinguished from any particular system of jurisprudence or the municipal law of any state" (p. 384). Not only is this the weight of opinion, but it is amply borne out by the language of arbitration treaties as adapted to the different sorts of arbitration and the types of questions which they present. The letter of Secretary Hughes to the Norwegian Minister, of date February 26, 1923 (17 Am. Journ. Int. Law, 287–289), in which he protests as to certain features of the award, challenges the rule of international law found by the Tribunal and applied to the case. But it does not contest or refer to the Tribunal's construction of the words "law and equity," as used in the agreement; nor do we think that construction is open to question. Our conclusion on this branch of the cause is that, according to general and universally recognized principles of justice and the analogy of the way in which English and American courts, on proper occasions, look behind what in such cases they call "the corporate fiction" in the interests of justice or of the policy of the law (Daimler Company, Ltd., *v.* Continental Tyre and Rubber Company, Ltd. [1916] 2 A. C. 307, 315–316, 338 ff; 1 Cook (Corporations, 8 ed. § 2), on the division of the Cayuga Nation the Cayuga Indians permanently settled in Canada became entitled to their proportionate share of the annuity and that such share ought to have been paid to them from 1810 to the present time.

But it is not necessary to rest the case upon this proposition. It may be rested upon the strict legal basis of Article IX of the Treaty of Ghent, and in our judgment is to be decided by the application of that covenant to the equitable claim of the Canadian Cayugas to their share in the annuity.

Article IX of the Treaty of Ghent, so far as material, reads as follow: "The United States of America engage to put an end, immediately after the ratification of the present treaty, to hostilities with all the tribes or

nations of Indians with whom they may be at war at the time of such ratification; and forthwith to restore to such tribes or nations, respectively, all the possessions, rights, and privileges which they may have enjoyed or been entitled to in one thousand eight hundred and eleven, previous to such hostilities." The former portion of this covenant clearly refers to the Indian tribes on the public domain of the United States known then as the Western Indians, and was so construed by the United States, which proceeded to make special treaties of peace with those tribes. On its face the remainder of the covenant seems to apply squarely to the Canadian Cayugas, who had been actually in the receipt and enjoyment of their share of the annuity from the Treaty of 1795 down to the eve of the war of 1812. In the answer of the United States there is an elaborate and ingenious argument, based upon the history of the negotiations leading to Article IX, on the basis of which we are asked to hold that the article was only a "nominal" provision, not intended to have any definite application. We can not agree to such an interpretation. Nothing is better settled, as a canon of interpretation in all systems of law, than that a clause must be so interpreted as to give it a meaning rather than so as to deprive it of meaning. We are not asked to choose between possible meanings. We are asked to reject the apparent meaning and to hold that the provision has no meaning. This we cannot do. We think the covenant in Article IX of the Treaty of Ghent must be construed as a promise to restore the Cayugas in Canada who claimed to be a tribe or nation and had been in the war as such, to the position in which they were prior to the division of the nation at the outbreak of the war. It was a promise to restore the situation in which they received their share of the money covenanted to be paid to the original undivided nation. There are but two alternatives, each quite inadmissible under every-day rules of interpretation. One is that the promise has no meaning but was, as it was urged in argument, a provision in-

serted to save the face of the negotiators. The other is that the tribe or nation must be taken to be the entity of New York law, not the Canadian Cayugas as British nationals. As to this interpretation, the remark of Chief Justice Fuller, in Burthe *v.* Dennis, 133 U. S. 514, 520–21, is pertinent. He says: "It would be a remarkable thing, and we think without precedent in the history of diplomacy, for the Government of the United States to make a treaty with another country to indemnify its own citizens for injuries received from its own officers." It would be no less strange and unprecedented for the United States to covenant with another power to restore the rights of its own nationals under its exclusive protection. In order to give this portion of the article any meaning, we must take it to promise that the Indians who had gone to Canada and had sided with Great Britain on the splitting up of the original nation, were to be put in the *status quo* as of 1811, even if legally the New York Cayuga organization was now the nation for the strict legal purposes of the covenant in the Treaty of 1795.

In 1843, in a letter to the then Governor of New York, written on behalf of the New York Cayugas with reference to the division of the annuity between the Cayugas remaining in New York and those who had gone to the West, Peter Wilson, an educated Cayuga, and one of the sachems of the New York nation, said: "The emigrating party of the New York Cayugas have invited the Canadian Indians to come over and accompany them to the Western country, and we are apprehensive they will represent these as composing a part of their party having claims to the moneys of the Cayuga Nation arising from the annuities of the State of New York, which claim we do not recognize." Further on he adds: "We wish your excellency distinctly to understand that the Cayugas residing in a foreign country, to-wit, Canada, have no just or legal claim to any part of the annuities arising from this State." Here, in its original form, the objection of the New York Cayugas to participation by the Canadian Cayugas rests

on the proposition, obviously inadmissible, if for no other reason, in view of Art. IX of the Treaty of Ghent, that the Canadian Cayugas reside in a foreign country. Six years later (1849), when the Canadian Cayugas were pressing their claim to a share before the Legislature of New York, the objection was rested on the ground of an agreement at the time of the division of the nation, whereby, to use Wilson's own words, "it was mutually agreed that thereafter they should no longer participate in the annuities or emoluments flowing from the governments they were to oppose; but each division should take the whole from the government to which it is allied * * * that all property and interest on the British side should belong to the British Indians, while the property and interests on the American side must be the sole property of the American Iroquois." This is a plausible theory and, urged dramatically and with much detail of circumstance in Wilson's speech in 1849, it has undoubtedly played a controlling part in the subsequent denials of the claims of the Canadian Cayugas. But without adverting to the mystery that surrounds the speech itself, for it is not established that it was ever delivered, and conceding certain circumstances that appear to confirm it, we are of opinion that it has no foundation beyond the admitted division of the nation on the eve of the War of 1812, and the fact that during and after that war the Canadian Cayugas did not participate in the division of the payments. In reality the circumstances do not go beyond this. If there had been more, Wilson certainly would have said so in 1843. His letter of that date is too prolix to justify an assumption that he left out anything he knew that had a bearing on his case. Certainly he would not have left out the one conclusive argument in his armory. Moreover, it ought to have been possible to establish a point of such importance by something more than the assertion in Wilson's speech. The only other evidence is a statement in a report of the Committee on Indian Affairs to the Senate of New York, in 1849, that the Council in which "that agreement was made, if any,"

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had been graphically described to the committee by an Onondaga Chief. It is clear enough from the whole report that the committee, at the least, was skeptical as to the alleged agreement. Certainly the whole conduct of the Canadian Cayugas from the conclusion of the War of 1812 was inconsistent with it. We are satisfied that they held the counterpart of the Treaty of 1795 from a time soon after its execution to the present, when they produce it before us. There is clear evidence that after 1815 their chiefs made repeated visits to New York claiming a share and vouching their possession of the counterpart upon which, by the terms of the treaty, receipts for payment were to be indorsed. Almost immediately upon the close of the war they urged upon the British Colonial Office that they were no longer receiving their share of the annuity, as they had received it before the war. In 1819 they discussed their claim in a council and considered retaining counsel to present it. In 1849 they presented it by petition to the Legislature of New York, and continued to press it at intervals from that time. No one but Wilson testifies (if his speech may be called testimony) to the agreement of partition. His speech, in many of its details, is palpably erroneous. The circumstances and the conduct of the parties are at variance with it. It can not be that, if this solid and conclusive ground for excluding the Canadian Cayugas had existed, the ground of excluding them from a share in the annuity would have been doubtful in 1849.

