SECTION 21. STATUS OF SURPLUS AND CEDED LANDS

In the preceding three sections dealing with the execution of conveyances. leases, and licenses covering Indian tribal lands, we have been primarily concerned with the validity of such instruments and with the power of the tribal owner to dispose of private property. When we turn to the subject of Indian land cessions to the United States, the question of validity is no longer a troublesome one, for, as we have noted, most of the historical peculiarities of Indian land law were designed to encourage the cession of tribal lands to the United States, and the courts have been reluctant to put obstacles in the way of this process.[518] Even where prior treaties guaranteed that no land cessions would ever be made or that such cessions would be made only with the consent of three-fourths of the Indians concerned. the Supreme Court has held that a subsequent statute providing for the cession of Indian land by a majority is entirely constitutional.[519] The problem in this field is, therefore, primarily one of the construction of treaties, agreements, and statutes, rather than their validity.

In dealing with the status of ceded lands. the basic question that constantly recurs is whether a cession of lands by an Indian tribe has finally and completely ended the interest of the tribe thereln, or whether the tribe retains some equitable interest In the land conveyed.[520] Prior to 1880, most of the treaties. agreements, and statutes by which Indian tribes ceded land to the United States provided for an outright and final conveyance. in return for which the Indians received cash payments, annuities, substitute lands, or other things of value.[521]

For about four decades after the adoption of the General Allotment Act an alternative pattern prevails. "Surplus" reservation lands, not needed for allotment, are turned over to the Government for the purpose of sale. The Indians are credited with the proceeds only as the land is sold, and the United States is not itself bound to purchase any part of the lands so opened for disposal. Undisposed of lands of this class remain tribal property until disposed of as provided by law.[522]

In between these two recognized patterns of "cession and removal" and "relinquishment in trust." various hybrid forms appear.[523]

The "cession and removal" formula is found in the Treaty of March 16. 1854,[524] with the Omaha Indians. construed in United *States* v. *Omaha Tribe* of *Indians*.[525] In this treaty the language of present conveyance is used and the Indians undertake to remove from the land ceded within 1 year from the ratification of the treaty. The fact that payment was to be made over a long period of years, in the opinion of the Supreme Court, did not delay the passage of title to the United States.[526]

A clear case of the "relinquishment in trust" agreement appears in the Act of April 27, 1904,[527] ratifying an agreement with the crow Indians. This agreement provided that the Indians "ceded, granted, and relinquished" to the United States all of their "right, title, and interest" in the lands described. The United States agreed to sell the land on prescribed terms and to pay the proceeds to the Indians, making semiannual reports as to the status and disposition of the sums realized. The agreement specifically declared "the intention of this Act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received, as herein provided.[528] Construing these provisions in the case of *Ash Sheep Co.* v. *United States*,[529] the Supreme Court declared :

> It is obvious that the relation thus established by the act between the Government and the tribe of Indians was essentially that of trustee and beneficiary and that the agreement contained many features appropriate to a trust agreement to sell lands and devote the proceeds to the interests of the *cestui que trust. Minnesota v. Hitchcock*, 185 u. s. 373, 394, 398.
>
> . . . . .
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> Taking all of the provisions of the agreement together we cannot doubt that while the Indians by the agreement released their possessory right to the Government, the owner of the fee, so that, as their trustee. it could make perfect title to purchasers, nevertheless, until sales should be made any benefits which might be derived from the use of the lands would belong to the beneficiaries and not to the trustee. and that they did not become "Public lands" lo the sense of being subject to sale, or other disposition, under the general land laws. Union *Pacific R. R. Co. v. Harris.* 215 U. S. 386. 388 They were subject to sale by the Government, to be sure, but in the manner and for the purposes provided for in the special agreement with the Indians. which was embodied in the Act of April 27, 1904. 33 Stat. 352, and as to this point the case is ruled by the *Hitchcock* and *Chippewa Cases, supra.* Thus, we conclude, that the lands described in the bill were "Indian lands" when the company pastured its sheep upon them. In violation of § 2217 of Revised Statutes. and the decree in No. 212 must be affirmed. (Pp. 165,166.)

Similar circumstances were present in the Act of January 14, 889,[530] authorizing an agreement for the cession and sale of Chippewa lands la construing this agreement the Supreme Court suggested : [541]

> . . . that the United States has no substantial interest in the lands: that it holds the legal title under a contract with the Indians and in trust for their benefit. (P. 387)

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[518] These claims hare been maintained and established as far west as the river Mississippi. by the sword. The title to a vast portion of the lnods we now hold, originates In them. It is not for the courts of this country to question the validity of this title or to sustain one which is incompatible with it. *Johnson* v. *Mcintosh*. 8 Wheat. 543. 588–589 (1823).

[519] *Lone Wolf* v. *Hitchcock*. 187 U. S. 553 (1903) : *Cherokee Nation* v *Hitchcock*. 187 U. S. 2 9 4 (1902).

[520] Whether or not the Government became trustee for the Indians or acquired an unrestricted title by the cession of their lands depends in each case upon the termsmof the agreement or treaty by which the cession was made. *Minnesota* v. *Hitchcock. 185* U *S. 373. 394. 398* (1902) : *United States* v. *Mille Lac Band of Chippewa Indians. 229* U. S. 498. 509 (1913) *Ash Sheep* Co. v. United Stales. 252 U. S. 159. 164 (1920) aff'g 250 Fed. 591 C(C. A. 9. 1918). and 254 Fed. 59 (C A. A. 9 . 1918). *Cf United Stes* v. *Choctaw Nation*, 179 U. S. 494 (1900); Op. Sol. I D., M. 29798. June 15. 1938 (Ute) (56 I. D. 330). Op. Sol. I. D.. M 28198. January 8, 1936 (Yuma).

[521] See. for example. *Beaulieu* v. *Garfield*, 32 App. D. C. 398 (1909). See also fn 64 of this chapter.

[522] *Ash Sheep Co* v *United States*, *252* U. S. 159 (1920). aff'g 250 Fed. 591 (C C A. 9. 1918) ; and 254 Fed. 59 (C. C. A. 9. 1918).

[523] See secs. 5-6. *supra.*

[524] 10 stat. 1043.

[525] 253 U. S. 275 (1920).