We have next to consider whether the claim of Great Britain, on behalf of the Canadian Cayugas, that the latter should share in the payments of the annuity covenanted to be paid to the original Cayuga Nation, is barred by Article V of the Claims Convention of 1853. That article reads:

"The high contracting parties engage to consider the result of the proceedings of this commission as a full, perfect, and final settlement of every claim upon either Government arising out of any transaction of a date prior to the exchange of the ratifications of the present conven-

tion, and further engage that every such claim, whether or not the same may have been presented to the notice of, made, presented, or laid before the said commission, shall, from and after the conclusion of the proceedings of the said commission, be considered and treated as finally settled, barred, and thenceforth inadmissible."

On behalf of Great Britain it is contended that Article V must be construed in connection with Articles I and II. The United States, on the other hand, contends that Article V is complete and unambiguous and hence calls for no interpretation, but must be applied according to its plain terms.

It will be noted that in order to be barred the claim must have (1) "arisen," and (2) arisen out of "transactions" prior to the ratification of the convention. No doubt the Treaty of 1795, the division of the Cayuga Nation, and the Treaty of Ghent are "transactions" prior to 1853. But if no claim against the United States had "arisen" in 1853, there was no claim to be barred by the terms of Article V, which does not purport to apply and certainly ought not to be construed as applying to claims to arise in the future, even if in part out of past transactions. If, as the United States insists, we must apply the language of Article V as it stands, the word "arise" is quite as important as the word "transactions," and we must look to the transactions that are decisive for the "arising" of the claim, as one cognizable before an international tribunal, in order to determine whether the claim before us is barred.

What, then, are the grounds on which liability of the United States must be based, and what is the date of the "transactions" from which a claim "arises" in which that liability may be asserted?

First, we must ask whether the United States would be liable directly and immediately on the basis of the Treaty of 1795. It has been urged upon us that the United States would be liable upon that treaty on three grounds: (1) That the treaty is legally a Federal, not a New York, treaty, made in the presence of a Federal Indian agent;

(2) that the treaty has to do with a matter of exclusively Federal cognizance, under the Constitution of the United States, and so must be presumed to have been executed under competent Federal authority, since the alternative would be that the treaty would be void; (3) that in any event the interest of the United States in the treaty, as one dealing with a matter of Federal cognizance under the Constitution of the United States, is such as to make the United States directly and immediately liable upon the treaty, even if it is the contract of the State of New York.

We are unable to assent to any of these propositions. Neither in form nor in substance was the Treaty of 1795 a Federal treaty; it was a contract of New York with respect to a matter as to which New York was fully competent to contract. In form it is exclusively a New York contract. The negotiators derived their authority from the State Legislature and purported to represent the State only. The United States does not appear anywhere in the negotiations nor in the treaty. The United States Indian agent, who was present, at the request of the Indians because they had confidence in him, appears as a witness in his personal, not his official, capacity. Nor was the subject matter one of Federal cognizance. The title of the Cayuga Indians, one of occupation only, had been extinguished by the Treaty of 1789, which ceded the lands of the Cayugas to New York, providing for a reservation, which, we think, must be taken to have been held of New York by the nation. It is argued that the language of the treaty is rather that of a common-law reservation, so that the reserved land was reserved out of the grant. As to this, we are satisfied with the observations of Gray, J., in Jones *v.* Meehan, 175 U. S. 1, 11: "The Indians * * * are a weak and dependent people, who have no written language and are wholly unfamiliar with all the forms of legal expression, and whose only knowledge of the terms in which the treaty is framed is that imparted to them by the interpreter * * *;

the treaty must therefore be construed not according to the technical meaning of the words to learned lawyers, but in the sense in which they would naturally be understood by the Indians." We think the treaty meant to set up an Indian reservation, not to reserve the land from the operation of the cession. Such a construction is indicated by Marshall, C. J., in Cherokee Nation *v.* Georgia, 5 Pet. 1, 17.

That treaty (1789) was made at a time when New York had authority to make it, as successor to the Colony of New York and to the British Crown. Long before the Revolution, the country of the Six Nations had been treated as "appendent to the government of New York." Baldwin, J., in Cherokee Nation *v.* Georgia, 5 Pet. 1, 35. It was for the Legislature of New York to say who could bind the Cayuga Nation as a New York entity. The subsequent treaties of 1790 and 1795 purported simply to confirm the original treaty and were made because of dissatisfaction of the Indians, not because of any legal invalidity. The cases cited to us with respect to Indians on the public domain of the United States or on lands relinquished by some or other of the original thirteen States are not in point. The distinction is made clear in Dana's note to Wheaton, Elements of International Law, § 38 (8 ed. 60). He says: "It is important to notice the underlying fact that the title to all lands occupied by the Indian tribes *beyond the limits of the thirteen original States*, is in the United States. The Republic acquired it by the treaties of peace with Great Britain, by cessions from France and Spain, and by *relinquishments from the several States.*" See also Seneca Nation *v.* Appleby, 127 App. Div. 770. The title of New York here was independent of and anterior to the Federal Constitution. At the time of the Treaty of 1795, the Cayuga Indians held the reservation of New York and the dealings of New York with the Cayuga Nation as a New York entity and with respect to lands held of New York were a matter for that State only. See Marshall, C. J., in Cherokee Nation

v. Georgia, 5 Pet. 1, 16–18; Nelson, J., in Fellows *v.* Blacksmith, 19 How. 366, 369; 3 Kent, Commentaries, 380–386; Beecher *v.* Wetherbee, 95 U. S. 517, 525, and State decisions there cited; Seneca Nation *v.* Christie, 126 N. Y. 122; Jemison *v.* Bell Telephone Co., 186 N. Y. 493, 498.

We must hold that the Treaty of 1795 was a contract of the State of New York and that it was not a contract on a matter of Federal concern or in which the Federal Government had an interest. Indeed the fact that it has stood unchallenged as a New York contract for over a century and that New York has gone on for the whole of that time dealing with the provisions of the treaty and with the legal position of the Cayuga Nation as matters of New York law, speaks for itself. This Tribunal can not know more as to what is a Federal treaty and what a New York treaty than the United States and the State of New York.

If the treaty of 1795 is a contract of the State of New York, the United States would not be liable merely on the basis of a failure of New York to perform a covenant to pay money. This proposition is established by repeated decisions of international tribunals: Thornton, Umpire, in Nolan's Case, 4 Moore, International Arbitrations, 3484; Thompson's case, Ibid.; Bainbridge, commissioner, in La Guaira Electric Light and Power Company's Case, Ralston, Venezuela Arbitrations of 1903, 178, 181–2; Thomson-Houston Electric Company's Case, Id. 168–9; Schweitzer *v.* United States, 21 Ct. Cl. 303; Florida Bond Cases, 4 Moore, International Arbitrations, 3594, 3608–12. In the case last cited there is a full discussion by Bates, Umpire. See also Ralston, International Arbitral Law and Procedure, §§ 457–467, pp. 217–221; Borchard, Diplomatic Protection of Citizens Abroad, 200. Two *dicta,* cited to the contrary on the argument, are readily distinguishable. What is said in the Montijo, 2 Moore, International Arbitrations, 1421, 1439, had no reference to a contract of a State of a Federal union creating a debt of that State.

There was a violation of a Federal treaty. And the letter of Secretary Fish, 6 Moore, Digest of International Law, 815–816, had reference to injuries to persons and property by the State authorities, not to Federal liability for debts incurred by the contract of a State.

In the cases in which a Federal Government has been held upon the contract of a State, there has been (1) an immediate connection of the Federal Government with the contract as a participant therein, or (2) an assumption thereof or of liability therefor, or (3) a connection therewith as beneficiary, whether in the inception or as beneficiary of the performance, in whole or in part, or (4) some direct Federal interest therein. The United States is in no such relation to and had no such connection with or interest in the contract of New York with the Cayuga Nation.

Liability of the United States must, therefore, be grounded upon Article IX of the Treaty of Ghent, in which the United States covenanted that the Indians should be restored to the position in which they were before the War of 1812, and hence that they should share in the annuity, as they did before the war. That liability, in our opinion, did not accrue until, New York having definitely refused to recognize the claims of the Canadian Cayugas, the matter was brought to the attention of the authorities of the United States, and that Government did nothing to carry out the treaty provision. That situation and the Treaty of Ghent are the transactions out of which the claim arises. The earliest date at which the claim can be said to have accrued, as a claim against the United States under International Law, is 1860.

In municipal law, failure of a promisor to perform gives rise to a cause of action then and there, without more. But it is otherwise when one State steps in to assert a claim against another State because the latter is in default with respect to some performance promised to a national of the former. " In the estimation of statesmen and jurists, international law is probably not regarded as denouncing the failure of a State to keep such a prom-

ise, until there has been a refusal either to adjudicate wholly the claim arising from the breach, or, following an adjudication, to heed the adverse decision of a domestic court. Upon the happening of either of those events, the denial of justice is regarded as first apparent. Then there is seen a failure to respect a duty of jurisdiction which is distinct from the breach of the contract and subsequent to it in point of time." 1 Hyde, International Law, § 303, pp. 546–7. See to the same effect decisions cited in Ralston, International Arbitral Law and Procedure, § 37, pp. 27–29; 6 Moore, Digest of International Law, § 916, pp. 285–9; 1 Westlake, International Law 331–334.

Even in 1860, the Government of the United States referred the Indians to New York. Certainly in 1853, when it was by no means clear that some thing might not yet be done by the Legislature of New York, an international tribunal would have said that, while there might have been a breach of the covenant, there had not, as yet, been a denial of justice by the United States. For these reasons we hold that the claim is not barred by Article V of the Convention of 1853.

It is urged on behalf of the United States that the claim should be held to be barred by laches. There is no doubt that there has been laches on the part of Great Britain. The claim of the Canadian Cayugas to share in the annuity payments was brought to the attention of the British Colonial Office immediately after the War of 1812, and within a few years thereafter was repeatedly urged upon the Deputy Superintendent General of Indian Affairs in Canada. Yet it was not until 1899 that the British Minister at Washington presented the claim to the State Department of the United States. Also it must be conceded that the case is not as if New York had withheld the money entirely. That State had paid the whole amount of the annuity each year, in reliance upon its authority to decide who constituted the "Cayuga Nation." There is much to be said for an equity in favor of New York as to payments before the claim of the Canadian Cayugas was presented to the legislature

of that State, in 1849. But no laches can be imputed to the Canadian Cayugas, who in every way open to them have pressed their claim to share in the annuities continuously and persistently since 1816. In view of their dependent position, their claim ought not to be defeated by the delay of the British Government in urging the matter on their behalf. Nor can New York be said to have been prejudiced by the delay after 1849, at which time the facts of the case had been brought to the notice of the legislature and a public commission had recommended that justice be done. On the general principles of justice on which it is held in the Civil Law that prescription does not run against those who are unable to act, on which in English-speaking countries persons under disability are excepted from the operation of statutes of limitation, and on which English and American Courts of Equity refuse to impute laches to persons under disability, we must hold that dependent Indians, not free to act except through the appointed agencies of a sovereign which has a complete and exclusive protectorate over them, are not to lose their just claims through the laches of that sovereign, unless, at least there has been so complete and bona fide change of position in consequence of that laches as to require such a result in equity. In the present case by no possibility can there be said to have been a change of position without notice after 1849. Under all the circumstances, we think it will be enough to deny interest on the share of the Canadian Cayugas in past installments of the annuity and to let the payments from 1811 to 1849 stand as made.

By the third prayer of the Memorial, Great Britain seeks a declaration that the Canadian Cayugas are entitled to the annuity for the future. Great Britain, for reasons already stated, is not entitled to such a declaration. Nor have we jurisdiction to make a declaration that the Canadian Cayugas are entitled to share in the annuity for the future. Our powers are limited to a money award, and we must consider how we may frame a money award so as to give effect by that means to the substantive rights

of the parties and reach a just result. Accordingly we think the award should contain two elements: (1) An amount equal to a just share in the payments of the annuity from 1849; (2) a capital sum which at five per cent interest will yield half of the amount of the annuity for the future. If by means of an award the United States is held to pay these sums, we think that Government will have been required to perform the covenant in Article IX of the Treaty of Ghent so far as specific performance may be achieved through a money award. The Canadian Cayugas are in a legal condition of pupilage. A sum in the hands of their quasi guardian sufficient to pay their share of the annuities for the future will fully protect them and give them what they are entitled to under the Treaty of Ghent.

In explanation of the way in which we have arrived at the amount of the award, we may say that as to the second element, we have taken a sum sufficient to yield an income equal to half of the annuity because the evidence is too uncertain and controversial and the relative numbers fluctuate too much to permit of an exact proportion. Hence, in the absence of any clear mathematical basis of distribution, we proceed upon the maxim that equality is equity. In view of all the evidence we are satisfied that it is not New York nor the United States that will suffer by reason of any margin of error. As to the first element, as it is palpable that in any possible reckoning the Canadian Cayugas have always been numerically much more than half the tribe, we feel that we should be quite justified in awarding sixty per cent of the payments after 1849. But out of abundant caution and in view of the fact that New York actually paid out the whole amount each year under claim of right, we fix the whole amount, including both the elements above set forth, at one hundred thousand dollars.