[526] Accord Op Sol I D M.28198. January 8. 1936 In this case the effect of Art I of an agreement with the Yuma Indians. ratified by the Act of August 1 5. 1894. 28 Stat. 286. 332. was in issue. The Solicitor of the Interior Department ruled that although nonirrigable lands had been continuously administered as a part of the Indian reservation and leased for grazing and mining purposes for the benefit of the Yuma Indians. this administrative recognition of Indian ownership could not prevail in the face of clear language co the agreement indicating "in clear and precise terms a present relinquishment or cession of all of the interest of the Indians in the reservation lands." The unreported cases o f *United States* v. *Sid Johnson and Mrs. Sid Johnson.* and *United States* v. *M O* Walker *and Mrs M* c *Walker.* decided August 2. 1935. in the District Court of the United States for the Southern District of California. are cited in support of this ruling.

[527] 33 Stat. 352

[528] 33 Stat 352. 361

[529] 252 u. s. 159 (1920). aff'g 250 Fed. 591 (C. C. A. 9. 1918). and 254 Fed. 59 (C. C. A. 9. 1918).

[530] 25 Stat 642.

[541] *Minnesota* v *Hitchcock*, 185 U. S. 373 (1902).

This was not a case, the Court pointed out, where "the interest of the tribe in the land from which it has been removed ceases and the full obligation of the Government to the Indians is satisfied when the pecuniary or real estate consideration for the cession is secured to them." (P. 401.) Under the circumstances the Indians had a right to expect that the entire tract would be used as declared in the act or agreement.[532]

Various other cases give effect to the equitable interest thus found to exist in the Indian tribe with respect to the land ceded.[533]

Several difficult border-line cases were presented when Congress, by section 3 of the Act of June 18, 1934,[534] authorized the Secretary of the Interior "to restore to tribal ownership the remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public-land laws of the United States." The question arose whether this language was broad enough to cover land ceded by the Colorado Ute Indians under the Act of June 15, 1880.[535] The Solicitor of the Interior Department, holding that such lands came within the permissive scope of tlie statute,[536] declared:

> The 1880 cession agreement with the Colorado Ute Indians is one of the early examples of 'conditional surplus land cessions; in fact the provisions of the 1880 act set forth a plan of allotment and disposal of surplus lands which became stereotyped in later allotment acts. A commission was appointed to make a census of the Indians, to select lands to he allotted, to survey sufficient of these lands for allotment, and to cause allotments to be made. The provisions of section 3 of this act, quoted above, are significant, in that they provide for the disposal only of those lands within the reservation "not so allotted." The legislative history of this 1880 act makes clear that the chief purpose of the act was the immediate allotment within the Colorado Ute Reservation of the individual Indians of various Ute bands and the opening to disposal of the remaining surplus lands. The opening up of the surplus lands was described as essential in view of the thousands of settlers and prospectors on the borders of the reservation who could not successfully be kept from entering the reservation by military or other means. The plan of allotment of the Indians was favored and bitterly opposed as the entering wedge in the allotment of the tribes generally throughout the United States. In fact, a general allotment act was pending in that session of Congress. (See House debates on the 1880 agreement, Congressional Record, 46th Congress, 2d session, June 7 1880, pages 4251-4263.)
>
> From the foregoing it definitely appears that the fact that this cession occurred several years before other allotment cessions does not mean that this cession falls within the earlier type of outright cession and removal. This cession was rather a forerunner and a model of later allotment acts and differs in no important respect from these acts. The fact that two of the three main groups of Indians were subsequently pot allotted within the borders of the Colorado Ute Reservation does not alter my conclusion. The 1880 act did not provide for establishing new reservations but for supplying the Indians with allotments, and "where allotments occurred outside the reservation, the Indians were to be charged a price of $1.25 an acre to be paid from the proceeds of the land sold from the Colorado Ute Reservation. The allotments off the reservation were therefore in the nature of lieu allotments and, in the case of the Uncompahgre Utes, were made only because of the fact that insufficient agricultural lands were found within the Colorado Ute Reservation. (See Report of the Commissioner of Indian Affairs, 1881, at 19, 325, *et seq.*)

The fact that the Act of 1880 and the subsequent Act of 1882 provided that the lands ceded "shall be held and deemed to be public lands of the United States" was held not to affect the conclusion that the lands in question were lands in which the Indian tribe retained an interest:

> Surplus lands ceded to be disposed of for the Indians are in fact qualified public lands and also qualified Indian lands. They are public lands in that the United States has the legal title and has secured from the Indians a release of their right of occupancy and has arranged to dispose of them, but they are not public lands in the full sense of the term as they are to be disposed of only in limited ways and 'upon certain conditions. *Minnesota* v. *Hitchcock*, *supra*. It should be noted that both the 1880 and the 1882 acts concerning 'the Ute' land qualified the reference to the land as public land and subject to disposal under the public land laws by stated conditions and restrictions. (Pp. 338-339.).

Where ceded lands are held by the United States to be disposed of for the benefit of an Indian tribe, all proceeds from the land belong, in equity, to the Indian. tribe.[537] No part of such proceeds accrue to the state in which the lands are located, although such state is entitled to proceeds from the sale of ordinary "public lands"[538] Where such lands are subjected by statute to a flowage easement, Congress has provided for payment of damages to the tribe.[539]

Where surplus lands are disposed of as a result of fraud, the Secretary of the Interior, under proper statutory authorization, may sue on behalf of the tribe to recover the lands lost or the value thereof.[540]

The equitable right to the value of lands erroneously disposed of is vested in the Indian tribe.[541]

Where unsold ceded lands are held to be, in equity, the Property of the tribe, it has been administratively determined that such lands are within the scope of the leasing provisions of approved tribal constitutions.[542]

The equity in ceded lands is vested in the tribe entitled to the proceeds therefrom, rather than the tribe or band making the original cession, and ceded lands restored to tribal ownership pursuant to section 3 of the Act of June 18, 1934[543] become the property of the tribe entitled to the proceeds therefrom.[544]

The manner in which ceded lands are to be disposed Of is for Congress to determine, so long as the promised benefits accrue to

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[532] Ibid., pp. 401, 402.

[533] United *States* v. *Brindle*, 110 U. S. 688 (1884) (holding ceded lands remain property of Indians, in equity, until sold and are therefore not "public lands" within the official duties of an agent designated to sell "public lands"). : *United States* v. *Blackfeather*, 155 U. S. 180 (1894) ; *United States v. Creek Nation, 295 U. S. 103* (1935), rev'g. 77 C. Cls. 159 (1933) : rehearing den. 235 U. S. 769 (1935) ; *cf. United States* v. *Mille Lac Band* of *Chippewas*, 229 U. S. 498 (1913) (certain lands ceded for present consideration, others for future disposition under trust).

[534] 48 Stat. 984. On the scope of sec. 3 of this act; see Memo. Sol. I. D.. August 27. 1938 (Southern Ute; interpreting Act of June 15. 1880, 21 Stat. 199 ; Act of February 20, 1895, 28 Stat. 677), and see 54 I. D. 599 (1934).