We award one hundred thousand dollars.

Done at Washington, D. C., January 22, 1926.

The President of the Tribunal,

A. NERINCX.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1926

156610-4 (Secy.)

Ottawa, November 2, 1946.

Dear Mr. Murdoch:-

This will acknowledge your letter of October 25 with further reference to the matter of the Pottawatomie claim.

In the first place, I should like to say that you are under a misconception with regard to the position of the Governments of Great Britain and of Canada in respect to the Cayuga and Pottawatomie claims. The Cayuga claim was dealt with under the Agreement for Submission to Arbitration of Pecuniary Claims between Great Britain and the United States of America signed at Washington on August 18th, 1910. The Government of Canada as a part of the British Empire was able to take advantage of this machinery. I should like to point out that the reference of the claim to the Tribunal was undertaken solely on the initiative of the Canadian authorities and that all the work of advocacy of the claim, the appointment of counsel and so forth, was conducted by the Canadian Government through the Department of Indian Affairs, the Department of External Affairs and the Department of Justice. The Department of Indian Affairs endeavoured to have the same procedure followed in connection with the Canadian Pottawatomies' claim, but was unable to do so as the procedures under the Agreement of 1910 above mentioned, were discontinued. According to my understanding, it would not be possible to re-open such proceedings now. The Canadian Government also endeavoured to have the Pottawatomie claim brought before the courts in the United States and full representations were made to the United States authorities concerned to that end. The request of the Canadian Government was very definitely rejected and as the facts and circumstances of the claim remained the same, there does not appear to be any basis on which diplomatic exchanges could be re-opened now. There is no way in which this Department can have this claim enforced as suggested by you. The Department, however, does not wish to interfere with any action that individuals or groups of Pottawatomies may take on their own initiative and is prepared to give consent thereto as maybe required under the Indian Act subject to necessary safeguards and conditions.

As previously stated, we shall be pleased to discuss the matter with you here on the occasion of your next visit.

Yours truly,

Director.

W. Murdoch, Esq.,
719 Yonge Street,
Toronto, Ontario.

F.R.L.M

BY HAND

EXD. 156610-4

MEMORANDUM , November 4, 1946.

MR. CORY

Further to my memorandum of October 4 I am enclosing herewith letter from Mr. Douglas with return of the redrafted agreement in connection with the Pottawatomies' claim.

I do not see any objection to the proviso made by Mr. Douglas in paragraph 2. As a matter of fact, I have always doubted the need for this paragraph at all requiring counsel to advocate that any moneys recovered be paid to the Department for administration. It seems to me that it is really a matter for the Court in the U.S. to determine and anyway as this is something that the Indians are going after on their own, if they should succeed, the individuals concerned have a pretty good claim to have the money paid to them direct. However the clause was included in the original agreement with Mr. Chisholm, approved by Justice, and I suppose it should stand as modified by Mr. Douglas to make such advocacy subject to his clients instructions. The actual disposition of funds is something that can be worked out if and when any are recovered, which as the matter stands, is rather a remote eventuality.

The addition to paragraph 8 suggested by Mr. Douglas for closer accounting to the Department of the funds received by way of retainers from the Indians, is all to the good and I think he is to be commended for making it. The Indians of course are playing a long shot in this claim and may be wasting their money, but after all they are educated Indians and well versed in the history of this claim and moreover other similar claims which looked no better than this one, have succeeded, and therefore I do not think we should try to interfere with their rights as individuals to pursue it. In any event they cannot lose much individually in view of the small amount of the retainers. Incidentally, unlike the Cayugas and other groups, who won claims in the U.S., Pottawatomies are not a band and have to be dealt with as individuals.

Please advise me if the agreement with the two suggestions made by Mr. Douglas is in order and if so, what the next step should be to complete it.

Kindly return Mr. Douglas's letter.

T.R.L. MacInnes,
Secretary

This Agreement made this day of A.D. 1946.

B E T W E E N:

HIS MAJESTY THE KING, in right of Canada, represented by the Minister of Mines and Resources, hereinafter called the PARTY

OF THE FIRST PART,

- and -

ASHTON RAY DOUGLAS, of the City of London, in the County of Middlesex, Solicitor, hereinafter called the PARTY

OF THE SECOND PART.

WHEREAS the Party of the Second Part is retained by certain Indians residing in the Province of Ontario, claiming to be members (or descendents of members) of the Indians known as stray bands of Pottawatomies of the State of Wisconsin, one of the United States of America, who claim to be entitled to share in the distribution of funds to the said Pottawatomies by the United States of America.

AND WHEREAS such retainer provided for the professional compensation of the Party of the Second Part.

AND WHEREAS the Party of the First Part has given his consent, expressed in writing, to prosecute the claim of the said Indians as provided by Section 141 of the Indian Act.

AND WHEREAS there is an agreement between the Party of the Second Part and one, Robert C. Bell, Jr., an Attorney, residing in the City of Stamford, in the State of Connecticut, one of the United States of America, with respect to the prosecution of the claim of the said Pottawatomies providing for the sharing of the remuneration to be awared and other matters.

NOW THEREFORE, IT IS AGREED by and between the parties hereto as follows:

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

2. The Party of the Second Part subject to any instructions to the contrary given him by his clients, agrees to advocate that any moneys recovered from the United States of America for the said claimants be paid to the Party of the First Part in the right of the Dominion of Canada to be administered for the exclusive benefit of said claimants.

3. In the event of the claim of the said Pottawatomies being determined by the Court of Claims of the United States of America and that they are declared entitled so to share in the said fund the said Court of Claims shall be asked to fix the compensation of the said Robert C. Bell, Jr., and the Party of the Second Part for their professional services.

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 received.

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 of each claimant entitled thereto personally, the Party of the Second Part will endeavour to arrange for distribution to said claimants by the Director of Indian Affairs at Ottawa, in which event the cheques or warrants for payment will be held till the 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 make payments as above determined for the legal services aforesaid, only out of monies belonging to said fund in his possession or control and which may lawfully be appropriated to that purpose. No payment fors legal services as aforesaid shall be made, however, unless and until the Party of the Second Part furnishes the Party of the First Part with a list of names of those Indians who retain the Party of the Second Part as provided herein. Such list shall be attached hereto and shall form part of this agreement. The Party of the Second Part shall keep this list accurate and up to date during the currency of this agreement.

8. The Party of the First Part will raise no objection to the levying of an assessment on said chaimants 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. And further provided that before the Party of the Second part collects the second assessment he shall furnish to the Party of the First Part a statement shewing the moneys received and disbursed with respect to the first assessment.

9. The Party of the Second Part agrees at all times and in good faith to use his best endeavours to see that the Estate of the said Andrew Gordon Chisholm secures a proportionate sum of the compensation awarded as provided by Paragraph 10 of a certain memorandum of agreement between the Party of the First Part and the said Andrew Gordon Chisholm, dated the 8th day of August, 1918.

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 said 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 written.

SIGNED, SEALED AND DELIVERED)
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In the presence of)
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DATED A.D. 1946.

HIS MAJESTY THE KING

- and -

ASHTON RAY DOUGLAS

- A G R E E M E N T -

DOUGLAS & McCALLUM,
Solicitors, &c.,
LONDON, Ontario.

for Mr. Cory

15-6610-4

DOUGLAS & McCALLUM

BARRISTERS, SOLICITORS, ETC.

A.R. DOUGLAS, K.C. J.D. McCALLUM

R.J. LAMON

PHONE METCALF 271-2
CABLE-DOUGLAS-LONDON

ROYAL BANK BUILDING
383 RICHMOND STREET
LONDON, CANADA 25th October, 1946.

Dr. T.R.L. MacInnes,
Secretary, Indian Affairs Branch,
Parliament Buildings,
OTTAWA, Ontario.

Dear Sir:

Re: Potawatamies - your file 156610-4

With further reference to your letter of October 4th, I beg to advise you that I have visited the reservations at Christian Island, Cape Croker, The Saugeen, Kettle Point and Walpole Island. Arrangements have been made to set up committees in each of the reservations for the purpose of having retainers signed by the claimants and generally surpervising the arrangements so far as the claimants in each reservation are concerned. As these retainers come in signed by the claimants, I shall furnish you with lists. I might say that I received a very good reception and my feeling is that the claimants are prepared to support the application unanimously, and that there will not be the factions which existed a number of years ago. I could not go to Manitoulin Island, but I am assured the members there will co-operate.

I have considered the revised Agreement as submitted by the Legal Branch. It appears to be satisfactory with the exception of Paragraph 2. The majority of the members of the bands, whom I interviewed, were agreeable to having the money paid through the Department of Indian Affairs, but some of the senior men seemed to think that in some instances the younger people would want the money paid directly to them. This being the case, if I am retained by any person in the latter class, I would have to act upon his or her instructions. I have, therefore, made my advocacy of payment to the Department of Indian Affairs subject to the clients' individual instructions.

With regard to Paragraph 8, as you no doubt know there was some dissatisfaction with the account of the money, which the late Mr. Chisholm collected. Therefore, I would like to add the last proviso as I think that it will put the contributors' minds at rest as to how the money is disbursed. If the Agreement is satisfactory in the form in which I submit, will you please have it engrossed and forwarded to me.

I shall keep you advised as the matter progresses.

Yours sincerely,

A.R. Douglas

ARD/JM
Encl.

156610-4

, November 13, 1946.

Dear Mr. Douglas:-

Your revised draft of the agreement regarding the Pottawatomies'claim forwarded with your letter of October 25 has just been returned to me from the Legal Division. The two changes you suggested in Paragraph 2 and Paragraph 8 are accepted.

The revised agreement in triplicate is enclosed herewith. Please sign three copies and return them to me following which they will be submitted to the Minister for signature and a copy will be returned to you when signed by him.

Yours truly,

T.R.L. MacInnes,
Secretary.

A.R. Douglas, Esq., K.C.,
Barrister, Solicitor, Etc.,
London, Ontario.

TRLM/ITH

LEGAL DIVISION

CANADA
DEPARTMENT
OF
MINES AND RESOURCES
GENERAL ADMINISTRATIVE OFFICES

OTTAWA 8th November, 1946.

MEMORANDUM:

Mr. MacInnes.

Please see your memorandum of the 4th instant, file 156610-4, with regard to the letter from Mr. Douglas with return of the redrafted agreement in connection with the Pottawatomies' claim.

I have discussed this redrafted agreement with Mr. Jackson and he is satisfied to accept the suggestions made by Mr. Douglas. It will, therefore, be in order to have this agreement retyped in the required number of copies and forwarded Mr. Douglas for execution and returned here for the execution of the Minister.

Solicitor.

This Agreement made this day of A.D. 1946.

B E T W E E N:

HIS MAJESTY THE KING, in right of Canada, represented by the Minister of Mines and Resources, hereinafter called the PARTY

OF THE FIRST PART,

- and -

ASHTON RAY DOUGLAS, of the City of London, in the County of Middlesex, Solicitor, hereinafter called the PARTY

OF THE SECOND PART.

WHEREAS the Party of the Second Part is retained by certain Indians residing in the Province of Ontario, claiming to be members (or descendents of members) of the Indians known as stray bands of Pottawatomies of the State of Wisconsin, one of the United States of America, who claim to be entitled to share in the distribution of funds to the said Pottawatomies by the United States of America.

AND WHEREAS such retainer provided for the professional compensation of the Party of the Second Part.

AND WHEREAS the Party of the First Part has given his consent, expressed in writing, to prosecute the claim of the said Indians as provided by Section 141 of the Indian Act.

AND WHEREAS there is an agreement between the Party of the Second Part and one, Robert C. Bell, Jr., an Attorney, residing in the City of Stamford, in the State of Connecticut, one of the United States of America, with respect to the prosecution of the claim of the said Pottawatomies providing for the sharing of the remuneration to be awarded and other matters.

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

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

2. The Party of the Second Part subject to any instructions to the contrary given him by his clients, agrees to advocate that any moneys recovered from the United States of America for the said claimants be paid to the Party of the First Part in the right of the Dominion of Canada to be administered for the exclusive benefit of said claimants.

3. In the event of the claim of the said Pottawatomies being determined by the Court of Claims of the United States of America and that they are declared entitled so to share in the said fund the said Court of Claims shall be asked to fix the compensation of the said Robert C. Bell, Jr., and the Party of the Second Part for their professional services.

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 received.

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 of each claimant entitled thereto personally, the Party of the Second Part will endeavour to arrange for distribution to said claimants by the Director of Indian Affairs at Ottawa, in which event the cheques or warrants for payment will be held till the compensation of the Party of the Second Pard 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 make payments as above determined for the legal services aforesaid, only out of monies belonging to said fund in his possession or control and which may lawfully be appropriated to that purpose. No payment for legal services as aforesaid shall be made, however, unless and until the Party of the Second Part furnishes the Party of the First Part with a list of names of those Indians who retain the Party of the Second Part as provided herein. Such list shall be attached hereto and shall form part of this agreement. The Part of the Second Part shall keep this list accurate and up to date during the currency of this agreement.

8. The Party of the First Part 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. And further provided that before the Party of the Second Part collects the second assessment he shall furnish to the Party of the First Part a statement showing the moneys received and disbursed with respect to the first assessment.

9. The Party of the Second Part agrees at all times and in good faith to use his best endeavours to see that the Estate of the said Andrew Gordon Chisholm secures a proportionate sum of the compensation awarded as provided by Paragraph 10 of a certain memorandum of agreement between the Party of the First Part and the said Andrew Gordon Chisholm, dated the 8th day of August, 1918.