[535] 21 Stat. 199.

[536] Op. Sol. I. D., M.29798, June 15, 1938 (56 I. D. 330). The restoration made pursuant to this opinion was superseded by the Act of June 28, 1938, 52 Stat. 1209.

[537] Op. Sol. I. D., M26075, August 5. 1930 (53 I. D. 154) (Flathead) ; Peter Fredericksen, 48 L. D. 440 (1922). *Cf.* Minnesota National Forest, 31 Op. *A.* G. 95 (1917) (ceded lands classified as National Forest under jurisdiction of Secretary of Agriculture) ; *Chippewa Indians of Minnesota* v. *United States*, *305* U. S. *479* (1939).

[538] Sales of Indian Lands in Kansas, 19 Op. A. G. 117 (1888).

[539] Act of April 13, 1938. 52 Stat. 215.

[540] *United States* v. *Rea-Read Mill & Elevator Co.*. 171 Fed. 501 (C. C. E. D. Okla., 1909).

[541] *United States* v. *Creek Nation, 295* U. S. *103* (1935), rev'g. *77* C. Cls. 159 (1933) ; rehearing den. 295 U. S. 769 (1935).

[542] Memo. Acting Sol. I. D.. May 25. 1937.

[543] 48 Op. Stat. 984. 25 U. S. C. 463.

[544] Op. Sol. I. D., M29616, February 19, 1938 ; Memo. Sol. Off. I. D., January 22. 1936. *To* the effect that proceeds of ceded lands are due to the tribe making the last cession, in the absence *Of* clear contrary provisions in the governing statute, treaty.. or agreement, see *United States* v. *Choctaw Nation*, 179 U. S. 494 (1900).

the tribe.[545] Whether ceded lands are subject to preemption laws applicable to the public domain generally [546] or exempt from such laws [547] depends upon the terms of the cession as well as the applicable public land laws.

Where Indians "cede and convey" certain lands to the United States "in compliance with the desire of the United States to locate other Indians and freedmen thereon" [548] it has been held that such lands become the property of the United States but are not subject to preemption rights as a part of the public domain and are "Indian country" within the meaning of criminal trespass laws.[549]

Where the Indians making the cession are given a certain period within which they may select a portion of the ceded land for their own use, it has been said that "until this privilege was exhausted, the land, in any proper sense, belonged to them," and accordingly it has been held that during such period the lands are not subject to "preemption" as public domain lands.[550]

It has been administratively determined that ceded lands in which an Indian tribe retains an equity may be temporarily withdrawn from entry as "public lands" under the Act of June 25, 1910.[551]

Cession agreements in acts of Congress are generally construed as contracts,[552] and where provision is made for subsequent tribal consent, the agreement becomes effective as of the time when such consent is given, although formal proclamation of such consent may be delayed.[553]

[546] Statutes governing appraisement of ceded lands for purposes of sale are construed In: Reappraisal of Land within Indian Reservation. 36 Op. A. G. 506 (1931) ; Stone Denham. 46 L. D. 375 (1918) ; Op. Sol. I. D.. M.28028, May 24, 1935. Example of statute extending public land laws to ceded Indian Lands is *Act* of March 19. 1906, 34 Stat. 78.

[547] *Stroud* v. *Missouri Ft. S. & G. R.* Co., 23 Fed. Cas. No. 13547 (C. C. Kan., 1877); *Armsworthy* v. *Missouri* River Ft. S. *& G. R. Co.*, 1 Fed. Cas. No. 550 (C. C. Ran.. 1879).

[547] Ceded Indian lands were held to be exempt from the preemption act of September 4. 1841. 5 Stat. 453; *Spalding* v. Chandler. 160 U. S. 394 (1896). Such lands were likewise held to be exempt from the preemption provisions of the Act of April 12, 1815, 3 Stat. 121; *Hot Springs Cases*, 92 U. S. 698 (1875).

[548] Treaty of March 21. 1866. with the Seminoles. 14 Stat. 755.

[549] *United States* v. *Payne*, *8* Fed. 883 (D. C. W. D. Ark.. 1881).

[550] *Walker* v. *Henshaw*, 16 Wall. 436. 443 (1872).

[551] 36 Stat. 847. Memo. Sol. I. D.. September 17, 1934.

[552] *Cf. New York Indians* v. *United States*, 170 U. S. 1 (1898) (time of exchange and removal). Cf. also, *Oklahoma* v. *Texas*. *258* U. S. *574* (1922) (conveyance of tribal land by United States construed in accordance with laws of state in which land is situated).

[553] Great Sioux Reservation, 19 Op. 4. G. 467 (1890). See Chapter 14. sec. 5.

The question of civil and criminal jurisdiction over ceded lands involves. in addition to the question of property rights discussed in the *Ash Sheep* case, other questions which are separately treated in Chapters 18 and 19.

That reserved rights to hunt and fish on lands sold by an Indian tribe are property rights, rather than rights of sovereignty. and are therefore to be exercised under the police power of the state, was decided in the ease of *Kennedy* v. *Becker*.[554] In that case the United States, on behalf of the plaintiff Indians, sought to maintain that lands sold by the Senecas with reservation of hunting add fishing rights "became thereby subject to a joint property ownership and the dual sovereignty. of the two peoples, white and red, to fit the case intended. however infrequent such situation was to be."[555] The opinion of the Court, prepared by Hughes, *J.*, and read by White, C. *J.*, declared :

> We are unable to take this view. It is said that the State would regulate the whites and that the Indian tribe would regulate its members, but if neither could exercise authority with respect to the other at the *locus* in *quo*, either would be free to destroy the subject of the power. Such a duality of sovereignty instead of maintaining in each the essential power of preservation would in fact deny it to both.
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> * * * We do not think that it is a proper construction of the reservation in the conveyance to regard it as an attempt either to reserve sovereign prerogative or so to divide the inherent power of preservation as to make its competent exercise impossible. Rather are we of the opinion that the clause is fully satisfied by considering it a reservation of a privilege of fishing and hunting upon the granted lands in common with the grantees, and others to whom the privilege might be extended, but subject nevertheless to that necessary power of appropriate regulation, as to all those privileged, which inhered in the sovereignty of the State over the lands where the privilege was exercised. This was clearly recognized in *United States v. Winans*, 198 U. S. *371. 384*, where the court in sustaining the fishing rights of the Indians on the Columbia River. under the provisions of the treaty between the United States and the Yakima Indians, ratified in 1859. said (referring to the authority of the State of Washington) : "Nor does it" (that is, the right of 'taking fish at all usual and accustomed places') "restrain the State unreasonably, if at all, in the regulation of the right. It only fixes in the land such easements as enable the right to be exercised." (Pp. 563. 564.)