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 said 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 written.

SIGNED, SEALED AND DELIVERED)
In the presence of)

DATED A.D.1946

HIS MAJESTY THE KING

- and -

ASHTON RAY DOUGLAS

- A G R E E M E N T -

DOUGLAS & McCALLUM,
Solicitors, Etc.,
LONDON, Ontario.

156610 4

719 YONGE STREET
TORONTO

TELEPHONES:
BUSINESS, RANDOLPH 1163
RESIDENCE, KINGSDALE 0287

November 9th,
1 9 4 6.

Mr. R. J. Hoey,
Director - Dept. Mines & Resources,
Indian Affairs Branch,
O T T A W A.

Dear Mr. Hoey: Re: Pottawatomie Indians

I have your letter of the 2nd instant which I discussed on Thursday with two of the Pottawatomies that were here.

I do not agree with the position assumed by your Department. The fact that the United States Government have denied liability for the claim of the Pottawatomies is no answer nor is the fact that the claim was not included in the Convention of 1910 any obstacle to the matter now being dealt with. The facts are now quite clear and the decision of the United States court of claims as well as the judgment in the Cayuga claim have established that the Pottawatomie Indians have not lost but still retain their right to share in the Treaty Monies notwithstanding that they have crossed into the Dominion. So far as the Pottawatomies are concerned I have before me the Report of the Secretary of the Interior of the United States in which the Treaty Money claimed by the Wisconsin Pottawatomies is based upon a division of the total amount alleged to be due between the Wisconsins ~~payments~~ and the 1550 Pottawatomies who were then found to be living in Canada. I have also before me a copy of the letter from the Secretary of the Interior dated 18th July 1941, in which the following paragraphs occur:

"As the result of a memorial presented to Congress by the Wisconsin and Michigan Pottawatomies who had thus been deprived of their annuities (Senate Document 185, 57th Congress), the Secretary of the Interior was directed by the Act of June 21, 1906, (34 Stat. 320, to investigate their claims. In the report subsequently made to Congress (House Document No. 820, 60th Congress), it is shown that 457 of these Indians resided in Wisconsin and Michigan and 1,560 in Canada; and that to equalize the payments would require the sum of $447,339 for the Indians residing in the United States and $1,517,226.87 for those who resided in Canada. The $447,339 has been appropriated and paid to the United States branch of the Band, or expended for the benefit of these Indians, but no appropriation has been made for the Canadian Pottawatomies.

"The field agent who made the investigation reported that, with few exceptions, the Indians residing in Canada were treated and considered as British subject; that they were for the most part the second generation removed from the original

fugitive ancestors and were fully domiciled wards of the Dominion Government.

"Later, in 1932, the claim of the Canadian Pottawatomies was the subject of correspondence between the Department of State and the Minister of the Dominion of Canada, culminating in a Department of State note of June 9, 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. In reply, the Canadian Legation, on October 25, 1932, stated 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 seemed 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." Our records contain no information concerning any further action."

From these paragraphs it appears that the Canadian Government are awaiting a favourable opportunity to again raise the question. In this connection, in view of the recent Statute of Congress authorizing the court of claims to deal with claims of Indians in the United States against the United States Government, the time would now seem appropriate to press for the amendment of the Statute to include the claims of the Canadian Pottawatomies as well as the claim of the St. Regis Indians. I do not agree with the statement that the individual Indian should prosecute the claim and I think it is a most disgraceful affair that your Department should encourage the collection of funds from individual Indians on the pretext of prosecuting the claim. You must know and if you don't I can tell you quite frankly from my conversations with the officials in Washington that the American Government will not deal with the individual Indian. The fact that the Cayuga claim was prosecuted by the British Government with the assistance of the Canadian Government, while Canada was then only a colony, is a sufficient answer to any pretext to escape the proper fulfilment of the duty to the Canadian Government as Guardian of these Indians to recover what admittedly is owing to them. I would also point out that the instructions given to Sinclair in 1935, and which were partly carried out, were that the claim for the St. Regis Indians was to be made on behalf of His Majesty. Why this claim was not prosecuted beyond the stage of making the claim against the State of New York, I am unable to find, except that it was proposed within my knowledge by an Officer of your Department that Sinclair should undertake to recover of the claim upon a contingency fee basis. The suggestion was an insult to the Crown. There is a very serious question which may evidently be ultimately raised if your Department persist in its present attitude. Not only the Pottawatomies but several other groups are threatening to raise it and I hope that on reconsideration your Department will collaborate with the Department of Foreign Affairs to have the matter taken up at Washington and

the amendment which I have suggested made to the recent Statute.

There is at the moment a very explosive element amongst the Indians which is being fanned by certain newspapers. I do not think that it would effect much credit to the present Committee if publicity is given to all the grievances of the Indians, and I have endeavoured as best as I can to prevent anything that would cause friction at the present stage of matters. I may not, however, be able to control these men who are now pretty well exasperated.

I should be obliged if you let me hear from you and I suggest again that we discuss the matter personally.

Yours faithfully,

W. Murdoch.

WM/LL

CHERRY 2666 LAW OFFICES

DORR E. WARNER
1101 HIPPODROME BUILDING
CLEVELAND

BEFORE THE INDIAN CLAIMS COMMISSION OF THE UNITED STATES

HENRY JACKSON,

Claimants.

-vs-

UNITED STATES

- STATEMENT OF CLAIM -

I.

The Claimants are the descendants and successors in interest o that portion of the United Pottawatomie Nation which did not remove west of the Mississippi River with other members of the tribe, but which later departed from the tribal lands in Wisconsin and other states and settled in Canada, and file this Statement of Claim on their own behalf and on behalf of all other members of the band similarly situated.

They claim that the United States should account to them for their just and proportionate share of the tribal annuities and proceeds of the sale of tribal lands arising from treaties made between their ancestors and the United States.

These descendants, continuing to reside in Wisconsin, of the Pottawatomies who did not remove west of the Mississippi, petitioned the Congress to account to them for their just and proportionate share of th said funds (Senate Document No. 185, 57th Congress, second session) and thereafter the Congress appropriated to them their share of such funds. Final action has not been taken in respect of the share of those Pottawatomies residing in Canada.

CHERRY 2666

LAW OFFICES

DORR E. WARNER
1101 HIPPODROME BUILDING
CLEVELAND

II.

They have claims at law and in equity against the United States arising out of treaties between the United Pottawatomie Nation of Indians and the United States, and claims arising from the taking of their lands by the United States without payment of their just and proportionate share thereof.

III.

There are no allowable deductions from the amount of said claims, and there are no other offsets, counter claims or demands in a suit brought in the Court of Claims under Section 145 of the Judicial Code (36 Stat. 1136, 28 U.S.C. Sec. 250); and no money or property has been given to or funds expended gratuitously by the United States for the benefit of Claimants or their ancestors.

IV.