[554] 241 U. S. 556 (1916). For a further discussion of tribal hunting and fishing rights, see Chapter 14. sec. 7 ; and see Chapter 3. sec. 2.

[555] *Ibid.* p. 563.

SECTION 22. TRIBAL RIGHTS IN PERSONAL PROPERTY [556]

The first white explorers, traders, settlers, and lawyers found the Indians possessing not only lands but various valuable chattels, such as furs, provisions, tobacco. wampum, and, in some parts of the country, slaves. Apparently no attempt was ever made to claim ownership of these chattels in the name of the sovereign, as was done, from time to time, with Indian lands. Possibly this may be ascribed to the fact that the Indians themselves had more definite notions of ownership with respect to chattels than they had with respect to land, or perhaps we may find a more adequate explanation in the historic fact that the feudal system was always pretty closely tied to land and never developed a theory of "seizin" and "fees" with respect to personal property. Whatever the reason, the result is that we are at least spared the confusions that the theory of seizin and fees has introduced into Indian land law. If an Indian tribe or clan owns a saint's picture [557] or a herd of cattle. no matter how many limitations the law may put upon the disposition of the property. nobody will explain the limitation in terms of a "fee in the sovereign."

Apart from this difference, the ownership of personal property by an Indian tribe raises problems essentially similar to those raised by tribal ownership of realty.

The same diversity noted in the types of interest in real property held by an Indian tribe is found with respect to personalty in tribal ownership.

The essential distinctions between tribal property and public

[556] For regulations regarding tribal moneys, see 25 C. F. R., subchapter S.

[557] *Pueblo of Laguna* v. *Pueblo of Acoma*, *1 N. M. 220* (1857).

property, which we have noted in the field of realty, are Paralleled in the field of personalty.

The distinction between property vested in the tribe as an entity and property held by tribal members in common is likewise repeated in the field of personality.

The question of who composes the tribe -in which personal Property is vested does not differ in principle from the parallel question which we have considered in the field of real property.

The problems raised by the concept of "equitable ownership" in tribal realty are repeated with respect to equitable ownership of tribal funds and other personal property.

Possibly a peculiar problem is raised in the field of tribal personality by the question of when interest is payable on tribal funds helds by the United States, although this problem shows a basic similarity to the problem of the right to the proceeds of land field by the United States in trust for an Indian tribe.

Another problem that may appear peculiar to the field of tribal personality, but is in fact basically analogous to problems in the field of tribal realty, is that of creditors' claims against tribal funds.

Because of these numerous parallels, it should be possible to deal with the foregoing questions rather briefly, relying upon analyses already made with respect to real property.

A. FORMS OF PERSONAL PROPERTY

The personal property of Indian tribes probably comprises all the forms of personal property known to non-Indians. including bonds, notes, mortgages, moneys, credits, shares of stock, choses in action,[558] and herds.[559]

A tribe may have an equitable interest in personal property held by the United States or by some other party, and, conversely, an Indian tribe may have in its possession funds which it holds as trustee.

Thus a tribe may hold funds as a trustee to carry out projects for the rehabilitation of needy Indians.[560]

Of all forms of property held by an Indian tribe, it is probable that a principal focus of discussion and controversy has been the category of choses in action and, in particular, claims against the United States and against other tribes.[561]

B. TRIBAL PROPERTY AND FEDERAL PROPERTY

As with realty, the distinction between personal property of au Indian tribe and public property of the United States has been recognized in a wide variety of cases.

The distinction between tribal funds and public moneys of the United States was the basis of the decision in *Quick Bear* v. *Leupp*.[562] In that case the Supreme Court held that payments to the Bureau of Catholic Indian Missions for the care, education, and maintenance of Indian pupils was not in violation of statutory provisions which declared it "to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school."[563] The Supreme Court said:

> These appropriations rested on different' grounds from the gratuitous appropriations of public moneys under the heading "Support of Schools." The two subjects were separately treated in each act, and, naturally, as they are essentially different in character. One is the gratuitous appropriation of public moneys for the purpose of Indian education, but the "Treaty Fund" is not public money in this sense. It is the Indians' money, or at least is dealt with by the Government as if it belonged to them, as morally it does. It differs from the "Trust Fund" in this : The "Trust Fund" has been set aside for the Indians and the income expended for their benefit, which expenditure required no annual appropriation. The whole amount due the Indians for certain land cessions was appropriated in one lump sum by the act of 1889, 25 Stat. 888, chap. 405. This "Trust Fund" is held for the Indians and not distributed *per capita*, being held as property in common. The money is distributed in accordance with the discretion of the Secretary of the Interior, but really belongs to the Indians. The President declared it to be the moral right of the Indians to have this "Trust Fund" applied to the education of the Indians in the schools of their choice, and the same view was entertained by the Supreme Court of the District of Columbia and the Court of Appeals of the District. But the "Treaty Fund" has exactly the same characteristics. They are moneys belonging really to the Indians. They are the price of land ceded by the Indians to the Government. The only difference is that in the "Treaty Fund" the debt to the Indians created and secured by the treaty is paid by annual appropriations. They are not gratuitous appropriations of public moneys, but the payment, as we repeat, of a treaty debt in installments. We perceive no justification for applying the proviso or declaration of policy to the payment of treaty obligations, the two things being distinct and different in nature and having no relation to each other, except that both are technically appropriations. (Pp. 80–81.)

Since the decision in *Quick* Bear v. *Leupp*, the Bureau of Indian Affairs has continued to make payments to sectarian schools out of Indian "trust" or "treaty" funds, at the request of the adult Indians concerned. Justifications for such expenditures have been regularly presented to Congress in hearings on Indian appropriations and regularly approved.[564]

In the case of United *States* v. *Sinnott*,[565] where the United States sought to recover upon an Indian agent's bond by reason of the agent's failure to deposit certain timber sale Proceeds in the United States Treasury, the court found for the defendant, on this issue, declaring:

> The mill at which this lumber was sawed was erected by the United States for the Indians of this reservation in pursuance of the treaty with the Umpquas, of November 29, 1854 (10 St. 1125.) and that with the Mollallas, of December 21, 1885, (12 St. 981,) and in fact belongs to them ; and therefore, in my judgment, such lumber was not the "property" of the United States, within the purview of section 3618 of the Revised Statutes, which requires the proceeds of any sale thereof to be conveyed into the treasury; nor was the money received therefor, received "for the use of the United States," within the purview of section 3617 of the Revised Statutes. (PP. 85–86.)

[558] See, for example, Act of June 10, 1872, 17 Stat. 388 (sale of Ottawa tribal assets).

On debts to a tribe created by the appropriation of tribal funds for payment of irrigation construction charges on allotted lands, see Act of June 4, 1920. sec. 8. 41 Stat. 751. 753. See also Act of March 3. 1921. sec. 5. 41 Stat. 1355, and see Chapter 12. sec. 7. To the effect that a tribe may transfer or assign debts owing from the United States on the same basis as a private person, see Assignability of Indebtedness—Cherokee Nation, 20 Op. A. G. 749 (1894).

[559] See. for example, Act of April 27. 1904. 33 Stat. 352, 353 (Crow).

[560] See Letter of Acting Secretary, I. D. to United States Employees' Compensation Commission, July 9, 1937, analyzing loans and grants to Indian tribes made pursuant to the Emergency Belief Appropriation Act of April 8. 1935.

> These agreements are known as trust agreements and contain the following significant provisions: The United States grants to the tribe all of the allocation of emergency funds required to cover the cost of the approved projects excepting such part of the cost as represents necessary administrative and supervisory expenses. The grant is made subject to the condition that it will be used for only the approved projects and that the projects will be carried on under the regulations and supervision of the Indian Office.

And see Sec. 24 of this chapter.

[561] See Chapter 14, sec. 6.

[562] 210 u. s. 50 (1908).

[563] Act of June 10, 1896. 29 Stat. 321. 345: Act of June 7. 1897. 30 Stat. 63, 79 ; similar provisions are found in more recent appropriation acts, e. g., Act of March 2. 1917, 39 Stat. 969. 988.

[564] Op. Sol. I. D.. M.27514, August 1. 1933. See Chapter 12. sec. 2.

[565] 26 Fed. 84 (C. C. Ore. 1886).

In a somewhat similar case, the United States Supreme Court declared: [566]

> The moneys paid for the Indian lands were trust moneys, not public moneys. They were at all times in equity the moneys of the Indians, subject only to the expenses incurred by the United States for surveying, managing, and selling the lands. (P. 693.)

C. TRIBAL OWNERSHIP AND COMMON OWNERSHIP

Tribal funds, like tribal lands, are, the property of the tribe as an entity rather than common property of the individual members.[567]

This general rule, however, does not settle the question of when a particular treaty or statute is to be construed as establishing tribal property rights in a given fund, for instance, and when individual rights are established. The problem is apt to become acute when the treaty or statute in question refers to "Indians" in the plural instead of to a tribe in the singular.

In *the case* of *Chippewa Indians of Minnesota v. United States*,[568] a possible ambiguity in the original statute [569] requiring payments to "the Chippewa Indians in the State of Minnesota" was resolved by the Supreme Court in view of a sustained course of administrative dealings treating the funds in question as the property of the tribe rather than of individuals.

Ordinarily a treaty promise to make annuity payments to a tribe *per capita* does not establish vested rights in individual members of the tribe, and no such vested right is established by the general statute requiring that payment of annuities be made directly to the Indians rather than to agents or attorneys.[570] Therefore individual members who separate from the tribe forfeit a legal claim to annuities.[571] As was said in the case of *The Sac and Fox Indians*,[572] *per* Holmes, *J.*:

> The Government did not deal with individuals but with tribes. *Blackfeather v. United* States. 190 U. S. 368. 377. See *Fleming v. McCurtain*. 215 U. S. 56. The promises in the treaties under which the annuities were due were promises to the tribes. Treaties of November 3. 1804. 7 Stat. 84; October 21, 1837. 7 Stat. 540: October 11, 1842. 7 Stat. 596. See treaty of October 1. 1859. 15 Stat. 467 (P. 484.)
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> The treaty contracts on which the plaintiffs claims are founded gave rights only to the tribe. not to the members. It was an accepted and reasonable rule. especially in the days when Indians' wars still were possible and troublesome, that payments to the tribe should be made only at their reservation and to persons present there. The acts of 1852 and 1867 did not shift the treaty rights from the tribe to the members, create new rights or enlarge old ones. The payments up to 1884 had the sanction of statute. The act of 1884 no more created individual rights than did the acts of 1852 and 1867. It confined its benefits to "original Sacs and Foxes now in Iowa," and made the Secretary Of the Interior the judge. (Pp. 489–490.)

D. TRIBAL INTEREST IN TRUST PROPERTY

Numerous statutes refer to funds held by the United States for an Indian tribe as "trust funds" and to the Secretary of the Treasury or the Secretary of the Interior as "custodian." [573]

The strict language of "trust" is not, however, necessary to establish a trust relationship between the United States and the tribe where tribal personal property is held by the United States.

Incidents of the trust or depositary relationship are found in statutes providing for payments out of the Treasury to replace bonds held by the Secretary of the Interior for an Indian tribe and stolen while in his custody,[574] or to compensate for the defaults of states on state bonds.[575]

E. THE COMPOSITION OF THE TRIBE

As has been already noted, the question of what individuals are entitled to share in tribal personal property does not differ essentially from the parallel question considered with respect to realty.[576] The chief difficulties with respect to the proper distribution of tribal funds have arisen in connection with the amalgamation of distinct tribes,[577] the splitting of single tribes,[578] and the loss of membership by or adoption of particular individuals.

Where several tribes or bands are interested in a single fund, Congress has sometimes provided for distribution in accordance with respective numbers.[579]

The interest of the various groups of Cherokees in national funds has been a source of legislation[580] and litigation [581] for many years.

Special statutes occasionally provide for the payment of shares of tribal funds to persons newly added to tribal rolls.[582]

F. INTEREST ON TRIBAL FUNDS

When tribal funds are held by the United States for the benefit of the tribe. the question frequently arises whether interest on such funds is due to the tribe and, if such be the case, what the appropriate rate of interest may be. Ordinarily this question must be answered by reference to the terms of the treaty. act

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[566] *United States v. Brindle. 110* U. S. *688 (1884)*

[567] *Dukes v. Goodall*, 5 Ind. T. 145 (1904) (holding individual Choctaw has no such interest in tribal property as will justify representative suit to prevent improper additions to tribal rolls); Seminole Indians—Modification of Agreement With. 26 Op. A. G. 340 (1907); see *Parks v Ross*, 11 How. 362, 374 (1850). And *cf Muskrat v. United States*. 219 U S 346 (1911). rev'g 44 C. Cls. 137 (1909) (holding unconstitutional provision in the Appropriation Act of March 1. 1907. 34 Stat 1015. 1028 conferring jurisdiction upon the Court of Claims and the Supreme Court to determine the constitutionality of the Act of April 26. 1906. 34 Stat 137. an amended by Act of June 21. 1906. 34 Stat. 325. adding new members to Cherokee rolls).