The pertinent facts are a matter of official record. They are found in:

1. The report of the Secretary of the Interior, House Document No. 830, 60th Congress, first session, herein termed "Report 830";

2. The report of the Committee of the House of Representatives on Indian Affairs, Report No. 470, 64th Congress, first session, herein termed "Report 470";

3. The report of the Committee of the Senate on Indian Affairs, Report No. 293, 65th Congress, second session, herein termed "Report 293".

CHERRY 2666 LAW OFFICES

DORR E. WARNER
1101 HIPPODROME BUILDING
CLEVELAND

The Pottawatomies residing in Wisconsin petitioned the Congress to consider the merits of their claims against the United States (Senate Document No. 185, 57th Congress, second session) and thereafter, pursuant to an Act of Congress (34 Stat. L. 380) the Secretary of the Interior made a report as to the status of their claim, including an enrollment of those Pottawatomies residing in Wisconsin, Michigan and Canada (Report 830).

From the report of the Committee of the House (Report 470), in which the Committee of the Senate on Indian Affairs concurred, it appears t that:

> "The Pottawatomie Indians formerly occupied territory of the United States lying 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 the 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,

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CLEVELAND

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 Stats., 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 a 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.

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Many of the Wisconsin Pottawatomies refused to remove to the new home west of the Mississippd River; in fact, about 2,007 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. 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, 1,550 of the 2,007 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 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 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.

The total principal amount of the proportionate share of the Indians residing in Wisconsin, Michigan and Canada who did not remove west of the Mississippi River, as of January 1, 1908, is $1,964,565.87. (Report 830, page 12.).

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The principal amount of the proportionate share of those residing in Wisconsin and Michigan, as of January 1, 1908, is $447,339.00, and the principal amount of the proportionate share of those residing in Canada, as of January 1, 1908, is $1,517,226.87.

V.

The treaties made between the United Pottawatomie Nation and the United States are as follows:

Treaty	United States Statutes
Aug. 3, 1795	5-49, art. 4
Sept. 3, 1809	7-113, art. 3
Oct. 2, 1818	7-185, art. 3
Aug, 29, 1821	7-218, art. 4
Oct. 16, 1826	7-295, art. 3
Do.	7-295, art. 3
Sept.20, 1828	7-317, art. 2
Do.	7-317, art. 2
July 29, 1829	7-320, art. 2
Do.	7-320, art. 2
Oct. 20, 1832	7-378, art. 3
Oct. 26, 1832	7-394, art. 3
Oct. 27, 1832	7-399, art. 4
Sept.26, 1833	7-431, art. 3
Sept.27, 1833	7-442, art. 2
June 17, 1846	9-853, art. 10

WHEREFORE, the Claimants pray the Commission to make a final determination in writing of (1) its finding of facts upon which its conclusions are based; (2) a statement (a)that there are just grounds for relief of the Claimants, and the amount thereof is, as of January 1, 1908, $1,517,226.87; (b) there are no allowable offsets, counterclaims or other deductions; (3) a statement of its reasons for its findings and conclusions.

Dorr E. Warner
Attorney for Claimants
1101 Hippodrome Building
Cleveland, Ohio

CHERRY 2666

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1101 HIPPODROME BUILDING
CLEVELAND

HENRY JACKSON being first duly sworn according to law, deposes and says that he is one of the Claimants in the foregoing claim; that the facts and allegations contained in the Statement of Claim are true, as he verily believes.

_____

(Henry Jackson)

Sworn to before me and subscribed in my presence this _____ day of _____, 1947.

_____

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DORR E. WARNER
1101 HIPPODROME BUILDING
CLEVELAND

December 13, 1946

Department of Mines,
Ottowa, Canada

Attention - Mr. Glenn.

Re: Pottowatomie Indians vs. United States

Dear Mr. Glenn:

At the last session of Congress it passed a Bill creating an Indian Claims Commission to hear and determine claims against the United States on behalf of any Indian tribe, band or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska.

After a long consultation with the spokesman of the Indian Affairs Committee of the United States Senate, it was decided to file the claim of the Pottowatomie Indians of Canada before the Commission.

In the event the Commission decides it has no jurisdiction, we will then attempt to obtain an amendment of the Act giving it jurisdiction over the claims of the Canadian Indians.

I enclose herewith a copy of the Statement of Claim which we propose to file, for your approval or any suggestions you may desire to make in respect thereto. At the time of my conference in Ottowa, I obtained the impression that it was not necessary for the Canadian Government to give its approval to a group of Indians to file the action, or to the Pottowatomie band as such to file the action. However, we would prefer to have your approval.

I will be in Toronto Monday, December 16th, and will telephone you.

I am sending a copy of this Statement of Claim and also a copy of this letter to Mr. William A. Robinson, Midland, Ontario.

Very truly yours,

Dorr E. Warner

DEW:A
Encl.

719 YONGE STREET
TORONTO

TELEPHONES:
BUSINESS, RANDOLPH 1163
RESIDENCE, KINGSDALE 0057

January 2 - 1947.

Mr. R. A. Hoey,
Director - Dept. Mines & Resources,
Indians Affairs Branch,
OTTAWA.

Dear Mr. Hoey:

Re: Pottawatomie Indians

I have had quite an experience in dealing with Government Departments both here and in England, but what has occurred in the past fortnight in connection with this matter is not only disgraceful but the people involved in it in your Department should be dismissed from the service.

Mr. McInnis came to see me some ten days ago after having been advised by Mr. Warren that he proposed to file a claim on behalf of the members of the Band for whom he has been acting and after I had enquired of you who this man Douglas was. During my conversation with Mr. McInnis, I had a very strong feeling that he was not absolutely candid and that there was something that he was withholding. He took the old attitude of the department that the Crown had nothing to do with this matter at all but were only concerned in giving a license to Douglas or anybody else under Section 141 of the Indian Act.

I have this morning, after some enquiry, received from one of the Band a copy of an agreement together with a copy of a letter dated 4th October, 1946, addressed by Mr. McInnis to Mr. Douglas. These documents disclose a condition of affairs in connection with this matter which is damnable. Like the Irishman, Mr. McInnis spoke out of both sides of his mouth and gave expression to entirely opposite ideas. With one side he told me that the Crown was not interested except to grant the license under Section 141, and that so far as the Indians were concerned they had nothing to do with the money if, as and when it was recovered. This agreement which has been sent to me, purports to be made by H. M. the King with Mr. Douglas, and the Crown covenants that Mr. Douglas is to represent the Crown, and if the Indian is successful, without the consent of all the Indians involved, is to demand that the money be paid over to His Majesty. Not only so, but H. M. the King is to settle the compensation through a reference to the Exchequer Court of Canada.

I need not comment upon the remaining paragraphs of the Agreement except paragraph 9, whereby Chisholm's estate is again to get a slice out of all the Indians, although he represented only a

small fraction and has been paid for anything he ever did.