[568] 307 U. S. 1 (1939).

[569] Act of January 14, 1889. 25 Stat. 642.

[570] Act Of August 30. 1852. sec. 3. 10 Stat. 41, 56

[571] *Sac and Fox Indians of the Mississippi in Iowa v. Sac and Fox Indians of the Mississippi in Oklahoma*, 220 U. s . 4 8 1 (1911), aff'g. 43 C. Cls. 287 (1910).

[572] *Ibid.*

[573] Art of June 10. 1876. 19 Stat. 58; Act of June 16. 1880. sec. 2. 21 Stat 291. 292 (Great and Little Osage).

[574] Act of July 12. 1862. sec. 1. 12 Stat 539. 540 (Kaskaskias. Peorias. Piankeshaws, and Weas).

[575] Thus the Act of March 3. 1845. 5 Stat 766. 777. includes an appropriation "To make good the interest on investments in State stocks and bonds. for various Indian tribes. not yet paid by the States. to be reimbursed out of the interest when collected * * *." Act of August 31. 1842. 5 Stat. 576 (Wyandott).

[576] sec. 1. *supra*.

[577] See *e g.*, Act of January 19. 1891. 26 Stat. 720 (division of Sioux Nation).

[578] See e. *g.*, Treaty of July 19. 1866. with Cherokee Nation. 14 Stat. 799 (incorporation of friendly tribes).

[579] Treaty of July 27. 1853. with Comanche. Kiowa. and Apache Indians. Art. 6. 10 Stat. 1013. 1014; *Act* of January 18, 1881. sec 3. 21 Stat. 315. 316 (Winnebago); *cf* Treaty of August 25 1828. Art 2. 7 Stat. 315. 316 (Winnebago. Potawatomie. Chippewa. and Ottawa Indians); *cf*. also Act of March 2, 1889. sec. 2. 25 stat. 1013. 1015 (United Peorias and Miamies).

[580] See Act of August 7. 1882. 22 Stat. 302, 328: Act of March 3. 1883. 22 Stat. 582. 585–586; Act of August 23. 1894. 28 Stat. 424. 441. 451.

[581] *Cherokee Nation v. Blackfeather*, *155* U. S. *218* (1894); *Cherokee Nation v. Journeycake*, 165 U. S. 196 (1894). aff'g. *Journeycake v. Cherokee* Nation. 28 C. Cls. 281 (1893)

[582] Act of June 2. 1924. 43 Stat. 253 (Cheyenne and Arapaho).

of Congress, or agreement by which the fund in question was established.[583]

Under some treaties what amounted to interest payments were designated, "annuities" [584]

The Act of April 1, 1880,[585] authorized the Secretary of the Interior to deposit such funds in the United States Treasury, in lieu of investment, with a provision that interest should be payable "semiannually * * * at the rate per annum stipulated by treaties or prescribed by law." The Act of February 12, 1929,[586] as amended by the Act of June 13, 1930,[587] provides for the payment of simple interest at the rate of 4 per centum per annum on tribal funds, "upon which interest is not otherwise authorized by law." [588]

When tribal funds held by the United States were segregated for pro rata distribution and deposited in banks, section 28 of the Act of May 25, 1918,[589] required as a condition of the deposit that the bank agree to pay interest on such funds "at a reasonable rate." Subsequently, section 324 (c) of the Banking Act of 1935[590] prohibited payment of- interest by member banks of the Federal Reserve System on demand deposits, and repealed "so much of existing law as requires the payment of interest with respect to any funds deposited by the United States * * * as is inconsistent with the provision of this section as amended." It was administratively determined that this statute superseded the requirement of interest payment on funds on demand deposit in such banks, and that such funds might lawfully be deposited in banks not paying interest thereon.[591] This holding was limited to banks which are members of the Federal Reserve System,[592] and had no application to tribal funds not segregated for pro rata distribution, as to which a fixed interest is due to the tribe.

The Act of June 24, 1938,[593] authorized the Secretary of the Interior to withdraw from the United States Treasury and to deposit in banks tribal funds "on which the United States is not obliged by law to pay interest at higher rates-than can be procured from the banks."

Although the right of an Indian tribe to interest in connection with recovery against the United States is beyond the scope of this chapter, we may note the general rule laid down by Taft, *C. J.*, in *Cherokee Nation* v. *United States*,[594] based upon section 177 of the Judicial Code:

> * * * we, should begin with the premise, well established by the authorities, that a recovery of interest against the United States is not authorized under a special Act referring to the Court of Claims a suit founded upon a contract with the United States unless the contract or the act expressly authorizes such interest.[595]

G. CREDITORS' CLAIMS

The question of whether funds due to or held in trust for the tribe by the United States should be subjected to the claims of creditors has been expressly covered in a number of special statutes relating to the disposition of such funds.[596] In a few cases general payment by the Secretary of the Interior to all of the creditors of a given tribe is authorized, but generally the statute authorizes payment of a designated claim, based either upon tribal agreement,[597] or upon, depredations.[598] General legislation on depredation claims authorized the Court of Claims to adjudicate such claims in suits against the United States, with permission to interested Indians to appear, as parties defendant.[599] Judgments rendered against Indian tribes were to be satisfied out of annuities, other funds, or any appropriations for the benefit of the tribe, and, if all these sources failed, from the Treasury of the United States, such payments to be reimbursable out of future tribal, annuities, funds, or appropriations. Thereafter the regular appropriation acts authorized the Secretary of the Interior to make payments to successful claimants under the Act of March 3, 1891, by deducting such sums from tribal funds, having due regard for the educational and other necessary requirements of the tribe or tribes affected.[600]

The general rule is that tribal funds held by the United States will not be subjected to claims of third parties unless payment of such claims is clearly authorized by statute or treaty,[601] or by lawful action of the tribe itself.[602]

[583] See Crow Indians of Montana, Modification of Agreement, 20 Op. A. G.. 517 (1893).

[584] *United States* v. *Blackfeather*, 155 U. S. 180 (1894). revg. *Blackfeather v. United States, 28 C. Cls. 447* (1893) ; but *cf. Sioux Indians* v. *United States*, 277 U. S. *424* (1928). affg. 58 C. Cls. 302 (1923).

[585] 21 stat. 70. 25 U. S. c. 161.

[586] 45 stat. 1164.

[587] 46 Stat. 584.

[588] Sec. 2 of this act fixes the same interest rate for "Indian Money, Proceeds of Labor" accounts over $500 (25 U. S. C. 161b). Secs. 3 and 4 relate to accounting and to deposit of accrued interest. (25 U. S. C. 161c, 161d).

[589] 40 Stat. 591.

[590] 49 stat. 684. 714-715.

[591] Op. Sol. I. D.. M.28231, March 12, 1936.

[592] Op. Sol. I. D., M.28519, May 27. 1936.

[593] 52 stat. 1037.

[594] 270 U. S. 476, 487 (1926).

[595] For an example of such expression see *United States v. Blackfeather*, 155 U. S. 180 (1894). revg. *Blackfeather* v. *United States*, 28 C. Cls. 447 (1893), (holding that where interest is due on the proceeds of land ceded by the tribe, to be sold by the Federal Government in public sale, and such lands are actually sold at private sale at lower price than that designated, and subsequently, under a special jurisdictional act, it is adjudicated that the tribe is entitled to the difference, the tribe Is also entitled to interest thereon; the case being brought within the exception to the rule above cited, by a treaty provision for the payment of "five per centum on the amount of said balance, as an annuity.") (P. 188.)

[596] Act of June 22, 1854. 10 Stat. 781 (Sac and Fox) ; Act of June 16. 1880, 21 Stat. 259, 277 (Cheyenne). Act of May 16, 1874, sec. 1, 18 Stat. 47 (Sioux).

[597] Act of August 5, 1882, 22 Stat. 728 (Kansas) ; Act of April 4. 1888. 25 Stat. 79 (Pottawatomie) ; Act of May 27, 1902. 32 Stat. 207 (Menominee).

[598] Act of March 3. 1883, 22 Stat. 804. 805 (Cheyenne and Arapaho) ; Act of March 3, 1885. 23 Stat. 478. 498 (Cheyenne and Arapaho).

[599] Act of March 3, 1891, 26 Stat. 851. For a discussion of the responsibility of tribes for depredations, see Chapter 14, secs. 1, 6.

[600] Act of August 23, 1894, 28 Stat. 424, 476: Act of June 8, 1896. 29 Stat. 267, 306; Act of February 9, 1900, 31 Stat. 7, 26 ; Act of February 14. 1902. 32 Stat. 5, 27.

[601] Claim of Board of Foreign Missions under Treaty with the Cherokees. 5 Op. A. G. 268 (1850) ; The Cherokee Fund Not Liable for Damages. etc., 3 Op. A. G. 431 (1839) ; Transfer of Stocks from the Chickasaw to the Choctaw Fund, 3 Op. A. G. 591 (1840).

[602] To the effect that a tribe may assume collective responsibility for debts incurred by individual members, and that the President, at the request of the tribe, may turn annuity funds over to the creditor. see: Contracts of the Potawatomie Indians, 6 Op. A. G. 49 (1853) ; Contracts of Indians. 6 Op. A. G. 462 (1854).

SECTION 23. TRIBAL RIGHT TO RECEIVE FUNDS

The right of an Indian tribe to receive funds or other personal property from the United States or from third parties depends. of course, upon the language of the treaty, statute, or agreement, in which such promise of payment appears.[603] In this section we shall attempt to determine the principal sources of tribal rights to income, and to analyze the manner in which such payments are handled.

[603] The right of an Indian tribe to recover funds, apart from agreement, by reason of torts committed against it, is treated elsewhere, in Chapter 14. The right to compensation under eminent domain Proceedings is adverted to in sec. 11, *supra*. Powers with respect to taxes and fees are treated in Chapter 7.

A. SOURCES OF TRIBAL INCOME

The principal source of tribal income, at least since the Revolution, has been the sale of tribal resources-chiefly land, timber, minerals, and water power. Since sale of such resources was. for more than a century. largely restricted to the United States. most of the tribal income received prior to 1891, when the first general leasing law was enacted,[604] was paid to the tribe by the United States. Failure to appreciate the basis of such payments helped to create the popular misimpression that all payments made by the United States to Indians were matters of charity. An illustration of this sentiment is found in section 3 of the Act of June 22. 1874,[605] which provides that able-bodied male Indians receiving supplies pursuant to appropriation acts should perform useful labor "for the benefit of themselves or of the tribe, at a reasonable rate, to be Bred by the agent in charge, and to an amount equal in value to the supplies to be delivered."

The popular outcry that would have followed the application of a similar rule to white holders of Government bonds or pensions may well be imagined.

It is important to recognize that funds due to Indian tribes under treatles and agreements were viewed by the Indians either as commercial debts for value received or as indemnities due from a foe in war. The fact that such payments were otherwise viewed by the public and by many administrators helps to esplain some of the bitter controversies which formerly were decided on the field of battle and are now decided in the Court of Claims.

In numerous treaties, agreements, and statutes. the United States has agreed to pay money to an Indian tribe, in consideration of land cessions or other disposition of Indian property.[606] Where the tribal organization permitted, provision was frequently made that payment should go directly to the treasurer of the tribe; in other eases payments were to be made to chiefs, or to heads of families, or per capita to all adults; in some cases payment was to be made in goods or services.[607]

Many of the early treaties provided for payments to be made in goods.[608]

Ordinarily payments Promised in a treaty and paid in annual Installments called annuities [609] were due to the tribe, and like obligations of one nation to another, were deemed satisfied when the tribal authorities had received the funds in question.[610] For the United States to have presumed to satisfy its Obligation by direct payment to the individual members of the tribe would have been a departure from the canons of international law to which the Federal Government was trying to assimilate its relationship with the Indian tribes. Furthermore, payments to tribal authorities saved the Federal Government from the necessity of making difficult adjudications that might lead to dissatisfaction. On the other band; payments to tribal authorities sometimes led to worse dissatisfactions on the part of individual members of the tribes who considered themselves discriminated against, and so the practice grew up of reserving to the United States, by treaty provision, the right to distribute to the members of the tribe the moneys or goods owing to the tribe.[611] Occasionally , the treaty provided that this distribution was to be made on the basis of an agreement between the tribal authorities and the agents of the Federal Government.[612]

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[604] See sec. 19. *supra*.

[605] 18 Stat. 146. 176; reenacted as permanent legislation in sec. 3 of the Act of March 3. 1878. 18 Stat. 420, 449. 25 U. S. C. 137. See Chapter 4. sec. 10. Chapter 12. sec. 4.