If the Crown has nothing to do with this matter what right had the Crown to make such an Agreement? If it has the right to make the Agreement, then it's duty is to proceed to recover the money. The Agreement in view of the fact that Chisholm is dead is a further attempt on the part of the Department to divide and rule the Indians, rather than that the Indians should be united to secure the rights which belong to them.

For the information of the 1200 who were not represented by Chisholm, I shall be obliged by your advising me whether or not this Agreement has been executed. This question has been put to me by claimants at Sarnia, Walpole Island and Kettlepoint.

Yours faithfully,

WM/LL

W. Murdoch

COPY

Walpole Island, Ont.
Dec 10/46

Public Archives of
Canada, Ottawa.

Dear Sirs:

Kindly give me the information concerning the few questions as follows

1. How many in number did the Pottawatomie Indians of United States came into Canada between the years 1836-1841?

2. What Reserves or places did they settled at?

3. And the number in each place of settlement?

Trusting that you will supply me the information on my three questions.

Yours very truly,

(sgd) Alfred Day,
Walpole Island
R.R.No. 3
Ont.

156610-4

Letter

Ind. Affs. Br.

30.12.46

PUBLIC ARCHIVES OF CANADA

Ottawa, December 19th, 1946.

The Director,
Indian Affairs Branch,
Mines & Resources Department,
Ottawa, Ont.

Dear Sir:

Attached hereto please find copy of a letter from Mr. Alfred Day, Walpole Island, Ontario, which is self explanatory. As the information requested is not on file in the Archives, the letter is being forwarded to you for whatever action you may wish to take in the matter, and for the favour of a direct reply.

Department of Mines & Resources
Indian Affairs Branch
DEC 21 1946
REGISTERED

Yours very truly,

G. Lanctot

G.Lanctot,
Deputy Minister.

Jeff:

Our old papers in the Archives relating to the migration of the Pottawatamie Indians to Upper Canada between 1835-40 do not disclose the total population of these American Indians who settled mainly on Walpole Isld and the River St Clair.

In connection with Mr Day's recent inquiry please see departmental letter dated Feby 3rd 1940. file 86680, and in reply to his request for similar information.

Please see also letter dated Nov. 14. 1934 to Capt Dawn on file 156610-4 Vol 6 regarding information supplied by Wm W. Day on the same subject.

156610-4 (Secy.)

Ottawa, January 6, 1947

Dear Mr. Day:-

This will acknowledge your letter of December 10, which was referred to this Branch by Mr. G. Lanctot, Deputy Minister of the Public Archives of Canada, regarding Pottawatomie Indians.

In reply I have to refer to similar requests made by you on November 14, 1938, and December 1939 through Mr. B.B. Osler, Barrister of Toronto. At that time you were informed that the data you requested was not available.

Your present inquiry requesting similar data regarding the Pottawatomie Indians was again checked through our old papers in the Public Archives and at this Branch, and they do not disclose the information you require.

Yours truly,

Director.

Mr. Alfred Day,
R.R. No. 3,
Walpole Island, Ont.

156610

OFFICE OF THE DIRECTOR

CANADA
DEPARTMENT
OF
MINES AND RESOURCES

February 13, 1947.

Memorandum: Director.

Re: Pottawatomie Indians.

As stated to you verbally the letter hereunder from Mr. W. Murdoch of January 2nd, 1947 does not call for or merit a reply.

I spent a considerable time with Mr. Murdoch in his office in Toronto on December 18th last which is the occasion to which he refers in such opprobrious terms. Evidently it was a mistake talking to him on this case. and I would not recommend further conversations of the kind. I explained the situation to him very carefully but he has chosen to distort most of what was said just as he has distorted and misunderstood information previously given to him either verbally or by letter.

It is true, of course, that I did not tell Mr. Murdoch anything about the proposed agreement with Mr. Douglas to enable the latter to act for the clients of the late Mr. Chisholm for whose estate he acts. This agreement has not been executed and the copy which Mr. Murdoch obtained of it was only tentative and subject to change. This agreement was dealt with by the Chief Executive Assistant and the Departmental Solicitor and follows a previous agreement, approved by the Department of Justice, with the late Mr. Chisholm. The new agreement is simply to insure that all

the work done by Mr. Chisholm, for which the Indians themselves paid out a considerable amount, could be continued in a legal way if the Indians so desired. The only reason for the agree- or any other agreement is to give the necessary consent under Section 141 to permit collections of retainers from the Indians. If it were not for this section the department need not have become involved in the matter at all. Being involved, however, it was necessary both for the Department and the Solicitor that a number of safeguards and conditions to the consent should be included for the protection of the Indians and to ensure proper procedure. The agreement, of course, does not, as stated by Mr. Murdoch, covenant "that Mr. Douglas is to represent the Crown, etc.". On the contrary it was made quite clear in the correspondence with Mr. Douglas that he was not acting for the Crown but for his individual Indian client as a private solicitor. The provision for settlement of fees by the Exchequer Court to which Mr. Murdoch takes exception would only apply in the event that the U.S. Court of Claims should refer the administration of any award made to the Canadian Government; this provision also was in the old agreement with Mr. Chisholm. The provision by which Mr. Douglas agrees that the interests of the Chisholm estate should be protected is proper and derives from a clause in the old agreement with Mr. Chisholm.

It would not have been proper or even permissible for me to have told Mr. Murdoch anything about the agreement because it is still under advisement and therefore confidential and indeed it may never be carried out at all as we have not heard recently from Mr. Douglas on the subject and he may have lost interest.

I had in mind writing to Mr. Douglas to find out just how a copy of the agreement got out of his hands into those of an Indian and in turn to Mr. Murdoch's. At the moment, however, I think it better not to stir up the question at all as it is quiescent.

As to the question in Mr. Murdoch's last paragraph as to whether or not the agreement has been executed I do not think it deserves an answer as he is improperly in possession of the draft copy, a preliminary one incidentally which was changed later in several respects. In the circumstances I think it was

quite unethical for Mr. Murdoch to take cognizance of the draft obtained in the way it was or to write to this Branch about it.

This whole thing is an example of the sort of difficulty likely to be encountered by reason of the presence on the Statute of Section 141 requiring departmental consent to Indians contributing their own money for the prosecution of claims. Whatever the department does in any case either by giving or refusing consent is likely to turn out to be wrong or so considered by the interested parties. The Indians if they want to contribute their own money for their claims will do so regardless of any prohibition. Refusal to give consent or prosecution proceedings by the department would be regarded as an oppression and an interference with personal liberty. Whereas on the other hand consent by the department is likely to be interpreted as encouragement of exploitation of the Indians. The section is ineffectual as experience has shown that it is extremely difficult to get a conviction under it. In my opinion it should be removed from the Act leaving the Indians free to do legally what they will do anyway if they are so inclined.

T.R.L. MacInnes

156610 VOL.7 CLOSED

POOTAWATOMIE CLAIM

SEE VOLUME 8

CLOSED JUNE 17 1947

FROM MAR 16 1939

FEB 13 1947