[606] Art. 4 of Treaty of November 7. 1825. with Shawnee tribe. 7 Stat. 284. 285: Art. 4 of Treaty of October 27. 1832. with Potowatomies. 7 Stat. 399, 401; Art. 3 of Treaty of September 10. 1853. with Rogue River tribe. 10 Stat. 1018. 1019; Art. 3 of Treaty of May 12. 1854. with Menomonee tribe. 10 Stat. 1064, 1065; Art. 6 of Treaty of May 30. 1854. with Kaskaskia and Peoria and Piankeshaw and Wea tribes. 10 Stat. 1082. 1083: Art. 3 of Treaty of June 5. 1854. with Miami tribe. 10 Stat. 1093. 1091: Art. 4 of Treaty of September 30, 1854. with Chippewa Indians of Lake Superior and the Mississippi, 10 Stat. 1109, 1110; Arts 3 and 4 of Treaty of September 3. 1839. with Stockbridge and Munsee tribes, 11 Stat. 577, 578; Art. 7 of Treaty of August 7. 1856. with Creek and Seminole tribes. 11 Stat. 699, 702: Art. 3 of Treaty of March 10 1865. with Ponca tribe, 14 Stat. 675. 676 : Art. 46 of Treaty of April 28. 1866. with Choctaws and Chickasaws. 14 Stat. 769. 780: Art. 11 of Treaty of October 1. 1859. with Sacs and Foxes of the Mississippi. 15 Slat. 467. 470: Treaty of February 23. 1867. with Senecas. mixed Senecas and Shawnees, Quapaws, Confederated Peorias, Kaskaskias, Weas. and Piankeshaws, Miamies, Ottawas of Blanchard's Fork and Roche de Boeuf. and certain Wyandottes, 15 Stat. 513; Act of April 15. 1874 18 Stat. 29 (Seminoles) ; Act of February 19, 1875. 18 Stat. 330. 331 (Seneca Nation) ; Act of March 3. 1875. 18 Stat 402. 413 (Choctaws) Act of February 28. 1877. 19 Stat. 265 (Cherokees) ; Act of June 16 1880. 21 Stat. 238. 248 (Cherokee Nation) : Act of July 7. 1884. 23 Stat 191. 212 (Creek Nation) ; Act of March 1. 1889. 25 Stat. 757. 758 (Muscogee or Creek Nation) ; Act of August 19. 1890. 26 Stat. 329 (Omaha tribe) ; Act of February 13. 1891. 26 Stat 749. 752 (Sac and Fox and Iowa) : Joint Resolution of March 31. 1894. 28 Stat. 579 580 (Cherokee Nation) : Act of February 7. 1903. 32 Stat. 803 (Colville Indian Reservation) ; Act of August 26. 1922. 42 Stat. 832 (Agua Caliente Band).

[607] On the scope of obligations thereby assumed by the United States. see *United States* v. *Omaha Tribe of Indians*, *253* U. S. 275, 281 (1920) ; and *cf. United States* v. *Seminole* Nation, 299 U. S. 417 (1937).

[608] See Chapter 3. sec. 3C(3).

[609] Although it has long been the custom to make new appropriations each year. Congress has made appropriations to Indian tribes payable over extended periods. Act of April 21. 1806, 2 Stat. 407 ; Act of March 3, 1819. 3 Stat. 517 ("annually, for ever") ; Act of January 9. 1837. 5 Stat. 135; Act of March 3, 1811, 2 Stat. 660 ("five hundred dollars . . . to be paid annually to the said nations; which annuities shall be permanent").

[610] This was so self-evident that most of the early treaties did not mention the fact. A few treaties, however, did make explicit the understanding that distribution of payments made to the tribe was to be in the hands of the tribal authorities: Treaty of September 3. 1836. with the Menomonie Nation of Indians, 7 Stat 506; Treaty of February 22. 1855. with the Mississippi bands of Chippewa Indians. 10 Stat. 1165. Other treaties emphasized this understanding. without making It explicit. by providing that the United States reserve the right to apportion annuities among the different bands or tribes with which a single treaty was made, but reserving no similar right to apportion funds within a band or tribe; Treaty of July 27. 1853. with the Comanche. Kiowa. and Apache tribes or nations of Indians, 10 Stat. 1013 : Treaty of September 30. 1854. with the Chippewa Indians of Lake Superior and the Mississippi. 10 Stat. 1109.

[611] At first these treaties provided simply that the United States might "divide the said annuity amongst the individuals of the said tribe." Treaty of December 30. 1805. with the Piankeshaw. 7 Stat. 100. In the Treaty of January 8. 1821. with the Choctaw. 7 Stat. 210. per capita distribution is promised In order to remove "any discontent which may have arisen in the Choctaw Nation. in consequence of six thousand dollars of their annuity baring been appropriated annually, for sixteen years. by some of the chiefs. for the support of their schools." Other treaties promising equal distribution are: Treaty of October 4. 1842. with the Chippewa Indians of the Mississippi and Lake Superior. 7 Stat. 591 ; Treaty of January 4. 1845. with the Creek and Seminole Tribes of Indians. 9 Stat. 821: Treaty of March 17. 1842. with the Wyandott Nation of Indians. 11 Stat. 581. Later treaties generally reserved a more comprehensive right In the President of the United States to determine how moneys due to the Indian tribe should be paid to the members of the tribe or expended for their use and benefit: Treaty of March 16 1854. with the Omaha tribe of Indians. 10 Stat. 1043: Treaty of May 6 1854. with the Delaware tribe of Indians. 10 Stat. 1048 ; Treaty of June 5 1854. with the Miami tribe of Indians. 10 stat. 1093 ; Treaty of October 17. 1855. with the Blackfoot and other tribes of Indians. 11 Stat 657 ; Treaty of January 22. 1855. with the Dwamish and other tribes of Indians in Territory of Washington. 12 Stat. 927; Treaty of January 26 1855. with the S'Klallams. 12 Stat. 933: Treaty of January 31. 1855 with the Makah tribe of Indians. 12 Stat. 939: Treaty of June 25. 1855 with the Confederated tribes of Indians in Middle Oregon. 12 Stat. 963 ; Treaty of July 1. 1855. with Qui-nai-elt and Quil-leh ute Indians. 12 Stat 971; Treaty of February 18, 1861. with the Confederated tribes of Arapahoe and Cheyenne Indians. 12 Stat. 1163 ; Treaty of March 6. 1865. with the Omaha Tribe of Indians. 14 Stat. 667 : Treaty of September 29. 1865. with the Great and Little Osage Indians. 14 Stat. 687 ; Treaty of March 2. 1868. with the Ute Indians. 15 Stat. 619.

[612] See, for example: Treaty of September 29. 1837. with the Sioux Nation of Indians, 7 Stat. 538; Treaty of October 18. 1848. with the